



A-570-882
Sunset Review
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order on Refined Brown Aluminum Oxide from the People's Republic of China

Summary

We analyzed the responses of the domestic interested parties in the second sunset review of the antidumping duty order covering refined brown aluminum oxide (RBAO) from the People's Republic of China (PRC). No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review. We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. The following is a list of the issues for which we received a substantive response:

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margins Likely to Prevail

Background

On February 3, 2014, the Department of Commerce (the Department) published the notice of initiation of the second sunset review of the antidumping duty order on RBAO from the PRC, pursuant to section 751(c) of the Tariff Act 1930, as amended (the Act).¹ On February 14, 2014, we received a notice of intent to participate from C-E Minerals, Inc., Imerys Fused Minerals Niagara Falls, Inc., U.S. Electrofused Minerals, Inc., and Washington Mills Group, Inc. (collectively "the domestic interested parties"). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic like product in the United States.

¹ See Initiation of Five-Year ("Sunset") Review, 79 FR 6163 (February 3, 2014).



On March 4, 2014, we received an adequate substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from any respondent interested parties. 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 order.

Scope of the Order

The merchandise covered by this order is ground, pulverized or refined brown artificial corundum, also known as brown aluminum oxide or brown fused alumina, in grit size of 3/8 inch or less. Excluded from the scope of the order is crude artificial corundum in which particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch. The scope includes brown artificial corundum in which particles with a diameter greater than 3/8 inch constitute less than 50 percent of the total weight of the batch. The merchandise covered by this order is currently classifiable under subheadings 2818.10.20.00 and 2818.10.20.90 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

History of the Order

On November 19, 2003, the Department published in the Federal Register the antidumping duty order on RBAO from the PRC.² In the order, the Department assigned a weighted-average dumping margin of 135.18 percent to Zibo Jinyu Abrasive Co., Ltd. (Zibo Jinyu) and the PRC-wide entity.

In the first sunset review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping³. In addition, the U.S. International Trade Commission (ITC) determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁴ Thus, the Department published the notice of continuation of the antidumping duty order.⁵ Since the first sunset review of the order, the Department conducted one administrative review for the period November 1, 2006, to October 31, 2007, in which it calculated a 46.88 percent weighted-average dumping margin for Qingdao Shunxingli Abrasives Co., Ltd.⁶

² See Antidumping Duty Order: Refined Brown Aluminum Oxide (Otherwise Known as Refined Brown Artificial Corundum or Brown Fused Alumina) From the People's Republic of China, 68 FR 65249 (November 19, 2003).

³ See Refined Brown Aluminum Oxide from the People's Republic of China: Final Results of Expedited Sunset Review, 74 FR 4138 (January 23, 2009).

⁴ See Refined Brown Aluminum Oxide from China, USITC Pub. 4063, Inv. No. 731-TA-1022 (Review), March 2009; see also Refined Brown Aluminum Oxide from China; Determination, 74 FR 9830 (March 6, 2009).

⁵ See Refined Brown Aluminum Oxide from the People's Republic of China: Continuation of Antidumping Duty Order, 74 FR 10884 (March 13, 2009).

⁶ See Refined Brown Aluminum Oxide from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 23682 (May 20, 2009).

Since the issuance of the order, the Department issued three scope rulings.⁷ There have been no changed circumstances determinations or findings of duty absorption by the Department over the history of this order. The order remains in effect for all PRC manufacturers, producers, and exporters of the subject merchandise.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the order 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 investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and after, the issuance of the order. When analyzing import volumes for second and subsequent sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.⁸

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (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's determinations of likelihood will be made on an order-wide, rather than company-specific, basis.⁹ In addition, 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 the 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.¹⁰

In addition, as a base period of 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

⁷ See Notice of Scope Rulings, 70 FR 24533 (May 10, 2005) (crude brown aluminum oxide, in which particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch, that is purchased from the PRC and then refined in a country other than the PRC is outside the scope of the order); Notice of Scope Rulings, 70 FR 41374 (July 19, 2005) (black aluminum oxide is outside the scope of the order); and Notice of Scope Rulings, 74 FR 14521 (March 31, 2009) (certain semi-friable and heat-treated, specialty aluminum oxides are outside the scope of the order).

⁸ See Ferrovandium From the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders, 79 FR 14216 (March 13, 2014) and accompanying Issues and Decision Memorandum at "Legal Framework."

⁹ See SAA at 879, and House Report at 56.

¹⁰ See SAA at 889-90, House Report at 63-64, and Senate Report at 52; see also Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18872 (April 16, 1998) (Sunset Policy).

of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.¹¹

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 antidumping duty margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.¹²

In February 2012, the Department announced it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization (WTO)-inconsistent.¹³ In the Final Modification for Reviews, the Department stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.¹⁴ The Department further stated that apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”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 (LTFV).¹⁶

Below we address the comments of the domestic interested parties.

¹¹ 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.

¹² See SAA at 890; see also 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.

¹³ 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).

¹⁴ Id.

¹⁵ Id.

¹⁶ See Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties assert that the Department should conclude that revocation of this order would be likely to lead to continuation or recurrence of dumping when applying the Sunset Policy guidelines¹⁷ in this review.

With respect to the weighted-average dumping margins, the domestic interested parties point out that since the LTFV investigation only one exporter, which was not a respondent in the LTFV investigation, requested a review. Therefore, most of the dumping margins determined in the LTFV investigation continue to exist for shipments of the subject merchandise. As to import volumes, the domestic interested parties assert that imports of the subject merchandise declined substantially after the issuance of the order, according to data from U.S. ITC Dataweb.¹⁸ Therefore, in accordance with the Department's Sunset Policy, the domestic interested parties argue that the Department should conclude that there is likelihood that dumping would continue or recur if the order on RBAO from the PRC were revoked.

Department's Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA, the House Report, and the Senate Report, the Department's determinations of likelihood will be made on an order-wide basis.¹⁹ In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the 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.²⁰

As explained above, 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. According to the SAA, “[d]eclining import volumes accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes.”²¹

¹⁷ See Sunset Policy, 63 FR at 18871.

¹⁸ See Domestic Interested Parties March 4, 2014, substantive response at page 7.

¹⁹ See SAA at 879, and House Report at 56.

²⁰ See SAA at 889-90, House Report at 63-64, and Senate Report at 52; see also Sunset Policy, 63 FR at 18872.

²¹ See SAA at 889.

In this case, the Department conducted only one administrative review, in which it calculated a 46.88 percent margin for the sole respondent in that review. Therefore, for other exporters of RBAO from the PRC, the cash deposit rates established in the original LTFV investigation remain in effect and entries of subject merchandise into the United States after issuance of the antidumping duty order were assessed at above de minimis rates. In addition, pursuant to section 752(c)(1)(B) of the Act, the Department 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 noted above, when analyzing import volumes for second and subsequent sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the last continuation notice. The import statistics provided by the domestic interested parties in their March 4, 2014, substantive response and confirmed by the Department from the ITC Dataweb demonstrate that import volumes decreased significantly following the imposition of the antidumping duty order. According to ITC Dataweb figures, imports of the subject merchandise were 47,934 and 62,700 short tons in 2000 and 2001, respectively, and continued at levels significantly below pre-petition levels at 1,035 short tons in 2009; 1,287 short tons in 2010; 1,019 short tons in 2011; 1,708 short tons in 2012; and 1,373 short tons in 2013. This indicates that PRC exporters may not be able to maintain pre-investigation import levels without selling merchandise at dumped prices.

Therefore, given that dumping margins 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 or recur if the order were revoked, pursuant to section 752(c)(1) of the Act.

2. Magnitude of the Margins Likely to Prevail

Interested Party Comments

The domestic interested parties request that the Department report to the ITC the 135.18 percent margins that were determined in the final determination of the original LTFV investigation. The domestic interested parties maintain that these margins are the only calculated rates that reflect the behavior of exporters without the discipline of an antidumping duty order. In addition, the domestic interested parties argue that the Department may rely on these margins because they are consistent with WTO obligations.²²

²² The domestic interested parties' statement, at footnote 1 on page 6 of their substantive response, that the LTFV investigation was conducted after the Department stopped zeroing in investigations is incorrect. The Department ceased its zeroing practice in investigations in February 2007, over three years after the issuance of the antidumping duty order on RBAO from the PRC (see Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification, 72 FR 3783 (January 26, 2007)).

Department's Position

Pursuant to section 752(c)(3) of the Act and the SAA at 890, the Department normally will provide to the ITC the company-specific margins from the investigation. In non-market-economy (NME) cases, for companies not investigated specifically and which were not found to be eligible for a separate rate, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the NME-entity rate from the investigation.²³ The Department's preference for selecting a margin from the LTFV 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 recently calculated margin to report to the ITC.

After considering the dumping margins determined in the LTFV investigation and the sole administrative review of this antidumping duty order, we find that it is appropriate to provide the ITC with the 135.18 percent margins determined in the LTFV investigation for the magnitude of the margins likely to prevail because these margins best reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. Further, we note that the calculation of these margins was WTO-consistent. That is, the calculation was not affected by zeroing because all of the comparison results for the respondent were positive and, therefore, we did not deny offsets when aggregating these results. Moreover, the margin calculated for the respondent was also assigned as the rate for the PRC-Wide Entity.²⁴ As a result, we will report to the ITC the margins of dumping likely to prevail listed in the "Final Results of Review" section below.

Final Results of Review

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

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Zibo Jinyu Abrasive Co., Ltd.....	135.18
PRC-wide.....	135.18

²³ See, e.g., Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 73 FR 39656 (July 10, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

²⁴ See the memorandum entitled "LTFV Investigation Final Determination Margin Calculation" dated concurrently with this determination; see also Final Modification for Reviews, 77 FR at 8103.

Recommendation

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

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

30 APRIL 2014
(Date)