

DATE: June 30, 2014

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Expedited Sunset Reviews of the
Antidumping Duty Orders on Polyvinyl Alcohol from Japan, the
Republic of Korea, and the People's Republic of China

Summary

We have analyzed the responses of the interested parties in the sunset reviews of the antidumping duty orders covering polyvinyl alcohol (PVA) from Japan, the Republic of Korea (Korea), and the People's Republic of China (PRC).¹ 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 of dumping likely to prevail

Background

On March 3, 2014, the Department published the notice of initiation of the sunset reviews of the antidumping duty (AD) orders on PVA from Japan, Korea, and the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² The Department received a notice of intent to participate from E.I. du Pont de Nemours and Company and Sekisui Specialty Chemical America, LLC (collectively, "domestic interested parties") within the deadline specified in 19 CFR 351.218(d)(1)(i). The companies claimed interested party status under section 771(9)(C) of the Act as producers of a domestic like product in the United States.

¹ See substantive responses of the domestic interested parties for Japan, Korea, and the PRC (Apr. 2, 2014).

² See Initiation of Five-Year ("Sunset") Reviews, 79 FR 11762 (Mar. 3, 2014) (Notice of Initiation).

The Department received a complete substantive response 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 any of the orders covered by these sunset reviews, nor was a hearing requested. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the AD orders for Japan, Korea, and the PRC.

History of the Orders

Japan

On April 21, 2003, the Department of Commerce (the Department) published its final determination in the investigation of PVA from Japan.³ For Japan, the Department found the following weighted-average dumping margins:

Denki Kagaku Kogyo Kabushiki Kaisha	144.16
Japan VAM & POVAL Co., Ltd.	144.16
Kuraray Co., Ltd.	144.16
The Nippon Synthetic Chemical Industry Co., Ltd.	144.16
All-Others Rate	76.78

Korea

On August 11, 2003, the Department published its final determination in the investigation of PVA from Korea.⁴ For Korea, the Department found the following weighted-average dumping margins:

DC Chemical Company, Ltd.	38.74
All-Others Rate	32.08

PRC

On August 11, 2003, the Department published its final determination in the investigation of PVA from the PRC.⁵ For the PRC, the Department found the following weighted-average dumping margins:

³ See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan, 68 FR 19510 (Apr. 21, 2003).

⁴ See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the Republic of Korea, 68 FR 47540 (Aug. 11, 2003).

⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (Aug. 11, 2003); see also Notice of Amended Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China, 68 FR 52183 (Sept. 2, 2003).

Sinopec Sichuan Vinylon Works (SVW)
PRC-Wide Rate

5.51⁶
97.86

Administrative Reviews

There have been no administrative reviews conducted for Japan, Korea, or the PRC since the conclusion of the first sunset review.⁷

Duty Absorption, Changed Circumstances Reviews, and Scope Inquiries

There have been no duty absorption findings, changed circumstances reviews, or scope inquiries concerning PVA from Japan, Korea, and the PRC.

Scope of the Orders

The merchandise covered by these orders is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of these orders:

- 1) PVA in fiber form.
- 2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.
- 3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.
- 4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.
- 5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.
- 6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.
- 7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.
- 8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.
- 9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.
- 10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

⁶ See Polyvinyl Alcohol from the People's Republic of China: Notice of Court Decision Not In Harmony with Final Determination, 72 FR 36960 (July 6, 2007) (Notice of Court Decision).

⁷ See Polyvinyl Alcohol from Japan, the Republic of Korea, and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders, 73 FR 57596 (Oct. 3, 2008).

11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

12) PVA covalently bonded with acetoacrylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise subject to these orders is currently classifiable under subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting these sunset reviews to determine whether revocation of the AD orders 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 these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigations and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the AD orders.

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (SAA), the House Report, H. Rep. No. 103-823 pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's determinations of likelihood will be made on an order-wide basis, rather than a company-specific basis.⁸ In addition, the Department normally will determine that revocation of an AD 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.⁹ Alternatively, the Department normally will determine that revocation of an AD order is not likely lead to continuation or recurrence of dumping where dumping declined or was eliminated and import volumes remained steady or increased after the issuance of the order.¹⁰ In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject

⁸ See SAA at 879 and House Report at 56.

⁹ See SAA at 889-90, House Report at 63-64, and Senate Report at 52.

¹⁰ See SAA at 889-90 and House Report at 63.

merchandise for the period before and after the issuance of the AD order.¹¹

Further, 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 orders were revoked. Generally, the Department selects the weighted-average dumping margins from the final determination in the original investigation, as these are the only rates that reflect the behavior of exporters without the discipline of an order in place.¹²

The Department recently announced it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization (WTO)-inconsistent, *i.e.*, zeroing/the denial of offsets for non-dumped sales.¹³ Instead, the Department noted that it “will limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent.”¹⁴

Pursuant to section 752(c)(4)(A) of the Act, a weighted-average dumping margin of zero or de minimis shall not itself require the Department to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at less than fair value.¹⁵

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties argue that revocation of these AD orders would likely lead to a continuation or recurrence of dumping.¹⁶

The domestic interested parties state that Japanese, Korean, and PRC imports of the subject merchandise have remained below their pre-order levels. The domestic interested parties note that the Department has determined that revocation is likely to lead to continuation or recurrence of dumping when declining imports are accompanied by a continued existence of dumping

¹¹ See Stainless Steel Bar from Germany: Final Results of the Sunset Review of the Antidumping Duty Order, 72 FR 56985 (Oct. 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

¹² See SAA at 890; see also Persulfates from the People’s Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order, 73 FR 11868 (Mar. 5, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

¹³ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101, 8103 (Feb. 14, 2012) (Final Modification for Reviews).

¹⁴ *Id.*, at 8103.

¹⁵ See Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 16765 (Apr. 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁶ See substantive responses of the domestic interested parties for Japan, Korea, and the PRC (Apr. 2, 2014) at 4.

margins after the issuance of an order.¹⁷ Further, the domestic interested parties argue that the Department has also stated that an examination of import volumes is necessary “only where dumping ceased after the issuance of the order.”¹⁸ Regarding the PRC, while the domestic interested parties note that the Department calculated de minimis or zero weighted-average dumping margins for SVW in the two completed administrative reviews of this order, they also point out that this fact does not require that the Department determine that there is no likelihood of continuation or recurrence of dumping. Further, the domestic interested parties note that, while the high rate for the PRC-wide entity has remained in effect since the investigation, Chinese producers continue to dump in the U.S. market as demonstrated by imports of Chinese PVA more than doubling in 2009 and subsequently reaching 5,640,000 kg in 2013. Thus, the domestic interested parties argue that the substantial weighted-average dumping margins and the volume of imports remaining below pre-order levels demonstrate that revocation of the orders would certainly lead to a continuation of dumping.¹⁹

Department’s Position

As explained above, when determining whether revocation of the order would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the AD order. Thus, one consideration is whether the Department continued to find dumping at above de minimis levels in administrative reviews subsequent to the imposition of the AD order.²⁰ According to the SAA and the House Report, “if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline was removed.”²¹ The SAA continues, explaining, “[d]eclining import volumes accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes.”²²

¹⁷ See substantive responses of the domestic interested parties for Korea (Apr. 2, 2014) at 4; and substantive response of the domestic interested parties for Japan and the PRC (Apr. 2, 2014) at 5 citing Policies Regarding the Conduct of Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders, 63 FR 18871, 19972 (Apr. 16, 1998).

¹⁸ See substantive responses of the domestic interested parties for Japan, Korea, and the PRC (Apr. 2, 2014) at 5.

¹⁹ See substantive responses of the domestic interested parties for Korea (Apr. 2, 2014) at 5-7; and substantive response of the domestic interested parties for Japan and the PRC (Apr. 2, 2014) at 5-8.

²⁰ See SAA at 890.

²¹ Id.; see also House Report, at 63-64

²² See SAA at 889.

Japan

There have been no administrative reviews conducted for Japan since the investigation. Weighted-average dumping margins presently remain in place for producers and exporters. Consequently, affirmative weighted-average dumping margins have existed over the life of the order and cash deposit rates above a de minimis level continue in effect for exports of the subject merchandise for all producers and exporters. We note that the rates for Japan established in the investigation were based on the petition rates and did not involve zeroing.

Consistent with section 752(c) of the Act, the Department also considered the import volumes before and after issuance of the order. The Department examined the U.S. Census import data from the ITC's Dataweb for the relevant periods which show that imports of PVA from Japan declined after issuance of the order and continue to remain at pre-order levels. In 2002, imports of subject merchandise were 5,056,807 kilograms (kgs). By 2013, the imports had dropped to 3,417,271 kg.²³ The import statistics demonstrate that import volumes of the subject merchandise from Japan declined significantly immediately following the imposition of the order and continue to remain at low levels.

Based on this analysis, the Department finds that the existence of dumping after the issuance of this order is highly probative of the likelihood of continuation or recurrence of dumping. Therefore, given that there have been no administrative reviews since the investigation and dumping has continued over the life of the order at above de minimis levels, imports declined significantly and are below pre-order levels, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Korea

There have been no administrative reviews conducted for Korea since the investigation. Weighted-average dumping margins presently remain in place for producers and exporters. Consequently, affirmative weighted-average dumping margins have existed over the life of the order and cash deposit rates above a de minimis level continue in effect for exports of the subject merchandise for all producers and exporters. We note that the rates for Korea established in the investigation were based on the petition rates and did not involve zeroing.

Consistent with section 752(c) of the Act, the Department also considered the import volumes before and after issuance of the order. The Department examined the U.S. Census import data from the ITC's Dataweb for the relevant periods which show that imports of PVA from Korea declined after issuance of the order and have not returned to pre-order levels. In 2002, imports of subject merchandise were 1,869,505 kg. By 2013, the imports had dropped to 300 kg.²⁴ The import statistics demonstrate that import volumes of the subject merchandise from Korea declined dramatically immediately following the imposition of the order and continue to remain at very low, almost non-existent levels.

²³ See the June 30, 2014, memorandum to the File from Alice Maldonado entitled, "Placing Data from the ITC Trade Dataweb on the Record of the Expedited Sunset Reviews of Polyvinyl Alcohol (PVA) from Japan, the Republic of Korea (Korea), and the People's Republic of China (PRC)" (ITC Dataweb Memo).

²⁴ Id.

Based on this analysis, the Department finds that the existence of weighted-average dumping margins after the issuance of this order is highly probative of the likelihood of continuation or recurrence of dumping. Therefore, given that there have been no administrative reviews since the investigation and dumping has continued over the life of the order at above de minimis levels, imports have almost ceased, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

PRC

The Department has conducted two administrative reviews of the order on PVA from the PRC for the periods 8/11/2003 through 9/30/2004 and 10/1/2004 through 9/30/2005 in which SVW received margins of 0.03 percent (de minimis) and 0.0 percent, respectively.²⁵ The rate for the PRC-wide entity, established in the investigation, has remained in effect since the imposition of the order. We note that this rate was based on the petition rate and did not involve zeroing. Weighted-average dumping margins presently remain in place for producers and exporters. Consequently, affirmative dumping margins have existed over the life of the order and continue to exist at above de minimis levels for all producers and exporters of the subject merchandise except SVW.

The Department examined the U.S. Census import data from the ITC's Dataweb for the relevant periods which show that imports of PVA from the PRC declined after issuance of the order and have not returned to pre-order levels. In 2002, imports of subject merchandise were 6,078,153 kg. In 2003, imports of subject merchandise dropped down to 2,662,200 kg. In 2013, the imports were 5,639,876 kg.²⁶ The import statistics demonstrate that import volumes of the subject merchandise from the PRC declined dramatically immediately following the imposition of the order and continue to remain at lower than pre-order levels.

Based on this analysis, the Department finds that the existence of weighted-average dumping margins after the issuance of this order is highly probative of the likelihood of continuation or recurrence of dumping. Therefore, given that the rate for the PRC-wide entity from the investigation was not based on zeroing, dumping has continued over the life of the order at above de minimis levels, imports declined significantly and are below pre-order levels, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

²⁵ See Polyvinyl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 27991, 27993 (May 15, 2006); Polyvinyl Alcohol from the People's Republic of China: Amended Final Results of Administrative Review, 71 FR 35616, 35617 (June 21, 2006); and Polyvinyl Alcohol from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 62086, 62087 (Oct. 23, 2006).

