

71 FR 26334, May 4, 2006

A-570-806
A-351-806
Sunset Reviews
Public Document
IA/NME/9:MJQ/CDR

DATE: April 27, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for Expedited Sunset Reviews
of the Antidumping Duty Orders on Silicon Metal from the
People's Republic of China and Brazil; Final Results

SUMMARY:

We have analyzed the substantive responses of the interested parties in the second sunset reviews of the antidumping duty orders on Silicon Metal from the People's Republic of China ("PRC") and Brazil. We recommend that you approve the positions 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
2. Magnitude of the margin likely to prevail

History of the Orders

PRC

On June 10, 1991, the Department published an antidumping duty order on silicon metal from the PRC, in which the Department determined a margin of 139.49 percent for all PRC exporters of the subject merchandise. See Antidumping Duty Order: Silicon Metal from the People's Republic of China, 56 FR 26649 (June 10, 1991). Since then, the Department has conducted two

administrative reviews. In both reviews, the Department assigned the respondents the adverse facts available (“AFA”) rate of 139.49 percent, which is also the PRC-wide rate. See Notice of Final Results of Administrative Review: Silicon Metal from the People's Republic of China, 68 FR 35383 (June 13, 2003); Silicon Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 63 FR 37850 (July 14, 1998). In addition, the Department initiated and rescinded one new shipper review. See Silicon Metal From the People's Republic of China; Notice of Rescission of New Shipper Review, 64 FR 40831 (July 28, 1999). Finally, the Department has conducted one sunset review, resulting in the continuation of the order. See Continuation of Antidumping Duty Orders on Silicon Metal from Brazil and China and on Siliconmanganese from Brazil and China, and Continuation of Suspended Antidumping Duty Investigation on Siliconmanganese from Ukraine, 66 FR 10669 (February 16, 2001).

There has been one scope clarification in this proceeding. See Scope Rulings, 58 FR 27542 (May 10, 1993) (“Scope Ruling”). In response to a request by domestic interested parties for clarification of the scope of the antidumping duty order, the Department determined that silicon metal containing between 89.00 percent and 99.00 percent silicon by weight, but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent, but less than 99.99 percent silicon by weight, is the same class or kind of merchandise as the silicon metal described in the original order. Therefore, such material is within the scope of the order on silicon metal from the PRC.

Brazil

On June 12, 1991, the Department published an antidumping duty order on silicon metal from Brazil, in which the Department determined an antidumping duty margin of 87.79 percent for Companhia Brasileira Carbureto de Calcio (“CBCC”), 93.20 percent for Camargo Correa Metais, S.A. (“CCM”), and 91.06 percent for all other Brazilian exporters of subject merchandise. See Antidumping Duty Order: Silicon Metal from Brazil, 56 FR 36135 (July 31, 1991). Since then, the Department has conducted administrative reviews of the order covering every period of review since the order was issued in 1991. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 71 FR 7517 (February 13, 2006). Finally, the Department has conducted one sunset review, resulting in the continuation of the order. See Continuation of Antidumping Duty Orders on Silicon Metal from Brazil and China and on Siliconmanganese from Brazil and China, and Continuation of Suspended Antidumping Duty Investigation on Siliconmanganese from Ukraine, 66 FR 10669 (February 16, 2001).

Background

On January 3, 2006, the Department initiated a sunset review of the antidumping duty order on silicon metal from the PRC and Brazil, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Initiation of Five-Year Sunset Reviews, 71 FR 91 (January 3, 2006). The Department received a notice of intent to participate on behalf of Globe Metallurgical Inc. (“Globe”), on January 18, 2006, within the applicable deadline specified in 19 CFR 351.218(d)(1)(i). Globe claimed interested-party status under section 771(9)(C) of the Act, as a U.S. producer of the domestic like product. On February 2, 2006, Globe submitted complete substantive responses regarding the PRC and Brazil, within the 30-day deadline specified in the regulations pertaining to sunset reviews. See 19 CFR 351.218(d)(3)(i). Globe noted that, in 1990, several domestic producers, including Globe, filed a petition that resulted in the issuance of the antidumping duty order on silicon metal from the PRC and Brazil. Globe also noted that it and/or Elkem Metals Company, whose assets Globe purchased in December 2005, have actively participated in each of the administrative, new shipper and sunset reviews for the PRC and/or Brazil conducted by the Department, as well as in a number of related appeals and remand proceedings.

Without a substantive response from respondent interested parties, the Department, pursuant to 19 CFR 351.218(e)(1)(ii)(C), determined to conduct an expedited, 120-day review of this order. See Letter to Robert Carpenter, Director, Office of Investigations, International Trade Commission from Thomas Futtner, Acting Director, Office 4, AD/CVD Operations, Import Administration, regarding Inadequate Foreign Responses and Concomitant Expedited Sunset Reviews of Certain Antidumping Duty Orders Initiated in January 2006 (February 21, 2006).

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, 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 order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the International Trade Commission (“ITC”) the magnitude of the margin of dumping likely to prevail if the order is revoked.

Below we address the comments of the domestic interested party, Globe.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

PRC

In its substantive response of February 2, 2006, Globe contends that revocation of the order would result in continued and increased dumping of PRC silicon metal in the United States. See Silicon Metal from the People's Republic of China; Sunset Review; Substantive Response of Globe Metallurgical Inc., February 2, 2006, at 3 (“Globe Submission for PRC”). Citing a Department Policy Bulletin and the Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1 (1994) (“SAA”) which note that the existence of dumping margins is highly probative of the likelihood of continuation or recurrence of dumping, Globe stated that the Department’s margin determination of 139.49 percent for all PRC exporters has remained unchanged since the order was issued. Id. at 4; see also Policies Regarding the Conduct of Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (“Sunset Policy Bulletin”). Globe contends that during the more than fourteen years the order has been in place, no exporter of silicon metal from the PRC has demonstrated that it can ship silicon metal to the United States without dumping (or at a margin below 139.49 percent). Id. at 5. Further, Globe indicates that, according to the U.S. Census Bureau’s data, the volume of entries into the United States from the PRC under the HTS numbers which cover silicon metal has fallen below pre-order levels. Id. at 5 and Table 4. In fact, Globe asserts that negligible volumes of silicon metal from the PRC on which a duty was paid have been imported into the United States since 2001. Id. at 5-6; see also Attachment 1 which includes ITC Dataweb data which covers all merchandise entered into the United States under the relevant HTS numbers (including, potentially, non-subject merchandise). Therefore, domestic interested parties assert that, based on these facts, and in accordance with the above-referenced Sunset Policy Bulletin, the Department should determine that dumping is likely to continue or recur if the antidumping duty order on the PRC is revoked. Id. at 6.

Brazil

In its substantive response of February 2, 2006, Globe contends that revocation of the order would result in continued and increased dumping of Brazilian silicon metal in the United States. See Silicon Metal from Brazil; Sunset Review; Substantive Response of Globe Metallurgical Inc., February 2, 2006, at 3 (“Globe Submission for Brazil”). Again, citing the above-referenced Sunset Policy Bulletin and the SAA which note, as previously stated, that the existence of dumping margins is highly probative of the likelihood of continuation or recurrence of dumping, Globe states that the Department’s margins for several Brazilian exporters (e.g., CCM, Companhia Ferroligas Minas Gerais - Miasligas, and Italmagnesio Nordeste S.A.) remain at

levels above de minimis. Id. at 5. Globe also contends that during the more than fourteen years the order has been in place, only four exporters of silicon metal from Brazil have received company-specific calculated margins. However, according to these four companies' submissions to the Department, none had imports to the United States that remained steady or increased during the life of the order. Id. at 8. Further, Globe asserts that, according to the U.S. Census Bureau's data, the volume of silicon metal imported into the United States from Brazil on which duty was paid has fallen to a small fraction of the pre-order levels. Id. at 6; see also Attachment 1 which includes ITC Dataweb data which covers all merchandise entered into the United States under the relevant HTS numbers (including, potentially, non-subject merchandise). Therefore, the domestic interested party asserts, based on these facts, and in accordance with the Sunset Policy Bulletin, that the Department should determine that dumping is likely to continue or recur if the antidumping duty order on Brazil is revoked. Id. at 6.

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the SAA, the House Report, H. Rep. No. 103-826, pt. 1 (1994) ("House Report"), and the Senate Report, S. Rep. No. 103-412 (1994) ("Senate Report"), 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 ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of an order and import volumes for the subject merchandise declined significantly.

The information on the record of the proceedings of these two orders demonstrates that dumping has persisted since the issuance of these orders. Cash deposit rates above de minimis remain in effect for nearly all exports of Silicon Metal from the PRC and Brazil. The Department also analyzed and considered the volume of imports, as reported by the U.S. Census Bureau and the ITC, of the subject merchandise for the period before issuance of the order and for the period after the issuance of these orders, and import volumes over the past five years. We note that with respect to Silicon Metal from Brazil, that there have been above de minimis margins for at least one of the reviewed companies in each administrative review throughout the history of the order. See Globe Submission for Brazil, at 2. As such, on the basis of the information on the record, we continue to find that it is likely that if the antidumping duty orders were revoked for the PRC and Brazil, dumping would continue or recur.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments:

PRC

In its substantive response, Globe cites to the Act and the Sunset Policy Bulletin and asserts that, because the Department's original country-wide rate of 139.49 percent has remained unchanged, and import volumes have decreased dramatically as a result of the antidumping duty order, the Department should report to the Commission 139.49 percent for all PRC exporters. This rate should be reported, Globe argues, because it is the only rate that reflect the behavior of exporters without the discipline of an order. See Globe Submission for PRC at 8.

Brazil

Globe also asserts that in accordance with the legislative history and the Department's policy, the Department should provide the ITC with company specific rates for CCM and the all others rate from the original investigation.¹ These are 93.20 percent for CCM and 91.06 percent for the "all others" rate. As was the case with the PRC, Globe argues these rates should be reported to the ITC because they are the only calculated rates that reflect the behavior of exporters without the discipline of an order. See Globe Submission for Brazil, at 9.

Department's Position

Section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin of dumping that is likely to prevail if the orders were revoked. The Department normally will select a margin from the final determination of the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. See SAA at 890, and the House Report at 64.

In the final determination of the investigation from the PRC, the Department found dumping margins of 139.49 percent for the PRC-wide entity. See Final Determination of Sales at Less Than Fair Value: Silicon Metal From the People's Republic of China, 56 FR 18570 (April 23,

¹ In addition, pursuant to the Sunset Policy Bulletin which states that "the Department normally will provide to the Commission a list of companies excluded from the order based on zero or de minimis margins, if any, or subsequently revoked from the order, if any," we will notify the ITC that CBCC and RIMA Eletrometalurgica S.A. ("RIMA") are no longer subject to the order. See Silicon Metal From Brazil: Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part, 68 FR 57670 (October 6, 2003) (order revoked for CBCC) ("CBCC Revocation"); see also Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part, 67 FR 77225 (December 17, 2002) (order revoked for RIMA).

1991). In the final determination of the investigation from Brazil, the Department found dumping margins of 93.20 percent for CCM and 91.06 percent for the “all others” rate.² See Final Determination of Sales at Less Than Fair Value: Silicon Metal from Brazil, 56 FR 26977 (June 12, 1991).

In the final results of subsequent administrative reviews of both orders, the Department continued to find margins to be above de minimis. In the first sunset review, the Department determined that the margins calculated in the original investigation are reflective of the behavior of the PRC and Brazilian producers and exporters of silicon metal without the discipline of the orders. Furthermore, for the second sunset review of silicon metal from the PRC and Brazil, the Department does not find any indication that the margins calculated in subsequent reviews are more probative of behavior without the discipline of the orders. Consequently, as in the first sunset review, the Department finds that the margins from the original investigation, with the exception of CBCC’s margin from the Brazil investigation, are the appropriate margins to report to the ITC with respect to the orders on silicon metal from the PRC and Brazil because they are the only calculated rates that reflect the behavior of producers and exporters without the discipline of the orders. Therefore, consistent with section 752(c) of the Act, the Department will report to the ITC company-specific and “all others” rates from the investigations, where applicable, as indicated in the “Final Results of Reviews” section of this memorandum.

Final Results of Review

We determine that revocation of the antidumping duty orders on silicon metal from the PRC and Brazil would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margin:

PRC

<u>Manufacturer/exporters</u>	<u>Margin (percent)</u>
PRC-Wide Rate	139.49

² The Department calculated a rate of 87.79 percent for CBCC in the investigation, but the order has since been revoked for CBCC. See CBCC Revocation.

Brazil

<u>Manufacturer/exporters</u>	<u>Margin (percent)</u>
Camargo Correa Metais, S.A. (“CCM”)	93.20
Companhia Brasileira Carbureto de Calcio (“CBCC”)	Revoked
RIMA Eletrometalurgica S.A. (“RIMA”)	Revoked
All Others	91.06

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If the recommendations are accepted, we will publish the Final Results of Review in the Federal Register.

AGREE _____ DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date

Attachment 1

U.S. Imports of Silicon Metal

In Units (1,000)

	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
PRC	21,874	2,973	3,684	3,971	5,003	51,036	2,847	2,479
Brazil	29,106	8,297	435	15,828	38,290	2,818	68,877	62,899

NOTE: Order for the PRC issued on June 10, 1991. Order for Brazil issued on July 31, 1991.

NOTE: 1st Sunset Review, for the PRC and Brazil, completed on February 16, 2001.

Source: USITC Dataweb

NOTE: Data comprised of HTS 2804.69.10 defined as “Hydrogen, rare gases and other nonmetals; Silicon; Other; containing by weight less than 99.99 percent but not less than 99 percent of silicon,” and HTS 2804.69.50 defined as “Hydrogen, rare gases and other nonmetals; Silicon; Other; Other.”

SOURCE: U.S. ITC Dataweb (<http://dataweb.usitc.gov/>)