



A-570-828

A-823-805

Sunset Review

**Public Document**

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February 2, 2018

**MEMORANDUM TO:** Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

**FROM:** James Maeder  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
Expedited Fourth Sunset Reviews of the Antidumping Duty Orders  
on Silicomanganese from the People's Republic of China and  
Ukraine

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**I. Summary**

We have analyzed the substantive responses of a domestic interested party in the fourth sunset reviews of the antidumping duty (AD) orders<sup>1</sup> covering silicomanganese from the People's Republic of China (China) and Ukraine. No other party submitted a substantive response. Accordingly, we conducted expedited (120-day) sunset reviews 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 these sunset reviews for which we received substantive responses:

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

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<sup>1</sup> See *Antidumping Duty Order: Silicomanganese from the People's Republic of China (PRC)*, 59 FR 66003 (December 22, 1994) (*China Order*); see also *Suspension Agreement on Silicomanganese from Ukraine; Termination of Suspension Agreement and Notice of Antidumping Duty Order*, 66 FR 43838 (August 21, 2001) (*Ukraine Order*) (collectively, *AD Orders*). The Brazil AD Order was revoked in the third sunset review due to the International Trade Commission's determination that revocation of the order would not likely lead to continuation or recurrence of material injury to an industry in the United States. See *Silicomanganese from Brazil: Revocation of Antidumping Duty Order*, 77 FR 66798 (November 7, 2012); see also *Silicomanganese from Brazil, China, and Ukraine*, 77 FR 65906 (October 31, 2012), USITC Publication 4354 (October 2012) (Investigation No. 731-TA-671-673 (Review)).

## **II. Background**

On October 4, 2017, the Department of Commerce (Commerce) published the notice of initiation of the fourth sunset reviews of the *AD Orders* on silicomanganese from China and Ukraine, pursuant to section 751(c)(2) of the Act.<sup>2</sup> On October 9, 2017, Commerce received a letter from the Trade Defense Department of the Ministry of Economic Development and Trade (TDDMEDT) of Ukraine in which TDDMEDT stated its intent to participate as an interested party in this proceeding.<sup>3</sup> Commerce received a notice of intent to participate from Eramet Marietta, Inc. (Eramet) within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>4</sup> Eramet claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of silicomanganese.<sup>5</sup>

Commerce received complete substantive responses from Eramet within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>6</sup> We received no substantive response from respondent interested parties. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the *AD Orders*. Commerce has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of these sunset reviews is now February 5, 2018.<sup>7</sup>

## **III. Scope of the AD Orders**

The merchandise covered by these orders is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3

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<sup>2</sup> See *Initiation of Five-Year (Sunset) Reviews*, 82 FR 46221 (October 4, 2017).

<sup>3</sup> See letter from Government of Ukraine, "Entry of Appearance: Five-Year "Sunset" Review of the Antidumping Duty Order on Silicomanganese from China, and Ukraine (4<sup>th</sup> Review), DOC Case No. A-823-805," dated October 9, 2017.

<sup>4</sup> See letters from Eramet, "Five-Year ("Sunset") Review of Antidumping Duty Order on Silicomanganese from the People's Republic of China: Notice of Intent to Participate," dated October 19, 2017 (Eramet China NOITP) and "Five-Year ("Sunset") Review of Antidumping Duty Order on Silicomanganese from Ukraine: Notice of Intent to Participate," dated October 19, 2017 (Eramet Ukraine NOITP).

<sup>5</sup> See Eramet China NOITP at 1-2; see also Eramet Ukraine NOITP at 1-2.

<sup>6</sup> See letters from Eramet, "Five-Year ("Sunset") Review of Antidumping Duty Order on Silicomanganese from the People's Republic of China: Eramet's Substantive Response to Notice of Initiation," dated November 3, 2017 (Eramet's China Substantive Response) and "Five-Year ("Sunset") Review of Antidumping Duty Order on Silicomanganese from Ukraine: Eramet's Substantive Response to Notice of Initiation," dated November 3, 2017 (Eramet's Ukraine Substantive Response).

