

70 FR 17231, April 5, 2005

A-423-077
A-427-078
A-428-082
Sunset Reviews
Public Document
IA/OPS/HES/4340

March 30, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Ronald K. Lorentzen
Acting Director
Office of Policy

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset
Reviews of the Antidumping Duty Findings on Sugar from
Belgium, France, and Germany; Final Results

Summary

We have analyzed the substantive responses of the interested parties in the second sunset reviews of the antidumping duty findings covering sugar from Belgium, France, and Germany. We recommend that you approve the positions we developed 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 a substantive response:

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

History of the Finding

On June 13, 1979, following affirmative injury determinations by the International Trade Commission (“ITC”), the Department of the Treasury issued antidumping duty findings on imports of sugar from Belgium, France, and Germany with country-wide rates of 103 percent for Belgian sugar, 102 percent for French sugar, and 121 percent for German sugar. *See Sugar from Belgium, France, and the Republic of Germany, Treasury Decision 79-167*, 44 FR 33878 (June 13, 1979) (“*Treasury Decision*”). Since the issuance of the antidumping duty findings, the

Department has completed several administrative reviews with respect to imports of sugar from Belgium, France, and Germany; none of those reviews was completed since the first sunset reviews.¹

The Department also conducted a changed circumstances review for sugar from France. *See Sugar from France: Final Results of Changed Circumstances Antidumping Duty Review and Revocation in Part of Antidumping Duty Finding*, 61 FR 40609 (August 5, 1996). The Department partially revoked the finding, revoking with respect to homeopathic sugar pellets, based on the fact that the domestic parties expressed no interest in maintaining a finding on homeopathic sugar pellets from France. *Id.* The antidumping duty findings on sugar remain in effect for all importers of the subject merchandise from France, Belgium and Germany.

The Department published its notice of initiation of the first sunset reviews 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 those reviews, the Department found that revocation of the antidumping duty findings would be likely to lead to continuation or recurrence of dumping. *See Final Results of Expedited Sunset Reviews: Sugar from France, Belgium and Germany*, 64 FR 5638 (February 4, 1999) (“First Sunset Reviews”). On October 6, 1999, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty findings on sugar from France, Belgium and Germany would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada*, 64 FR 54335 (October 6, 1999) and USITC Pub. 3238, Inv. Nos. 104-TAA-7 (Review); AA1921-198-200 (Review); and 731-TA-3 (Review) (September 1999). On September 23, 1999, the Department published the notice of continuation of the antidumping findings on sugar. *See Continuation of Antidumping Findings on Sugar from Belgium, France, and Germany and Countervailing Duty Finding on Sugar from the European Community*, 64 FR 58033 (October 28, 1999).

Background:

On September 1, 2004, the Department published the notice of initiation of the second sunset reviews of the antidumping duty findings on sugar from France, Belgium and Germany pursuant to section 751(c) of the Act. *See Initiation of Five-Year (“Sunset”) Reviews*, 69 FR 53408 (September 1, 2004). The Department received the Notice of Intent to Participate from the American Sugar Cane League, the Sugar Cane Growers Cooperative of Florida, the Florida

¹*See Sugar from France, Belgium and the Federal Republic of Germany; Final Results of Administrative Review of Antidumping Finding*, 46 FR 22778 (April 21, 1981); *Sugar from France, Belgium and the Federal Republic of Germany; Final Results of Administrative Review of Antidumping Finding*, 47 FR 3399 (January 25, 1982); *Sugar from France, Belgium and the Federal Republic of Germany; Final Results of Administrative Review of Antidumping Finding*, 48 FR 1786 (January 14, 1983); and *Sugar from France, Belgium and the Federal Republic of Germany; Final Results of Administrative Review of Antidumping Finding*, 49 FR 43738 (October 31, 1984).

Sugar Cane League, the Hawaii Sugar Farmers, the Rio Grande Valley Sugar Growers, the U.S. Beet Sugar Association, and the American Sugarbeet Growers Association (collectively “the domestic interested parties”), within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations (“Sunset Regulations”). The domestic interested parties claimed interested party status under section 771(9)(E) of the Act, as a trade association, the majority of whose members manufacture, produce, or wholesale a domestic like product in the United States. We received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of these findings.

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 these antidumping duty findings 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 finding. 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 finding 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 these antidumping duty findings have played a critical role in protecting the domestic sugar industry from dumped imports and that revocation of these findings would likely lead to the recurrence of dumping. They note that dumping was found in the original investigations and subsequent administrative reviews and that the Department found a likelihood of continuation or recurrence of dumping in the first sunset reviews of these antidumping duty findings. *See* Substantive Response of the Domestic Interested Parties regarding French Sugar (“France Substantive Response”) (October 1, 2004) at 17; Substantive Response of the Domestic Interested Parties regarding Belgian Sugar (“Belgium Substantive Response”) (October 1, 2004) at 17; and Substantive Response of the Domestic Interested Parties regarding German Sugar (“Germany Substantive Response”) (October 1, 2004) at 16. They also note that exports to the United States, which were in the thousands of tons prior to the issuance of the finding, virtually ceased thereafter. They argue that the relatively small volumes of imports in recent years are most likely specialty sugars outside the scope of the finding, particularly given the high average unit values of the imports. *Id.*

The domestic interested parties provided U.S. Department of Agriculture statistics to demonstrate that the combination of increased world supply (new productive capacity, record global surplus, and Brazil as a major exporter) and falling global demand has resulted in low world prices. *Id.* at 19 and at Appendices 9-10. Given low world prices, the domestic interested parties contend that high domestic prices in the European Union dictate that Belgium, France, and Germany will dump sugar at least at the magnitude that existed at the time of the original finding, notwithstanding the existence of a tariff rate quota on sugar. *Id.* at 13. They note that the tariff rate quotas do not bar imports and that exporters are able to ship to the United States despite the tariff.

The domestic interested parties also argue that the uncertainty of U.S. sugar policy, particularly with respect to the negotiations of new free trade agreements (FTA), could also increase the likelihood that dumping could recur if these findings were revoked. They state that possible increases in the tariff rate quota volumes for imported sugar from FTA countries will likely depress sugar prices and put added price pressure on other foreign suppliers to the U.S. market. *Id.* at 26-28.

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 (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 normally determines that revocation of an antidumping duty finding 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 finding, (b) imports of the subject merchandise ceased after the issuance of the finding, or (c) dumping was eliminated after the issuance of the finding and import volumes for the subject merchandise declined significantly. With respect to the antidumping duty findings on sugar from Belgium, France and Germany, the Department has conducted a number of reviews since the issuance of these findings in which it found that dumping continued at levels above *de minimis*. See Footnote 1 of this Memorandum.

In addition, pursuant to 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty finding. Using statistics provided by the ITC Dataweb (see attached), the Department finds that imports since the issuance of the findings have never come close to pre-finding levels. See attached import statistics. Given that dumping has continued at significantly reduced import volumes at levels above *de minimis*, the Department determines that dumping is likely to continue or recur if these findings were revoked.

2. Magnitude of the Margin Likely to Prevail:

Interested Party Comments

In their substantive responses, the domestic interested parties state that the dumping margins likely to prevail if the findings were revoked are at least as high as the margins from the original investigation. Indeed, they argue that, based on methodology similar to that used by the Department of Treasury in the original investigation, the dumping margins likely to prevail in each of the sunset reviews is 394.5 percent.² *See* Belgium, France and Germany Substantive Responses at 29-32. Therefore, the domestic interested parties request that, at a minimum, the Department report the margins from the original investigations to the ITC but believe that the higher margins they have calculated are more recent and, as such, are more representative of the likely behavior of the Belgian, French and German manufacturers and exporters of sugar if these findings were revoked.

Department's Position

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company, and for companies not investigated specifically, or for companies that did not begin shipping until after the finding was issued, the Department normally will provide a margin based on the “all others” rate from the investigation. 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 exporters without the discipline of a finding or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin, to report to the ITC.

In the first sunset reviews, the Department reported to the ITC margins from the original investigations. *See* First Sunset Reviews, 64 FR at 5640. The Department may, in response to an argument from an interested party, provide to the ITC a more recently calculated margin where, for example, dumping margins increased, even if the increase was a result of the application of best information or facts available. However, as was discussed in the first sunset reviews, the SAA provides that only in the most extraordinary circumstances will the Department rely on dumping margins other than those it calculated and published in its prior determinations. *See* First Sunset Reviews, 64 FR at 5639 and SAA at 890-891. For the final results of these expedited sunset reviews, the Department has determined to report to the ITC the margins from the original investigations, the margins reported in the first sunset reviews, because these dumping margins are the only calculated rates that reflect the behavior of exporters without the discipline of a finding in place. Thus, we will report to the ITC a margin of 103, 102, and 121 percent, respectively, for Belgian, French, and German exporters and producers of sugar.

²Based on an examination of U.S. and European Union prices. Alternatively, they argue that a comparison of U.S. prices to a constructed value for French, Belgian and German sugar results in margins of 136.6, 176.95 and 257 percent, respectively.

Final Results of Reviews

We determine that revocation of the antidumping duty findings on sugar from Belgium, France, and Germany would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margin:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
All Belgian Manufacturers/Exporters	103
All French Manufacturers/Exporters	102
All German Manufacturers/Exporters	121

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 these sunset reviews in the *Federal Register*.

AGREE _____

DISAGREE _____

ORIGINAL SIGNED

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

3/30/05

(Date) _____