

**DATE:** October 20, 2006

**MEMORANDUM TO:** David M. Spooner  
Assistant Secretary  
for Import Administration

**FROM:** Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

**SUBJECT:** Issues and Decision Memorandum for the Second Sunset Review  
of the Antidumping Duty Order on Furfuryl Alcohol from  
Thailand; Preliminary Results

---

### Summary

We have analyzed the responses of the interested parties in the second sunset review of the antidumping duty order covering furfuryl alcohol from Thailand. We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review:

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

### History of the Order

The Department of Commerce (“Department”) published its amended final antidumping duty determination and order for furfuryl alcohol from Thailand in the Federal Register at the following rates.<sup>1</sup>

Indorama Chemical (Thailand) Ltd. (“Indorama”)	7.82
All Others	7.82

---

<sup>1</sup> See Furfuryl Alcohol from Thailand: Notice of Amended Final Antidumping Duty Determination and Order, 60 FR 38035 (July 25, 1995).

The Department conducted the first sunset review on imports of furfuryl alcohol from Thailand pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), and found that revocation of the antidumping duty order would likely lead to the continuation or recurrence of dumping.<sup>2</sup> The International Trade Commission (“ITC”) determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on furfuryl alcohol from Thailand would likely lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>3</sup> Thus, the order remained in place.<sup>4</sup>

Since the issuance of the antidumping duty order on furfuryl alcohol from Thailand, the Department has conducted two administrative reviews.<sup>5</sup> There have been no changed-circumstances determinations or duty absorption findings concerning the furfuryl alcohol antidumping duty order. The order remains in effect for all manufacturers, producers, and exporters of the subject merchandise from Thailand.

On April 3, 2006, the Department published the notice of initiation of the second sunset review of the antidumping duty order on furfuryl alcohol from Thailand pursuant to section 751(c) of the Act.<sup>6</sup> On April 7, 2006, the Department received a notice of intent to participate from Penn Speciality Chemicals, Inc. (“Penn”), a domestic interested party. The submission was received within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations (“Sunset Regulations”). The domestic interested party claimed interested party status under section 771(9)(C) of the Act, as a manufacturer of a domestic like product in the United States.

On May 2, 2006, we received a complete substantive response from the domestic interested party. This response was received within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). On May 3, 2006, we received a substantive response from the respondent interested party, Indorama, a foreign producer and exporter of subject merchandise during this review. In its substantive response, Indorama claimed interested party status under section 771(9)(A) of the Act. Pursuant to 19 CFR 351.218(d)(4), on May 8, 2006, Penn filed a rebuttal in response to Indorama’s May 3, 2006, substantive response.

---

<sup>2</sup> See Furfuryl Alcohol From the People’s Republic of China and Thailand: Final Results of Antidumping Duty Sunset Reviews, 65 FR 53701 (September 5, 2000).

<sup>3</sup> See ITC Sunset Determination, 66 FR 21015 (April 26, 2001).

<sup>4</sup> See Continuation of Antidumping Duty Orders: Furfuryl Alcohol From the People’s Republic of China and Thailand, 66 FR 22519 (May 4, 2001).

<sup>5</sup> See Notice of Final Results of Antidumping Administrative Review: Furfuryl Alcohol from Thailand, 67 FR 76380 (December 12, 2002) (“First Administrative Review”); and Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from Thailand, 70 FR 71085 (November 25, 2005) (“Second Administrative Review”).

<sup>6</sup> Initiation of Five-year (“Sunset”) Reviews, 71 FR 16551 (April 3, 2006).

On May 23, 2006, we found Indorama's response to be adequate because Indorama is the only producer and exporter of furfuryl alcohol from Thailand and, therefore, accounted for more than 50 percent of the exports by volume of subject merchandise from Thailand to the United States during the sunset review period.<sup>7</sup> We also found that Penn had adequately responded to the notice of initiation under 19 CFR 351.218(e)(1)(i)(A).<sup>8</sup> As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218 (e)(2)(i), the Department began conducting a full sunset review of this order.

On September 11, 2006, Penn filed additional factual information. On September 15, 2006, the Department rejected Penn's September 11, 2006 submission.<sup>9</sup>

### Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the antidumping duty 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, 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 antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margins of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

### **Issue 1. Likelihood of Continuation or Recurrence of Dumping**

*Domestic Interested Party Comments:* The domestic interested party, Penn, argues that revocation of this antidumping duty order will likely lead to a continuation or recurrence of dumping of furfuryl alcohol from Thailand.<sup>10</sup> Penn claims that the Department has "good cause" to consider factors other than the antidumping duty margins and the volume of imports when making its determination. In particular, Penn argues that the product is a commodity product, with world-wide over capacity. Moreover, Penn states that the respondent has excess capacity and, absent this order, will increase exports, reduce its U.S. prices, and dump in the United States. Penn also argues that the respondent sharply decreased its share of total U.S. imports in

---

<sup>7</sup> See Memorandum to Susan H. Kuhbach, Director, AD/CVD Operations, Office 1, "Adequacy Determination in Antidumping Duty Sunset Review of Furfuryl Alcohol from Thailand," (May 23, 2006) at page 2 ("Adequacy Memo").

<sup>8</sup> See *id.*

<sup>9</sup> See Letter to Mr. Christopher Wall, Counsel to Penn, from Susan H. Kuhbach, Director, AD/CVD Operations, Office 1, "2<sup>nd</sup> Sunset Review of the Antidumping Duty Order on Furfuryl Alcohol from Thailand," (September 15, 2006) ("Rejection Letter").

<sup>10</sup> See Substantive Response of Domestic Interested Party (May 2, 2006) at 3.

2005 when compared to pre-order U.S. import levels. For example, Penn notes that prior to the imposition of the order (1994), Indorama's share of U.S. imports was 23.9 percent but, in 2005, its share of U.S. imports was only 7.98 percent.

On September 11, 2006, Penn submitted additional factual information that related to Penn's "good cause" argument. This submission was rejected by the Department as discussed below.

*Respondent Interested Party Comments:* The respondent interested party, Indorama, states that it is the only producer of furfuryl alcohol from Thailand and has been covered in two administrative reviews over this five-year sunset period (2001- 2005). These reviews resulted in either a zero or *de minimis* rate. Further, Indorama's imports of subject merchandise into the United States have been steady in recent years and at levels comparable to, or higher than, the levels in the period immediately preceding the original investigation.<sup>11</sup> Finally, Indorama argues that it is producing furfuryl alcohol virtually at its production capacity and has no intention of shifting sales to export additional furfuryl alcohol to the United States.<sup>12</sup>

*The Department's Position:* Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) ("House Report"), 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 basis.<sup>13</sup> In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to a continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.<sup>14</sup> However, the SAA at 889-90, the House Report at 63, and the Senate Report at 52 state that, "declining (or no) dumping margins, accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked."

In analyzing whether dumping is likely to continue or recur if the order on furfuryl alcohol from Thailand were revoked, we first examined the extent of dumping since the last five-year sunset period. As claimed by Indorama, both administrative reviews covering its exports over the

---

<sup>11</sup> See Substantive Response of Respondent Interested Party (May 3, 2006) at 6.

<sup>12</sup> See *id.* at 4.

<sup>13</sup> See SAA at 879 and House Report at 56.

<sup>14</sup> See SAA at 889 and 890, House Report at 63-64, and Senate Report at 52.

second five-year sunset period (2001-2005) resulted in either a zero or *de minimis* rate.<sup>15</sup> Also, our analysis shows that Indorama was the only producer and exporter of furfuryl alcohol from Thailand during the period of review.<sup>16</sup> Therefore, we find that dumping of the subject merchandise did not continue at any level above *de minimis* subsequent to the first sunset proceeding.

We reviewed public U.S. import data as reported by the U.S. International Trade Commission Trade Database (U.S. Census data) for the second five-year sunset period (2001- 2005). The Harmonized Tariff Schedule of the United States (“HTSUS”) code for furfuryl alcohol is a basket category that also includes tetrahydrofurfuryl alcohol, which is non-subject merchandise. Thus, public import data do not permit the Department to make an accurate analysis of imports of subject merchandise from Thailand. Accordingly, we examined proprietary U.S. Customs and Border Protection (“CBP”) data to review import levels of subject merchandise by Indorama into the United States for the second five-year sunset period (2001-2005). We compared the CBP data to Indorama’s reported data and found that these data are comparable. Based on this import data we find that Indorama’s imports have been steady in recent years and at levels comparable to, or higher than, the level in the period immediately preceding the original investigation.<sup>17</sup> This indicates that Indorama does not have to dump to maintain market share in the United States.

Penn has argued that Indorama’s share of imports into the United States has decreased between the period immediately preceding the order and 2005. We do not agree with Penn that this establishes Indorama’s inability to sell in the U.S. market without dumping or that imports of the subject merchandise declined significantly. Instead, this comparison suggests that other countries have increased their exports to the United States because, as discussed above, the volume of imports from Indorama in recent years has been comparable to or exceeded the pre-order volume.

Penn further argued in its May 2, 2006, substantive response that the Department has “good cause” to consider other factors leading to a recurrence of dumping. However, Penn submitted no evidence to support these claims. The Department’s regulations are clear that such “good cause” claims and evidence to support them must be filed as part of the substantive response. Section 351.218(d)(3)(iv)(A) of the Department’s regulations states that “an interested party may submit information or evidence to show “good cause” for the Secretary to consider other factors under...section 752(c)(2) (AD) of the Act and paragraph (e)(2)(ii) of this section. Such information or evidence must be submitted in the party’s substantive response to the notice of initiation under paragraph (d)(3) of this section.” The Department’s regulations at

---

<sup>15</sup> See First Administrative Review, 67 FR 76380; and Second Administrative Review at 70 FR 71085, 71086.

<sup>16</sup> See Adequacy Memo.

<sup>17</sup> See Adequacy Memo at Attachment 1; see also Substantive Response of Respondent Interested Party (May 3, 2006) at 6.

351.218(d)(3)(i) state that “a complete substantive response to a notice of initiation, filed under this section, must be submitted to the Department no later than 30 days after the date of publication in the Federal Register of the notice of initiation.” Lacking any evidence of these other factors, the Department is not taking them into account in our determination regarding the likelihood of continuation or recurrence of dumping.

On September 11, 2006, Penn filed a submission, which contained argument and information regarding its “good cause” allegations. Because Penn’s September 11, 2006, submission was made more than five months after the date of publication of the notice of initiation and contained only argument and information regarding “good cause,” we rejected the submission in its entirety as untimely filed.<sup>18</sup>

Consistent with the Act, the SAA, and the House and Senate Reports, the zero and *de minimis* margins for the only producer/exporter, Indorama, accompanied by steady or increasing imports indicates that dumping is not likely to continue or reoccur if the antidumping duty order on furfuryl alcohol from Thailand were revoked.<sup>19</sup>

## **Issue 2. Magnitude of the Margin Likely to Prevail**

*Domestic Interested Party Comments:* In its May 2, 2006, substantive response, Penn requests that the Department report to the ITC the margins that were determined in the amended final antidumping duty determination.<sup>20</sup>

Indorama	7.82
All Others	7.82

*Respondent Interested Party:* Indorama requests that the Department report to the ITC that the margin likely to prevail is zero because there is no likelihood of continuation or recurrence of dumping.<sup>21</sup>

*The Department’s Position:* Because a determination that dumping is not likely to continue or recur would lead the Department to revoke this antidumping duty order without a referral to the ITC, it should not be necessary to report a rate to the ITC. In addition, the ITC has already determined whether there is a likelihood of continuation or recurrence of material injury if this

---

<sup>18</sup> See Rejection Letter (September 15, 2006).

<sup>19</sup> See SAA at 889-90 and the House Report at 63.

<sup>20</sup> See Substantive Response of Domestic Interested Party (May 2, 2006) at 7.

<sup>21</sup> See Substantive Response of Respondent Interested Party (May 3, 2006) at 5.

dumping order were revoked.<sup>22</sup> This further negates the need to determine the margin of dumping likely to prevail.

But, if the Department were to make a finding in this preliminary determination, we would determine that the margin likely to prevail would be zero for the following reasons. In the first sunset review, the Department found that it was appropriate to provide the ITC with the rate from the investigation for Indorama because it was the only calculated rate that reflected the behavior of exporters without the discipline of an order in place.<sup>23</sup> The Department may, however, select a more recently calculated margin to report to the ITC. The SAA at 890-91 and the House Report at 64 state that “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.” The SAA at 889-90, the House Report at 63, and the Senate Report at 52 continue by stating that, “declining (or no) dumping margins, accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.”

In the instant case, as noted above, dumping did not continue at any level above *de minimis* during the second sunset review period, and dumping was eliminated while import volumes for subject merchandise consistently increased when comparing the pre-order import levels and the import levels for the second sunset review period. As a result, we have a basis to determine that a more recent rate is more probative of the margin likely to prevail. Finally, because we preliminarily find that dumping is not likely to continue if the order were revoked, we preliminarily find that the margin to prevail should be zero.

#### Preliminary Results of Review

We preliminarily determine that revocation of the antidumping duty order on furfuryl alcohol from Thailand would not be likely to lead to the continuation or recurrence of dumping.

---

<sup>22</sup> See Furfuryl Alcohol from China and Thailand (Investigation Nos. 731-TA-703 and 705 (Second Review)), (“ITC Investigation”) 71 FR 55804 (September 25, 2006).

<sup>23</sup> Indorama did not request any reviews from 1995 through 2000, so its 7.82 percent rate from the investigation continued during the first sunset review period. See Furfuryl Alcohol From the People’s Republic of China and Thailand; Final Results of Antidumping Duty Sunset Reviews, 65 FR 53701, 53702 (September 5, 2000).

Recommendation

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

AGREE \_\_\_\_\_

DISAGREE \_\_\_\_\_

\_\_\_\_\_  
David M. Spooner  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date