

MEMORANDUM TO: John M. Andersen,
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations.

FROM: Richard Weible
Director Office 7

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Expedited Five-Year (Sunset) Review of the Antidumping Duty
Order on Sorbitol from France

Summary

We have analyzed the substantive response of the domestic interested party in the third sunset review of the antidumping duty order covering Sorbitol from France. 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 these sunset reviews for which we received substantive responses:

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

Background

On February 12, 1982, the Department of Commerce (Department) published in the Federal Register its final affirmative determination of sales at less than fair value (LTFV) with respect to imports of sorbitol from France. See Sorbitol from France; Final Determination of Sales at Less Than Fair Value, 47 FR 6459 (February 12, 1982). On April 9, 1982, the Department published in the Federal Register an antidumping duty order on sorbitol from France. See 47 FR 15391, 15392 (April 9, 1982). Since the issuance of the antidumping duty order, the Department has conducted numerous administrative reviews with respect to imports of sorbitol from France.¹

¹ Sorbitol from France; Final Results of Antidumping Duty Administrative Review, 51 FR 42873 (November 26, 1986); Sorbitol from France; Final Results of Antidumping Duty Administrative Review, 52 FR 20444 (June 1, 1987); Sorbitol from France; Final Results of Antidumping Duty Administrative Review, 53 FR 21506 (June 8, 1988); Sorbitol from France; Final Results of Antidumping Duty Administrative Review, 55 FR 6668 (February 26, 1990), Sorbitol from France; Final Results of Antidumping Duty Administrative Review, 65 FR 7361 (February 14, 2000).

The Department initiated the first sunset review on October 1, 1998, pursuant to Section 751(c) of the Tariff Act of 1930, as amended (the Act). See Initiation of Five-Year Reviews, 63 FR 52683 (October 1, 1998). As a result of that review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. See Final Results of Expedited Sunset Review: Sorbitol from France, 64 FR 5636 (February 4, 1999) (1st Sorbitol Sunset Review). In that determination, the Department also reported to the International Trade Commission (ITC) as the likely dumping margin for all French manufacturers or exporters a rate of 2.90 percent. Id.

Since the first sunset review, the Department has completed only one administrative review covering the period 1998-1999. The Department determined a rate of 12.07 percent for Roquette Freres based on adverse facts available. See Sorbitol from France: Final Results of Antidumping Duty Administrative Review, 65 FR 7361 (February 14, 2000).

The Department initiated the second sunset review on February 2, 2004. See Initiation of Five-Year Reviews, 69 FR 4921 (February 2, 2004). As a result of that review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. See Sorbitol from France: Final Results of Expedited Sunset Review of Antidumping Duty Order, 69 FR 36062 (June 28, 2004) (2nd Sorbitol Sunset Review). In that determination, the Department also reported to the ITC as the likely dumping margin for all French manufacturers or exporters a rate of 2.90 percent. Id. There have been no administrative or new shipper reviews of the order since the second sunset review.

On July 1, 2009, the Department initiated the instant sunset review of the antidumping duty order on sorbitol from France pursuant to section 751(c) of the Act. See Initiation of Five-Year (Sunset) Reviews, 74 FR 31412 (July 1, 2009).

The Department received a notice of intent to participate from one domestic interested party, Archer Daniels Midland Company (ADM) within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations.² A second domestic interested party, Corn Products International (Corn Products) filed its notice of intent to participate on July 22, 2009, a week after the regulatory deadline. Further, Corn Products filed a substantive response on July 31, 2009. The Department rejected Corn Products' notice of intent to participate as untimely on August 11, 2009. As a result, the Department also determined that it would not consider Corn Product's substantive response on the grounds that failure to file a notice of intent to participate means the Department could not accept or consider any unsolicited submissions made by Corn Products during the course of this review. See Memorandum to the File dated August 11, 2009. As a result, the Department returned all submitted documents to Corn Products. See Letter to Corn Products International, dated August 11, 2009.

² Counsel for ADM notified the Department by telephone that ADM intended to participate in this proceeding and requested that ADM be permitted to file its notification one day after the regulatory deadline of July 16, 2009. The Department acceded to this request and accepted ADM's notice of intent, filed on July 17, 2009. See Memorandum to the file from Dana S. Mermelstein dated July 21, 2009.

ADM claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of sorbitol. On July 31, 2009, we received a complete, substantive response from ADM within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). The Department received no substantive responses from respondent interested parties. 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 (120-day) sunset review of this order.

On August 17, 2009, a respondent party, Roquette Freres, filed comments in which Roquette Freres argued that the Department should return, as untimely, the Notices of Intent filed by the domestic interested parties. In so doing, Roquette Freres argues that the Department should disallow domestic interested parties to participate in this sunset review, and automatically revoke the antidumping duty order in accordance with 351.218(d)(1)(iii)(B).

On August 18, 2009, ADM responded to Roquette Freres comments, referencing the Department's memorandum to the file from Dana Mermelstein dated July 21, 2009. ADM claims therefore its request for an extension of time to file the notice of intent to participate was granted. On September 1, 2009, ADM made a formal request for the Department to conduct an expedited review on the grounds that "no respondent party had submitted an adequate substantive response" and that ADM had filed both an intent to participate and a complete substantive response.

