

DATE: January 13, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Expedited Sunset Review of the Antidumping Duty Order on
Refined Brown Aluminum Oxide from the PRC

Summary

We have analyzed the responses of the domestic interested parties in the sunset review of the antidumping duty order covering refined brown aluminum oxide (RBAO) from the People's Republic of China (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 we received substantive responses:

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

History of the Order

On November 19, 2003, the Department published in the Federal Register the antidumping duty order on RBAO from the PRC. See Antidumping Duty Order: Refined Brown Aluminum Oxide (Otherwise Known as Refined Brown Artificial Corundum or Brown Fused Alumina) From the People's Republic of China, 68 FR 65249, (November 19, 2003). In the order, the Department assigned a margin of 135.18 percent to Zibo Jinyu Abrasive Co., Ltd. (Zibo Jinyu), and 135.18 percent as the PRC-wide rate. The Department has not completed any administrative reviews since the issuance of the antidumping duty order. However, the Department has recently issued preliminary results for an administrative review of RBAO from the PRC for the period November 1, 2006, to October 31, 2007. See Refined Brown Aluminum Oxide from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 72767 (December 1, 2008). There have been no findings of duty absorption by the Department. The Department has issued three scope rulings since the issuance of the order. See

Notice of Scope Rulings, 70 FR 24533, May 10, 2005 (whether crude brown aluminum oxide, in which particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch, that is purchased from the People's Republic of China and then refined in a country other than the People's Republic of China is outside the scope of the order); Notice of Scope Rulings, 70 FR 41374, July 19, 2005 (whether black aluminum oxide is outside the scope of the order); and "Final Scope Ruling: Antidumping Duty Order on Brown Aluminum from the People's Republic of China (A-570-882): 3M Company," Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration dated October 1, 2008 (whether certain semi-friable and heat-treated, specialty aluminum oxides are outside the scope of the order). There have been no changed circumstances determinations over the history of this order. The order remains in effect for all PRC manufacturers, producers, and exporters of the subject merchandise.

On October 1, 2008, the Department published the notice of initiation of the sunset review of the antidumping duty order on RBAO from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See Initiation of Five-Year ("Sunset") Review, 73 FR 57055, October 1, 2008. The Department received a Notice of Intent to Participate from the following domestic producers of RBAO: C-E Minerals, Inc., Great Lakes Minerals LLC, Treibacher Schleifmittel North America, Inc., U.S. Electrofused Minerals, Inc., and Washington Mills Company, Inc. (collectively "the domestic interested parties"), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of 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 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.

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 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 margins of dumping likely to prevail if the order 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 assert that the Department should conclude that revocation of this order would be likely to lead to continuation or recurrence of dumping when applying the Department's Sunset Policy Bulletin 98.3 guidelines¹ in this review.

With respect to the weighted-average dumping margins, the domestic interested parties point to the only completed segment in this proceeding, the less-than-fair-value (LTFV) investigation, in which the Department calculated a margin of 135.18 percent for the sole respondent, Zibo Jinyu, and the PRC-wide rate. As to import volumes, the domestic interested parties assert that imports of the subject merchandise have declined substantially after the issuance of the order, according to U.S. Customs and Border Protection import data. See Domestic Interested Parties October 30, 2008, substantive response at pages 5 - 6 and Exhibit II, and November 7, 2008, response. Therefore, in accordance with the Department's Sunset Policy Bulletin, the domestic interested parties argue that the Department should conclude that there is likelihood that dumping would continue or recur if the order on RBAO from the PRC were revoked.

Department's Position

Consistent with 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's determinations of likelihood will be made on an order-wide basis.² In determining whether revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping, the Department shall consider (a) the weighted-average dumping margin for the investigation that continued at any level above de minimis after the issuance of the order, and (b) imports of the subject merchandise for the period before and after the issuance of the order, in accordance with section 752(c)(1)(B) of the Act. For example, "declining 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 in order to sell at pre-order volumes." See SAA at 889. In addition, "the existence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping." See SAA at 890.

¹ See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998).

² See SAA at 879 and House Report at 56.

In this case, the Department found dumping at above de minimis levels in the original LTFV investigation. The cash deposit rates established in the original investigation remain in effect and there have been no completed administrative reviews of the antidumping duty order. In addition, import statistics provided by the domestic interested parties in their October 30, 2008, substantive response (as clarified in their November 7, 2008, submission) and confirmed by the Department from the ITC Dataweb demonstrate that import volumes decreased significantly following the imposition of the antidumping duty order.

Therefore, given that dumping margins have continued to exist at levels above de minimis since the issuance of the order, and there have been substantially lower import levels after the imposition of the order when compared to pre-order levels, the Department finds that dumping would likely continue or recur if the order were revoked.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

The domestic interested parties request that the Department report to the ITC the 135.18 percent margin that was determined in the final LTFV determination in the original investigation. According to the domestic interested parties, this margin is the only calculated rate that reflects the behavior of exporters without the discipline of an antidumping duty 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 margin from the investigation for each company. 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. 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). 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.

After considering the dumping margins determined in the LTFV investigation, and because there have been no subsequent administrative reviews of this antidumping duty order completed at this time, the Department finds that, in this case, it is appropriate to provide the ITC with the rate from the LTFV investigation for the magnitude of the margin likely to prevail, because this rate is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order in place.

Final Results of Review

We determine that revocation of the antidumping duty order on RBAO from the PRC would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

----- - Manufacturers/Exporters/Producers	Weighted-Average Margin (percent) -----
-	
Zibo Jinyu Abrasive Co., Ltd.....	135.18
PRC-wide.....	135.18

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 review in the Federal Register.

AGREE _____

DISAGREE _____

 Ronald K. Lorentzen
 Acting Assistant Secretary
 for Import Administration

 (Date)