

November 22, 2011

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 Third Sunset Reviews of the Antidumping Duty Orders on Silicomanganese from Brazil, the People's Republic of China, and Ukraine

SUMMARY

We have analyzed the responses of the interested parties in the third sunset reviews of the antidumping duty orders covering silicomanganese from Brazil, the People's Republic of China ("PRC"), and Ukraine.¹ 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 these sunset reviews for which we received substantive responses:

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

¹ The domestic interested party in this sunset review is Eramet Marietta, Inc. (formerly, Elkem Metals Company) ("Eramet"), a producer of silicomanganese in the United States and the petitioner in the antidumping duty investigation concerning imports of silicomanganese from Brazil, the PRC, and Ukraine. See *Notice of Antidumping Duty Order: Silicomanganese From Brazil*, 59 FR 66003 (December 22, 1994), *Notice of Antidumping Duty Order: Silicomanganese From the People's Republic of China (PRC)*, 59 FR 66003 (December 22, 1994), and *Suspension Agreement on Silicomanganese From Ukraine; Termination of Suspension Agreement and Notice of Antidumping Duty Order*, 66 FR 43838 (August 21, 2001) ("Ukraine Order")(collectively "Silicomanganese Orders").

HISTORY OF THE ORDER

In 1994, the Department of Commerce (“Department”) published its final affirmative determinations of sales at less than fair value in the *Federal Register*² with respect to imports of silicomanganese from Brazil, the PRC, and Ukraine at the following rates:

<u>Brazil</u>	<u>Margin (%)</u>
Rio Doce Manganês S.A. (“RDM”), Companhia Paulista de Ferro-Ligas (“CPFL”), and Urucum Mineração S.A. (collectively RDM/CPFL)	64.93
All Others	17.60
<u>The People’s Republic of China</u>	
All Manufacturers/Producers/Exporters	150.0
<u>Ukraine</u>	
All Manufacturers/Producers/Exporters	163.00

The Department published antidumping duty orders on silicomanganese from Brazil and the PRC and the suspension of the antidumping duty investigation and the suspension agreement on silicomanganese from Ukraine in the *Federal Register*.³ The Department later terminated the suspension agreement and issued an antidumping duty order on silicomanganese from Ukraine, effective September 17, 2001.⁴

Since the issuance of the orders, the Department has not conducted an administrative review of silicomanganese from Ukraine. The Department has completed one administrative review⁵ of silicomanganese from the PRC prior to the first sunset review. The Department has completed four administrative reviews⁶ of silicomanganese from Brazil.

On November 2, 1999, the Department initiated the first sunset reviews of the orders on silicomanganese from Brazil and the PRC and the suspended antidumping investigation on silicomanganese from Ukraine pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”).⁷ We found that revocation of the antidumping duty orders and termination of the

² See *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Brazil*, 59 FR 55432 (November 7, 1994); *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Ukraine*, 59 FR 62711 (December 6, 1994); *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From the People’s Republic of China*, 59 FR 55435 (November 7, 1994).

³ See *Silicomanganese Orders*.

⁴ See *Ukraine Order*.

⁵ See *Silicomanganese From the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 65 FR 31514 (May 18, 2000).

⁶ See *Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review*, 62 FR 37869 (July 15, 1997); *Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review*, 69 FR 13813 (March 24, 2004); *Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review*, 70 FR 19418 (April 13, 2005); *Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review*, 71 FR 2516 (January 17, 2006).

⁷ See *Notice of initiation of Five-Year (“Sunset”) Reviews*, 64 FR 59160 (November 2, 1999).

suspended antidumping investigation would be likely to lead to continuation or recurrence of dumping at the same percentage weighted-average margins found in the original investigations.⁸ The International Trade Commission (“ITC”) determined, pursuant to section 751(c) of the Act, that revocation of the orders on silicomanganese from Brazil and the PRC and termination of the suspended investigation on silicomanganese from Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁹ Accordingly, the Department published the notice of continuation of these antidumping duty orders and suspended antidumping duty investigation pursuant to section 777(i)(1) of the Act.¹⁰ As described above, on August 21, 2001, the Department terminated the suspension agreement and issued an antidumping duty order on silicomanganese from Ukraine, effective September 17, 2001. *See Ukraine Order.*

On January 3, 2006, the Department initiated the second sunset reviews of the antidumping duty orders on silicomanganese from Brazil, the PRC, and Ukraine pursuant to section 751(c) of the Act.¹¹ We found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the same percentage weighted-average margins as we found in the original investigations.¹² The ITC determined, pursuant to section 751(c) of the Act, that revocation of the orders on silicomanganese from Brazil, the PRC, and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹³ Accordingly, the Department published the notice of continuation of these antidumping duty orders pursuant to section 777(i)(1) of the Act.¹⁴

BACKGROUND

On August 1, 2011, the Department published the notice of initiations of the third sunset reviews of the antidumping duty orders on silicomanganese from Brazil, the PRC, and Ukraine pursuant to section 751(c) of the Act.¹⁵ The Department received a notice of intent to participate in all three reviews from a domestic interested party, Eramet, within the time specified in 19 CFR

⁸ *See Silicomanganese From the People’s Republic of China and Brazil; Final Results of Antidumping Duty Expedited Sunset Reviews*, 65 FR 35324 (June 2, 2000), and *Final Results of Full Sunset Review: Silicomanganese From Ukraine*, 65 FR 58045 (September 27, 2000).

⁹ *See Silicomanganese From Brazil, China, and Ukraine*, 66 FR 8981 (February 5, 2001), and USITC Pub. 3386, Inv. No. 731-TA-671-673 (Review) (January 2001).

¹⁰ *See Continuation of Antidumping Duty Orders on Silicon Metal From Brazil and China and on Silicomanganese From Brazil and China, and Continuation of Suspended Antidumping Duty Investigation on Silicomanganese From Ukraine*, 66 FR 10669 (February 16, 2001).

¹¹ *See Initiation of Five-Year (“Sunset”) Reviews*, 71 FR 91 (January 3, 2006).

¹² *See Silicomanganese from Brazil, Ukraine, and the People’s Republic of China; Five-year Sunset Reviews of Antidumping Duty Orders; Final Results*, 71 FR 26927 (May 9, 2006).

¹³ *See Silicomanganese From Brazil, China, and Ukraine*, 71 FR 52145 (September 1, 2006), and USITC Pub. 3879, Inv. Nos. 731-TA-671-673 (Second Review) (August 2006).

¹⁴ *See Silicomanganese from Brazil, Ukraine, and the People’s Republic of China: Continuation of Antidumping Duty Orders*, 71 FR 54272 (September 14, 2006).

¹⁵ *See Initiation of Five-Year (“Sunset”) Review*, 76 FR 45778 (August 1, 2011).

351.218(d)(1)(i).¹⁶ Eramet claimed interested-party status under section 771(9)(C) of the Act as a manufacturer of a domestic like product in the United States. The Department received complete substantive responses from Eramet within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department received no responses from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of these orders.

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 this determination, the Department shall consider both the weighted-average dumping margins determined in the investigations 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 orders. 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 orders were revoked. Below we address the comments of the interested party.

1. Likelihood of Continuation or Recurrence of Dumping

On August 31, 2011, Eramet submitted a substantive response in each sunset review. In its responses, Eramet asserts that revocation of the antidumping duty orders would lead to a continuation of dumping by manufacturers, producers, and exporters of the subject merchandise from Brazil, the PRC, and Ukraine based on: (1) the current dumping margins and the significant decline in import volume after the imposition of the order; (2) the continuation of dumping above a *de minimis* level since the order was imposed and since the prior sunset review.

Brazil:

Eramet states that, after the imposition of the antidumping duty order on silicomanganese from Brazil, the level of imports of the subject merchandise fell dramatically from annual levels ranging from 64,774 metric tons (“MT”) in 1993 (the year the petition was filed) to 21,373 MT in 1994 (the year the order was published) and then to 137 MT in 1995. Eramet adds that there were no imports from 1996 to 1998, imports of 20 MT and 15 MT in 1999 and 2000, respectively, no imports in 2001, and imports of 43 MT, 42 MT, and 54 MT in 2002, 2003, and 2004, respectively. Since 2005, Eramet asserts that imports of silicomanganese from Brazil have ceased.¹⁷ It comments that, over the life of the order, the margin determined by the Department for the sole respondent first increased from 64.93 percent in the investigation to 88.87 percent in the first administrative review and then declined to 13.02 percent in the 2001-2002

¹⁶ On August 19, 2011, the Department received a notice of intent to participate from Felman Production Inc. (“Felman”), a producer of the domestic like product. On August 22, 2011, Felman requested an extension of the deadline to submit its notice of intent to participate, as the deadline for domestic interested parties to submit notices of intent to participate in the sunset reviews was August 16, 2011, pursuant to 19 CFR 351.218(d)(1)(i) (“the deadline for filing a ‘Notice of Intent’ to participate by domestic interested parties in a sunset review is ‘no later than 15 days after the date of publication of the initiation notice.’”). In light of the compressed timelines for conducting the sunset review under section 751(c) of the Act, and 19 CFR 351.218(d), the Department denied Felman’s request for an extension. We received no responses from respondent interested parties.

