



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration

Washington, D.C. 20230

A-823-810

Five-Year (Second) Sunset Review

Public Document

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DATE: September 20, 2012

TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Susan H. Kuhbach *SHK*
Director, Office 1
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 Solid
Agricultural Grade Ammonium Nitrate from Ukraine

Summary

We have analyzed the substantive response of the interested parties in the sunset review of the antidumping duty order covering solid agricultural grade ammonium nitrate (“ammonium nitrate”) from Ukraine. We recommend that you approve the positions described 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 a substantive response:

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

History of the Order

On July 25, 2001, the Department of Commerce (“the Department”) published its final determination in the investigation of ammonium nitrate from Ukraine finding dumping margins of 156.29 percent for J.S.C. “Concern Stirol” and 156.29 percent for the Ukraine-wide rate. *See Notice of Final Determination of Sales at Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate from Ukraine*, 66 FR 38632 (July 25, 2001). On September 12, 2001, the Department published an antidumping duty order on ammonium nitrate from Ukraine. *See Antidumping Duty Order: Solid Agricultural Grade Ammonium Nitrate from Ukraine*, 66 FR 47451 (September 12, 2001).

Since the issuance of this order, the Department has conducted no administrative, changed circumstances, or duty absorption reviews. The order remains in effect for all manufacturers, producers, and exporters of the subject merchandise from Ukraine.



In the first sunset review of this antidumping duty order, the Department found that revocation of the order would be likely to lead to continuation or recurrence of dumping at the same rates found in the original investigation. *See Solid Agricultural Grade Ammonium Nitrate from Ukraine; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 71 FR 70508 (December 5, 2006). The U.S. International Trade Commission (“ITC”) determined, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the 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 Certain Ammonium Nitrate From Ukraine*, 72 FR 35260 (June 27, 2007). Thus, the Department published the notice of continuation of the antidumping duty order. *See Solid Agricultural Grade Ammonium Nitrate from Ukraine: Continuation of Antidumping Duty Order*, 72 FR 37195 (July 9, 2007).

On June 1, 2012, the Department initiated the second sunset review of the antidumping duty order on ammonium nitrate from Ukraine, pursuant to section 751(c) of the Act. *See Initiation of Five-Year (“Sunset”) Review*, 77 FR 32527 (June 1, 2012). The Department received a notice of intent to participate from domestic interested parties, CF Industries, Inc. and El Dorado Chemical Company (collectively, “Petitioners”), within the deadline specified in 19 CFR 351.218(d)(1)(i). Petitioners claimed interested party status under section 771(9)(C) of the Act as a manufacturer, producer, or wholesaler in the United States of a domestic like product.

On July 2, 2012, the Department received a substantive response from Petitioners. In addition to meeting the other requirements of 19 CFR 351.218(d)(3), Petitioners provided information on the volume and value of Ukrainian exports of ammonium nitrate to the United States. The Department received no responses from respondent interested parties to this proceeding. 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 this antidumping duty 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 margin 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

Petitioners argue that revocation of this antidumping duty order would likely lead to a continuation or recurrence of dumping by the Ukrainian producers of the subject merchandise.

See Petitioners' Response to Notice of Initiation, at 9 (July 2, 2012). Petitioners submit evidence on the record indicating that imports of ammonium nitrate from Ukraine into the United States have ceased since the issuance of the antidumping order. *Id.* at 8 and Exhibit 1. Petitioners contend that it is reasonable to conclude that Ukrainian producers and exporters cannot sell subject merchandise in the U.S. market without dumping because they ceased shipping ammonium nitrate to the United States after the imposition of the antidumping duty order. *Id.* at 9. Therefore, the Department should determine that dumping of Ukrainian ammonium nitrate would be likely to recur if the order were revoked. *Id.*

Department's Position

Consistent with 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. In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

The Department finds that imports of ammonium nitrate from Ukraine into the United States ceased entirely after the imposition of the order in 2001. In light of this, the Department determines that dumping is likely to continue or recur if the order were revoked.

2. Magnitude of the Margin of Dumping Likely to Prevail

Interested Party Comments

Petitioners contend that since imports of ammonium nitrate from Ukraine have ceased since the issuance of the order and no administrative reviews have been conducted, the only dumping margins on record available for consideration are the rates that were calculated in the original investigation. See Petitioners' Response to Notice of Initiation at 6. Petitioners argue that they cannot recalculate J.S.C. "Concern Stinol's" weighted-average dumping margin in accordance with the Department's *Final Modification for Reviews*¹ because Petitioners no longer possess the proprietary record data that would permit them to do so. See Petitioner's Response to Notice of Initiation, at 7. Petitioners further argue that there is no need to recalculate the weighted-average dumping margin in the investigation since the rate was calculated without providing offsets because all comparisons in the investigation were positive and, as a result, there was no zeroing in the investigation. *Id.* at 7. Petitioners state that the Department should consider only the rates calculated in the investigation. *Id.* at 8.

¹ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification for Reviews*, 77 FR 8101 (February 14, 2012) ("*Final Modification for Reviews*").

Department's Position

Normally, the Department will provide to the ITC the company-specific rates from the investigation for each company. For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin of dumping likely to prevail based on the “all others” rate from the investigation. The Department’s preference for selecting a rate from the 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 recent rate to report to the ITC.²

The Department recently announced in its *Final Modification for Reviews* that it will “no longer rely on weighted-average dumping margins that were calculated in the investigation or reviews using a {zeroing} methodology.” In the underlying investigation in this sunset review, the Department determined that all of J.S.C. “Concern Stirol’s” U.S. sales of subject merchandise were dumped. See Memorandum to the File from Mahnaz Khan, International Trade Compliance Analyst, Office 1, AD/CVD Operations, regarding “Ammonium Nitrate from Ukraine Antidumping Duty Order 2012 Sunset Review; SAS Log and Output from Original Investigation,” dated September 17, 2012. As a result, the Department’s final weighted-average dumping margin calculated in the investigation for J.S.C. “Concern Stirol” was not affected by zeroing. After considering the arguments put forward, and the weighted-average dumping margin determined in the investigation, the Department agrees with Petitioners that it is appropriate to report to the ITC the investigation rate for J.S.C. “Concern Stirol” and all other exporters because this is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order in place. The Department does not find in this case that there are extraordinary circumstances that would warrant departure from the Department’s usual practice in this regard. Thus, the Department will report to the ITC the rates listed in the Final Results of Review section, below.

² See, e.g., *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).

FINAL RESULTS OF REVIEW

We determine that revocation of the antidumping duty order on ammonium nitrate from Ukraine would be likely to lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail if the order were revoked is 156.29% for J.S.C. “Concern Stirol” and for all other exporters of subject merchandise from Ukraine.

Recommendation

Based on our analysis of the substantive 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*, and notify the ITC of our determination.

AGREE ✓

DISAGREE _____

Paul Piquado
Paul Piquado
Assistant Secretary
for Import Administration

2 SEPTEMBER 2012
Date