

DATE: March 1, 2011

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

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order on Granular Polytetrafluoroethylene Resin from Italy

SUMMARY

We have analyzed the responses of interest parties in the third sunset review of the antidumping duty order covering granular polytetrafluoroethylene resin (“PTFE resin”) from Italy. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of the issues in this sunset review for which we received a substantive response:

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

HISTORY OF THE ORDER

The Department of Commerce (“Department”) published its final affirmative determination of sales at less than fair value with respect to imports of PTFE resin from Italy on July 11, 1988.¹ The antidumping duty order was published on August 30, 1988.² The Department established weighted-average dumping margins of 46.46 percent for Montefluos S.p.A./Ausimont U.S.A., and 46.46 percent for “all others.”

¹ See Final Determination of Sales as Less Than Fair Value: Granular Polytetrafluoroethylene Resin From Italy, 53 FR 26096 (July 11, 1988) (“Final Determination”).

² See Antidumping Duty Order: Granular Polytetrafluoroethylene Resin from Italy, 53 FR 33163 (August 30, 1998).

On May 3, 1999, the Department initiated the first sunset review of the antidumping duty order on PTFE resin from Italy pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”).³ Prior to completion of the first sunset review, the Department conducted seven administrative reviews.⁴ As a result of the first sunset review, pursuant to sections 751(c) and 752 of the Act, the Department determined that revocation of the antidumping duty order on PTFE resin from Italy would likely lead to continuation or recurrence of dumping.⁵ On December 27, 1999, the International Trade Commission (“ITC”), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on PTFE resin from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁶ Accordingly, the Department published a notice of the continuation of the antidumping duty order on PTFE resin from Italy, pursuant to 19 CFR 351.218(f)(4).⁷

On December 1, 2004, the Department initiated the second sunset review of the antidumping duty order on PTFE resin from Italy pursuant to section 751(c) of the Act.⁸ After the final results of the first sunset review, and prior to the final results of the second sunset review, the Department conducted two administrative reviews of PTFE resin from Italy.⁹ The Department also conducted a changed circumstances review in which it found that Solvay Solexis S.p.A. and Solvay Solexis, Inc. are the successors-in-interest to Ausimont S.p.A. and Ausimont U.S.A., Inc., respectively.¹⁰ As a result of the second sunset review, pursuant to sections 751(c) and 752 of the Act, the Department determined that revocation of the antidumping duty order on PTFE resin from Italy would be likely to lead to continuation or recurrence of dumping.¹¹ On December 8,

³ See Initiation of Five-Year (“Sunset”) Reviews, 64 FR 23596 (May 3, 1999).

⁴ See Granular Polytetrafluoroethylene Resin From Italy; Final Results of Antidumping Duty Administrative Review, 55 FR 50854 (December 11, 1990); Granular Polytetrafluoroethylene Resin From Italy; Final Results of Antidumping Duty Administrative Review, 56 FR 58031 (November 15, 1991); Granular Polytetrafluoroethylene Resin From Italy; Final Results of Antidumping Duty Administrative Review, 60 FR 19884 (April 21, 1995); Granular Polytetrafluoroethylene Resin From Italy; Final Results of Antidumping Duty Administrative Review, 60 FR 53737 (October 17, 1995); Granular Polytetrafluoroethylene Resin From Italy; Final Results of Antidumping Duty Administrative Review, 61 FR 25195 (May 20, 1996); Granular Polytetrafluoroethylene Resin From Italy; Final Results of Antidumping Duty Administrative Review, 62 FR 5590 (February 6, 1997); as amended, Granular Polytetrafluoroethylene Resin From Italy; Amended Final Results of Antidumping Duty Administrative Review, 62 FR 23219 (April 29, 1997); Granular Polytetrafluoroethylene Resin From Italy; Final Results of Antidumping Duty Administrative Review, 62 FR 48592 (September 16, 1997); Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy, 63 FR 49080 (September 14, 1998).

⁵ See Final Results of Expedited Sunset Reviews; Granular Polytetrafluoroethylene Resin From Italy and Japan, 64 FR 67865 (December 3, 1999).

⁶ See Granular Polytetrafluoroethylene Resin From Italy and Japan, 64 FR 72362 (December 27, 1999), and USITC Publication 3260 (December 1999), entitled “Granular Polytetrafluoroethylene Resin From Italy and Japan: Investigations Nos. 731-TA-385-386 (Review)”.

⁷ See Continuation of Antidumping Duty Orders; Granular Polytetrafluoroethylene Resin From Italy and Japan, 65 FR 6147 (February 8, 2000).

⁸ See Initiation of Five-Year (“Sunset”) Reviews, 69 FR 69891 (December 1, 2004).

⁹ See Notice of Final Results of Antidumping Administrative Review: Granular Polytetrafluoroethylene Resin From Italy, 67 FR 1960 (January 15, 2002) and Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy, 68 FR 2007 (January 15, 2003).

¹⁰ See Granular Polytetrafluoroethylene Resin from Italy; Final Results of Changed Circumstances Review, 68 FR 25327 (May 12, 2003).

¹¹ See Granular Polytetrafluoroethylene Resin from Italy and Japan; Five-year (“Sunset”) Reviews of Antidumping Duty Orders; Final Results, 70 FR 38872 (July 6, 2005) (“Second Sunset Review Final”).

2005, the ITC, pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on PTFE resin from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹² Accordingly, the Department published a notice of the continuation of the antidumping duty order on PTFE resin from Italy, pursuant to 19 CFR 351.218(f)(4).¹³

After the final results of the second sunset review, and prior to the current sunset review, the Department conducted three administrative reviews of PTFE resin from Italy.¹⁴ In all of the administrative reviews since the order was put in place, the Department found that the Italian producers/exporters continued dumping with the order in place. The order remains in effect for all manufacturers and exporters of the subject merchandise from Italy.

BACKGROUND

On November 1, 2010, the Department published the notice of initiation of the third sunset review of the antidumping duty order on PTFE resin from Italy pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Review, 75 FR 67082 (November 1, 2010) (“Initiation Notice”). On January 12, 2011, the Federal Register published a correction to that notice, indicating that an incorrect product name for this case was listed in the Initiation Notice. See Initiation of Five-Year (“Sunset”) Review: Correction, 76 FR 2083 (January 12, 2011) (“Correction Notice”). We allowed interested parties an extension of time in which to file a notice of intent to participate and substantive responses. On January 13, 2011, we also notified the ITC of these new deadlines. This sunset review covers imports of all producers and exporters of PTFE resin from Italy. On January 12, 2011, the Department received a notice of intent to participate from a domestic interested party, E.I. DuPont de Nemours & Co. (“DuPont” or “domestic interested party”). Submission of the notice of intent to participate was filed by DuPont within the deadline specified in 19 CFR 351.218(d)(1)(i), as extended due to the Correction Notice. DuPont claimed interested party status under section 771(9)(C) of the Act, as a producer of PTFE resin in the United States. On February 11, 2011, the Department received a substantive response from the domestic interested party within the deadline specified in 19 CFR 351.218(d)(3)(i), as extended due to the Correction Notice. We received no substantive responses from any 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 is conducting an expedited sunset review of the antidumping duty order.

¹² See Granular Polytetrafluoroethylene Resin From Italy and Japan, 70 FR 73026 (December 8, 2005), and USITC Publication 3260 (December 2005), entitled “Granular Polytetrafluoroethylene Resin from Italy and Japan: Investigations Nos. 731-TA-385 and 386 (Second Review)”.

¹³ See Continuation of Antidumping Duty Orders on Granular Polytetrafluoroethylene Resin from Italy and Japan, 70 FR 76026 (December 22, 2005).

