



A-570-930  
Sunset Review  
**Public Document**  
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September 25, 2019

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Expedited Second  
Sunset Review of the Antidumping Duty Order on Circular  
Welded Austenitic Stainless Pressure Pipe from the People's  
Republic of China

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## I. SUMMARY

We analyzed the substantive response of the domestic interested parties<sup>1</sup> in this expedited second sunset review of the antidumping duty (AD) order<sup>2</sup> covering circular welded austenitic stainless pressure pipe (WSPP) from the People's Republic of China (China),<sup>3</sup> and recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review of the *Order*.<sup>4</sup> The following is a complete list of the issues that we address in this expedited sunset review:

### 1. Likelihood of Continuation or Recurrence of Dumping; and

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<sup>1</sup> The domestic interested parties are: Bristol Metals, LLC, Felker Brothers Corporation, and Webco Industries, Inc. We also received a submission from Primus Pipe & Tube, Inc. (Primus Pipe) in support of the domestic interested parties' substantive response.

<sup>2</sup> See *Antidumping Duty Order: Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China*, 74 FR 11351 (March 17, 2009) (*Order*).

<sup>3</sup> See Domestic Interested Parties' Letter, "Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China, Second Review: Substantive Response to Notice of Initiation," dated June 28, 2019 (Substantive Response).

<sup>4</sup> See *Procedures for Conducting Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005) (Commerce normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response).

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

## II. BACKGROUND

On March 17, 2009, the Department of Commerce (Commerce) published the *Order* in the *Federal Register*.<sup>5</sup> On June 4, 2019, Commerce published the notice of initiation of this sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>6</sup> On June 13, 2019, Commerce received a timely and complete notice of intent to participate in the sunset review from domestic interested parties within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>7</sup> On June 18, 2019, Commerce also received a notice of intent to participate in the sunset review from Primus Pipe.<sup>8</sup> The domestic interested parties and Primus Pipe claimed interested party status pursuant to section 771(9)(C) of the Act as manufacturers in the United States of the domestic like product.<sup>9</sup>

On June 28, 2019, pursuant to 19 CFR 351.218(d)(3)(i), domestic interested parties filed a timely and adequate substantive response.<sup>10</sup> On July 5, 2019, Primus Pipe expressed its support for the substantive response filed by the domestic interested parties and incorporated them by reference.<sup>11</sup> In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C), because Commerce did not receive a substantive response from any respondent party, we deem that the respondent interested parties did not provide an adequate response to the notice of initiation. Therefore, consistent with 19 CFR 351.218(e)(1)(ii)(C)(2), we conducted an expedited sunset review of the *Order* and are issuing the final results of review no later than 120 days after the date of publication of the notice of initiation.

## III. SCOPE OF THE ORDER

The merchandise covered by this order is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials (“ASTM”) A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) welded stainless mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or

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<sup>5</sup> See *Order*.

<sup>6</sup> See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 25741 (June 4, 2019).

<sup>7</sup> See Domestic Interested Parties’ Letter, “Welded Stainless Steel Pressure Pipe from China: Notice of Intent to Participate,” dated June 13, 2019 (Domestics’ Notice to Participate).

<sup>8</sup> See Primus Pipe’s Letter, “Circular Welded Austenitic, Stainless Pressure Pipe from China: Notice of Intent to Participate,” dated June 18, 2019 (Primus Pipe’s Notice to Participate).

<sup>9</sup> See Domestics’ Notice to Participate at 2; Primus Pipe’s Notice to Participate at 2.

<sup>10</sup> See Substantive Response.

<sup>11</sup> See Primus Pipe’s Letter, “Welded Stainless Steel Pipe Sunset Review: 2<sup>nd</sup> Review for China AD/CVD; 1<sup>st</sup> Review for Vietnam, Thailand and Malaysia; Substantive Response to Notice of Initiation,” dated July 5, 2019.

comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A-269, ASTM A-270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005; 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (“HTSUS”). They may also enter under HTSUS subheadings 7306.40.1010; 7306.40.1015; 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of this order is dispositive.

#### **IV. HISTORY OF THE ORDER**

On January 28, 2009, Commerce published in the *Federal Register* its final affirmative determination in the less-than-fair-value (LTFV) investigation of WSPP from China.<sup>12</sup> On March 17, 2009, following an affirmative injury determination by the U.S. International Trade Commission (ITC), Commerce published the *Order*.<sup>13</sup> Commerce found a weighted-average dumping margin of 10.53 percent for separate rate exporter Zhejiang Jiuli Hi-Tech Metals Co., Ltd. (Jiuli) and 55.21 percent for the China-wide entity.

Since the issuance of the *Order*, there has been one administrative review,<sup>14</sup> two scope rulings,<sup>15,16</sup> no new shipper reviews, and no duty absorption findings in connection with the *Order*.

On July 22, 2011, Commerce published the final results of the sole administrative review of the *Order* in the *Federal Register*. In the final results of the review, Commerce determined a *de minimis* weighted-average dumping margin for Jiuli of 0.01 percent.

This is the second sunset review of the *Order*. On June 9, 2014, Commerce determined that the revocation of the *Order* would likely lead to the continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be 10.53 percent for Jiuli and 55.21 percent for the China-wide entity.<sup>17</sup> On July 23, 2014, Commerce published the notice of continuation of the *Order*.<sup>18</sup>

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<sup>12</sup> 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*).

<sup>13</sup> See *Order*.

<sup>14</sup> 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)(*AD Review*).

<sup>15</sup> See *Notice of Scope Rulings*, 82 FR 48799 (October 20, 2017).

<sup>16</sup> See *Notice of Scope Rulings*, 84 FR 11742 (March 28, 2019).

<sup>17</sup> See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order*, 79 FR 32913 (June 9, 2014) (*First Sunset Determination*).

<sup>18</sup> See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Continuation of Antidumping Duty Order*, 79 FR 42760 (July 23, 2014) (*Continuation Notice*).

On July 10, 2015, the U.S. Trade Representative instructed Commerce to implement its determinations under section 129 of the Uruguay Round Agreements Act (URAA) regarding the LTFV investigation of WSPP from China.<sup>19</sup> The section 129 determination involved determining whether offsetting of the same subsidy occurred twice (“double remedies”). Based on a lack of record evidence, Commerce determined that no adjustment to the investigation dumping margins was warranted to account for double remedies.<sup>20</sup>

## V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce conducted this sunset review to determine whether revocation of the *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 this determination, Commerce shall consider 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 after, the issuance of the AD order.

In accordance with the guidance provided in the legislative history accompanying the URAA, 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), Commerce’s likelihood determinations will be made on an order-wide, rather than company-specific, basis.<sup>21</sup> In addition, Commerce normally will determine that revocation of an AD 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 issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.<sup>22</sup> In addition, as a base period of import volume comparison, it is Commerce’s practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, because the initiation of an

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<sup>19</sup> See *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Aluminum Extrusions from the People’s Republic of China; Certain Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China; Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China; Certain Magnesia Carbon Bricks from the People’s Republic of China; Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China; Certain Oil Country Tubular Goods from the People’s Republic of China; Certain Potassium Phosphate Salts from the People’s Republic of China; Certain Steel Grating from the People’s Republic of China; Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China; Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China; Citric Acid and Certain Citrate Salts from the People’s Republic of China; Lightweight Thermal Paper from the People’s Republic of China; Narrow Woven Ribbons With Woven Selvedge from the People’s Republic of China; Prestressed Concrete Steel Wire Strand from the People’s Republic of China; Raw Flexible Magnets from the People’s Republic of China; Sodium Nitrite from the People’s Republic of China*, 80 FR 45184 (July 29, 2015) (*Section 129 Determination*).

<sup>20</sup> *Id.*, 80 FR at 45186.

<sup>21</sup> See SAA at 879; see also House Report at 56.

<sup>22</sup> See SAA at 889-90; House Report at 63-64; and Senate Report at 52 for a description of our practice; 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 Bulletin*).

investigation may dampen import volumes and, thus, skew a comparison.<sup>23</sup> Also, when analyzing import volumes for second and subsequent sunset reviews, Commerce'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.<sup>24</sup>

Further, section 752(c)(3) of the Act states that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, Commerce selects the dumping margin from the final determination in the investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.<sup>25</sup> 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, Commerce may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review.").<sup>26</sup>

In February 2012, Commerce 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.<sup>27</sup> In the *Final Modification for Reviews*, Commerce stated that "only in the most extraordinary circumstances" would it rely on dumping margins other than those calculated and published in prior determinations.<sup>28</sup> Commerce further stated that apart from the "most extraordinary circumstances," it did not anticipate needing to recalculate dumping margins in the vast majority of future sunset determinations. Instead Commerce will "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." Commerce "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."<sup>29</sup>

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<sup>23</sup> 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 (IDM) at Comment 1.

<sup>24</sup> 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 IDM.

<sup>25</sup> See SAA at 890; and *Sunset Policy Bulletin* at section II.B.1; see also, 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 IDM at Comment 2.

<sup>26</sup> See SAA at 890-91; see also *Sunset Policy Bulletin* at section II.B.2.

<sup>27</sup> 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*).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require Commerce to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.<sup>30</sup>

Below we address the comments submitted by the domestic interested parties.

## **VI. DISCUSSION OF THE ISSUES**

### **A. Likelihood of Continuation or Recurrence of Dumping**

#### **Domestic Interested Parties' Comments:**

- In determining whether revocation of an AD order would be likely to lead to continuation or recurrence of dumping, Commerce considers: (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 periods before and after the issuance of the AD order or issuance of a suspension agreement.
- Revocation of the *Order* would lead to the continuation or recurrence of sales at LTFV by margins equivalent to, or greater than, those found in the investigation. The record demonstrates that, since the issuance of the *Order*, import volumes have declined significantly and dumping has continued at above *de minimis* levels.
- Commerce must find that if the *Order* were revoked, dumping by Chinese exporters would likely continue or recur.

#### **Commerce's Position:**

Consistent with the legal framework laid out above and section 752(c)(1)(A) of the Act, we first considered the weighted-average dumping margins determined in the investigation and subsequent reviews in this proceeding. In the investigation, Commerce found dumping margins ranging from 10.53 percent to 55.21 percent.<sup>31</sup> There was only one administrative review of the *Order* in which Commerce calculated a 0.01 percent *de minimis* rate for the collapsed entity Jiuli/Huzhou.<sup>32</sup> 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” Commerce 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.<sup>33</sup> With the exception of Jiuli/Huzhou, dumping margins above *de minimis* have existed throughout the life of the *Order*. Commerce 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.

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<sup>30</sup> 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 IDM at Comment 1.

<sup>31</sup> See *Final Determination*, 74 FR 4913.

<sup>32</sup> See *AD Review*.

<sup>33</sup> 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 IDM at Comment 1.

Separately, pursuant to section 752(c)(1)(B) of the Act, we considered the volume of imports of the subject merchandise in determining whether revocation of the *Order* is likely to lead to continuation or recurrence of dumping. As noted above, when analyzing import volumes for second and subsequent sunset reviews, Commerce’s practice is to compare import volumes during the year preceding initiation of the underlying investigation (*i.e.*, 2007 for this sunset review) to import volumes since the issuance of the last continuation notice.<sup>34</sup> The *Continuation Notice* for this sunset review was issued in July 2014.<sup>35</sup>

In analyzing import volumes for the five calendar years following issuance of the *Continuation Notice* (*i.e.*, 2014 through 2018), we have determined that the annual import volumes of subject merchandise from China for the group of harmonized tariff schedule (HTSUS) numbers included in the scope of the *Order* are significantly lower than the pre-initiation volume.<sup>36</sup> During the sunset period, annual import volumes of subject merchandise ranged from approximately 3.17 percent to 6.91 percent of the import volume of the year preceding initiation of the underlying investigation (*i.e.*, 2007).<sup>37</sup>

As noted in the *SAA*, “declining 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.”<sup>38</sup> Furthermore, 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.”<sup>39</sup> While imports have not ceased, record evidence shows significantly lower import volumes during the years covering this sunset review compared to the year preceding initiation of the underlying investigation (*i.e.*, 2007).<sup>40</sup> This indicates that Chinese exporters may not be able to maintain pre-initiation import levels without selling subject merchandise at dumped prices.<sup>41</sup> Therefore, pursuant to section 752(c)(1) of the Act, because we found lower levels of imports in each of the years covered by this sunset review compared to the year before initiation, accompanied by the continued existence of dumping after issuance of the *Order*, we recommend finding that dumping is likely to continue or recur if the *Order* were revoked.

Section 752(c)(2) of the Act provides that Commerce shall also consider “other factors” than those listed in section 752(c)(1) of the Act if “good cause is shown.” We have concluded that no such “good cause” exists in this case, because we find that the continued existence of above *de minimis* dumping margins and the decline in the volume of imports alone support the statutory test for determining the likelihood that dumping would continue or recur in the event of the revocation of the *Order*.

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<sup>34</sup> See Substantive Response.

<sup>35</sup> See *Continuation Notice*.

<sup>36</sup> See Substantive Response.

<sup>37</sup> *Id.* and Attachment.

<sup>38</sup> See *SAA* at 889; the House Report at 63; and the Senate Report at 52.

<sup>39</sup> See *SAA* at 889; see also House Report at 63-64.

<sup>40</sup> See Substantive Response.

<sup>41</sup> 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 IDM at Comment 1.

## B. Magnitude of the Dumping Margin Likely to Prevail

### Domestic Interested Parties' Comments:

- In determining the magnitude of the dumping margin likely to prevail in the event of revocation that should be reported to the ITC, the SAA and Commerce's *Policy Bulletin* state that the agency will normally select the dumping margins established in the investigation, because they are the only calculated rates that reflect the behavior of exporters without the discipline of an order or suspension agreement in place.
- Because none of these dumping margins were calculated using zeroing, the *Final Modification for Reviews* has no effect on this conclusion.
- Accordingly, the dumping margins that should be reported to the ITC are the margins from the investigation; specifically, 10.53 percent for Jiuli and 55.21 percent for the China-wide entity.

### Commerce's Position:

Pursuant to section 752(c)(3) of the Act, Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if an AD order were revoked. Normally, Commerce will select a weighted-average dumping margin from the investigation to report to the ITC.<sup>42</sup> Commerce's preference is to select a weighted-average dumping margin from the LTFV investigation, because it is the only calculated rate that reflects the behavior of the producers and exporters without the discipline of an order or suspension agreement in place.<sup>43</sup> However, as explained above, in accordance with the *Final Modification for Reviews*, Commerce will not rely on weighted-average dumping margins that were calculated using the zeroing methodology found to be WTO-inconsistent.<sup>44</sup>

Under certain circumstances, however, Commerce may select a more recent rate to report to the ITC. 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 Commerce 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.

Consistent with Commerce's practice, we considered the dumping margins from the LTFV investigation to be the best evidence of the exporters' behavior in the absence of an order. The dumping margin assigned to the one participating mandatory respondent in the investigation does not include zeroing and, thus, this dumping margin is consistent with the *Final Modification for Reviews*.<sup>45</sup> Furthermore, the highest calculated CONNUM-specific margin that was assigned to the China-wide entity does not include zeroing and, thus, this dumping margin is also consistent with the *Final Modification for Reviews*.

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<sup>42</sup> See SAA at 890.

<sup>43</sup> *Id.*

<sup>44</sup> See *Final Modification for Reviews*, 77 FR at 8103.

<sup>45</sup> See *First Sunset Determination*.

**VII. FINAL RESULTS OF SUNSET REVIEW**

We determine that revocation of the *Order* would likely lead to continuation or recurrence of dumping. We also determine that the magnitude of the dumping margin likely to prevail would be weighted-average dumping margins up to 55.21 percent.

**VIII. 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 expedited sunset review in the *Federal Register* and notify the ITC of our determination.

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Agree

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Disagree

9/25/2019

**X**   
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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**Attachment**

<b>Year</b>	<b>Volume of Imports (net tons)</b>	<b>Percentage (%)</b>
2006	23,218	
2007	30,337	
<b>2014</b>	1,586	5.23
<b>2015</b>	2,097	6.91
<b>2016</b>	961	3.17
<b>2017</b>	1,243	4.10
<b>2018</b>	1,570	5.18