UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-887
Sunset Review
Public Document
E&C III: PS

March 3, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order on Tetrahydrofurfuryl Alcohol from the People's Republic of China

Summary

The Department of Commerce ("Department") analyzed the substantive response submitted by a domestic interested party, Penn A Kem LLC ("PAK") the sole participating interested party in this second sunset review of the antidumping duty ("AD") *Order*[1] covering Tetrahydrofurfuryl Alcohol ("THFA") from the People's Republic of China ("PRC"). No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review. We recommend adopting the positions developed in the "Discussion of the Issues" section of this memorandum. The following is a complete list of issues in this sunset review for which we received substantive responses:

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

Background

[1] *See Notice of Antidumping Duty Order: Tetrahydrofurfuryl Alcohol From The People's Republic of China*, 69 FR 47911 (August 6, 2004) ("*Order*").

On November 3, 2014, the Department initiated the second sunset review of the AD *Order* on THFA from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended ("Act").[2] On November 6, 2014, Penn A Kem LLC ("PAK"), the petitioner in the THFA investigation, timely notified the Department (pursuant to 19 CFR 351.218(d)(1)(i)) that it intended to participate in the sunset review claiming domestic interested party status under section 351.102(b)(29)(v) of the Department's regulations and section 771(9)(C) of the Act, as a domestic producer of THFA.[3] The Department received a complete substantive response filed by PAK on December 2, 2014, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] The Department did not receive any responses from any 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), we conducted an expedited (120-day) sunset review of the *Order*.

Scope of the *Order*

The product covered by this order is THFA (C5H10O2). THFA, a primary alcohol, is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents. THFA is currently classifiable in the Harmonized Tariff Schedules of the United States ("HTSUS") under subheading 2932.13.00.00. Although the HTSUS subheadings are provided for convenience and for customs purposes, the Department's written description of the merchandise subject to the order is dispositive.

History of the *Order*

On June 18, 2004, the Department published the final determination of sales at less than fair value on THFA from the PRC in the United States.[5] In the final determination, the Department found the antidumping duty margins as follows:

Exporter/Manufacturer	Margin (percent)[6]
Qingdao Wenkem (F.T.Z.) Trading Co., Ltd.	136.86
PRC-Wide	136.86

Following the publication of the Department's final determination, the U.S. International Trade Commission ("ITC") found that the U.S. industry was materially injured by reason of the imports

[2] *See Initiation of Five-year ("Sunset") Review*, 79 FR 65186 (November 3, 2014) ("*Sunset Initiation*").
[3] *See* PAK's letter, "Sunset Review (Second Review) of the Antidumping Duty Order on Tetrahydrofurfuryl Alcohol from the People's Republic of China: Domestic Interested Party Notification of Intent to Participate," dated November 6, 2014.
[4] *See* PAK's letter, "Sunset Review (Second Review) of the Antidumping Duty Order on Tetrahydrofurfuryl Alcohol from the People's Republic of China: Substantive Response to Notice of Initiation," dated December 2, 2014 ("Response").
[5] *See Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China*, 69 FR 34130 (June 18, 2004) ("*Final Determination*").
[6] *See id.*, 69 FR at 34132.

of subject merchandise.[7] On August 6, 2004, the Department published the AD *Order* with respect to imports of THFA from the PRC.[8]

There have been no administrative reviews since issuance of the AD *Order*. There have been no related findings or rulings (*e.g.*, changed circumstances review, scope ruling, duty absorption review, *etc.*) since issuance of the *Order*. The *Order* remains in effect for all producers and exporters of subject merchandise.

On November 5, 2009, the final results of the first expedited sunset review of THFA published in the *Federal Register*.[9] In the *First Sunset*, the Department found that revocation of the AD *Order* would be likely to lead to continuation or recurrence of dumping.[10] In addition, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the AD *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[11] Thus, the Department published the notice of continuation of the AD *Order* on December 16, 2009.[12]

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 AD *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 period before, and the period after, the issuance of the AD *Order*.

As explained in the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), the Department normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after 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. Alternatively, the Department normally will determine that revocation of an AD 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.[13] In addition, as a base

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[7] *See USITC Publication 3709 (July 2004)*, entitled *Tetrahydrofurfuryl Alcohol from China: Investigation No. 731-TA-1046 (Final)* at 3.
[8] *See Order*, 69 FR 47911.
[9] *See Tetrahydrofurfuryl Alcohol From the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 74 FR 57290 (November 5, 2009) ("*First Sunset*").
[10] *See id.*
[11] *See USITC Publication 4118 (November 2009), entitled Tetrahydrofurfuryl Alcohol from China: Investigation No. 731-TA-1046 (Review)* (December 2009) and *Tetrahydrofurfuryl Alcohol from China*, 74 FR 63788 (December 4, 2009).
[12] *See Tetrahydrofurfuryl Alcohol from the People's Republic of China: Continuation of the Antidumping Duty Order* 74 FR 66616 (December 16, 2009) ("*Continuation Notice*").
[13] *See* SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90.

period for 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.[14]

Further, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the margin(s) 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.[15] However, in certain circumstances, 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, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review").[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 AD order would not be likely to lead to a continuation or recurrence of sales at less than fair value.[17]

In the *Final Modification*, the Department announced that 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 determined by the Appellate Body to be World Trade Organization ("WTO")-inconsistent.[18] The Department also noted that "*only in the most extraordinary circumstances* will the Department rely on margins other than those calculated and published in prior determinations."[19] The Department further noted that it does not anticipate that it will need to recalculate the dumping margins in sunset determinations to avoid WTO inconsistency, apart from the "most extraordinary circumstances" provided for in its regulations.[20]

Below we address the comments submitted by PAK.

[14] *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) ("*Stainless Steel Bar*"), and accompanying Issues and Decision Memorandum ("IDM") at Comment 1.

[15] *See* SAA at 890; *see, e.g., 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.

[16] *See* SAA at 890-91.

[17] *See also id.* at 890; *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 IDM at Comment 1.

[18] *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*").

[19] *Id.* (emphasis added).

[20] *Id.*

Discussion of the Issues

1. Likelihood of Continuation or Recurrence of Dumping

PAK's Comments

PAK asserts that dumping would be likely to continue or resume if the AD *Order* on THFA from the PRC were revoked. The record of this proceeding demonstrates that following the issuance of the AD *Order*, THFA import volumes ceased or declined significantly.[21] PAK contends that PRC producers have not shipped to the United States since the issuance of the AD *Order*, even though there is capacity to produce THFA in the PRC, because these PRC producers cannot do so without dumping. Furthermore, PAK argues that the cessation, or significant decline, of imports after the issuance of the order and the failure of exporters to request administrative reviews during the ten years after issuance of the AD *Order* are strong indicators that exporters of PRC THFA cannot export to the United States without dumping, and that dumping likely would continue or recur if the AD *Order* were revoked.[22]

Department's Position:

Drawing on the guidance provided in the legislative history accompanying the URAA,[23] the Department normally determines 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.[24]

In this case, the Department found dumping at above *de minimis* levels in the original antidumping duty investigation of THFA in the PRC.[25] As discussed below in the "Magnitude of the Margins Likely to Prevail" section, the dumping margins determined in the original investigation do not include zeroing (*i.e.*, because all comparison results were positive). Moreover, since the issuance of the antidumping duty order on THFA from the PRC, the Department has not conducted an administrative review, because no administrative review was requested. *See above*, at History of the Order section. Thus, dumping margins and cash deposit rates at or above *de minimis* levels remain in effect for PRC companies. *See below*, at Final Results of Review section. These margins provide the best evidence of dumping behavior of these companies and there is no evidence that indicates dumping has ceased.

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[21] *See* PAK's Response at 3 and Exhibits A, B and footnote 4.
[22] *See* PAK's Response at 7.
[23] *See, e.g.*, SAA at 889.
[24] *See, e.g., Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order*, 74 FR 10239 (March 10, 2009), and accompanying IDM at Comment 1; *see also, Pure Magnesium in Granular Form from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 5417 (February 6, 2007), and accompanying IDM at Comment 1.
[25] *See Final Determination*, 69 FR at 34132.

Separately, pursuant to 752(c)(1)(B) of the Act and in accordance with the Department's practice, the Department considers the volume of imports of the subject merchandise for the one-year period immediately preceding the initiation of the investigation as a base period for comparison to the sunset review period.[26] The Department initiated the less-than-fair-value investigation on THFA from the PRC on July 14, 2003.[27] Therefore, in this review we examined import volumes in the year ending June, 2003 as compared to import volumes for the five calendar years, 2010 through 2014, following the issuance of the *Continuation Notice* for the first sunset review.[28] Our review of the import statistics provided by PAK and confirmed by the Department based on its review of the United States International Trade Commission's "Tariff and Trade DataWeb"[29] for the subject merchandise examined by the Department demonstrate that in 2014 imports ceased, and in the years 2010 through 2013 imports declined significantly from pre-investigation levels.[30] The volume of THFA imported during the 12 months immediately preceding the initiation of the investigation, *i.e.*, the year ending June, 2003, was 257,200 kilograms ("KG").[31] The annual U.S. import volumes of subject merchandise from the PRC for the calendar years 2010 through 2013 were 7,368 KG, 4,448 KG, 3,730 KG, and 5,040 KG, respectively.[32] Thus, the import statistics demonstrate that import volumes of the subject merchandise since the *Continuation Notice* ceased in 2014 and before that were significantly below the import volume in the year immediately preceding the initiation of the investigation.

Based on this analysis, the Department finds that because above *de minimis* dumping margins remain in place for post-order entries of subject merchandise and imports declined significantly and are below pre-initiation levels, and ceased in 2014, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the order were revoked.

2. Magnitude of the Margins Likely to Prevail

PAK's Comments

The Department's *Policy Bulletin* states that the Department normally will select a margin "from the investigation, because that is the only calculated rate that reflects the behavior of exporters ... without the discipline of an order or suspension agreement in place."[33] The Department should provide to the ITC the dumping margin from the original investigation and the *First Sunset*: 136.86 percent, which is the only dumping margin available.[34]

[26] *See Stainless Steel Bar*, 72 FR 56985 and accompanying IDM at Comment 1.
[27] *See AD Initiation Notice.*
[28] *See Continuation Notice.*
[29] The Tariff and Trade DataWeb is available at http://dataweb.usitc.gov/.
[30] *See* Attachment and PAK's Response.
[31] *See* Attachment.
[32] *See id*
[33] *See* PAK's Response at 5, citing "*Policies Regarding the Conduct of Five-year ("Sunset") Reviews,*" 63 FR 18871, 18873 (April 16, 1998) ("Policy Bulletin") (quoting the SAA at 890).
[34] *See id.* at 7, citing *Order*, 69 FR at 47912 and *First Sunset*, 74 FR at 57290.

Department's Position:

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Normally, the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.[35] Furthermore, pursuant to section 752(c)(4)(A), a dumping margin of "zero or *de minimis* shall not by itself require" that the Department determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at less than fair value. The Department finds that the margin calculated in the original investigation is the best indication of the margins likely to prevail if the order were revoked, because it is the only calculated rate without the discipline of an order in place.

Because all of the comparison results for Qingdao Wenkem (F.T.Z.) Trading Co., Ltd.'s ("Wenkem") calculated margins were positive,[36] none of the margins were affected by zeroing. Also, the rate for the PRC-wide entity was based on the margin for Wenkem, and thus, is likewise not affected by zeroing.

Therefore, consistent with section 752(c)(3) of the Act, the Department will report to the ITC that the magnitude of the margin of dumping likely to prevail would be weighted average margins up to 136.86 percent (*i.e.*, the margin assigned to Wenkem and the PRC-wide entity in the original investigation).[37]

Final Results of Review

We determine that revocation of the AD *Order* on THFA from the PRC would be likely lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be weighted average margins up to 136.86 percent.

[35] *See* SAA at 890; *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.
[36] *See* Memorandum to the File, "Tetrahydrofurfuryl Alcohol ("THFA") from the People's Republic of China: 2014 Sunset Review: Placing Analysis Memorandum's from the Investigation on the Record of the Instant Review," dated concurrently with this memo at Attachment.
[37] *See Final Determination.*

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register* and notify the ITC of our determination.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

3 MARCH 2015
(Date)

Attachment

293213: First Unit of Quantity by Country Name and First Unit of Quantity for ALL Countries

U.S. Imports for Consumption

Annual + Year-To-Date Data from Jan - Dec

[redacted]

Country	HTS Number	2010	2011	2012	2013	2014	2013 YTD	2014 YTD	Percent Change YTD2013 - YTD2014
		In Actual Units of Quantity							
First Unit of Quantity where quantities are collected in kilograms									
Argentina	293213	212,600	265,200	42,000	168,000	0	168,000	0	-100.00%
Belgium	293213	6,400,674	10,272,094	3,864,128	7,610,779	9,321,583	7,610,779	9,321,583	22.50%
Brazil	293213	0	0	0	3,611	2,640	3,611	2,640	-26.90%
Canada	293213	176,904	107,465	249,226	338,808	653,338	338,808	653,338	92.80%
China	293213	7,368	4,448	3,730	5,040	0	5,040	0	-100.00%
Dominican Rep	293213	0	0	0	2,769,837	4,762,899	2,769,837	4,762,899	72.00%
Germany	293213	2,352	0	0	0	0	0	0	N/A
Netherlands	293213	0	172,800	172,800	19,200	19,200	19,200	19,200	0.00%
South Africa	293213	6,659,792	681,417	2,963,232	1,369,974	1,349,470	1,369,974	1,349,470	-1.50%
Switzerland	293213	100	250	150	150	100	150	100	-33.30%
Thailand	293213	0	39,400	1,382,320	118,220	52,040	118,220	52,040	-56.00%
United Kingdom	293213	0	156	0	0	0	0	0	N/A
Subtotal kilograms		13,459,790	11,543,230	8,677,586	12,403,619	16,161,270	12,403,619	16,161,270	30.30%

293213: CONS_COST_INS_FREIGHT by Country Name and First Unit of Quantity for ALL Countries

U.S. Imports for Consumption

Annual + Year-To-Date Data from Jan - Dec

[redacted]

Country	HTS Number	2010	2011	2012	2013	2014	2013 YTD	2014 YTD	Percent Change YTD2013 - YTD2014
		In Actual Dollars							
CONS_COST_INS_FREIGHT where quantities are collected in kilograms									
Argentina	293213	644,302	794,198	84,000	310,700	0	310,700	0	-100.00%
Belgium	293213	8,819,086	16,080,968	5,071,102	8,908,421	10,723,753	8,908,421	10,723,753	20.40%
Brazil	293213	0	0	0	15,420	15,291	15,420	15,291	-0.80%
Canada	293213	378,083	324,404	661,237	723,817	1,359,462	723,817	1,359,462	87.80%
China	293213	52,567	45,202	28,043	21,320	0	21,320	0	-100.00%
Dominican Rep	293213	0	0	0	2,024,158	3,419,380	2,024,158	3,419,380	68.90%
Germany	293213	43,552	0	0	0	0	0	0	N/A
Netherlands	293213	0	588,763	603,480	67,820	55,492	67,820	55,492	-18.20%
South Africa	293213	8,213,097	1,290,661	5,294,196	2,132,526	2,247,526	2,132,526	2,247,526	5.40%
Switzerland	293213	2,495	11,231	6,440	6,496	9,009	6,496	9,009	38.70%
Thailand	293213	0	90,494	3,614,272	255,105	128,084	255,105	128,084	-49.80%
United Kingdom	293213	0	5,240	0	0	0	0	0	N/A
Subtotal kilograms		18,153,182	19,231,161	15,362,770	14,465,783	17,957,997	14,465,783	17,957,997	24.10%
Total		**18,153,182**	**19,231,161**	**15,362,770**	**14,465,783**	**17,957,997**	**14,465,783**	**17,957,997**	**24.10%**

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.

HTS - 293213: FURFURYL ALCOHOL AND TETRAHYDROFURFURYL ALCOHOL
First Unit of Quantity by Country Name, HTS Number and First Unit of Quantity for China

U.S. Imports for Consumption

Monthly data for 2002

[redacted]

Country	HTS Number	Quantity Description	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
			In Actual Units of Quantity											
China	293213	kilograms	0	35,840	55,220	15,840	40,480	42,220	15,840	15,840	15,840	15,840	15,840	15,840

HTS - 293213: FURFURYL ALCOHOL AND TETRAHYDROFURFURYL ALCOHOL
First Unit of Quantity by Country Name, HTS Number and First Unit of Quantity for China

U.S. Imports for Consumption

Monthly data for 2003

[redacted]

Country	HTS Number	Quantity Description	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
			In Actual Units of Quantity											
China	293213	kilograms	31,680	51,280	31,680	15,840	15,840	15,840	31,680	31,680	15,840	0	0	0

Jul-02	15,840
Aug-02	15,840
Sep-02	15,840
Oct-02	15,840
Nov-02	15,840
Dec-02	15,840
Jan-03	31,680
Feb-03	51,280
Mar-03	31,680
Apr-03	15,840
May-03	15,840
Jun-03	15,840
TOTAL July 2002 - June 2003	257,200

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.