

October 29, 2009

MEMORANDUM TO: John M. Andersen
Acting Deputy Assistant Secretary
For Antidumping and Countervailing Duty Operations

FROM: Edward C. Yang
Senior Enforcement Coordinator
China/Non-Market Economy Group

RE: Issues and Decision Memorandum for the Final Results in the Expedited Sunset Review of the Antidumping Duty Order on Chloropicrin from the People's Republic of China

Summary

In the sunset review of the antidumping duty order on chloropicrin from the People's Republic of China ("PRC"), Ashta Chemicals Inc., Niklor Chemical Company ("Niklor"), and Trinity Manufacturing, Inc. (collectively, "domestic interested parties"), U.S. producers of chloropicrin¹, have submitted an adequate substantive response. No respondent interested party has submitted a substantive response. 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") issued an antidumping duty order on imports of chloropicrin from the PRC.² The calculated margins set forth in the *Order* were 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

¹ Niklor stated that it currently sells domestically produced chloropicrin at the wholesale level in the United States. Niklor stated that it previously produced chloropicrin, but currently does not do so. Niklor additionally stated that it has the production capacity to produce chloropicrin and is working on resuming production.

² See *Antidumping Duty Order: Chloropicrin from the People's Republic of China*, 47 FR 10691 (March 22, 1984) ("*Order*").

since issuance of the Order.³ There have been no related findings or rulings (e.g., changed circumstances review, scope ruling, duty absorption review) since issuance of the Order. The Order remains in effect for all exporters of subject merchandise. The Department conducted two previous sunset reviews of the Order. On March 9, 1999 the Department completed the first sunset review of the Order.⁴ On July 6, 2004, the Department completed the second sunset review of the Order.⁵

On July 1, 2009, the Department initiated the third sunset review of the Order covering the sunset period of review 2004-2008 (“sunset POR”) pursuant to section 751(c) of the Tariff Act of 1930, as amended (“Act”).⁶ On July 13, 2009, 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 July 31, 2009, 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. On September 30, 2009 the Department contacted the domestic interested parties to request certain missing information from its July 31, 2009 substantive response.⁹ On September 30, 2009, the domestic interested parties provided the requested information.¹⁰ On October 14, 2009, the Department made its adequacy determination in the sunset review finding that the Department did not receive a substantive response from any respondent interested party.¹¹ Based on the lack of an adequate 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).¹² Our

³ The margins in the first administrative review of the Order are 58 percent for SINOCEM and the China-wide entity, and 158 percent, an adverse facts available (“AFA”) rate, for SINOCEM/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) (“ARI”).

⁴ See *Final Results of Expedited Sunset Review: Chloropicrin from the People’s Republic of China*, 64 FR 11440 (March 9, 1999) and the accompanying Issues and Decision Memorandum (“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).

⁵ 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).

⁶ See *Initiation of Five-year (“Sunset”) Review*, 74 FR 31412 (July 1, 2009) (“Sunset Initiation”).

⁷ See Letter from domestic interested parties titled Request for Release Under APO dated 7/13/2009.

⁸ See Letter from domestic interested parties titled, “Five-Year (“Sunset”) Review of Chloropicrin from China: Substantive Response of Domestic Interested Parties.”

⁹ See Memorandum to The File from Ryan Kane, Case Analyst titled, “Expedited Sunset Review: Chloropicrin from the People’s Republic of China.”

¹⁰ See Letter from domestic interested parties titled, “Five-Year (“Sunset”) Review of Chloropicrin from China”.

¹¹ See “Sunset Review of the Antidumping Duty Order on Chloropicrin from the People’s Republic of China: Adequacy Determination,” Memorandum from Jennifer C. Moats, Special Assistant to the Senior Enforcement Coordinator, to Edward Yang, Director, SEC Office, dated October 14, 2009.

¹² See Letter to ITC titled, “Conduct of Expedited Sunset Reviews,” dated August 20, 2009. See also *Procedures from Conducting Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061,

analysis of the domestic interested parties' comments submitted in their substantive response is set forth in the "Discussion of the Issues" section, *infra*.

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 751(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 as well as the volume of imports of the subject merchandise for the period before and after the issuance of this antidumping 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 antidumping duty 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.¹³ Alternatively, the Department normally will determine that revocation of an antidumping duty order...is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order...and import volumes remained steady or increased.¹⁴ It is the Department's practice to use as a base period of import volume comparison 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.¹⁵

In addition, section 752(c)(3) of the Act states that the Department shall provide to the International Trade Commission ("ITC") the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the 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.¹⁶ However, the Department may use a rate from a more recent review where the dumping margin increased as this rate may be a better representative of a company's behavior in the absence of an order (*e.g.*, where a company increases dumping to maintain or increase market share with an order in place).¹⁷

(October 28, 2005) (the Department normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response).

¹³ See SAA, H.R. Rep. No. 103-316, Vol. 1, at 889-90; See also, *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.

¹⁴ See *Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

¹⁵ See *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 ("*Stainless Bar from Germany Final*").

¹⁶ See, *e.g.*, *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of the Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying *Issues and Decision Memorandum* at Comment 2.

¹⁷ See, *e.g.*, *Stainless Steel Bar from Germany; Preliminary Results of the Sunset Review of Antidumping Duty Order*, 72 FR 29970 (May 30, 2007), and accompanying *Issues and Decision Memorandum* at Comment 2.

Additionally, pursuant to section 752(c)(4)(A) of the Act, 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 of recurrence of sales at less than fair value.

Analysis

1. Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Parties’ Comments

The domestic interested parties assert that 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.

The domestic interested parties cite to the *2004 Sunset Review* where the Department considered, pursuant to section 752(c) of the Act, the weighted-average margins of dumping determined in the investigation and in subsequent reviews. In the *2004 Sunset Review*, the Department noted that in its original investigation, the Department found that Chinese producers and exporters were selling the subject merchandise at less than fair value in the United States at levels greater than *de minimis*.¹⁸ The domestic interested parties further argue that the Department stated in the *2004 Sunset Review* that since the issuance of the *Order*, it had conducted one administrative review and found that dumping continued above *de minimis* levels.¹⁹ The domestic interested parties assert that the Department also made an affirmative likelihood determination in the *1999 Sunset Review*.²⁰

In addition, the domestic interested parties note that there have been no administrative reviews of the *Order* since the completion of the *2004 Sunset Review* and the *Order* remains in effect on all Chinese producers and exporters of the subject merchandise. The domestic interested parties maintain that, 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. Also, the domestic interested parties claim that, since the *2004 Sunset Review*, there have been virtually no imports under Harmonized Tariff Schedule (“HTS”) 2904.90.5005, the provision for chloropicrin.

The domestic interested parties conclude that 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 order on chloropicrin from the PRC were revoked as a result of the current Sunset Review.

(“*Stainless Bar from Germany Prelim*”), as corrected in 72 FR 31660 (June 7, 2007) (unchanged in *Stainless Bar from Germany Final*”).

¹⁸ See *2004 Sunset Review*.

¹⁹ See *id.*

²⁰ See *1999 Sunset Review*.

Department Position

As explained in the Legal Framework section above, the Department's determination concerning whether revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping is based, in part, upon guidance provided in the SAA. One consideration is whether the Department has continued to find dumping above *de minimis* levels in administrative reviews subsequent to imposition of the antidumping duty order. In this proceeding, the Department indeed found dumping at above *de minimis* levels in the administrative review it has conducted since the original antidumping duty investigation (*i.e.*, In *ARI*, the calculated margins were 58 percent for SINOCHEM and the China-wide entity, and 158 percent (based on adverse facts available) for SINOCHEM/William Hunt & Co. (International) Ltd. (Hong Kong)).²¹

As discussed above, Sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order when determining whether revocation of the order would be likely to lead to continuation or recurrence of dumping. In the original investigation, the Department calculated a weighted-average dumping margin of 58 percent.

In the previous sunset reviews of the *Order*, *i.e.*, *1999 Sunset Review* and *2004 Sunset Review*, we evaluated the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order based on import data in HTS category 2904.90.50. In those sunset reviews we found that the imports of the subject merchandise had fallen significantly since the imposition of the order.²²

In 2004, a new HTS category 2904.90.50.05 was instituted for chloropicrin. Domestic interested parties provided United States import data for HTS category 2904.90.50.05 during the sunset POR demonstrating that imports of chloropicrin from the PRC were minimal.²³ Accordingly, for this sunset POR domestic interested parties provided and we reviewed United States import data within HTS category 2904.90.50.05.

Specifically, imports in HTS category 2904.90.50.05 fluctuated over the sunset POR. First, imports slightly increased from 18,112 kg in 2004 to 30,564 kg in 2005, and then decreased in

²¹ See *ARI*.

²² In the *1999 Sunset Review* and the *2004 Sunset Review*, the Department examined U.S. Census data (IM146 reports) for the years preceding the imposition of the order through 1999. This information demonstrates that exports of chloropicrin from the PRC decreased sharply after the imposition of the order. For example, during the period of investigation, exports of the subject merchandise to the United States exceeded 1.25 million kilograms in 1982, and, in 1983, exports of the subject merchandise to the United States exceeded 2.45 million kilograms. However, in 1985, the year after the imposition of the order, this volume fell to zero. In the years following the imposition of the order, exports of chloropicrin to the United States never reached their pre-order level and have typically remained below 200,000 kilograms per year. Based on this analysis, we affirm that the imports of the subject merchandise have fallen significantly since the imposition of the order.

²³ We note that while the domestic interested parties' data provided data for our analysis, we independently analyzed annual U.S. imports for consumption data for the PRC available for HTS categories 2904.90.50 and 2904.90.50.05. The data retrieved from United States International Trade Commission Dataweb as reported by the U.S. Census Bureau similarly reflect that imports of subject merchandise were minimal during the sunset POR.

2006 and 2007 to 3,346 kg and zero kg, respectively. In 2008, there was an increase in chloropicrin imports to 4,050 kg. Imports in HTS category 2904.90.50.05 did not continually decrease or cease entirely between over the sunset POR. However, imports of chloropicrin did not steadily increase over the sunset POR either. Therefore, based an analysis of the volume of imports, we find that revocation of the antidumping duty order on chloropicrin from the PRC would result in a continuation of dumping.

The Department determined rates above *de minimis* for all PRC manufacturers and exporters during the original investigation and in the only administrative review conducted under the *Order*.²⁴ As the Department has only conducted one administrative review since the original investigation, the margins from *ARI* are the prevailing margins. Because the ITC Dataweb data indicate that imports of chloropicrin have continued to enter the U.S. market under the current rates of 58 and 158 percent of entered value, dumping has continued at levels above *de minimis* during the period of the sunset review. Therefore, pursuant to section 752(c)(1)(A) of the Act, we determine that revocation of the *Order* is likely to lead to continuation or recurrence of dumping.²⁵

2. Magnitude of the Dumping Margin Likely to Prevail

Interested Party Comments

The domestic interested parties assert that the Department should provide to the ITC the margin the Department reported to the ITC in the second sunset review, 58 percent, because the Department determined that this rate “best reflects the increase in the dumping margin that has taken place over the life of the order” and is based on current methodology used by the Department in non-market economy cases.

Department Position

Normally, the Department will provide to the ITC the company-specific margin from the investigation for each company.²⁶ For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all-others rate from the investigation.²⁷ The Department’s preference for selecting a margin 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.²⁸ Therefore, we will report to the ITC the PRC-wide rate of 58 percent as contained in the “Final Results of Review” section of this notice.

²⁴ See *Order* and *ARI*.

²⁵ See Attachment I to this memorandum.

²⁶ See *Eveready Battery Co. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

²⁷ See *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People’s Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

²⁸ See *Id.*

Final Results of Review

We have determined that revocation of the *Order* on chloropicrin from the PRC would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margin:

| Exporter/Manufacturer | Margin(percent) |
|--|-----------------|
| China Chemicals National Import and Export Corp.(SINOCHEM) | 58.0 |
| PRC-wide rate..... | 58.0 |

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*.

John M. Andersen
Acting Deputy Assistant Secretary
For Antidumping and Countervailing Duty Operations

(Date)