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Sunset Reviews
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders on Polyethylene Terephthalate (PET) Film, Sheet, and Strip from Brazil, the People's Republic of China, and the United Arab Emirates

Summary

We have analyzed the responses of the interested parties in the sunset reviews of the antidumping duty orders covering polyethylene terephthalate (PET) film, sheet, and strip from Brazil, the People's Republic of China (PRC), and the United Arab Emirates (UAE). We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is the list of the issues in these sunset reviews:

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

History of the Order on PET Film from Brazil

On September 24, 2008, the Department of Commerce (the Department) published its final affirmative determination of sales at less than fair value (LTFV) regarding polyethylene terephthalate (PET) film, sheet, and strip from Brazil.¹ The period of investigation (POI) was July 1, 2006, through June 30, 2007, for Brazil.

For Brazil, the Department found a weighted-average dumping margin of 44.36 percent for Terphane Inc. (Terphane) and a weighted-average margin of 28.86 for "all others."² Terphane's

¹ See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, 73 FR 55035 (September 24, 2008)(LTFV for Brazil).

² Id.



rate was based on adverse facts available, and the all-other's rate was calculated as 28.72 percent.

On November 10, 2008, the Department published the antidumping duty order on Brazil.³

Since the issuance of the antidumping duty order on PET film from Brazil, the Department has conducted three administrative reviews. The first one covered the period November 6, 2008, through October 31, 2009 the second one covered the period November 1, 2009, through October 31, 2010, and the most recent one covered the period November 1, 2011, through October 31, 2012.⁴ An administrative review on PET film from Brazil for the POR November 1, 2010, through October 31, 2011 was initiated, but was subsequently rescinded.⁵

A scope clarification for PET film from Brazil was issued. This scope clarification was requested by Terephane. In this ruling, the Department determined that certain co-polymer films are not within the scope of the antidumping duty order, provided that the performance enhancing co-polymer layer is greater than 0.00001 inches thick.⁶

There have been no changed circumstance determinations, no duty absorption findings, and no other scope clarifications or rulings concerning this antidumping duty order. No Harmonized Tariff Schedule categories have been added to the scope and the scope description itself has not changed. The orders remain in effect for all producers and exporters of the subject merchandise.

History of the Order on PET Film from the PRC

On September 24, 2008, the Department published its final affirmative determinations of LTFV sales regarding PET film from the PRC.⁷ The POI was January 1, 2007, through June 30, 2007, for the PRC.

For the PRC, the Department found weighted-average dumping margins of 3.49 percent for the following exporter/producer combinations: DuPont Teijin Films China Ltd./DuPont Hongji Films Foshan Co., Ltd; DuPont Teijin Films China Ltd/DuPont Teijin Hongji Ningbo Co., Ltd.; Fuwei Films (Shandong) Co., Ltd/Fuwei Films (Shandong) Co., Ltd; Shaoxing Xiangyu Green Packing Co., Ltd./Fuewi Films (Shandong) Co., Ltd.; Sichaun Dongfang Insulating Material Co.,

³ See Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates, 73 FR 66595 (November 10, 2008) (Orders on Brazil, China and UAE and Amended Order on UAE).

⁴ See Polyethylene Terephthalate Film, Sheet, and Strip From Brazil: Final Results of Antidumping Duty Administrative Review, 75 FR 75172 (December 2, 2010), Polyethylene Terephthalate Film, Sheet, and Strip From Brazil: Final Results of Antidumping Duty Administrative Review, 76 FR 72676 (November 25, 2011), and Polyethylene Terephthalate Film, Sheet, and Strip From Brazil: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 1827 (January 10, 2014).

⁵ See Polyethylene Terephthalate Film, Sheet, and Strip From Brazil: Notice of Rescission of Antidumping Duty Administrative Review, 77 FR 31833 (May 30, 2012).

⁶ See Notice of Scope Rulings, 78 FR 42934 (July 18, 2013).

⁷ See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China, 73 FR 55039 (September 24, 2008) (PRC Final Determination).

Ltd./Sichaun Dongfang Insulating Material Co., Ltd; Tianjin Wanhua Co., Ltd; Tianjin Wanhua Co., Ltd; Shanghai Uchem Co., Ltd./Sichaun Dongfang Insulating Material Co., Ltd.; Shanghai Uchem Co., Ltd./Shanghai Xishu Electric Material Co., Ltd., and 77.72 percent for the PRC-wide entity.⁸ The rate of 3.49 percent was calculated and this rate included offsets for non-dumped sales.

Since the issuance of the antidumping duty order, the Department has conducted two administrative reviews of the antidumping duty orders on PET film from the PRC. The respective PORs for these reviews were November 6, 2008, through October 31, 2009, and November 1, 2009, through October 31, 2010.⁹ The November 1, 2010, through October 31, 2011, administrative review is currently ongoing.¹⁰

A scope clarification for PET Film from China was issued. Coated Fabrics Company requested this scope clarification. The Department determined that Amorphous PET (APET), Glycol-modified PET (PETG), and coextruded APET and with PETG on its outer surface (GAC Sheet), were within the scope of the antidumping duty order.¹¹

There have been no changed circumstance determinations, no duty absorption findings, and no other scope clarifications or rulings concerning this antidumping duty order. No Harmonized Tariff Schedule categories have been added to the scope and the scope description itself has not changed. The order remains in effect for all producers and exporters of the subject merchandise.

History of the Order on PET Film from the United Arab Emirates

On September 24, 2008, the Department published its final affirmative determinations of LTFV sales regarding PET film, sheet, and strip from the UAE.¹² The POI was July 1, 2006, through June 30, 2007, for the UAE.

For the UAE, the Department found a weighted-average dumping margin of 4.80 percent for Flex Middle East FZE and 4.80 percent for all other UAE producers and exporters of the subject merchandise.¹³

On November 10, 2008, the Department published an amended final determination with respect to PET film from the UAE.¹⁴ The Department's amended final determination established a revised weighted-average dumping margin of 4.05 percent for Flex Middle East FZE and 4.05

⁸ See PRC Final Determination.

⁹ See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review, 76 FR 9753 (February 22, 2011); Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 77 FR 14493 (March 12, 2012).

¹⁰ See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 7833 (December 26, 2013).

¹¹ See Notice of Scope Rulings 75 FR 38081 (July 1, 2010).

¹² See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates, 73 FR 5503 (September 24, 2008).

¹³ Id.

¹⁴ See Orders on Brazil, China and UAE and Amended Order on UAE.

percent for all other UAE producers and exporters of the subject merchandise.¹⁵ The rate of 4.05 percent was calculated and included offsets for non-dumped sales.

Since the issuance of the antidumping duty orders, the Department has conducted three administrative reviews of the antidumping duty orders on PET film from the UAE.¹⁶ The respective PORs for these reviews were November 6, 2008 through October 31, 2009, and November 1, 2009 through October 31, 2010, and November 1, 2010 through October 31, 2011. The November 1, 2011, through October 30, 2012 is currently ongoing.¹⁷

There have been no changed circumstances determinations, no duty absorption findings, and no scope clarifications or rulings concerning the antidumping duty order. No Harmonized Tariff Schedule categories have been added to the scope and the scope description itself has not changed. The orders remain in effect for all producers and exporters of the subject merchandise.

Background

On October 1, 2013, the Department published the notice of initiation of the first sunset reviews of the AD orders on PET film from Brazil, the PRC, and the UAE pursuant to section 751(c) of the Act.¹⁸ The Department received notices of intent to participate in the sunset reviews from DuPont Teijin Films, Mitsubishi Polyester Film, Inc. and SKC, Inc., collectively the petitioners. The Department received substantive responses to the notice of initiation from the petitioners on November 18, 2013. The deadline for the substantive submissions was extended due to the government shutdown.¹⁹

The Department received no responses from respondent interested parties, *i.e.*, PET Film producers and exporters from Brazil, the PRC, and the UAE. Because petitioners timely filed notices of intent to participate and adequately filed substantive responses, and respondent interested parties failed to file adequate responses, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the antidumping duty orders for Brazil, the PRC, and the UAE.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted these sunset reviews to determine whether revocation of the AD orders 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

¹⁵ See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates, 73 FR 66595 (November 10, 2008).

¹⁶ See Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review, 76 FR 22867 (April 25, 2011); See Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review, 77 FR 20357 (April 4, 2012); See Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review: 2010-2011, 78 FR 29700 (May 21, 2013).

¹⁷ See Polyethylene Terephthalate Film, Sheet and Strip from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 77649 (December 24, 2013).

¹⁸ See Initiation of Five-Year ("Sunset") Review, 78 FR 60253 (October 1, 2013).

¹⁹ See "Memorandum from Paul Piquado, Assistant Secretary for Enforcement and Compliance, to the File on Deadlines Affected By Shutdown of Government," dated October 18, 2013.

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 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 petitioners believe that revocation of these AD orders would likely lead to a continuation or recurrence of dumping by the producers and exporters of the subject merchandise.²⁰ The petitioners claimed the following:

Brazil: The petitioners cite to the fact that our statute requires the Department to determine whether revocation of an antidumping order would likely lead to a continuation or recurrence of dumping. The petitioners note that the Department determines whether revocation of antidumping duty order would lead to a continuation or recurrence of dumping on an order-wide basis. The petitioners cite to the fact that dumping has continued after the issuance of the order and the fact that import volumes declined precipitously when the order was imposed and have remained at significantly depressed levels since that time.

The petitioners state that Terphane was assessed an adverse facts available rate of 44.36 percent in the investigation, which has remained in place, and is suggestive of the likelihood of continuation or recurrence of dumping. The petitioners also allege that Terphane has been shipping subject merchandise to the United States under a tariff number for non-subject merchandise. They argue that the necessity of the discipline of the order is demonstrated by such efforts of Terphane to evade the order and provide a graph demonstrating that shipments under the tariff number for subject merchandise have declined precipitously under since 2006.

The PRC: The petitioners cite to the fact that our statute requires the Department to determine whether revocation of an antidumping order would likely lead to a continuation or recurrence of dumping. The petitioners note that the Department determines whether revocation of antidumping duty order would lead to a continuation or recurrence of dumping on an order-wide basis.

The petitioners cite to the fact that dumping has continued after the issuance of the order and the fact that import volumes declined precipitously when the antidumping duty order on PET film from the PRC was imposed. Further, import volumes have remained at significantly depressed levels since that time. Accordingly, petitioners argue that revocation of the order would likely lead to a continuation of dumping.

The petitioners argue that the Chinese producers have demonstrated a pattern of dumping throughout the history of this order with non-AFA rates as high as 12.80 percent. The petitioners state that the Department has found weighted-average margins at above *de minimis* levels in

²⁰ See the petitioners' substantive responses for Brazil, the PRC, and UAE, dated November 18, 2013.

every administrative review under this order, although there have been zero or *de minimis* rates applied on certain Chinese respondents in administrative reviews conducted since the imposition of this order.

The petitioners also cite to Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,²¹ where the Department states that “decreased {import} volumes may provide another basis to determine whether dumping is likely to continue or recur if order were to be revoked.”

The petitioners state that the order has had a “disciplining effect.” The petitioners cite to the drop from 2007 where imports were 20,533,121 kilograms to the following five years where imports were 6,642,090 kilograms in 2008, their highest level from 2008 through 2012.²² The petitioners conclude that the import volume data confirms that the order has had a profound “disciplining effect” on Chinese exporters, in terms of both price and volume.

The UAE: The petitioners cite to the fact that our statute requires the Department to determine whether revocation of an antidumping order would likely lead to a continuation or recurrence of dumping. The petitioners note that the Department determines whether revocation of antidumping duty order would lead to a continuation or recurrence of dumping on an order-wide basis.

The petitioners state that the revocation of this order would likely lead to a continuation or recurrence of dumping because dumping has continued after the order and import volumes declined after the order was imposed. PET film imports from the UAE decreased from 6,670,131 kilograms in 2008 (when the order was imposed) to 2,719,999 kilograms in 2009. The petitioners argue that both UAE producers have demonstrated a pattern of dumping throughout the history of this order with rates up to 9.80 percent. (The 9.80 percent rate was calculated in the most recently completed review of JBF RAK LLC, not a respondent in the original investigation.²³) Furthermore, this 9.80 percent rate was calculated using a WTO-consistent methodology.²⁴ The petitioners note that Flex Middle East FZE (another UAE producer) received a 3.16 percent rate in the 2008-2009 administrative review, a *de minimis* rate in the 2010-2011 review, and is currently being reviewed in the 2011-2012 administrative review.

The petitioners argue that because there have been dumping levels above the *de minimis* level in every administrative review under this order that the Department should determine that dumping would likely continue or recur if the antidumping order were revoked.

²¹ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012) (Final Modification for Reviews).

²² See the PRC substantive response at 6.

²³ See Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 29700 (May 21, 2013).

²⁴ See Final Modification for Reviews.

Department's Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action (SAA), H. R. Doc. 103-316, vol. 1 (1994), 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 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 AD order.

Brazil, the PRC, and the UAE: Given that weighted-average dumping margins have continued to exist above the *de minimis* threshold since the issuance of the order, and that there have been substantially lower import volumes since the imposition of the order when compared to pre-order levels (Brazil and the PRC) or that import volumes have declined following the initiation of the investigation (the UAE), the Department finds that dumping would likely continue or recur if the orders were revoked.

We note that the 2010-2011 reviews cited by the petitioners as evidence of continued dumping under the PRC and UAE orders were conducted in compliance with the Final Modification for Reviews and did not involve “zeroing.” The AFA rate from the Brazil investigation cited by the petitioners, which has been applied in subsequent administrative reviews, was also calculated without zeroing.

2. Magnitude of the Margin Dumping Likely to Prevail

Interested Party Comments

The petitioners request that the Department should report to the ITC the weighted-average dumping margins that were determined in the final determinations (or, in the case of UAE, the amended final determination) in the original investigations, in accordance with the SAA and section 752(c)(3) of the Act.²⁵

Department's Position

Normally, the Department will provide to the ITC the company-specific weighted-average dumping 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 rate based on the “all others” rate from the investigation.²⁶

²⁵ See the Brazil substantive response at 6, the PRC substantive response at 14, and the UAE substantive response at 6.

²⁶ See, e.g., Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order, 77 FR 54898 (September 6, 2012) and the accompanying Issues and Decision Memorandum at “Magnitude of the Margin of Dumping Likely to Prevail.”

The Department’s preference for selecting a rate from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of producers and exporters without the discipline of an order or suspension agreement in place.²⁷ Under certain circumstances, however, the Department may select a more recent margin to report to the ITC.²⁸

The Department has recently announced that in sunset reviews, it will comply with WTO dispute findings concerning “zeroing” by “not rely{ing} on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be WTO-inconsistent.”²⁹ The original LTFV investigations for PET film from the People’s Republic of China and the United Arab Emirates were conducted after the Department adopted its new practice with regard to offsetting in investigations.³⁰ In the original investigation involving Brazil, Terphane’s rate was based on adverse facts available and the “all other’s rate” was based on rates from the petition.³¹ As a result, the Department’s final weighted-average dumping margins calculated in the investigations were not affected by the WTO-inconsistent methodology.

After considering the arguments put forth, and the weighted-average dumping margins determined in the investigations, the Department agrees with the petitioners that it is appropriate to report to the ITC the investigation rates for Brazil, the People’s Republic of China, and the United Arab Emirates, because these are the only rates that reflect the behavior of producers and exporters without the discipline of an order in place. Thus, the Department will report to the ITC the rates listed in the Final Results of Review section, below.

FINAL RESULTS OF REVIEW

We determine that revocation of the antidumping duty orders on PET film from Brazil, the PRC, and the UAE would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins. Further, we determine that the magnitudes of the margins of dumping likely to prevail if each order would be revoked as the following:

Exporters or Producers	Rate (percent)
<u>Brazil</u>	
Terphane Ltda	44.36
All Others	28.72

²⁷ See, e.g., Potassium Permanganate from The People's Republic of China: Five-year (“Sunset”) Review of Antidumping Duty Order; Final Results, 70 FR 24520 (May 10, 2005) and the accompanying Issues and Decision Memorandum at “Magnitude of the Margin.”

²⁸ Id.

²⁹ See Final Modification for Reviews.

³⁰ See United States-Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing) (US-Zeroing (EC)), WT/DS294/R, WT/DS294/AB/R, adopted May 9, 2006.

³¹ See LTFV for Brazil.

The People's Republic of China

DuPont Teijin Films China/	
DuPont Hongji Films Foshan Co., Ltd.	3.49%
DuPont Teijin Films China/	
DuPont Teijin Hongji Ningbo Co., Ltd.	3.49%
Fuwei Films (Shandong) Co., Ltd. /	
Fuwei Films (Shandong) Co., Ltd.	3.49%
Shaoxing Xiangyu Green Packing Co., Ltd./	
Shaoxing Xiangyu Green Packing Co., Ltd.	3.49%
Sichuan Dongfang Insulating Material Co., Ltd./	
Sichuan Dongfang Insulating Material Co., Ltd.	3.49%
Tianjin Wanhua Co., Ltd./Tianjin Wanhua Co., Ltd.	3.49%
Shanghai Uchem Co., Ltd./	
Sichuan Dongfang Insulating Material Co., Ltd.	3.49%
Shanghai Uchem Co., Ltd./	
Shanghai Xishu Electric Material Co., Ltd.	3.49%
PRC-wide	76.72%

The United Arab Emirates

Flex Middle East FZE	4.05
All Others	4.05

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting each of the above positions. If these recommendations are accepted, we will publish the final results of these expedited sunset reviews in the Federal Register, and notify the ITC of our findings.

AGREE ✓

DISAGREE _____

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

14 FEBRUARY 2014
Date