



March 2, 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 Sunset
Review of the Antidumping Duty Order on Melamine from the
People's Republic of China

I. SUMMARY

We have analyzed the response of the domestic interested party, Cornerstone Chemical Company (Cornerstone) in the first sunset review of the antidumping duty (AD) order covering melamine from the People's Republic of China (China). We recommend adopting 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 substantive responses:

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

II. BACKGROUND

On November 3, 2020, Commerce published the *Notice of Initiation* of the sunset review of the AD order on melamine from China pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).¹ On November 10, 2020, Commerce received a notice of intent to participate from Cornerstone within the deadline specified in 19 CFR 351.218(d)(1)(i).² On November 25, 2020, Cornerstone submitted a timely substantive response within the 30-day deadline specified

¹ See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 69585 (November 3, 2020) (*Notice of Initiation*); see also *Melamine from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders*, 80 FR 80751 (December 28, 2015) (*Order*).

² See Cornerstone's Letter, "Five-Year ("Sunset") Review Of Antidumping Duty Order On Melamine from the People's Republic Of China: Domestic Interested Party Notice Of Intent To Participate," dated November 10, 2020.

in 19 CFR 351.218(d)(3)(i).³ Cornerstone claimed domestic interested party status under section 771(9)(C) of the Act, as a manufacturer of a domestic like product in the United States.⁴ Commerce received no substantive responses from any other interested parties with respect to the *Order*, nor was a hearing requested. On December 23, 2020, 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 is conducting an expedited (120-day) sunset review of the *Order*.

The *Order* on melamine from China remains in effect for all producers and exporters of the subject merchandise.⁶

III. SCOPE OF THE *ORDER*

The scope of the *Order* covers melamine (Chemical Abstracts Service (CAS) registry number 108–78–01, molecular formula C₃H₆N₆).⁷ Melamine is a crystalline powder or granule typically (but not exclusively) used to manufacture melamine formaldehyde resins. All melamine is covered by the scope of the *Order* irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of the *Order*. Melamine that is otherwise subject to the *Order* is not excluded when commingled with melamine from sources not subject to the *Order*. Only the subject component of such commingled products is covered by the scope of the *Order*.

The subject merchandise is provided for in subheading 2933.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

IV. HISTORY OF THE *ORDER*

On November 6, 2015, Commerce published the final affirmative determination in the less-than-fair-value (LTFV) investigation of melamine from China in the *Federal Register*.⁸ On December

³ See Cornerstone’s Letter, “Five-Year (“Sunset”) Review Of Antidumping Duty Order On Melamine from the People’s Republic Of China: Domestic Interested Party Substantive Response,” dated November 25, 2020 (Cornerstone’s Substantive Response).

⁴ See Cornerstone’s Notice of Intent to Participate.

⁵ See Commerce’s Letter, “Sunset Reviews for November 2020,” dated December 23, 2020.

⁶ See *Order*.

⁷ Melamine is also known as 2,4,6-triamino-s-triazine; 1,3,5-Triazine-2,4,6-triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names.

⁸ See *Melamine from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 80 FR 68851 (November 6, 2015) (*Final Determination*).

28, 2015, Commerce published the *Order*, which established the following weighted-average dumping margins:⁹

Exporter	Weighted-Average Margin (percent)
China-Wide Entity	363.31

Since the investigation, no administrative reviews or new shipper reviews have been requested or conducted under the *Order*. There have also been no duty-absorption findings or changed circumstance reviews since the issuance of the *Order*. Since the investigation, Commerce has issued one scope ruling under the *Order*.¹⁰

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 these determinations, Commerce shall consider both the weighted-average dumping margins determined in the investigations and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and after the issuance of the *Order*.

In accordance with the guidance provided in the legislative history in the SAA,¹¹ the House Report,¹² and the Senate Report,¹³ Commerce's determinations of likelihood will be made on an order-wide, rather than company-specific, basis.¹⁴ In addition, Commerce normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (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.¹⁵

⁹ See *Order*.

