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Sunset Review
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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 Sunset Review of the Antidumping Duty Order on Silicon Metal from the Russian Federation

Summary

We have analyzed the substantive response of the domestic interested party in the sunset review of the antidumping duty order on silicon metal from the Russian Federation (“Russia”). We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is the list of the issues in this sunset review:

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

History of the Order

On March 26, 2003, the Department of Commerce (“the Department”) published an antidumping duty order on imports of silicon metal from Russia.¹ As a result of the Amended Final Determination,² the Department established weighted-average margins of 61.61 percent for ZAO Kremny and SUAL-Kremny-Ural, Ltd. (Kremny); 87.08 percent for Bratsk Aluminum Smelter and Rual Trade Limited (Bratsk); and 79.42 percent for the Russia-wide entity.

¹ See Antidumping Duty Order: Silicon Metal from Russia, 68 FR 14578 (March 26, 2003) (Antidumping Duty Order), amended by Silicon Metal From the Russian Federation: Notice of Amended Final Determination Pursuant to Court Decision, 71 FR 8277 (February 16, 2006) (Amended Final Determination).

² Id.



the same rates as found in the amended final determination pursuant to a court decision.³ 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,⁶ the Department has conducted no administrative reviews with respect to silicon metal from Russia. There have been no related findings or rulings (e.g., changed circumstances reviews, scope rulings, or duty absorption reviews) since the publication of the antidumping duty order. The order remains in effect for all manufacturers, producers, and exporters of the subject merchandise.

On June 3, 2013, the Department published the notice of initiation of the second sunset review of the antidumping duty order on silicon metal from Russia pursuant to section 751(c) of the Act.⁷ On June 13, 2013, the Department received a notice of intent to participate in the sunset review from Globe Metallurgical Inc. (“Globe”), a domestic interested party. The Department received a substantive response to the notice of initiation from Globe on July 3, 2013. Globe claims domestic interested party status under section 771(9)(C) of the Act as producers of silicon metal. No other interested party responded to the Department’s notice of initiation. Therefore, we determined that a full sunset review was not appropriate.⁸ As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting an expedited (120-day) sunset review of the antidumping duty order on silicon metal from Russia.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department has conducted this sunset review 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 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 period before and the period after the issuance of the antidumping duty order. 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 order were revoked.

³ See Silicon Metal from the Russian Federation: Final Results of Expedited Sunset Review of the Antidumping Duty Order, 73 FR 31064 (May 30, 2008) (“First Sunset Review”), and accompanying Issues and Decision Memorandum.

⁴ See Silicon Metal from Russia, USITC Pub. 4018, Inv. No. 731-TA-991 (Review), June 2008; see also Silicon Metal from Russia, 73 FR 38467 (July 7, 2008).

⁵ See Silicon Metal From the Russian Federation: Continuation of Antidumping Duty Order, 73 FR 40847 (July 16, 2008).

⁶ See Silicon Metal From the Russian Federation: Final Results of Expedited Sunset Review of Antidumping Duty Order, 73 FR 31064 (May 30, 2008), and accompanying Issues and Decision Memorandum.

⁷ See Initiation of Five-Year (“Sunset”) Review, 78 FR 33063 (June 3, 2013).

⁸ See section 751(c)(3)(B) of the Act and 19 CFR 351.218(e).

On February 14, 2012, the Department published in the Federal Register its Final Modification for Reviews,⁹ addressing its calculation methodology of the weighted-average dumping margin and assessment rates in antidumping duty proceedings, to ensure they were calculated in a WTO-consistent manner. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

Globe Comments:

- Revocation of the antidumping duty order on silicon metal from Russia would likely result in the continuation or recurrence of dumping.
- The Department’s policy bulletin regarding the conduct of five-year (“sunset”) reviews of antidumping and countervailing duty orders states that the Department will make its likelihood determination on an order-wide basis.¹⁰
- The Statement of Administrative Action which states that, “declining import volumes accompanied by the continued existence of dumping margins after the issuance of the 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,” and that, “existence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. 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.”¹¹
- According to Policy Bulletin 98:3, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (1) dumping continued at any level above de minimis after the issuance of the order; (2) imports of the subject merchandise ceased after the issuance of the order; or (3) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.¹²
- In the investigation, the Department calculated antidumping duty margins of 87.08 percent for Bratsk, 61.61 percent for Kremny, and 79.42 percent for all other Russian producers or exporters.¹³
- No administrative review of the antidumping duty order on silicon metal from Russia has been conducted, and no producer or exporter has demonstrated that it can ship Russian silicon metal to the United States without dumping.
- Imports of silicon metal from Russia have “essentially ceased” since the issuance of the antidumping duty order. Data from the Department’s Bureau of the Census show that imports of silicon metal from Russia totaled 30,020 metric tons (MT) in 2002, the year the petition was filed, and that there were no imports of silicon metal from Russia for the

⁹ 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”).

¹⁰ See Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Policy Bulletin 98:3).

¹¹ Globe cites Policy Bulletin 98:3 at II.A.3.

¹² Id.

¹³ See Amended Final Determination.

years 2003 and 2004, and for the years 2006 through 2009. Further, there were imports of only 20 MT in 2005, 10 MT in 2010, 120 MT in 2011, and 51 MT in 2012. There were no imports of silicon metal from Russia during January through April 2013.

- Thus, there were no imports of silicon metal from Russia in five of the nine calendar years since the order was issued in 2003, and for each of the four years in which there were imports, the import volume accounted for only about 0.03 and 0.4 percent of the volume of imports during the year preceding the order.¹⁴
- In the First Sunset Review, the Department found that imports of silicon metal from Russia essentially ceased after the antidumping duty order was imposed,¹⁵ and that foreign producers and exporters were unable to demonstrate that they can sell at non-dumped prices. Thus, the Department determined that dumping of silicon metal from Russia was likely to continue or recur if the order were revoked.¹⁶
- For these reasons, and in accordance with Policy Bulletin 98:3, the Department should determine that revocation of the antidumping duty order on silicon metal from Russia is likely to lead to continuation or recurrence of dumping.¹⁷

Department's Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action (“SAA”), H. R. Doc. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department normally determines that revocation of an antidumping order would be 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. In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the AD order.

In conducting our analysis, we reviewed the import data provided by Globe (data regarding import for consumption from the Bureau of the Census), which indicated that after the issuance of the antidumping duty order in 2003, the annual import volume of silicon metal from Russia was either non-existent or existed in quantities significantly smaller than those prior to the issuance of the antidumping duty order. Globe states that imports of silicon metal from Russia “essentially ceased” after the imposition of the order,¹⁸ and the data provided by Globe indicates that but for 20 MT in 2005, 10 MT in 2010, 120 MT in 2011, and 51 MT in 2012 (ranging between 0.03 percent and 0.4 percent of pre-order exports of 30,020 MT), there were no imports of the subject merchandise since the imposition of the order. As detailed above, the Department will determine that revocation of an antidumping duty order would be likely to lead to continuation or recurrence of dumping when “imports of the subject merchandise cease[] after the issuance of the order.”¹⁹ We can reasonably conclude that no exports to the United States in

¹⁴ See Globe’s Substantive Response of July 3, 2013 (“Globe’s Substantive Response”), at 3-6 and Table A.

¹⁵ See First Sunset Review, 73 FR at 31064.

¹⁶ Id.

¹⁷ See Policy Bulletin 98:3, 63 FR at 18872.

¹⁸ See Globe’s Substantive Response, at 5.

¹⁹ See Policy Bulletin 98:3, 63 FR at 18872.

2003 to 2004 and 2006 to 2009, and negligible exports in 2005 and 2010 to 2012 (with less exports in 2012 than in 2011), are essentially the same as the cessation of imports. Accordingly, the Department finds that revocation of an order would be likely to lead to continuation or recurrence of dumping where imports of the subject merchandise have ceased after the issuance of the order.

We have also examined whether revocation of the order is likely to lead to continuation or recurrence of dumping where “dumping continued at any level above de minimis after issuance of the order.”²⁰ The Department determined rates above de minimis for all Russian producers and exporters during the investigation.²¹ As the Department has not conducted any administrative reviews since the issuance of the antidumping duty order, the margins from the investigation are the prevailing margins. Further, in light of the Final Modification for Reviews,²² we examined the margins to ensure they were calculated in a WTO-consistent manner. Neither respondent company had transactions with negative margins.²³ Thus, the investigation margins were calculated in a WTO-consistent manner. Because the margins from the investigation are the prevailing margins, we find that dumping has continued at levels above de minimis during the period of this sunset review.

Therefore, pursuant to section 752(c)(1) of the Act and according to Policy Bulletin 98:3, we determine that revocation of the antidumping duty order on silicon metal from Russia would be likely to lead to continuation or recurrence of dumping because, there have been virtually no imports of subject merchandise since the issuance of the antidumping order and because dumping has otherwise continued at levels above de minimis.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

Globe Comments:

- Section 752(c)(3) of the Act requires the Department to provide to the ITC the company-specific margin of dumping that is likely to prevail if the order is revoked.
- In accordance with the SAA at 890 and the House Report accompanying the URAA, the Department normally will select a margin “from 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.”²⁴
- Policy Bulletin 98:3 at 18873, states that “for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department will provide a margin based on the all others rate from the investigation.”
- The Department may only depart from these general rules and use a more recently

²⁰ See Policy Bulletin 98:3, 63 FR at 18872.

²¹ See Antidumping Duty Order; see also Amended Final Determination.

²² See Final Modification for Reviews, 77 FR 8101, 8103.

²³ See Memorandum From Elfi Blum, International Trade Compliance Analyst, Office of AD/CVD Operations 6 to The File regarding “Second Sunset Review of the Antidumping Duty Order on Silicon Metal from Russia: Documentation Showing Calculated Margins from the Investigation,” dated concurrently with this Memorandum (“Memo on Investigation Margin Calculations”).

²⁴ See Globe’s Substantive Response, at 6-7.

calculated margin for a particular company where: (1) dumping margins declined or were eliminated, and import volumes remained steady or increased during the life of the order; and (2) dumping margins increased during the life of the order.²⁵

- In the instant case, the dumping margins the Department determined for Bratsk, Kremny, and for all other Russian producers in the investigation have neither declined nor increased during the life of the order, and remained unchanged.
- The import volumes since the imposition of the order have not remained steady or increased. The volume of U.S. imports of silicon metal from Russia was 30,020 MT prior to the imposition of the order, whereas there were no imports of subject merchandise from Russia during five of the nine years following the imposition of the order.
- For the four years for which there were imports of silicon metal from Russia, the import volume ranged 0.03 percent and 0.4 percent of the import volume of the year preceding the imposition of the order.
- Imports of silicon metal from Russia have essentially ceased after the imposition of the antidumping duty order.
- In the first sunset review, the Department determined that the margins calculated in the investigation were probative because they are the only calculated rates and reflect the behavior of Russian producers and exporters of silicon metal without the discipline of an order in place.
- In the first sunset review, Department determined that revocation of the antidumping duty order on silicon metal from Russia would likely lead to continuation or recurrence of dumping by Batsk and Kremny at the 87.08 and 61.61 percent margins, respectively, and by all other producers and exporters at a percent margin of 79.42 percent.
- Thus, in accordance with Policy Bulletin 98:3, the Department should again determine that the margin of dumping likely to prevail if the order is revoked is 87.08 percent for Bratsk, 61.61 percent for Kremny, and 79.42 for all other producers and exporters of silicon metal from Russia.
- The Department calculated these margins in the investigation, which were not calculated using zeroing.²⁶

Department's Position

In general, the Department provides to the ITC the company-specific margin from the investigation for each company. For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department will provide a margin based on the "all others" rate from the investigation.²⁷ 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

²⁵ Id.

²⁶ See Globe's Substantive Response, at 8-9; see also Final Modification for Reviews, 77 FR at 8101.

²⁷ See, e.g., Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order, 77 FR 54898 (September 6, 2012) and the accompanying Issues and Decision Memorandum, at Magnitude of the Margin of Dumping Likely to Prevail.

order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recent margin to report to the ITC.²⁸

The Department announced that in sunset reviews, it will comply with WTO dispute findings against “zeroing” by “not rely{ing} on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be WTO-inconsistent.”²⁹ In the original investigation involving silicon metal from Russia, all final dumping margins were margins where no offsets were denied because all comparison results were positive.³⁰ As a result, the Department’s final weighted-average dumping margins calculated in the investigation were not affected by the WTO-inconsistent methodology.

After considering the arguments put forth, and the dumping margins determined in the investigations, the Department agrees with domestic interested party that it is appropriate to report to the ITC the corresponding individual company rates and the Russia-wide rate from the investigation, as noted in the “Final Results of Sunset Review” section, *infra*, because these rates are probative of the behavior of exporters without discipline of an order in place. These are the only rates that reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. Therefore, consistent with section 752(c)(3) of the Act, the Department will report to the ITC the rates listed 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 order on silicon metal from Russia would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Exporters/Producers	Weighted-Average Margin (percent)
ZAO Kremny and SUAL-Kremny-Ural, Ltd.	61.61
Bratsk Aluminum Smelter and Rual Trade Limited	87.08
Russia-wide	79.42

²⁸ See, e.g., Potassium Permanganate from The People’s Republic of China: Five-year (“Sunset”) Review of Antidumping Duty Order; Final Results, 70 FR 24520 (May 10, 2005) and the accompanying Issues and Decision Memorandum, at Magnitude of the Margin.

²⁹ See Final Modification for Reviews, 77 FR at 8103.

³⁰ See Memo on Investigation Margin Calculations.

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of these reviews in the Federal Register, and notify the ITC of our findings.

AGREE ✓

DISAGREE _____

Paul Piquado
Paul Piquado
Assistant Secretary
for Import Administration

26 SEPTEMBER 2013
Date