¹⁴ See Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy, 72 FR 1980 (January 17, 2007); Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy, 72 FR 65939 (November 26, 2007) (“2005-2006 Final Results”); and Granular Polytetrafluoroethylene Resin From Italy: Final Results of Antidumping Duty Administrative Review, 74 FR 14519 (March 31, 2009); as amended, Granular Polytetrafluoroethylene Resin From Italy: Amended Final Results of Antidumping Duty Administrative Review, 74 FR 19931 (April 30, 2009) (“2006-2007 Amended Final Results”).

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) Act, the Department is conducting 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 ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments made by the domestic interested party.

1. Likelihood of Continuation or Recurrence of Dumping

DuPont asserts that, in determining whether revocation would lead to continuation or recurrence of dumping, the Department considers 1) the weighted-average dumping margins determined in the investigation and subsequent reviews, and 2) the volume of imports of the subject merchandise both before and after the issuance of the antidumping order. DuPont cites to the SAA¹⁵ and the Policy Bulletin¹⁶ in asserting that the Department will normally determine that revocation of an antidumping duty order will likely lead to continuation or recurrence of dumping where dumping continued at above de minimis levels after issuance of an order. DuPont also asserts that the Department stated significant declines in imports of subject merchandise after the issuance of an order suggested that a recurrence of dumping is likely, although examination of volume is only necessary where dumping ceased after an order.

DuPont argues that revocation of the antidumping duty order will likely lead to a continuation of dumping in the instant case because 1) dumping has continued after the issuance of the order at levels significantly above de minimis, and 2) import volumes declined significantly after the issuance of the order. For example, DuPont points to the 2006-2007 Amended Final Results where the Department established a margin on the subject merchandise of 79.45 percent,¹⁷ which is nearly double the 2005-2006 Final Results where the Department assessed a margin of 35.35 percent.¹⁸

DuPont further argues that PTFE resin is a commodity input and that U.S. and Italian producers have interchangeable products that compete directly on price; hence, even a small dumping margin can mean the difference between “sales won and lost in the U.S. market.”¹⁹ Accordingly, DuPont argues, the high degree of interchangeability between subject and non-subject merchandise may lead to aggressive production of subject PTFE resin if the order were revoked. DuPont states that the Harmonized Tariff Schedule of the United States (“HTSUS”) headings for PTFE resin include some non-subject merchandise, such as PTFE dispersions in water and fine

¹⁵ See Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1, at 890 (1994) (“SAA”).

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

¹⁷ See 2006-2007 Amended Final Results 74 FR at 19932.

¹⁸ See 2005-2006 Final Results 72 FR at 65940.

¹⁹ See Dupont February 11, 2011, substantive response at 5.

powders (“polymist”). DuPont asserts that these are similar products and producers can shift production from one to the other quickly and efficiently. DuPont argues that the revocation of this order would permit Italian producers to decrease their production of non-subject merchandise (such as polymist) and increase their production of subject merchandise.

DuPont asserts that while an examination of post-order import volumes is only necessary where dumping has been eliminated, the post-order decline in import volume only provides further support that dumping would likely continue or recur if the order were revoked.²⁰ DuPont argues that imports of PTFE resin from Italy declined by over 43 percent between the year before the order and the second year following the order.²¹ DuPont further states that imports of PTFE resin from Italy have remained stable²² since the Second Sunset Review Final, when the Department recognized and affirmed the disciplining effect on Italian PTFE resin of the order. DuPont concludes that the order has effectively remediated the harmful effects of the subject merchandise entering the U.S. market. DuPont concludes that the Department should determine that dumping would likely continue or recur if the order were revoked in this sunset review.

Department’s Position:

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA, the House Report, H. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), 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. In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considered the quantity of imports of the subject merchandise for the period before and after the issuance of the order.

The record of the order shows that dumping has persisted since the issuance of this order. Deposit rates above de minimis remain in effect for all exports of PTFE resin from Italy. The Department also analyzed and considered the volume of imports of subject merchandise for the period before issuance of the order and for the period after the issuance of this order, and import volumes over the past five years. While import volumes initially declined after issuance of the order, import volumes over the last five years are above the pre-order levels.²³ However, continuation of dumping at above de minimis levels alone warrants the continuation of this order.²⁴ Therefore, on the basis of information provided by DuPont, information on the record, and the lack of information provided by respondent parties, we continue to find that it is likely

²⁰ See Policy Bulletin 63 FR at 18872.

²¹ See DuPont February 11, 2011, substantive response at page 6.

²² Id.

²³ See Memorandum to the File, from Joseph Shuler, International Trade Compliance Analyst, titled “Import Volumes and Values for the Final Results of Expedited Third Sunset Review of the Antidumping Duty Order on PTFE Resin from Italy,” dated March 1, 2011. See also DuPont February 11, 2011, substantive response at page 6.

²⁴ See Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea: Final Results of the Expedited Third Five-Year (Sunset) Review of the Antidumping Duty Order, 76 FR 1135 (January 7, 2011) and accompanying Issues and Decision Memorandum at 8.

that if the antidumping duty order were revoked, dumping would continue or recur.

2. Magnitude of the Margins Likely to Prevail

DuPont notes that section 752(c)(3) of the Act requires the Department to determine the magnitude of the margin of dumping that likely would prevail if the Department revoked the antidumping order. DuPont further explains that the Department will normally select a margin from the investigation because it is the only calculated rate that reflects the behavior of exporters, without the discipline of an order or suspension agreement in place. Further, DuPont explains that for companies not specifically investigated, or for companies that began shipping after the order was issued, the Department will normally provide a margin based on the all-others rate from the investigation. DuPont notes the following dumping margins were from the investigation: Montefluos S.p.A./Ausimont U.S.A.: 46.46 percent and the all-others rate: 46.46 percent.²⁵ DuPont concludes that the Department should inform the ITC that a 46.46 margin will likely prevail for all exporters of PTFE resin from Italy if the Department determines to revoke the order.

Department's Position:

Section 752(c)(3) of the Act provides that the Department will provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Normally, the Department will provide the ITC the company-specific margin from the investigation for each company.²⁶ Under certain circumstances, the Department may select a more recently calculated margin to report to the ITC.²⁷ However, for companies not investigated specifically, or for companies that did not begin shipping until after an order was issued, the Department normally will provide a margin based on the "all-others" rate from the investigation.²⁸ The Department's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate on the record that reflects the behavior of manufacturers, producers, and exports without the discipline of an order or suspension agreement in place.²⁹

We agree with DuPont that we should report the rates from the original investigation,³⁰ because these margins best reflect the behavior of producers/exporters of PTFE resin from Italy without the discipline of an order in place. As noted above, in the investigation, Montefluos S.p.A./Ausimont U.S.A. had a margin of 46.46 percent and a margin of 46.46 percent was found for all other producers/exporters.

FINAL RESULTS OF REVIEW

²⁵ See Final Determination 53 FR at 26099.

²⁶ See Eveready Battery Co., Inc. v. United States, 77 F. Supp. 2d 1327, 1333 (Ct. Int'l Trade 1999).

²⁷ 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 (November 1, 2000), and accompanying Issues and Decision Memorandum at Comment 3.

²⁸ 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 (December 5, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

²⁹ Id.

³⁰ See Final Determination 53 FR at 26099.

We determine that revocation of the order on PTFE resin from Italy would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturer/exporter	Weighted Average Margin (percent)
Montefluos S.p.A./Ausimont U.S.A. ³¹	46.46
All Others.....	46.46

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, and notify the ITC of our determination.

AGREE _____

DISAGREE _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date

³¹ As noted in footnote 10, Solvay Solexis S.p.A. and Solvay Solexis, Inc. are successors-in-interest to Ausimont S.p.A. and Ausimont U.S.A. Inc.