



A-570-882
Sunset Review
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December 19, 2019

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

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

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

I. SUMMARY

We have analyzed the substantive response of a domestic interested party in the third sunset review of the antidumping duty (AD) order on refined brown aluminum oxide (RBAO) from the People's Republic of China (China).¹ No other interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review 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). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

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

II. BACKGROUND

On September 10, 2019, Commerce published the notice of initiation of the third sunset review of the AD order on RBAO from China, pursuant to section 751(c) of the Act.² Commerce received notices of intent to participate from Imerys Fused Minerals Niagara Falls, Inc. (Imerys), U.S. Electrofused Minerals, Inc. (Electrofused), Washington Mills Group, Inc (Washington Mills), and Great Lakes Minerals, LLC (Great Lakes) (collectively, domestic interested parties),

¹ See *Antidumping Duty Order: Refined Brown Aluminum Oxide (Otherwise Known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China*, 68 FR 65249 (November 19, 2003) (Order).

² See *Initiation of Five-Year (Sunset) Review*, 84 FR 47485 (September 10, 2019).

within the deadline specified in 19 CFR 351.218(d)(1)(i).³ Imerys, Electrofused, Washington Mills, and Great Lakes, each claimed interested party status under section 771(9)(C) of the Act, as domestic producers of RBAO.

Commerce received a substantive response from the domestic interested parties⁴ within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive response from any other domestic or interested parties in this proceeding, nor was a hearing requested.

On October 21, 2019, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁵ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this antidumping duty order.

III. SCOPE OF THE ORDER

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

IV. HISTORY OF THE ORDER

On September 26, 2003, Commerce published its final affirmative determination of sales at less-than-fair-value (LTFV) in the *Federal Register* with respect to RBAO from China finding a weighted-average dumping margin of 135.18 percent for Zibo Jinyu Abrasive Co., Ltd. (Zibo Jinyu), and applying that rate, as adverse facts available (AFA) to the China-wide entity.⁶ Following the issuance of Commerce's final determination, the ITC found that the U.S. industry was materially injured by reason of the subject imports.⁷ On November 19, 2003, Commerce published its AD order on RBAO from China in the *Federal Register*.⁸

³ See Imerys, Electrofused, and Washington Mills' Letter, "Refined Brown Aluminum Oxide from the People's Republic of China: Notice of Intent to Participate," dated September 16, 2019; and Great Lakes' Letter, "Refined Brown Aluminum Oxide from the People's Republic of China: Notice of Intent to Participate," dated September 18, 2019.

⁴ See Domestic Interested Parties' Letter, "Refined Brown Aluminum Oxide from China, Third Sunset Review: Substantive Response to the Notice of Initiation," dated October 1, 2019 (Substantive Response).

⁵ See Commerce's Letter, "Sunset Review Initiated on September 1, {sic} 2019," dated October 21, 2019.

⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China*, 68 FR 55589 (September 26, 2003) (*Final Determination*).

⁷ See *Refined Brown Aluminum Oxide from China: Investigation No. 731-TA-1022 (Final)* U.S. ITC Pub. 3613 (November 2003).

⁸ See *Order*, 68 FR at 55589. Commerce relied on the margins from the *Final Determination*. *Id.* at 55590.

Since the issuance of the *Order*, Commerce has completed one administrative review,⁹ and has issued three scope rulings.¹⁰ There have been no changed circumstances determinations, no new shipper reviews, and no duty absorption findings in connection with this *Order*. The *Order* remains in effect for all Chinese manufacturers, producers, and exporters of the subject merchandise.

This is the third sunset review of the *Order*. On March 13, 2009, and October 14, 2014, at the conclusion of the first and second sunset reviews, respectively, Commerce published notices of continuation of the *Order*.¹¹

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce is conducting 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 both 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 the periods after the issuance of the AD order. In addition, section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action (SAA),¹² the House Report,¹³ and the Senate Report,¹⁴ Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.¹⁵ In addition, Commerce 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 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

⁹ See *Refined Brown Aluminum Oxide from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 23682 (May 20, 2009) (finding a margin of 46.88 percent for Qingdao Shunxingli Abrasives Co., Ltd.) (06/07 Review).

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

¹¹ See *Refined Brown Aluminum Oxide from the People's Republic of China: Notice of Continuation of Antidumping Duty Order*, 74 FR 10884 (March 13, 2009); see also *Refined Brown Aluminum Oxide from the People's Republic of China: Notice of Continuation of Antidumping Duty Order*, 79 FR 61606 (October 14, 2014).

¹² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol. 1 (1994), reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

¹³ See H. Rep. No. 103-826, pt. 1 (1994) (House Report).

¹⁴ See S. Rep. No. 103-412 (1994) (Senate Report).

¹⁵ See SAA at 879; see also House Report at 56.

significantly.¹⁶ Alternatively, Commerce 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.¹⁷

Furthermore, 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, as the initiation of the investigation may dampen import volumes and, thus, skew the comparison.¹⁸ 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.¹⁹

In addition, section 752(c)(3) of the Act states that the magnitude of the margin of dumping that is likely to prevail if the order were revoked shall be provided by Commerce to the ITC. Generally, Commerce selects the weighted-average dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.²⁰ In certain circumstances, however, 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").²¹ Finally, pursuant to section 752(c)(4)(A) of the Act, a margin of dumping likely to prevail 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.²²

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, Commerce announced that in five-year (*i.e.*, sunset) reviews, it will not rely on weighted-average dumping margins that were calculated using the zeroing methodology that was found to be World Trade Organization (WTO)-inconsistent and was the subject of that *Final Modification*

¹⁶ See SAA at 889-890; House Report at 63-64; Senate Report at 52; and *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*).

¹⁷ See SAA at 889-890; see also House Report at 63.

¹⁸ See *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.

¹⁹ See, e.g., *Certain Welded Carbon Steel Pipes and Tubes From India, Thailand, and Turkey: Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders*, 82 FR 46485 (October 5, 2017), and accompanying IDM; *Ferrovandium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying IDM.

²⁰ See SAA at 890; and *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.

²¹ See SAA at 890-91.

²² 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.

for Reviews.²³ However, Commerce explained in the *Final Modification for Reviews* that it “retain{s} the discretion, on a case-by-case basis, to apply an alternative methodology, when appropriate” in both investigations and administrative reviews pursuant to section 777A(d)(1)(B) of the Act.²⁴ In the *Final Modification for Reviews*, Commerce stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.²⁵ Commerce 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 recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available (AFA), and dumping margins where no offsets were denied because all comparison results were positive.”²⁶

VI. DISCUSSION OF THE ISSUES

Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments²⁷

The domestic interested parties argue that revocation of the *Order* will result in continuation or recurrence of dumping due to the continued existence of dumping margins above *de minimis*. They argue that the continued existence of above *de minimis* margins is, in itself, a sufficient basis to conclude that Chinese producers are likely to continue to engage in dumping in the absence of the *Order*. Nonetheless, the domestic interested parties also argue that Commerce will find that dumping is likely to continue or recur where it determines that import volumes for the subject merchandise declined significantly after the issuance of an order and argue that, in fact, imports of RBAO from China declined significantly after the issuance of the *Order*. The domestic interested parties note that, compared to the two years prior to the filing of the petition (2000 and 2001), where imports of RBAO from China were 47,934 and 62,700 net tons, respectively, during the five years prior to this sunset review imports ranged from a low of 1,559 net tons to a high of 3,710 net tons.²⁸

Commerce’s Position:

As explained in the Legal Framework section above, Commerce’s determinations of likelihood will be made on an order-wide basis.²⁹ In addition, Commerce normally will determine that

²³ 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*).

²⁴ *Id.* at 8102, 8105, 8109.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Substantive Response at 5-8.

²⁸ *Id.* at 8 and Exhibit 1 (citing USITC Dataweb, Imports for Consumption, HTS Subheadings 2818.10.20.00 and 2818.10.20.90).

²⁹ See SAA at 879; and House Report at 56.

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 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.³⁰ In addition, pursuant to section 752(c)(1)(B) of the Act, Commerce considers the volume of imports of the subject merchandise for the period before and after the issuance of the AD order. Also, as discussed 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 to import volumes since the issuance of the last continuation notice.³¹

In this case, Commerce conducted only one administrative review, in which it calculated a 46.88 percent margin for the sole respondent in that review.³² Therefore, for other exporters of RBAO from China, the cash deposit rates established in the original LTFV investigation remain in effect and entries of subject merchandise into the United States after issuance of the *Order* were assessed at above *de minimis* rates.³³ Additionally, we examined the statistics placed on the record by the domestic interested parties with respect to imports of the subject merchandise for the period preceding initiation of the underlying investigation and compared them to import volumes since the issuance of the last continuation notice, pursuant to section 752(c)(1)(B) of the Act. These data show that import volumes in the most recent review period since issuance of the last continuation notice (2014 – 2018) have continued to be significantly below the volume of imports in the years preceding the initiation of the investigation (*i.e.*, 2001 – 2002). Given the continued existence of above *de minimis* margins calculated without zeroing coupled with the substantially lower import levels since imposition of the *Order* during this sunset review period, we determine that it is unlikely that Chinese producers of subject merchandise would be able to sell without dumping.³⁴ Therefore, pursuant to section 752(c)(1) of the Act, we determine that revocation of the *Order* would likely result in the continuation of dumping in the United States.

³⁰ See SAA at 889-890; House Report at 63-64; and Senate Report at 52.

³¹ See, e.g., *Certain Welded Carbon Steel Pipes and Tubes From India, Thailand, and Turkey: Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders*, 82 FR 46485 (October 5, 2017), and accompanying IDM; and *Ferrovandium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying IDM.

³² See *Refined Brown Aluminum Oxide from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 23682 (May 20, 2009), and accompanying IDM.

³³ See *Refined Brown Aluminum Oxide from the People's Republic of China: Final Results of Expedited Second Sunset Review of the Antidumping Duty Order*, 79 FR 26207 (May 7, 2014), and accompanying IDM at "2. Magnitude of the Margins Likely to Prevail" (explaining that the calculation of investigation rates was "not affected by zeroing because all of the comparison results for the respondent were positive and, therefore, we did not deny offsets when aggregating these results").

³⁴ See SAA at 890 (explaining that "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").

2. Magnitude of the Dumping Margins Likely to Prevail

Interested Party Comments³⁵

The domestic interested parties cite to the SAA and the *Sunset Policy Bulletin* and note that Commerce normally will select the rate from the original investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place. Therefore, consistent with the SAA and the *Sunset Policy Bulletin*, the domestic interested parties argue that Commerce should rely upon the dumping margin from the original investigation. Further they note that, consistent with Commerce's findings in the previous sunset review, this margin was not affected by zeroing and is, therefore, consistent with the *Final Modification for Reviews*. As such, the domestic interested parties argue that Commerce should report to the ITC the dumping margin calculated in the investigation for the China-wide entity (135.18 percent) as the margin likely to prevail if the *Order* were revoked.

Commerce's Position:

Section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the *Order* were revoked. Commerce's preference is to select a rate from the investigation because it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order in place.³⁶ However, Commerce may provide a more recently calculated margin for a particular company, where declining (or zero or *de minimis*) dumping margins are accompanied by steady or increasing imports, which would reflect that the exporter is likely to dump at a lower rate found in a more recent review. Similarly, if an exporter chooses to increase dumping to increase or maintain market share, Commerce may provide the ITC with an increased margin that is more representative of that exporter's behavior in the absence of an order.³⁷ As indicated in the Legal Framework section above, Commerce's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology found to be WTO-inconsistent, in accordance with the *Final Modification for Reviews*.³⁸

As noted in the "History of the Order" section above, and under Issue 1, Commerce relied on AFA in assigning a margin to the China-wide entity in the underlying investigation. This rate was based on the margin calculated for the sole respondent and did not involve the practice of zeroing found to be WTO-inconsistent and subject to the *Final Modification for Reviews*. Thus, we determine that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping at the magnitude of weighted-average margins up to 135.18 percent.

³⁵ See Substantive Response at 9-10.

³⁶ See SAA at 890; and Sunset Policy, 63 FR at 18873 (section II.B.1); see also, e.g., *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 43063 (July 21, 2015), and accompanying IIDM at Issue 2.

³⁷ See Section 752(c)(3) of the Act.

³⁸ See *Final Modification for Reviews*, 77 FR at 8103.

VII. FINAL RESULTS OF SUNSET REVIEW

Commerce determines that revocation of the AD order on RBAO from China would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the margins of dumping that are likely to prevail would be at a rate up to 135.18 percent.

VIII. RECOMMENDATION

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

Agree

Disagree

12/19/2019

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance