



A-570-887  
Sunset Review - 2020  
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June 29, 2020

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

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

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## I. SUMMARY

The Department of Commerce (Commerce) analyzed the substantive response submitted by Penn A Kem LLC (Penn A Kem) (formerly, Penn Specialty Chemicals), a domestic interested party and sole participant in this third sunset review of the antidumping duty (AD) order covering certain tetrahydrofurfuryl alcohol (THFA) from the People's Republic of China (China).<sup>1</sup> No respondent interested party submitted a substantive response within the 50-day deadline. Accordingly, Commerce conducted an expedited (120-day) sunset review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930 (the Act) and 19 CFR 351.218(e)(1)(ii)(C)(2). The following is a complete list of the issues in this sunset review for which we received a substantive response:

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

In accordance with our analysis of the domestic interested party's substantive response, we recommend that you approve the positions described in this memorandum.

## II. BACKGROUND

On March 2, 2020, Commerce published the notice of initiation of the third sunset review of the *Order* on THFA from China, pursuant to section 751(c)(2) of the Act.<sup>2</sup> On March 20, 2020, Commerce received a notice of intent to participate from domestic interested party, Penn A Kem, within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>3</sup> On March 30, 2020, Commerce received a complete substantive response from Penn A Kem within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>4</sup> We received no substantive responses from respondent interested parties.<sup>5</sup> As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*.

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<sup>1</sup> See *Antidumping Duty Order: Tetrahydrofurfuryl Alcohol from The People's Republic of China*, 69 FR 47911 (August 6, 2004) (*Order*).

<sup>2</sup> See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 12253 (March 2, 2020).

<sup>3</sup> See Penn A Kem's Letter, "Sunset Review (3rd Review) of the Antidumping Duty Order on Tetrahydrofurfuryl Alcohol from the People's Republic of China: Domestic Interested Party Notification of Intent to Participate," dated March 10, 2020.

<sup>4</sup> See Penn A Kem's Letter, "Sunset Review (3rd Review) of the Antidumping Duty Order on Tetrahydrofurfuryl Alcohol from the People's Republic of China: Domestic Interested Party Substantive Response to Notice of Initiation," dated March 30, 2020 (Substantive Response).

<sup>5</sup> See Commerce's Letter, "Sunset Reviews Initiated on March 2, 2020," dated April 22, 2020.

### III. SCOPE OF THE ORDER

The product covered by this *Order* is tetrahydrofurfuryl alcohol (THFA) from China, or C<sub>5</sub>H<sub>10</sub>O<sub>2</sub>. THFA, a primary alcohol, is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents. THFA is currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under subheading 2932.13.00.00. Although the HTSUS subheadings are provided for convenience and for customs purposes, Commerce's written description of the merchandise subject to the *Order* is dispositive.

### IV. HISTORY OF THE ORDER

#### Final Determination of Sales at Less-than-Fair Value and Order

On June 18, 2004, Commerce published its final determination of sales at less than fair value (LFTV) pertaining to THFA from China.<sup>6</sup> On August 6, 2004, Commerce published the *Order* with respect to imports of THFA from China. In the *Order*, we established the following weighted-average dumping margins:<sup>7</sup>

Manufacturer/exporter	Weighted-average margin (percent)
Qingdao Wenkem (F.T.Z.) Trading Co., Ltd. (Wenkem)	136.86
China-wide entity <sup>8</sup>	136.86

On November 5, 2009, the final results of the first expedited sunset review of THFA published in the *Federal Register*.<sup>9</sup> In the *First Sunset*, Commerce found that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping, and notified the U.S. International Trade Commission (ITC) of the margins likely to occur, should the *Order* be revoked.<sup>10</sup> After 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 future,<sup>11</sup> Commerce published a notice of continuation of the *Order*, effective December 9, 2009.<sup>12</sup>

On March 12, 2015, the final results of the second expedited sunset review of THFA published in the *Federal Register*.<sup>13</sup> In the *Second Sunset*, Commerce found that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping, and notified the ITC of the margins likely to occur, should the *Order* be revoked.<sup>14</sup> After 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 future,<sup>15</sup> Commerce published a notice of continuation of the *Order*, effective April 16, 2015.<sup>16</sup>

<sup>6</sup> See *Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 69 FR 34130 (June 18, 2004) (*LTFV Final*).

<sup>7</sup> See *Order*, 69 FR at 47912.

<sup>8</sup> The "China-wide entity" rate applies to all exporters of subject merchandise not specifically listed.

<sup>9</sup> See *Tetrahydrofurfuryl Alcohol from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 74 FR 57290 (November 5, 2009) (*First Sunset*), and accompanying Issues and Decision Memorandum (IDM).

<sup>10</sup> *Id.*

<sup>11</sup> See *Tetrahydrofurfuryl Alcohol from China*, 74 FR 63788 (December 4, 2009).

<sup>12</sup> See *Tetrahydrofurfuryl Alcohol from the People's Republic of China: Continuation of the Antidumping Duty Order*, 74 FR 66616 (December 16, 2009).

<sup>13</sup> See *Tetrahydrofurfuryl Alcohol from the People's Republic of China: Final Results of the Second Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 12981 (March 12, 2015) (*Second Sunset*), and accompanying IDM.

<sup>14</sup> *Id.*

<sup>15</sup> See *Tetrahydrofurfuryl Alcohol from China: Determination*, 80 FR 19092 (April 6, 2015).

<sup>16</sup> See *Tetrahydrofurfuryl Alcohol from the People's Republic of China: Continuation of Antidumping Duty Order*, 80 FR 20470 (April 16, 2015).

Commerce has not conducted any administrative reviews since issuance of the *Order*, as none have been requested. There have been no related findings or rulings (*e.g.*, changed circumstances reviews, scope rulings, or duty absorption reviews, *etc.*) since issuance of the *Order*. The *Order* remains in effect for all producers and exporters of THFA from China.

## V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, Commerce 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 periods before, and the periods 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), the House Report, and the Senate Report, Commerce's determinations of likelihood will be made on an order-wide, rather than company-specific, basis.<sup>17</sup> In addition, Commerce 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.<sup>18</sup>

Alternatively, Commerce 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 after issuance of the order and import volumes remained steady or increased.<sup>19</sup> 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 AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.<sup>20</sup>

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 the comparison.<sup>21</sup> 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.<sup>22</sup>

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 antidumping duty 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.<sup>23</sup> However, in certain circumstances, a more recently

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<sup>17</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report); see also Senate Report, S. Rep. No. 103-412 (1994) (Senate Report).

<sup>18</sup> See SAA at 889-90; see also House Report at 63-64; Senate Report at 52; and *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*).

<sup>19</sup> See SAA at 889-90; see also House Report at 63; and Senate Report at 52.

<sup>20</sup> 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 IDM at Comment 1.

<sup>21</sup> 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) (*Stainless Steel Bar*), and accompanying IDM at Comment 1.

<sup>22</sup> 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) (*Ferrovanadium*), and accompanying IDM at 3.

<sup>23</sup> 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) (*Persulfates*), and accompanying IDM at Comment 2.

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”).<sup>24</sup>

In February 2012, in the *Final Modification for Reviews*, Commerce announced that in five-year (i.e., sunset) reviews, it will not rely on weighted-average dumping margins that were calculated using the zeroing methodology that was found to be World Trade Organization (WTO)-inconsistent and was the subject of that *Final Modification for Reviews*.<sup>25</sup> However, Commerce explained in the *Final Modification for Reviews* that it “retain{s} the discretion, on a case-by-case basis, to apply an alternative methodology, when appropriate” in both investigations and administrative reviews pursuant to section 777A(d)(1)(B) of the Act.<sup>26</sup> 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.<sup>27</sup> Commerce 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 recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available (AFA), and dumping margins where no offsets were denied because all comparison results were positive.”<sup>28</sup>

Our analysis of Penn A Kem’s comments follows below.

## VI. DISCUSSION OF THE ISSUES

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

#### Penn A Kem’s Comments

Penn A Kem asserts revocation of the *Order* would likely lead to recurrence or continuation of dumping in the United States of THFA from China. Penn A Kem contends that, to the best of its knowledge, Chinese producers of THFA have not shipped to the United States since the issuance of the AD *Order*, including in the instant sunset review period, even though there is significant overcapacity to produce THFA in China. Specifically, the record of this proceeding demonstrates during the period 2015 - 2019, THFA import volumes from China were miniscule and, even so, may be inclusive of furfuryl alcohol or misclassified furan resins.<sup>29</sup> Because imports of THFA from China have essentially ceased since issuance of the *Order*, including in the instant sunset period, and considering that Chinese THFA producers and exporters have not requested an administrative review since the issuance of the *Order*, Penn A Kem argues exporters of THFA cannot export to the United States without dumping, and that dumping likely would continue or recur if the *Order* were revoked.<sup>30</sup>

#### Commerce’s Position:

As explained in the Legal Framework section above, Commerce’s determinations of likelihood of continuation or recurrence of dumping will be made on an order-wide basis.<sup>31</sup> 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 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 *Order*.

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<sup>24</sup> See SAA at 890-91; see also *Sunset Policy Bulletin* at section II.B.2.

<sup>25</sup> 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*).

<sup>26</sup> *Id.*, 77 FR at 8105-6.

<sup>27</sup> *Id.*, 77 FR at 8103.

<sup>28</sup> *Id.*, 77 FR at 8109.

<sup>29</sup> See Penn A Kem’s Substantive Response at 7 and Exhibit A.

<sup>30</sup> See Penn A Kem’s Substantive Response at 8.

<sup>31</sup> See SAA at 879; see also House Report at 56.

In this case, Commerce found dumping at above *de minimis* levels in the original antidumping duty investigation of THFA from China.<sup>32</sup> As discussed below in the “Magnitude of the Margins Likely to Prevail” section, the dumping margins determined in the original THFA investigation do not include zeroing because all comparison results were positive. Since the issuance of the *Order* on August 6, 2004, Commerce has not conducted an administrative review, because no respondent interested parties have requested one. Thus, dumping margins and cash deposit rates at or above *de minimis* levels remain in effect for Chinese companies. Based on URAA guidance, these margins provide the best evidence of dumping behavior by these companies, with no new evidence to suggest that dumping has ceased.

Pursuant to 752(c)(1)(B) of the Act, Commerce 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.<sup>33</sup> Thus, in this review, we examined import volumes of subject merchandise for the year ending June 2003, and compared these results to import volumes for years 2015 through 2019, as provided in Exhibit A of Penn A Kem’s Substantive Response. Our analysis of import statistics sourced from the ITC’s DataWeb for the subject merchandise, as provided by Penn A Kem, show that in years 2015 through 2019, imports of THFA remained significantly lower than import levels prior to the period of investigation.<sup>34</sup> Specifically, the volume of THFA imported during the 12 months immediately preceding the initiation of the investigation, *i.e.*, the year ending June, 2003, was 257,200 kilograms.<sup>35</sup> In contrast, the U.S. import volumes of THFA from China for the calendar years 2015 through 2019 were 1,200 kilograms, 6,761 kilograms, 24,240 kilograms, and 21,120 kilograms, and 18,792 kilograms, respectively.<sup>36</sup> Thus, import volumes of the subject merchandise following the continuation of the *Order* in 2015 were significantly below the import volume of the subject merchandise in the year 2003, *i.e.* the year immediately preceding the initiation of the investigation.

Based on this analysis, Commerce finds that above *de minimis* dumping margins remain in place for post-order entries of subject merchandise and imports declined significantly and remain below pre-initiation levels in this sunset review period. Thus, absent argument and evidence to the contrary, Commerce determines that dumping is likely to continue or recur if the *Order* were revoked.

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

### Penn A Kem’s Comments

Commerce normally will select a margin “from the investigation, because that is the only calculated rate that reflects the behavior of exporters... without the discipline of an order or suspension agreement in place.”<sup>37</sup> Penn A Kem argues Commerce should select the 136.86 percent dumping margin calculated in the original investigation and upheld in the previous two five-year sunset reviews, as it is the only dumping margin available that reflects the behavior of the exporters without the *Order* in place.<sup>38</sup>

### **Commerce’s Position:**

Pursuant to section 752(c)(3) of the Act, Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the *Order* were revoked. Normally, Commerce will select a weighted-average dumping margin from the investigation to report to the ITC.<sup>39</sup> Commerce’s preference is to select a weighted-average dumping margin from the LTFV

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<sup>32</sup> See *LTFV Final*, 69 FR at 34132.

<sup>33</sup> See *Stainless Steel Bar*, 72 FR 56985 and accompanying IDM at Comment I.

<sup>34</sup> See Penn A Kem’s Substantive Response at Exhibit A; see also *Second Sunset* IDM at 11.

<sup>35</sup> See *Second Sunset* IDM at 11.

<sup>36</sup> See Penn A Kem’s Substantive Response at Exhibit A.

<sup>37</sup> See Penn A Kem’s Substantive Response at 6 (citing *Sunset Policy Bulletin*, 63 FR at 18873 quoting the SAA at 890).

<sup>38</sup> *Id.* at 7.

<sup>39</sup> See SAA at 890; see also *Persulfates*, 73 FR at 11868, and accompanying IDM at Comment 2.

investigation because it is the only calculated rate that reflects the behavior of the producers and exporters without the discipline of an order or suspension agreement in place.<sup>40</sup> Under certain circumstances, however, we may select a more recent rate to report to the ITC.<sup>41</sup> Additionally, as explained above, in accordance with the *Final Modification for Reviews*, Commerce will not rely on weighted-average dumping margins that it calculated using the methodology found to be WTO-inconsistent that was subject to the *Final Modification for Reviews*.<sup>42</sup>

For companies not investigated individually, or for companies that did not begin shipping until after the *Order* was issued, Commerce will normally provide a rate based on the all-others rate from the investigation. However, Commerce considers China to be a nonmarket economy under section 771(18) of the Act, and, thus, instead of an all-others rate, Commerce uses a rate established for the China-wide entity, which it applies to all imports from an exporter that has not established its eligibility for a separate rate.<sup>43</sup>

Consistent with our practice, Commerce has determined that the weighted-average antidumping duty margins established in the *LTFV Final* are the best evidence of the exporters' behavior in the absence of the *Order*. Further, as established in the *Second Sunset*, these margins were not affected by the zeroing methodology that was subject to the *Final Modification for Reviews*.<sup>44</sup> Therefore, consistent with section 752(c)(3) of the Act, Commerce finds that the margin of dumping likely to prevail would be a weighted average margin of up to 136.86 percent, as assigned to both Wenkem and the China-wide entity during the original investigation.<sup>45</sup>

## VII. FINAL RESULTS OF THIRD EXPEDITED SUNSET REVIEW

We determine that revocation of the AD duty order on THFA from China would be likely to lead to continuation or recurrence of dumping at weighted-average margins of up to 136.86 percent, as determined in the original investigation.

## VIII. RECOMMENDATION

Based on our analysis of the substantive response 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

6/29/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler

Assistant Secretary

for Enforcement and Compliance

<sup>40</sup> See SAA at 890.

<sup>41</sup> *Id.* at 890-891.

<sup>42</sup> See *Final Modification for Reviews*, 77 FR at 8109.

<sup>43</sup> See *Paper Clips from the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order*, 76 FR 26242 (May 6, 2011), and accompanying IDM at Comment 2; see also 19 CFR 351.107(d).

<sup>44</sup> See *Second Sunset* IDM at 7 ("Because all of the comparison results for Qingdao Wenkem (F.T.Z.) Trading Co., Ltd.'s ("Wenkem") calculated margins were positive, none of the margins were affected by zeroing. Also, the rate for the PRC-wide entity was based on the margin for Wenkem, and thus, is likewise not affected by zeroing.")

<sup>45</sup> See *LTFV Final*.