

February 15, 2012

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 Expedited Third Sunset
Review of the Antidumping Duty Order on Silicon Metal from the
People's Republic of China

Summary

In the sunset review of the antidumping duty order covering silicon metal from the People's Republic of China ("PRC"), Globe Metallurgical Inc. ("Globe"), a domestic producer of silicon metal, was the only participating interested party. No respondent interested party submitted a substantive response. In accordance with our analysis of Globe's substantive response, we recommend adopting the positions described below. The following is a complete list of issues in this sunset review for which we received a substantive response:

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

Background

On November 1, 2011, the Department of Commerce ("Department") published the notice of initiation of the sunset review of the antidumping duty order on silicon metal from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("Act").¹ On November 16, 2011, pursuant to 19 CFR 351.218(d)(1), the Department received a timely and complete notice of intent to participate in the sunset review from Globe. On December 1, 2011, pursuant to 19 CFR 351.218(d)(3), Globe filed a timely and adequate substantive response. The Department did not receive substantive 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 an expedited (120-day) sunset review of the antidumping duty order on silicon metal from the PRC.

¹ See *Initiation of Five-Year ("Sunset") Review*, 76 FR 67412 (November 1, 2011).

History of the Order

PRC

On April 23, 1991, the Department published its final determination in the less than fair value (“LTFV”) investigation of silicon metal from the PRC.² On June 10, 1991, the Department published the antidumping duty order on silicon metal from the PRC.³ The Department found the following antidumping duty margins:

Exporters	Weighted-Average Margin (percent)
PRC-Wide Rate (all exporters)	139.49

Administrative Reviews and New Shipper Reviews

Since the issuance of the antidumping duty order, the Department has completed five administrative reviews.⁴ The Department has also terminated or rescinded three administrative reviews.⁵ Moreover, the Department has completed a new shipper review⁶ and has rescinded four additional new shipper reviews.⁷ Further, the Department has conducted two sunset

² See *Final Determination of Sales at Less Than Fair Value: Silicon Metal From the People's Republic of China*, 56 FR 18570 (April 23, 1991).

³ See *Antidumping Duty Order: Silicon Metal From the People's Republic of China*, 56 FR 26649 (June 10, 1991) (“Antidumping Order”).

⁴ See *Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 63 FR 37850 (July 14, 1998); *Notice of Final Results of Administrative Review: Silicon Metal from the People's Republic of China*, 68 FR 35383 (June 13, 2003); *Final Results and Final Partial Rescission of Antidumping Duty Administrative Review: Silicon Metal From the People's Republic of China*, 73 FR 46587 (August 11, 2008); *Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 1592 (January 12, 2010) (“2007-08 Review Final Results”); *Silicon Metal From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review*, 76 FR 7811 (February 11, 2011) (“2008-09 Review Amended Final Results”).

⁵ See *Silicon Metal From the People's Republic of China; Termination of Antidumping Duty Administrative Review*, 58 FR 68119 (December 23, 1993); *Silicon Metal from the People's Republic of China: Notice of Rescission of New Shipper Review and Administrative Review for China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp.*, 68 FR 11057 (March 7, 2003); *Silicon Metal From the People's Republic of China: Rescission of Antidumping Duty Administrative Review*, 76 FR 12338 (March 7, 2011).

⁶ See *Silicon Metal from the People's Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews*, 72 FR 58641 (October 16, 2007) and *Silicon Metal From the People's Republic of China: Notice of Amended Final Results of New Shipper Reviews Pursuant to Court Decision*, 75 FR 15412 (March 29, 2010) (“Amended New Shipper Review”).

⁷ See *Silicon Metal From the People's Republic of China; Notice of Rescission of New Shipper Review*, 64 FR 40831 (July 28, 1999); *Silicon Metal From the People's Republic of China; Notice of Rescission of New Shipper Antidumping Duty Review*, 66 FR 12927 (March 1, 2001); *Silicon Metal from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review*, 67 FR 38255 (June 3, 2002); *Silicon Metal from the People's Republic of China: Notice of Rescission of New Shipper Review and Administrative Review for China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp.*, 68 FR 11057 (March 7, 2003).

reviews, both of which resulted in continuation of the order.⁸ Finally, the sixth administrative review of silicon metal from the PRC is ongoing.⁹

Scope Inquiries, Changed Circumstances Reviews, and Duty Absorption

On May 10, 1993, the Department issued a scope clarification in this proceeding.¹⁰ The Department found that silicon metal containing between 89.00 and 96.00 percent silicon by weight, with higher aluminum content than the silicon metal containing at least 96.00 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.¹¹ Therefore, such material is within the scope of the antidumping duty order on silicon metal from the PRC.

There have been no circumvention or changed circumstances determinations in connection with the antidumping duty order on silicon metal from the PRC. Further, there have been no duty absorption findings concerning the antidumping duty order on silicon metal from the PRC.

Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the antidumping duty 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 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 periods before, and the periods after, the issuance of the antidumping duty order.

As explained in the Statement of Administrative Action (“SAA”) 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 when: (a) dumping continued at any level above *de minimis* after issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. Alternatively, the Department normally will determine that revocation of an antidumping duty order is not likely to lead to continuation or recurrence of dumping where dumping was

⁸ 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); *Silicon Metal from the People’s Republic of China: Continuation of Antidumping Duty Order*, 71 FR 76636 (December 21, 2006) (“*Second Silicon Metal Sunset Review*”) and *Silicon Metal from the People’s Republic of China: Notice of Correction of Continuation of Antidumping Duty Order*, 72 FR 531 (January 5, 2007).

⁹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocations in Part and Deferral of Administrative Reviews*, 76 FR 45227 (July 28, 2011).

¹⁰ See *Scope Rulings*, 58 FR 27542, 27543 (May 10, 1993).

¹¹ *Id.*

eliminated after issuance of the order and import volumes remained steady or increased.¹² In addition, as a base period for import volume comparison, it is the Department'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 an investigation may dampen import volumes and, thus, skew comparison.¹³

Further, 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 were revoked. Generally, the Department selects the margin(s) from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.¹⁴ However, the Department may use a rate from a more recent review where the dumping margin increased, as this rate may be more representative of a company's behavior in the absence of an order (*e.g.*, where a company increases dumping to maintain or increase market share with an order in place).¹⁵ Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of "zero or *de minimis* shall not by itself require" the Department to 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. Our analysis of the comments submitted by Globe follows.

Analysis

1. Likelihood of Continuation or Recurrence of Dumping

- Globe argues that revocation of the antidumping duty order on silicon metal from the PRC would likely result in the continuation of dumping in the United States.¹⁶ Specifically, Globe contends that during the more than twenty years since the *Antidumping Order* was issued, no exporter of silicon metal from the PRC has demonstrated that it can ship silicon metal to the United States without dumping. Globe states that these facts are virtually unchanged from those considered by the Department in the first and second sunset reviews of the *Antidumping Order*.¹⁷
- In addition, Globe argues that, according to the U.S. Census Bureau's data, the volume of silicon metal imported from the PRC has declined dramatically from the year the petition was filed (*i.e.*, 1990).¹⁸ In particular, Globe states that during the five-year period from 2006 through 2010, silicon metal imports from the PRC remained well below pre-*Antidumping Order* levels. In fact, Globe states that silicon metal imports were

¹² See SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90; 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*").

¹³ See, *e.g.*, *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁴ See SAA at 890 and *Sunset Policy Bulletin* at section II.B.1. See, *e.g.*, *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.

¹⁵ See SAA at 890-91; *Sunset Policy Bulletin* at section II.B.2.

¹⁶ See *Silicon Metal from the People's Republic of China; Third Sunset Review; Substantive Response of Globe Metallurgical Inc. to the Notice of Initiation*, dated December 1, 2011 ("Globe Substantive Response") at 5.

¹⁷ *Id.* at 5-6.

¹⁸ *Id.* at 5-6 and Table A.

negligible for all years except 2008. Globe argues that this pattern has continued in 2011, through September, when only 451 metric tons (“MT”) of silicon metal have been imported from the PRC.

- Further, Globe argues that beginning in 1993, a large portion of the silicon metal imported from the PRC into the United States has entered as temporary importation under bond (“TIB”) entries, which is a procedure whereby articles may be imported duty free by posting a bond to guarantee that the articles will be re-exported or destroyed within a specified period.¹⁹ Thus, Globe argues that from 1993 through 2010, only 13,102 MT of the 50,074 MT of silicon metal imported from the PRC were subject to duty.²⁰

Department’s Position: As explained in the Legal Framework section above, the Department’s determination concerning whether revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping is based, in part, upon guidance provided by the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, the SAA; House Report, H. Rep. No. 103-826, pt. 1 (1994) (“House Report”); and Senate Report, S. Rep. No. 103-412 (1994) (“Senate Report”). Consistent with the SAA, the Department will make its likelihood determination on an order-wide basis.²¹ Further, 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 the Department 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 antidumping duty order. Thus, one consideration is whether the Department has continued to find dumping above *de minimis* levels in administrative reviews subsequent to imposition of the antidumping duty order.²² According to the SAA and the House Report, “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.”²³ In the instant review, for the reasons stated below, we find that revocation of the antidumping duty order on silicon metal from the PRC would likely result in the continuation of dumping in the United States.

In this case, we find that PRC exporters of silicon metal have continued to sell into the United States at prices below normal value following the issuance of the *Antidumping Order* in 1991. Since issuance of the *Antidumping Order*, the Department has found dumping at rates exceeding *de minimis* levels in every completed review. In particular, since the completion of the *Second Silicon Metal Sunset Review*, the Department has calculated separate rates for two PRC exporters (*i.e.*, Jiangxi Gangyuan Silicon Industry Co., Ltd. (“Jiangxi Gangyuan”) and Shanghai Jinneng International Trade Co. Ltd. (“Shanghai Jinneng”). Specifically, for Jiangxi Gangyuan, the Department calculated a 71.57 percent margin in the 2005-06 new shipper review, a 50.02 percent margin in the 2007-08 administrative review.²⁴ For Shanghai Jinneng, the Department calculated a 50.41 percent margin in the 2005-06 new shipper review, a 23.16 percent margin in

¹⁹ *Id.* at 6.

²⁰ *Id.*

²¹ See SAA at 879.

²² See *id.* at 890.

²³ *Id.*; see also House Report at 63-64.

²⁴ See *Amended New Shipper Review; 2007-08 Review Final Results*, 75 FR at 1594.

the 2007-08 administrative review, and a 3.30 percent margin in the 2008-09 administrative review.²⁵

Pursuant to section 752(c)(1)(B) of the Act, the Department also considered the volume of imports of the subject merchandise in determining whether revocation of the antidumping duty order is likely to lead to continuation or recurrence of dumping. As discussed above, it is the Department's practice to compare the volume of imports for the one year period preceding the initiation of the LTFV investigation to the volume of imports after the issuance of the order. Since the issuance of the *Antidumping Order*, import volumes of silicon metal into the United States from the PRC have generally declined and have remained below pre-investigation levels for most years.²⁶ Globe provided import volume data from the U.S. Census Bureau from 1990 to 2011 showing imports of silicon metal from the PRC drastically declined in the year the order was imposed, and remained at a low level, for the twenty years following imposition of the order.²⁷ In analyzing import volumes for the five years following the last sunset review, based on Harmonized Tariff Schedule of the United States ("HTSUS") import data provided by DataWeb, the ITC's online database of international trade data, the Department has determined that imports from the PRC under the HTSUS numbers listed in the scope of the *Antidumping Order* have generally remained at lower levels than the year immediately preceding the initiation of the LTFV investigation (*i.e.*, 1989).²⁸ Although the volume of imports in 2008 was approximately twenty percent higher than the pre-investigation volume, the following year the volume decreased by over 90 percent compared to the pre-investigation volume. In fact, the average annual volume of imports of silicon metal into the United States from the PRC for 2006 through 2010 (*i.e.*, approximately 2,055,016 kilograms ("KG")) was less than silicon metal imports in 1989 (*i.e.*, approximately 7,275,467 KG).²⁹ Thus the weight of the evidence shows that there have been declining imports over the last five years when compared to pre-initiation import volumes.

Therefore, pursuant to section 752(c)(1) of the Act, because the Department has found declining import volumes in four of the five years covered by this sunset review, accompanied by the continued existence of dumping margins after the issuance of the *Antidumping Order*, we find that dumping is likely to continue or recur if the *Antidumping Order* is revoked. The existence of above *de minimis* margins demonstrates that if the *Antidumping Order* is revoked, it is likely that PRC exporters of silicon metal would continue dumping at significant levels. Finally, because the Department has found that dumping is likely to continue or recur if the *Antidumping Order* is revoked, it is not necessary to address Petitioner's argument regarding U.S. imports of silicon metal entered as TIB entries.

²⁵ See *Amended New Shipper Review*, 75 FR at 15413; *2007-08 Review Final Results*, 75 FR at 1594; *2008-09 Review Amended Final Results*, 76 FR at 7812. The *2007-08 Review Final Results* were challenged at the U.S. Court of International Trade. See *Globe Metallurgical Inc. v. United States*, Slip Op. 11-72, Ct. No. 10-00032 (June 21, 2011). On remand, Shanghai Jinneng's and Jiangxi Gangyuan's rates were recalculated, resulting in antidumping margins of 21.97 percent and 48.64 percent, respectively. The Court has not yet issued a final decision. The *2008-09 Review Amended Final Results* are also currently under appeal.

²⁶ See Attachment I to this memorandum.

²⁷ See Globe Substantive Response at Table A. The LTFV investigation was initiated in September of 1990. See *Initiation of Antidumping Duty Investigation: Silicon Metal From the People's Republic of China*, 55 FR 38717 (September 20, 1990).

²⁸ See Attachment I to this memorandum.

²⁹ *Id.*

2. Magnitude of the Dumping Margin Likely to Prevail

- Globe argues that the Department should report to the ITC the antidumping duty margin calculated in the investigation of silicon metal from the PRC, which is in accordance with the Act and the *Sunset Policy Bulletin*. Specifically, Globe argues that because the Department's original PRC-wide rate of 139.49 percent has remained unchanged, and import volumes have decreased dramatically as a result of the *Antidumping Order*, the Department should report to the ITC 139.49 percent for all PRC exporters. Globe argues that this rate should be reported because it is the only rate that reflects the behavior of exporters without the discipline of an order.

Department's Position: The Department has determined that the dumping margin established in the investigation of silicon metal from the PRC is the margin most likely to prevail if the *Antidumping Order* were revoked. Normally, the Department will provide to the ITC the company-specific margin from the investigation for each company.³⁰ 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.³¹ In this proceeding, however, the Department did not individually examine specific companies in the LTFV investigation. For companies not investigated individually, or for companies that did not begin shipping until after the order was issued, the Department will normally provide a margin based on the "All-Others" rate from the investigation.³² However, the Department considers the PRC to be a non-market economy under section 771(18) of the Act, and instead of an "All-Others" rate, the Department uses a PRC-wide rate.³³

The Department agrees with Globe that the PRC-wide rate of 139.49 percent, calculated in the LTFV investigation, is likely to prevail if the *Antidumping Order* is revoked because the original margin best represents the behavior of Chinese exporters in the absence of an order. Consequently, as in the first and second sunset reviews, the Department finds the 139.49 percent rate from the LTFV investigation is probative of the behavior of PRC manufacturers, producers, and exporters of silicon metal without the discipline of an order in place. As a result, we will report to the ITC the margin listed in the "Final Results of Review" section below.

Final Results of Review

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

³⁰ See *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

³¹ *Id.*; see also SAA at 890 and *Sunset Policy Bulletin* at section II.B.1.

³² See *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

³³ See *Paper Clips From the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order*, 76 FR 26242 (May 6, 2011) and accompanying Issues and Decision Memorandum at Comment 2.

Exporters	Weighted-Average Margin (percent)
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PRC-Wide Rate	139.49
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Recommendation

Based on our analysis of the substantive response received, we recommend adopting 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

Paul Piquado
Assistant Secretary
for Import Administration

(Date)

Attachment 1

United States (Consumption/Domestic) Import Statistics From the PRC
Commodity: 280469, Silicon, Containing By Weight Less Than 99.99% Of Silicon

Commodity	Unit	Description	Quantity (KG)									
			1989	1990	1991	1992	2005	2006	2007	2008	2009	2010
Combined Total	KG	Silicon, Containing By Weight Less Than 99.99% Of Silicon	7,275,467	21,874,475	3,662,392	3,884,304	2,479,194	192,257	381,752	8,681,397	602,637	417,037
		Combined % difference between total import volume in the base year (i.e., 1989, the year immediately preceding the Order) and total import volume in the current year		Year of Initiation	Issuance of the Order	-46.61%	-65.92%	-97.36%	-94.75%	19.32%	-91.72%	-94.27%
2804691000	KG	Silicon Containing By Weight Less Than 99.99 Percent But Not Less Than 99 Percent Of Silicon	4,931,703	19,226,452	2,687,345	256,444	40,156	87,609	362,705	7,415,400	1,000	64,438
2804695000	KG	Silicon Less Than 99 Percent Pure	2,343,764	2,648,023	975,047	3,627,860	2,439,038	104,648	19,047	1,265,997	601,637	352,599

Years
1989
2006-2010
Average % decrease in import volume from base year (1989) to each target year (i.e., 2006 through 2010)

Combined Average Import Volumes (KG)
7,275,467
2,055,016

-71.75%

Total Imports
2006 through
2010
10275080

Review of Import Data Entering Under HTS Category for Silicon Metal from the PRC

