

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
Reviews of the Antidumping Duty Orders on Polyvinyl Alcohol
from Japan, the Republic of Korea, and the People's Republic of
China

Summary

We have analyzed the responses of the interested parties in the sunset reviews of the antidumping duty orders covering polyvinyl alcohol (PVA) from Japan, the Republic of Korea (Korea), and the People's Republic of China (PRC). 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 these sunset reviews for which we received substantive responses:

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

History of the Orders

Japan

On April 21, 2003, the Department of Commerce (the Department) published its final determination in the investigation of PVA from Japan.¹ For Japan, the Department found the following antidumping duty margins:

Denki Kagaku Kogyo Kabushiki Kaisha	144.16
Japan VAM & POVAL Co., Ltd.	144.16

¹ See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan, 68 FR 19510 (Apr. 21, 2003).

Kuraray Co., Ltd.	144.16
The Nippon Synthetic Chemical Industry Co., Ltd.	144.16
All-Others Rate	76.78

Korea

On August 11, 2003, the Department published its final determination in the investigation of PVA from Korea.² For Korea, the Department found the following antidumping duty margins:

DC Chemical Company, Ltd.	38.74
All-Others Rate	32.08

PRC

On August 11, 2003, the Department published its final determination in the investigation of PVA from the PRC.³ For the PRC, the Department found the following antidumping duty margins:

Sinopec Sichuan Vinylon Works (SVW)	5.51 ⁴
PRC-Wide Rate	97.86

Administrative Reviews

Since the issuance of the antidumping duty orders, the Department has conducted no administrative reviews with respect to PVA from Japan or Korea. The Department has conducted two administrative reviews with respect to PVA from the PRC for the periods 8/11/2003 through 9/30/2004 and 10/1/2004 through 9/30/2005 in which SVW received margins of 0.03 percent (*de minimis*) and 0.0 percent, respectively.⁵ The Department rescinded a third administrative review for the period 10/1/2005 through 9/30/2006, at SVW's request.⁶

² See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the Republic of Korea, 68 FR 47540 (Aug. 11, 2003).

³ See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (Aug. 11, 2003); see also Notice of Amended Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China, 68 FR 52183 (Sept. 2, 2003).

⁴ See Polyvinyl Alcohol from the People's Republic of China: Notice of Court Decision Not In Harmony with Final Determination, 72 FR 36960 (July 6, 2007) (Notice of Court Decision).

⁵ See Polyvinyl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 27991, 27993 (May 15, 2006); Polyvinyl Alcohol from the People's Republic of China: Amended Final Results of Administrative Review, 71 FR 35616, 35617 (June 21, 2006); and Polyvinyl Alcohol from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 62086, 62087 (Oct. 23, 2006).

⁶ See Polyvinyl Alcohol From the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review, 72 FR 16766 (Apr. 5, 2007).

Duty Absorption, Changed Circumstances Reviews, and Scope Inquiries

There have been no duty absorption findings, changed circumstances reviews, or scope inquiries concerning PVA from Japan, Korea, and the PRC.

Background

On June 5, 2008, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on PVA from Japan, Korea, and the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See Initiation of Five-Year (“Sunset”) Reviews, 73 FR 31974 (June 5, 2008) (Notice of Initiation). The Department received a notice of intent to participate from Celanese Chemicals, Ltd. and E.I. Dupont de Nemours & Co. (collectively, “domestic interested parties”) within the deadline specified in 19 CFR 351.218(d)(1)(i). The companies claimed interested party status under section 771(9)(C) of the Act as producers of a domestic like product in the United States. The Department also received a notice of intent from two Japanese respondent interested parties: The Nippon Synthetic Chemical Industry Co., Ltd. and Marubeni Specialty Chemicals Inc. The companies claimed interested party status under section 771(9)(A) of the Act as a foreign producer and a U.S. importer, respectively, of the subject merchandise.

The Department received a complete substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to any of the orders covered by these sunset reviews, nor was a hearing requested. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the antidumping duty orders for Japan, Korea, and the PRC.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting these sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to a 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 periods before and the periods after the issuance of the antidumping duty orders. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the International Trade Commission (ITC) the magnitude of the margins of dumping likely to prevail if the orders were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties believe that revocation of these antidumping duty orders would likely lead to a continuation or recurrence of dumping by the manufacturers/producers and

exporters of the subject merchandise. See substantive responses of the domestic interested parties for Japan, Korea, and the PRC (July 3, 2008) at 5.

The domestic interested parties state that the antidumping margins have remained at a high level and Japanese, Korean, and PRC imports of the subject merchandise have declined dramatically since the imposition of the orders. Further, the domestic interested parties note that the U.S. Court of International Trade (CIT) has stated that the Department must decide that revocation is likely to lead to continuation or recurrence of dumping when declining imports are accompanied by a continued existence of dumping margins after the issuance of an order. See NMB Sing. Ltd. v. United States, 533 F. Supp. 2d 1244, 1251 (CIT 2007). Regarding the PRC, while the domestic interested parties note that the Department calculated *de minimis* or zero margins for SVW in the two completed administrative reviews of this order, they also point out that this fact does not require that the Department determine that there is no likelihood of continuation or recurrence of dumping. Thus, the domestic interested parties argue that the substantial antidumping duty margins and significant decline in the volume of imports following the issuance of the antidumping duty orders demonstrate that revocation of the orders would certainly lead to a continuation of dumping. See substantive responses of the domestic interested parties for Japan and Korea (July 3, 2008) at 5-8; and substantive response of the domestic interested parties for the PRC (July 3, 2008) at 5-9.

Department's Position:

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, vol. 1 (1994), 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 basis.⁷ 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.⁸ In addition, pursuant to section 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 duty order.

Further, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In these reviews, the Department did not receive a substantive response from any respondent interested party.

Japan: The Department examined the ITC data for the relevant periods which shows that imports of PVA from Japan declined after issuance of the order and have not returned to pre-order levels. In 2002, imports of subject merchandise were 5,056,807 kilograms (kgs). By 2007,

⁷ See SAA at 879 and House Report at 56.

⁸ See SAA at 889 and 890, House Report at 63-64, and Senate Report at 52.

the imports had dropped to 3,497,734 kgs. See the September 11, 2008, memorandum to the file from Miriam Eqab entitled, “Placing Data from the ITC Trade Dataweb on the Record of the Expedited Sunset Reviews of Polyvinyl Alcohol (PVA) from Japan, Korea, and the PRC” (ITC Dataweb Memo). Given that there have been no administrative reviews since the investigation, dumping continues at above *de minimis* levels, and imports are below pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

Korea: The Department examined the ITC data for the relevant periods which shows that imports of PVA from Korea declined after issuance of the order and have not returned to pre-order levels. In 2002, imports of subject merchandise were 1,869,505 kgs. By 2007, the imports had ceased. See ITC Dataweb Memo. Given that there have been no administrative reviews since the investigation, dumping continues at above *de minimis* levels, and imports have ceased, the Department determines that dumping is likely to continue or recur if the order were revoked.

PRC: The Department examined the ITC data for the relevant periods which shows that imports of PVA from the PRC declined after issuance of the order and have not returned to pre-order levels. In 2002, imports of subject merchandise were 6,078,153 kgs. By 2007, the imports had dropped to 2,058,859 kgs. See ITC Dataweb Memo. Although we calculated *de minimis* or zero rates for SVW in the two completed administrative reviews of this order, the high PRC-wide rate has remained in effect since the investigation. Given that dumping continues at above *de minimis* levels and imports are below pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

The domestic interested parties request that the Department report to the ITC the antidumping duty margins that were determined in the investigation. Thus, the domestic interested parties recommend the following antidumping duty margins for PVA from Japan: for Denki Kagaku Kogyo Kabushiki Kaisha, Japan VAM & POVAL Co., Ltd., Kuraray Co., Ltd., and The Nippon Synthetic Chemical Industry Co., Ltd., 144.16 percent; and for the all-others rate, 76.78 percent. See substantive response of the domestic interested parties for Japan (July 3, 2008) at 9-10. The domestic interested parties recommend the following antidumping duty margins for PVA from Korea: for DC Chemical Company, Ltd., 38.74 percent; and for the all-others rate, 32.08 percent. See substantive response of the domestic interested parties for Korea (July 3, 2008) at 9-10. The domestic interested parties recommend the following antidumping duty margins for PVA from the PRC: for SVW, 7.40 percent; and for the PRC-wide rate, 97.86 percent. See substantive response of the domestic interested parties for the PRC (July 3, 2008) at 9-10.

Department’s Position

Normally, the Department will provide to the ITC the company-specific margin from the investigation for each company. See *Eveready Battery Co. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999). 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 rate from the investigation. 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 (Dec. 5, 2006) (Hot-Rolled), and accompanying Issues and Decision Memorandum at Comment 2. The Department's preference for selecting a margin from the 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. See Hot-Rolled at Comment 2. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC. See section 752(c)(3) of the Act. See also Final Results of Full Sunset Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands, 65 FR 65294 (Nov. 1, 2000), and accompanying Issues and Decision Memorandum at Margin Likely to Prevail Comment 3.

Since the order, the Department has conducted no administrative reviews of the antidumping duty orders on PVA from Japan or Korea. Also, for Korea, exports to the United States are presently at zero, while exports from Japan are below pre-order levels. Therefore, the Department finds that it is appropriate to provide the ITC with the antidumping duty rates from the investigation for Japan and Korea because these are the only calculated antidumping duty rates that exist.

We also find it appropriate to report the investigation rates for PVA from the PRC, as modified by the Notice of Court Decision, to the ITC. Although administrative reviews have been conducted and the margin for SVW has decreased since the investigation, exports from the PRC are significantly below pre-order levels. Moreover, there is no information on the record of this sunset review to indicate that exports by SVW have remained the same or increased since the investigation. This indicates that the order has imposed a discipline on exports. Thus, the antidumping duty rates from the investigation reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on PVA from Japan, Korea, and the PRC 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)
<u>Japan</u>	
Denki Kagaku Kogyo Kabushiki Kaisha	144.16
Japan VAM & POVAL Co., Ltd.	144.16
Kuraray Co., Ltd.	144.16
The Nippon Synthetic Chemical Industry Co., Ltd.	144.16
All-Others Rate	76.78

Korea

DC Chemical Company, Ltd.

38.74

All-Others Rate

32.08

PRC

Sinopec Sichuan Vinylon Works

5.51

PRC-Wide Rate

97.86

Recommendation

Based on our analysis of the responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish these final results of reviews in the Federal Register.

AGREE _____

DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date