On August 27, 2009, Roquette Freres filed an administrative protective order application in the proceeding.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department has 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 periods before and 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 (the Commission) the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of domestic interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

ADM asserts that revocation of the antidumping duty order of sorbitol from France would result in the continuation or recurrence of dumping. ADM notes French producers and exporters are currently subject to margins that are above de minimis and that the continuing existence of higher than de minimis margins after the issuance of the order compels the finding that dumping will continue or recur if the Department revokes the order. See Substantive Response of ADM at 3 (July 31, 2009).

ADM believes that two companies, Syral S.A.S. (Syral) and Roquette Freres, currently produce and export sorbitol from France. ADM states “the Department has only individually investigated and reviewed Roquette Freres’s U.S. sales of sorbitol” and alleges that Roquette Freres has continued to dump sorbitol since the investigation. Roquette Freres’s original weighted average margin was 2.90 percent, and ADM notes that in six of eight administrative reviews since 1982, the margin for Roquette Freres exceeded the de minimis level. See Substantive Response of ADM at 4.

ADM notes the Department has not completed an administrative review of the order since the 1998-1999 review period. ADM suggests the Department may reasonably infer that Roquette Freres and Syral have not requested administrative reviews because they could not prove that they could ship sorbitol to the United States without dumping. Noting that Roquette Freres has established crystalline sorbitol production facilities in the United States, ADM argues there is an additional basis for inferring that Roquette Freres cannot export sorbitol from France without dumping. Id. ADM further asserts that Roquette Freres, the largest sorbitol producer in the world, has continued dumping throughout the life of the order, and stresses that in three reviews Roquette Freres’s margin of dumping exceeded the margin in the investigation.

With respect to Syral, ADM notes that the Department rescinded the 1999-2000 review for Amylum, a former producer of sorbitol, upon determining that Amylum had no shipments during the review period. See Sorbitol From France: Notice of Rescission of Antidumping Duty Administrative Review, 66 FR 20788 (April 25, 2001). According to ADM, Syral purchased its sorbitol assets from Amylum in 2007 and has never participated in an administrative review. Thus, ADM argues Syral has never been found to have eliminated dumping since the issuance of the order. Therefore, ADM argues, Amylum and Syral have always been assigned the 2.90 percent “all others” rate established in the original order.

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 at 883 (1994), the Department’s determination of likelihood of continuation or recurrence is made on an order-wide basis. In addition, 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 an order and import volumes for the subject merchandise declined significantly. See SAA at 889-890, House Report at 63-64, Senate Report at 52.

Therefore, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where, inter alia, dumping continued at any level above de minimis after the issuance of the order. The Department has conducted a number of reviews since issuance of the order in which it found that dumping continued. Therefore, we continue to collect and assess dumping duties on entries of subject merchandise. The Department therefore concurs with ADM's conclusions that French producers and exporters are currently subject to margins that are above de minimis. Given that dumping at levels above de minimis has continued over the life of the order, 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

ADM notes the Department calculated a dumping margin of 2.90 percent in the original investigation. ADM states the Department should provide Roquette Freres' margin of 2.90 percent to the Commission as this would be consistent with the Department's decision in the first and second sunset reviews of this order. In those reviews the Department held that revocation of the order would likely lead to continuation or recurrence of dumping at a rate of 2.90 percent. See 1st Sorbitol Sunset Review and 2nd Sorbitol Sunset Review. ADM argues no factual basis exists to find that a lower rate would prevail in this sunset review.

With respect to Syral, ADM argues that because Syral only recently began exporting to the United States, the Department should adhere to its Policy Bulletin and provide the "all others" rate of 2.90 percent to the Commission as the magnitude of Syral's margin of dumping likely to prevail if the order is revoked.

Department's Position

Section 752(c)(3) of the Act provides that the Department will report to the Commission the magnitude of the margin of dumping likely to prevail if the order were revoked. Both the SAA at 890 and the House Report at 64 provide that the Department will normally select a margin "from 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." Therefore, the Department normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Exceptions, to this policy, where appropriate, include the use of more recently calculated dumping margins and consideration of duty absorption determinations (see the SAA at 890-91 and the House Report at 63-64, and the Senate

Report at 52), or in situations where the Department did not issue a final determination (e.g., because the investigation was suspended and continuation was not requested). Specifically, the Department will normally provide the company-specific margin from the investigation for each company regardless of whether the margin was calculated using a company's own information or based on best information available, or facts available. Furthermore, in light of the legislative history discussed above, for companies not specifically investigated, 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. In addition, the Department normally will provide to the Commission a list of companies excluded from the order based on zero or de minimis margins, if any, or subsequently revoked from the order, if any.

The Department believes it is appropriate to again report the figure of 2.90 percent to the Commission as the magnitude of the margin likely to prevail if the order were revoked because it is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place. Therefore, the Department will report to the Commission the company-specific margins, and the "all others" rate published in the original order.

Final Results of Sunset Reviews

The Department determines that revocation of the antidumping duty order on sorbitol from France would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

- Manufacturers/Exporters/Producers Weighted-Average Margin (Percent)

Roquette Freres	2.90	percent
All Others	2.90	percent

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_____

DISAGREE_____

John M. Andersen,
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date