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Sunset Review
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July 30, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty

SUBJECT: Issues and Decision Memorandum for the Final Results of
Expedited First Sunset Review of the Antidumping Duty Order on
Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from
Japan

I. SUMMARY

We have analyzed the substantive response of a domestic interested party in the first sunset review of the antidumping duty (AD) order on diffusion-annealed nickel-plated flat-rolled steel products from Japan.¹ No other 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). We recommend that you approve 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 a substantive response:

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

II. BACKGROUND

On April 1, 2019, the Department of Commerce (Commerce) initiated the first sunset review of the *Order*, in accordance with section 751(c) of the Act.² On April 15, 2019, Commerce received a notice of intent to participate from Thomas Steel Strip Corporation (Thomas), within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).³ Thomas claimed interested party

¹ See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Antidumping Duty Order*, 79 FR 30816 (May 29, 2014) (*Order*).

² See *Initiation of Five-Year (Sunset) Review*, 84 FR 12227 (April 1, 2019) (*Initiation*).

³ See Thomas’ Letter, “Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Notice of Intent to Participate,” dated April 16, 2019.

status under section 771(9)(C) of the Act, as a domestic producer of diffusion-annealed nickel-plated flat-rolled steel products.

On May 1, 2019, Commerce received a substantive response from Thomas⁴ within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to the *Order* covered by this sunset review.

On May 23, 2019, 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 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*.

III. SCOPE OF THE *ORDER*

The diffusion-annealed, nickel-plated flat-rolled steel products included in this order are flat-rolled, cold-reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (*i.e.*, “diffusion-annealed”); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness. For purposes of this order, “nickel-based alloys” include all nickel alloys with other metals in which nickel accounts for at least 80 percent of the alloy by volume.

Imports of merchandise included in the scope of this order are classified primarily under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7212.50.0000 and 7210.90.6000, but may also be classified under HTSUS subheadings 7210.70.6090, 7212.40.1000, 7212.40.5000, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.90.0010, 7220.90.0015, 7225.99.0090, or 7226.99.0180. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

IV. HISTORY OF THE *ORDER*

On April 10, 2014, Commerce published its final affirmative determination of sales at less than fair value in the *Federal Register* with respect to diffusion-annealed nickel-plated flat-rolled steel products from Japan finding weighted-average dumping margins ranging from 45.42 percent to 77.70 percent.⁶ Following the issuance of Commerce’s final determination, the ITC found that the U.S. industry was materially injured by reason of the subject imports.⁷ On May 29, 2014, Commerce published its antidumping duty order on diffusion-annealed nickel-plated flat-rolled

⁴ See Thomas’ Letter, “Diffusion-Annealed, Nickel-Plated Flat Steel Products from Japan: Thomas’s Substantive Response to the Notice of Initiation of Five-Year (Sunset) Review of Antidumping Duty Order,” dated May 1, 2019 (Thomas Substantive Response).

⁵ See Commerce Letter, “Sunset Review Initiated on April 1, 2019,” dated May 23, 2019.

⁶ See *Notice of Affirmative Final Determination of Sales at Less Than Fair Value: Diffusion-Annealed, Nickel-Plated Flat Rolled Steel Products from Japan*, 79 FR 19868 (April 10, 2014) (*Final Determination*).

⁷ See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Investigation No. 731-TA-1206 (Final)* U.S. ITC Pub. 4466 (May 2014).

steel products from Japan in the *Federal Register*.⁸ Commerce has completed three administrative reviews since the issuance of the *Order*.⁹

On July 12, 2018, Commerce initiated the fourth administrative review of the period May 1, 2017 through April 30, 2018.¹⁰ The review is ongoing. There have been no circumvention determinations concerning the *Order*. There have also been no scope rulings or changed circumstances reviews since the imposition of 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 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 this determination, Commerce 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 periods before and the periods after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action (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 a company-specific, basis.¹⁴ In addition, Commerce normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject

⁸ See *Order*. Consistent with the *Final Determination*, we applied the following weighted-average dumping margins for the two mandatory respondents, one of which was based entirely on adverse facts available (the highest petition rate): (1) Toyo Kohan Co., Ltd., 45.42 percent; and (2) Nippon Steel & Sumitomo Metal Corporation, 77.70 percent. The All-Others dumping margin was established as 45.42 percent. *Id.* at 30817.

⁹ See *Diffusion-Annealed, Nickel-Plated, Flat-Rolled Steel Products from Japan: Final Results of Antidumping Duty Administrative Review; 2013–2015*, 81 FR 91116 (December 16, 2016) (finding a margin of 0.00 percent for Toyo Kohan Co., Ltd.) (13/15 Review); *Diffusion-Annealed, Nickel-Plated, Flat-Rolled Steel Products from Japan: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 82 FR 57715 (December 7, 2017) (finding a margin of 1.59 percent for Toyo Kohan Co., Ltd.) (15/16 Review); and *Diffusion-Annealed, Nickel-Plated, Flat-Rolled Steel Products from Japan: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 64327 (December 14, 2018) (finding a margin of 4.57 percent for Toyo Kohan Co., Ltd. and a margin of 77.70 percent for Nippon Sheet & Sumitomo Metal Corporation based on the application of adverse facts available) (16/17 Review).

¹⁰ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 32270 (July 12, 2018).

¹¹ See H.R. Doc. 103-316, vol. 1 (1994) (SAA).

¹² See H. Rep. No. 103-826, pt. 1 (1994) (House Report).

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

¹⁴ See SAA at 879; see also House Report at 56.

merchandise declined significantly.¹⁵ Alternatively, Commerce 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.¹⁶

Furthermore, 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 the investigation may dampen import volumes and, thus, skew the comparison.¹⁷

In addition, section 752(c)(3) of the Act states that the magnitude of the margin of dumping that is likely to prevail if the order were revoked shall be provided by Commerce to the ITC. Generally, Commerce selects the weighted-average 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.¹⁸ In certain circumstances, however, 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").¹⁹ Finally, pursuant to section 752(c)(4)(A) of the Act, a margin of dumping likely to prevail 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.²⁰

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, Commerce announced that in five-year (*i.e.*, sunset) reviews, it will not rely on weighted-average dumping margins that were calculated using the zeroing methodology.²¹ 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.²² In the *Final Modification for Reviews*, Commerce stated that "only in the most extraordinary circumstances" would it rely

¹⁵ See SAA at 889-890; 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*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).

¹⁶ See SAA at 889-890; *see also* House Report at 63.

¹⁷ See *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.

¹⁸ See SAA at 890 and *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.

¹⁹ See SAA at 890-91.

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 IDM at Comment 1.

²¹ 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*).

²² *Id.* at 8102, 8105, 8109.

on margins other than those calculated and published in prior determinations.²³ Commerce 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 dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available (AFA), and dumping margins where no offsets were denied because all comparison results were positive.”²⁴

VI. DISCUSSION OF THE ISSUES

Below we address the comments of the interested party.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments²⁵

Thomas argues that revocation of the *Order* would likely lead to the continuation or recurrence of sales at less than fair value and would likely also result in significant increases in the volume of dumped imports. Citing the history of the *Order*, Thomas argues that, even with the continued existence of margins ranging as high as 77.70 percent, imports of subject merchandise have increased throughout the five-year period.²⁶ Thomas notes that subject imports not only increased to an all-time high in 2017, but prices have been falling.

Commerce’s Position:

As explained in the Legal Framework section above, Commerce’s determinations of likelihood will be made on an order-wide basis.²⁷ In addition, Commerce normally will determine that revocation of an antidumping duty 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; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.²⁸ In addition, pursuant to section 752(c)(1)(B) of the Act, Commerce considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

As noted in the “History of the Order” section above, Commerce found dumping at above *de minimis* levels in the underlying antidumping duty investigation. Commerce relied on the highest margin presented in the petition for one of the two respondents, because it chose not to participate. Further, in three of the four completed administrative reviews conducted, Commerce continued to find above *de minimis* dumping margins and, in the most recently completed

²³ *Id.*

²⁴ *Id.*

²⁵ See Thomas Substantive Response at 8 – 12.

²⁶ *Id.* at 11 – 12 (citing import statistics compiled from U.S. Bureau of Census imports statistics as reported by the USITC Dataweb).

²⁷ See SAA at 879; House Report at 56.

²⁸ See SAA at 889-890; House Report at 63-64; Senate Report at 52.

administrative review, Commerce relied on the dumping margin presented in the petition. These margins from the reviews provide the best evidence of dumping behavior of these companies and there is no evidence that indicates dumping has ceased. Additionally, we examined the statistics placed on the record by Thomas with respect to imports of the subject merchandise for the period before and after the issuance of the *Order*, pursuant to section 752(c)(1)(B) of the Act. These data show that import volumes after the imposition of the *Order* have continued to increase and most recently (*i.e.*, 2017 – 2018), are at levels significantly above the volume of imports in the year preceding the initiation of the investigation (*i.e.*, 2012). Given the continued existence of above *de minimis* margins calculated without zeroing since imposition of the *Order*, we determine that it is unlikely that Japanese producers of subject merchandise would be able to sell without dumping.²⁹ Therefore, pursuant to section 752(c)(1) of the Act, we determine that revocation of the *Order* would likely result in the continuation of dumping in the United States, due to the continued existence of dumping margins since the issuance of the *Order*.

2. Magnitude of the Dumping Margins Likely to Prevail

Interested Party Comments³⁰

Thomas notes that the SAA instructs that Commerce normally will select the rate from the original investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place. Therefore, consistent with the SAA and the *Sunset Policy Bulletin*, Thomas argues that Commerce should rely upon the dumping margins from the original investigation.

Commerce's Position:

Section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the *Order* were revoked. Commerce's preference is to select a rate from the investigation, because it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order in place.³¹ However, Commerce may provide a more recently calculated margin for a particular company, where declining (or zero or *de minimis*) dumping margins are accompanied by steady or increasing imports, which would reflect that the exporter is likely to dump at a lower rate found in a more recent review. Similarly, if an exporter chooses to increase dumping to increase or maintain market share, Commerce may provide the ITC with an increased margin that is more representative of that exporter's behavior in the absence of an order.³² As indicated in the Legal Framework section above, Commerce's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology found to be WTO-inconsistent, in accordance with the *Final Modification for Reviews*.³³

²⁹ See SAA at 890 (explaining that "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 See Thomas Substantive Response at 12 – 13.

³¹ See SAA at 890; and Sunset Policy, 63 FR at 18873 (section II.B.1); see also, *e.g.*, *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 43063 (July 21, 2015), and accompanying Issues and Decision Memorandum at Issue 2.

³² See Section 752(c)(3) of the Act.

³³ See *Final Modification for Reviews*, 77 FR at 8103.

As noted in the “History of the Order” section above, and under Issue 1, Commerce relied on adverse facts available in assigning a margin to one of the two respondents in the underlying investigation. This rate was based on the petition, and did not involve the practice of zeroing found to be WTO-inconsistent and subject to the *Final Modification for Reviews*. Thus, we determine that revocation of the *Order* would be likely lead to continuation or recurrence of dumping at the magnitude of weighted-average margins up to 77.70 percent.

VII. FINAL RESULTS OF SUNSET REVIEW

Commerce determines that revocation of the antidumping duty order on diffusion-annealed nickel-plated flat-rolled steel products from Japan would be likely to lead to the continuation or recurrence of dumping, and that the magnitude of the margins of dumping that are likely to prevail would be at a rate up to 77.70 percent.

VIII. RECOMMENDATION

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

☒

Agree

☐

Disagree

7/30/2019

X 

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