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Sunset Review
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DATE: June 5, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Second
Sunset Reviews of the Antidumping Duty Orders on Sodium
Nitrite from Germany and the People's Republic of China

I. Summary

We have analyzed the substantive responses of a domestic interested party in the second sunset reviews of the antidumping duty orders covering sodium nitrite from Germany and the People's Republic of China (China).¹ No other interested party submitted a substantive response. Accordingly, we conducted expedited (120-day) sunset reviews pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2). 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 this sunset review for which we received a substantive response:

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

II. Background

On February 5, 2019, Commerce published the notice of initiation of the second sunset review of the *Orders* on sodium nitrite from Germany and the People's Republic of China pursuant to section 751(c) of the Act.² On February 21, 2019, Commerce received notices of intent to

¹ See *Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China: Antidumping Duty Orders*, 73 FR 50593 (August 27, 2008) (the *Orders*).

² See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 1705 (February 5, 2019). The initiation of these reviews was originally scheduled for January 2019 (see *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review*, 83 FR 62292 (December 3, 2018)), however, the initiation was affected by the partial federal government closure from December 22, 2018, through the resumption of



participate from Chemtrade Chemicals US LLC (Chemtrade), a domestic interested party, within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).³ Chemtrade claimed interested party status under section 771(9)(C) of the Act as a producer of sodium nitrite in the United States.

On March 7, 2019, Commerce received adequate substantive responses to the notice of initiation from Chemtrade within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁴ We received no substantive responses from respondent interested parties with respect to either of the orders covered by these sunset reviews.

On March 20, 2019, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁵ As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the antidumping duty orders on sodium nitrite from Germany and China.

III. Scope of the Orders

The merchandise subject to these orders is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by these orders may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO_2 and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name “sodium nitrite” to sodium nitrite. The CAS registry number is 7632-00-0.

While the HTSUS subheading, CAS registry number, and CAS name are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

IV. History of the Orders

On July 8, 2008, Commerce published its final determinations in the less than fair value (LTFV) investigations of sodium nitrite from Germany and China.⁶ Commerce relied on adverse facts

operations on January 28, 2019. Due to the partial federal government closure, Commerce initiated these reviews in February 2019.

³ See Chemtrade’s Letter, “Sodium Nitrite from Germany: Notice of Intent to Participate,” dated February 21, 2019; see also Chemtrade’s Letter, “Sodium Nitrite from China: Notice of Intent to Participate,” dated February 21, 2019. Chemtrade originally submitted notices of intent to participate on January 15, 2019, but resubmitted these documents due to the partial federal government closure. See Chemtrade’s Letter, “Sodium Nitrite from Germany: Notice of Intent to Participate,” dated January 15, 2019; see also Chemtrade’s Letter, “Sodium Nitrite from China: Notice of Intent to Participate,” dated January 15, 2019.

⁴ See Chemtrade’s Letter, “Sodium Nitrite from Germany and China: Substantive Response to Notice of Initiation of Five-Year (Sunset) Review of the Antidumping Duty Orders and Countervailing Duty Order,” dated March 7, 2019 (Chemtrade Substantive Response).

⁵ See Letter re: “Sunset Reviews Initiated on February 5, 2019 Applicable to January 2019,” dated March 20, 2019.

⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the People’s Republic of China*, 73 FR 38984 (July 8, 2008) (*China Final Determination*); see also *Notice of Final Determination of Sales at*

available (the highest margin in the petitions) in establishing the weighted-average dumping margins for the mandatory respondents in both investigations. On August 27, 2008, Commerce published antidumping orders on imports of sodium nitrite from Germany and China.⁷ Commerce found the following weighted-average dumping margins in the LTFV investigations:

Exporter/Producer	Weighted-Average Percentage Margin
PRC	
PRC–Wide Entity	190.74
Germany	
BASF AG	237.00
All Others	150.82

On February 12, 2014, Commerce published the continuation of the antidumping duty orders on sodium nitrite from Germany and China at the conclusion of the first sunset reviews of the *Orders*.⁸ Commerce has not conducted an administrative review or changed circumstance review since the publication of the *Orders*. For sodium nitrite from China, in 2015, Commerce conducted a Section 129 proceeding to implement the findings adopted by the WTO Dispute Settlement Body in DS449. However, because no Chinese producer submitted any information, the margin from the final determination did not change.⁹ The *Orders* remain in effect for all manufacturers, producers, and exporters of the subject merchandise from Germany and China.

Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany, 73 FR 38986 (July 8, 2008) (*Germany Final Determination*).

⁷ See the *Orders*.

⁸ See *Sodium Nitrite from Germany and the People's Republic of China: Continuation of Antidumping Duty Orders*, 79 FR 8438 (February 12, 2014).

⁹ See *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Aluminum Extrusions from the People's Republic of China; Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China; Certain Kitchen Appliance Shelving and Racks from the People's Republic of China; Certain Magnesia Carbon Bricks from the People's Republic of China; Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; Certain Oil Country Tubular Goods from the People's Republic of China; Certain Potassium Phosphate Salts from the People's Republic of China; Certain Steel Grating from the People's Republic of China; Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China; Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China; Citric Acid and Certain Citrate Salts from the People's Republic of China; Lightweight Thermal Paper from the People's Republic of China; Narrow Woven Ribbons With Woven Selvage from the People's Republic of China; Prestressed Concrete Steel Wire Strand from the People's Republic of China; Raw Flexible Magnets from the People's Republic of China; Sodium Nitrite from the People's Republic of China*, 80 FR 45184 (July 29, 2015).

V. Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce is conducting these sunset reviews to determine whether revocation of the *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 this determination, Commerce 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 period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action (SAA),¹⁰ the House Report,¹¹ and the Senate Report,¹² Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.¹³ In addition, Commerce normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when: (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.¹⁴ Alternatively, Commerce normally will determine that revocation of an antidumping duty order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.¹⁵

Furthermore, as a base period of import volume comparison, it is Commerce's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of the investigation may dampen import volumes and, thus, skew the comparison.¹⁶ When analyzing import volumes for the second and subsequent sunset reviews, Commerce's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.¹⁷

In addition, section 752(c)(3) of the Act states that Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked.

¹⁰ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA).

¹¹ See H. Rep. No. 103-826, pt. 1 (1994) (House Report), reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

¹² See S. Rep. No. 103-412 (1994) (Senate Report).

¹³ See SAA at 879.

¹⁴ See SAA at 889-890; House Report at 63-64; Senate Report at 52; and *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Policy Bulletin*).

¹⁵ See SAA at 889-890; see also House Report at 64.

¹⁶ See *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

¹⁷ See *Ferrovanadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying IDM at 3-4 and 5-7.

Generally, Commerce selects the weighted-average dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.¹⁸ In certain circumstances, however, a more recently calculated rate may be more appropriate (e.g., “if dumping margins have declined over the life of an order and imports have remained steady or increased, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review”).¹⁹ Finally, pursuant to section 752(c)(4)(A) of the Act, a margin of dumping likely to prevail of “zero or *de minimis* shall not by itself require” Commerce to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at LTFV.

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, Commerce announced that in five-year (*i.e.*, sunset) reviews it will not rely on weighted-average dumping margins that were calculated using the zeroing methodology.²⁰ However, Commerce explained in the *Final Modification for Reviews* that it “retain{s} the discretion, on a case-by-case basis, to apply an alternative methodology, when appropriate” in both investigations and administrative reviews pursuant to section 777A(d)(1)(B) of the Act.²¹ In the *Final Modification for Reviews*, Commerce stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.²² Commerce further stated that, apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”²³

VI. Discussion of the Issues

Below we address the comments of the interested party.

1. Likelihood of Continuation or Recurrence of Dumping

¹⁸ See SAA at 890; see also *Persulfates from the People’s Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying IDM at Comment 2.

¹⁹ See SAA at 890-91.

²⁰ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8102-3 (February 14, 2012) (*Final Modification for Reviews*).

²¹ *Id.* at 8105-6.

²² *Id.* at 8102-3 and 8107-10.

²³ *Id.*

Interested Party Comments²⁴

Chemtrade cites to the statute, the SAA, and the *Policy Bulletin* for guidance in determining whether revocation of an antidumping duty order would be likely to lead to continuation or recurrence of dumping. Chemtrade notes that Commerce is to consider the weighted average dumping margins determined in the investigation and subsequent reviews as well as the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. Chemtrade notes that there has been no administrative review of either order.

With respect to volume of imports, Chemtrade asserts that imports of sodium nitrite from China and Germany declined significantly after the *Orders* were imposed in August 2008 and have not returned to pre-order levels.²⁵ Chemtrade notes that the virtual exit of German and Chinese producers from the U.S. market suggests that subject imports cannot compete in the U.S. market without dumping.

Chemtrade concludes that because (1) dumping has continued for the life of the *Orders*; and (2) imports have significantly decreased since the imposition of the *Orders*, the record supports the conclusion that dumping is likely to continue or recur if the *Orders* were revoked.

Commerce's Position:

As explained in the Legal Framework section above, Commerce's determinations of likelihood will be made on an order-wide basis.²⁶ In addition, Commerce 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.²⁷ In addition, pursuant to section 752(c)(1)(B) of the Act, Commerce considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

In this case, Commerce found dumping at above *de minimis* levels in the underlying antidumping duty investigations. Commerce relied on the margins presented in the petitions to determine margins in its final determinations because the respondents that Commerce selected for individual examination chose not to participate.²⁸ The cash deposit rates established in the underlying investigations remain in effect and there have been no administrative reviews of the *Orders*. Additionally, we examined the statistics placed on the record by Chemtrade with respect to imports of the subject merchandise for the period before and after the issuance of the *Orders*, pursuant to section 752(c)(1)(B) of the Act.²⁹ These data show that import volumes drastically

²⁴ See Chemtrade Substantive Response at 10-17.

²⁵ *Id.* at 14-15 (citing to import statistics compiled from U.S. Bureau of Census imports statistics as reported by USITC Dataweb).

²⁶ See SAA at 879.

²⁷ See SAA at 889-890; House Report at 63-64; Senate Report at 52.

²⁸ See *Germany Final Determination*, 73 FR at 38987; see also *China Final Determination*, 73 FR at 38985.

²⁹ See Chemtrade Substantive Response at 15.

decreased with the issuance of the *Orders*, and were nonexistent in the most recent year (2017). Furthermore, these data show substantially decreased import volumes from both Germany and China when compared with the import volumes from the year prior to the initiation of the investigations to the five-year period since the most recent continuation notices.³⁰ Given the continued existence of above *de minimis* margins calculated without zeroing since the imposition of the *Orders* and the overall decrease in the volume of imports, we determine that it is unlikely that German or Chinese producers of subject merchandise would be able to sell at pre *Order* volumes without dumping.³¹ Accordingly, we determine that dumping would likely continue or recur if the *Orders* were revoked.³²

2. Magnitude of the Dumping Margins Likely to Prevail

Interested Party Comments³³

Chemtrade asserts that, as was done in the first sunset review of the *Orders*, pursuant to the principles set forth in the *SAA* and *Policy Bulletin*, Commerce should report the margins of dumping determined in the original investigations.

Commerce's Position:

Section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the *Orders* were revoked. Commerce's preference is to select a rate from the investigation because it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order in place.³⁴ However, Commerce may provide a more recently calculated margin for a particular company, where declining (or zero or *de minimis*) dumping margins are accompanied by steady or increasing imports, which would reflect that the exporter is likely to dump at a lower rate found in a more recent review. Similarly, if an exporter chooses to increase dumping to increase or maintain market share, Commerce may provide the ITC with an increased margin that is more representative of that exporter's behavior in the absence of an order.³⁵ As indicated in the Legal Framework section *supra*, Commerce's current practice is to not rely on weighted average dumping margins calculated using the zeroing methodology found to be WTO inconsistent, in accordance with the *Final Modification for Reviews*.³⁶

³⁰ *Id.*

³¹ See SAA at 889 (explaining that "declining import volumes accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes").

³² See SAA at 890 (explaining that "{i}f 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").

³³ See Chemtrade Substantive Response at 16–18.

³⁴ See SAA at 890; and *Policy Bulletin*, 63 FR at 18873 (section II.B.1); see also *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 43063 (July 21, 2015), and accompanying IDM at Comment 2.

³⁵ See section 752(c)(3) of the Act; see also *Clad Steel Plate from Japan: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 83 FR 22008 (May 11, 2018), and accompanying IDM at Comment 2.

³⁶ See *Final Modification for Reviews*, 77 FR at 8103.

As noted in the “History of the Orders” section *supra*, Commerce relied on adverse facts available in assigning a margin to the respondents in both investigations. These rates were based on the rates alleged in the petitions, and did not involve the practice of zeroing found to be WTO-inconsistent and subject to the *Final Modification for Reviews*. Commerce has not conducted an administrative review since the publication of the *Orders*. Thus, we determine that revocation of the *Orders* would be likely lead to continuation or recurrence of dumping at the magnitude of weighted average margins up to 237.00 percent for Germany and 190.74 percent for China. Accordingly, in accordance with section 752(c)(3) of the Act, Commerce will provide the ITC with the margins from the final determinations as the margin of dumping that is likely to prevail if the *Orders* were revoked.

VII. Final Results of Sunset Review

Commerce determines that revocation of the antidumping duty orders on sodium nitrite from Germany and China would be likely to lead to the continuation or recurrence of dumping, and that the magnitude of the margins of dumping that are likely to prevail would be at a rate up to 237.00 percent for Germany and 190.74 percent for China.

VIII. 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 these expedited sunset reviews in the *Federal Register*.



Agree

Disagree

6/5/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler

Assistant Secretary

for Enforcement and Compliance