



A-570-905
Sunset Review
Public Document
IA/NME/O9: JH

August 29, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Gary Taverman 
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset
Review of the Antidumping Duty Order on Certain Polyester
Staple Fiber from the People's Republic of China

Summary

In the sunset review of the antidumping duty order covering certain polyester staple fiber from the People's Republic of China ("PRC"), DAK Americas LLC, domestic producer of certain polyester staple fiber ("domestic interested party") submitted an adequate substantive response. No respondent interested party submitted a substantive response. In accordance with our analysis of the domestic interested party's substantive response, we recommend adopting the positions described in the instant memorandum. The following is a complete list of issues in this sunset review for which we received a substantive response:

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

Background

On May 14, 2012, the Department of Commerce ("the Department") published a corrected notice of initiation of the sunset review of the antidumping duty order on certain polyester staple fiber from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.218(c)(2).¹ On May 16, 2012, pursuant to 19 CFR 351.218(d)(1)(i), the Department received a timely and complete notice of intent to participate in the sunset review from the domestic interested party.² On May 31, 2012, pursuant to 19 CFR 351.218(d)(3)(i), the domestic

¹ See Initiation of Five-Year ("Sunset") Review, 77 FR 28355 (May 14, 2012); see also Initiation of Five-Year ("Sunset") Review, 77 FR 25683 (May 1, 2012) ("Sunset Initiation").

² See Letter from domestic interested party, re: "Polyester Staple Fiber From China: Five Year ("Sunset") Review of Antidumping Duty Order", dated May 16, 2012.



interested party filed a timely and adequate substantive response within 30 days after the date of publication of the Sunset Initiation.³ The Department did not receive a substantive response from any respondent interested party. 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 antidumping duty order on certain polyester staple fiber from the PRC.

History of the Order

On April 19, 2007, the Department published its final determination in the less than fair value (“LTFV”) investigation of certain polyester staple fiber from the PRC.⁴ On June 1, 2007, the Department published the antidumping duty order on certain polyester staple fiber from the PRC.⁵ In so doing, the Department found the following weighted-average dumping margins:

Exporter	Weighted-Average Dumping Margin (percent)
Cixi Jiangnan Chemical Co., Ltd	<i>De minimis</i>
Far Eastern Industries (Shanghai) Ltd.	3.47
Ningbo Dafa Chemical Fiber Co., Ltd.	4.86
Cixi Sansheng Chemical Fiber Co., Ltd.	4.44
Cixi Santai Chemical Fiber Co., Ltd.	4.44
Cixi Waysun Chemical Fiber Co., Ltd.	4.44
Hangzhou Best Chemical Fibre Co., Ltd.	4.44
Hangzhou Hanbang Chemical Fibre Co., Ltd.	4.44
Hangzhou Huachuang Co., Ltd.	4.44
Hangzhou Sanxin Paper Co., Ltd.	4.44
Hangzhou Taifu Textile Fiber Co., Ltd.	4.44
Jiaxang Fuda Chemical Fibre Factory	4.44
Nantong Luolai Chemical Fiber Co. Ltd.	4.44
Nanyang Textile Co., Ltd.	4.44
Suzhou PolyFiber Co., Ltd.	4.44
Xiamen Xianglu Fiber Chemical Co.	4.44
Zhaoqing Tifo New Fiber Co., Ltd.	4.44
Zhejiang Anshun Pettechs Fibre Co., Ltd.	4.44
Zhejiang Waysun Chemical Fiber Co., Ltd.	4.44
PRC-Wide Rate	44.30

³ See Letter from domestic interested party, re: “Polyester Staple Fiber From China: Five Year (“Sunset”) Review of Antidumping Duty Order”, dated May 31, 2012 (“Substantive Response”).

⁴ See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People’s Republic of China, 72 FR 19690 (April 19, 2007) (“LTFV Investigation”).

⁵ See Notice of Antidumping Duty Order: Certain Polyester Staple Fiber From the People’s Republic of China, 72 FR 30545 (June 1, 2007) (“Order”).

Administrative Reviews and New Shipper Reviews

Since the issuance of the Order, the Department has completed three administrative reviews with respect to certain polyester staple fiber from the PRC.⁶ On November 9, 2011, the Department determined that Ningbo Dafa Chemical Fiber Co. Ltd. (“Ningbo Dafa”) and Cixi Santai Chemical Fiber Co. Ltd. (“Cixi Santai”) did not sell subject merchandise at LTFV for three consecutive periods, and the Department revoked Ningbo Dafa and Cixi Santai from the Order.⁷ The fourth administrative review is ongoing. There have been no new shipper reviews.

Scope Inquiries, Changed Circumstances Reviews, and Duty Absorption

There have been no scope inquiries, no changed circumstances reviews, and no duty absorption findings.

Discussion of the Issues

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 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 periods before, and the periods after, the issuance of the antidumping duty order.⁸

As explained in the Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act, the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (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

⁶ See First Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 1336 (January 11, 2010), corrected at 75 FR 5763 (February 4, 2010); Certain Polyester Staple Fiber From the People’s Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 76 FR 2886 (January 18, 2011); and Certain Polyester Staple Fiber From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, and Revocation of an Order in Part, 76 FR 69702 (November 9, 2011) (“PSF AR3”).

⁷ See PSF AR3, 76 FR at 69703.

⁸ In its recent announcement in Final Modification for Reviews, the Department modified its practice in sunset reviews, stating that it would “not rely on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be {World Trade Organization (“WTO”)}-inconsistent in US—Zeroing (EC), US—Zeroing (Japan), and US—Continued Zeroing (EC).” See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101, 8103 (February 14, 2012) (“Final Modification for Reviews”). The Department notes that the antidumping duty margins calculated from the LTFV Investigation and the separate rate carried forward for the separate rate respondents in the subsequent reviews were made where no offsets were denied, consistent with Final Modification of Reviews.

declined significantly.⁹ Alternatively, the Department normally will determine that revocation of an antidumping duty order is not likely to lead to continuation or recurrence of dumping where dumping margins declined or were eliminated and import volumes remained steady or increased after issuance of the order.¹⁰ 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 comparison.¹¹

Further, section 752(c)(3) of the Act states that the Department shall provide to the International Trade Commission ("ITC") the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the antidumping duty margin(s) from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.¹²

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.¹³ Our analysis of the comments submitted by domestic interested parties' follows.

Analysis

1. Likelihood of Continuation or Recurrence of Dumping

The domestic interested party argues that revocation of the antidumping duty order on certain polyester staple fiber from the PRC would likely result in the continuation of dumping in the United States. Specifically, the domestic interested party contends that, since the imposition of the order in 2007, numerous separate rate and PRC-Wide entity respondents have continued dumping subject merchandise at above de minimis rates and urges the Department to consider the positive weighted-average dumping margins determined in the investigation and subsequent reviews.¹⁴ The domestic interested party also points to a sharp drop in import volume during the year that the Order was imposed, although the import volume had remained substantial in subsequent years, and reaching a new record level in 2011. The domestic interested party argues import volumes would have been much greater had there been no antidumping duties in place, based on the massive, unused capacity in the PRC as well as the PRC's heavy export-orientation.¹⁵

⁹ See SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90.

¹⁰ See SAA at 889-90, and the House Report, H. Rep. No. 103-826, pt. 1 (1994) ("House Report") at 63.

¹¹ 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.

¹² 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.

¹³ 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.

¹⁴ See Substantive Response at 13 and 14.

¹⁵ See Substantive Response at 14 and 15.

Department’s Position: As explained in the Legal Framework section above, the Department’s determination concerning whether revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping is based, in part, upon guidance provided by the legislative history accompanying the Uruguay Round Agreements Act (i.e., the SAA, House Report, and Senate Report, S. Rep. No. 103-412 (1994)). Consistent with the SAA, the Department will make its likelihood determination on an order-wide, rather than company-specific basis.¹⁶ Further, when determining whether revocation of the order would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

We have considered these margins for purposes of this sunset review, but we have not relied upon them in our determination of whether revocation of the Order would likely result in the continuation of dumping.

We find that revocation of the antidumping duty order on certain polyester staple fiber from the PRC would likely result in the continuation of dumping in the United States due to a significant decline in import volume. We examined public U.S. import data of the volume of certain polyester staple fiber imports from June 2005 to May 2012. The annual import data ending in May 2006 is 108.39 million kilograms, for the full year prior to the initiation of the investigation. The annual import data ending in May 2007 declined to 88.92 million kilograms, for the full year during the investigation and prior to the issuance of the Order. The annual import data for the five-year sunset review period has steadily increased from 95.10 million kilograms for the year ending in May 2008 to 130.12 million kilograms for the year ending in May 2012. However, because Cixi Jiangnan Chemical Co. Ltd. (“Cixi Jiangnan”) was excluded from the Order from the investigation, we obtained from the U.S. Customs and Border Protection (“CBP”) entry information of all shipments made by Cixi Jiangnan during the relevant seven-year period. Once we excluded all entries made by Cixi Jiangnan from consideration, which were not subject to the Order, the adjusted import volume for the sunset review period declined significantly following the imposition of the Order and remained low throughout the five-year sunset review period ending in May 2012, never recovering to pre-investigation levels.¹⁷ The Department finds the trend for this adjusted import volume as demonstrative of the effect of the Order on the companies that were subject to the Order, and this significant decrease in import volumes of subject merchandise supports the finding of likelihood of continuation or recurrence of dumping absent of the Order. In our analysis, we also considered the rates of dumping determined during this sunset review period, as discussed above, but we have not relied on these rates in our determination as to whether dumping is likely to continue or recur if the order were revoked.

¹⁶ See SAA at 879, and House Report at 56.

¹⁷ See Memorandum to File, re “Expedited Sunset Review of the Antidumping Duty Order on Certain Polyester Staple Fiber from the People’s Republic of China: Import Volume Analysis”, dated concurrently with this memorandum.

2. Magnitude of the Margin of Dumping Likely to Prevail

The domestic interested party argues that the Department should report to the ITC the weighted-average antidumping duty margins calculated in the LTFV Investigation in accordance with the Sunset Policy Bulletin except for companies that are excluded from the Order.¹⁸ Additionally, the domestic interested party contends that the Department's recent Final Modification for Reviews requires the Department to no longer rely on antidumping duty margins that were calculated using the "zeroing" methodology. Nevertheless, this requirement does not change the results in this proceeding because the weighted-average antidumping duty margins calculated in the investigation were determined on the basis of partial adverse facts available, and, no extraordinary circumstances exist in the instant review that cause the Department to need to recalculate any antidumping duty margins.¹⁹

Department's Position: Normally, the Department will provide to the ITC the company-specific, weighted-average antidumping duty margin from the investigation for each company.²⁰ 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 exporters without the discipline of an order or suspension agreement in place.²¹ For companies not investigated individually, or for companies that did not begin shipping until after the order was issued, the Department will normally provide a rate based on the "All-Others" rate from the investigation.²² However, for the PRC, which the Department considers to be a non-market economy under section 771(18)(A) of the Act, the Department does not have an "All-Others" rate. Thus, in non-market economy cases, instead of an "All-Others" rate, the Department uses an established country-wide rate, which it applies to all imports from exporters that have not established their eligibility for a separate rate.²³

The Department has determined that the weighted-average antidumping duty margins established in the investigation of certain polyester staple fiber from the PRC represent the magnitude of the margins of dumping most likely to prevail if the order were revoked. As noted above, in this sunset proceeding, the Department has relied on weighted-average antidumping duty margins that were not affected by the methodology addressed in the Final Modification for Reviews.²⁴ Accordingly, we find it appropriate to provide the ITC with the final determination rates from the LTFV Investigation of certain polyester staple fiber from the PRC. As a result, we will report to

¹⁸ See Substantive Response at 18; 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 Bulletin").

¹⁹ See Substantive Response at 17, 18.

²⁰ See Eveready Battery Co., Inc. v. United States, 77 F. Supp. 2d 1327, 1333 (Ct. Int'l Trade 1999).

²¹ See id.; see also SAA at 890.

²² See Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders, 71 FR 70506 (December 5, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

²³ See Bristol Metals L.P. v. United States, 703 F. Supp. 2d 1370, 1378 (Ct. Int'l Trade 2010) (citation omitted); see also Amanda Foods (Vietnam) Ltd. v. United States, 647 F. Supp. 2d 1368, 1379 (Ct. Int'l Trade 2009) (citation omitted).

²⁴ See Final Modification for Reviews, 77 FR at 8103.

the ITC the margins of dumping likely to prevail listed in the “Final Results of Review” section below.

Final Results of Review

We determine that revocation of the antidumping duty order on certain polyester staple fiber from the PRC would likely lead to continuation or recurrence of dumping and that the magnitudes of the margins of dumping likely to prevail are as follows:

Exporter	Margin of Dumping (percent)
Far Eastern Industries (Shanghai) Ltd.	3.47
Cixi Sansheng Chemical Fiber Co., Ltd.	4.44
Cixi Waysun Chemical Fiber Co., Ltd.	4.44
Hangzhou Best Chemical Fibre Co., Ltd.	4.44
Hangzhou Hanbang Chemical Fibre Co., Ltd.	4.44
Hangzhou Huachuang Co., Ltd.	4.44
Hangzhou Sanxin Paper Co., Ltd.	4.44
Hangzhou Taifu Textile Fiber Co., Ltd.	4.44
Jiaxang Fuda Chemical Fibre Factory	4.44
Nantong Luolai Chemical Fiber Co. Ltd.	4.44
Nanyang Textile Co., Ltd.	4.44
Suzhou PolyFiber Co., Ltd.	4.44
Xiamen Xianglu Fiber Chemical Co.	4.44
Zhaoqing Tifo New Fiber Co., Ltd.	4.44
Zhejiang Anshun Pettechs Fibre Co., Ltd.	4.44
Zhejiang Waysun Chemical Fiber Co., Ltd.	4.44
PRC-Wide Rate	44.30

Recommendation

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

✓
Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Import Administration

29 AUGUST 2012
(Date)