



A-570-941
Sunset Review
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DATE: November 4, 2014

MEMORANDUM TO: Ronald K. Lorentzen
Acting 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 Expedited First Sunset
Review of the Antidumping Duty Order on Certain Kitchen
Appliance Shelving and Racks from the People's Republic of
China

Summary

In the expedited sunset review of the antidumping duty order covering certain kitchen appliance shelving and racks (“KASR”) from the People’s Republic of China (“PRC”), domestic interested parties, Nashville Wire Products, Inc. (“Nashville Wire”) and SSW Holding Company, Inc. (“SSW”) (collectively, “Petitioners”), submitted a timely and adequate substantive response on September 2, 2014.¹ No respondent interested party submitted a substantive response. In accordance with our analysis of Petitioners’ Substantive Response, we recommend adopting the positions described below.

Background

On August 1, 2014, the Department of Commerce (the “Department”) published a notice of initiation of the sunset review of the antidumping duty order on KASR from the PRC.² As noted above, on September 2, 2014, Petitioner submitted its Substantive Response within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). Also as noted above, the Department did not receive a substantive response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (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 KASR from the PRC.

¹ See Petitioners’ September 2, 2014, submission (“Substantive Response”).

² See Initiation of Five-Year (“Sunset”) Review, 79 FR 44743 (August 1, 2014).



Scope of the Order

The scope of the order consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens (“certain kitchen appliance shelving and racks” or “the merchandise under order”). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

- shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or
- subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches.

The merchandise under order is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.200 inch. The merchandise under order may be coated or uncoated and may be formed and/or welded. Excluded from the scope of the order is shelving in which the support surface is glass.

The merchandise subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 8418.99.8050, 8418.99.8060, 7321.90.5000, 7321.90.6090, 8516.90.8000 and 8419.90.9520. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

History of the Order

On July 24, 2009, the Department published its Final Determination in the less than fair value (“LTFV”) investigation of KASR from the PRC.³ On September 14, 2009, the Department published the Amended Final and Order on KASR from the PRC.⁴ In so doing, the Department determined the following weighted-average dumping margins:

³ See Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009) (“Final Determination”).

⁴ See Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order, 74 FR 46971 (September 14, 2009) (“Amended Final and Order”).

Exporter	Producer	Weighted-Average Dumping Margin (percent) ⁵
Guangdong Wireking Housewares & Hardware Co., Ltd. (a/k/a Foshan Shunde Wireking Housewares & Hardware Co., Ltd.)	Guangdong Wireking Housewares & Hardware Co., Ltd.	95.99
New King Shan (Zhu Hai) Co., Ltd.	New King Shan (Zhu Hai) Co., Ltd.	43.09
Marmon Retail Services Asia	Leader Metal Industry Co., Ltd. (a/k/a Marmon Retail Services Asia)	43.09
Hangzhou Dunli Import & Export Co., Ltd.	Hangzhou Dunli Industry Co., Ltd.	43.09
Jiangsu Weixi Group Co.	Jiangsu Weixi Group Co.	43.09
PRC-wide Entity (including Asber Enterprise Co., Ltd. (China))		95.99

Since the issuance of the Amended Final and Order, the Department completed three administrative reviews. The Department calculated a zero-percent margin for respondent New King Shan (Zhu Hai) Co., Ltd. in the first, second, and third administrative reviews.⁶ Further, in the first administrative review, we calculated a dumping margin of 7.89 percent for Guangdong Wireking Housewares & Hardware Co., Ltd. and assigned that calculated rate as the separate rate for Hangzhou Dunli Import & Export Co., Ltd. We also assigned the PRC-wide entity rate of 95.99 percent to the PRC-wide entity. The Department rescinded the fourth administrative review based on a timely withdrawal of the sole review request from an interested party.⁷ Additionally, the Department conducted four scope inquiries regarding the antidumping duty order on KASR.

⁵ The margins determined in the Amended Final and Order were not affected by the denial of offsets. See “Discussion of the Issues” below.

⁶ See, e.g., Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012) (“AR1”); Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: 2010-2011; Final Results of Antidumping Duty Administrative Review, 78 FR 5414 (January 25, 2013) (“AR2”); Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2011–2012, 79 FR 3176 (January 17, 2014) (“AR3”).

⁷ See Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Rescission of Antidumping Duty Administrative Review; 2012–2013, 78 FR 78815 (December 27, 2013).

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 order would likely 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 the period after, the issuance of the order.

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”),⁸ the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report),⁹ and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department’s determinations of the likelihood of dumping will be made on an order-wide, rather than company-specific, basis.¹⁰ In addition, the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (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.¹¹ 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 margins declined or were eliminated and import volumes remained steady or increased after issuance of the order.¹² 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 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 antidumping duty margin 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

In 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

⁸ Reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

⁹ Reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

¹⁰ See SAA at 879, and House Report at 56.

¹¹ See SAA at 889-90, House Report at 63-64, and Senate Report at 52.

¹² See SAA at 889-90, and House Report at 63.

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; 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.

found to be World Trade Organization (“WTO”)-inconsistent, *i.e.*, zeroing/the denial of offsets.¹⁵ 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.¹⁶ 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.”¹⁷

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 LTFV.¹⁸ Our analysis of the comments submitted by domestic interested parties’ follows.

Analysis

1. *Likelihood of Continuation or Recurrence of Dumping*

Petitioners argue that revocation of the order would likely result in the continuation of dumping in the United States. Specifically, Petitioners contend that, since the imposition of the order in 2009, Chinese exporters of the subject merchandise have either ceased shipping to the United States or have continued to engage in dumping.¹⁹ Petitioners note that despite having calculated a *de minimis* margin for one exporter in recent administrative reviews, “Chinese producers also have been found to be dumping at above *de minimis* rates throughout the sunset review period.”²⁰ Petitioners provided proprietary data from their own records as evidence of decreased imports because U.S. Customs and Border Protection (“CBP”) does not collect volume data for the HTSUS subheadings subject to the scope of the order.²¹ Petitioners also state that import volumes would have been much greater had there been no antidumping duties in place.²²

Department’s Position

As explained in the Legal Framework section 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

¹⁵ 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”).

¹⁶ Id.

¹⁷ Id.

¹⁸ 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.

¹⁹ See Substantive Response, at 16-18.

²⁰ Id., at 14.

²¹ Id., at 15-16.

²² Id.

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 continued to find dumping above de minimis levels in administrative reviews subsequent to imposition of the antidumping duty order.²³ For the reasons discussed below, we find that revocation of the antidumping duty order on KASR from the PRC would be likely to lead to the continuation or recurrence of dumping in the United States.

In analyzing whether dumping is likely to continue or recur if the order were revoked, pursuant to section 752(c)(1)(A) of the Act, we examined the extent of dumping determined in the investigation and subsequent proceedings during the five-year sunset period of 2009-2014. As noted above, in the investigation, the Department found dumping margins of 95.99 percent for the PRC-wide entity (including Asber Enterprise Co., Ltd. (China)). We also assigned, as adverse facts available (“AFA”), a rate of 95.99 percent to Guangdong Wireking Housewares & Hardware Co., Ltd. (a/k/a Foshan Shunde Wireking Housewares & Hardware Co., Ltd.) (“Wireking”). Finally, we calculated an antidumping duty margin of 43.09 percent for New King Shan (Zhu Hai) Co., Ltd. (“NKS”) which we then also assigned to the qualifying separate rate companies. These rates were determined without using the zeroing methodology, as discussed in greater detail below.

In the first, second, and third administrative reviews, the Department calculated a zero percent dumping margin for NKS. Further, in the first administrative review the Department calculated a weighted-average dumping margin of 7.89 percent for Wireking, which the Department also assigned, as a separate rate, to Hangzhou Dunli Import & Export Co., Ltd. In that same review, the Department assigned the PRC-wide entity a rate of 95.99 percent to PRC exporters that did not qualify for a separate rate. Accordingly, dumping continued at an above de minimis level after the issuance of the order on KASR from the PRC.²⁴

While one of the company-specific margins in AR1 relied upon zeroing in the margin calculation²⁵, we note that, consistent with our recent practice articulated in the Final Modification for Reviews, we are not relying upon margins affected by zeroing. The dumping margin of 95.99 percent, determined in the LTFV investigation²⁶ was obtained from the petition, which did not rely upon the zeroing methodology, as discussed below. Subsequently, the Department assigned 95.99 percent to the PRC-wide entity in the AR1, and it remains in place for nearly all the producers and exporters of the subject merchandise.²⁷

²³ See SAA, at 890

²⁴ See, e.g., AR1, 77 FR at 21734.

²⁵ See AR1, and accompanying Issues and Decision Memorandum at Comment 1.

²⁶ See Final Determination, and accompanying Issues and Decision Memorandum at Comment 16A where the Department stated that 95.99 percent was “the highest petition margin that can be corroborated” within the meaning of section 776(c) of the Act.

²⁷ See AR1, 77 FR at 21738, footnote 29, where we noted that the PRC-wide entity included Jiangsu Weixi Group Co., Asia Pacific CIS (Wuxi) Co., Ltd., and Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia), as well as any company that does not have a separate rate.

According to the SAA, “{i}f 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.”²⁸ In addition, the Department normally will determine that revocation of an 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.²⁹

Consistent with section 752(c)(1)(B) of the Act, the Department’s practice has been to also compare the volume of imports for the one-year period preceding the initiation of the investigation to the volume of imports during the period of the sunset review. While the Department has consistently relied upon import data based on volume from U.S. Census Bureau import statistics (“Dataweb”),³⁰ here, because the Department has been unable to rely on either Dataweb or CBP import volume data, we have not reviewed Dataweb or CBP import volume data to determine whether import volumes have decreased during the sunset review period. As we stated in AR1, we cannot rely upon CBP data for import volume because the import data for volume contains “anomalies in the data.”³¹ Furthermore, as noted by Petitioners in their Substantive Response, the large basket categories for the HTSUS subheadings included within the scope of the order do not distinguish subject merchandise from non-subject merchandise.³² As a result, Petitioners provided proprietary import data from their own records as evidence of decreased imports during the sunset review period. However, Petitioners’ proprietary import volume data are unsubstantiated by supporting documentation; thus, we decline to rely upon Petitioners’ data for purposes of this sunset review.

While we are unable to compare the import levels of subject merchandise for the periods before and after the issuance of the order, consistent with the guidance in the SAA,³³ the existence of margins above de minimis during the sunset review period is a sufficient basis to conclude that dumping would likely continue were the order on KASR from the PRC revoked. We determine that dumping has continued after the issuance of the order based on the above-de minimis

²⁸ See SAA, at 890.

²⁹ See, e.g., Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Argentina, Brazil and Germany: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders, 71 FR 59079 (October 6, 2006) and accompanying Issues and Decision Memorandum at Issue 1.

³⁰ See, e.g., Saccharin From the People’s Republic of China: Final Results of Expedited Second Sunset Review of Antidumping Duty Order, 79 FR 51139 (August 27, 2014); Citric Acid and Certain Citrate Salts From Canada and the People’s Republic of China: Final Results of Expedited First Sunset Reviews of the Antidumping Duty Orders, 79 FR 45763 (August 6, 2014); Barium Carbonate From the People’s Republic of China: Final Results of Expedited Second Sunset Review of the Antidumping Duty Order, 79 FR 32221 (June 4, 2014).

³¹ See, e.g., Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results, 76 FR 62765 (October 11, 2011) (“Preliminary Results”) unchanged in Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012). In the Preliminary Results, we stated that “the Department placed U.S. Customs and Border Protection (“CBP”) data for the U.S. Harmonized Tariff Schedule (“USHTS”) numbers listed in the scope of the order on the record of the review and stated that because there were apparent anomalies in the data that, for respondent selection purposes, it would be issuing quantity and value (“Q&V”) questionnaires to all companies under review.”

³² See Substantive Response at 15-16.

³³ See SAA, at 890.

margins either assigned in administrative reviews subsequent to the issuance of the order or still active since the issuance of the order and, therefore, we find that dumping is likely to continue or recur if the order were revoked.

2. *Magnitude of the Margin of Dumping Likely to Prevail*

Petitioners note that the rates calculated for PRC exporters in the investigation best reflect the behavior of respondents free from the restraints of an antidumping duty order. Accordingly, the Department should report to the ITC the rate of 43.09 percent for NKS, Leader Metal Industry Co., Ltd., Hangzhou Dunli Import & Export Co., Ltd., and Jiangsu Weixi Group Co. and a rate of 95.99 percent for Guangdong Wireking Housewares & Hardware Co., Ltd. and all other PRC exporters.

Department's 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 that is likely to prevail if the order were revoked. Normally, the Department will provide to the ITC the company-specific, weighted-average antidumping duty margin from the investigation for each company.³⁴ The Department's preference for selecting a rate from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.³⁵ 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 rate based on the "All-Others" rate from the investigation.³⁶ However, for the PRC, which the Department considers to be a non-market economy under section 771(18)(A) of the Act, the Department does not have an "All-Others" rate. Thus, in non-market economy cases, instead of an "All-Others" rate, the Department uses an established country-wide rate, which it applies to all imports from exporters that have not established their eligibility for a separate rate.³⁷

The Department determines that the weighted-average antidumping duty margins established in the Amended Final and Order, represent the magnitude of the margins of dumping most likely to prevail if the order were revoked. We further determine that these margins were not affected by the denial of offsets in accordance with the Final Modification for Reviews³⁸ because the Amended Final and Order occurred after the Department ceased zeroing in investigations.³⁹

³⁴ See Eveready Battery Co., Inc. v. United States, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

³⁵ Id.; see also SAA at 890.

³⁶ 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.

³⁷ See Bristol Metals L.P. v. United States, 703 F. Supp. 2d 1370, 1378 (CIT 2010) (citation omitted); see also Amanda Foods (Vietnam) Ltd. v. United States, 647 F. Supp. 2d 1368, 1379 (CIT 2009) (citation omitted).

³⁸ As stated in the Final Modification for Reviews, "{i}f the dumping margins determined in a manner not found to be WTO-inconsistent in these disputes indicate that dumping continued with the discipline of the order in place, those dumping margins alone can form the basis for a determination that dumping will continue or recur if the order were to be revoked." See Final Modification for Reviews, 77 FR at 8103.

³⁹ As noted above, the Amended Final and Order published in September 2009, while the Department announced it would cease zeroing in investigations on December 26, 2006. See Amended Final and Order, 74 FR at 46971 and

Furthermore, the final dumping margin for the PRC-wide entity was based on total AFA and did not involve the denial of offsets.⁴⁰ Accordingly, we find it appropriate to provide the ITC with the margins from the Amended Final and Order because these margins best reflect the behavior of exporters without the discipline of an order in place. 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 Sunset Review

We determine that revocation of the order on KASR from the PRC would likely lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be weighted-average margins up to 95.99 percent.⁴¹

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

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

November 4, 2014

(Date)

Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation: Final Modification, 71 FR 77722 (December 27, 2006).

⁴⁰ See Final Modification for Reviews, 77 FR at 8103.

⁴¹ See Amended Final and Order, 74 FR at 46973.