



A-570-962
Sunset Review
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March 2, 2021

MEMORANDUM TO: Christian Marsh
Acting 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 Second Sunset Review of the Antidumping Duty Order on Certain Potassium Phosphate Salts from the People's Republic of China

I. SUMMARY

We have analyzed the response of domestic producers of certain potassium phosphate salts (salts) in the second sunset review of the antidumping duty (AD) order on salts from the People's Republic of China (China). No other interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margins Likely to Prevail

II. BACKGROUND

On July 22, 2010, the Department of Commerce (Commerce) published the AD order on salts from China.¹ On November 3, 2020, Commerce initiated the second sunset review of the *Order* pursuant to section 751(c) of the Act.² Commerce received a notice of intent to participate from domestic interested parties, ICL Performance Products LP and Prayon, Inc. (collectively,

¹ See *Notice of Antidumping Duty Order: 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) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 69585 (November 3, 2020).



“Domestic Industry”), within the deadline specified in 19 CFR 351.218(d)(1)(i).³ The members of the Domestic Industry claimed interested party status under section 771(9)(C) of the Act as producers of the domestic like product. On December 3, 2020, Commerce received a substantive response from the Domestic Industry within the deadline specified in 19 CFR 351.218(d)(3)(i).⁴ Commerce received no responses from respondent interested parties with respect to the *Order* covered by this sunset review.

On December 23, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁵ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*.

III. SCOPE OF THE ORDER

The products covered by 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 the *Order* include the foregoing phosphate salts in all grades, whether food grade or technical grade. The products covered by the *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.

³ See Domestic Industry’s Letter, “Potassium Phosphate Salts from the People’s Republic of China: Notice of Intent to Participate,” dated November 18, 2020.

⁴ See Domestic Industry’s Letter, “Potassium Phosphate Salts from the People’s Republic of China: Substantive Response to Notice of Initiation of Five-Year (Sunset) Review of the Antidumping Duty Order and Countervailing Duty Order,” dated December 3, 2020 (Substantive Response).

⁵ See Commerce’s Letter, “Sunset Reviews for November 2020,” dated December 23, 2020.

IV. HISTORY OF THE ORDER

On June 1, 2010, Commerce published its *Final Determination* in the less-than-fair-value (LTFV) investigation of salts from China.⁶ Following the issuance of Commerce's *Final Determination*, the ITC found that the U.S. industry was threatened with material injury by reason of imports from China pursuant to section 735(b) of the Act.⁷ Subsequently, Commerce published an amended final determination with the *Order*.⁸ In the *Order*, Commerce established the following weighted-average dumping margins:⁹

Exporter	Weighted-Average 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
China-Wide Entity	95.40

In 2015, Commerce conducted the first sunset review of the *Order*. In that sunset review, we found that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping.¹⁰ In addition, 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.¹¹ Thus, Commerce published the notice of continuation of the *Order*.¹²

Commerce has not conducted any administrative reviews, new shipper reviews, or changed circumstances reviews, made any scope rulings, or found duty absorption over the history of the *Order*. The *Order* remains in effect for all Chinese producers and exporters of salts.

⁶ 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*).

⁷ See *Certain Potassium Phosphate Salts from China*, USITC Investigation Nos. 701-TA-473 and 731-TA-1173 (Final), USITC Publication 4171 (July 2010).

⁸ See *Order*.

⁹ See *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 *Order* occurred after Commerce ceased zeroing in investigations.

¹⁰ See *Certain Potassium Phosphate Salts from the People's Republic of China: Final Results of Expedited First Sunset Review of the Antidumping Duty Order*, 80 FR 60122 (October 5, 2015) (*First Sunset*), and accompanying Issues and Decision Memorandum (IDM).

¹¹ See *Potassium Phosphate Salts from China: Determination*, USITC Investigation Nos. 701-TA-473 and 731-TA-1173 (Review), USITC Publication 4584 (December 2015).

¹² See *Certain Potassium Phosphate Salts from the People's Republic of China: Continuation of Antidumping Duty Order and Countervailing Duty Order*, 80 FR 79305 (December 21, 2015).

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 a 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 AD order. In addition, section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA,¹³ the House Report,¹⁴ and the Senate Report,¹⁵ Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.¹⁶ In addition, Commerce normally determines that revocation of an AD 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.¹⁷ Alternatively, Commerce normally will determine that revocation of an AD 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.¹⁸

Furthermore, 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 the investigation may dampen import volumes and, thus, skew the comparison.¹⁹ 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.²⁰

¹³See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol. 1 (1994) (SAA).

¹⁴ See H. Rep. No. 103-826, pt. 1 (1994) (House Report).

¹⁵ See S. Rep. No. 103-412 (1994) (Senate Report).

¹⁶ See SAA at 879; see also House Report at 56.

¹⁷ 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*).

¹⁸ See SAA at 889-90; see also House Report at 63.

¹⁹ 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 IDM at Comment 1.

²⁰ See, e.g., *Certain Welded Carbon Steel Pipes and Tubes from India, Thailand, and Turkey: Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders*, 82 FR 46485 (October 5, 2017), and accompanying IDM; see also *Ferrovandium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying IDM.

In addition, section 752(c)(3) of the Act states that the magnitude of the margin of dumping that is likely to prevail if the order were revoked shall be provided by Commerce to the ITC. Generally, Commerce selects the weighted-average 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.²¹ 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, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review”).²² Finally, 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 order would not be likely to lead to a continuation or recurrence of sales at LTFV.²³

Regarding the margin of dumping likely to prevail, 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.²⁴ 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.²⁵ 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.²⁶ 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.”²⁷

²¹ 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 Second Sunset Review*), and accompanying IDM at Comment 2.

²² See SAA at 890-91.

²³ 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.

²⁴ 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*).

²⁵ *Id.*, 77 FR at 8102, 8105, and 8109.

²⁶ *Id.*

²⁷ *Id.*

VI. DISCUSSION OF THE ISSUES

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments²⁸

The Domestic Industry argues that revocation of the *Order* would lead to a continuation or recurrence of dumping by producers and exporters of salts from China because dumping margins have remained at above *de minimis* levels and subject imports have significantly declined following the imposition of the *Order*. The Domestic Industry further states that these conditions are addressed in Commerce's *Sunset Policy Bulletin*, and, thus, Commerce should find that dumping would be likely to continue absent the *Order*.²⁹

Commerce'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 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 AD order. According to the SAA, the existence of dumping margins after the order "is highly probative of the likelihood of continuation or recurrence of dumping. If 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. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping."³⁰ In addition, "declining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes."³¹ Alternatively, the legislative history provides 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.³²

In the LTFV investigation, Commerce found dumping margins of 95.40 percent for the China-wide entity (including Sichuan Blue Sword Import and Export Co., Ltd., and SD BNI (LYG) Co., Ltd.). Commerce calculated an AD 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.³³ Thus, Commerce determined rates above *de minimis* for all Chinese manufacturers and exporters during the original investigation.³⁴ There have been no

²⁸ See Substantive Response at 9-19.

²⁹ *Id.* at 13.

³⁰ See SAA at 890.

³¹ *Id.* at 889; see also House Report at 63; and Senate Report at 52.

³² See SAA at 889-90; see also House Report at 63; and Senate Report at 52.

³³ See *Order*.

³⁴ See *Order*, 80 FR at 79305-79306.

administrative reviews since issuance of the *Order*. Thus, any entries of subject merchandise into the United States after issuance of the *Order* were assessed at above *de minimis* AD rates.³⁵ As noted above, Commerce normally determines that revocation of an AD order would be likely to lead to continuation or recurrence of dumping when dumping continued at any level above *de minimis* after issuance of the order.

In analyzing import volumes for the period of this second sunset review, while Commerce has consistently relied upon import data based on volume from U.S. Census Bureau import statistics,³⁶ the Domestic Industry noted in its 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.³⁷ 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.³⁸ While we are unable to compare the import levels of subject merchandise for the period before the issuance of the *Order* and to the period since the issuance of the last continuation notice because the HTSUS subheadings are not specific to subject merchandise, consistent with the guidance in the SAA,³⁹ 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* revoked.⁴⁰ Additionally, we considered the Domestic Industry's statement that imports of salts have ceased or significantly declined since the imposition of the *Order*. Accordingly, pursuant to section 752(c)(1) of the Act, we determine that revocation of the *Order* would likely result in the continuation of dumping in the United States.

2. Magnitude of the Margins Likely to Prevail

Interested Party Comments⁴¹

The Domestic Industry cites to the SAA and the *Sunset Policy Bulletin* and notes that Commerce normally will select the rate from the original investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of the order in place. Therefore, the Domestic Industry argues that, consistent with the SAA and the *Sunset Policy Bulletin*, Commerce should rely upon the dumping margins from the original investigation. As such, the Domestic Industry contends that Commerce should report to the ITC that the magnitude of the dumping margins that are likely to prevail is indicated in the margins determined in the original

³⁵ See *First Sunset*, 80 FR at 60122.

³⁶ 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 IDM 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 IDM 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 IDM at Issue 1.

³⁷ See Substantive Response at 13-15.

³⁸ 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) (*Certain Kitchen Appliance Shelving*), and accompanying IDM at Issue 1.

³⁹ See SAA, at 890.

⁴⁰ See, e.g., *Certain Kitchen Appliance Shelving*, 79 FR at 67423, and accompanying IDM at Issue 1.

⁴¹ See Substantive Response at 9-19.

Order (i.e., 62.23 percent for Snow-Apple Group Limited , Tianjin Chengyi International Trading (Tianjin) Co., Limited, Wenda Co. Ltd., and Yunnan Newswift Company Ltd. and 95.40 percent for the China-wide entity (including Sichuan Blue Sword Import and Export Co. Ltd and SD BNI (LYG) Co. Ltd.)).⁴²

Commerce's Position

Pursuant to section 752(c)(3) of the Act, Commerce shall provide the ITC with the magnitude of the margin of dumping that is likely to prevail if an order were revoked. Normally, Commerce will select a weighted-average margin from the investigation to report to the ITC.⁴³ Commerce's preference for selecting a margin from the LTFV investigation is based on the fact that it is the only calculated rate that reflects the behavior of the manufacturers, producers, and exporters without the discipline of an order in place.⁴⁴ Because dumping continued following the issuance of the *Order* and, given the absence of argument and evidence to the contrary, Commerce finds that the margins determined in the original investigation are probative of the behavior of producers and exporters of subject merchandise from China if the *Order* were revoked. As indicated in the "Legal Framework" section above, consistent with *Final Modification for Reviews*, Commerce's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology. The weighted-average dumping margins were calculated without employing zeroing methodology. The China-wide entity 95.40 percent rate determined in the amended final determination was based on a rate from the petition and was calculated without the zeroing methodology.⁴⁵ Accordingly, consistent with section 752(c) of the Act, Commerce will report to the ITC the rates as indicated in the Final Results of Sunset Review section below.

VII. FINAL RESULTS OF SUNSET REVIEW

We determine that revocation of the *Order* 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.⁴⁶

⁴² *Id.*

⁴³ See SAA at 890; see also *Persulfates Second Sunset Review* IDM at Comment 2.

⁴⁴ See SAA at 890; see also *Sunset Policy Bulletin*, 63 FR at 18872 (at section II.B.1); and *Persulfates Second Sunset Review* IDM at Comment 2.

⁴⁵ Commerce announced it would cease zeroing in investigations on December 26, 2006. See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006).

⁴⁶ See *Order*.

VIII. RECOMMENDATION

Based on our analysis of the substantive response, 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

3/2/2021

X  _____

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance