



A-533-823  
A-834-807  
A-307-820  
Sunset Reviews  
**Public Document**  
SC/Office 6

DATE: January 31, 2013

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited  
Sunset Reviews of the Antidumping Duty Orders on Silicomanganese  
from India, Kazakhstan, and Venezuela

### Summary

We have analyzed the responses of the interested parties in the sunset reviews of the antidumping duty orders covering silicomanganese from India, Kazakhstan, and Venezuela. We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is the list of the issues in these sunset reviews:

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

### History of the Orders

On April 2, 2002, the Department of Commerce (“the Department”) published its final affirmative determinations of sales at less than fair value (“LTFV”) regarding silicomanganese from India, Kazakhstan, and Venezuela.<sup>1</sup> The period of investigation (“POI”) was April 1, 2000, through March 31, 2001, for India and Venezuela. The POI for Kazakhstan was October 1, 2000, through March 31, 2001. For India, the Department found weighted-average dumping margins of 15.32 percent for Nava Bharat Ventures, Ltd. (Nava Bharat), 20.42 percent for Universal Ferro and Allied Chemicals, Ltd. (Universal Ferro), and 17.69 percent for all other Indian producers and exporters of subject merchandise.<sup>2</sup> For

<sup>1</sup> See Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination, 67 FR 15531 (April 2, 2002) (India Final Determination); Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Kazakhstan, 67 FR 15535 (April 2, 2002) (Kazakhstan Final Determination); and Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Venezuela, 67 FR 15533 (April 2, 2002) (Venezuela Final Determination).

<sup>2</sup> See India Final Determination.



Kazakhstan, the Department found a weighted-average dumping margin of 247.88 percent for Alloy 2000, S.A. and the Kazakhstan-wide entity.<sup>3</sup> For Venezuela, the Department found a weighted-average dumping margin of 24.62 percent for Hornos Eléctricos de Venezuela, S.A. and for all other Venezuelan producers and exporters of the subject merchandise.<sup>4</sup> On May 23, 2002, the Department published an amended final determination with respect to silicomanganese from India and the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela. The Department's amended final determination established a revised weighted-average dumping margin of 20.53 percent for Universal Ferro and 17.74 percent for all other Indian producers and exporters of the subject merchandise. All other dumping margins in these orders remained the same.<sup>5</sup>

Since the issuance of the antidumping duty orders, the Department has conducted no administrative or new shipper reviews of the antidumping duty orders on silicomanganese from India, Kazakhstan, or Venezuela. There have been no changed circumstances determinations, no duty absorption findings, and no scope clarifications or rulings concerning the antidumping duty orders. No Harmonized Tariff Schedule categories have been added to the scope and the scope description itself has not changed. The orders remain in effect for all manufacturers, producers, and exporters of the subject merchandise.

The Department conducted the first sunset reviews on silicomanganese from India, Kazakhstan, and Venezuela pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), and found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the same rates as found in the original investigations.<sup>6</sup> The U.S. International Trade Commission ("ITC") determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>7</sup> Thus, the Department published the notice of continuation of the antidumping duty orders.<sup>8</sup>

On October 1, 2012, the Department published the notice of initiation of the second sunset reviews of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela pursuant to section 751(c) of the Act.<sup>9</sup> The Department received notices of intent to participate in the sunset reviews from domestic interested parties Eramet Marietta, Inc. ("Eramet") on October 15, 2012, and Felman Production, LLC ("Felman") on October 16, 2012. The Department received substantive responses to the notice of initiation from Eramet and Felman on October 31, 2012. Both parties claim domestic interested party status under section 771(9)(C) of the Act as producers of silicomanganese.

As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal

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<sup>3</sup> See [Kazakhstan Final Determination](#).

<sup>4</sup> See [Venezuela Final Determination](#).

<sup>5</sup> See [Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Orders: Silicomanganese from India, Kazakhstan, and Venezuela](#), 67 FR 36149 (May 23, 2002) ("[Amended Final and Order](#)").

<sup>6</sup> See [Silicomanganese from India, Kazakhstan, and Venezuela: Final Results of Expedited Five-year \("Sunset"\) Reviews of the Antidumping Duty Orders](#), 72 FR 42393, 42394 (August 2, 2007) ("[First Sunset Review](#)").

<sup>7</sup> See [Silicomanganese From India, Kazakhstan, and Venezuela](#), Investigation Nos. 731-TA-929-931 (Review), 72 FR 67965 (December 3, 2007).

<sup>8</sup> See [Continuation of Antidumping Duty Orders on Silicomanganese from India, Kazakhstan, and Venezuela](#), 73 FR 841 (January 4, 2008).

<sup>9</sup> See [Initiation of Five-Year \("Sunset"\) Review](#), 77 FR 59897 (October 1, 2012).

Government from October 29, through October 30, 2012. Thus all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the final results of this expedited sunset review is now January 31, 2013.<sup>10</sup>

On November 7, 2012, we received one substantive response in the sunset review of the antidumping duty order on silicomanganese from India, from respondent interested party Nava Bharat.<sup>11</sup> On November 13, 2012, Felman and Eramet filed rebuttal comments to Nava Bharat's substantive response. We found that Nava Bharat provided an inadequate response because it did not export subject merchandise to the United States over the five calendar years preceding the initiation of this review, and no other respondent interested party responded to the Department's notice of initiation.<sup>12</sup> Therefore, we determined that a full sunset review was not appropriate.<sup>13</sup> As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the antidumping duty orders for India, Kazakhstan, and Venezuela.

## **Discussion of the Issues**

In accordance with section 751(c)(1) of the Act, the Department conducted these sunset reviews to determine whether revocation of the antidumping duty orders 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 these determinations, 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 antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC 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 Party Comments**

Domestic interested parties believe that revocation of these antidumping duty orders would likely lead to a continuation or recurrence of dumping by the manufacturers, producers, and exporters of the subject merchandise.<sup>14</sup> The interested parties claimed the following:

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<sup>10</sup> See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Hurricane Sandy" dated October 31, 2012.

<sup>11</sup> On October 19, 2012, Nava Bharat requested an extension of time to file its substantive response. The Department granted an extension until November 7, 2012.

<sup>12</sup> See Sunset Review of the Antidumping Duty Order on Silicomanganese from India: Adequacy Determination Memorandum, dated November 23, 2012.

<sup>13</sup> See section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2); see also First Sunset Review, 72 FR at 42394 (determining that Nava Bharat's substantive response was not adequate where Nava Bharat did not demonstrate that its exports accounted for, on average, more than 50 percent of the total exports of subject merchandise, and where no other respondents submitted substantive responses).

<sup>14</sup> See generally Domestic Interested Parties' Substantive Responses for India, Kazakhstan, and Venezuela submitted on October 31, 2012. According to the domestic interested parties, the records of these proceedings demonstrate that respondents have persisted in dumping in the U.S. market, while also dramatically reducing their sales of subject merchandise.

*India:* Domestic interested parties state that imports of subject merchandise ceased for six years after the order was imposed, and resumed at nominal levels since 2009, as compared to the import values during the period of investigation.<sup>15</sup> Further, they state that during this sunset review period, the volume of imports was still substantially lower than the pre-order volumes. Specifically, domestic interested parties state that imports fell from 39,789 metric tons (“MT”) in 2001, the year the petition was filed, to 770 MT in 2002 (the year of the order). Since 2009, imports resumed at very low levels; 38 MT in 2009, 884 MT in 2010, 962 MT in 2011, and 2,562 MT from January through August 2012.<sup>16</sup> Thus, domestic interested parties conclude that the substantial antidumping margins have led to the cessation of all imports until 2008 following the issuance of the antidumping duty order, and have since then have been substantially lower than the pre-order volume of imports, thus demonstrating that revocation of the order will certainly lead to a continuation of dumping. Since the investigation, the antidumping margins have remained at 15.32 percent for Nava Bharat, 20.53 percent for Universal Ferro and Allied Chemicals, Ltd. and 17.74 percent for all other exporters because there have been no administrative reviews.

Nava Bharat claims that if it were to export to the United States, current prices in the U.S. market would enable them to do so at prices that exceed normal value. In addition, Nava Bharat indicates that it has a profitable third-country export base consisting of long-standing customers; a perceived high demand forecast for its domestic market; and, a perceived supply shortage in the U.S. market that will demand premium prices.<sup>17</sup>

*Kazakhstan:* Eramet states that the Department has not completed any administrative reviews of the antidumping duty order on silicomanganese from Kazakhstan, and therefore no exporter has shown it can ship the subject merchandise to the United States without dumping.<sup>18</sup> In addition, both Eramet and Felman contend that imports of silicomanganese from Kazakhstan ceased after the order was imposed. Specifically, domestic interested parties state that imports fell from 66,396 MT in 2000, the last full year prior to the filing of the petition; to zero in 2002 (the year of the order).<sup>19</sup> Domestic interested parties argue there have not been any imports of silicomanganese from Kazakhstan after 2005.<sup>20</sup>

*Venezuela:* Eramet states that the Department has not completed any administrative reviews of the antidumping duty order on silicomanganese from Venezuela, and therefore no exporter has shown it can ship the subject merchandise to the United States without dumping.<sup>21</sup> In addition, both Eramet and Felman contend that imports of silicomanganese from Venezuela ceased after the order was imposed. Specifically, domestic interested parties note that imports fell from 24,100 MT in 2000, the last full year prior to the filing of the petition, to zero in 2002 (the year of the order). Further, they state that there have not been any imports of silicomanganese from Venezuela since that time except for 1,308 MT in 2004.<sup>22</sup>

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<sup>15</sup> See Felman’s Substantive Response for India at 8 and Eramet’s Substantive Response for India at 5.

<sup>16</sup> Id.

<sup>17</sup> See Nava Bharat’s Substantive Response at 3-8.

<sup>18</sup> See Eramet’s Substantive Response for Kazakhstan at 5.

<sup>19</sup> See Felman’s Substantive Response for Kazakhstan at 7 and Eramet’s Substantive Response for Kazakhstan at 5.

<sup>20</sup> See Felman’s Substantive Response for Kazakhstan at 8 and Eramet’s Substantive Response for Kazakhstan at 5.

<sup>21</sup> See Eramet’s Substantive Response for Venezuela at 5.

<sup>22</sup> See Felman’s Substantive Response for Venezuela at 8 and Eramet’s Substantive Response for Venezuela at 5.

## **Department's Position**

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action ("SAA"), H. R. Doc. 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 normally determines that revocation of an antidumping 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. 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 antidumping duty order.

*India:* In this case, the Department found dumping at above de minimis levels in the original antidumping duty investigation. The cash deposit rates established in the investigation remained in effect and there have been no administrative or new shipper reviews of the antidumping duty order. In addition, import statistics provided by Felman and Eramet and confirmed by the ITC Trade Dataweb<sup>23</sup> demonstrate that import volumes decreased significantly following the imposition of the antidumping duty order. Specifically, the ITC Trade Dataweb indicates that in 2008, imports were zero; in 2009, imports were 38 MT; in 2010, imports were 884MT; in 2011, imports were 962; and, from January to August 2012, imports were 2,562 MT.<sup>24</sup> The pre-order import level was 60,496 MT.<sup>25</sup> Although Nava Bharat claims that current prices would enable it to sell subject merchandise at prices above normal value in the U.S. market, Nava Bharat itself has made no such sales. In addition, dumping margins have continued to exist at levels above de minimis since the issuance of the order, and there have been substantially lower import levels after the imposition of the order when compared to pre-order levels. Therefore, the Department finds that dumping would likely continue to occur if the order were revoked.

*Kazakhstan:* In this case, the Department found dumping at above de minimis levels in the original antidumping duty investigation. The cash deposit rates established in the investigation remained in effect and there have been no administrative reviews of the antidumping duty order. In addition, import statistics provided by Felman and Eramet and confirmed by the ITC Trade Dataweb, demonstrate that import volumes decreased significantly following the imposition of the antidumping duty order. Specifically, the USITC Trade Dataweb indicates that in 2001, imports were 32,328 MT; in 2002, imports were zero; in 2003, imports were 5 MT; in 2004, imports were zero; in 2005, imports were 20 MT; and, from 2006 through August 2012, imports were zero. The pre-order import level was 66,396 MT in 2000.<sup>26</sup> Therefore, given that dumping margins have continued to exist at levels above de minimis since the issuance of the order, and there have been substantially lower import levels after the imposition of the order when compared to pre-order levels, the Department finds that dumping would likely continue to occur if the order were revoked.

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<sup>23</sup> The ITC Trade Dataweb can be found at <http://dataweb.usitc.gov>.

<sup>24</sup> See Felman's Substantive Response for India at 8 and Eramet's Substantive Response for India at 5.

<sup>25</sup> See Eramet's Substantive Response for India at Table A.

<sup>26</sup> See Felman's Substantive Response for Kazakhstan at 8 and Eramet's Substantive Response for Kazakhstan at 5.

*Venezuela*: In this case, the Department found dumping at above de minimis levels in the original antidumping duty investigation. The cash deposit rates established in the investigation remained in effect and there have been no completed administrative reviews of the antidumping duty order. In addition, import statistics provided by Felman and Eramet and confirmed by the ITC Trade Dataweb, demonstrate that import volumes decreased significantly following the imposition of the antidumping duty order. Specifically, the ITC Trade Dataweb indicates that in 2001, imports were 1,500 MT; in 2002 and 2003, imports were zero; in 2004, imports were 1,308 MT; and from 2005 through August 2012, imports were zero. The pre-order import level was 24,100 MT in 2000.<sup>27</sup> Therefore, given that dumping margins have continued to exist at levels above de minimis since the issuance of the order,<sup>28</sup> and there have been substantially lower import levels after the imposition of the order when compared to pre-order levels, the Department finds that dumping would likely continue to occur if the order were revoked.

## 2. Magnitude of the Margin Likely to Prevail

### Interested Party Comments

Domestic interested parties request that the Department should report to the ITC, as in the first sunset review of these orders, the margins that were determined in the final determinations in the original investigations, in accordance with the SAA.<sup>29</sup> Nava Bharat states that the dumping margin likely to prevail is zero based on its arguments cited above.<sup>30</sup>

### Department's Position

Normally, the Department will provide to the ITC the company-specific margin from the investigation for each company. For companies not investigated specifically, 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 from the investigation.<sup>31</sup> The Department's preference for selecting a margin from the investigation is based on the fact that 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. Under certain circumstances, however, the Department may select a more recent margin to report to the ITC.<sup>32</sup>

The Department announced that in sunset reviews, it will comply with WTO dispute findings against "zeroing" by "not rely{ing} on weighted-average dumping margins that were calculated using the

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<sup>27</sup> See Felman's Substantive Response for Venezuela at 8 and Eramet's Substantive Response for Venezuela at 5.

<sup>28</sup> We have established that the rates calculated for the investigations do not include any non-dumped sales for which negative margins were set to zero. This is discussed in more detail under section 2, Magnitude of the Margin Likely to Prevail.

<sup>29</sup> See Felman's Substantive Response for India at 10 and Eramet's Substantive Response for India at 9-10; Felman's Substantive Response for Kazakhstan at 10 and Eramet's Substantive Response for Kazakhstan at 8; and Felman's Substantive Response for Venezuela at 10 and Eramet's Substantive Response for Venezuela at 8.

<sup>30</sup> See Nava Bharat's Substantive Response at 3-8.

<sup>31</sup> See, e.g., Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order, 77 FR 54898 (September 6, 2012) and the accompanying Issues and Decision Memorandum, at Magnitude of the Margin of Dumping Likely to Prevail.

<sup>32</sup> See, e.g., Potassium Permanganate from The People's Republic of China; Five-year ("Sunset") Review of Antidumping Duty Order; Final Results, 70 FR 24520 (May 10, 2005) and the accompanying Issues and Decision Memorandum, at Magnitude of the Margin.

methodology determined by the Appellate Body to be WTO-inconsistent.”<sup>33</sup> In the original investigations involving Kazakhstan and Venezuela, all final dumping margins were margins where no offsets were denied because all comparison results were positive.<sup>34</sup> As a result, the Department’s final weighted-average dumping margins calculated in the investigations were not affected by the WTO-inconsistent methodology.

For India, our review of the available record evidence provides information related to the calculation of Nava Bharat’s final dumping margin,<sup>35</sup> which also shows that its margin was not affected by the WTO-inconsistent methodology. The information available in the official file related to the calculation of Universal Ferro’s final and amended final dumping margins did not include the margin programming and output. However, we do have this information for Universal Ferro’s preliminary dumping margin<sup>36</sup> and our examination of this information reveals that for purposes of that calculation, none of the comparisons showed export or constructed export prices by Universal Ferro that were above normal value. In other words, all comparisons showed the existence of dumping and no comparison results were affected by the application of the zeroing methodology. Although the Department does not have all of the necessary information from the final determination<sup>37</sup> and amended final determination<sup>38</sup> to undertake the same examination, we note that the preliminary rate of 13.24% increased to a final rate of 20.42% and amended final rate of 20.53%. Based on this evidence, the Department finds that it is reasonable to conclude that the final rate or the amended final rate was not affected by the zeroing methodology. Moreover, we note that the Department is making the instant determination on the basis of facts available pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2) and 351.308(f). Therefore, for purposes of this sunset review, and in light of all the relevant evidence on the record thereof, we find that the amended final margin is not affected by zeroing and is useable as the margin likely to prevail consistent with the Final Modification for Reviews.

After considering the arguments put forth, and the dumping margins determined in the investigations, the Department agrees with domestic interested parties that it is appropriate to report to the ITC the investigation rates for India, Kazakhstan and Venezuela because these are the only rates that reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. Thus, the Department will report to the ITC the rates listed in the Final Results of Review section, below.

## **FINAL RESULTS OF REVIEW**

We determine that revocation of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

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<sup>33</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>34</sup> See Memorandum from Sean Carey, International Trade Compliance Analyst, Office of AD/CVD Operations 6 to The File regarding “Sunset Reviews of the Antidumping Duty Orders on Silicomanganese from India, Kazakhstan, and Venezuela: Documentation Showing Calculated Margins from the Investigations,” dated January 31, 2013.

<sup>35</sup> Id.

<sup>36</sup> Id.; see also Notice of Preliminary Determination of Sales at Less Than Fair Value: Silicomanganese from India, 66 FR 56644 (November 9, 2001).

<sup>37</sup> See India Final Determination; Amended Final and Order.

<sup>38</sup> See Amended Final and Order.

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Exporters/Producers	Weighted-Average Margin (percent)
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India

Nava Bharat Ventures, Ltd.	15.32
Universal Ferro and Allied Chemicals, Ltd.	20.53
All Others Rate	17.74

Kazakhstan

Alloy 2000, S.A.	247.88
Kazakhstan-Wide Rate	247.88

Venezuela

Hornos Eléctricos de Venezuela, S.A.	24.62
All Others Rate	24.62

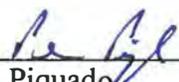
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**Recommendation**

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 these reviews in the *Federal Register*, and notify the ITC of our findings.

AGREE

DISAGREE

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

31 JANUARY 2013  
Date