¹⁷ See Eramet’s Brazil Substantive Response at 5.

administrative review and zero in the two most recent administrative reviews. Eramet concludes that, since the imposition of the order, imports of silicomanganese from Brazil have declined significantly and ceased since 2005; therefore, revocation of the order would likely lead to a continuation or recurrence of dumping.

PRC:

Eramet states that, after the imposition of the antidumping duty order on silicomanganese from the PRC, the level of imports of the subject merchandise fell dramatically from 51,193 MT in 1993 (the year the petition was filed) to 15,486 MT in 1994 (the year the order was published) and that there were no imports for the next eight years (1994 through 2002). Eramet states that, in 2003 and 2004, imports of silicomanganese from the PRC totaled 850 MT and 19 MT, respectively. Since the last sunset review, imports ceased most recently in 2005 and 2006 and increased slightly but remained far below pre-order levels during the next four years (34 MT in 2007, 2 MT in 2008, 536 MT in 2009, and 35 MT in 2010).¹⁸ Eramet argues further that the Department has completed only one administrative review covering the 1997-1998 period and determined dumping margins of 182.97 percent for Sichuan Emei Ferroalloy Import and Export Co., Ltd. (“Emei”), and 126.22 percent for Guangxi Bayi Ferroalloy Works (“Bayi”), respectively.¹⁹ Thus, Eramet argues, there has been dumping of silicomanganese from the PRC at levels above *de minimis* after the issuance of the order and that the Department should determine that revocation of the antidumping duty order on silicomanganese from the PRC is likely to lead to continuation or recurrence of dumping.

Ukraine:

Eramet states that the level of imports of silicomanganese fell dramatically from 37,642 MT in 1993 (the year the petition was filed) to a total of 72 MT in 2004, including periods of no imports from Ukraine (1995-1996 and 2000-2002). Since 2005, Eramet states that imports of silicomanganese from Ukraine have ceased.²⁰ Eramet states that no administrative reviews of the antidumping duty order on silicomanganese from Ukraine have been conducted. Thus, it contends, no exporter has demonstrated that it can ship Ukrainian silicomanganese to the United States without dumping and revocation of the order would likely lead to a continuation or recurrence of dumping.

Department Position:

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, the Department normally determines 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 order, (b) imports of the subject merchandise

¹⁸ See Eramet’s PRC Substantive Response at 5.

¹⁹ See *Silicomanganese From the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 65 FR 31514 (May 18, 2000). The Department also initiated a second administrative review (covering the 2003-2004 review period), but that review was rescinded after the requesting importer withdrew its request for review. See *Silicomanganese from the People’s Republic of China: Rescission of Antidumping Duty Administrative Review*, 70 FR 30926 (May 31, 2005).

²⁰ See Eramet’s Ukraine Substantive Response at 5.

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.²¹

Brazil:

Using import statistics from the ITC's DataWeb system, the Department finds that import volumes of silicomanganese from Brazil have declined significantly from pre-order levels and have ceased since 2005.²² Given that no administrative reviews have been conducted since the last sunset review and imports have ceased, the Department determines that dumping is likely to continue or recur if the order were revoked.

PRC:

Using import statistics from the ITC's DataWeb system, the Department finds that import volumes of silicomanganese from the PRC have declined significantly from pre-order levels and ceased most recently in the period 2005-2006. Since 2006, a slight but irregular increase has occurred; however, import levels have averaged 184.5 MT during the period 2007-2010, or 0.36 percent of the pre-order volume.²³ Given that no administrative reviews have been conducted since the last sunset review and imports have declined significantly from pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

Ukraine:

Using import statistics from the ITC's DataWeb system, the Department finds import volumes of silicomanganese from Ukraine have declined significantly from pre-order levels and that imports have ceased since 2005.²⁴ Given that no administrative reviews have been conducted and imports have ceased, the Department determines that dumping is likely to continue or recur if the order were revoked.

Magnitude of the Margins Likely to Prevail

Brazil:

In its substantive response for silicomanganese from Brazil, Eramet states that the Department should provide the margin calculated in the original investigation to the ITC.²⁵ Accordingly, it recommends that the Department report the following dumping margins to the ITC:

RDM/CPFL	64.93
All Others	17.60

PRC:

Eramet states that the Department determined a 150.00 percent margin for all exporters of silicomanganese from the PRC. Eramet adds that the Department has completed only one

²¹ See the Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1 (1994); House Report, H. Rep. No. 103-826, pt. 1 (1994); Senate Report, S. Rep. No. 103-412 (1994); *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998).

²² See Attachment 1.

²³ See Attachment 2.

²⁴ See Attachment 3.

²⁵ See Brazil Substantive Response at 9.

administrative review and determined dumping margins of 182.97 percent for Emei and 126.22 percent for Bayi, respectively.²⁶ Eramet argues that the dumping margin of 150.00 percent calculated for all PRC producers in the original investigation is likely to prevail if the order is revoked because the original margin best represents the behavior of PRC producers and exporters in the absence of an order. Accordingly, it recommends that the Department report the following dumping margins to the ITC:

All Other Manufacturers/Producers/Exporters	150.00
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Ukraine:

In its substantive response for silicomanganese from Ukraine, Eramet states that the Department should provide the margin calculated in the original investigation to the ITC.²⁷ Accordingly, it recommends that the Department report the following dumping margin to the ITC:

All Manufacturers/Producers/Exporters	163.00
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Department 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 likely to prevail if the order were revoked. Normally, the Department will select a margin from the final determination in 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.²⁸ Furthermore, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of “zero or *de minimis* shall not by itself require” that the Department determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at less than fair value. The Department continues to find that the margins calculated in the original investigations are the best indication of the margins likely to prevail if the orders were revoked, because they are the only calculated rates without the discipline of an order in place.

Therefore, consistent with section 752(c)(3) and section 752(c)(4)(A) of the Act, the Department will report to the ITC the corresponding individual company rates and all others rates from the original investigations as noted in the “Final Results of Review” section, below.

FINAL RESULTS OF REVIEW

For the reasons stated above, we determine that revocation of the antidumping duty orders on silicomanganese from Brazil, the PRC, and Ukraine would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

²⁶ See PRC Substantive Response at 7.

²⁷ See Ukraine Substantive Response at 7.

²⁸ See *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.

Manufacturers/Exporters/Producers Weighted-Average Margin (percent)

Brazil

RDM/CPFL	64.93
All Others	17.60

PRC

All Manufacturers/Producers/Exporters	150.00
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Ukraine

All Manufacturers/Producers/Exporters	163.00
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RECOMMENDATION

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

Agree _____ Disagree _____

Paul Piquado
Assistant Secretary
for Import Administration

Date

Attachment 1: Import Statistics of Silicomanganese from Brazil

Brazil	<i>In Actual Dollars</i>	<i>In Actual Units of Quantity (metric tons)</i>
1993	26,288,249	67,774,100
1994	9,900,592	21,373,155
1995	104,120	137,000
1996	0	0
1997	0	0
1998	0	0
1999	17,360	20,000
2000	20,405	15,000
2001	0	0
2002	24,002	42,722
2003	30,282	42,000
2004	92,016	54,000
2005	0	0
2006	0	0
2007	0	0
2008	0	0
2009	0	0
2010	0	0
2011 YTD	0	0

Source: International Trade Commission's DataWeb System, HTS# 7202.30.0000.

Attachment 2: Import Statistics of Silicomanganese from the PRC

PRC	<i>In Actual Dollars</i>		<i>In Actual Units of Quantity (metric tons)</i>
1993	20,472,890		51,192,775
1994	6,592,366		17,918,439
1995	0		0
1996	0		0
1997	0		0
1998	0		0
1999	0		0
2000	0		0
2001	0		0
2002	0		0
2003	15,389		19,480
2004	932,400		850,000
2005	0		0
2006	0		0
2007	114,829		34,362
2008	6,000		2,000
2009	937,183		536,500
2010	54,134		34,813
2011 YTD	0		0

Source: International Trade Commission's DataWeb System, HTS# 7202.30.0000.

Attachment 3: Import Statistics of Silicomanganese from Ukraine

Ukraine	<i>In Actual Dollars</i>		<i>In Actual Units of Quantity (metric tons)</i>
1993	13,667,978		37,641,993
1994	5,480,142		14,024,862
1995	0		0
1996	0		0
1997	4,360,728		7,492,148
1998	0		0
1999	2,850,654		8,187,506
2000	0		0
2001	0		0
2002	0		0
2003	15,187		19,967
2004	56,164		72,176
2005	0		0
2006	0		0
2007	0		0
2008	0		0
2009	0		0
2010	0		0
2011 YTD	0		0

Source: International Trade Commission's DataWeb System, HTS# 7202.30.0000.