²⁶ See ITC Dataweb Memo

2. Magnitude of the Margins of Dumping Likely to Prevail

Interested Party Comments

The domestic interested parties request that the Department report to the ITC the weighted-average dumping margins that were determined in the investigations. Thus, the domestic interested parties recommend the following rates for PVA from Japan: for Denki Kagaku Kogyo Kabushiki Kaisha, Japan VAM & POVAL Co., Ltd., Kuraray Co., Ltd., and The Nippon Synthetic Chemical Industry Co., Ltd., 144.16 percent; and for the all-others rate, 76.78 percent.²⁷ The domestic interested parties recommend the following rates for PVA from Korea: for DC Chemical Company, Ltd., 38.74 percent; and for the all-others rate, 32.08 percent.²⁸ The domestic interested parties recommend the following rates for PVA from the PRC: for SVW, 5.51 percent; and for the PRC-wide entity, 97.86 percent.²⁹

Department's Position

As discussed above section, 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margins of dumping likely to prevail if the orders were revoked. Normally, the Department will provide the ITC the company-specific, weighted-average dumping margin from the investigation for each company.³⁰

Since the imposition of the orders, the Department has conducted no administrative reviews of the AD orders on PVA from Japan or Korea. Also, exports to the United States from Japan and Korea are below pre-order levels. Therefore, the Department finds it appropriate to provide the ITC with the weighted-average dumping margins from the investigations for Japan and Korea because these are the only rates that exist that reflect the behavior of exporters without the discipline of an order or suspension agreement in place.³¹ We note that the rates for Japan and Korea established in the investigations were based entirely on adverse facts available (AFA). These rates were derived from the petition rates and did not involve zeroing. The Department has relied on rates based entirely on AFA in making likelihood determinations in sunset reviews. Section 776(b) of the Act contemplates that rates based on AFA may be a proxy for weighted-average dumping margins. Further, the Department articulated this statutory interpretation in the Final Modification for Reviews, stating that, with respect to sunset review determinations, “{t}he Department may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as . . . dumping margins determined based on the use of adverse facts available . . .”³² As noted above, the rates calculated in the investigations for Japan and Korea did not include zeroing and are, therefore, WTO-consistent.

²⁷ See substantive response of the domestic interested parties for Japan (Apr. 2, 2014) at 8.

²⁸ Id. at 7.

²⁹ Id. at 7-8.

³⁰ See Eveready Battery Co., Inc. v. United States, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

³¹ Id.; see also SAA at 890.

³² Id. at 8103.

We also find it appropriate to rely on the investigation rates for PVA from the PRC. Specifically, we are providing to the ITC both the rate for the PRC-wide entity from the investigation, which was based on AFA, as well as the company-specific rate for SVW, as modified by the Notice of Court Decision and recalculated as noted below. There is no information on the record of this sunset review to indicate that exports by SVW have remained the same or increased since the investigation. This indicates that the order has imposed a discipline on exports. Thus, the rates from the investigation reflect the behavior of producers and exporters without the discipline of an order in place.

As noted above, the rate for the PRC-wide entity established in the investigation was based entirely on AFA and did not involve zeroing. For SVW, however, the rate established in the investigation was calculated using the zeroing methodology. As indicated above, the Department’s current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology. Therefore, we have recalculated SVW’s weighted-average dumping margin from the investigation, as modified by the Notice of Court Decision, consistent with the Final Modification for Reviews.³³

The Department will report to the ITC as the margins of dumping likely to prevail the AFA rates from the investigations for each respondent from Japan and Korea, the AFA rate from the investigation for the PRC-wide entity, and the revised company-specific weighted-average dumping margin for SVW cited in the “Final Results of Review” section of this memorandum, below.

Final Results of Review

We determine that revocation of the antidumping duty orders on PVA from Japan, Korea, and the PRC would be likely to lead to continuation or recurrence of dumping, and the margins of dumping likely to prevail are at the following rates:

Exporters or Producers	Rate (percent)
<u>Japan</u>	
Denki Kagaku Kogyo Kabushiki Kaisha	144.16
Japan VAM & POVAL Co., Ltd.	144.16
Kuraray Co., Ltd.	144.16
The Nippon Synthetic Chemical Industry Co., Ltd.	144.16
All-Others Rate	76.78
<u>Korea</u>	
DC Chemical Company, Ltd.	38.74
All-Others Rate	32.08

³³ See Calculation Memorandum for the PRC, dated concurrently with this memorandum.

PRC

Sinopec Sichuan Vinylon Works
PRC-Wide Entity

3.45
97.86

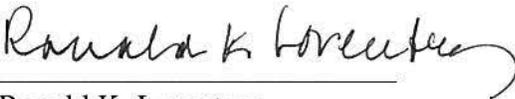
Recommendation

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 these final results of sunset reviews in the Federal Register, and notify the ITC of our determination.

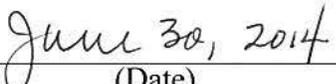


Agree

Disagree



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance



(Date)