

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-001]

Final Results of Expedited Sunset Review: Sorbitol From France

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Sorbitol from France.

SUMMARY: On October 1, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on sorbitol from France (63 FR 52683) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and a complete substantive response filed on behalf of the domestic industry, and inadequate response (in this case no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Results of Review* section to this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, D.C. 20230; telephone (202) 482-3207 or (202) 482-1560, respectively.

EFFECTIVE DATE: February 4, 1999.

Statute and Regulations: This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope: The merchandise covered by this order is crystalline sorbitol, a polyol produced by the hydrogenation of

sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals, currently classifiable under Harmonized Tariff Schedule ("HTS") item number 2905.44.00. The HTS item number is provided for convenience and for Customs purposes. The written description remain dispositive.

This review covers all manufacturers and exporters of sorbitol from France.

Background: On October 1, 1998, the Department initiated a sunset review of the antidumping order on sorbitol from France (63 FR 52683) pursuant to section 751(c) of the Act. On October 6, 1998, we received a Notice of Intent to Participate from SPI Polyols, Inc. ("SPI"). On October 16, 1998, we received a Notice of Intent to Participate from Archer Daniels Midland Company ("ADM") and Roquette America ("RA"). Each of these notices were received within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. ADM and SPI claimed interested party status under section 771(9)(C) of the Act, as domestic producers of sorbitol. RA claimed interested party status as a domestic producer and as an importer of the subject merchandise. The Department received substantive responses on behalf of each of the three parties within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act, and our regulations (19 C.F.R. § 351.218(e)(1)(ii)(C)(2)), we determined to conduct an expedited review.

Determination: In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c)(1) of the Act provides that, in making this determination, 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 order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, parties' comments with respect to the

continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping: Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. 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 basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (see section II.A.3. of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping 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 (see section II.A.3. of the *Sunset Policy Bulletin*).

The Department's antidumping duty order on sorbitol from France was published in the **Federal Register** (47 FR 15391) on April 9, 1982. Since that time the Department has conducted several administrative reviews.¹ The antidumping duty order remains in effect for all imports of sorbitol from France.

In its substantive response, ADM argues that if the order on crystalline sorbitol from France were revoked dumping will continue or resume. ADM supports its conclusion by stating that after the issuance of the order, dumping of sorbitol continued at levels above *de minimis*, imports ceased and imports declined when they did not cease altogether. With respect to margins above *de minimis*, ADM notes that in five of the seven administrative reviews

¹ See *Sorbitol from France; Final Determination of Sales at Less Than Fair Value*, 47 FR 6459 (February 12, 1982); *Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 51 FR 42873 (November 26, 1986); *Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 52 FR 20444 (June 1, 1987); *Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 53 FR 21506 (June 8, 1988); *Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 55 FR 6668 (February 26, 1990).

conducted by the Department since 1982, margins exceeded de minimis, and in one instance, the margin was more than four times that of the original margin.² With respect to the cessation of imports, ADM states that Roquette Freres ("RF"), the only known exporter of sorbitol to the U.S., previously acknowledged that its sorbitol exports ceased for at least some period of time after the issuance of the antidumping order. ADM argues that because RF requested revocation in 1988 based on no shipments for several years and no sales that contained margins during the 1987-88 administrative review period, the Department could conclude RF could not ship sorbitol to the U.S. without dumping. Finally ADM argues that aggregated import statistics for HTSUS item no. 2905.44.00, which includes crystalline sorbitol, indicates that the total volume of imports declined, thus providing a basis to infer that RF exported smaller volumes in certain periods compared to the volumes that it shipped before the antidumping petition was originally filed.³

In its substantive response SPI asserts that absent the order, RF will resume large volume shipments from its French plant, producing dumping margins in the range of 40 percent. SPI further asserts that in recent years RF sold to U.S. customers exclusively from its U.S. plant. However, RF has been bidding at extra-low prices to obtain additional U.S. business. If successful, the additional business would substantially exceed the capacity at RF's Illinois plant. Thus, SPI asserts, it is obvious that RF plans to serve the additional business from its French plant. Citing to the July 1998 marketing report, "Sorbitol and Related Polyols—Worldwide Supply, Demand Business Opportunities 1997/8-2005" in which the price for sorbitol 100% is given as \$2.15/kg in the EU and \$1.65/kg in the United States, SPI estimates dumping margins of 40 percent.

RA, in its substantive response to the notice of initiation, supported the preservation of the antidumping order. RA claimed that the EU, particularly France, is currently significantly expanding production capacity for crystalline sorbitol. Further, because market demand within the EU is growing very slowly and cannot be expected to consume the capacity increase and because exports are expected to decline drastically because

of the Asian crisis, the EU industry will be seeking new export markets, with the United States being the likely target.

As discussed in section II.A.3. of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63-64, "[E]xistence of dumping margins after the order, or cessation of imports 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." As ADM noted, dumping margins above de minimis were found to exist in five of the seven administrative reviews conducted by the Department. Further, deposit rates above de minimis continue in effect for exports of sorbitol from France. Therefore, given that dumping margins above de minimis were found to exist and continue in effect, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin: In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department will provide to the Commission the company-specific margins from the investigation for each company because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. For companies not specifically investigated 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 section II.B.1 of the *Sunset Policy Bulletin*. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. See sections II.B.2 and 3 of the *Sunset Policy Bulletin*.

