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A-570-002
Sunset Review
Public Document

MEMORANDUM TO: Jeffery A. May
Acting Assistant Secretary
for Import Administration

FROM: Ronald K. Lorentzen
Acting Director, Office of Policy

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

Summary:

We have analyzed the substantive responses of the interested parties participating in the sunset review of the antidumping duty order on chloropicrin from the People's Republic of China ("China").

We recommend that you approve the positions we have developed 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 comments by the interested parties.

1. Likelihood of continuation or recurrence of dumping

A. Weighted-average of dumping margin

B. Volume of imports

2. Magnitude of the margin likely to prevail

Margin from the investigation

History of the Order

On February 16, 1984, the Department of Commerce (“Department”) published in the *Federal Register* its final affirmative determination of sales at less than fair value on chloropicrin from China. See *Final Determination of Sales at Less than Fair Value; Chloropicrin from the People’s Republic of China*, 49 FR 5982 (February 16, 1984), (“*Department’s Investigation*”). On March 22, 1984, the Department published in the *Federal Register* the antidumping duty order on chloropicrin from China. See *Antidumping Duty Order; Chloropicrin from the People’s Republic of China*, 49 FR 10691 (March 22, 1984). In the order, the Department determined a weighted-average dumping margin of 58 percent for SINOCEM, and an “All Others” rate of 58 percent. The Department has completed one administrative review since the issuance of the order. See *Chloropicrin from the People’s Republic of China; Final Results of Administrative Review of Antidumping Duty Order*, 50 FR 2844 (January 22, 1985), (“*Department’s Administrative Review*”). In the administrative review, the Department determined a dumping margin of 58 percent for SINOCEM, and 58 percent for SINOCEM/William Hunt & Co. (International) Ltd. (Hong Kong), a third country reseller. On March 6, 1999, the Department published notice of the final results of the first sunset review, in which it determined that revocation of the order would be likely to lead to continuation or recurrence of dumping. See *Final Results of Expedited Sunset Review: Chloropicrin from China*, 64 FR 11440 (March 9, 1999)(“*Department’s First Sunset Review*”). In addition, the International Trade Commission (“Commission”), in its sunset review, determined that revocation of the antidumping duty order on chloropicrin from China would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. See *Chloropicrin from China, Determination of Injury*, 64 FR 16998 (April 7, 1999), (“*Commission’s First Sunset*”).

Review”). Based on the Department’s and the Commission’s findings, the Department published a notice of continuation of the order. *See Continuation of Antidumping Duty Order: Chloropicrin from the People’s Republic of China*, 64 FR 42655 (August 5, 1999).

The antidumping duty order on chloropicrin from China remains in effect for all Chinese manufacturers, producers, and exporters.

Background

The Department initiated a second sunset review of the order on chloropicrin from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended, (the “Act”). *See Initiation of Five-Year (“Sunset”) Review*, 69 FR 9585-9586 (March 1, 2004)(“*Initiation Notice*”). On March 16, 2004, the Department received a Notice of Intent to Participate on behalf of Ashta Chemicals, Inc., Arvesta Corporation, Niklor Chemical Company, and Trinity Manufacturing Inc. (collectively, “the domestic interested parties”) within the deadline specified in section 351.218(d)(1)(I) of the Department’s regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the domestic like product.

On March 31, 2004, the Department received comments from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department’s regulations. We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C) of the Department’s regulations, the Department conducted an expedited, 120-day review of this order.

Discussion of the Issues

In accordance with section 752(c) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the Commission the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Parties' Comments

The domestic interested parties assert that revocation of the antidumping duty order on chloropicrin from China would likely result in the dumping of substantial quantities at prices below fair value. *See Substantive Response of Domestic Interested Parties*, March 31, 2004, at 4-11.

The domestic interested parties note that in the investigation of this order the Department determined weighted-average dumping margins of 58 percent. *Id.* at 4. In the only administrative review that has been conducted, the Department confirmed this same margin, 58 percent. *Id.* at 5. Further, in its analysis in the *Department's First Sunset Review*, the Department stated that given that the weighted-average dumping margin is above *de minimis* levels, it is highly probative of the likelihood of continuation or recurrence of dumping should the order be revoked. *Id.* at 7. No respondents have requested an administrative review since the completion of the review, and import volumes since that

time have been virtually non-existent as reported in the *Department's First Sunset Review*. *Id.* at 9.

The domestic interested parties claim that they are not aware of Chinese exports of chloropicrin during this period. *Id.* at 10.

Finally, the domestic interested parties believe that China's capacity to produce chloropicrin has expanded by 50 percent since 1998, and that exports substantial quantities (a price-competitive, commodity-type product) to Japan and Europe at prices 20 percent to 40 percent U.S. prices. *Id.*

The nature and characteristics of the product, and the market in the United States would further provide an incentive for Chinese producers to resume dumping if the order were revoked. *Id.* For these reasons, revocation of the order would likely result in dumping at substantial quantities and at prices far below fair value. *Id.*

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis. *See Sunset Policy Bulletin* at section II.A.2. In addition, the Department indicated that normally it will determine that revocation of an antidumping 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 finding, (b)

imports of the subject merchandise ceased after the issuance of the finding, or (c) dumping was eliminated after the issuance of the antidumping duty order and import volumes for the subject merchandise declined significantly. *See Sunset Policy Bulletin* at section II.A.3.

Pursuant to section 752(c) of the Act, the Department considered the weighted-average margins of dumping determined in the investigation and in subsequent reviews. In the original investigation, the Department found that Chinese producers and exporters were selling the subject merchandise at less than fair value in the United States at levels greater than *de minimis*. *See Department's Investigation* (49 FR 5982). Since the issuance of the order, one administrative review has been conducted by the Department. In that review, the Department found that dumping continued above *de minimis* levels. *See Department's Administrative Review* (59 FR 2844). In addition, the Department also made an affirmative likelihood determination in its first sunset review of this order. *See Department's First Sunset Review* (64 FR 11440). Accordingly, as discussed in section II.A.3 of the *Sunset Policy Bulletin* and the SAA at 890, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were revoked.

In accordance with section 752(c) of the Act, the Department also considered the volume of imports before and after the issuance of the order. As noted by the domestic interested parties, in the first sunset review we found that import volumes decreased significantly after the imposition of the order. The Department examined U.S. Census data for the years preceding the imposition of the order through the present. This information demonstrates that exports of chloropicrin from China decreased sharply after the imposition of the order. In 1982, exports of the subject merchandise to the United

States exceeded 1.25 million kilograms and, in 1983, exports of the subject merchandise to the United States exceeded 2.45 million kilograms. However, in 1985, the year after the imposition of the order, this volume fell to zero. In the years following the imposition of the order, exports of chloropicrin to the United States never reached their pre-order level and have, for the majority of the interim years, remained below 200,000 kilograms per year. Based on this analysis, we affirm that the imports of the subject merchandise have fallen significantly since the imposition of the order.

With regards to the domestic interested parties concerns on (1) China's capacity of production expansion since 1998, (2) its substantial quantities to Japan and Europe at prices below U.S. prices, (3) the nature and characteristics of the product, the Department may consider other factors when making its determination on whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. However in this instant, we believe that it is not necessary to address the domestic interested parties concerns regarding these issues. As noted in the *Discussion of the Issues* section of this memorandum, in making our determinations the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. Evidence on the record shows that dumping margins continue to exist and import volumes have declined significantly since the issuance of the order. Given the existence of dumping margins in the original investigation and subsequent review, coupled with the decline of import volumes after the issuance of the order, leads us to determine that dumping would be likely to continue or recur if the order on chloropicrin from China were revoked.

2. Magnitude of the Margin

Interested Parties' Comments

The domestic interested parties assert that the margin from the original investigation would be the dumping margin likely to prevail for all Chinese exporters if the order were revoked. *See Substantive Response of Domestic Interested Parties*, March 31, 2004, at 11.

Department's Position

The Department agrees with the domestic interested parties concerning the margins to report to the Commission. In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation because these margins are the only calculated margins that best reflect the behavior of exporters absent the discipline of the order in place. In addition, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "All Others" rate.

In the original investigation, the Department calculated weighted-average margins of 58 percent. In the final results of the first sunset review, we reported to the Commission the margins determined in the investigation, 58 percent. Therefore, consistent with the *Sunset Policy Bulletin* and the final results of the first sunset review, the Department finds that the margins calculated in the original investigation are probabtive of the behavior of Chinese manufacturers and exporters absent the discipline of the order. Therefore, we will report to the Commission the company-specific margins and the "All Others" rate determined in the original investigation.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturers/Producers/Exporters	Weighted-average margin (percent)
China National Chemicals Import and Export Corporation (SINOCHEM)	58.00
China-wide rate	58.00

Recommendation

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

Agree _____

Disagree _____

Jeffrey A. May
Acting Assistant Secretary
for Import Administration

(Date)