A-570-002
Sunset Review
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DATE July 29, 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 Expedited Sunset Review of the Antidumping Duty Order on Chloropicrin from the People's Republic of China

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Summary

In the fourth sunset review of the antidumping duty (AD) order on chloropicrin from the People's Republic of China ("PRC"), Ashta Chemicals Inc., Niklor Chemical Company, and Trinity Manufacturing, Inc. (collectively, "domestic interested parties"), U.S. producers or wholesalers of chloropicrin, have submitted an adequate and timely notice of intent to participate as well as a substantive response. No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review. In accordance with our analysis of the domestic interested parties' adequate substantive response, we recommend that you approve the positions described in the instant memorandum. The following is a complete list of issues in the instant sunset review for which we received a substantive response:

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

Background

On March 22, 1984, the Department of Commerce (the "Department") published an antidumping duty order on imports of chloropicrin from the PRC.[1] The calculated dumping margins set forth in the *Order* are 58 percent for China National Chemicals Import and Export Corporation ("SINOCHEM"); and a PRC-Wide rate of 58 percent. There has been one administrative review

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[1] *See Antidumping Duty Order: Chloropicrin from the People's Republic of China*, 47 FR 10691 (March 22, 1984) ("*Order*").

since issuance of the *Order*.[2] The Department has not conducted any other reviews (*e.g.*, new shipper reviews, changed circumstances reviews), other than sunset reviews, or made any duty absorption findings or scope rulings in this proceeding. The Department conducted three previous sunset reviews of the *Order*, published on March 9, 1999;[3] July 6, 2004;[4] and November 6, 2009.[5]

On April 1, 2015, the Department initiated the fourth sunset review of the *Order* pursuant to section 751(c) of the Tariff Act of 1930, as amended ("Act").[6] On April 15 2015, the Department received a timely notice of intent to participate in the sunset review from the domestic interested parties, pursuant to 19 CFR 351.218(d)(1)(i).[7] In accordance with 19 CFR 351.218(d)(1)(ii)(A), the domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers of the domestic like product. On May 1, 2015, the domestic interested parties filed a substantive response in the sunset review within the 30-day deadline, as specified in 19 CFR 351.218(d)(3)(i).[8] The Department did not receive a substantive response from any respondent interested party in the sunset review. Based on the lack of a response in the sunset review from any respondent party, the Department is conducting an expedited (120-day) sunset review consistent with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).[9] Our analysis of the domestic interested parties' comments submitted in their substantive response is set forth in the "Analysis" section, *infra*.

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[2] The dumping margins in the first administrative review of the *Order* (the one known exporter did not participate in the review) are 58 percent for both SINOCHEM and SINOCHEM/William Hunt & Co. (International) Ltd. (Hong Kong). *See Chloropicrin From the People's Republic of China: Final Results of Administrative Review of Antidumping Duty Order*, 50 FR 2844 (January 22, 1985) ("AR1").

[3] *See Final Results of Expedited Sunset Review: Chloropicrin from the People's Republic of China*, 64 FR 11440 (March 9, 1999) ("1999 Sunset Review"). Based on the findings in the first sunset review, the Department continued the antidumping duty order on chloropicrin from the PRC on August 5, 1999. *See Continuation of Antidumping Duty Order: Chloropicrin From the People's Republic of China*, 64 FR 42655 (August 5, 1999).

[4] *See Chloropicrin From the People's Republic of China; Final Results of the Expedited Sunset Review of Antidumping Duty Order*, 69 FR 40601 (July 6, 2004) and the accompanying Issues and Decision Memorandum ("2004 Sunset Review"). Based on findings in the second sunset review, the Department continued the antidumping order on chloropicrin from the PRC on August 23, 2004. *See Continuation of Antidumping Duty Order: Chloropicrin From the People's Republic of China*, 69 FR 51811 (August 23, 2004).

[5] *See Chloropicrin From the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 74 FR 57450 (November 6, 2009) and the accompanying Issues and Decision Memorandum ("2009 Sunset Review"). Based on findings in the third sunset review, the Department continued the antidumping order on chloropicrin from the PRC on May 18, 2010. *See Chloropicrin from the People's Republic of China: Notice of Continuation of Antidumping Duty Order*, 75 FR 27704 (May 18, 2010).

[6] *See Initiation of Five-year ("Sunset") Review*, 80 FR 17388 (April 1, 2015) ("Sunset Initiation").

[7] *See* Letter from domestic interested parties "Re: Fourth Five-Year (Sunset) Review of Antidumping Duty Order on Chloropicrin from the People's Republic of China: Notice of Intent to Participate dated April 15, 2015.

[8] *See* Letter from domestic interested parties "Re: Five-Year ("Sunset") Review of Chloropicrin from China: Substantive Response of Domestic Interested Parties" dated May 1, 2015.

[9] *See* Procedures from Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 70 FR 62061(October 28, 2005) (the Department normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response).

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 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.

Consistent with guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, the Statement of Administrative Action, SAA, H.R. Rep. No. 103-316, Vol. 1 (1994) ("SAA");[10] House Report, H. Rep. No. 103-826, pt. 1 (1994) ("House Report");[11] and Senate Report, S. Rep. No. 103-412 (1994)("Senate Report")), the Department will make its likelihood determination on an order-wide, rather than company-specific, basis.[12] The Department normally determines that revocation of an AD 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 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.[13] 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.[14] In addition, as a base 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 the comparison.[15]

Furthermore, when analyzing import volumes for second and subsequent sunset reviews, the Department'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.[16] Further, section 752(c)(3) of the Act states that the Department shall provide to the U.S. International Trade Commission ("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 investigation, as this is the only calculated rate that reflects the behavior of

[10] Reprinted at 1994 U.S.C.C.A.N. 4040.
[11] Reprinted at 1994 U.S.C.C.A.N. 3773.
[12] *See* SAA at 879, and House Report at 56.
[13] *See* SAA at 889-90, House Report at 63-64, and Senate Report at 52.
[14] *See* SAA at 889-90, and House Report at 63.
[15] *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.
[16] *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 Issues and Decision Memorandum.

exporters without the discipline of an order in place.[17] 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").[18] 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.[19]

In the *Final Modification for Reviews*, the Department announced that in five-year (*i.e.*, sunset) reviews, 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, *i.e.* zeroing/the denial of offsets.[20] 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."[21] 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.[22]

Below we address the comments submitted by the domestic interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

<u>Domestic Interested Parties' Comments</u>

- Revocation of the *Order* would likely result in a continuation or recurrence of dumping in the United States of substantial quantities of chloropicrin from the PRC at prices substantially below fair value.
- In the *2009 Sunset Review*, the Department noted that in its original investigation in this proceeding it found that Chinese producers and exporters were selling the subject merchandise at less than fair value in the United States at a dumping margin greater than *de minimis*.[23] Since the issuance of the *Order*, the Department conducted one administrative review and found that dumping continued above *de minimis* levels.[24]

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[17] *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 Issues and Decision Memorandum at Comment 2.
[18] *See* SAA at 890-91.
[19] *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) ("*Folding Gift Boxes*") and accompanying Issues and Decision Memorandum at Comment 1.
[20] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8109 (February 14, 2012) ("*Final Modification for Reviews*").
[21] *Id.* (emphasis added); *see also* 19 CFR 351.218(e)(2).
[22] *Id.*
[23] *See 2009 Sunset Review*.
[24] *Id.*

- As discussed in section II.A.3 of the *Sunset Policy Bulletin* and the *SAA* at 890, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were revoked.
- Since the *2009 Sunset Review*, there have been a negligible volume of imports under Harmonized Tariff Schedule ("HTSUS") 2904.90.5005, the HTSUS provision for chloropicrin.
- Given the existence of dumping margins in the original investigation and subsequent review and the decline of import volumes after the issuance of the *Order*, the Department should determine that dumping would be likely to continue or recur if the AD order on chloropicrin from the PRC were revoked as a result of the current Sunset Review.
- The Department also made an affirmative likelihood determination in all other prior sunset reviews.

Department Position

As explained in the "Legal Framework" section above, the Department's determination concerning whether revocation of an AD order would be likely to lead to continuation or recurrence of dumping is based, in part, upon guidance provided by the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, the SAA; House Report; and Senate Report). Consistent with the SAA and House Report, the Department will make its likelihood determination on an order-wide basis.[25] Further, 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 AD order. Thus, one consideration is whether the Department continued to find dumping above *de minimis* levels in administrative reviews subsequent to imposition of the AD order.[26] According to the SAA and the House Report, "if 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."[27] For the reasons discussed below, we find that revocation of the *Order* would be likely to result in the continuation or recurrence of dumping in the United States.

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and subsequent reviews. In both the investigation and *AR1* the Department found dumping margins of 58 percent. Thus, all dumping margins determined in this proceeding have been above *de minimis* levels.[28]

In addition, pursuant to section 752(c)(1)(B) of the Act, the Department also considered the volume of imports of the subject merchandise in determining whether revocation of the AD order would be likely to lead to continuation or recurrence of dumping. As noted above, when

[25] *See* SAA at 879 and House Report at 56.
[26] *Id.* at 890.
[27] *Id.*; *see also* House Report at 63-64.
[28] *See Order* and *AR1*.

analyzing import volumes for second and subsequent sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation (*i.e.*, 1982 for this sunset review) to import volumes since the issuance of the last continuation notice. The last continuation notice for this sunset review was issued in May 2010.[29]

Import volumes of chloropicrin into the United States from the PRC under the HTSUS number listed in the most recent scope of the *Order* (2904.90.50.05) in the period since the issuance of the last continuation notice for the *Order* were significantly lower than import volumes in the year immediately preceding the initiation of the investigation (*i.e.*, 1982) and remain below pre-investigation levels. Specifically, since the last sunset review (*i.e.*, during calendar years 2010 through 2014) there were no U.S. imports of chloropicrin from the PRC other than in 2012, which had imports that amounted to no more than 0.22 percent of the total volume of U.S. imports during calendar year 1982.[30] As noted above, the SAA explained that the Department normally determines that revocation of an AD order would be likely to lead to continuation or recurrence of dumping when, among other things, imports of the subject merchandise ceased after issuance of the order. While imports of chloropicrin from the PRC have not ceased, record evidence shows significantly lower imports over the five-year period examined when compared to pre-initiation import volumes. This indicates that PRC exporters may not be able to maintain pre-investigation import levels without selling merchandise at dumped prices.[31]

Therefore, pursuant to section 752(c)(1) of the Act, because above *de minimis* dumping margins applied to post-order entries of subject merchandise, and the Department found dramatically lower import volumes in the five years examined in comparison to the import volumes prior to the initiation, we find that dumping would be likely to continue or recur if the *Order* were revoked.

2. Magnitude of the Dumping Margin Likely to Prevail

Domestic Interested Parties' Comments

- The Department should provide to the ITC the dumping margin the Department found in the investigation and reported to the ITC in each of the prior sunset reviews, 58 percent.

Department 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 that is likely to prevail if the order is revoked or the suspended investigation is terminated." Normally, the Department will provide to the ITC the

[29]*See Chloropicrin from the People's Republic of China: Notice of Continuation of Antidumping Duty Order*, 75 FR 27704 (May 18, 2010).

[30] The Department stated in the 1999 Sunset Review that "{i}n 1982, exports of the subject merchandise to the United States exceeded 1.25 million kilograms … ."

[31] *See, e.g.*, *Certain Activated Carbon From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 77 FR 33420 (June 6, 2012), and accompanying Issues & Decision Memorandum at Comment 1.

weighted-average dumping margin for each company from the investigation.[32] 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 manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.[33] Under certain circumstances, however, the Department may select a more recently calculated rate to report to the ITC. The Department will normally provide a rate based on the "All-Others" rate from the investigation for companies not individually investigated or for companies that did not begin shipping until after the order was issued. 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.[34] As indicated in the "Legal Framework" portion of this memorandum, the Department's practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology that was modified in the *Final Modification for Reviews*.

We determine that the weighted-average AD margins established in the investigation represent the margins of dumping most likely to prevail if the *Order* were revoked because these are the margins calculated without the discipline of an order. We further determine that these margins were not affected by the denial of offsets in accordance with the *Final Modification for Reviews*.[35] Specifically, the dumping margin determined in the investigation for the mandatory respondent China National Chemicals Import and Export Corporation (SINOCHEM) is a margin where no offsets were denied because all comparison results were positive.[36] Furthermore, in the investigation, the Department used the rate calculated for China National Chemicals Import and Export Corporation (SINOCHEM) as the PRC-wide rate. Accordingly, we find it appropriate to provide the ITC with the dumping margins from the investigation because these dumping margins best reflect the behavior of exporters without the discipline of an order. As a result, the Department will report to the ITC the range of 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 chloropicrin from the PRC would likely lead to continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail would be weighted-average margins up to 58 percent.

[32] *See Eveready Battery Co. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999).
[33] *See* SAA at 890.
[34] *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).
[35] *See Final Modification for Reviews*, 77 FR at 8103.
[36] *See Final Determination of Sales at Less Than Fair: Chloropicrin From the People's Republic of China*, 49 FR 5982 (February 16, 1984) (noting that "{w}e found that the foreign market value of chloropicrin from the PRC exceeded the United States price on 100 percent of sales. These margins ranged from 38 percent to 63 percent. The overall weighted-average margin on all sales compared is 58 percent ad valorem.").

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 expedited sunset review in the *Federal Register* and notify the ITC of the Department's determination.

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Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 JULY 2015
(Date)