In the Department's final determination of sales at less than fair value of sorbitol from France, the Department established a 2.9 percent dumping margin for RF. The Department has not issued an affirmative duty absorption determination.⁴

ADM states that in compliance with the SAA, the Department should provide the original margin of 2.9 percent to the Commission because 2.9 percent reflects RF's behavior without

the discipline of an order in place.⁵ ADM further argues that, in this case, it is not appropriate for the Department to select a more recently calculated rate because the dumping margins calculated for the seven reviews conducted by the Department have fluctuated significantly and do not evince a pattern from which the Department could conclude that a more recently calculated rate is likely to prevail in the absence of the order.

RA argues that a dumping margin of more than 20 percent is likely to prevail if the order is revoked because the EU market, including France, is a highly protected market with a tariff structure which prohibits U.S. producers from exporting to the EU. In addition, RA claims that the EU has a system of export refunds to compensate EU producers for the high internal EU prices of grains which are the feedstock for crystalline sorbitol outside the EU.

As discussed above, SPI alleges that the margin of dumping likely to prevail if the order is revoked is 40 percent. SPI bases this allegation on an EU price of \$2.15/kg and a U.S. price of \$1.65.

As noted in the *Sunset Regulations* and *Sunset Policy Bulletin*, only under the most extraordinary circumstances will the Department rely on a dumping margin other than those it calculated and published in its prior determinations. Further, in antidumping sunset reviews, the Department will consider other factors, such as prices and costs, only where it determines that good cause to consider such other factors exists (see section 351.218(e)(2) of the *Sunset Regulations* and section II.C of the *Sunset Policy Bulletin*). Although RA and SPI assert that the dumping margin likely to prevail without the order could be 20 percent or 40 percent, they do not make any "good cause" arguments. Neither RA nor SPI offered any rationale suggesting that their estimated margins would not be more speculative and, therefore, less probative than the calculated rate from the original investigation.

The Department finds no reason to deviate from our *Policy Bulletin* in this review. Therefore, we determine that the original margin calculated by the Department which reflects the behavior of exporters without the discipline of the order, is probative of the behavior of the French producers of sorbitol. The Department will report to the Commission the company-specific and "all others" rate at the levels indicated in the *Final Results of the Review* section of this notice.

² See Substantive Response of ADM (November 2, 1998) at 4.

³ See Substantive Response of ADM (November 2, 1998) appendix B.

⁴ See *Sorbitol from France; Final Determination of Sales at Less Than Fair Value*, 47 FR 6549 (February 12, 1982).

Final Results of Review: As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the margins listed below.

Manufacturer/Exporter	Margin (percent)
Roquette Freres	2.90
All Others	2.90

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: January 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-078; A-423-077; A-428-082]

Final Results of Expedited Sunset Review: Sugar From France, Belgium and Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews: Sugar from France, Belgium and Germany.

SUMMARY: On October 1, 1998, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping findings on sugar from France, Belgium and Germany (63 FR 52683) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the bases of the notices of intent to participate and substantive comments filed on behalf of the domestic industry, as well as inadequate responses (in these cases, no responses) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these

reviews, the Department finds that revocation of the antidumping findings would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT:

Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482-6397 or (202) 482-1560, respectively.

EFFECTIVE DATE: February 4, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to these antidumping findings is sugar, both raw and refined, with the exception of specialty sugars, from France, Belgium and Germany. The order on sugar from France excludes homeopathic sugar pellets meeting the following criteria: (1) composed of 85 percent sucrose and 15 percent lactose; (2) have a polished, matte appearance, and more uniformly porous than domestic sugar cubes; (3) produced in two sizes of 2 mm and 3.8 mm in diameter.¹

The merchandise under review is currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 1701.1100, 1701.1101, 1701.1102, 1701.1103, 1701.1105, 1701.1110, 1701.1120, 1701.1150, 1701.1200, 1701.1201, 1701.1202, 1701.1205, 1701.1210, 1701.1250, 1701.9105, 1701.9110, 1701.9120, 1701.9121, 1701.9122, 1701.9130, 1701.9900, 1701.9901, 1701.9902,

¹ See *Sugar from France; Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Finding*, 61 FR 40609 (August 5, 1996).

1701.9905, 1701.9910, 1701.9950, 1702.9005, 1702.9010, 1702.9020, 1702.9030, 1702.9031, 1702.9032, 2106.9011, 2106.9012, 2106.9042, 2106.9044, and 2106.9046. The HTSUS item numbers are provided for convenience and customs purposes only. They are not determinative of the products subject to the orders. The written description remains dispositive.

These reviews cover all manufacturers and exporters of sugar from France, Belgium and Germany.

Background

On October 1, 1998, the Department initiated sunset reviews of the antidumping findings on sugar from France, Belgium and Germany (63 FR 52683), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate for each of these findings from The United States Beet Sugar Association and The United States Cane Sugar Refiners' Association ("the Associations") on October 16, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The Associations claimed interested party status under section 771(9)(E) of the Act as a trade association whose members produce sugar in the United States. We received a complete substantive response from the Associations on November 2, 1998, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i), for each of these findings. In each of the substantive responses, the Associations claimed interested party status under subsections 771(9)(C) and 771(9)(E) & (G)(i-iii) of the Act. We did not receive a substantive response from any respondent interested party in these sunset proceedings. As a result, pursuant to section 751(c)(3)(B) of the Act and our regulations (19 CFR 351.218(e)(1)(ii)(C)(2)), the Department determined to conduct expedited reviews.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping findings would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, 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 finding, and shall provide to the International Trade