

A-570-806
Sunset Review: 2023
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August 24, 2023

MEMORANDUM TO: Abdelali Elouaradia
Deputy 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 Final Results of the
Expedited Fifth Sunset Review: Silicon Metal from the People's
Republic of China

I. SUMMARY

We have analyzed the substantive response¹ of the domestic interested parties² in this sunset review of the antidumping duty order on silicon metal from the People's Republic of China (China).³ No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review of the *Order* 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).⁴

We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. The following is a complete list of the issues that we address in this expedited sunset review:

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

II. BACKGROUND

On May 1, 2023, Commerce published the notice of initiation of this fifth sunset review of the

¹ See Globe Metallurgical Inc. and Mississippi Silicon LLC's Letter, "Substantive Response to the Notice of Initiation," dated May 30, 2023 (Domestic Substantive Response).

² The domestic interested parties are Globe Metallurgical Inc. (Globe) and Mississippi Silicon LLC (Mississippi Silicon).

³ See *Antidumping Duty Order: Silicon Metal From the People's Republic of China*, 56 FR 26649 (June 10, 1991) (*Order*).

⁴ 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).



Order pursuant to section 751(c)(2) of the Act.⁵ On May 3 and 30, 2023, the domestic interested parties, timely filed a notice of intent to participate⁶ and a substantive response,⁷ respectively, pursuant to 19 CFR 351.218(d)(1)(i) and 19 CFR 351.218(d)(3)(i). These parties claimed domestic interested party status under section 771(9)(C) of the Act as producers of silicon metal in the United States.

We received no substantive response from any respondent interested party. On June 20, 2023, Commerce notified the U.S. International Trade Commission (ITC) that that no respondent interested party submitted a substantive response.⁸ As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*.

III. SCOPE OF THE *ORDER*

The merchandise covered by the *Order* is silicon metal containing at least 96.00 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 is dispositive.

IV. HISTORY OF THE *ORDER*

On April 23, 1991, Commerce published in the *Federal Register* its final affirmative determination of sales at less than fair value (LTFV) in the investigation of silicon metal from China in which it determined a margin of dumping of 139.49 percent for all exporters (*i.e.*, the China-wide entity).⁹ After the ITC found that the U.S. industry was materially injured by reason of imports of subject merchandise,¹⁰ Commerce published the *Order* on June 10, 1991.¹¹

Since issuance of the *Order*, Commerce: 1) completed eight administrative reviews of the

⁵ See *Initiation of Five-Year (Sunset) Review*, 88 FR 26522 (May 1, 2023).

⁶ See Globe and Mississippi Silicon's Letter, "Notice of Intent to Participate," dated May 3, 2023.

⁷ See Domestic Substantive Response.

⁸ See Commerce's Letter, "Sunset Reviews Initiated on May 1, 2023," dated June 20, 2023.

⁹ 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).

¹⁰ 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).

¹¹ See *Order*.

Order,¹² 2) terminated and/or rescinded four administrative reviews of the *Order*,¹³ 3) completed one new shipper review of the *Order*,¹⁴ 4) rescinded four new shipper reviews of the *Order*,¹⁵ 5) issued a scope ruling,¹⁶ and 6) conducted four sunset reviews of the *Order*, each of which resulted in continuation of the *Order*.¹⁷

Commerce has not conducted any changed circumstances reviews or circumvention inquiries, or made duty absorption findings concerning the *Order*.

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 likely lead to a continuation or recurrence of dumping. Guidance provided in the legislative history accompanying the SAA,¹⁸ the House

¹² 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); *Silicon Metal from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review*, 76 FR 7811 (February 11, 2011); *Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 54563 (September 5, 2012); *Silicon Metal from the People's Republic of China: Final Results of and Final No Shipments Determination of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 29322 (May 20, 2013); *Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 47157 (July 20, 2016).

¹³ 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); *Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 69361 (December 18, 2019).

¹⁴ 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*).

¹⁵ 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).

¹⁶ See *Scope Rulings*, 58 FR 27542, 27543 (May 10, 1993).

¹⁷ 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); *Silicon Metal from the People's Republic of China: Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order*, 82 FR 30841 (July 3, 2017).

¹⁸ See Statement of Administrative Action Accompanying Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) (SAA).

Report,¹⁹ and the Senate Report,²⁰ indicates that Commerce's determination of likelihood will be made on an order-wide, rather than a company-specific, basis.²¹

Sections 752(c)(1)(A) and (B) of the Act provide that, in making a determination whether revocation of an order is likely to lead to continuation or recurrence of dumping, Commerce shall consider both the weighted-average dumping margins determined in the LTFV investigation and subsequent reviews, and the volume of U.S. imports of subject merchandise for the period before, and after, issuance of the order. Specifically, Commerce normally will determine that revocation of an 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 (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 order would *not* be likely to lead to a continuation or recurrence of sales at LTFV);²² (b) imports of 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.²³ Alternatively, Commerce normally will determine that revocation of an order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after the issuance of the order and the volume of U.S. imports of subject merchandise remained steady or increased.²⁴

In evaluating U.S. import volumes of subject merchandise, Commerce's practice is to use the one-year period immediately preceding the initiation of the LTFV investigation as a base period, rather using the period after initiation, but before issuance of the order, as a base period because the initiation of a LTFV investigation may dampen import volumes and, thus, skew the comparison.²⁵ However, when analyzing U.S. import volumes of subject merchandise for second and subsequent sunset reviews, Commerce's practice is to compare import volumes during the one-year period immediately preceding initiation of the underlying LTFV investigation to import volumes since the issuance of the last continuation notice.²⁶ Since the instant expedited sunset review is the fifth sunset review of the *Order*, we have used the latter comparison here.

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 provides the ITC with the dumping margin(s) from the final determination in the LTFV

¹⁹ See H. Rep. No. 103-826, pt. 1 (1994) (House Report).

²⁰ See S. Rep. No. 103-412 (1994) (Senate Report).

²¹ See SAA at 879; see also House Report at 56.

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 Issues and Decision Memorandum (IDM) at Comment 1.

²³ See SAA at 889-90; see also 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 98.3, 63 FR 18871 (April 16, 1998) (Policy Bulletin).

²⁴ See SAA at 889-90; see also House Report 63-63.

²⁵ 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.

²⁶ 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.

investigation because this is the only calculated dumping margin that reflects the behavior of exporters without the discipline of an order in place.²⁷ However, in certain circumstances, it may be more appropriate to provide the ITC with a more recently calculated dumping margin (e.g., if dumping margins have declined over the life of an order and the volume of U.S. imports has remained steady or increased, Commerce may conclude that exporters are likely to continue dumping at the lower more recently calculated dumping margins).²⁸

In February 2012, Commerce announced that 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, i.e., zeroing/the denial of offsets.²⁹ 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.³⁰ 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 reviews 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...”³¹ 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.”³²

VI. DISCUSSION OF THE ISSUES

Below we address the comments submitted by domestic interested parties.

1. *Likelihood of Continuation or Recurrence of Dumping*

Domestic Interested Parties’ Comments:³³

- Revocation of the *Order* would lead to the continuation or recurrence of dumping because: (1) dumping continued after issuance of the *Order* (all Chinese exporters currently have a 139.49 percent dumping margin); (2) U.S. imports of silicon metal from China dramatically decreased since imposition of the *Order*; thus, indicating that Chinese exporters are unable to sell silicon metal in the U.S. market without dumping; (3) China’s silicon metal industry is export-oriented and has significant production capacity; therefore, the industry is in a position to export silicon metal to the United States at

²⁷ See SAA at 890; and *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.

²⁸ See SAA at 890-91; and *Policy Bulletin* at section II.B.2.

²⁹ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8102-3 (February 14, 2012) (*Final Modification for Reviews*).

³⁰ *Id.* at 8102-3 and 8107-10.

³¹ *Id.* at 8103.

³² *Id.*

³³ See Domestic Substantive Response at 10-16.

LTFV should the *Order* be revoked; and (4) silicon metal is fungible; thus, Chinese companies seeking to reenter the U.S. market would need to sell at prices below those offered by existing suppliers and at LTFV.

Commerce's Position: As noted above, Commerce normally will determine that revocation of an order is likely to lead to continuation or recurrence of dumping when, among other things dumping continued at any level above *de minimis* after issuance of the order. In all administrative reviews of the *Order*, Commerce found dumping above *de minimis* levels, with dumping rates reaching up to 139.49 percent. Those above *de minimis* dumping margins remained in effect for all exporters over this sunset review period. 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."³⁴

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 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 U.S. import volumes of subject merchandise over this fifth sunset review period (*i.e.*, 2018 to 2022, the last continuation notice for the *Order* was issued on May 25, 2018) compared to the pre-initiation import period (*i.e.*, 1990, as the underlying investigation was initiated in September 1990). The annual volume of U.S. imports of subject merchandise in each of the five years in the current sunset review period is less than 1.4 percent of the pre-initiation U.S. import volume of subject merchandise.³⁵

Based on the foregoing, we recommend finding that dumping is likely to continue or recur if the *Order* were revoked.

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

Domestic Interested Parties' Comments:³⁶

- Commerce should follow the SAA³⁷ and its *Policy Bulletin*³⁸ and report to the ITC that the magnitude of the dumping margin that is likely to prevail should the *Order* be revoked is the investigation dumping margin of 139.49 percent. The dumping margin from the investigation represents the best evidence of Chinese producers' and exporters' behavior in the absence of an order.

Commerce's Position: Because dumping continued following the issuance of the *Order* and given the absence of argument and evidence to the contrary, we find that the weighted-average

³⁴ See SAA at 889; see also House Report at 63-64.

³⁵ See Domestic Substantive Response at Exhibit 1. 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).

³⁶ See Domestic Substantive Response at 16-17.

³⁷ See SAA at 890.

³⁸ See *Policy Bulletin*, 63 FR 18871, 18873.

dumping margin established in the LTFV investigation of silicon metal from China, 139.49 percent, represents the margin of dumping most likely to prevail if the *Order* were revoked. This is consistent with Commerce's practice of providing to the ITC the weighted-average dumping margin(s) from the LTFV investigation³⁹ 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.⁴⁰

We further determine that the 139.49 percent dumping margin from the LTFV 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*.⁴¹ This determination is based on the fact that the 139.49 percent dumping margin from the LTFV investigation, which was the dumping margin applied to the China-wide entity, was based on the corroborated dumping margin calculated in the Petition. Accordingly, pursuant to section 752(c)(3) of the Act, we will report to the ITC the margin of dumping likely to prevail listed in the "Final Results of Sunset Review" section below.

VII. FINAL RESULTS OF SUNSET REVIEW

We determine that revocation of the *Order* would likely lead to continuation or recurrence of dumping at weighted-average margins up to 139.49 percent.

VIII. 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 expedited sunset review in the *Federal Register* and notify the ITC of this determination.

☒

Agree

☐

Disagree

8/24/2023

X



Signed by: ABDELALI ELOUARADIA

Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

³⁹ See *Eveready Battery Co. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

⁴⁰ See SAA at 890.

⁴¹ See *Final Modification for Reviews*, 77 FR at 8103.