



A-570-806
Sunset Review
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June 27, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Fourth Sunset
Review of the Antidumping Duty Order on Silicon Metal from the
People's Republic of China

Summary

In this fourth sunset review of the antidumping duty order covering silicon metal from the People's Republic of China (PRC),¹ Globe Metallurgical Inc. (Globe), a domestic producer of silicon metal, submitted an adequate and timely notice of intent to participate, as well as a substantive response. No respondent 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).¹ In accordance with our analysis of Globe's adequate substantive response, we recommend that you approve the positions described in the instant memorandum. The following is a complete list of issues in the instant sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margin likely to prevail.

Background

On March 3, 2017, the Department of Commerce (Department) published the notice of initiation of the fourth sunset review of the antidumping duty order on silicon metal from the PRC, pursuant to section 751(c) of the Act.² On March 3, 2017, pursuant to 19 CFR 351.218(d)(1), the Department received a timely and complete notice of intent to participate in the sunset review

¹ See *Procedures for Conducting Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005) (the Department normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response).

² See *Initiation of Five-Year (Sunset) Review*, 82 FR 12438 (March 3, 2017).

from Globe.³ On March 24, 2017, pursuant to 19 CFR 351.218(d)(3), Globe filed a timely and adequate substantive response.⁴ The Department did not receive substantive responses from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the antidumping duty order on silicon metal from the PRC.

Scope of the Order

The merchandise covered by the order is silicon metal containing at least 96.00 percent, but less than 99.99 percent of silicon by weight. Also covered by the order is silicon metal containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight (58 FR 27542 May 10, 1993). Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTSUS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to the order. Although the HTSUS subheadings are provided for convenience and for customs purposes, the written description of the merchandise remains dispositive.

History of the Proceeding

Investigation and Order

The following summarizes the history of the decisions that led to the *Order*. On April 23, 1991, the Department published its final affirmative determination in the less than fair value (LTFV) investigation of silicon metal from the PRC in the *Federal Register*.⁵ Following the publication of the Department's final determination, the International Trade Commission (ITC) found that the U.S. industry was materially injured by reason of imports of subject merchandise.⁶ On June 10, 1991, the Department published the antidumping duty order on silicon metal from the PRC.⁷ The Department found the following antidumping duty margins:

| Exporters | Weighted-Average Margin (percent) |
|-------------------------------|-----------------------------------|
| PRC-Wide Rate (all exporters) | 139.49 |

³ See Letter from Domestic Interested Parties (Globe) re "Silicon Metal from the People's Republic of China; Fourth Sunset Review; Notice of Intent to Participate" dated March 3, 2017.

⁴ See Silicon Metal from the People's Republic of China; Fourth Sunset Review; Substantive Response of Globe Metallurgical Inc. to the Notice of Initiation, dated March 24, 2017 (Globe Substantive Response).

⁵ See *Final Determination of Sales at Less Than Fair Value: Silicon Metal From the People's Republic of China*, 56 FR 18570 (April 23, 1991).

⁶ See *Silicon Metal From the People's Republic of China, Determination of the Commission in Investigation No. 731-TA-475 (Final)*, USITC Publication No. 2385 (June, 1991).

⁷ See *Antidumping Duty Order: Silicon Metal From the People's Republic of China*, 56 FR 26649 (June 10, 1991) (*Order*).

Subsequent Administrative, New Shipper, Changed Circumstances, and Circumvention Reviews

Since the issuance of the *Order*, the Department has completed eight administrative reviews,⁸ terminated or rescinded three administrative reviews,⁹ completed a new shipper review,¹⁰ and rescinded four new shipper reviews.¹¹ The Department has not conducted any changed circumstances or circumvention reviews in connection with the *Order*.

Scope Inquiries

On May 10, 1993, the Department issued a scope clarification in this proceeding.¹² In that clarification, the Department found that silicon metal containing between 89.00 and 96.00 percent silicon by weight, with higher aluminum content than the silicon metal containing at least 96.00 but less than 99.99 percent silicon by weight, is the same class or kind of merchandise as the silicon metal described in the *Order*.¹³ Therefore, such silicon metal is within the scope of the *Order*.

Duty-Absorption

There have been no duty absorption findings concerning the *Order*.

⁸ See *Silicon Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 37850 (July 14, 1998); *Notice of Final Results of Administrative Review: Silicon Metal from the People's Republic of China*, 68 FR 35383 (June 13, 2003); *Final Results and Final Partial Rescission of Antidumping Duty Administrative Review: Silicon Metal From the People's Republic of China*, 73 FR 46587 (August 11, 2008); *Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 1592 (January 12, 2010) (2007-08 Review Final Results); *Silicon Metal From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review*, 76 FR 7811 (February 11, 2011) (2008-09 Review Amended Final Results); *Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 Fed. Reg. 54,563 (September 5, 2012); *Silicon Metal From the People's Republic of China: Final Results of No Shipments Determination of Antidumping Duty Administrative Review; 2011-2012*, 78 Fed. Reg. 29,322 (May 20, 2013); *Silicon Metal From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 Fed. Reg. 47,157 (July 20, 2016).

⁹ See *Silicon Metal From the People's Republic of China; Termination of Antidumping Duty Administrative Review*, 58 FR 68119 (December 23, 1993); *Silicon Metal from the People's Republic of China: Notice of Rescission of New Shipper Review and Administrative Review for China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp.*, 68 FR 11057 (March 7, 2003); *Silicon Metal From the People's Republic of China: Rescission of Antidumping Duty Administrative Review*, 76 FR 12338 (March 7, 2011).

¹⁰ See *Silicon Metal from the People's Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews*, 72 FR 58641 (October 16, 2007) and *Silicon Metal From the People's Republic of China: Notice of Amended Final Results of New Shipper Reviews Pursuant to Court Decision*, 75 FR 15412 (March 29, 2010) (Amended New Shipper Review).

¹¹ See *Silicon Metal From the People's Republic of China; Notice of Rescission of New Shipper Review*, 64 FR 40831 (July 28, 1999); *Silicon Metal From the People's Republic of China; Notice of Rescission of New Shipper Antidumping Duty Review*, 66 FR 12927 (March 1, 2001); *Silicon Metal from the People's Republic of China: Rescission of Antidumping Duty New Shipper Review*, 67 FR 38255 (June 3, 2002); *Silicon Metal from the People's Republic of China: Notice of Rescission of New Shipper Review and Administrative Review for China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp.*, 68 FR 11057 (March 7, 2003).

¹² See *Scope Rulings*, 58 FR 27542, 27543 (May 10, 1993).

¹³ *Id.*

Sunset Reviews

The Department has conducted three sunset reviews, each of which resulted in continuation of the *Order*.¹⁴

Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping. If the Department determines that revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping, pursuant to section 752(c)(3) of the Act, the Department shall provide to the International Trade Commission (ITC) the magnitude of the margin of dumping likely to prevail if the *Order* were revoked.

Sections 752(c)(1)(A) and (B) of the Act provide that, in determining whether revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping, the Department 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 period before, and the period after, the issuance of the antidumping duty order. As a base period for import volume comparison, it is the Department's practice to use the one-year period immediately preceding the initiation of the investigation for comparison, rather than a period after initiation but before issuance of the order, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.¹⁵ However, when analyzing import volumes for second and subsequent sunset reviews, the Department'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.¹⁶ Since the instant expedited sunset review is the fourth sunset review of the *Order*, we have used the latter comparison here.

As explained in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, the Department normally determines that revocation of an antidumping duty 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 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

¹⁴ See *Continuation of Antidumping Duty Orders on Silicon Metal From Brazil and China and on Silicomanganese From Brazil and China, and Continuation of Suspended Antidumping Duty Investigation on Silicomanganese From Ukraine*, 66 FR 10669 (February 16, 2001); *Silicon Metal from the People's Republic of China: Continuation of Antidumping Duty Order*, 71 FR 76636 (December 21, 2006) and *Silicon Metal from the People's Republic of China: Notice of Correction of Continuation of Antidumping Duty Order*, 72 FR 531 (January 5, 2007); *Silicon Metal from the People's Republic of China: Continuation of Antidumping Duty Order*, 77 FR 23660 (April 20, 2012).

¹⁵ 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 at Comment 1.

¹⁶ 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 Issues and Decision Memorandum.

declined significantly.¹⁷ However, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of “zero or *de minimis* shall not by itself require” the Department 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.¹⁸

Alternatively, the Department normally will determine that revocation of an antidumping duty 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.¹⁹ Consistent with guidance provided in the legislative history the Department will make its likelihood determination on an order-wide, rather than company-specific, basis.²⁰

If the Department determines that revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping, generally the Department provides the ITC with the magnitude of the margin of dumping likely to prevail based on the dumping margin(s) 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.²¹ However, in certain circumstances, the Department may determine that a more recently calculated dumping margin may be more representative of a company’s behavior in the absence of an order (*e.g.*, where a company increases dumping to maintain or increase market share with an order in place or “if dumping margins have declined over the life of an order and imports have remained steady or increased, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review”).²²

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, the Department announced that in five-year (*i.e.*, sunset) reviews, it will not rely on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be World Trade Organization (WTO)-inconsistent, *i.e.*, zeroing/the denial of offsets.²³ The Department also noted that “only in the most extraordinary circumstances will the Department rely on margins other than those calculated and published in prior determinations.”²⁴ The Department 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

¹⁷ See SAA at 889-90, House Report at 63-64, and Senate Report at 52; *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*).

¹⁸ 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) (*Folding Gift Boxes*) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁹ See SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90; see also *Policies Regarding the Conduct of Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin*).

²⁰ See SAA at 879, and House Report at 56.

²¹ See SAA at 890 and *Sunset Policy Bulletin* at section II.B.1. See, *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 Issues and Decision Memorandum at Comment 2.

²² See SAA at 890-91; *Sunset Policy Bulletin* at section II.B.2.

²³ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8109 (February 14, 2012) (*Final Modification for Reviews*).

²⁴ *Id.*; see also 19 CFR 351.218(e)(2).

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

Below we address the comments submitted by Globe.

Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Parties’ Comments

- Revocation of the *Order* would likely result in continuation of dumping of silicon metal from the PRC in the United States.²⁶ Specifically, during the more than twenty-five years since the *Order* was issued, no exporter of silicon metal from the PRC has demonstrated that it can ship silicon metal to the United States without dumping. These facts are virtually unchanged from those considered by the Department in the first, second, and third sunset reviews of the *Order*.²⁷
- In addition, according to the U.S. Census Bureau’s data, the volume of silicon metal imported into the United States from the PRC has declined dramatically from the year the petition was filed (*i.e.*, 1990).²⁸ In particular, during the five-year period from 2012 through 2016 (the five-year period since the last sunset review), only negligible volumes of silicon metal from the PRC entered the United States. Those volumes are 183 MT in 2012, 305 MT in 2013, 255 MT in 2014, 248 MT in 2015 and 316 MT in 2016. These volumes represent 0.8, 1.4, 1.2, 1.1 and 1.4 percent of the pre- *Order* volume, respectively.²⁹

Department’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 and all subsequent administrative reviews of the *Order*, the Department found dumping above *de minimis* levels, with dumping rates reaching as high as 139.49 percent. 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.”³⁰

Pursuant to section 752(c)(1)(B) of the Act, we also 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, the Department’s practice is to compare import volumes during the year preceding initiation of the underlying investigation (*i.e.*, 1990, as the underlying

²⁵ *Id.* at 8109.

²⁶ See Silicon Metal from the People’s Republic of China; Fourth Sunset Review; Substantive Response of Globe Metallurgical Inc. to the Notice of Initiation, dated March 24, 2017 (Globe Substantive Response) at 4.

²⁷ *Id.* at 5-6.

²⁸ *Id.* at 6 and Table A.

²⁹ *Id.*

³⁰ See SAA at 889; see also House Report at 63-64.

investigation was initiated in September 1990) to import volumes since the issuance of the last continuation notice (*i.e.*, 2012 to 2016). The last continuation notice for this sunset review was issued in April 2012. U.S. imports of silicon metal from the PRC under the applicable HTSUS number listed in the scope of the *Order* in the five-period since the issuance of the last continuation notice have significantly declined compared to imports in the year immediately preceding the initiation of the investigation (*i.e.*, 1990) and remain below pre-investigation levels. Imports in each of these five years is less than 1.5 percent of pre-initiation import volume.³¹

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.” Record evidence shows significantly lower import volumes over this fourth sunset review period compared to the pre-initiation import period. This indicates that PRC exporters may not be able to maintain pre-initiation import levels without selling subject merchandise at dumped prices.³² Therefore, pursuant to section 752(c)(1) of the Act, because we found declining import volumes in each of the five years covered by this sunset review, 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* is revoked.

Magnitude of the Dumping Margin Likely to Prevail

Domestic Interested Parties’ Comments

- The Department should report to the ITC the PRC-wide rate of 139.49 percent as the magnitude of dumping likely to prevail because this rate: (1) is the only rate that reflects the behavior of exporters without the discipline of an order; (2) has remained unchanged and import volumes have decreased dramatically as a result of the *Order*; and (3) is in accordance with the Act and the *Sunset Policy Bulletin*.

Department’s Position

We find that the weighted-average dumping margin established in the investigation of silicon metal from the PRC, 139.49 percent, represents the margin of dumping most likely to prevail if the *Order* were revoked. This is consistent with the Department’s practice of providing to the ITC the weighted-average dumping margin(s) from the investigation,³³ because it is the only calculated dumping margin that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.³⁴

³¹ See Globe Substantive Response at Table A. The LTFV investigation was initiated in September of 1990. See *Initiation of Antidumping Duty Investigation: Silicon Metal From the People’s Republic of China*, 55 FR 38717 (September 20, 1990).

³² 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 Issues & Decision Memorandum at Comment 1.

³³ See *Eveready Battery Co. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

³⁴ See SAA at 890.

We further determine that the 139.49 percent dumping margin from the investigation was not affected by the denial of offsets and, thus, it is an appropriate dumping margin for this sunset review in accordance with the *Final Modification for Reviews*.³⁵ This determination is based on the fact that the 139.49 percent dumping margin from the investigation, which was the dumping margin applied to the PRC-wide entity, was based on a dumping margin calculated in the Petition. Accordingly, we will report to the ITC the margin of dumping likely to prevail listed in the “Final Results of Review” section below.

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register* and notify the ITC of the Department’s determination.

Agree

Disagree

6/27/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

³⁵ See *Final Modification for Reviews*, 77 FR at 8103.