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Sunset Review
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DATE: January 30, 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 Final Results of the
Expedited Sunset Review of the Antidumping Duty Order on Gray
Portland Cement and Clinker from Japan

Summary

We have analyzed the substantive response of the domestic interested parties in the second sunset review of the antidumping duty order covering gray portland cement and clinker (cement) from Japan.¹ We recommend that you approve the positions we developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this sunset review:

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

History of the Order

The Department of Commerce (the Department) published its amended final affirmative determination of sales at less than fair value and its antidumping duty order of cement from Japan in the Federal Register with the following rates:

Onoda Cement Company, Ltd. (Onoda)	70.52
Nihon Cement Company, Ltd. (Nihon)	69.89
All Other Manufacturers/Producers/Exporters	70.23

¹ We received no responses from respondent interested parties.

See Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker From Japan, 56 FR 12156 (March 22, 1991), as amended by Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker From Japan, 56 FR 21658 (May 10, 1991), and Amended Final Determination of Sales at Less Than Fair Value and Antidumping Order: Gray Portland Cement and Clinker From Japan, 60 FR 39150 (August 1, 1995).

Since the issuance of the order, the Department has conducted three administrative reviews of sales of cement from Japan prior to the first sunset review. See Gray Portland Cement and Clinker From Japan; Amendment of Final Results of Antidumping Duty Administrative Review, 58 FR 53705 (October 18, 1993); Gray Portland Cement and Clinker From Japan; Final Results of Antidumping Duty Administrative Review, 60 FR 43761 (August 23, 1995); Gray Portland Cement and Clinker From Japan; Final Results of Antidumping Duty Administrative Review, 61 FR 67308 (December 20, 1996). There have been no duty-absorption reviews of the order.² Prior to the first sunset review, the Department conducted a changed-circumstances review whereby it revoked the order in part with respect to “New Super Fine Cement” from Japan. See Gray Portland Cement and Clinker From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order, 61 FR 58861 (November 19, 1996). There have been two scope rulings on the subject merchandise covered by the order. See Scope Rulings, 57 FR 19602 (May 7, 1992), classes G and H of oil well cement are within the scope of the order, and Scope Rulings, 58 FR 27542 (May 10, 1993), “Nittetsu Super Fine” cement is not within the scope of the order. The order remains in effect for all manufacturers, producers, and exporters of cement from Japan.

The Department conducted the first sunset review of the order on cement from Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the same rates it found in the original investigation. See Gray Portland Cement and Cement Clinker from Japan; Final Results of Antidumping Duty Expedited Sunset Review, 65 FR 11549 (March 3, 2000). The International Trade Commission (ITC) determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on cement from Japan would be likely to lead to continuation, or recurrence, of material injury to an industry in the United States within a reasonably foreseeable time. See Gray Portland Cement and Cement Clinker from Japan, Mexico, and Venezuela, 65 FR 65327 (November 1, 2000). Thus, the Department published a notice of continuation of the antidumping duty order on cement from Japan pursuant to 19 CFR 351.218(f)(4). See Continuation of Antidumping Duty Orders: Gray Portland Cement and Cement Clinker from Japan and Mexico, 65 FR 68979 (November 15, 2000).

² The Department lacks authority to conduct duty-absorption inquiries under section 751(a)(4) of the Act on pre-Uruguay Round Agreements Act orders. See *FAG Italia S.p.A. v. United States*, 291 F.3d 806 (Fed. Cir. 2002).

On October 3, 2005, the Department initiated the second sunset review of the antidumping duty order on cement from Japan pursuant to sections 751(c) and 777(i)(1) of the Act and 19 CFR 351.218. See Initiation of Five-Year (“Sunset”) Reviews, 70 FR 57560 (October 3, 2005). The Department received a notice of intent to participate from the Committee for Fairly Traded Japanese Cement, the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, and the Local Lodge 93 of the International Association of Machinists and Aerospace Workers (collectively, the domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested-party status under section 771(9)(C) of the Act as a manufacturer, producer, or wholesaler in the United States of a domestic like product, under section 771(9)(D) of the Act as a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product, and under section 771(9)(E) of the Act as a trade or business association, a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States. We received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted an expedited (120-day) sunset review of the 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 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 periods before and the periods after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide the ITC with the magnitude of the margins 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

On November 2, 2005, the domestic interested parties submitted a substantive response (Substantive Response) in this sunset review. In their response, they assert that revocation of the antidumping duty order would lead to a continuation of dumping by manufacturers, producers, and exporters of the subject merchandise from Japan.

The domestic interested parties argue that the margins have not changed since the first sunset review when the Department concluded that dumping above *de minimus* levels has persisted over the life of the order. See Substantive Response at page 10.

The domestic interested parties state that, immediately after bonding requirements went into effect on October 31, 1990, the Japanese exporters ceased exports to California and drastically reduced exports to the rest of the United States. The domestic interested parties argue that, in the two calendar years preceding issuance of the May 1991 order, Japan's annual exports to the United States exceeded two million tons. Substantive Response at page 11. After the order was issued, however, the domestic interested parties argue that Japanese imports declined by 85% in the next two years, that Japan ceased shipping clinker to the United States after 1990, and that since 1994 imports of cement from Japan never exceeded 1.5% of the volume that was imported in 1989. Id. at 13. The domestic interested parties conclude that this decrease in imports indicates a strong likelihood of a recurrence of dumping should the antidumping order be revoked.

Department's Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action, 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 of a recurrence or continuation of dumping 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 section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the periods before and after the issuance of the antidumping order.

Two companies, Onoda and Nihon, participated in the investigation and ultimately received margins of 70.52 percent and 69.89 percent, respectively; the Department calculated the "all others" rate in the investigation to be 70.23 percent. See Amended Final Determination of Sales at Less Than Fair Value and Antidumping Order: Gray Portland Cement and Clinker From Japan, 60 FR 39150 (August 1, 1995). Onoda was reviewed three times and received margins of 33.95 percent, 24.27 percent, and 30.12 percent in those reviews. See Gray Portland Cement and Clinker From Japan; Amendment of Final Results of Antidumping Duty Administrative Review, 58 FR 53705 (October 18, 1993); Gray Portland Cement and Clinker From Japan; Final Results of Antidumping Duty Administrative Review, 60 FR 43761 (August 23, 1995); Gray Portland

Cement and Clinker From Japan; Final Results of Antidumping Duty Administrative Review, 61 FR 67308 (December 20, 1996). No other margins have been calculated in this proceeding. Therefore, dumping has continued at a level above *de minimis*.

The administrative record shows that 2,415,000 and 2,100,000 short tons of subject merchandise were imported from Japan in 1989 and 1990, respectively. See Substantive Response at Exhibit 7. Also, over the next several years, Japanese exports of subject merchandise greatly diminished, and Japanese exporters did not export subject merchandise to the United States in 1995, 1996, and 1997. Id. at Exhibit 7. Since 1997, Japanese exports of subject merchandise averaged 14,000 short tons, or less than 1% of their pre-order totals. Id. at Exhibit 7. Given that dumping continues at above *de minimis* levels and that imports declined significantly from pre-order levels and eventually ceased, the Department determines that dumping is likely to continue or recur if it revokes the order.

2. Magnitude of the Margins Likely to Prevail

Interested-Party Comments

In the substantive response for cement from Japan, the domestic interested parties argue that dumping margins have not decreased over the life of the order and that imports have not remained steady or increased. See Substantive Response at 14.

The domestic interested parties assert that Onoda is the only producer that participated in an administrative review and, that, although the margins for Onoda in the first, second, and third administrative reviews were lower than the rate the Department calculated in the original investigation, those margins are not indicative of what Onoda's behavior would have been in the absence of the discipline of the order. Id. at 14. Moreover, the domestic interested parties claim that the Department determined in the first sunset review that Taiheiyo, Onoda's successor, should be treated as a new entity to which the "all others" rate should be applied. Id. at 15. Accordingly, they recommend that the Department report the following dumping margin to the ITC:

All Manufacturers/Producers/Exporters

70.23

Department's Position

Section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin that is likely to prevail if the order were revoked. Normally the Department will provide the company-specific margins from the original investigation to the ITC. For companies not investigated specifically or for companies that did not begin shipping until after the order was issued, the Department will normally provide the ITC with a margin based on the "all others" rate from the investigation. The Department prefers to select a margin from the investigation because it is the only calculated rate that reflects the behavior of

manufacturers, producers, and exporters without the discipline of an antidumping duty order or suspension agreement in place. Under certain circumstances, however, the Department may select a margin calculated more recently to report to the ITC.

The Department finds that it is appropriate to provide the ITC with the rates from the investigation because these rates are the only calculated rates that reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. Absent argument or evidence to the contrary, we determine that the margins from the investigation are probative of the behavior of Japanese manufacturers/exporters without the discipline of the order.

Because we have not previously determined whether Taiheiyo is the successor-in-interest to either Nihon or Onoda, we agree with the domestic interested parties that it is a new entity to which the “all-others” rate should apply.

Therefore, the Department will report to the ITC these same margins as listed in the “Final Results of Review” section below.

Final Results of Review

We determine that revocation of the antidumping duty order on cement from Japan 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)
Onoda	70.52
Nihon	69.89
All Other Manufacturers/Producers/Exporters	70.23

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)