



A-570-930
Sunset Review
Public Document
EC/OIV: LEA

DATE: June 3, 2014

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 Expedited First Sunset
Review of the Antidumping Duty Order on Circular Welded
Austenitic Stainless Pressure Pipe from the People's Republic of
China

Summary

In the sunset review of the antidumping (“AD”) duty order covering circular welded austenitic stainless pressure pipe from the People’s Republic of China (“PRC”), Bristol Metals LLC, Felker Brothers Corporation, and Outokumpu Stainless Pipe, Inc. (collectively “Domestic Producers”), submitted a timely and complete notice of intent to participate as well as a substantive response. No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review. We recommend adopting the positions described below. The following is a complete list of issues in this sunset review for which we received substantive responses:

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

Background

On February 3, 2014, the Department of Commerce (“Department”) published the notice of initiation of the sunset review of the AD order on circular welded austenitic stainless pressure pipe from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the



“Act”).¹ On February 14, 2014, 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 the Domestic Producers.² On March 4, 2014, pursuant to 19 CFR 351.218(d)(3), the Domestic Producers filed a timely and adequate substantive response within 30 days after the date of publication of the *Sunset Initiation*.³ The Department received no substantive responses from 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 AD order on circular welded austenitic stainless pressure pipe from the PRC.

History of the Order

On January 28, 2009, the Department published its final determination in the less-than-fair-value (“LTFV”) investigation of circular welded austenitic stainless pressure pipe from the PRC.⁴ On March 17, 2009, the Department published the AD order on imports of circular welded austenitic stainless pressure pipe from the PRC.⁵ The Department found the following weighted-average dumping margins in the LTFV investigation:

| Exporter and Producer | Weighted-Average Dumping Margin |
|---|---------------------------------|
| Zhejiang Jiuli Hi-Tech Metals Co., Ltd. Produced by: Zhejiang Jiuli Hi-Tech Metals Co., Ltd. (“Jiuli”) | 10.53% |
| PRC-Wide Entity | 55.21% |

Administrative Reviews and New Shipper Reviews

Since the issuance of the AD order, one administrative review was conducted covering the period September 5, 2008 – February 28, 2010. In that administrative review, the Department found that the sole respondent did not make sales below normal value.⁶ Specifically, the Department found the following weighted-average dumping margin for the respondent:

| Exporter | Weighted-Average Dumping Margin |
|--|---------------------------------|
| Zhejiang Jiuli Hi-Tech Metals Co., Ltd./ Huzhou Jiuli Welded Stainless Steel Pipe Co., Ltd. (“Jiuli/Huzhou”) | 0.01% |

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

² See Letter regarding “Circular Welded Austenitic Stainless Pressure Pipe from China, First Sunset Review,” dated February 14, 2014.

³ See Letter regarding, “Circular Welded Austenitic Stainless Pressure Pipe from China, First Sunset Review: Substantive Response to Notice of Initiation,” dated March 4, 2014.

⁴ See *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 4913 (January 28, 2009) (“*Final Determination*”).

⁵ See *Antidumping Duty Order: Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China*, 74 FR 11351 (March 17, 2009) (“*Antidumping Duty Order*”).

⁶ See *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 76 FR 43981 (July 22, 2011).

Scope Inquiries, Changed Circumstances Reviews, and Duty Absorption

There have been no scope inquiries, changed circumstances reviews or duty absorption findings in connection with this AD order.

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 AD 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 AD order.

As explained in the Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act, the Department normally determines that revocation of an AD 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 AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.⁷ 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 the analysis.⁸

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 LTFV investigation, as these are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.⁹ However, in certain circumstances, a more recently calculated rate may be more appropriate (*e.g.*, “if dumping margins have declined over the life of an order and imports have remained steady or increased, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review.”).¹⁰ Finally, pursuant to section 752(c)(4)(A) of the Act, a weighted-average dumping margin of “zero or *de minimis* shall not by itself require” the Department to determine that

⁷ See SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90, reprinted at 1994 U.S.C.C.A.N. 4040, 4213-14.

⁸ 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.

⁹ See SAA at 890; 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.

¹⁰ See SAA, at 890-91.

revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at less than fair value.¹¹

In the *Final Modification for Reviews*, the Department announced that in five-year (“sunset”) reviews, it will not rely on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be World Trade Organization (WTO)-inconsistent.¹² The Department also noted that “*only in the most extraordinary circumstances* will the Department rely on margins other than those calculated and published in prior determinations.”¹³ The Department further noted that it does not anticipate that it will need to recalculate the dumping margins in sunset determinations to avoid WTO inconsistency, apart from the “most extraordinary circumstances” provided for in its regulations.¹⁴

Below we address the comments submitted by the Domestic Producers.

1. Likelihood of continuation or recurrence of dumping

Domestic Producers’ Comments

- Revocation of the *Antidumping Duty Order* would likely lead to the continuation or recurrence of sales at less than fair value at rates equivalent to, or greater than, those found in the investigation.
- The record demonstrates that, since the issuance of the *Antidumping Duty Order*, dumping has continued. While there has been an administrative review of one respondent, most of the dumping from the investigation continues to exist.
- Shipments of subject merchandise have decreased significantly; thus indicating that PRC exporters could not ship the subject merchandise under the discipline of the order.

Department’s Position: As explained in the “Legal Framework” section above, the Department’s determination concerning whether revocation of an AD order would be 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”);¹⁵ and Senate Report, S. Rep. No. 103-412 (1994)). Consistent with the SAA, the Department will make its likelihood determination on an order-wide basis.¹⁶ 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

¹¹ 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.

¹² 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*”).

¹³ *Id.* (emphasis added); see also 19 CFR 351.218(e)(2)

¹⁴ *Id.*

¹⁵ Reprinted at 1994 U.S.C.C.A.N. 3773.

¹⁶ See SAA, at 879.

merchandise for the period before and after the issuance of the AD order. Thus, one consideration is whether the Department continued to find dumping above *de minimis* levels in administrative reviews subsequent to imposition of the AD order.¹⁷ 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.”¹⁸ For the reasons discussed below, we find that revocation of the *Antidumping Duty Order* would be likely to result in the continuation or recurrence of dumping in the United States.

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and subsequent reviews. In the final determination, the Department applied the simple average of the dumping margins alleged in the petition, 10.53 percent, to Jiuli, the separate rate respondent. The Department found that the PRC-wide entity failed to cooperate to the best of its ability and, as adverse facts available (“AFA”), assigned it the highest product-specific dumping margin, *i.e.*, 55.21 percent, which was calculated in the preliminary determination for the mandatory respondent which subsequently withdrew from verification.¹⁹ There was only one administrative review of the *Antidumping Duty Order* in which the Department calculated a 0.01 percent *de minimis* rate for the collapsed entity Jiuli/Huzhou. However, as noted above, 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 AD order would not be likely to lead to a continuation or recurrence of sales at less than fair value.²⁰ With the exception of Jiuli/Huzhou, dumping margins above *de minimis* have existed throughout the life of the *Antidumping Duty Order*. The Department normally determines that revocation of an AD order would be likely to lead to continuation or recurrence of dumping when dumping continued at any level above *de minimis* after issuance of the order

In addition, 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 AD order would be 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 (*i.e.*, 2007) to the volume of imports after the issuance of the order (the order was issued in early 2009). We analyzed import volumes for five years following the issuance of the order using U.S. Bureau of Census import statistics which the Domestic Producers obtained from the U.S. ITC Dataweb. The data show that the volume of U.S. imports of circular welded austenitic stainless pressure pipe from the PRC during calendar years 2009 through 2013 ranged from 1.52 percent to 5.65 percent of the total import volume during calendar year 2007.²¹ As noted above, the SAA explained that the Department normally determines that revocation of an AD order would be likely to lead to continuation or recurrence of dumping when, among other things, imports of the subject merchandise ceased after issuance of the order. While imports from the PRC have not ceased, record evidence shows significantly

¹⁷ *Id.* at 890.

¹⁸ *Id.*; *see also* House Report, at 63-64.

¹⁹ *See Final Determination*, 74 FR at 4915.

²⁰ *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.

²¹ *See* Attachment to this memorandum.

lower imports over the five year period examined when compared to pre-initiation import volumes. This indicates that PRC exporters may not be able to maintain pre-investigation import levels without selling merchandise at dumped prices.²²

Therefore, pursuant to section 752(c)(1) of the Act, because above *de minimis* dumping margins applied to all post-order entries of subject merchandise, except entries of subject merchandise exported by Jiuli/Huzhou, and the Department has found dramatically lower import volumes in the five years examined in comparison to the import volumes prior to the initiation of the underlying investigation, we find that dumping would be likely to continue or recur if the *Antidumping Duty Order* were revoked.

2. Magnitude of the Margins of Dumping Likely To Prevail

Domestic Producers' Comments

- Consistent with the SAA and Department policy, it should rely on the weighted-average dumping margins from the investigation as the magnitude of the margins of dumping likely to prevail in the event of a revocation of the *Antidumping Duty Order*. Those rates are 55.21 percent for Winner Machinery Enterprise Co., Ltd., Winner Stainless Steel Tube Co., Ltd., and the PRC-wide entity and 10.53 percent for Jiuli.
- Because none of these weighted-average dumping margins were calculated using zeroing, the *Final Modification for Reviews* has no effect on this conclusion.

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 or the suspended investigation terminated." Normally, the Department will provide to the ITC the weighted-average dumping margin from the investigation for each company.²³ 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 manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.²⁴ Under certain circumstances, however, we may select a more recently calculated rate to report to the ITC. 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. However, the Department considers the PRC to be a nonmarket economy country under section 771(18) of the Act, and thus the Department does not have an "All-Others" rate in PRC cases. Rather, in PRC cases, instead of an "All-Others" rate, the Department uses a rate established for the PRC-wide entity, which it applies to all imports from exporters that have not established their eligibility for a separate rate.²⁵

²² See, e.g., *Certain Activated Carbon From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 77 FR 33420 (June 6, 2012), and accompanying Issues & Decision Memorandum at Comment 1.

²³ See *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

²⁴ See SAA at 890.

²⁵ 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; see also 19 CFR 351.107(d).

As indicated in the “Legal Framework” portion of this memorandum, the Department’s current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology that was modified in the *Final Modification for Reviews*.

As noted above, Jiuli/Huzhou received a *de minimis* weighted-average dumping margin in an administrative review but a rate of 10.53 percent in the investigation. While the Department may consider a more recently calculated rate to be the magnitude of the margin of dumping likely to prevail if the order were revoked in a situation where the weighted-average dumping margin declined and import volumes remained steady or increased, such is not the case here. Jiuli has not participated in this sunset review and provided the necessary information in order for the Department to evaluate Jiuli’s import volumes and market share. Thus, consistent with the Department’s practice, we have considered the weighted-average dumping margin from the LTFV investigation to be the best evidence of Jiuli’s behavior in the absence of an order.

Further, because the LTFV investigation for this proceeding was conducted consistent with the *Final Modification for Investigations*,²⁶ the weighted-average dumping margin calculated for the respondents in the *Final Determination and Antidumping Duty Order* do not include zeroing. Therefore, these rates are consistent with the *Final Modification for Reviews*.²⁷

Final Results of Review

We determine that revocation of the *Antidumping Duty Order* on circular welded austenitic stainless pressure pipe from the PRC would likely lead to continuation or recurrence of dumping. The magnitude of the margin of dumping likely to prevail with respect to subject merchandise produced and exported by Jiuli is 10.53 percent. The magnitude of the margin of dumping likely to prevail with respect to all other producers and exporters of circular welded austenitic stainless pressure pipe from the PRC is 55.21 percent.

²⁶ *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 7772 (December 27, 2006) (*Final Modification for Investigations*).

²⁷ See Memorandum to the File regarding, “Expedited First Sunset Reviews of the Antidumping Duty Orders on Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China,” dated May 29, 2014.

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If these recommendations are accepted, we will publish these final results of this expedited sunset review in the *Federal Register* and notify the ITC of our determination.

✓ _____
Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 MAY 2014
Date

Attachment

**U.S. Imports For Consumption
Circular Welded Austenitic Stainless Pressure Pipe From the PRC**

| Year | Qty. (net tons) | Percentage of total 2007 import volume |
|-------------|------------------------|---|
| 2007 | 30,337 | |
| 2008 | n/a | |
| 2009 | 460 | 1.52% |
| 2010 | 947 | 3.12% |
| 2011 | 1,714 | 5.65% |
| 2012 | 1,694 | 5.58% |
| 2013 | 1,544 | 5.09% |

Source: U.S. Bureau of Census import statistics, obtained from USITC Dataweb.