

71 FR 33279, June 8, 2006

A-570-831
Sunset Review
Public Document
IA/Office 8/HES

June 1, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China

Summary

We have analyzed the substantive response of the domestic interested parties in the second sunset review of the antidumping duty order covering fresh garlic from the People's Republic of China ("the PRC"). 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 this sunset review for which the Department of Commerce ("the Department") received a substantive response:

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

History of the Order

On November 16, 1994, the Department published an antidumping duty order on imports of fresh garlic from the PRC, applying a country-wide rate of 376.67 percent. *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994) ("Order").

The Department published its notice of initiation of the first sunset review on December 1, 1999, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Notice of Initiation of Five-Year ("Sunset") Reviews*, 64 FR 67247 (December 1, 1999). As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping by the PRC-wide entity at a rate of 367.67 percent, the same rate as found in the investigation. *See Fresh Garlic from the People's Republic of*

China; Final Results of Expedited Sunset Review of Antidumping Duty Order, 65 FR 41432 (July 5, 2000) (“*First Sunset Review*”).

On February 28, 2001, the International Trade Commission (“ITC”) determined, pursuant to section 751(c) of the Act, that revocation of this antidumping duty order 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 Fresh Garlic from China*, 66 FR 12810 (February 28, 2001) and USITC Pub. 3393, Inv. No. 731-TA-683 (Review) (February 2001). On March 13, 2001, the Department published the notice of continuation of this antidumping duty order. *See Continuation of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China*, 66 FR 14544 (March 13, 2001) (“*Continuation*”).

The Department has conducted several administrative reviews and new shipper reviews since the continuation of this order. *See* the Procedural History chart at Attachment 1. In addition, the Department has conducted one changed circumstances review since the continuation of this order in which the Department found that Heze Ever-Best is the successor-in-interest to Shandong Heze. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Fresh Garlic from the People’s Republic of China*, 69 FR 58892 (October 1, 2004). The Department also conducted a scope ruling since the continuation of the order in which the Department ruled that certain garlic cloves in brine are within the scope of the order. *See Notice of Scope Rulings*, 70 FR 24533, 24534 (May 10, 2005). The Department has not conducted any duty absorption reviews. Thus, the order remains in effect for all manufacturers and exporters of the subject merchandise from the PRC.

Note: Please refer to the first sunset review for procedural history prior to this review. *See First Sunset Review*.

Background

On February 1, 2006, the Department published the notice of initiation of the second sunset review of the antidumping duty order on fresh garlic from the PRC pursuant to section 751(c) of the Act. *See Initiation of Five-Year (“Sunset”) Reviews*, 71 FR 5243 (February 1, 2006). The Department received the notice of intent to participate from the Fresh Garlic Producers Association and its individual members: Christopher Ranch LLC; The Garlic Company; Valley Garlic; and Vessey and Company, Inc. (collectively “the domestic interested parties”), within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. The domestic interested parties claimed interested party status under sections 771(9)(C) and (F) of the Act, as domestic producers and processors of fresh garlic and a trade association whose members produce and process fresh garlic. The Department also received a complete substantive response from the domestic interested party within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department’s regulations. The Department received no response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and

section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited (120-day) sunset review of this order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty 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 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: The domestic interested parties argue that revocation of this order would likely lead to continuation or recurrence of dumping because of the PRC entity's high dumping margin, the dramatic decline in imports until 2000, and the import surge due to the change in the new shipper administrative procedure of the Uruguay Round Agreements Act of 1995. *See* "Second Five-Year Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China," ("Response") (March 3, 2006) at 25-36. The domestic interested parties state that dumping margins have continued to exist since the Department issued the order, as evidenced by several completed administrative and new shipper reviews. *See* Response at 35. Accordingly, the domestic interested parties claim that the Department should conclude that dumping has continued and will continue if the order were revoked.

Department's Position: Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action ("SAA"), H. Doc. No. 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 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.

The Department determined rates above *de minimis* for all PRC manufacturers and exporters during the original investigation. *See* Order at 25692. During subsequent reviews the Department found that some companies warranted separate rates and were found to be dumping at a level below *de minimis*. *See First Sunset Review* and the Procedural History Chart

at Attachment 1. With respect to the PRC entity and most PRC manufacturers and exporters, however, the Department has continued to find dumping margins above *de minimis* in several administrative and new shipper reviews, including reviews during the last five years. *See id.* Because dumping has continued at levels above *de minimis* during the period of this sunset review, the Department has determined that revocation of this order is likely to lead to continuation or recurrence of dumping.

Pursuant to section 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 order. The Department has determined that fresh garlic imports from the PRC have increased in volume during the period of this sunset review and that imports are significantly higher in volume than before the order was put in place. *See First Sunset Review.* In 1993, the year before the imposition of this order, the import volume of fresh garlic was 26.2 million kilograms. *See First Sunset Review.* Using statistics provided by the ITC Dataweb, the Department finds that imports of fresh garlic from the PRC have dramatically increased since the issuance of the continuation of the order in 2001. *See import statistics provided at Attachment 2.* During the period of this sunset review, imports of fresh garlic from the PRC increased from 7.9 million kilograms in 2001 to 67.2 million kilograms in 2005. *See id.* The Department normally will determine that revocation of an order is not likely to lead to continuation of dumping where dumping has declined accompanied by steady or increasing imports. *See SAA at 889-90.* However, if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were removed. *See SAA at 890.* Therefore, the Department determines that dumping would likely continue or recur if the order were revoked.

Given these facts, it is not necessary that the Department address the domestic interested parties' other arguments.

2. Magnitude of the Margin Likely to Prevail

Interested Parties' Comments: The domestic interested parties state that most imports of fresh garlic have been subject to the PRC-wide dumping margin of 376.67 percent. *See Response at 37.* The domestic interested parties note the Department's policy to normally provide to the ITC the margin that was calculated in the investigation. *See Response at 36.* In addition, the domestic interested parties reiterate the Department's policy to provide a rate from the investigation for companies that did not begin to ship until after the order was put in place. *See Response at 36.* Therefore, the domestic interested parties contend that the Department should report to the ITC the dumping margin of 376.67 percent for fresh garlic. *See Response at 37.*

Department's Position: The Department will normally provide to the ITC the company-specific margins from the investigation for each company. In a non-market economy case where companies that were not investigated specifically or did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "country-wide" 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 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. *See 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).

In this case, the domestic interested parties request that the Department report to the ITC the margin of 376.67 percent (the PRC-wide rate) found in the investigation. *See* Response at 37. The Department finds that this case provides no circumstances to warrant the Department to consider a more recently calculated margin. Accordingly, the Department determines that it is appropriate to report to the ITC the margin from the investigation and the first sunset review because this rate is probative of the behavior of most of the PRC producers and exporters if the order were revoked as it is the only margin that reflects their actions absent the discipline of the order.

Final Results of Review

We determine that revocation of the antidumping duty order on fresh garlic from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margin for all PRC manufacturers and producers:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
The PRC-wide Rate	376.67

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register*.

AGREE _____ X

DISAGREE _____

ORIGINAL SIGNED

David M. Spooner
Assistant Secretary
for Import Administration

6/1/06

(Date)

Attachment 1

Procedural History Since the Continuation of the Order on March 31, 2001

Attachment 2

U.S. Imports of Fresh Garlic