A-570-001
Sunset Review
Public Document
E&C/V: OQ

December 30, 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 Fourth Sunset Review of the Antidumping Duty Order on Potassium Permanganate from the People's Republic of China

---

Summary

In the fourth sunset review of the antidumping duty ("AD") order on potassium permanganate from the People's Republic of China ("PRC"), Carus Corporation ("Carus"), an interested party under section 771(9)(C) of the Tariff Act of 1930, as amended (the "Act"), submitted an adequate and timely notice of intent to participate as well as a substantive response.[1] No respondent submitted a substantive response. In accordance with our analysis of the administrative record, we recommend adopting the positions described in this memorandum.

Background

On September 1, 2015, the Department of Commerce ("Department") published a notice of initiation of the sunset review of the antidumping duty order on potassium permanganate from the PRC.[2] On September 9, 2015, Carus submitted its notice of intent to participate in this sunset review.[3] On September 29, 2015, Carus submitted its Substantive Response within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). 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 Act, and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted an expedited (120-day) sunset review of the antidumping duty order on potassium permanganate from the PRC.

---

[1] *See* Substantive Response to Notice of Initiation (September 29, 2015) ("Substantive Response").
[2] *See Initiation of Five-Year ("Sunset") Review*, 80 FR 52743 (September 1, 2015).
[3] *See* Letter from the domestic interested party (September 9, 2015).

Scope of the Order

Imports covered by this order are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. Potassium permanganate is currently classifiable under item 2841.61.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS item number is provided for convenience and customs purposes, the written description of the merchandise remains dispositive.

History of the Order

The Department published in the *Federal Register* its final determination in the original investigation that imports of potassium permanganate from the PRC were being sold in the United States at less-than-fair-value ("LTFV").[4] The antidumping duty order on potassium permanganate from the PRC was published on January 31, 1984.[5] In the antidumping duty order, the Department reported a weighted-average dumping margin of 39.63 percent for China National Chemicals Import and Export Corporation ("SINOCHEM"), and an "all others" rate of 39.63 percent. Furthermore, the Department "found that the foreign market value of potassium permanganate from the PRC exceeded the United States price on 100 percent of sales,"[6] and, thus, all sales by SINOCHEM during the period of investigation were at less than fair value.

The Department conducted two administrative reviews following the imposition of the order.[7] In the first administrative review, the Department assigned a margin of 128.94 to certain of the reviewed producers or exporters.[8] Three resellers retained the "all other" rate of 39.63 percent from the original investigation.[9] In the second administrative review, the Department determined a margin of 128.94 existed for all producers, exporters and resellers.[10]

On November 2, 1998, the Department initiated its first sunset review of the antidumping duty order on potassium permanganate from the PRC, pursuant to section 751(c) of the Act.[11] In the final results of the *First Sunset Review*, the Department determined that revocation of the order would be likely to lead to continuation or recurrence of dumping.[12] As a result of the Department's and the ITC's[13] affirmative determinations, on November 24, 1999, the

[4] *See Final Determination of Sales at Less Than Fair Value; Potassium Permanganate from the People's Republic of China*, 48 FR 57347 (December 29, 1983) ("*LTFV Final Determination*").
[5] *See Antidumping Duty Order; Potassium Permanganate from the People's Republic of China*, 49 FR 3897 (January 31, 1984).
[6] *See LTFV Final Determination.*
[7] *See Final Results of Antidumping Duty Administrative Review; Potassium Permanganate from the People's Republic of China*, 56 FR 19640 (April 29, 1991) ("*1st AR Potassium Permanganate from PRC Final Results*"), and *Potassium Permanganate from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 59 FR 26625 (May 23, 1994) ("*2nd AR Potassium Permanganate from PRC Final Results*").
[8] *See 1st AR Potassium Permanganate from PRC Final Results*, 56 FR at 19640.
[9] *Id.*
[10] *See 2nd AR Potassium Permanganate from PRC Final Results*, 59 FR at 26625 .
[11] *See Initiation of Five-Year ("Sunset") Review*, 63 FR 58709 (November 2, 1998).
[12] *See Final Results of Expedited Sunset Review*, 64 FR 16907 (April 7, 1999)("*First Sunset Review*").
[13] *See Potassium Permanganate from China and Spain Determinations*, 64 FR 60225 (November 4, 1999).

Department published a notice of continuation of the order.[14]

After the *First Sunset Review*, the Department conducted an additional two administrative reviews, in which the Department found that dumping continued and assigned margins to the reviewed companies of 107.32 percent[15] and 128.94 percent respectively.[16] In addition, the Department conducted a new shipper review.[17]

On October 1, 2004, the Department initiated the second sunset review of the antidumping duty order of potassium permanganate from the PRC pursuant to section 751(c) of the Act.[18] On the basis of the notice of intent to participate, and an adequate substantive response filed on behalf of the domestic interested parties and an inadequate response from respondent interested parties, the Department conducted an expedited sunset review. In the final results of the *Second Sunset Review*, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping.[19] As a result of the Department's and the ITC's[20] affirmative determinations, on June 21, 2005, the Department published a notice of continuation of the order.[21] The Department conducted no administrative or new shipper reviews in the five year period following the issuance of the final results of the *Second Sunset Review*.

On May 3, 2010, the Department published the notice of initiation of the third sunset review of the antidumping duty order on potassium permanganate from the PRC pursuant to section 751(c) of the Act.[22] In the final results of the *Third Sunset Review*, the Department determined that revocation of the antidumping duty order on potassium permanganate from the PRC would likely lead to a continuation or recurrence of dumping.[23] As a result of the Department's and the ITC's[24] affirmative determinations, on October 25, 2010, the Department published a notice of continuation of the order.[25]

Recent Administrative Reviews

After the *Third Sunset Review*, the Department completed an administrative review for the period January 1, 2013 through December 1, 2013, in which it concluded that the only exporter under

---

[14] *See Continuation of Antidumping Duty Order; Potassium Permanganate from the People's Republic of China*, 64 FR 66166 (November 24, 1999).

[15] *See Potassium Permanganate from the People's Republic of China, Final Results of Antidumping Duty Administrative Review*, 66 FR 46775 (September 7, 2001).

[16] *See Potassium Permanganate from the People's Republic of China, Final Results of Antidumping Duty Administrative Review*, 68 FR 51765 (August 28, 2003).

[17] *See Potassium Permanganate from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review*, 67 FR 38254 (June 3, 2002).

[18] *See Initiation of Five-Year Sunset Review*, 69 FR 58890 (October 1, 2004).

[19] *See Final Results of Expedited Sunset Review*, 70 FR 24520 (May 10, 2005) ("*Second Sunset Review*").

[20] *See Potassium Permanganate from China Determination*, 70 FR 32372 (June 2, 2005).

[21] *See Continuation of Antidumping Duty Order; Potassium Permanganate from the People's Republic of China*, 70 FR 35630 (June 21, 2005).

[22] *See Initiation of Five-Year ("Sunset") Review*, 75 FR 23240 (May 3, 2010).

[23] *See Final Results of Expedited Sunset Review*, 75 FR 52509 (August 26, 2010) ("*Third Sunset Review*").

[24] *See Potassium Permanganate from China Determination*, 75 FR 63865 (October 18, 2010).

[25] *See Continuation of Antidumping Duty Order; Potassium Permanganate from the People's Republic of China*, 75 FR 65448 (October 25, 2010).

review had no entries of subject merchandise during the period of review.[26] The Department is currently conducting an administrative review of the period January 1, 2014 through December 1, 2014.[27]

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c)(i)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider 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 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"),[28] the House Report, H. Rep. No. 103-826, pt. 1 (1994) ("House Report"),[29] 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.[30] In addition, 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 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.[31] Alternatively, the Department may determine that revocation of an AD 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.[32] 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 distort import volumes, and thus, skew the comparison.[33] Also, when analyzing import volumes for second and subsequent sunset reviews, the Department's practice is to compare import volumes during the year

[26] *See Potassium Permanganate from the People's Republic of China, Final Results of Antidumping Duty Administrative Review*, 80 FR 50264, 50265 (August 19, 2015).
[27] *See Initiation of Antidumping and Countervailing Duty Administrative Review*, 80 FR 11116 (March 2, 2015).
[28] Reprinted in 1994 U.S.C.C.A.N. 4040 (1994).
[29] Reprinted in 1994 U.S.C.C.A.N. 3773 (1994).
[30] *See* SAA at 879, and House Report at 56.
[31] *See* SAA at 889-90, House Report at 63-64, and Senate Report at 52.
[32] *See* SAA at 889-90, and House Report at 63.
[33] *See, e.g., Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 79 FR 26208 (May 7, 2014) and accompanying Issues and Decision Memorandum at 8; *see also 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.

preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.[34]

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 dumping margins from the final determination in the original investigation, as these are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.[35] 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."[36]).

In 2012, the Department 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 (*i.e.*, zeroing) found to be World Trade Organization ("WTO")-inconsistent.[37] 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.[38] The Department further stated that apart from the "most extraordinary circumstances," it did not anticipate needing to recalculate dumping margins in the vast majority of future sunset determinations and, instead 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."[39]

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 LTFV.[40] Our analysis of the Petitioner's comments follows.

---

[34] *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.

[35] *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.

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

[37] *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*").

[38] *Id.*

[39] *Id.*

[40] *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.

1. *Likelihood of Continuation or Recurrence of Dumping*

Petitioner's Comment

Carus asserts that it is likely that dumping would continue or recur if the order on potassium permanganate from the PRC were revoked.[41] Carus argues that dumping margins increased from 39.64 percent, the investigation rate, to a 128.94 percent rate in a subsequent administrative review.[42] Carus maintains that continued dumping during the first several years that a discipline was in place is compelling evidence that PRC exporters would continue dumping if the order were to be removed. Carus also asserts that the substantial spike in PRC imports during the 2001-2002 period in which one Chinese exporter, Groupstars, was able to enter large quantities of potassium permanganate by posting bonds during the pendency of its new shipper review, indicates that PRC producers retain the ability to absorb duties below the 128.94 percent rate.[43] In addition, Carus argues that the behavior of Chinese exporters continues to demonstrate that a margin of dumping of at least 128.94 percent would prevail if the order were revoked. Specifically, Carus states that "the absence of PRC-origin imports into the U.S. market for the past 12 years and for much of the prior five years demonstrates that Chinese exporters continue to be unable and unwilling to absorb this high margin."[44]

Department's Position: As explained 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.[45] 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. For the reasons discussed below, we find that revocation of the order would be likely to lead to the continuation or recurrence of dumping in the United States.

In the final determination of the investigation, the Department found that imports of potassium permanganate from the PRC were being sold in the United States at LTFV.[46] Since the issuance of the antidumping duty order, PRC exporters continued dumping at levels above *de minimis*. As noted above, through the process of administrative reviews, the Department established higher weighted-average dumping margins compared to the rates found in the LTFV

[41] *See* Substantive Response at 3-4.
[42] *Id.* at 4-6.
[43] Groupstars' status as a new shipper enabled its affiliated importer to secure its estimated duties by posting bonds under 19 USC l675(a)(2)(B)(iii). *Id*. Before the regulation was changed, it was possible to obtain single entry bonds for new shipper imports for a fraction of the cost of the required duty deposit requirement. *Id*.
[44] *Id*.
[45] *See* SAA at 879, and House Report at 56.
[46] *See Final Determination of Sales at Less Than Fair Value; Potassium Permanganate from the People's Republic of China*, 48 FR 57347 (December 29, 1983).

investigation.[47] In subsequent administrative reviews of this order, the Department found that dumping continued at rates ranging from 107.32 percent to 128.94 percent.[48] The Department did not conduct an administrative review between 2003 and 2013, and in the 2013 administrative review there were no suspended AD/CVD entries for the exporter under review.

It is the Department's practice to compare the volume of imports for the one-year period preceding the initiation of the investigation to the volume of imports during the period of this sunset review. Since the issuance of the order, import volumes of potassium permanganate from the PRC into the United States have decreased and remain below pre-investigation levels. Specifically, the volume of imports for 1982, the year prior to the investigation, was 266 metric tons ("mt").[49] The total volume of imports for the entire sunset period, 2010 through 2014, was 7.2 mt.[50] Official import statistics show that from 2010 through 2014, imports of subject merchandise from the PRC remained below pre-initiation levels with periods of no shipments.[51] Thus, record evidence shows that the imports are significantly lower in the last five years, with periods of no shipments, when compared to pre-initiation import volumes.

The Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Cash deposit rates above the *de minimis* level continue in effect for exports of the subject merchandise by all known PRC exporters. Because dumping has continued with the antidumping duty order in place, and because imports of subject merchandise were significantly lower in the last five years with periods of no shipments when compared to pre-initiation import volumes, the Department determines that dumping is likely to continue or recur if the AD order were to be revoked.

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

Petitioner's Comment

Carus suggests that the Department report to the ITC a rate of 128.94 percent. Carus argues that the history of margins of dumping and imports under this order, in addition to PRC exporters' behavior during the past twelve years, as well as much of the five years prior, demonstrate this is the margin of dumping likely to prevail if the order were revoked. This margin of dumping is also the rate reported to the ITC in the final results of the *First Sunset Review*, *Second Sunset Review* and *Third Sunset Review*. .[52]

Department's Position: Section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin of dumping that is likely to prevail if the order is to be revoked. The Department normally will select rates from the investigation because those rates are the only calculated margins of dumping that reflect the behavior of exporters without the

---

[47] *See 1st AR Potassium Permanganate from PRC Final Results*, 56 FR at 19640, and *2nd AR Potassium Permanganate from PRC Final Results*, 59 FR at 26625 .
[48] *Id.*
[49] *See* Substantive Response at Attachment 15.
[50] *Id.* at Attachment 1.
[51] *Id*. at Attachments 1 and 15.
[52] *Id.* at 5-6.

discipline of an order.[53] However, in certain instances the Department may report to the ITC a more recently calculated rate.

In this instance, we find it appropriate to report a more recently calculated rate to the ITC. In the first sunset review of the order, in explaining the margin of dumping to report to the ITC, we stated "[t]he Department believes that the increase in import volumes and market share between the imposition of the order and the Final Results in the 1989 administrative review reflect the willingness and ability of Chinese producers/exporters to dump this product despite the margin rate established by the Department in the original investigation. Furthermore, the continuation of dumping and the virtual recapture of market share between the final results in the 1989 review and those in the 1990 review reflects attempts by Chinese producers/exporters to circumvent the order by transshipping the subject merchandise through third country resellers with lower deposit rates. This is evidenced by the dramatic reduction in import volumes following the 1990 administrative review (59 FR 26625, May 23, 1994) in which a single rate was established for all potassium permanganate of Chinese origin, regardless of the interim shipping location, absent a showing that either the Chinese exporter was entitled to a separate rate or the third country reseller was not merely engaged in transshipment. This more inclusive margin determination has apparently reduced the ability of Chinese producers/exporters to circumvent the order."[54] We went on to note that this more recently calculated rate is, therefore, more probative of the behavior Chinese exporters.[55] Therefore, in this proceeding, where the Department has reported a more recent margin of 128.94 percent to the ITC in in the *First Sunset Review*, *Second Sunset Review* and *Third Sunset Review*, we find it appropriate to continue to report the rate of 128.94 percent to the ITC as the magnitude of the margins of dumping likely to prevail if the AD order were to be revoked.[56]

In this sunset review, the Department has relied on weighted-average dumping margins that were not affected by the methodology (*i.e.*, zeroing) addressed in the *Final Modification for Reviews*.[57] The 128.94 percent was determined in the 1990 administrative review, based on the "best information available" provision in the statute. Respondents refused to participate in that review, so the Department relied on Carus's submissions in the review (dated 8/27/90 and 12/10/90) as the best information available.[58] The Department explained in the preliminary results of that review that the United States' price was based on a single resale price provided by Carus,[59] which therefore indicates that the Department's positive dumping margin calculation was not impacted by zeroing.

Therefore, we determine that the more recently calculated rate of 128.94 percent will reflect the behavior of PRC exporters without the discipline of the antidumping duty order. Pursuant to

---

[53] *See* SAA at 890, and the House Report at 64.
[54] *See First Sunset Review*, at 64 FR 16907, 16910.
[55] *Id*.
[56] *See First Sunset Review*, 64 FR 16907, 16910; *Second Sunset Review*, 70 FR 24520; and *Third Sunset Review*, 75 FR 52509, 52510 (August 26, 2010).
[57] *See Final Modification for Reviews*, 77 FR 8101, 8103. *See also Potassium Permanganate from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 55 FR 53581 (December 31, 1990), unchanged in 1st AR *Potassium Permanganate from PRC Final Results*, 56 FR at 19640.
[58] *See 2nd AR Potassium Permanganate from PRC Final Results*, 59 FR at 26625.

section 752(c) of the Act, the Department will report to the ITC this margin of dumping as indicated in the final results of review of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be up to 128.94 percent.

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the *Federal Register*.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

30 DECEMBER 2015
(Date)