

CHAIRMAN LYNN M. BRAGG  
EXPLANATORY STATEMENT OF VIEWS ON ADEQUACY  
ELEMENTAL SULFUR FROM CANADA NO. AA1921-127 (REVIEW)

November 5, 1998

Upon careful consideration of the various interested party responses to the Federal Register notice instituting this review investigation, I find that both domestic and foreign producer/importer interested parties have provided inadequate group responses. Nevertheless, I determine that a full review investigation is warranted based on the existence of significant like product issues.

GENERAL VIEWS ON ADEQUACY

I note that there are no definitive quantitative or qualitative prerequisites for determining whether individual or group responses are adequate. Indeed, what is adequate in one review investigation may not be adequate in another. Similarly, one Commissioner's adequacy may be another's basis for determining that an expedited review investigation is appropriate. Individual Commissioners may find certain information more indicative of a party's or group's willingness to participate in a review (see 19 U.S.C. § 1675(c)(2)(A)) than other information.

SPECIFIC ADEQUACY ISSUES IN THIS REVIEW INVESTIGATION

In this review investigation, both domestic interested parties and foreign interested parties allege that the other side's response as a group is inadequate. Given the relatively low percentage of both domestic production and U.S. exports accounted for by the foreign and domestic responding parties, I agree. Nevertheless, a fundamental ambiguity exists regarding the appropriate like product and domestic industry due to the language and analysis used in the Commission's original determination.

Since the Commission conducted its original investigation over two decades ago, the composition of the domestic industry has changed dramatically. At that time, a far greater percentage of domestic producers produced sulfur using the frash method than do today, when the industry is dominated by producers that recover sulfur as a by-product of other lines of business. I therefore believe that a full review is warranted. In its Notice of Final Rulemaking ("NOFR") the Commission stated that it would conduct full reviews notwithstanding inadequate responses by one or the other side in cases in which significant like product issues exist.<sup>1</sup> In my view, these issues exist with regard to this review investigation.

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<sup>1</sup> NOFR at 30,604.