

70 FR 38872, July 6, 2005

A-475-703
A-588-707
Sunset Reviews
Public Document

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

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for Sunset Reviews of the
Antidumping Duty Orders on Granular Polytetrafluoroethylene
Resin from Italy and Japan; Final Results

SUMMARY:

We have analyzed the substantive responses of the interested parties in the second sunset reviews of the antidumping duty orders on granular polytetrafluoroethylene resin ("PTFE Resin") from Italy and Japan. 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 substantive responses:

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

History of the Orders

On May 3, 1999, the Department of Commerce ("the Department") initiated the first sunset review of the antidumping duty orders on PTFE Resin from Italy and Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See Initiation of Five-Year ("Sunset") Reviews, 64 FR 23596 (May 3, 1999). As a result of the first sunset reviews, pursuant to sections 751(c) and 752 of the Act, the Department determined that revocation of the antidumping duty orders on PTFE Resin from Italy and Japan would likely lead to continuation or recurrence of dumping. See Final Results of Expedited Sunset Reviews: Granular Polytetrafluoroethylene Resin from Italy and Japan, 64 FR 67865 (December 3, 1999) ("Department's First Sunset Review"). On December 27, 1999, the International Trade Commission ("the ITC"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on PTFE Resin from Italy and Japan 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 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)(ITC's First Sunset Review)). Accordingly, the Department published a notice of the continuation of the antidumping duty orders on PTFE Resin from Italy and Japan, pursuant to 19 CFR 351.218(f)(4) of the Department's regulations. See Continuation of Antidumping Duty Orders: Granular Polytetrafluoroethylene Resin from Italy and Japan, 65 FR 6147 (February 8, 2000).

Italy

On July 11, 1988, the Department published its affirmative determination of sales at less than fair value ("LTFV") with respect to PTFE Resin from Italy. See Final Determination of Sales at Less Than Fair Value: Granular Polytetrafluoroethylene Resin from Italy, 53 FR 26096 (July 11, 1988). The antidumping duty order was published on August 30, 1988. See Antidumping Duty Order: Granular Polytetrafluoroethylene Resin from Italy, 53 FR 33163 (August 30, 1988). The Department established weighted-average margins of 46.46 percent for Montefluos S.p.A./Ausimont U.S.A., and 46.46 percent for "all others". In subsequent administrative reviews, including two reviews since the first sunset review, the Department found that the Italian producers/exporters continued dumping with the order in place. See Notice of Final Results of Antidumping Administrative Review on Granular Polytetrafluoroethylene Resin From Italy, 67 FR 1960 (January 15, 2002)(2002 Review) and Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy, 68 FR 2007 (January 15, 2003)(2003 Review).

On May 12, 2003, the Department published the final results of a changed circumstances review. See Granular Polytetrafluoroethylene Resin from Italy: Final Results of Changed Circumstances Review, 68 FR 25327 (May 12, 2003). In that review, the Department 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.

Japan

On July 5, 1988, the Department published its affirmative determination of sales at LTFV with respect to PTFE Resin from Japan. See Final Determination of Sales at Less Than Fair Value: Granular Polytetrafluoroethylene Resin from Japan, 53 FR 25191 (July 5, 1988). The antidumping duty order was published on August 24, 1988. The Department established a weighted-average margin of 103.00 percent for Daikin Industries, Inc., 51.45 percent for Asahi Fluoropolymets, Inc., and 91.74 percent for "all others". In administrative reviews prior to the first sunset review, the Department found that Daikin Industries, the sole participant, continued dumping with the order in place. Since the final results of the first sunset review, the Department has not published any final results of administrative reviews of the order from Japan.

Deposit rates remain in effect for Italian and Japanese producers/exporters of the subject merchandise.

Background

On December 1, 2004, the Department initiated the second sunset review of the antidumping duty orders on PTFE Resin from Italy and Japan pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Reviews, 69 FR 69891 (December 1, 2004)(“Department’s Second Sunset Review”). The Department invited parties to comment. The Department received notices of intent to participate from a domestic interested party, E.I. DuPont de Nemours & Company (“DuPont”) within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. DuPont claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of a domestic like product. The Department received a substantive response from DuPont within deadline specified in 19 CFR 351.218(d)(3)(i). DuPont was the sole petitioner in the original investigation and actively monitors and has participated in these proceedings since that time. The Department did not receive responses to the notice of initiation 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 conducted expedited sunset reviews of these orders.

On April 7, 2005, the Department extended the time limit for final results of these sunset reviews to not later than June 29, 2005. See Carbon Steel Butt-Weld Pipe Fittings From Brazil, Japan, the People's Republic of China, Taiwan, and Thailand, and Granular Polytetrafluoroethylene Resin From Italy and Japan: Extension of Time Limit for the Final Results of Sunset Reviews of Antidumping Duty Orders, 70 FR 17647 (April 7, 2005).

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 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 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 party.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

Italy

DuPont argues that revocation of the order on PTFE Resin from Italy is likely to lead to continued dumping because dumping has continued at above de minimis levels and import volumes declined significantly after the issuance of the order. See Substantive Response of DuPont, January 3, 2005, at 5 (“Substantive Response”). DuPont notes that in the more recent

administrative review, dumping margins for Ausimont S.p.A., increased from the margins determined in the immediately preceding administrative review. Id. at 6. With respect to import volumes, DuPont asserts that import volumes declined immediately following the issuance of the order. DuPont provided import volumes of the subject merchandise under the Harmonized Tariff Schedule item number 3904.61.00 for the periods 1987 through 2004. Id. at 7 and Exhibit 1. Although DuPont notes that the HTS heading also includes some small amounts of non-subject merchandise of PTFE Resin in fine powder, DuPont claims that based on the continued margins alone, the Department should determine that dumping is likely to continue or recur if the order were revoked. Id.

Japan

DuPont makes similar arguments regarding the likely effects of revocation of the order on PTFE Resin from Japan. DuPont again argues that revocation of the order on PTFE Resin from Japan is likely to lead to continued dumping because dumping has continued at levels significantly above de minimis and import volumes declined significantly after the issuance of the order, and have remained below pre-order levels. See Substantive Response at 4. DuPont further asserts that on the sole basis of dumping margins found after the issuance of the order, the Department should determine that dumping is likely to continue or recur if the order were revoked. Id. at 5.

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 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.

The records of the orders show that dumping has persisted since the issuance of these orders. Deposit rates above de minimis remain in effect for all exports of PTFE Resin from Italy and Japan. The Department also analyzed and considered the volume of imports of the subject merchandise for the period before issuance of the order and for the period after the issuance of these orders, and import volumes over the past five years. We note that with respect to PTFE Resin from Japan, import volumes continue to be well below pre-order levels. With respect to PTFE Resin from Italy, import volumes have returned to pre-order levels. See Memorandum to file, July 29, 2005, regarding import volumes of PTFE Resin from Italy and Japan. However, we agree with DuPont that the continuation of dumping at above de minimis levels, warrants the continuation of these orders. Therefore, on the basis of information provided by DuPont, information on the record, and the lack of information provided by the respondent parties, we continue to find that it is likely that if the antidumping duty orders were revoked, dumping would

continue or recur.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

Italy

DuPont asserts that in accordance with the legislative history and the Department's regulations, the Department should provide the ITC the rates from the original investigation, 46.46 percent, for all Italian exporters of PTFE Resin from Italy. See Substantive Response at 8.

Japan

DuPont suggests that the Department should report the rate from the original investigation with regards to Daikan Industries, 103.00 percent and "all others" of 91.74 percent. See Substantive Response of DuPont at 8.

Department's Position

Section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. The Department normally will select a margin from the final determination of the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. See SAA at 890, and the House Report at 64.

In the final determination of the investigation from Italy, the Department found dumping margins of 46.46 percent for Montefluos S.p.A./Ausimont U.S.A. and 46.46 percent for "all others". In the final determination of the investigation from Japan, the Department found dumping margins of 103.00 percent for Daikan Industries, Inc., 51.45 percent for Asahi Fluoropolymers, Inc, and 91.74 for "all others".

In the final results of subsequent administrative reviews, margins continued to be above de minimis. In the first sunset review, the Department determined that the margins calculated in the original investigation are probative of the behavior of the Italian and Japanese producers and exporters of PTFE Resin without the discipline of the order. Furthermore, for these second sunset reviews, the Department does not find any indication that the margins calculated in subsequent reviews are more probative of behaviors without the discipline of the order. As in the first sunset review, the Department finds that the margins from the original investigation are the appropriate margins to report to the ITC with respect to the orders on PTFE Resin from Italy and Japan. Therefore, the Department continues to find that the margins calculated in the original investigations are probative of the behavior of Italian and Japanese producers and exporters if these orders were revoked. Consistent with section 752(c) of the Act, the Department reported to the ITC company-specific and "All Others" rates from the investigations as indicated in the

“Final Results of Reviews” section of this memorandum.

Final Results of Reviews

As a result of these reviews, the Department determines that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

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

Italy	
Montefluos S.p.A./Ausimont U.S.A.	46.46 ¹
All Others	46.46
Japan	
Daikin Industries, Inc.	103.00
Asahi Fluoropolymers, Inc.	51.45
All Others	91.74

¹ Solvay Solexis S.p.A. and Solvay Solexis, Inc. are successors in interest to Ausimont S.p.A and Ausimont U.S.A, Inc.

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 _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date