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Sunset Review
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited First Sunset Review of the Antidumping Duty Order on Sodium Hexametaphosphate from the People's Republic of China

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Summary

In the sunset review of the antidumping duty order covering sodium hexametaphosphate from the People's Republic of China ("PRC"), domestic interested parties ICL Performance Products LP and Innophos, Inc. (collectively, "Petitioners"), submitted an adequate substantive response on March 4, 2013.[1] No respondent submitted a substantive response. In accordance with our analysis of Petitioners' Substantive Response, we recommend adopting the positions described in the instant memorandum.

Background

On February 1, 2013, the Department of Commerce (the "Department") published a notice of initiation of the sunset review of the antidumping duty order on sodium hexametaphosphate from the PRC.[2] As noted above, on March 4, 2013, Petitioners submitted their Substantive Response within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). Also as noted above, the Department did not receive a substantive response from any respondent interested party. As a result, 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), the Department conducted an expedited (120-day) sunset review of the antidumping duty order on sodium hexametaphosphate from the PRC.

History of the *Order*

On February 4, 2008, the Department published its final determination in the less than fair value ("LTFV") investigation of sodium hexametaphosphate from the PRC.[3] On March 19, 2008, the

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[1] *See* Petitioners' March 4, 2013, submission ("Substantive Response").
[2] *See Initiation of Five-Year ("Sunset") Review*, 78 FR 7400 (February 1, 2013).
[3] *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from the People's Republic of China*, 73 FR 6479 (February 4, 2008) ("*Investigation Final*").

Department published the order on sodium hexametaphosphate from the PRC.[4] In so doing, the Department found the following weighted-average dumping margins:

Exporter	**Weighted-Average Dumping Margin (percent)**
Jiangyin Chengxing International Trading Co., Ltd.	92.02
Sichuan Mianzhu Norwest Phosphate Chemical Co.,	92.02
PRC-Wide Rate	188.05

Since the issuance of the *Order*, the Department has completed three administrative reviews with respect to sodium hexametaphosphate from the PRC. In the *First AR*, we calculated a rate of 82.62 percent for the only respondent, Hubei Xingfa Chemical Group Co., Ltd. ("Hubei Xingfa").[5] In the *Second AR*, we calculated a rate of 91.23 percent for the only respondent, Hubei Xingfa.[6] In the *Third AR*, we found that there were no reviewable entries of subject merchandise during the period of review for certain exporters under review.[7] Other exporters under review were considered part of the PRC-wide entity, which received a rate of 188.05 percent.[8] There are no ongoing reviews with respect to the *Order*. In addition, there have been no new shipper reviews, scope inquiries, changed circumstances reviews or duty absorption findings.

Discussion of the Issues

Legal Framework
In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the *Order* would likely 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 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 *Order*.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) ("*SAA*"), 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, rather than company-specific, basis.[9] In addition,

[4] *See Notice of Antidumping Duty Order: Sodium Hexametaphosphate from the People's Republic of China*, 73 FR 14772 (March 19, 2008) ("*Order*").
[5] *See First Administrative Review of Sodium Hexametaphosphate from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 75 FR 64695, 64696 (October 20, 2010) ("*First AR*").
[6] *See Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375, 59376 (September 27, 2012) ("*Second AR*").
[7] *See Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 18956, 18957 (March 28, 2013) ("*Third AR*").
[8] *Id*.
[9] *See SAA*, at 879 and House Report at 56.

the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.[10] Alternatively, the Department normally will determine that revocation of an antidumping duty order is not likely to lead to continuation or recurrence of dumping where dumping margins declined or were eliminated and import volumes remained steady or increased after issuance of the order.[11] In addition, as a base period of import volume comparison, it is the Department'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 an investigation may dampen import volumes and, thus, skew comparison.[12]

Further, section 752(c)(3) of the Act states that the Department shall provide to the International Trade Commission ("ITC") the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the antidumping duty margins from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.[13]

The Department recently announced it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization ("WTO")-inconsistent, *i.e.*, zeroing/the denial of offsets.[14] In the *Final Modification for Reviews*, the Department stated that "only in the most extraordinary circumstances" would it rely on margins other than those calculated and published in prior determinations.[15] The Department 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 total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive."[16]

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require the Department to determine that revocation of an antidumping duty

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[10] *See SAA* at 889-90, House Report at 63-64, and Senate Report at 52.
[11] *See SAA* at 889-90, and House Report at 63.
[12] *See, e.g., 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 at Comment 1.
[13] *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 Issues and Decision Memorandum at Comment 2.
[14] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) ("*Final Modification for Reviews*").
[15] *Id*.
[16] *Id*.

order would not be likely to lead to a continuation or recurrence of sales at LTFV.[17] Our analysis of the comments submitted by domestic interested parties' follows.

Analysis

1. *Likelihood of Continuation or Recurrence of Dumping*

Petitioners argue that revocation of the *Order* would likely result in the continuation of dumping in the United States. Specifically, Petitioners contend that, since the imposition of the *Order* in 2008, numerous separate rate and PRC-wide entity respondents have continued dumping subject merchandise at above *de minimis* rates.[18] Petitioners also point to a sharp drop in import volume during the year that the *Order* was imposed. According to the Petitioners, import volumes would have been much greater had there been no antidumping duties in place.[19]

Department's Position: As explained in the Legal Framework section above, when determining whether revocation of the order would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. According to the *SAA*, "{d}eclining 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."[20] We find that revocation of the *Order* would likely result in the continuation of dumping in the United States due to the continued existence of dumping margins and a significant decline in import volume since the issuance of the *Order*.

In analyzing whether dumping is likely to continue or recur if the *Order* was revoked, we examined the extent of dumping during the five-year sunset period of 2008-2013. As noted above, in the *First AR* the Department assigned Hubei Xingfa a rate of 82.62 percent, and in the *Second AR* the Department assigned Hubei Xingfa a rate of 91.23 percent.[21] According to the *SAA*, "{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."[22] We also determine that the positive margins in these reviews were not affected by zeroing, because all comparison results were positive and thus no offsets were denied.[23] As stated in the *Final Modification for*

[17] *See Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.
[18] *See* Substantive Response, at 10-12.
[19] *See* Substantive Response, at 11-12.
[20] *See SAA*, at 889.
[21] *See First AR*, 75 FR at 64696; *Second AR*, 77 FR at 59376.
[22] *See SAA*, at 890.
[23] Because these margin outputs are proprietary, *see* Memorandum to File, from Paul Walker, Case Analyst, "Sunset Review of the Antidumping Duty Order on Sodium Hexametaphosphate from the People's Republic of China: Hubei Xingfa Chemical Group's First and Second Review Margin Calculations," dated concurrently with this memorandum.

Reviews, "{i}f the dumping margins determined in a manner not found to be WTO-inconsistent in these disputes indicate that dumping continued with the discipline of the order in place, those dumping margins alone can form the basis for a determination that dumping will continue or recur if the order were to be revoked."[24] Therefore, because the Department has found dumping of the subject merchandise to exist after the issuance of the *Order*, we find that the revocation of the *Order* is likely to lead to a continuation of dumping.

Our review of HTSUS import data collected by Global Trade Atlas for the volume of sodium hexametaphosphate imports from March 2006 to January 2013, as well as the Department's recent finding of no shipments in the *Third AR*,[25] indicates that imports have rapidly declined after imposition of the *Order*. The annual import data ending in February 2007 reports 20,333 metric tons ("mt") for the full year prior to the initiation of the investigation. The annual import data ending in February 2008 declined to 16,283 mt, for the full year during the investigation and prior to the issuance of the *Order*. The import volume for the sunset review period declined significantly following the imposition of the *Order* and remained low throughout the five-year sunset review period ending in February 2013, never recovering to pre-investigation levels.[26] The Department finds the trend for this adjusted import volume as demonstrative of the effect of the *Order* on the companies that were subject to the *Order*, and this significant decrease in import volumes of subject merchandise, along with the continued existence of dumping margins, supports the finding of likelihood of continuation or recurrence of dumping absent of the *Order*.

