



A-570-835
Sunset Review
Public Document
E&C/OIII: KAH

DATE: April 25, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order on Furfuryl Alcohol from the People's Republic of China

I. SUMMARY

We have analyzed the substantive response of Penn A Kem, LLC (“PennAKem”), formerly known as Penn Specialty Chemicals, Inc., the successor to the petitioner, Great Lakes Chemical, in the underlying investigation, the sole participating interested party in this sunset review of the antidumping duty order on furfuryl alcohol from the People’s Republic of China (“PRC”).¹ No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review of the *Order*. Below is a complete list of the issues in this sunset review for which we received substantive responses:

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

We recommend that you approve the positions described in the “Discussion of Issues” section of this memorandum.

II. BACKGROUND

On January 3, 2017, the Department of Commerce (“Department”) published a notice of initiation of the fourth sunset review of the antidumping duty (“AD”) order on furfuryl alcohol from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”).² On January 12, 2017, PennAKem, a domestic interested party, timely notified the Department of its

¹ See *Notice of Antidumping Duty Order: Furfuryl Alcohol from the People's Republic of China (PRC)*, 60 FR 32302 (June 21, 1995) (“*Order*”).

² See *Initiation of Five-Year (“Sunset”) Reviews*, 82 FR 84 (January 3, 2017) (“*Notice of Initiation*”).



intent to participate within the deadline specified in 19 CFR 351.218(d)(1)(i).³ On February 1, 2017, the Department received a complete substantive response to the *Notice of Initiation* with respect to the *Order* from PennAKem within the 30-day period specified in 19 CFR 351.218(d)(3)(i).⁴ In accordance with 19 CFR 351.218(d)(1)(ii)(A), PennAKem claimed interested party status under section 771(9)(C) of the Act, as a domestic manufacturer of furfuryl alcohol.⁵ PennAKem or its predecessor were part of the original investigation and have participated in all of the segments that have occurred since publication of the *Order*. The Department received no substantive responses from respondent interested parties. Thus, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset review of the *Order*.

III. SCOPE OF THE ORDER

The merchandise covered by this order is furfuryl alcohol (C₄H₃OCH₂OH). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

IV. HISTORY OF THE ORDER

1) Final Determination of Sales at Less-than-Fair-Value and *Order*

On May 8, 1995, the Department published its final affirmative determination of sales at less than fair value (“LTFV”) in the *Federal Register* with respect to imports of furfuryl alcohol from the PRC at the following rates:⁶

Exporter	Weighted-Average Margin (percent)
Qingdao Chemicals & Medicines Import & Health Products Import & Export Company	50.43
Sinochem Shandong Import and Export Company	43.54
PRC-Wide Entity	45.27

³ See submission from PennAKem to the Department, “Fourth Sunset Review of the Antidumping Duty Order on Furfuryl Alcohol from the People’s Republic of China; Domestic Interested Party Notification of Intent to Participate,” dated January 12, 2017.

⁴ See submission from PennAKem to the Department, “Fourth Sunset Review of the Antidumping Duty Order on Furfuryl Alcohol from the People’s Republic of China; Domestic Interested Party Substantive Response to the Notice of Initiation” (“Substantive Response”), dated February 1, 2017.

⁵ *Id.*, at 2.

⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People’s Republic of China*, 60 FR 22544 (May 8, 1995).

The Department later published in the *Federal Register* the *Order* covering imports of furfuryl alcohol from the PRC, establishing the above listed rates.

2) Subsequent Administrative Reviews

Since publication of the *Order*, the Department has completed only one administrative review with respect to imports of furfuryl alcohol from the PRC in which the selected respondent, Qingdao WenKem Co., Ltd., was non-responsive and, thus, assigned the PRC-wide rate.⁷ Deposit rates remain in effect for imports of subject merchandise from the PRC.

3) Duty-Absorption Findings, Changed-Circumstances Reviews, Scope Inquiries

There have been no duty-absorption findings or changed-circumstances reviews with respect to the *Order*.

The Department conducted one scope ruling with respect to the *Order*:

- November 14, 2013 – Furfuryl alcohol with minimal silane additive (*a.k.a.*, “Faint S”), is covered by the *Order*.⁸

4) Prior Sunset Reviews

The Department published the final results of the first sunset review on May 4, 2001, in which it determined that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping.⁹ On April 26, 2001, the International Trade Commission (“ITC”) determined, pursuant to section 751(c) of the Act, that revocation of the *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹⁰ As a result and pursuant to section 751(d)(2) of the Act, the Department published a notice of continuation.¹¹

The Department published the final results of the second sunset review on October 6, 2006, in which it again determined that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping.¹² On September 25, 2006, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable

⁷ See *Furfuryl Alcohol from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 36873 (June 8, 2016) (“14-15 Review”).

⁸ See Substantive Response at Exhibit B (citing Memorandum to Christian Marsh, “Final Scope Ruling on Furfuryl Alcohol with Minimal Silane Additive (*a.k.a.*, “Faint S”), dated November 14, 2013).

⁹ 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).

¹⁰ See *Furfuryl Alcohol from China & Thailand*, USITC Inv. No. 731-TA-703 (April 26, 2001).

¹¹ See *Continuation of Antidumping Order: Furfuryl Alcohol from the People's Republic of China and Thailand*, 66 FR 22519 (May 4, 2001).

¹² See *Furfuryl Alcohol from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 71 FR 35412 (June 20, 2006).

time.¹³ As a result and pursuant to section 751(d)(2) of the Act, the Department published a notice of continuation.¹⁴

The Department published the final results of its third sunset review on December 19, 2011.¹⁵ On February 6, 2012, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹⁶ As a result, and pursuant to section 751(d)(2) of the Act, the Department published a notice of continuation.¹⁷

Since the completion of the third sunset review, there has been one administrative review and one scope ruling, as discussed above.

V. LEGAL FRAMEWORK

In accordance with section 751(c) of the Act, the Department is conducting this sunset review to determine whether revocation of the order would be likely lead to continuation or recurrence of dumping. Section 752(c)(1)(A)-(B) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigations and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and 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 (“SAA”),¹⁸ the House Report,¹⁹ and the Senate Report,²⁰ the Department’s determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.²¹ In addition, 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 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.²² Alternatively, the Department normally will determine that revocation of an AD order is not likely to lead to continuation or

¹³ See *Furfuryl Alcohol from China & Thailand*, USITC Inv. No. 731-TA-703 (September 25, 2006).

¹⁴ See *Furfuryl Alcohol from the People's Republic of China: Continuation of Antidumping Duty Order*, 71 FR 59072 (October 6, 2006).

¹⁵ See *Furfuryl Alcohol from the People's Republic of China: Final Results of Expedited Third Sunset Review of the Antidumping Duty Order*, 76 FR 78613 (December 19, 2011).

¹⁶ See *Furfuryl Alcohol from China*, USITC Inv. No. 731-TA-703 (February 6, 2012).

¹⁷ See *Furfuryl Alcohol from the People's Republic of China: Notice of Continuation of Antidumping Duty Order*, 77 FR 9203 (February 16, 2012).

¹⁸ See H.R. Doc. 103-316, vol. 1 (1994) (“SAA”).

¹⁹ See H. Rep. No. 103-826, pt. 1 (1994) (“House Report”).

²⁰ See S. Rep. No. 103-412 (1994) (“Senate Report”).

²¹ See SAA at 879; see also House Report at 56.

²² See SAA at 889-890; see also House Report at 63-64; Senate Report at 52; *Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Order; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (“Sunset Policy”).

recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.²³

Furthermore, 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 the investigation may dampen import volumes and, thus, skew the comparison.²⁴ When analyzing import volumes for second and subsequent sunset reviews, the Department'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.²⁵

In addition, section 752(c)(3) of the Act states that the magnitude of the dumping margin likely to prevail if the order were revoked shall be provided by the Department to the ITC. Generally, the Department selects the dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.²⁶ In certain circumstances, however, 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").²⁷ 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.²⁸

On February 14, 2012, the Department announced it was modifying its practice in sunset reviews, such that it would not rely on weighted-average dumping margins calculated using the "zeroing" methodology found to be inconsistent with World Trade Organization ("WTO") obligations.²⁹ 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.³⁰ 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-

²³ See SAA at 889-890; see also House Report at 63.

²⁴ 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.

²⁵ See *Ferrovaniadium 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 Order*, 79 FR 14216 (March 13, 2014), and accompanying Issues and Decision Memorandum, at 3.

²⁶ 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.

²⁷ See SAA at 890-91.

²⁸ 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.

²⁹ 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*").

³⁰ *Id.*

inconsistent” and that it “may also rely on past 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.”³¹

VI. DISCUSSION OF THE ISSUES

1. Likelihood of Continuation or Recurrence of Dumping

PennAKem’s Comments

PennAKem argues that revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping by the manufacturers/producers and exporters of the subject merchandise. PennAKem also argues that PRC producers have an overcapacity to produce furfuryl alcohol and would direct their overcapacity to the United States if the constraints of the order were removed.³²

PennAKem provides statistics from the ITC’s online statistical data file, DataWeb , which identifies imports that entered the United States under HTSUS 2932.13.0000 (Furfuryl Alcohol and Tetrahydrofurfuryl Alcohol). PennAKem states its belief that the imports reported under HTSUS 2932.13.0000 could be furfuryl alcohol, tetrahydrofurfuryl alcohol or misclassified furfuryl alcohol resins.³³

As evidence of dumping continuing above a *de minimis* level after issuance of the *Order*, PennAKem cites to the Department’s November 2013 scope determination, where we found the product with the trade name “Faint S” was within the scope of the *Order*. PennAKem contends that, immediately following this determination, imports of Faint S ceased in 2014, illustrating that PRC exporters of furfuryl alcohol cannot export to the United States without dumping. PennAKem also cites to the 2014-2015 administrative review, where the selected mandatory respondent failed to participate in the review, as evidence of above *de minimis* levels of dumping, because the failure of Chinese exporters to participate, in and of itself, illustrates dumping above *de minimis* levels continuing during the sunset period.³⁴ PennAKem then states that the dumping margins for exporters of furfuryl alcohol from the PRC remain between 43.54 percent and 50.43 percent (*i.e.*, the same weighted-average dumping margins as those from the investigation). PennAKem also asserts that the failure of exporters to demonstrate during the five years after the *Order* was continued in 2012 that they could export furfuryl alcohol to the United States without dumping confirms that PRC exporters of furfuryl alcohol cannot export to the United States without dumping and that dumping likely will continue or recur if the *Order* were revoked.³⁵

³¹ *Id.*, at 8109.

³² *See* Substantive Response at 3.

³³ *Id.*, at 3 n.4 and Exhibit A.

³⁴ *Id.*, at 6.

³⁵ *Id.*, at 6-7.

Department’s Position: As explained in the Legal Framework section above, the Department’s determinations of likelihood of continuation or recurrence of dumping will be made on an order-wide basis.³⁶ In addition, the Department normally will determine that revocation of an AD 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 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.³⁷ In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the AD duty order.

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and any subsequent reviews. As discussed above and in the *Final Modification for Reviews*, the Department 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 found to be WTO-inconsistent. As discussed above in the “History of the Order” section, since the issuance of the *Order* on furfuryl alcohol from the PRC, the Department has conducted one administrative review, in which the respondent company was non-responsive and therefore received the PRC-wide entity rate.³⁸ This administrative review occurred after the last continuation notice in this proceeding.

Separately, pursuant to section 752(c)(1)(B) of the Act and in accordance with the Department’s practice, the Department considers the volume of imports of the subject merchandise for the one-year period immediately preceding the initiation of the investigation as a base period for comparison to the sunset review period. Because the HTS classification of the subject merchandise was fully established since the issuance of the *Order* and is relatively discrete to subject merchandise at the harmonized six-digit level (*i.e.*, HTS 2932.13 “Furfuryl Alcohol and Tetrahydrofurfuryl Alcohol”),³⁹ we are able to examine the aggregate trend in import volumes before and after the *Order*. Based on a review of import statistics from the ITC’s DataWeb system for subject merchandise in the pre-*Order* period⁴⁰ compared to the current period of review from the ITC’s DataWeb system as provided by PennAKem,⁴¹ the Department finds that import volumes of furfuryl alcohol from the PRC have declined significantly from pre-*Order* levels. Since the last *Order* continuation notice, import volumes slightly increased from 2010 to 2011, ceased completely in 2014, after a Department scope determination found Faint S to be covered by the scope of the *Order*, and returned to pre-scope determination quantity levels in 2015-2016.⁴²

³⁶ See SAA at 879 and House Report at 56.

³⁷ See SAA at 889 and 890, House Report at 63-64, and Senate Report at 52.

³⁸ See *14-15 Review*, 81 FR at 36874.

³⁹ Whereas tetrahydrofurfuryl alcohol is a separate product, it is similarly covered by an existing antidumping order, and, therefore, the relatively negligible quantities in these categories demonstrate that import quantities have declined significantly since the issuance of the orders on both products.

⁴⁰ PennAKem did not provide the import information for the pre-*Order* period in its Substantive Response. Accordingly, we sourced this information from the record of the prior sunset decision memorandum. See Memorandum to the File, “Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order on Furfuryl Alcohol from the People’s Republic of China: Transmittal of Source Documents Referenced to the File,” dated concurrently with this document (“Source Document Memorandum”) at Attachment 3.

⁴¹ See Substantive Response at Exhibit A.

⁴² *Id.*

As discussed above, only one administrative review has been conducted since the last sunset review, which resulted in the Department finding that the company was part of the PRC-wide entity, which is subject to a dumping margin of 45.27 percent.⁴³ Thus, because dumping has continued at above-*de minimis* levels since the last *Order* continuation notice, the Department, absent argument and evidence to the contrary, determines that dumping is likely to continue or recur if the order were revoked.

2. Magnitude of the Margin Likely to Prevail

PennAKem's Comments

PennAKem cites the SAA and the *Policy Bulletin* to explain that, in determining the magnitude of the margins of dumping that are likely to prevail in the event of a revocation of the order, the Department will normally select the company-specific rate(s) from the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place. Therefore, PennAKem requests that, as it did in the prior sunset review determinations, the Department rely upon the company-specific margins from the original investigation as the magnitude of the margin of dumping that is likely to prevail for investigated companies in the PRC, as they are the only margins available.⁴⁴

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. The Department's preference is to select a rate from the investigation, because 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.⁴⁵ As indicated in the "Legal Framework" section above, the Department's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology found to be WTO-inconsistent, in accordance with the *Final Modification for Reviews*.

The Department agrees with PennAKem that it is appropriate to report to the ITC the margins found in the AD investigation of furfuryl alcohol from the PRC as the margins likely to prevail if the *Order* were revoked, because these rates reflect the behavior of exporters without the discipline of an order, and there are no more recently calculated dumping margins. These margins are weighted-average rates calculated from the two mandatory respondents in the original investigation. The Department verified that neither calculated weighted-average margin from the investigation was affected by zeroing and, therefore, both are WTO-consistent.⁴⁶ As a result, pursuant to section 752(c)(3) of the Act, we will report to the ITC the margin of dumping likely to prevail listed in the "Final Results of Review" section below.

⁴³ See *14-15 Review*, 81 FR at 36874.

⁴⁴ See Substantive Response at 7.

⁴⁵ See SAA at 890 and *Sunset Policy*, at section II.B.1; see also, 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.

⁴⁶ See Source Document Memorandum at Attachment 1-2.

VII. FINAL RESULTS OF REVIEW

We determine that revocation of the *Order* on furfuryl alcohol from the PRC would be likely to lead to continuation or recurrence of dumping and that the magnitude of the dumping likely to prevail would be weighted-average margins up to 50.43 percent.

VIII. RECOMMENDATION

Based on our analysis of the substantive response received, we recommend adopting all the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register*, and notify the ITC of our determination.

Agree

Disagree

4/25/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance