



A-570-947
Sunset Review
Public Document
E&C/OIV: KJ

January 22, 2021

MEMORANDUM TO: Christian Marsh
Acting 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 Certain Steel
Grating from the People's Republic of China

I. SUMMARY

We conducted an expedited (120-day) sunset review of the antidumping duty (AD) *Order*¹ on certain steel grating from the People's Republic of China (China) in accordance with section 751(c)(1) of the Tariff Act of 1930, as amended (the Act). We recommend finding that revocation of the *Order* would likely lead to continuation or recurrence of dumping at weighted-average dumping margins up to 145.18 percent.

II. BACKGROUND

On September 1, 2020, the Department of Commerce (Commerce) published in the *Federal Register* advance notice of sunset reviews scheduled for initiation in October 2020.² On October 1, 2020, Commerce published the notice of initiation of this sunset review in the *Federal Register* pursuant to section 751(c) of the Act.³ On October 16, 2020, Commerce received a complete notice of intent to participate in the sunset review from domestic interested parties⁴

¹ See *Certain Steel Grating from the People's Republic of China: Antidumping Duty Order*, 75 FR 43143 (July 23, 2010) (*Order*); see also *Certain Steel Grating From the People's Republic of China: Notice of Correction to the Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 75 FR 69626 (November 15, 2010) (*Amended Final Determination and Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review*, 85 FR 54347 (September 1, 2020).

³ See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 61928 (October 1, 2020).

⁴ The domestic interested parties are Nucor Grating, IKG USA, LLC, Ohio Gratings, Inc., Interstate Gratings, LLC and Lichtgitter USA Inc..

within the deadline specified in 19 CFR 351.218(d)(1)(i).⁵ Domestic interested parties claimed interested party status, pursuant to section 771(9)(C) of the Act, as U.S. manufacturers of the domestic like product.⁶ On November 2, 2020, pursuant to 19 CFR 351.218(d)(3)(i), domestic interested parties filed a timely and adequate substantive response.⁷ 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*.⁸ On October 20, 2020 and November 20, 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.⁹

III. SCOPE OF THE *ORDER*

The products covered by the order are certain steel grating, consisting of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process, regardless of: (1) size or shape; (2) method of manufacture; (3) metallurgy (carbon, alloy, or stainless); (4) the profile of the bars; and (5) whether or not they are galvanized, painted, coated, clad or plated. Steel grating is also commonly referred to as "bar grating," although the components may consist of steel other than bars, such as hot-rolled sheet, plate, or wire rod.

The scope of the order excludes expanded metal grating, which is comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded, and does not involve welding or joining of multiple pieces of steel. The scope of the order also excludes plank type safety grating which is comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, that has been pierced and cold formed, and does not involve welding or joining of multiple pieces of steel.

Certain steel grating that is the subject of the order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.90.7000. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

⁵ See Domestic Interested Parties' Letter, "Steel Grating from the People's Republic of China: Notice of Intent to Participate in Sunset Review," dated October 16, 2020.

⁶ *Id.* at 2-3.

⁷ See Domestic Interested Parties' Letter, "Steel Grating from the People's Republic of China: Substantive Response to the Notice of Initiation of Sunset Review," dated November 2, 2020 (Substantive Response).

⁸ 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 inadequate responses).

⁹ See Commerce's Letters, "Sunset Reviews Initiated on October 1, 2020" dated October 20, 2020 and November 20, 2020.

IV. HISTORY OF THE ORDER

After publication of the *Amended Final Determination and Order* in the *Federal Register* on November 15, 2010,¹⁰ Commerce amended the dumping duties determined in the Amended Final Determination¹¹ pursuant to litigation.^{12, 13} The amended duties range from 38.16 percent to 145.18 percent.

Section 129 Determination

On July 29, 2015, Commerce published a notice of implementation of determinations under section 129 of the Uruguay Round Agreements Act with respect to several AD orders including the *Order* on certain steel grating from China.¹⁴ The weighted-average dumping margins for certain steel grating from China did not change pursuant to the *Section 129 Determination*.

Administrative, New Shipper, Changed Circumstances, or Anti-circumvention Reviews

Commerce completed one AD administrative review covering 2014-2015. In that review, Commerce determined that Ningbo Haitian was not eligible for separate rate status and accordingly, was subject to the China-wide rate of 145.18 percent and that Yantai Xinke did not have reviewable transactions during the review period.¹⁵ Commerce initiated two other AD

¹⁰ See *Amended Final Determination and Order*, 75 FR at 69626.

¹¹ See *Certain Steel Grating From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 32366 (June 8, 2010) (*Final Determination*).

¹² See *Steel Grating From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination in the Less-Than-Fair-Value investigation and Notice of Amended Final Determination Pursuant to Court Decision*, 79 FR 43396 (July 25, 2014) (*Second Amended Final Determination*).

¹³ See *Steel Grating From the People's Republic of China: Notice of Correction to the Notice of a Court Decision Not in Harmony With the Final Determination in the Less-Than-Fair-Value Investigation and Notice of Amended Final Determination Pursuant to Court Decision*, 79 FR 47617 (August 14, 2014) (*Corrected Second Amended Final Determination*).

¹⁴ 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 Selvage 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*).

¹⁵ See *Certain Steel Grating From the People's Republic of China: Final Results of the 2014-2015 Antidumping Administrative Review*, 81 FR 51861 (August 5, 2016).

administrative reviews, but subsequently rescinded them.¹⁶ There have been no AD new shipper, changed circumstances, or anti-circumvention reviews of the *Order*.

Scope Rulings and Duty Absorption

There is one ongoing scope proceeding.¹⁷ There have been no duty absorption findings in connection with the *Order*.

Sunset Reviews

This is the second sunset review of the *Order*. On October 5, 2015, in the first sunset review of the *Order*, 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 certain steel grating from China would be up to 145.18 percent.¹⁸ On November 12, 2015, Commerce published a notice of continuation of the *Order*.¹⁹

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 U.S. imports of subject merchandise from the country subject to the order for the periods before, and after, 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 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 less than fair value);²⁰ (b) U.S. imports of subject merchandise from the country subject to the order ceased after issuance of the order; or (c) dumping was eliminated after issuance of the order and U.S. import

¹⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 76 FR 53404 (August 26, 2011); see also *Certain Steel Grating From the People's Republic of China: Notice of Rescission of the 2010-2011 Antidumping Duty Administrative Review*, 76 FR 76368 (December 7, 2011); see also *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 53128 (August 28, 2013); see also *Certain Steel Grating From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 18276 (April 1, 2014).

¹⁷ See Ikadan System USA Inc.'s Letter, "Certain Steel Grating from the People's Republic of China: Request for Scope Ruling on Ductile Cast Iron Flooring for Pig Farrowing Crates," dated November 13, 2020.

¹⁸ See *Certain Steel Grating From the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 60119 (October 5, 2015).

¹⁹ See *Certain Steel Grating From the People's Republic of China: Continuation of the Antidumping Duty Order and Countervailing Duty Order*, 80 FR 69940 (November 12, 2015) (*Continuation Notice*).

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 (IDM) at Comment 1.

volumes for subject merchandise from the country subject to the order declined significantly.²¹ 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 U.S. import volumes for subject merchandise from the country subject to the order remained steady or increased.²²

When examining U.S. import levels after issuance of the order, Commerce's practice to use the U.S. import volume for the one-year period immediately preceding initiation of the investigation, rather than the level of pre-order U.S. import volumes, in its comparisons because initiation of an investigation may dampen U.S. import volumes and, thus, skew comparisons.²³ Also, when analyzing U.S. import volumes for second and subsequent sunset reviews, Commerce's practice is to compare the U.S. import volume during the year preceding initiation of the underlying investigation to U.S. import volumes since issuance of the last continuation notice.²⁴

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the SAA, the House Report, and the Senate Report, Commerce's likelihood determinations will be made on an order-wide, rather than company-specific, basis.²⁵

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.²⁶ 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 U.S. imports have remained steady or increased, Commerce may conclude that exporters are likely to continue dumping at the lower more recently calculated rates).²⁷

²¹ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I (1994) (SAA) at 889-90; House Report H. Rep. No. 103-826, pt. 1 (1994) (House Report) at 63-64; and Senate Report, S. Rep. No. 103-412 (1994) (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*).

²² See SAA at 889-90; and House Report.

²³ 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 IDM at Comment 1.

²⁴ 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.

²⁵ See SAA at 879; see also House Report at 56; and Senate Report at 52.

²⁶ 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.

²⁷ See SAA at 890-91; and *Sunset Policy Bulletin* at section II.B.2.

In February 2012, Commerce announced it was modifying its practice in sunset reviews such that it would not rely on weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization (WTO)-inconsistent.²⁸ 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.²⁹ 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.” Commerce noted 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, and dumping margins where no offsets were denied because all comparison results were positive.”³⁰

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 should find that if the *Order* was revoked, dumping by Chinese exporters would likely continue or recur at margins equal to, or greater than, 145.18 percent *ad valorem* because: (i) dumping has continued at levels above *de minimis* following the issuance of the *Order*; and (ii) U.S. import volumes have declined significantly since issuance of the *Order*.³¹

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. As stated above, in the investigation in this proceeding, Commerce found dumping margins up to 145.18 percent (the China-Wide dumping margin).³² In the only completed subsequent AD administrative review of the *Order*, Commerce found that one of the two respondents reviewed was subject to the China-wide dumping margin, while the second respondent had no shipments

²⁸ 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*).

²⁹ *Id.*

³⁰ *Id.*

³¹ See Substantive Response.

³² See *Final Determination*.

during the review period. Therefore, the evidence indicates that dumping has continued above *de minimis* after issuance of the *Order*.

Additionally, pursuant to section 752(c)(1)(B) of the Act, we considered the volume of U.S. imports of subject merchandise from China 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 the volume of U.S. imports of subject merchandise from the country subject to the order during the year preceding initiation of the underlying investigation (*i.e.*, 2008 for this sunset review) to U.S. import volumes of subject merchandise from the country subject to the order since issuance of the last continuation notice.³³ Commerce issued the last continuation notice for this sunset review in November 2015.³⁴

In analyzing import volumes for the four calendar years following issuance of the *Continuation Notice* for which a full year of data were available at the time the domestic interested parties filed their substantive response (*i.e.*, 2016 through 2019), we have determined that the annual volume of U.S. imports of subject merchandise from China under the HTSUS listed in the scope of the *Order* for each of these years is significantly lower than the pre-initiation volume of U.S. imports of subject merchandise from China under that HTSUS number.³⁵ During this four year period, the annual volume of U.S. imports of subject merchandise from China ranged from approximately 0.60 percent to 2.95 percent of the volume of U.S. imports of subject merchandise from China in the year preceding initiation of the underlying investigation (*i.e.*, 2008).³⁶

The above facts indicate that Chinese exporters may not be able to maintain pre-initiation import levels without selling subject merchandise at dumped prices.³⁷ 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."³⁸ 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."³⁹ Therefore, pursuant to section 752(c)(1) of the Act, because we found lower volumes of U.S. imports of subject merchandise from China 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.

³³ See Substantive Response.

³⁴ See *Continuation Notice*.

³⁵ See Substantive Response at Exhibit 1 (citing USITC DataWeb, HTSUS 7308.90.7000).

³⁶ *Id.*

³⁷ 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.

³⁸ See SAA at 889; see also House Report at 63; and Senate Report at 52.

³⁹ See SAA at 889; see also House Report at 63-64.

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 existence of 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* was revoked at a rate equal to, or greater than, the dumping margin of 145.18 percent.⁴⁰

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 was revoked. Normally, Commerce will base the magnitude of the margin of dumping that is likely to prevail if an AD order was revoked, on the weighted-average dumping margins from the investigation.⁴¹ Commerce’s preference is to select a weighted-average dumping margin from the 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.⁴² Under certain circumstances, however, Commerce may select a more recent dumping margin to report to the ITC. 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.⁴³

Here, Commerce finds that the weighted-average dumping margins from the investigation, as revised pursuant to a court decision and further used in the *Section 129 Determination*, represent the magnitude of the margins of dumping likely to prevail if the *Order* was revoked (a range of weighted-average dumping margins up to 145.18 percent) because these are the dumping margins calculated without the discipline of an order. The 145.18 percent dumping margin was not calculated using zeroing and, thus, this dumping margin is consistent with the practice stipulated in the *Final Modification for Reviews*. Accordingly, we find it appropriate to provide the ITC with this range of dumping margins because these dumping margins best reflect the behavior of exporters without the discipline of an order.

⁴⁰ See Substantive Response.

⁴¹ See SAA at 890.

⁴² *Id.*

⁴³ See *Final Modification for Reviews*, 77 FR at 8103.

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* was revoked is the range of weighted-average dumping margins up to 145.18 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 these final results of this expedited sunset review in the *Federal Register* and notify the ITC of our determination.

Agree

Disagree

1/22/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance