



A-570-894
Sunset Review
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September 25, 2015

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 Second Sunset Review of the Antidumping Duty Order on Certain Tissue Paper Products the People's Republic of China

Summary

We analyzed the response of the domestic interested parties in the second sunset review of the antidumping duty order covering certain tissue paper products (tissue paper) from the People's Republic of China (PRC).¹ No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. The following is a list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margins Likely to Prevail

Background

On March 30, 2005, the Department of Commerce (the Department) published the antidumping duty order on tissue paper from the PRC.² On June 1, 2015, the Department published the notice of initiation of the second sunset review of the Order, pursuant to section 751(c) of the Tariff Act 1930, as amended (the Act).³ On June 15, 2015, we received a notice of intent to participate from Seaman Paper Company of Massachusetts, Inc., Eagle Tissue LLC, Flower City Tissue

¹ See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China, 70 FR 16223 (March 30, 2005) (Order).

² See Order.

³ See Initiation of Five-Year ("Sunset") Review, 80 FR 31012 (June 1, 2015).

Mills Co. and Garlock Printing & Converting Inc. (collectively “petitioners”).⁴ The petitioners claimed interested party status under section 771(9)(C) of the Act, as manufacturers, producers or wholesalers of the domestic like product in the United States. On June 30, 2015, we received an adequate substantive response from the petitioners within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁵ 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 conducted an expedited (120-day) sunset review of the Order.

Scope of the Order

The tissue paper products covered by the Order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30, 4802.54, 4802.61, 4802.62, 4802.69, 4804.31.1000, 4804.31.2000, 4804.31.4020, 4804.31.4040, 4804.31.6000, 4804.39, 4805.91.1090, 4805.91.5000, 4805.91.7000, 4806.40, 4808.30, 4808.90, 4811.90, 4823.90, 4802.50.00, 4802.90.00, 4805.91.90, 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.⁶

Excluded from the scope of this order are the following tissue paper products: (1) tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, i.e., disposable sanitary covers for toilet seats; and (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

⁴ See June 15, 2015, letter regarding “Certain Tissue Paper Products from the People’s Republic of China - Notice of Intent to Participate in Review and APO Application.”

⁵ See June 30, 2015, letter from the petitioners regarding “Certain Tissue Paper Products from the People’s Republic of China: Substantive Response to Notice of Initiation” (Substantive Response).

⁶ On January 30, 2007, at the direction of CBP, the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6 I 00, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

History of the Order

On February 14, 2005, the Department published its final determination in the less-than-fair-value (LTFV) investigation of tissue paper from the PRC.⁷ On March 30, 2005, the Department published an amended final determination and antidumping duty order on tissue paper from the PRC.⁸ The Department assigned the following dumping margins:

Qingdao Wenlong Co., Ltd.	112.64
Fujian Nanping Investment & Enterprise Co.	112.64
Fuzhou Light Industry Import & Export Co., Ltd.	112.64
Guilin Qifeng Paper Co. Ltd	112.64
Ningbo Spring Stationary Limited Company	112.64
Everlasting Business & Industry Corporation, Ltd.	112.64
BA Marketing & Industrial Co., Ltd.	112.64
Samsam Production Limited & Guangzhou Baxi Printing Products Limited	112.64
Max Fortune Industrial Limited	112.64
PRC-Wide Rate	112.64

Since the issuance of the Order, the Department has completed four administrative reviews and one sunset review. On July 20, 2010, as a result of the first sunset review determinations by the Department and International Trade Commission (ITC), the Department continued the Order.⁹ Since the continuation of the Order, the Department has issued two scope rulings¹⁰ and conducted two anti-circumvention inquiries,¹¹ but has not conducted any administrative or new shipper reviews of the Order.

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the 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 this determination, 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 after the issuance of the order.

⁷ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China, 70 FR 7475 (February 14, 2005) (Final Determination).

⁸ See Order.

⁹ See Certain Tissue Paper Products From the People's Republic of China: Notice of Continuation of Antidumping Duty Order, 75 FR 42067 (July 20, 2010) (2010 Continuation Notice).

¹⁰ See Notice of Scope Rulings, 80 FR 22969 (April 24, 2015) (DTP908 David Tutera Tissue Tassels and POM100 Tissue Poms are within the scope of the order).

¹¹ See Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 76 FR 47551 (August 5, 2011); and Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 78 FR 40101 (July 3, 2013).

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (SAA), 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's determinations of likelihood will be made on an order-wide, rather than company-specific, basis.¹² In addition, the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above de minimis after the issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.¹³

In addition, as a base period of import volume comparison, it is the Department's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.¹⁴ Also, when analyzing import volumes for second and subsequent sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.¹⁵

Further, 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. Generally, the Department selects the dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.¹⁶ However, in certain circumstances, a more recently calculated rate may be more appropriate (e.g., "if dumping margins have declined over the life of an order and imports have remained steady or increased, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review."¹⁷

In February 2012, the Department 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.¹⁸ In the Final

¹² See SAA at 879 and House Report at 56.

¹³ See SAA at 889-90, House Report at 63-64, and Senate Report at 52 for a description of our practice; see also Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18872 (April 16, 1998) (Sunset Policy).

¹⁴ See, e.g., Stainless Steel Bar from Germany: Final Results of the Sunset Review of the Antidumping Duty Order, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁵ See Ferrovaniadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders, 79 FR 14216 (March 13, 2014), and accompanying Issues and Decision Memorandum.

¹⁶ 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 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁷ See SAA at 890-91.

¹⁸ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101, 8103 (February 14, 2012) (Final

Modification for Reviews, the Department stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.¹⁹ The Department further stated that apart from the “most extraordinary circumstances,” it would “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” and that it “may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”²⁰

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or de minimis shall not by itself require the Department to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at LTFV.²¹

Discussion of the Issues

1. Likelihood of Continuation or Recurrence of Dumping

Petitioners’ Comments

The petitioners argue that revocation of the order would likely lead to continuation or recurrence of dumping. Pointing to 1) the subsequent decrease in import volumes since the imposition of the Order; 2) the fact that a margin of 112.64 percent applies to almost all imports of subject merchandise; and 3) the affirmative circumvention determinations of the Order, the petitioners argue that these facts indicate that Chinese producers/exporters are unable to sell subject merchandise in the U.S. market without dumping.²²

With regard to import volumes, the petitioners argue that the Order had an immediate and dramatic effect on imports of subject merchandise from the PRC.²³ After increasing rapidly from 2001 to 2004, in March 2005 when the Order went into effect import volumes of subject merchandise dramatically declined and have remained well below pre-order levels throughout the history of the order. Although import volumes increased in 2012, 2013 and 2014 (*i.e.*, the last three years of the current sunset review period), the petitioners point out that these increases were less than one sixth of the pre-order peak volume in 2003.²⁴ Therefore, the petitioners

Modification for Reviews).

¹⁹ Id.

²⁰ Id. at 8109.

²¹ 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 (April 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

²² See Substantive Response at page 17.

²³ The petitioner relied on tariff data compiled by the Department and the ITC. See Substantive Response at page 18 and Exhibit 1.

²⁴ The petitioners used the following 10-digit HTS subheadings for purposes of compiling the U.S. tissue paper import data: 4804.39.40.41, 4811.90.40.10, 4811.90.60.10, and 4811.90.90.10. The petitioners maintain that these

maintain that if the Order were revoked, it is likely, if not certain, that Chinese exporters would resume dumping at levels observed in the investigation in order to return to the U.S. market and regain market share. The petitioners maintain that such dumping would materially injure the domestic industry.

Furthermore, citing to the Department's Sunset Policy, the petitioners argue that the Department normally will determine that revocation of an antidumping duty order is inappropriate where dumping continued at any level above de minimis after the issuance of the order. In this instance, the petitioners argue that although the Department has initiated seven administrative reviews, all but one Chinese exporter are subject to 112.64 percent dumping margins.²⁵ Therefore, the petitioners argue, when considering the significant reduction in shipments to the United States following the imposition of the order and the fact that the margins of dumping were also significant (i.e., 112.64 percent) when subject imports were substantial in the years preceding the order, it is reasonable for the Department to conclude that dumping is likely to continue or recur if the order were revoked.²⁶

Department's Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA, the House Report, and the Senate Report, the Department's determinations of likelihood will be made on an order-wide basis.²⁷ In addition, the Department normally will determine 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.²⁸ According to the SAA, "{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."²⁹

As noted above, when analyzing import volumes for second and subsequent sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation (i.e., 2003 for this sunset review) to import volumes since the issuance of the last continuation notice. The last continuation notice of the tissue paper order was issued

HTS subheadings specifically capture the subject merchandise and should be used by importers to the exclusion of other HTS sub-classifications. The petitioners noted that U.S. tissue paper import data for 2004 and 2005 are not available because there were no distinct HTS subheadings for tissue paper products during that time period. See Substantive Response at pages 17-18 and Exhibit 1.

²⁵ See Substantive Response at pages 8 through 12.

²⁶ Id.

²⁷ See SAA at 879 and House Report at 56.

²⁸ See SAA at 889-90, House Report at 63-64, and Senate Report at 52; see also Sunset Policy, 63 FR at 18872.

²⁹ See SAA at 889.

in July 2010.³⁰ Therefore, for this sunset review we examined USITC Dataweb import volumes in 2003 as compared to import volumes during the sunset review period (i.e., 2010-2014). The USITC Dataweb statistics show that the annual import volumes of tissue paper from the PRC during 2010 through 2014 fluctuated between 58,243,230 kilograms and 87,482,359 kilograms but remained slightly above the import volume in 2003.³¹

In addition, we examined the weighted-average dumping margins in effect during the sunset review period to determine whether dumping continued at levels above de minimis. We note that a margin of zero percent and margins of 112.64 percent were in effect during the sunset review period.³² Further, we note that the 112.64 percent rate was assigned as adverse facts available in the underlying investigation and was based on the margin in the petition and, as such, did not involve the denial of offsets. Although import volumes during the sunset review period remained slightly higher than pre-order import volumes, given that dumping margins continued to exist at levels above de minimis, we find that dumping would likely continue or recur if the order were revoked, pursuant to section 752(c)(1) of the Act.

2. Magnitude of the Margins Likely to Prevail

Petitioners' Comments

Citing the Policy Bulletin, the petitioners request that the Department report to the ITC the dumping margins that were determined in the investigation, as amended, because these margins represent the best evidence of Chinese producers' and exporters' behavior in the absence of an order.

Department's Position

Pursuant to section 752(c)(3) of the Act and the SAA at 890, the Department normally will provide to the ITC the company-specific margins from the investigation. In non-market-economy (NME) cases, for companies not investigated specifically and which were not found to be eligible for a separate rate, or for companies that did not begin shipping until after the Order was issued, the Department normally will provide a margin based on the NME-entity rate from the investigation.³³ The Department's preference for selecting a margin from the LTFV investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC.

³⁰ See 2010 Continuation Notice.

³¹ See Attachment. We note that our query of the USITC Dataweb included all HTS numbers listed in the scope.

³² Seaman Paper Asia Company Ltd. was assigned a zero percent margin; all other companies including the PRC-wide entity were assigned a margin of 112.64 percent.

³³ See, e.g., Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 73 FR 39656 (July 10, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

As indicated in the “Legal Framework” section above, the Department’s current practice is not to rely on weighted-average dumping margins calculated using the zeroing methodology, consistent with the Final Modification for Reviews. Instead, we may rely on other rates that may be available, or we may recalculate weighted-average dumping margins using our current offsetting methodology in extraordinary circumstances.³⁴ In addition, the rate assigned to the PRC-wide entity, if it is based on the margin from the petition and does not involve the denial of offsets, is another available rate that we may report to the ITC.

After considering the dumping margins determined in the LTFV investigation and the subsequent administrative reviews, we find that it is appropriate to provide the ITC with the margins determined in the LTFV investigation for the magnitude of the margins likely to prevail because these margins best reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place.³⁵ Specifically, in the investigation, the Department assigned a 112.64 percent rate as adverse facts available to the two mandatory respondents. This rate was based on the margin in the petition and did not involve the denial of offsets.³⁶ Additionally, we note that this rate was also assigned to the separate rate companies and to the PRC-wide entity.

Final Results of Sunset Review

We determine that revocation of the antidumping duty order on tissue paper from the PRC would likely lead to continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail would be at weighted-average margins up to 112.64 percent for all producers and exporters of subject merchandise. Accordingly, we will report this range of margins of dumping to the ITC.

³⁴ See Final Modification for Reviews, 77 FR at 8103.

³⁵ See SAA 890.

³⁶ See Final Determination.

Recommendation

Based on our analysis of the response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the sunset review in the Federal Register.

Agree _____

Disagree _____

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

(Date)

ATTACHMENT

**Tissue Paper: First Unit of Quantity by Country Name and First Unit of Quantity
for China**

**U.S. Imports for Consumption
Annual Data**

Country	HTS Number	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
		<i>In Actual Units of Quantity</i>													
China	48119080	137,167	896,129	16,800,795	96,251,700	51,987,454	12,725,066	16,252,088	14,646,663	10,107,026	10,336,520	17,370,207	23,090,297	21,669,927	26,054,804
.	48239086	0	10,171,667	10,065,694	15,567,848	18,443,700	18,534,635	20,577,551	19,321,648	16,861,015	19,984,430	22,312,133	23,367,284	21,075,645	24,411,441
.	48119090	0	1,674,557	4,044,467	5,659,743	21,516,793	9,979,290	16,731,822	13,853,961	9,249,734	9,206,583	8,352,930	10,241,055	9,294,753	14,898,941
.	48239067	0	0	0	0	0	0	7,916,879	9,370,539	7,145,695	10,291,125	11,327,675	12,645,243	14,374,308	14,578,650
.	48119020	5,439	138,140	47,616	105,981	1,857,502	2,080,376	2,230,714	3,518,304	2,689,295	2,142,079	4,141,760	3,741,275	3,260,589	2,007,305
.	48239010	380,526	556,606	2,762,668	468,267	2,113,423	789,866	863,990	1,188,300	1,321,597	1,372,201	1,484,538	1,993,357	1,651,295	1,742,747
.	48026130	0	0	4,732	0	17,998	2,776	20,283	455,545	43,105	1,092	1,890	350,481	366,180	655,760
.	48043920	0	0	0	70	0	0	0	0	0	0	0	0	146,915	634,581
.	48119060	17,045	830,028	5,956,824	3,185,561	2,216,936	802,993	599,721	393,737	618,568	1,340,017	1,978,231	1,902,724	928,161	629,864
.	48043940	1,689,024	3,051,065	3,536,762	6,695,832	952,893	1,935,200	1,871,678	1,218,493	2,173,120	2,073,306	672,303	387,800	476,713	445,042
.	48043960	1,403,726	2,057,715	1,456,950	1,304,168	291,567	146,745	1,686,239	253,641	232,187	153,037	944,479	7,655,400	3,145,784	376,002
.	48119030	0	2,704	1,375	0	10,398	130,122	278,581	252,686	272,838	284,360	241,109	249,666	239,486	279,481
.	48026260	0	96,523	355,285	5,363,566	3,721,525	181,017	177,946	34,877	179,048	265,255	71,849	986,721	7,282	269,959
.	48239050	201,020	263,126	223,442	269,120	224,653	232,062	243,038	218,605	201,440	251,914	221,302	281,977	263,555	263,802
.	48239020	911,513	1,082,810	720,693	1,739,932	890,701	790,653	627,620	791,813	472,999	541,311	435,399	350,699	187,734	233,980
Subtotal kilograms		4,745,460	20,821,070	45,977,303	136,611,788	104,245,543	48,330,801	70,078,150	65,518,812	51,567,667	58,243,230	69,555,805	87,243,979	77,088,327	87,482,359

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.