2. *Magnitude of the Margin of Dumping Likely to Prevail*

Petitioners contend that the Department should consider selecting the rate from the original investigation for each of the subject producers (as well as "all others") as the dumping margin likely to prevail upon revocation, and for companies not individually investigated in the original investigation and for companies that did not begin shipping until after the order was issued, the Department should select the PRC-wide rate.[27]

Department's Position: Normally, the Department will provide to the ITC the company-specific, weighted-average antidumping duty margin from the investigation for each company.[28] The Department's preference for selecting a rate from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.[29] For companies not investigated individually, or for companies that did not begin shipping until after the order was issued, the Department will

[24] *See Final Modification for Reviews*, 77 FR at 8103.
[25] *See Third AR*, 78 FR at 18957.
[26] *See* Memorandum to File, from Paul Walker, Case Analyst, "Sunset Review of the Antidumping Duty Order on Sodium Hexametaphosphate from the People's Republic of China: Import Volume Analysis," dated concurrently with this memorandum.
[27] *See* Substantive Response at 10-12.
[28] *See Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999).
[29] *Id.*; *see also SAA* at 890.

normally provide a rate based on the "All-Others" rate from the investigation.[30] However, for the PRC, which the Department considers to be a non-market economy under section 771(18)(A) of the Act, the Department does not have an "All-Others" rate. Thus, in non-market economy cases, instead of an "All-Others" rate, the Department uses an established country-wide rate, which it applies to all imports from exporters that have not established their eligibility for a separate rate.[31]

The Department has determined that the weighted-average antidumping duty margins established in the *Investigation Final* represent the magnitude of the margins of dumping most likely to prevail if the *Order* were revoked. We further determine that these margins were not affected by the denial of offsets in accordance with the *Final Modification for Reviews*.[32] Specifically, the rates of the two mandatory respondents, Jiangyin Chengxing International Trading Co., Ltd. and Sichuan Mianzhu Norwest Phosphate Chemical Co., Ltd., were calculated without zeroing because the *Investigation Final* occurred after the Department ceased zeroing in investigations.[33] Furthermore, the final dumping margin for the PRC-wide entity was based on total adverse facts available and did not involve the denial of offsets.[34] Accordingly, we find it appropriate to provide the ITC with the final determination rates from the *Investigation Final* because these rates best reflect the behavior of exporters without the discipline of an order in place. As a result, we will report to the ITC the margins of dumping likely to prevail listed in the "Final Results of Review" section below.

Final Results of Review

We determine that revocation of the *Order* on sodium hexametaphosphate from the PRC would likely lead to continuation or recurrence of dumping and that the magnitudes of the margins of dumping likely to prevail are as follows:

Exporter	**Weighted-Average Dumping Margin (percent)**
Jiangyin Chengxing International Trading Co., Ltd.	92.02
Sichuan Mianzhu Norwest Phosphate Chemical Co.,	92.02
PRC-Wide Rate	188.05

[30] *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 (December 5, 2006) and accompanying Issues and Decision Memorandum at Comment 2.

[31] *See Bristol Metals L.P. v. United States*, 703 F. Supp. 2d 1370, 1378 (CIT 2010) (citation omitted); *see also Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368, 1379 (CIT 2009) (citation omitted).

[32] *See Final Modification for Reviews*, 77 FR at 8103.

[33] As noted above, the *Investigation Final* was published February 4, 2008, while the Department announced it would cease zeroing in investigations on December 26, 2006. *See Investigation Final*, 73 FR 6479; *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006).

[34] *See Final Modification for Reviews*, 77 FR at 8103.

Recommendation

Based on our analysis of the Substantive Response received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the *Federal Register* and notify the ITC of our determination.

✓
__________ Agree

__________ Disagree

Paul Piquado
Assistant Secretary
for Import Administration

3 JUNE 2013
(Date)