



A-570-895
Sunset Review
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December 1, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

I. SUMMARY

We have analyzed the substantive response of the domestic interested party¹ in this third sunset review of the antidumping duty (AD) order on certain crepe paper products (crepe paper) from the People's Republic of China (China). No other interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(e)(1)(ii)(C)(2). 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 Margins Likely to Prevail

II. BACKGROUND

On January 25, 2005, the Department of Commerce (Commerce) published the AD order on crepe paper from China.² On August 4, 2020, Commerce initiated the third sunset review of the AD order on crepe paper from China pursuant to section 751(c) of the Act.³ Commerce received a notice of intent to participate from the domestic interested party, Seaman Paper, within the

¹ The domestic interested party is Seaman Paper Company of Massachusetts, Inc. (domestic interested party or Seaman Paper).

² See *Antidumping Duty Order: Certain Crepe Paper from the People's Republic of China*, 70 FR 3509 (January 25, 2005) (*Order*).

³ See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 47185, 47186 (August 4, 2020).

deadline specified in 19 CFR 351.218(d)(1)(i).⁴ Seaman Paper claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product.

On September 3, 2020, Commerce received an adequate substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁵ Commerce received no responses from respondent interested parties with respect to the *Order* covered by this sunset review.

On September 30, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁶ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), we conducted an expedited (120-day) sunset review of the *Order*.

III. SCOPE OF THE *ORDER*

For purposes of the *Order*, the term “certain crepe paper” includes crepe paper products that have a basis weight not exceeding 29 grams per square meter prior to being creped and, if appropriate, flame-proofed. Crepe paper has a finely wrinkled surface texture and typically but not exclusively is treated to be flame-retardant. Crepe paper is typically but not exclusively produced as streamers in roll form and packaged in plastic bags. Crepe paper may or may not be bleached, dye colored, surface-colored, surface decorated or printed, glazed, sequined, embossed, die-cut, and/or flame retardant. Subject crepe paper may be rolled, flat or folded, and may be packaged by banding or wrapping with paper, by placing in plastic bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of crepe paper subject to this order may consist solely of crepe 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 entered under one or more of several different HTSUS subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4818.90; 4823.90; 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.

IV. HISTORY OF THE *ORDER*

On December 3, 2004, Commerce published its *Final Determination* in the less-than-fair-value (LTFV) investigation of crepe paper from China.⁷ Following the issuance of Commerce’s *Final Determination*, the ITC found that the U.S. industry was materially injured by reason of imports

⁴ See Seaman Paper’s Letter, “Certain Crepe Paper from the People’s Republic of China: Notice of Intent to Participate,” dated August 10, 2020.

⁵ See Seaman Paper’s Letter, “Certain Crepe Paper from the People’s Republic of China: Substantive Response to Notice of Initiation of Sunset Review,” dated September 3, 2020 (Substantive Response).

⁶ See Commerce’s Letter, “Sunset Reviews Initiated on August 4, 2020,” dated September 30, 2020.

⁷ See *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Crepe Paper from the People’s Republic of China*, 69 FR 70233 (December 3, 2004) (*Final Determination*).

from China pursuant to section 735(b) of the Act.⁸ On January 25, 2005, Commerce issued the *Order* on crepe paper from China.⁹ In the *Final Determination*, Commerce applied company-specific dumping margins of 266.83 percent for the mandatory respondents and separate rate respondents and assigned a China-wide rate of 266.83 percent.¹⁰

Since the issuance of the *Order*, Commerce has not conducted any administrative or new shipper reviews. Commerce has also conducted no changed circumstances reviews or made any scope rulings or duty absorption findings since issuance of the *Order*.

On August 6, 2015, Commerce published the final results of the expedited second sunset review of the *Order*.¹¹ In addition, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the *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.¹² On September 22, 2015, we published the continuation of the *Order*.¹³

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce 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, Commerce 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 *Order*.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA,¹⁴ the House Report,¹⁵ and the Senate Report,¹⁶ Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.¹⁷ In addition, Commerce normally determines that revocation of an AD duty order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after 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.¹⁸ Alternatively,

⁸ See *Certain Crepe Paper Products from China*, 70 FR 3385 (January 24, 2005); see also USITC Publication 3749 (January 2005).

⁹ See *Order*.

¹⁰ See *Final Determination*; see also *Order*.

¹¹ See *Certain Crepe Paper Products from the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order*, 80 FR 46954 (August 6, 2015).

¹² See *Crepe Paper from China*, 80 FR 53888 (September 8, 2015).

¹³ See *Certain Crepe Paper Products from the People's Republic of China: Continuation of Antidumping Duty Order*, 80 FR 57149 (September 22, 2015).

¹⁴ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol. 1 (1994) at 889-90.

¹⁵ See H. Rep. No. 103-826, pt. 1 (1994) (House Report).

¹⁶ See S. Rep. No. 103-412 (1994) (Senate Report).

¹⁷ See SAA at 879; see also House Report at 56.

¹⁸ See SAA at 889-890; see also House Report at 63-64; Senate Report at 52; and *Policies Regarding the Conduct of*

Commerce normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.¹⁹

As a base period for import volume comparison, it is Commerce'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.²⁰ When analyzing import volumes for the second and subsequent sunset reviews, Commerce'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.²¹

Furthermore, section 752(c)(3) of the Act states that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, Commerce selects the margin(s) from the final determination in the original investigation, as this is the only calculated rate that reflected the behavior of exporters without the discipline of an order in place.²² In certain circumstances, however, 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, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review").²³

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, Commerce announced that in five-year (*i.e.*, sunset) reviews, it will 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.²⁴ However, Commerce explained in the *Final Modification for Reviews* that it "retain{s} the discretion, on a case-by-case basis, to apply an alternative methodology, when appropriate" in both investigations and administrative reviews pursuant to section 777A(d)(1)(B) of the Act.²⁵ Commerce also noted that, apart from "*the most extraordinary circumstances*,"²⁶ 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 recalculated pursuant to Section

Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18872 (April 16, 1998).

¹⁹ See SAA at 889-90.

²⁰ 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 (IDM) at Comment 1.

²¹ See *Ferrovaniadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying IDM.

²² 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 IDM at Comment 2.

²³ See SAA at 890-91.

²⁴ 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*).

²⁵ *Id.*, 77 FR at 8102, 8105, and 8109.

²⁶ *Id.* (emphasis added).

129 proceedings, dumping margins determined based on the use of total adverse facts available (AFA), and dumping margins where no offsets were denied because all comparison results were positive.”²⁷

VI. DISCUSSION OF THE ISSUES

1. Likelihood of Continuation or Recurrence of Dumping

Seaman Paper’s Comments

- The high dumping margin, applicable to all subject imports, and the continued absence of Chinese imports, demonstrate that Chinese producers and exporters of crepe paper are unable to sell in the U.S. market without dumping.²⁸
- The *Order* had an immediate and dramatic effect on imports of crepe paper from China. After imposition of the *Order*, the volume of imports declined dramatically during the first five-year period, as Chinese exporters retreated from the U.S. market.²⁹
- Ever since imposition of the *Order*, no Chinese producers/exporters have requested an administrative review to potentially secure a lower dumping margin and return to the U.S. market. This suggests the continued absence of Chinese producers and exporters from the U.S. crepe paper market and demonstrates the efficacy of the *Order*.³⁰
- The dramatic decline in the volume and value of subject merchandise imports immediately after issuance of the *Order* reflects the effect of the *Order*; this fact also indicates a strong likelihood of continuation or recurrence of dumping should Commerce revoke the *Order*.³¹ Additionally, Chinese producers have substantial capacity to manufacture the subject merchandise and the U.S. market is highly price sensitive.³²

Commerce’s Position

As explained in the “Legal Framework” section above, 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 Commerce 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 AD order. As noted in the SAA, the existence of dumping margins after the order “is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping.”³³ In addition, “declining import volumes accompanied by the

²⁷ *Id.*

²⁸ *See* Substantive Response at 8.

²⁹ *Id.* at 8.

³⁰ *Id.* at 9.

³¹ *Id.* at 10.

³² *Id.* at 10-13.

³³ *See* SAA at 890.

continued existence of dumping margins after the issuance of the 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.”³⁴

With respect to the margins calculated in this proceeding, in the original investigation, Commerce applied a weighted-average dumping margin of 266.83 percent to the company respondents and the China-wide entity. Commerce has not calculated any other dumping margins since the investigation.

With respect to import volumes, pursuant to section 752(c)(1)(B) of the Act, we also consider the volume of imports of the subject merchandise in determining whether revocation of the *Order* would likely lead to continuation or recurrence of dumping. As the petitioner notes, the fact that Chinese exporters substantially reduced shipments to the United States following the imposition of the *Order* indicates an inability to sell without dumping.³⁵

Although we find the pre/post-*Order* behavior relevant, as noted above, when analyzing import volumes for second and subsequent sunset reviews, Commerce’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*. The import statistics on the record, covering subject merchandise imports between 2014 and 2019, show an increase of imports as compared with the pre-*Order* years.³⁶ However, the petitioner asserts that the import data for the HTS subheadings identified in the *Order* are broad and appear to significantly overstate crepe paper-specific import volume and value figures.³⁷ As a result, and in light of the fact that these assertions have not been contradicted by other interested parties, Commerce finds that we cannot rely upon U.S. Customs and Border Protection data for an analysis of import volume. While we are unable to compare the import levels of subject merchandise for the periods before issuance of the *Order* and the period under consideration, consistent with the guidance of the SAA, the existence of margins above *de minimis* during this sunset review period is a sufficient basis to conclude that dumping would likely continue were the *Order* revoked.³⁸

Moreover, respondent interested parties have not participated in this sunset review. Therefore, given that (1) dumping has continued following the issuance of the *Order*, (2) respondent interested parties have not participated in this review, and (3) there is an absence of argument and evidence to the contrary, we find that dumping is likely to continue or recur if the *Order*

³⁴ *Id.* at 889; *see also* House Report at 63; and Senate Report at 52.

³⁵ *See* Substantive Response at 8.

³⁶ *Id.* at 9 and Exhibit I.

³⁷ *Id.* at 8.

³⁸ *See* SAA at 890 (“{E}xistence of dumping margins after the order . . . is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed”); *see also Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order*, 85 FR 34703 (June 8, 2020), and accompanying IDM at 9 (“While we are unable to compare the import levels of subject merchandise for the periods before and after the issuance of the Order . . . {w}e determine that dumping has continued after the issuance of the Order based on the above-*de minimis* margins . . . assigned in administrative reviews subsequent to the issuance of the Order.”)

were revoked. Accordingly, pursuant to section 752(c)(1) of the Act, we determine that revocation of the *Order* is likely to lead to continuation or recurrence of dumping.

2. Magnitude of the Margins Likely to Prevail

Seaman Paper's Arguments

- Commerce should rely on the weighted-average dumping margins from the original investigation, as these margins represent the best evidence of Chinese producers' and exporters' behavior in the absence of an order and are the only margins assigned in this proceeding.³⁹
- The margin assigned as adverse facts available in the original investigation arguably understates the true level of dumping that was taking place.⁴⁰ Knowing what margin would be assigned (via the petition), an exporter would not rationally stop participating during the investigation unless the consequences of failing to cooperate (*i.e.*, a 266.83 percent rate) were less severe than the consequences of remaining in the investigation and receiving a calculated rate.⁴¹ Furthermore, no exporter has ever sought to have its dumping rate reviewed in an annual review.⁴²
- The *Order* has been highly effective at curbing such dumped imports. Thus, Commerce should report to the ITC that the dumping margin that is likely to prevail is the margin determined in the original investigation.⁴³

Commerce's Position

Section 752(c)(3) of the Act provides that Commerce will report to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Normally, Commerce will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.⁴⁴

Commerce has determined that the dumping margins established in the investigation of crepe paper from China are likely to prevail if the order was revoked. In the underlying investigation, Commerce calculated weighted-average dumping margins based on a rate from the petition (*i.e.*, a total adverse facts available rate).⁴⁵ As a result, we will report to the ITC the weighted-average dumping margin listed in the "Final Results of Reviews" section below.

³⁹ See Substantive Response at 14.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See SAA at 890.

⁴⁵ See *Final Determination*, 69 FR at 70234. As a petition rate, this margin was calculated without zeroing and, therefore, is consistent with the *Final Modification for Reviews*.

VII. FINAL RESULTS OF REVIEW

Commerce determines that revocation of the *Order* would likely lead to continuation or recurrence of dumping. Commerce also determines that the magnitude of the margin of dumping likely to prevail is up to 266.83 percent.⁴⁶

VIII. RECOMMENDATION

Based on our analysis of the Substantive Response, 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

12/1/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁴⁶ *Id.*