A-570-908
Sunset Review
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DATE: September 28, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Second Expedited Sunset Review of the Antidumping Duty Order on Sodium Hexametaphosphate from the People's Republic of China

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I. Summary

We analyzed the substantive response of the participating domestic interested parties in the second sunset review of the antidumping duty (AD) order covering sodium hexametaphosphate from the People's Republic of China (China). No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review of this order. We recommend that you approve the positions we describe in the Discussion of the Issues section of this memorandum. Below is a complete list of issues in this sunset review for which we received substantive responses:

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

II. Background

On June 1, 2018, the Department of Commerce (Commerce) published the notice of initiation of the second sunset review of the *AD Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[1] On June 8, 2018, Commerce received a timely notice of intent to

[1] *See Initiation of Five-Year (Sunset) Reviews*, 83 FR 25436 (June 1, 2018); *see also Notice of Antidumping Duty Order: Sodium Hexametaphosphate from the People's Republic of China*, 73 FR 14772 (March 19, 2008) (*AD Order*).

participate from two domestic interested parties: ICL Specialty Products, Inc. and Innophos, Inc. (collectively, the Petitioners) within the deadline specified in 19 CFR 351.218(d)(1)(i).[2] The Petitioners claimed interested party status under section 771(9)(C) of the Act, as a manufacturer in the United States of a domestic like product. On July 2, 2018, Commerce received a complete and adequate substantive response from the Petitioners within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[3] Commerce received no substantive responses from respondent interested parties with respect to the *AD Order*. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited sunset review of the *AD Order.*

III. Scope of the Order

The merchandise subject to the order is sodium hexametaphosphate (SHMP). SHMP is a water-soluble polyphosphate glass that consists of a distribution of polyphosphate chain lengths. It is a collection of sodium polyphosphate polymers built on repeating NaPO3 units. SHMP has a P2O5 content from 60 to 71 percent. Alternate names for SHMP include the following: Calgon; Calgon S; Glassy Sodium Phosphate; Sodium Polyphosphate, Glassy; Metaphosphoric Acid; Sodium Salt; Sodium Acid Metaphosphate; Graham's Salt; Sodium Hex; Polyphosphoric Acid, Sodium Salt; Glass H; Hexaphos; Sodaphos; Vitrafos; and BAC-N-FOS. SHMP is typically sold as a white powder or granule (crushed) and may also be sold in the form of sheets (glass) or as a liquid solution. It is imported under heading 2835.39.5000, Harmonized Tariff Schedule of the United States (HTSUS). It may also be imported as a blend or mixture under heading 3824.90.3900, HTSUS. The American Chemical Society, Chemical Abstract Service (CAS) has assigned the name "Polyphosphoric Acid, Sodium Salt" to SHMP. The CAS registry number is 68915-31-1. However, SHMP is commonly identified by CAS No. 10124-56-8 in the market. For purposes of the order, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name.

The product covered by the order includes SHMP in all grades, whether food grade or technical grade. The product covered by the order includes SHMP without regard to chain length i.e., whether regular or long chain. The product covered by the order includes SHMP without regard to physical form, whether glass, sheet, crushed, granule, powder, fines, or other form, and whether or not in solution.

However, the product covered by the order does not include SHMP when imported in a blend with other materials in which the SHMP accounts for less than 50 percent by volume of the finished product.

[2] *See* Petitioners' Letter, "Sodium Hexametaphosphate from China: Notice of Intent to Participate" (June 8, 2018).
[3] *See* Petitioners' Letter, "Sodium Hexametaphosphate (SHMP) from China: Substantive Response to Notice of Initiation of Five-Year (Sunset) Review of Antidumping Order," dated July 2, 2018 (Petitioners' Substantive Response).

IV. History of the Order

On February 4, 2008, Commerce published its final determination in the less than fair value (LTFV) investigation of SHMP from China.[4] On March 19, 2008, Commerce published the order on SHMP from China.[5] In so doing, Commerce 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 Company Limited	92.02
China-Wide Rate	188.05

Since the issuance of the *AD Order*, Commerce has completed three administrative reviews with respect to SHMP from China. In the *First AR*, we calculated a rate of 82.62 percent for the only respondent, Hubei Xingfa Chemical Group Co., Ltd. (Hubei Xingfa).[6] In the *Second AR*, we calculated a rate of 91.23 percent for Hubei Xingfa, which again was the only respondent in that review.[7] In the *Third AR*, we found that there were no shipments of subject merchandise during the period of review for certain exporters under review.[8] Other exporters under review were considered part of the China-wide entity, which received a rate of 188.05 percent.[9] Commerce has conducted one prior sunset review.[10] There are no ongoing or subsequent reviews with respect to the *AD Order*. In addition, there have been no new shipper reviews, scope inquiries, changed circumstances reviews or duty absorption findings.

V. Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce conducted this sunset review to determine whether revocation of the *AD Order* would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, Commerce shall consider 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 after the issuance of the antidumping duty order.

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[4] *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) (*Final Determination*).
[5] *See AD Order*, 73 FR 14772.
[6] *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*).
[7] *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*).
[8] *See Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 18956 (March 28, 2013) (*Third AR*).
[9] *Id*.
[10] *See Sodium Hexametaphosphate from the People's Republic of China: Final Results of Expedited First Sunset Review of the Antidumping Duty Order*, 78 FR 34989 (June 3, 2013).

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action (*SAA*),[11] the House Report,[12] and the Senate Report,[13] Commerce's likelihood determinations will be made on an order-wide, rather than company-specific, basis.[14] In addition, Commerce normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.[15] Alternatively, Commerce 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.[16]

In addition, as a base period of import volume comparison, it is Commerce's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew comparison.[17] Also, when analyzing import volumes for second and subsequent sunset reviews, Commerce's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.[18]

Further, section 752(c)(3) of the Act states that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, Commerce selects the margin 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.[19] 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, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review).[20]

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[11] *See* H.R. Doc. 103-316, vol. 1 (1994) (reprinted in 1994 U.S.C.C.A.N. 4040).
[12] *See* H. Rep. No. 103-826, pt. 1 (1994) (House Report) (reprinted in 1994 U.S.C.C.A.N. 3773).
[13] *See* S. Rep. No. 103-412 (1994) (Senate Report).
[14] *See SAA* at 879 and House Report at 56.
[15] *See SAA* at 889-90, House Report at 63-64, and Senate Report at 52. *See also Policies Regarding the Conduct of Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).
[16] *See SAA* at 889-90; *see also* House Report at 63; *Sunset Policy Bulletin*, 63 FR at 18872.
[17] *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 Section 1.
[18] *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 at 3, 6.
[19] *See SAA* at 890; *Sunset Policy Bulletin* at Section II.B.1. *See also, 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) (*Persulfates from the PRC*), and accompanying Issues and Decision Memorandum at Section 2.
[20] *See SAA* at 890-91; and *Sunset Policy Bulletin* at section II.B.2.

In February 2012, Commerce 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 zeroing methodology.[21] In the *Final Modification for Reviews*, Commerce stated that "only in the most extraordinary circumstances" would it rely on margins other than those calculated and published in prior determinations.[22] Commerce further stated that, apart from the "most extraordinary circumstances," it 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 calculated without zeroing, "such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive."[23]

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require Commerce to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at LTFV.[24]

VI. Discussion of the Issues

1. *Likelihood of Continuation or Recurrence of Dumping*

Petitioners' Comments:

- Revocation of the antidumping order on SHMP from China would be likely to lead to the continuation or recurrence of sales at less than fair value. Revocation would also result in significant increases in the volume of dumped imports.
- Given that the volume of imports dramatically declined after the order was put in place, it follows that but for the antidumping order, Chinese producers would attempt to regain lost market share in the United States by offering SHMP at the same dumped prices as in 2004-2006.
- Finding of no shipments in the third administrative review is consistent with the conclusion that Chinese SHMP would not be sold in the U.S. market at all unless the Chinese producers offer SHMP at less than fair value.

Commerce's Position: As explained above, Commerce's determinations of likelihood are made on an order-wide basis.[25] In addition, Commerce normally will determine that revocation of an

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[21] *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*).
[22] *Id*.
[23] *Id*.
[24] *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 Section 1.
[25] *See SAA* at 879 and House Report at 56.

AD 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 issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.[26]

Additionally, when determining whether revocation of an AD order would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct Commerce 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. 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."[27]

Pursuant to section 752(c)(1)(A) of the Act, Commerce must consider the weighted-average dumping margins determined in the investigation and any subsequent reviews. In this case, Commerce found dumping at above *de minimis* levels in the underlying antidumping duty investigation, with margins ranging from 92.02 percent to 188.05 percent. As discussed above and in the *Final Modification for Reviews*, Commerce has modified its practice in sunset reviews, such that it does not rely on weighted-average dumping margins that are calculated using the zeroing methodology. Commerce announced that its modification to the calculation of weighted-average dumping margins in antidumping duty investigations applied in investigations as of February 22, 2007.[28] Thus, the dumping margins in the original investigation were not affected by a WTO-inconsistent methodology because we issued both the final determination and amended final determination after this change in practice, on February 4, 2008, and March 19, 2008, respectively.[29] Additionally, the final results of all of the administrative reviews in this proceeding, which also found dumping at above *de minimis* levels, were issued after the *Final Modification of Reviews*, and therefore, did not include margins that were calculated using zeroing.[30]

Separately, pursuant to section 752(c)(1)(B) of the Act, Commerce must consider the volume of imports of the subject merchandise for the period before and after the issuance of the *AD Order*. Commerce reviewed the import data on the record. The data demonstrates that imports of SHMP from China declined after the *AD Order* was imposed, in March 2008, and that by 2018 imports were less than one third of pre-order levels. The data was collected by the U.S. Census Bureau

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[26] *See SAA* at 889-90, House Report at 63-64, and Senate Report at 52; *see also Sunset Policy Bulletin*, 63 FR at 18872.

[27] *See SAA* at 889.

[28] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification*, 72 FR 3783 (January 26, 2007); *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006) (*Final Modification of Reviews*).

[29] *See Final Determination*, 73 FR 6479; *AD Order*, 77 FR 14772 (showing issuance date of amended final determination as March 19, 2008).

[30] *See Final Modification of Reviews*, 71 FR at 77722.

and is available through the ITC website.[31] This data is acceptable for our analysis, and Commerce has relied on such information in past proceedings.[32] We find that record evidence shows that the volume of imports of SHMP from China are lower when compared to pre-initiation levels.[33]

Commerce also compared the volume of imports for the one-year period preceding the initiation of the investigation (2006 to 2007) to the volume of imports during the period of this sunset review (2013 to 2018).[34] In comparing these import volumes, we find that import volumes of SHMP from China into the United States during the period of the sunset review declined significantly compared to the period preceding the initiation by less than half.[35] Given that imports continued despite the above *de minimis* dumping margins that remain in effect, pursuant to section 752(c)(1) of the Act, Commerce determines that dumping would likely continue or recur if the *AD Order* were revoked.

2. *Magnitude of the Margins Likely to Prevail*

<u>*Petitioners' Comments:*</u>

- The revocation of the *AD Order* on SHMP from China would likely lead to the continuation or recurrence of dumping of Chinese merchandise in the U.S. market, at margins at least equal to those found in the original investigation.[36]
- The ITC data that demonstrates that after the *AD Order* came into effect in 2008, that imports of subject merchandise into the United States significantly decreased but dumping persists.[37]
- Commerce should report to the ITC that the magnitude of the dumping margin that is likely to prevail is identical to the margins determined in the original investigation, ranging from 92.02 percent to 188.05 percent *ad valorem*.[38]

Commerce's Position: Pursuant to section 752(c)(3) of the Act, the administering authority shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Normally, Commerce will select a weighted-average dumping margin from the LTFV investigation to report to the ITC.[39] Commerce's preference for selecting a margin from the LTFV 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 in place.[40]

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[31] *See* the Petitioners' Substantive Response at 14-15 (citing USITC Dataweb).
[32] *See, e.g. Circular Welded Carbon-Quality Steel Line Pipe from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order*, 79 FR 19052 (April 7, 2014), and accompanying Issues and Decision Memorandum at 5.
[33] *See* the Petitioners' Substantive Response at 13-15 (citing USITC Dataweb).
[34] *Id.*
[35] *Id.*
[36] *Id*. at 15.
[37] *Id*. at 16.
[38] *Id*.
[39] *See SAA* at 890; *see also, e.g., Persulfates from the PRC,* and accompanying Issues and Decision Memorandum at Section 2.
[40] *See SAA* at 890; *Sunset Policy Bulletin* at Section II.B.1. *See also, e.g., Persulfates from the PRC,* and

As indicated in the Legal Framework section above, consistent with the *Final Modification for Reviews*, Commerce's current practice is not to rely on weighted-average dumping margins calculated using the zeroing methodology. The 188.05 percent rate applied in the LTFV investigation was based on a rate from the petition and was calculated without zeroing.[41] Accordingly, Commerce will report to the ITC the rates as indicated in the Final Results of Review section below.

VII. Final Results of Sunset Review

We determine that revocation of the *AD Order* would likely lead to continuation or recurrence of dumping. We also determine that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 188.05 percent.

accompanying Issues and Decision Memorandum at Section 2.

[41] *See AD Order*, 73 FR at 14773.

VIII. <u>Recommendation</u>

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 this sunset review in the *Federal Register* and notify the ITC of our determination.

☒	☐
Agree	Disagree

9/28/2018

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Signed by: GARY TAVERMAN