

71 FR 70508, December 5, 2006

A-823-810
Sunset Review
Public Document
Office 1: ART

DATE: November 29, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of
the Antidumping Duty Order on Solid Agricultural Grade Ammonium
Nitrate from Ukraine; Final Results

Summary

We have analyzed the substantive responses 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 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 the antidumping order regarding imports of ammonium nitrate from Ukraine, the Department has conducted no administrative reviews, changed circumstance reviews, or duty absorption reviews. The order remains in effect for all manufacturers, producers, and exporters of the subject merchandise from Ukraine.

On August 1, 2006, the Department initiated a sunset review of the antidumping duty order on ammonium nitrate from Ukraine pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Initiation of Five-Year (Sunset) Reviews, 71 FR 43443 (August 1, 2006) (“Notice of Initiation”). The Department received a notice of intent to participate from the following domestic parties: the Committee for Fair Ammonium Nitrate Trade (“COFANT”) and its individual producer members, El Dorado Chemical Company and Terra Industries, Inc. (also known as domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i). COFANT claims interested party status for its members under section 771(9)(C) of the Act as domestic manufacturers of ammonium nitrate.

The Department received a complete substantive response from COFANT within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department also received a substantive response from respondent interested party, Open Joint Stock Company “Azot” (“Azot”), within the deadline specified in 19 CFR 351.218(d)(3)(i). On September 7, 2006, the domestic interested parties submitted a rebuttal to Azot’s substantive response. On September 20, 2006, the Department determined that the respondent interested party did not account for more than 50 percent of exports by volume of the subject merchandise, because it reported that it had no exports during the 2001-2005 sunset review period. Therefore, the Department concluded that the respondent interested party did not submit an adequate response to the Department’s Notice of Initiation. See Memorandum to Susan H. Kuhbach entitled, “Adequacy Determination in Antidumping Duty Sunset Review of Solid Agricultural Grade Ammonium Nitrate from Ukraine,” (September 20, 2006). On October 10, 2006, COFANT submitted comments supporting the Department’s adequacy determination. Pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting an expedited 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 U.S. International Trade Commission (“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

COFANT believes 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 Substantive Response of COFANT, at 4 (August 31, 2006). COFANT argues that the U.S. Census data indicates that there were imports of ammonium nitrate from Ukraine in 2004 and 2005. See Substantive Response of COFANT, at 6 (August 31, 2006) and Exhibit 1. COFANT submits, however, that Ukrainian producers have not exported any ammonium nitrate to the United States since the imposition of the order in September 2001, and that the 2004 and 2005 entries were from Russia and not Ukraine. Id. at 6-8. COFANT contends that the complete cessation (or, in the alternative, a drastic reduction) of Ukrainian imports since the issuance of the order is clear proof of the restraining effect of the order. Id. at 4. COFANT also points out that the Ukrainian producers have never requested an administrative review. Id. at 6. Consequently, COFANT concludes that the Ukrainian producers are incapable of selling ammonium nitrate in the United States without dumping. Therefore, the Department should determine that dumping of Ukrainian ammonium nitrate would be likely to recur if the order were revoked. Id. at 9.

Azot contends that revocation of the antidumping order is not likely to lead to recurrence of a dumping. See Azot’s Substantive Response, at 4 (August 31, 2006). Azot also states that the imposition of 156.29 percent duties in September 2001 resulted in the cessation of all shipments of solid agricultural grade ammonium nitrate from Ukraine to the United States. Id. at 3. Azot further states that the U.S. market is closed to all Ukrainian producers and exporters. Id.

However, Azot also states that the reason it has stopped shipping is not because it cannot sell subject merchandise at a fair price, but because of the substantial increase in expenses and costs related to producing the subject merchandise in Ukraine. Specifically, the costs of production, transportation expenses, and the antidumping duty cause the cost of the subject merchandise in

the United States to be much higher than that of the domestic like product. Id. at 4.

In COFANT's rebuttal to Azot's substantive response, it states that the only way for Azot to prove that it can make sales to the United States at fair prices is to have done so and then requested an administrative review. COFANT argues that Azot's failure to fully participate in the investigation, and failure to make any subsequent sales and request an administrative review strongly suggests that Azot cannot sell subject merchandise at fairly traded prices. See Rebuttal Response of COFANT, at 8-9 (September 7, 2006). COFANT also argues that the fact that Azot's costs have risen is not "particularly relevant to the Department's analysis of the likely effects of revocation" and would be more appropriate in the context of an administrative review. Id. at 9.

Department's Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), the Department's determinations of likelihood will be made on an order-wide basis. 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. In addition, pursuant to 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 order.

Although, Azot contends that revocation of the order would not likely lead to a recurrence of dumping, it also concedes that it cannot sell its product in the United States at a price that covers its costs and the previously determined level of dumping. Further, Azot's statement that it ceased shipments to the United States after the imposition of the order suggests that the antidumping order has had a restraining effect on Azot.

Looking at the antidumping order as a whole, the Department found dumping at above *de minimis* levels in the original antidumping duty investigation. The cash deposit rates established in the original investigation remain in effect and there have been no administrative reviews of the antidumping duty order. As indicated above, Census data shows imports of ammonium nitrate from Ukraine during the sunset review period. If such imports did occur, then the antidumping rate in place indicates continued dumping. However, if there were no imports of subject merchandise, as claimed by COFANT, this suggests that the Ukrainian producers cannot sell subject merchandise at non-dumped prices. Regardless of whether COFANT's claim is correct, shipments during the sunset review period decreased significantly when compared to pre-order import levels, according to Census data. Specifically, Census data indicates no imports of subject merchandise from 2001-03, but imports of 30,215 metric tons in 2004, and 20,655 metric tons in 2005. See Substantive Response of COFANT, at 6 and Exhibit 1 (August 31, 2006). The

pre-order import level was 277,381 metric tons in 2000. Id.

Therefore, given the existence of dumping margins at above *de minimis* levels and either the complete cessation of imports since the issuance of the original order or substantially lower import levels 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

In its substantive response, COFANT argues that the antidumping duty margins from the order are the margins that will likely prevail if the order were revoked. See Substantive Response of COFANT, at 10 (August 31, 2006). Also, COFANT adds that no Ukrainian exporter sought an administrative review to lower the dumping margins. Id. at 10. Consequently, the Department cannot select a more recently calculated rate because there have been no administrative reviews in which a new margin could have been calculated. Id.

Azot does not specifically state what the antidumping duty margin likely to prevail is if the order is terminated. Azot does ask the Department to take into consideration two factors. First, Azot argues that Ukraine has gained market economy status and will be subject to the antidumping rules applicable to market economy countries with respect to the analysis of transactions occurring on or after February 1, 2006. Secondly, Azot provides proprietary cost data to show that raw material costs have increased since the investigation. See Azot's Substantive Response, at 4-8 (August 31, 2006).

In COFANT's rebuttal to Azot's substantive response, it states that the graduation to a market economy can only affect a margin prospectively if an administrative review is requested and conducted. In Azot's case, there have been no imports of subject merchandise and, therefore, no reviews using the market economy methodology. See Rebuttal Response of COFANT, at 10-11 (September 7, 2006). Therefore, COFANT argues that the only available rate to report to the ITC is the rate from the investigation.

Department's Position

The Department normally will provide to the ITC the company-specific margin 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 based on the "All Others" or "Country-wide" rate from the investigation. Exceptions to this approach include the use of a more recently calculated margin, where appropriate.

The Department agrees with COFANT that the graduation of Ukraine to a market economy does not affect the outcome of this sunset review. Similarly, the cost data that Azot provided is not

pertinent to a sunset review decision. The Department does not calculate new antidumping margins in the context of a sunset review, and no administrative reviews have been performed. Therefore, the only margin available is the investigation antidumping duty margin.

After considering the arguments put forth, and the dumping margins determined in the investigation, the Department agrees with COFANT that it is appropriate to report to the ITC the investigation rate for J.S.C. "Concern" Stirol and the Ukraine-wide rate.¹

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 at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
J.S.C. "Concern" Stirol	156.29 percent
All Others rate	156.29 percent

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.

AGREE _____

DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)

¹ As of February 1, 2006, Ukraine graduated to market economy status (see Final Results of Inquiry Into Ukraine's Status as a Non-Market Economy Country, February 24, 2006 (71 FR 9520)). As a result, the Ukraine-wide rate is now the All Others rate.