¹⁰ See Cornerstone's Substantive Response at 7; see also *Notice of Scope Rulings*, 83 FR 26257, 26258 (June 6, 2018).

¹¹ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA).

¹² See H. Rep. No. 103-826, pt. 1 (1994) (House Report), reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

¹³ See S. Rep. No. 103-412 (1994) (Senate Report).

¹⁴ See SAA at 879 and House Report at 56.

¹⁵ See SAA at 889-90, House Report at 63-64, and Senate Report at 52; see also *Policies Regarding the Conduct of Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*; *Policy Bulletin 98.3*, 63 FR 18871, 18872 (April 16, 1998).

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, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.¹⁶ When analyzing import volumes for first and subsequent sunset reviews, Commerce's practice is to compare import volumes during the year preceding the initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.¹⁷

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.¹⁸ 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 order would not be likely to lead to a continuation or recurrence of sales at LTFV.¹⁹

Generally, Commerce selects the 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 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").²¹

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, Commerce announced that, in five-year sunset reviews, it will not rely on weighted-average dumping margins that were calculated using the zeroing methodology.²² 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.²³ 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.²⁴ Commerce further stated that, apart from the "most extraordinary circumstances," it would "limit

¹⁶ 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.

¹⁷ 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 at 3.

¹⁸ See SAA at 889-890; see also House Report at 63.

¹⁹ 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.

²⁰ See SAA at 890; see also *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 *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*).

²³ *Id.*, 77 FR at 8102, 8105, and 8109.

²⁴ *Id.*

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, and dumping margins where no offsets were denied because all comparison results were positive.”²⁵

VI. DISCUSSION OF THE ISSUES

1. Likelihood of Continuation or Recurrence of Dumping

Cornerstone’s Comments

- Commerce has not conducted any administrative reviews and, therefore, the dumping margins established in the investigation remain in effect for all shipments of subject merchandise.²⁶ The continued existence of above *de minimis* margins is, in itself, sufficient basis to conclude that producers in China are likely to continue to engage in dumping if the *Order* were revoked.²⁷
- After the imposition of the *Order*, subject imports declined significantly.²⁸
- The continued existence of dumping margins for all exporters and the significant decline in import quantities after issuance of the *Order* demonstrate that dumping would be likely to continue or recur were the *Order* revoked.

Commerce Position:

As explained in the Legal Framework section above, when determining whether revocation of the *Order* would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct Commerce to consider: (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 period before and after the issuance of the *Order*. According to the SAA, existence of dumping margins after the order “is highly probative of the likelihood of continuation or recurrence of dumping. 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. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they

²⁵ *Id.*

²⁶ See Cornerstone’s Substantive Response at 4.

²⁷ *Id.* (citing *Lightweight Thermal Paper from the People’s Republic of China: Final Results of Expedited First Sunset Review of the Antidumping Duty Order*, 79 FR 9879 (February 21, 2014), and accompanying IDM at Comment 1; *Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Romania: Final Results of the Expedited Second Five-Year Sunset Reviews of the Antidumping Duty Orders*, 76 FR 47555 (August 5, 2011), and accompanying IDM at Comment 1; *Sulfanilic Acid from India and the People’s Republic of China; Final Results of Third Expedited Sunset Reviews of Antidumping Duty Orders*, 76 FR 45510 (July 29, 2011), and accompanying IDM at Comment 1; and *Certain Cut-to-Length Carbon-Quality Steel Plate from India, Indonesia, Italy, Japan, and the Republic of Korea; Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 76 FR 12322 (March 7, 2011), and accompanying IDM at Comment 1).

²⁸ *Id.* at 5.

would have to resume dumping.”²⁹ In addition, “declining import volumes accompanied by the continued existence of dumping margins after the issuance of the 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.”³⁰ Alternatively, the legislative history provides that declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.³¹

As noted above, in the *Final Determination*, Commerce assigned a weighted-average dumping margin of 363.31 percent to the exporters/producers subject to the investigation.³² Also noted above, Commerce has conducted no administrative reviews of the *Order* and, therefore, these margins remain in effect for all companies. Further, these margins did not rely on a zeroing methodology, consistent with the *Final Modification for Reviews*.³³ In the instances where dumping margins continue to exist and there is a significant decline in import volumes, “it is reasonable to assume that dumping would continue if the discipline of the order were removed.”³⁴

Additionally, we examined the import statistics for the calendar year preceding and including the initiation of the LTFV investigation³⁵ and for the four-year period since the imposition of the *Order*, which show that imports of melamine from China declined significantly after the imposition of AD duties and remain significantly lower during the sunset period of review than in the calendar year before and of the initiation of the LTFV investigation.³⁶ Given this decrease in import volumes during the sunset review period, we determine that it is unlikely that Chinese exporters of melamine would be able to sell at pre-*Order* levels without dumping.

Therefore, pursuant to section 752(c)(1) of the Act, because non-*de minimis* dumping margins remain in place after the issuance of the *Order*, and Commerce has found dramatically lower import volumes in the period since the imposition of the *Order*, we find that dumping would be likely to continue or recur if the *Order* were revoked.

²⁹ See SAA at 890.

³⁰ *Id.* at 889; see also House Report at 63, and Senate Report at 52.

³¹ See SAA at 889-90; see also House Report at 63; and Senate Report at 52.

³² See *Final Determination*; see also *Order*.

³³ Commerce announced it would cease zeroing in investigations on December 26, 2006. See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006).

³⁴ See SAA at 890.

³⁵ The LTFV investigation was initiated in December 2014, so the majority of imports in 2014 would have occurred prior to the initiation of the investigation; see *Melamine from the People’s Republic of China and Trinidad and Tobago: Initiation of Less-Than-Fair-Value Investigations*, 79 FR 73037 (December 9, 2014).

³⁶ See Cornerstone’s Substantive Response at 5.

2. Magnitude of the Margins Likely to Prevail

Domestic Interested Parties' Comments

- Consistent with the SAA, Commerce will normally select dumping margins established in the original investigation as the margins that are likely to prevail if an order is revoked.³⁷
- Commerce has stated that its policy normally is to use the margin from the investigation regardless of whether the margin was calculated using a company's own information or based on best information or the facts available."³⁸
- In the investigation, all exporters were found to be part of the China-wide entity. Accordingly, Commerce should find that the likely dumping margin in the event of revocation of the *Order* should be set at the China-wide rate of 363.31 percent.³⁹

Commerce Position:

Pursuant to section 752(c)(3) of the Act, Commerce shall provide to the ITC the magnitude of the margins of dumping that are likely to prevail if the *Order* were revoked. Normally, Commerce will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.⁴⁰

Commerce has determined that the dumping margin established in the investigation of melamine from China is likely to prevail if the *Order* were revoked. In the underlying investigation, Commerce determined a weighted-average dumping margin based on a rate from the petition (*i.e.*, a total adverse facts available rate).⁴¹ As a result, we will report to the ITC the weighted-average dumping margin listed in the "Final Results of Sunset Reviews" section below.

VII. FINAL RESULTS OF SUNSET REVIEW

We determine that revocation of the *Order* on melamine from China would likely lead to continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail would be up to 363.31 percent.

³⁷ *Id.* at 6.

³⁸ *Id.* (citing *Policies Regarding the Conduct Of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin 98.3*, 63 FR 18871 (April 16, 1998)).

³⁹ *Id.*

⁴⁰ See SAA at 890.

⁴¹ See *Final Determination*. As a petition rate, this margin was calculated without zeroing and, therefore, is consistent with the *Final Modification for Reviews*.

VIII. RECOMMENDATION

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

Agree

Disagree

3/2/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance