



A-570-919  
Sunset Review  
**Public Document**  
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March 16, 2020

**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 Electrolytic  
Manganese Dioxide from the People's Republic of China

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## I. SUMMARY

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended, (the Act) the Department of Commerce (Commerce) had conducted this sunset review in order to determine whether revocation of the antidumping duty (AD) order<sup>1</sup> covering electrolytic manganese dioxide (EMD) from the People's Republic of China (China) *Order* would be likely to lead to continuation or recurrence of dumping. After analyzing the substantive response<sup>2</sup> of domestic interested parties<sup>3</sup> we recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum finding that revocation of the *Order* would likely lead to continuation or recurrence of dumping at weighted-average dumping margins up to 149.92 percent.

## II. BACKGROUND

On November 1, 2019, Commerce published in the *Federal Register* advance notice of sunset reviews scheduled for initiation in December 2019.<sup>4</sup> On December 2, 2019, Commerce

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<sup>1</sup> See *Antidumping Duty Order: Electrolytic Manganese Dioxide from the People's Republic of China*, 73 FR 58537 (October 7, 2008) (*Order*).

<sup>2</sup> See Domestic Interested Parties' Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Substantive Response to Notice of Initiation of Five-Year (Sunset) Review of the Antidumping Duty Order," dated January 2, 2020 (Substantive Response).

<sup>3</sup> The domestic interested parties are Borman Specialty Materials and Prince Specialty Products LLC.

<sup>4</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review*, 84 FR 58689 (November 1, 2019).



published the notice of initiation of this sunset review of the *Order* in the *Federal Register* pursuant to section 751(c) of the Act.<sup>5</sup> On December 17, 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>6</sup> Domestic interested parties 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>7</sup> On January 2, 2020, pursuant to 19 CFR 351.218(d)(3)(i), domestic interested parties filed a timely and adequate substantive response.<sup>8</sup> Commerce did not receive a substantive response from any respondent interested party. Accordingly, 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 the *Order*.<sup>9</sup> On December 23, 2019 and January 22, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it received a notice of intent to participate from domestic interested parties and did not receive an adequate substantive response from respondent interested parties, respectively.<sup>10</sup>

### **III. SCOPE OF THE ORDER**

The merchandise covered by this *Order* includes all manganese dioxide (MnO<sub>2</sub>) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD). The merchandise subject to this *Order* is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

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

On October 7, 2008, Commerce published the *Order* in the *Federal Register*.<sup>11</sup> In the underlying less-than-fair-value (LTFV) investigation, Commerce found a weighted-average dumping margin of 149.92 percent for the examined exporter and the China-wide entity.<sup>12</sup> Since issuance of the *Order*, there have been no completed administrative (there is one ongoing AD administrative review covering 2018-2019), new shipper, changed circumstances, or

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<sup>5</sup> See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 65968 (December 2, 2019).

<sup>6</sup> See Domestic Interested Parties' Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Notice of Intent to Participate," dated December 17, 2019.

<sup>7</sup> *Id.* at 1-2.

<sup>8</sup> See Substantive Response.

<sup>9</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).

<sup>10</sup> See Commerce's Letters, "Sunset Reviews Initiated on December 2, 2019" dated December 23, 2019, and January 22, 2020.

<sup>11</sup> See *Order*; see also *Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) (*Final Determination*).

<sup>12</sup> See *Final Determination*.

anticircumvention reviews of the *Order*. Also, there have been no scope determinations or duty absorption findings in connection with the *Order*.

This is the second sunset review of the *Order*. On February 3, 2014, Commerce determined that revocation of the *Order* would likely lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail for all exporters of EMD from the PRC would be 149.92.<sup>13</sup> On January 9, 2015, Commerce published the notice of continuation of the *Order*.<sup>14</sup>

## V. LEGAL FRAMEWORK

Sections 752(c)(1)(A) and (B) of the Act provide that, in making a determination as to whether revocation of an AD order is likely to lead to continuation or recurrence of dumping, 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. 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 (however, 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>15</sup> (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>16</sup> 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.<sup>17</sup>

When examining import levels after issuance of the order, 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, in its comparisons because initiation of an investigation may dampen import volumes and, thus, skew comparisons.<sup>18</sup> Also, when analyzing import volumes for second and subsequent sunset reviews, Commerce's practice is to compare import volumes

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<sup>13</sup> See *Electrolytic Manganese Dioxide From Australia and the People's Republic of China: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders*, 79 FR 6162 (February 3, 2014).

<sup>14</sup> See *Electrolytic Manganese Dioxide From the People's Republic of China and Australia: Continuation of the Antidumping Duty Order on the People's Republic of China, Revocation of the Antidumping Duty Order on Australia*, 80 FR 1393 (January 9, 2015) (*Continuation Notice*).

<sup>15</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>16</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*).

<sup>17</sup> See SAA at 889-90, H.R. Rep. No. 103-316, Vol. 1 (1994).

<sup>18</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.

during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.<sup>19</sup>

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the Statement of Administrative Action, (SAA), the House Report, , and the Senate Report, , Commerce’s likelihood determinations will be made on an order-wide, rather than company-specific, basis.<sup>20</sup>

Further, section 752(c)(3) of the Act requires that Commerce provide the ITC with the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, Commerce reports to the ITC the dumping margin from the final determination in the investigation because this is the only calculated dumping margin that reflects the behavior of exporters without the discipline of an order in place.<sup>21</sup> However, in certain circumstances, a more recently calculated dumping margin 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 more recently calculated rates).<sup>22</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>23</sup> In the *Final Modification for Reviews*, Commerce stated that “only in the most extraordinary circumstances” would it rely on dumping margins in sunset reviews other than those calculated and published in prior determinations.<sup>24</sup> Commerce further stated that apart from the “most extraordinary circumstances,” it did not anticipate the need to recalculate dumping margins in the vast majority of future sunset determinations and, instead would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available,

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<sup>19</sup> See *Ferrovanadium 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>20</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I (1994) at 879 (SAA); *see also* House Report H. Rep. No. 103-826, pt. 1 (1994) at 56 and Senate Report, S. Rep. No. 103-412 (1994)

<sup>21</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>22</sup> See SAA at 890-91; and *Sunset Policy Bulletin* at section II.B.2.

<sup>23</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>24</sup> *Id.*

and dumping margins where no offsets were denied because all comparison results were positive.”<sup>25</sup>

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

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

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

#### **Domestic Interested Parties’ Comments:**

- Commerce must find that if the *Order* were revoked, dumping by Chinese exporters would likely continue or recur because: (i) the lack of any administrative reviews is evidence that Chinese exporters cannot demonstrate that they are not dumping at rates below 149.92 percent (the rate determined in the AD investigation); and (ii) import volumes have declined significantly since issuance of the *Order*.

#### **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 margin determined in the investigation. As stated above, in the investigation in this proceeding, Commerce found a dumping margin of 149.92 percent.<sup>26</sup> No Chinese exporter has demonstrated, through the completion of an AD administrative review, that it is not dumping at this rate. Accordingly, based on the investigation dumping margin, any entries of subject merchandise after issuance of the *Order* were assessed at above *de minimis* rates. Therefore, the evidence indicates that dumping has continued after issuance of the *Order*.

Additionally, 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.*, 2006 for this sunset review) to import volumes since the issuance of the last continuation notice.<sup>27</sup> The last continuation notice for this sunset review was issued in January 2015.<sup>28</sup>

In analyzing import volumes for the four calendar years following issuance of the *Continuation Notice* (*i.e.*, 2015 through 2018), we have determined that the annual volume of U.S. imports of subject merchandise from China under the Harmonized Tariff Schedule of the United States

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<sup>25</sup> *Id.*

<sup>26</sup> *See Final Determination.*

<sup>27</sup> *See Substantive Response.*

<sup>28</sup> *See Continuation Notice.*

(HTSUS) listed in the scope of the *Order* for each of these years is significantly lower than the pre-initiation volume of imports.<sup>29</sup> During these four years, annual U.S. import volumes of subject merchandise from China ranged from approximately 0.48 percent to 1.74 percent of the U.S. import volume of subject merchandise from China in the year preceding initiation of the underlying investigation (*i.e.*, 2006).<sup>30</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>31</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>32</sup> 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.*, 2006).<sup>33</sup> This indicates that Chinese exporters may not be able to maintain pre-initiation import levels without selling subject merchandise at dumped prices.<sup>34</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 factors other 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 the above *de minimis* dumping margins and the decline in the volume of U.S. imports of subject merchandise from China after issuance of the *Order* satisfy the statutory test for determining the likelihood of whether dumping would continue or recur if the *Order* were revoked.

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

### **Domestic Interested Parties’ Comments:**

- Commerce should determine that dumping would continue if the *Order* were revoked, at a rate equal to, or higher than, the dumping margin from the investigation in this proceeding.

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<sup>29</sup> See Substantive Response at 11 (citing USITC DataWeb, HTSUS 2820.10.0000).

<sup>30</sup> *Id.*

<sup>31</sup> See SAA at 889; *see also* House Report at 63; and the Senate Report at 52.

<sup>32</sup> See SAA at 889; *see also* House Report at 63-64.

<sup>33</sup> See Substantive Response at 11.

<sup>34</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.

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

Pursuant to section 752(c)(3) of the Act, Commerce shall provide the ITC with the magnitude of the margin of dumping that is likely to prevail if an AD order were revoked. Normally, Commerce will base the magnitude of the margin of dumping that is likely to prevail if an AD order were revoked on the weighted-average dumping margins from the LTFV investigation.<sup>35</sup> Commerce's preference is to select a weighted-average dumping margin from the LTFV investigation for this purpose because it is the only calculated dumping margin that reflects the behavior of the producers and exporters without the discipline of an order or suspension agreement in place.<sup>36</sup> Under certain circumstances, however, Commerce may select a more recent dumping margin to report to the ITC.

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>37</sup> Here, Commerce finds that the magnitude of the margins of dumping likely to prevail if the *Order* were revoked is the range of weighted-average dumping margins up to 149.92 percent. This dumping margin was not calculated using zeroing and, thus, this dumping margin is consistent with the practice stipulated in the *Final Modification for Reviews*.

## **VII. FINAL RESULTS OF SUNSET REVIEW**

We determine that revocation of the *Order* would likely lead to continuation or recurrence of dumping and that the magnitude of the margins of dumping likely to prevail if the *Order* were revoked is the range of weighted-average dumping margins up to 149.92 percent.

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<sup>35</sup> See SAA at 890.

<sup>36</sup> *Id.*

<sup>37</sup> See *Final Modification for Reviews*, 77 FR at 8103.

**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 these 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

3/16/2020

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