



A-570-962
Sunset Review
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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 First Sunset
Review of the Antidumping Duty Order on Certain Potassium
Phosphate Salts from the People's Republic of China

Summary

In the sunset review of the antidumping duty order covering certain potassium phosphate salts (“salts”) from the People’s Republic of China (“PRC”), domestic interested parties under section 771(9)(C) of the Tariff Act of 1930, as amended (“the Act”), ICL Performance Products, LP and Prayon, Inc. (collectively, “Petitioners”), submitted a timely notice of intent to participate and an adequate substantive response on July 1, 2015.¹ No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review. In accordance with our analysis of Petitioners’ Substantive Response, we recommend adopting the positions described below.

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

Background

On June 1, 2015, the Department of Commerce (“Department”) published a notice of initiation of the sunset review of the antidumping duty order on salts from the PRC.² As noted above, on June 11, 2015, Petitioners timely notified the Department (pursuant to 19 CFR 351.218(d)(1)(i)) that they intended to participate in the sunset review³ and on July 1, 2015, Petitioners submitted their Substantive Response within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). Also 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 Tariff Act of 1930, as

¹ See Petitioners’ July 1, 2015, submission (“Substantive Response”).

² See Initiation of Five-Year (“Sunset”) Review, 80 FR 31012 (June 1, 2015).

³ See Petitioners’ June 11, 2015 submission.



amended (the “Act”) and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the antidumping duty order on salts from the PRC.

Scope of the Order

The phosphate salts covered by the scope of the order include anhydrous Dipotassium Phosphate (“DKP”) and Tetrapotassium Pyrophosphate (“TKPP”), whether anhydrous or in solution (collectively “phosphate salts”).

TKPP, also known as normal potassium pyrophosphate, Diphosphoric acid or Tetrapotassium salt, is a potassium salt with the formula $K_4P_2O_7$. The CAS registry number for TKPP is 7320-34-5. TKPP is typically 18.7 percent phosphorus and 47.3 percent potassium. It is generally greater than or equal to 43.0 percent P_2O_5 content. TKPP is classified under heading 2835.39.1000 of the Harmonized Tariff Schedule of the United States (“HTSUS”).

DKP, also known as Dipotassium salt, Dipotassium hydrogen orthophosphate or Potassium phosphate, dibasic, has a chemical formula of K_2HPO_4 . The CAS registry number for DKP is 7758-11-4. DKP is typically 17.8 percent phosphorus, 44.8 percent potassium and 40 percent P_2O_5 content. DKP is classified under heading 2835.24.0000 HTSUS.

The products covered by this order include the foregoing phosphate salts in all grades, whether food grade or technical grade. The products covered by this order also include anhydrous DKP without regard to the physical form, whether crushed, granule, powder or fines. Also covered are all forms of TKPP, whether crushed, granule, powder, fines or solution.

For purposes of the order, the narrative description is dispositive, and not the tariff heading, American Chemical Society, CAS registry number or CAS name, or the specific percentage chemical composition identified above.

History of the Order

On June 1, 2010, the Department published its Final Determination in the less than fair value (“LTFV”) investigation of salts from the PRC.⁴ On July 22, 2010, the Department published the Amended Final and Order on salts from the PRC.⁵ In so doing, the Department determined the following weighted-average dumping margins:

⁴ See Certain Potassium Phosphate Salts From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry, 75 FR 30377 (June 1, 2010) (“Final Determination”).

⁵ See Certain Potassium Phosphate Salts From the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order, 75 FR 42683 (July 22, 2010) (“Amended Final and Order”). As noted below, we determine that these margins were not affected by the denial of offsets in accordance with the Final Modification for Reviews because the Amended Final and Order occurred after the Department ceased zeroing in investigations.

Exporter	Weighted-Average Dumping Margin
Snow-Apple Group Limited	62.23 %
Tianjin Chengyi International Trading (Tianjin) Co., Limited	62.23 %
Wenda Co. Ltd.	62.23 %
Yunnan Newswift Company Ltd.	62.23 %
PRC-Wide Rate	95.40 %

There have not been any administrative reviews since the investigation. Separate rate respondents and the PRC-wide entity remain subject to the rates established in the investigation.

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 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 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”),⁶ the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report),⁷ and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department’s determinations of the likelihood of dumping will be made on an order-wide, rather than company-specific, basis.⁸ In addition, the Department normally determines that revocation of an antidumping duty 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.⁹ 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 margins declined or were eliminated and import volumes remained steady or increased after issuance of the order.¹⁰ 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 dampen import volumes and, thus, skew comparison.¹¹

⁶ Reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

⁷ Reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

⁸ See SAA at 879, and House Report at 56.

⁹ See SAA at 889-90, House Report at 63-64, and Senate Report at 52.

¹⁰ See SAA at 889-90, and House Report at 63.

¹¹ 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.

Further, 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 antidumping duty 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.¹²

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 found to be World Trade Organization (“WTO”)-inconsistent, *i.e.*, zeroing/the denial of offsets.¹³ 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.¹⁴ The Department further stated that apart from the “most extraordinary circumstances,” it 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.”¹⁵

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 antidumping duty order would not be likely to lead to a continuation or recurrence of sales at LTFV.¹⁶ Our analysis of the comments submitted by domestic interested parties’ follows.

Analysis

1. *Likelihood of Continuation or Recurrence of Dumping*

Petitioners argue that revocation of the order would likely result in the continuation or recurrence of dumping in the United States. Specifically, Petitioners contend that, since the imposition of the order, respondents have continued dumping subject merchandise, while dramatically reducing the volume of subject merchandise exported to the United States.¹⁷ Petitioners argue that the continued existence of dumped sales by the majority of respondents suggests that respondents are unable to sell in the United States without dumping, and that revocation of the

¹² 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.

¹³ 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”).

¹⁴ Id.

¹⁵ Id.

¹⁶ 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.

¹⁷ See Substantive Response, at 7-12.

Order would lead to renewed or increased dumping.¹⁸ As evidence of decreased import volume, Petitioners provided ships' manifest data (reported by PIERS), with respect to imports from China under each of the two tariff classifications.¹⁹ Petitioners note that the U.S. Bureau of Census import data for the U.S. Harmonized Tariff Schedule ("USHTS") subheadings covered in the scope of the Order are basket categories that also contain non-subject merchandise.²⁰ Thus, Petitioners argue that it is necessary to examine actual entries to demonstrate that there has been a significant drop in imports.²¹

Department's Position

As explained in the Legal Framework section above, 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 antidumping duty order.

Thus, one consideration is whether the Department continued to find dumping above de minimis levels in administrative reviews subsequent to imposition of the antidumping duty order.²² For the reasons discussed below, we find that revocation of the antidumping duty order on salts from the PRC would be likely to lead to the continuation or recurrence of dumping in the United States.

In analyzing whether dumping is likely to continue or recur if the order were revoked, pursuant to section 752(c)(1)(A) of the Act, we examined the extent of dumping determined in the investigation and subsequent segments of the proceeding during the five-year sunset period of 2010-2015. As noted above, in the investigation, the Department found dumping margins of 95.40 percent for the PRC-wide entity (including Sichuan Blue Sword Import and Export Co., Ltd., and SD BNI (LYG) Co., Ltd.). Finally, we calculated an antidumping duty margin of 62.23 percent for Snow-Apple Group Limited, Tianjin Chengyi International Trading (Tianjin) Co., Limited, Wenda Co. Ltd., and Yunnan Newswift Company Ltd. There have been no administrative reviews since the investigation, and the rates determined in the investigation remain in place.

According to the SAA, "{i}f 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."²³ In addition, the Department normally will determine that revocation of an 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 the

¹⁸ Id.

¹⁹ Id. at 13.

²⁰ Id. at 11.

²¹ Id. at 12.

²² See SAA, at 890

²³ See SAA, at 890.

issuance of the order, or (c) dumping was eliminated after the issuance of an order and import volumes for the subject merchandise declined significantly.²⁴

Consistent with section 752(c)(1)(B) of the Act, the Department's practice has been to also 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 the sunset review.²⁵ While the Department has consistently relied upon import data based on volume from U.S. Census Bureau import statistics ("Dataweb"),²⁶ Petitioners noted in their Substantive Response that the large basket categories for the HTSUS subheadings included within the scope of the order do not distinguish subject merchandise from non-subject merchandise.²⁷ Because of this, we have considered import volumes but have not relied upon this information to support our determination of likelihood of continuation or recurrence of dumping.²⁸

While we are unable to compare the import levels of subject merchandise for the periods before and after the issuance of the order because the HTSUS subheadings are not specific to subject merchandise, consistent with the guidance in the SAA,²⁹ the existence of margins above de minimis during the sunset review period is a sufficient basis to conclude that dumping would likely continue were the order on salts from the PRC revoked.³⁰ Therefore, given that above de minimis weighted-average dumping margins continue in effect for exports of the subject merchandise, we find that dumping is likely to continue or recur if the order were revoked.

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

Petitioners argue that the Department should provide the ITC with the dumping margins from the investigation as these margins best reflect the behavior of respondents. Accordingly, the Department should report to the ITC the rate of 62.23 percent for Snow-Apple Group Limited, Tianjin Chengyi International Trading (Tianjin) Co., Limited, Wenda Co. Ltd., and Yunnan Newswift Company Ltd. and a rate of 95.40 percent for the PRC-wide entity (including Sichuan Blue Sword Import and Export Co., Ltd., and SD BNI (LYG) Co., Ltd.).

²⁴ See, e.g., Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Argentina, Brazil and Germany: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders, 71 FR 59079 (October 6, 2006) and accompanying Issues and Decision Memorandum at Issue 1.

²⁵ See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of Expedited First Sunset Review of the Antidumping Duty Order, 79 FR 67423 (November 13, 2014), and accompanying Issues and Decision Memorandum at 7.

²⁶ See, e.g., Saccharin From the People's Republic of China: Final Results of Expedited Second Sunset Review of Antidumping Duty Order, 79 FR 51139 (August 27, 2014), and accompanying Issues and Decision Memorandum at Issue 1; Citric Acid and Certain Citrate Salts From Canada and the People's Republic of China: Final Results of Expedited First Sunset Reviews of the Antidumping Duty Orders, 79 FR 45763 (August 6, 2014), and accompanying Issues and Decision Memorandum at Issue 1; Barium Carbonate From the People's Republic of China: Final Results of Expedited Second Sunset Review of the Antidumping Duty Order, 79 FR 32221 (June 4, 2014), and accompanying Issues and Decision Memorandum at Issue 1.

²⁷ See Substantive Response at 11-12.

²⁸ See, e.g., Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Result of Expedited First Sunset Review of the Antidumping Duty Order, 79 FR 67423 (November 13, 2014), and accompanying Issues and Decision Memorandum at Issue 1.

²⁹ See SAA, at 890.

³⁰ See, e.g., Certain Kitchen Appliance Shelving, 79 FR at 67423, and accompanying Issues and Decision Memorandum at Issue 1.

Department's 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 were revoked. Normally, the Department will provide to the ITC a weighted-average antidumping duty margin from the investigation.³¹ 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 exporters without the discipline of an order or suspension agreement in place.³²

The Department determines that the weighted-average antidumping duty margins established in the Amended Final and Order represent the magnitude of the margins of dumping most likely to prevail if the order were revoked. We further determine that these margins were not affected by the denial of offsets in accordance with the Final Modification for Reviews³³ because the Amended Final and Order occurred after the Department ceased zeroing in investigations.³⁴ Accordingly, we find it appropriate to provide the ITC with the margins from the Amended Final and Order because these margins best reflect the behavior of exporters without the discipline of an order in place. As a result, we will report to the ITC the margins of dumping likely to prevail listed in the "Final Results of Review" section below.

Final Results of Sunset Review

We determine that revocation of the order on salts from the PRC would likely lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be weighted-average margins up to 95.40 percent.³⁵

³¹ See, e.g., Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order, 80 FR 43063 (July 21, 2015), and accompanying Issues and Decision Memorandum at Issue 2.

³² See, e.g., Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order, 79 FR 32913 (June 9, 2014), and accompanying Issues and Decision Memorandum at 3.

³³ As stated in the Final Modification for Reviews, "{i}f the dumping margins determined in a manner not found to be WTO-inconsistent in these disputes indicate that dumping continued with the discipline of the order in place, those dumping margins alone can form the basis for a determination that dumping will continue or recur if the order were to be revoked." See Final Modification for Reviews, 77 FR at 8103.

³⁴ As noted above, the Amended Final and Order was published in July 2010, while the Department announced it would cease zeroing in investigations on December 26, 2006. See Amended Final and Order, 75 FR at 42683, Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006), and Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins in Antidumping Investigations; Changes in Effective Date of Final Modification, 72 FR 3783 (January 26, 2007).

³⁵ See Amended Final and Order, 75 FR 42683, 42684.

Recommendation

Based on our analysis of the Substantive Response received, we recommend adopting 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

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

28 September 2015
(Date)