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...

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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”). 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). 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.

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).

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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, 4802.54.6100, 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. On March 30, 2005, the Department published an amended final determination and antidumping duty order on tissue paper from the PRC. 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. Since the continuation of the Order, the Department has issued two scope rulings and conducted two anti-circumvention inquiries, 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.

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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.
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).
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. 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.

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. 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.

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. 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.”).

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. In the Final

12 See SAA at 879 and House Report at 56.
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.
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. 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.”

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.

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.

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. 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. Therefore, the petitioners...
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}ecreasing 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

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\(^{25}\) 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. 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.

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. 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. 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.

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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. 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. 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. 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_________

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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

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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.