

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Ronald K. Lorentzen
Acting Director
Office of Policy

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of
the Antidumping Duty Finding on Polychloroprene Rubber from Japan

SUMMARY: We have analyzed the substantive responses of the interested parties participating in the second sunset review of the antidumping duty finding on polychloroprene rubber from Japan. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this expedited sunset review for which we received comments by a domestic interested party. Respondent interested parties did not comment.

1. Likelihood of Continuation or Recurrence of Dumping
 - A. Weighted-average dumping margins
 - B. Volume of imports
2. Magnitude of the Margin Likely to Prevail
Margins from the investigation

History of the Finding

The antidumping duty finding on polychloroprene rubber from Japan was published in the Federal Register on December 6, 1973, as Treasury Decision 73-333 (38 FR 33593). On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Department of Treasury ("Treasury") to the Department of Commerce ("the Department"). In the final results of the Department's first administrative review, the Department published the following weighted-average dumping margins: 1) zero percent for Denki Kagaku, K.K. ("Denki"); 2) 55 percent for Denki Kagaku Kogyo KK/Hoei Sangyo Company ("Denki/Hoei Sangyo"); 3) 55 percent for Suzugo Corporation ("Suzugo"); and 4) 55 percent for all other exporters/producers of the subject merchandise.

On August 3, 1998, the Department initiated its first sunset review of the antidumping duty finding on polychloroprene rubber from Japan.¹ See Notice of Initiation of Five Year ("Sunset") Review, 63 FR 41227 (August 3, 1998). Based on inadequate respondent responses, the Department conducted an expedited sunset review in which it determined that revocation of the antidumping duty finding would likely lead to continuation or recurrence of dumping. See Final Results of Expedited Sunset Review: Polychloroprene Rubber From Japan, 63 FR 67656 (December 8, 1998). In its first sunset review, the International Trade Commission ("ITC") determined that revocation of the antidumping duty finding on polychloroprene rubber from Japan would likely lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. See Polychloroprene Rubber from Japan, Determination of Injury, 64 FR 41458, (July 30, 1999). As a result of the Department and ITC's findings, the Department published the notice of continuation of the antidumping duty finding. See Continuation of Antidumping Finding: Polychloroprene Rubber from Japan, 64 FR 47765 (September 1, 1999). Since the publication of the continuation notice, the Department has completed one changed circumstances review in which it determined that the restructured manufacturing and marketing joint ventures, Showa DDE Manufacturing KK ("SDEM") and DDE Japan Kabushiki Kaisha ("DDE Japan"), were the successor-in-interest companies to Dupont Showa Denko ("SDP") and its predecessor, Showa Neoprene. On March 1, 2004, the Department initiated a third changed circumstances review of this finding.² See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan, 69 FR 9586 (March 1, 2004). A final decision in this changed circumstances review is currently pending. Following the first sunset review the Department initiated, and then rescinded, several administrative reviews upon the timely withdrawal of the request for review.³

¹ Prior to the conduct of the first sunset review the Department conducted several administrative reviews. See Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding; 47 FR 14746 (April 6, 1982); Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding; 48 FR 9678 (March 8, 1983); Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding; 49 FR 10694 (March 22, 1984); Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding; 49 FR 46454 (November 26, 1984); Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding; 61 FR 29344 (June 10, 1996); and Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding; 61 FR 67318 (December 20, 1996).

² Although the Department initiated a second changed circumstances review of the antidumping duty finding on polychloroprene rubber from Japan to determine whether Showa Denko Elastomers, K.K. (SDEL) and Showa Denko K.K. (SDK) are the successor-in-interest companies to Showa DDE Manufacturing K.K. (SDEM) and DDE Japan Kabushiki Kaisha (DDE Japan), that review was rescinded. Notice of Rescission of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan, 68 FR 74551 (December 24, 2003).

³ See Polychloroprene Rubber from Japan: Notice of Rescission of Antidumping Duty Administrative Review, 65 FR 52985 (August 31, 2000); Polychloroprene Rubber from Japan: Notice of Rescission of Antidumping Duty Administrative Review, 66 FR 45005 (August 27, 2001); Notice of Rescission of Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan, 69 FR 6642 (February 11, 2004).

Background

On July 1, 2004, the Department initiated a second sunset review of the antidumping duty finding on polychloroprene rubber from Japan in accordance with section 751(c) of the Tariff Act of 1930, as amended (the "Act"). See Initiation of Five-year ("Sunset") Reviews, 69 FR 39905 (July 1, 2004). The Department received a Notice of Intent to Participate within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations on behalf DuPont Dow Elastomers L.L.C. ("DDE"), the only domestic interested party in this proceeding.⁴ DDE claimed interested party status as a domestic producer of polychloroprene rubber as defined under section 771(9)(C) of the Act.⁵ The Department received complete substantive responses from the domestic interested party within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. On July 30, 2004, the Department received a statement of waiver of participation from the only respondent interested party to reply to the notice of initiation of the sunset review, Showa Denko K.K., in this proceeding. As a result, the Department determined that respondent interested party's response to the Department notice of initiation was inadequate. Consequently, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited, 120-day sunset review of this antidumping duty finding. On September 9, 2004, the Department received comments from DDE on the Department's adequacy determination of the expedited sunset review on polychloroprene rubber from Japan.⁶ In the letter, DDE stated that the Department is consistent with the applicable legal authorities and that it fully supports the Department's determination to expedite the sunset review based on the inadequacy of responses from respondent interested parties to the notice of initiation regarding this antidumping duty finding.

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 finding would likely lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider 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

⁴ DDE succeeds E.I. DuPont de Nemours & Company ("DuPont") as Petitioner in this antidumping proceeding. On April 1, 1996, DuPont and Dow Chemical formed a 50/50 joint venture, DuPont Dow Elastomers, to manufacture and sell specialty elastomers, including polychloroprene rubber.

⁵ DDE claims that it is related to DuPont Dow Elastomers Japan K.K., a foreign exporter located in Japan. DuPont Dow Elastomers Japan K.K. previously exported subject merchandise to the United States; however, is not currently exporting to the United States. DDE notes that it has previously imported subject merchandise into the United States, but currently does not.

⁶ See Letter from DDE, to James J. Jochum, Assistant Secretary for Import Administration.

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 antidumping duty order were revoked. Below, we address the comments of the interested party.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party's Comments

DDE argues that the history of the case and actions taken by Japanese producers and exporters of polychloroprene rubber prior to and during the pendency of this proceeding continue to demonstrate that revocation of the finding would likely lead to a recurrence of dumping in the United States largely because imports ceased after issuance of the antidumping duty finding. See Domestic Interested Party Substantive Response ("Domestic Response"), August 2, 2004, at 8-11.

DDE maintains that the legislative history of Section 752(c)(1) provides that 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. "Domestic Response" at 8-9. DDE asserts that with the exception of the first administrative review, covering the various periods of reviews, July 1, 1973, through November 30, 1980, the Department found no shipments of subject merchandise by known exporters in the subsequent administrative reviews and in the first sunset review. Id. at 9. DDE believes that imports of polychloroprene rubber from Japan have been limited since the first sunset review. DDE notes that the only known shipments of polychloroprene rubber from Japan are those found in a recent response to the Department's changed circumstances review which shows that SDEM/DDE Japan and SDK/SDA subject imports have been relatively small for the period May 2002 through December 2003. Id. at 10. Finally, DDE asserts that the available evidence confirms that there have been no significant alterations in the shipment pattern of polychloroprene rubber from Japan since the first affirmative sunset review. Id. Therefore, DDE argues that the Department should determine that there is a likelihood that dumping would continue were the finding revoked because imports of polychloroprene rubber ceased soon after the issuance of the finding.

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreement Act ("URAA"), specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, Vol. 1 (1994) at 826; the House Report, H. Rep. No. 103-826, pt. 1 (1994); and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. See Policies Regarding the Conduct of the Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, Policy Bulletin, No.98.3 (April 16, 1998) ("Sunset Policy Bulletin"). In its Sunset Policy Bulletin, the Department indicated that determinations of likelihood will be made on an order-wide bases (country-wide basis). See Section II.A.2 of the Sunset

Policy Bulletin. Further, in a sunset review, the Department normally will determine that revocation of an antidumping finding 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 or suspension agreement as applicable; (b) imports of the subject merchandise ceased after issuance of the order or the suspension agreement, as applicable; or (c) dumping was eliminated after the issuance of the order or suspension agreement, as applicable, and import volumes for the subject merchandise declined significantly. See Section II.A.3 of the Sunset Policy Bulletin.

Consistent with the Sunset Policy Bulletin, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where, inter alia, dumping continued at any level above de minimis after the issuance of the order. In the first administrative review of the finding, the Department found that dumping continued at levels above de minimis. Furthermore, the Department made an affirmative likelihood determination in its first sunset review of the finding. No party has challenged that determination. The order, therefore continues to exist and we continue to collect and assess dumping duties on entries of subject merchandise.

In addition, the Department considered the volume of imports of the subject merchandise for the the period before and after the issuance of the antidumping finding. Using statistics provided by the ITC Dataweb (see attached), the Department finds that imports have fluctuated since 1999, the completion of our first sunset review. Specifically, the statistics disclose a dramatic increase in imports in 2001 and 2002. The Department finds that the existence of dumping at above de minimis levels, at increased volumes, after the issuance of the finding, is highly probative of the likelihood of continuation or recurrence of dumping. Therefore, we find that dumping is likely to continue or recur if the finding on polychloroprene rubber from Japan is revoked.

Magnitude of Margin Likely to Prevail

Interested Party Comments

DDE recommends that the Department report to the ITC the final results of first administrative review as found for exporters and producers; Denki - zero, Denki Hoesi Sangyo – 55 percent, Suzugo – 55 percent, and All Others – 55 percent. Domestic Response at 12. DDE specifically argues that the Department reviewed seven additional companies in subsequent administrative reviews and that these companies should receive the new shippers rate of 55 percent of the antidumping finding as the margin likely to prevail were the finding revoked. Id. at 13.

Department's Position

The Department normally will report to the ITC as the margin likely to prevail a margin from the investigation, because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. In a sunset review of an antidumping duty finding, where the original investigation was conducted by Treasury, the Department normally will provide to the ITC the company-specific margin or the all others rate included in the Treasury finding published in the Federal Register. If no company-specific margin or all others rate is included in the Treasury finding, the Department normally will provide to the ITC the company-specific margin from the first final results of administrative review published in the Federal Register. If the final results of the first administrative review of the finding do not contain a company-specific margin, the Department normally will provide to the ITC, as a margin for that company, the first "new shippers" rate established by the Department for the finding. In 1993, the Department began using the all others rate from the original investigation as the appropriate cash deposit rate for companies not covered by a review or the original investigation. This "new shippers" rate is unrelated to new shipper reviews conducted pursuant to the URAA under section 751(a)(2)(B) of the Act.

The Department agrees with DDE on the choice of margin to report to the ITC. As noted above, in the final results of first administrative review, the Department found the following rates for the named firms: 1) Denki – zero percent; 2) Denki/Hoei Sangyo – 55 percent; 3) Suzugo – 55 percent; and 4) All Others – 55 percent. These rates are the only rates found since the issuance of this finding and thus, are the only that reflect the behavior of exporters/producers without the discipline of the finding. The Department reported these rates to the ITC in the first sunset review, and these rates have not been challenged.

Thus, the Department will report to the ITC the company-specific and all others rate from the Department's first final results of administrative review, because these rates are the only calculated rates that likely reflect the behavior of exporters without the discipline of a finding.

Final Results of Review

We determine that revocation of the antidumping duty finding on polychloroprene rubber from Japan is likely to lead to continuation or recurrence of dumping at the margins listed below:

----- Manufacturers/Exporters/Producers -----	Weighted-average margin (percent)
Denki Kagaku Kogyo K.K.	0.00
Denki Kagaku Kogyo, K.K./Hoei Sangyo Co., Ltd.	55.00

Suzugo Corporation	55.00
All Others	55.00

Recommendation

Based on our analysis of the substantive responses 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 _____

James J. Jochum
Assistant Secretary
for Import Administration

(Date)