<sup>7</sup> See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of these orders, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese.

Silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040.<sup>8</sup> The *AD Orders* cover all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the *AD Orders* remains dispositive.<sup>9</sup>

#### **IV. History of the AD Orders**

##### **1) Final Determination of Sales at Less-than-Fair Value and Orders**

In 1994, Commerce published its final affirmative determinations of sales at less than fair value in the *Federal Register*,<sup>10</sup> with respect to imports of silicomanganese from China and Ukraine at the following rates:

<u>China</u>	<u>Margin</u>
All manufacturers, producers, and exporters in China	150 percent
<u>Ukraine</u>	
All manufacturers, producers, and exporters in Ukraine	163 percent

Commerce published an antidumping duty order on silicomanganese from China.<sup>11</sup> It suspended the antidumping duty investigation and signed a suspension agreement on silicomanganese from Ukraine.<sup>12</sup> Commerce later terminated the suspension agreement and issued an antidumping duty order on silicomanganese from Ukraine, effective September 17, 2001.<sup>13</sup>

##### **2) Subsequent Administrative Reviews**

Since the issuance of the *AD Orders*, Commerce has not conducted an administrative review of silicomanganese from Ukraine. Commerce has conducted one administrative review of silicomanganese from China. Rates of 126.22 percent and 182.97 percent were determined for

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<sup>8</sup> 7202.99.5040 is the applicable HTSUS statistical reporting prior to July 2, 2003. Effective July 2, 2003, the subject merchandise that would originally have entered under 7202.99.5040 now enters under 7202.99.8040.

<sup>9</sup> See *Continuation of Antidumping Duty Orders: Silicomanganese from the People's Republic of China and Ukraine*, 77 FR 66956 (November 8, 2012).

<sup>10</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Ukraine*, 59 FR 62711 (December 6, 1994) (*Ukraine LTFV Final*); *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from the People's Republic of China*, 59 FR 55435 (November 7, 1994) (*China LTFV Final*).

<sup>11</sup> See *China Order*.

<sup>12</sup> See *Ukraine LTFV Final*.

<sup>13</sup> See *Ukraine Order*.

Guangxi Bayi Ferroalloy Works and Sichuan Emei Ferroalloy Import and Export Co., Ltd, respectively.<sup>14</sup>

### **3) Duty-Absorption Findings, Changed-Circumstances Reviews, Scope Inquires**

There have not been any duty absorption findings, changed circumstance reviews, or scope inquiries since the issuance of the *AD Orders*.

### **4) Prior Sunset Reviews**

On November 2, 1999, Commerce initiated the first sunset review of the AD order on silicomanganese from China and the suspended antidumping investigation on silicomanganese from Ukraine pursuant to section 751(c) of the Act.<sup>15</sup> As a result of those reviews, Commerce found that revocation of the antidumping duty order and termination of the suspended antidumping investigation would likely lead to a continuation or a recurrence of dumping.<sup>16</sup> On February 5, 2001, the International Trade Commission (ITC) determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on China and termination of the suspended investigation on silicomanganese from Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>17</sup> On February 16, 2001, Commerce published the notice of continuation of the antidumping order on silicomanganese from China and continued the suspension of the antidumping duty investigation on silicomanganese from Ukraine. As described above, on August 21, 2001, Commerce terminated the suspension agreement and issued an AD order on silicomanganese from Ukraine effective September 17, 2001.<sup>18</sup>

On January 3, 2006, Commerce initiated the second sunset reviews of the antidumping duty orders on silicomanganese from China and Ukraine pursuant to section 751(c) of the Act.<sup>19</sup> We found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the same percentage weighted-average margins as we found in the original investigations.<sup>20</sup> The ITC determined, pursuant to section 751(c) of the Act, that revocation of the order on silicomanganese from China and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a

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<sup>14</sup> See *Silicomanganese from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 65 FR 31514 (May 18, 2000).

<sup>15</sup> See *Notice of initiation of Five-Year ("Sunset") Reviews*, 64 FR 59160 (November 2, 1999).

<sup>16</sup> See *Silicomanganese from the People's Republic of China and Brazil; Final Results of Antidumping Duty Expedited Sunset Reviews*, 65 FR 35324 (June 2, 2000), and *Final Results of Full Sunset Review: Silicomanganese from Ukraine*, 65 FR 58045 (September 27, 2000).

<sup>17</sup> See *Silicomanganese from Brazil, China, and Ukraine*, 66 FR 8981 (February 5, 2001), and USITC Pub. 3386, Inv. No. 731-TA-671-673 (Review) (January 2001).

<sup>18</sup> See *Ukraine Order*.

<sup>19</sup> See *Initiation of Five-Year ("Sunset") Reviews*, 71 FR 91 (January 3, 2006).

<sup>20</sup> See *Silicomanganese from Brazil, Ukraine, and the People's Republic of China; Five-year Sunset Reviews of Antidumping Duty Orders; Final Results*, 71 FR 26927 (May 9, 2006).

reasonably foreseeable time.<sup>21</sup> Accordingly, Commerce published the notice of continuation of these antidumping duty orders pursuant to section 777(i)(1) of the Act.<sup>22</sup>

On August 1, 2011, Commerce published the notice of initiations of the third sunset reviews of the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine pursuant to section 751(c) of the Act.<sup>23</sup> We found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the same percentage weighted-average margins as we found in the original investigations.<sup>24</sup> The ITC determined, pursuant to section 751(c) of the Act, that revocation of the *AD Orders* on silicomanganese from China and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>25</sup> Accordingly, Commerce published the notice of continuation of these antidumping duty orders pursuant to section 777(i)(1) of the Act.<sup>26</sup>

## **V. Legal Framework**

In accordance with section 751(c) of the Act, Commerce is conducting these sunset reviews to determine whether revocation of the *AD Orders* would be likely to lead to the continuation or recurrence of dumping. Sections 752(c)(1)(A)-(B) of the Act provide that, in making this determination, Commerce shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews, as well as the volume of imports of the subject merchandise for the period before and after the issuance of the *AD Orders*.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action (SAA),<sup>27</sup> the House Report,<sup>28</sup> and the Senate Report,<sup>29</sup> Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.<sup>30</sup> In addition, Commerce normally determines that revocation of an AD 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; (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise

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<sup>21</sup> See *Silicomanganese from Brazil, China, and Ukraine*, 71 FR 52145 (September 1, 2006), and USTTC Pub. 3879, Nos. 731-TA-671-673 (Second Review) (August 2006).

<sup>22</sup> See *Silicomanganese from Brazil, Ukraine, and the People's Republic of China: Continuation of Antidumping Duty Orders*, 71 FR 54272 (September 14, 2006).

<sup>23</sup> See *Initiation of Five-Year ("Sunset") Review*, 76 FR 45778 (August 1, 2011).

<sup>24</sup> See *Silicomanganese from Brazil, the People's Republic of China, and Ukraine: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders*, 76 FR 73587 (November 29, 2011).

<sup>25</sup> See *Silicomanganese from Brazil, China, and Ukraine*, 77 FR 65906 (October 31, 2012), USITC Publication 4354 (October 2012) (Investigation No. 731-TA-671-673 (Review)).

<sup>26</sup> See *Silicomanganese from the People's Republic of China and Ukraine: Continuation of Antidumping Duty Orders*, 77 FR 66956 (November 08, 2012).

<sup>27</sup> See HR Doc. 103-316, vol. 1 (1994) (SAA), reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

<sup>28</sup> See H. Rep. No. 103-826, pt. 1 (1994) (House Report), reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

<sup>29</sup> See S. Rep. No. 103-412 (1994) (Senate Report).

<sup>30</sup> See SAA at 879; see also House Report at 56.

declined significantly.<sup>31</sup> Alternatively, Commerce may determine that revocation of an AD 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.<sup>32</sup>

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.<sup>33</sup> When analyzing import volumes for second and subsequent sunset reviews, Commerce'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.<sup>34</sup>

In addition, section 752(c)(3) of the Act states that the magnitude of the dumping margin likely to prevail if the *AD Orders* were revoked shall be provided by Commerce to the ITC. 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.<sup>35</sup> 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").<sup>36</sup> Finally, 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 duty order would not be likely to lead to a continuation or recurrence of sales at LTFV.<sup>37</sup>

On February 14, 2012, Commerce announced it was modifying its practice in sunset reviews, such that it would not rely on weighted-average dumping margins calculated using the "zeroing" methodology found to be inconsistent with World Trade Organization (WTO) obligations.<sup>38</sup> 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

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<sup>31</sup> See SAA at 889-890; see also House Report at 63-64; 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*).

<sup>32</sup> See SAA at 889-890; see also House Report at 63.

<sup>33</sup> 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.

<sup>34</sup> 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 Issues and Decision Memorandum.

<sup>35</sup> 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 Issues and Decision Memorandum at Comment 2.

<sup>36</sup> See SAA at 890-91.

<sup>37</sup> 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 at Comment 1.

<sup>38</sup> 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*).

determinations.<sup>39</sup> 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, and dumping margins where no offsets were denied because all comparison results were positive.”<sup>40</sup>

## **VI. Discussion of the Issues**

### **1. Likelihood of Continuation or Recurrence of Dumping**

#### Eramet’s Comments:

Eramet argues that, because of the decline in import volume from China and Ukraine and the fact that dumping margins currently in effect for Chinese and Ukraine exporters are well above *de minimis*, Commerce should again determine that dumping of silicomanganese from China and Ukraine will likely continue or recur if the orders are revoked.<sup>41</sup> Eramet states that since the *AD Orders* went into effect, U.S. imports of silicomanganese from China and Ukraine declined significantly and Chinese and Ukraine imports virtually ceased in 2016.<sup>42</sup> Eramet asserts that the significant decline in imports shows that Chinese and Ukraine producers are not willing to participate in the U.S. market at prices at or above fair value.<sup>43</sup>

#### China

The record shows that imports of silicomanganese from China totaled 428 MTs during the 2012-2016 review period and there were no imports from China from 1995-2002.<sup>44</sup> Eramet argues that the 2012-2015 levels of imports are vastly lower than levels experienced during the year in which the petition was filed (51,193 metric tons (MTs)) in 1993 and since the order was issued in December 1994 (a total of 1,906 MTs or an average of 83 MTs per year).<sup>45</sup>

#### Ukraine

The record shows that imports of silicomanganese from Ukraine totaled 20 MTs during the entire 2012-2016 review period and that there were no imports from Ukraine during the preceding 2007 to 2011 period (*i.e.*, the period corresponding to the third sunset review).<sup>46</sup> Eramet argues that this level of imports is vastly lower than levels experienced during the year in which the petition was filed (37,642 MTs) in 1993 and since the order was issued in August 2001 (a total of 112 MTs or an average of 7 MTs per year).<sup>47</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*, 77 FR at 8109.

<sup>41</sup> See Eramet’s China Substantive Response at 12 and Eramet’s Ukraine Substantive Response at 13.

<sup>42</sup> See Eramet’s China Substantive Response at 11 and Exhibit 2 and Eramet’s Ukraine Substantive Response at 12 and Exhibit 2.

<sup>43</sup> See Eramet’s China Substantive Response at 11 and Eramet’s Ukraine Substantive Response at 13.

<sup>44</sup> See Eramet’s China Substantive Response at 11 and Exhibit 2.

<sup>45</sup> *Id.*

<sup>46</sup> See Eramet’s Ukraine Substantive Response at 12 and Exhibit 2.

<sup>47</sup> *Id.* at 12-13.

**Commerce's Position:** As explained in the Legal Framework section above, Commerce's determinations of likelihood of continuation or recurrence of dumping will be made on an order-wide basis.<sup>48</sup> When determining whether revocation of the *AD Orders* 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 *AD Orders*. In addition, Commerce normally will determine that revocation of an AD 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 AD duty order, (b) imports of the subject merchandise ceased after the issuance of the AD duty order, or (c) dumping was eliminated after the issuance of the AD duty order and import volumes for the subject merchandise declined significantly.<sup>49</sup> Pursuant to section 752(c)(1)(A) of the Act, Commerce first considered the weighted-average dumping margins determined in the investigation and any subsequent reviews.

#### China

Commerce finds that import volumes of silicomanganese from China have declined significantly from pre-order levels and ceased most recently in the 2016 period. Since 2011, a slight but irregular increase has occurred; however, import levels have averaged 85.6 MTs during the period 2011-2015, or 0.17 percent (85.6 MTs divided by 51,193 MTs) of the pre-order volume. Given that no administrative reviews have been conducted since the last sunset review and imports have declined significantly from pre-order levels, Commerce determines that dumping is likely to continue or recur if the *China Order* were revoked.

#### Ukraine

Commerce finds that import volumes of silicomanganese from Ukraine have declined significantly from pre-order levels. Since the last continuation notice, imports of silicomanganese from Ukraine totaled only 20 MTs. Given that no administrative reviews have been conducted and imports have declined severely from pre-order levels, we determine that dumping is likely to continue or recur if the *Ukraine Order* were revoked.

As discussed above and in the *Final Modification for Reviews*, Commerce has modified its practice in sunset reviews, such that it does not rely on weighted-average dumping margins that are calculated using the "zeroing" methodology found to be WTO-inconsistent.<sup>50</sup> Accordingly, Commerce reviewed its official records to establish whether the dumping margins determined in the China and Ukraine LTFV investigations were calculated using zeroing. Both the China rate of 150 percent and the Ukraine rate of 163 percent are based on the best information available in each investigation and not on a zeroing methodology.<sup>51</sup> Because these investigation margins did not rely on a methodology that employed zeroing, they are WTO-consistent and reflective of the level of dumping without the discipline of an order in place. It is reasonable to conclude that dumping would continue if the *AD Orders* were revoked.

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<sup>48</sup> See SAA at 879 and House Report at 56.

<sup>49</sup> See SAA at 889 and 890, House Report at 63-64, and Senate Report at 52.

<sup>50</sup> See *Final Modification of Reviews*, 77 FR at 8103.

<sup>51</sup> See *Ukraine LTFV Final*.



Pursuant to section 752(c)(1)(B) of the Act, Commerce also considered the volume of imports of the subject merchandise for the period before and after the issuance of the *AD Orders*. In each case, the information on the record reflects that the volume of imports from China and Ukraine dropped precipitously subsequent to the issuance of the *AD Orders*, a trend which continued through the first three sunset periods and in the instant period.<sup>52</sup> Therefore, given the decrease in import volumes over the period, and the continued existence of dumping margins, Commerce determines that revocation of the *AD Orders* would likely lead to the continuation or recurrence of dumping.

## 2. Magnitude of the Margin Likely to Prevail

### Eramet's Comments:

#### China

According to Eramet, the prior-determined margins continue to represent the best evidence of Chinese producers' and exporters' behavior in the absence of an order due to Commerce determining in all three prior sunset reviews that these margins would be likely to prevail in the event of revocation of the order.<sup>53</sup> Eramet asserts that Commerce should thus find that the likely dumping margins in the event of revocation of the *China Order* is the China-wide rate of 150 percent and the company-specific rates of 126.22 percent and 182.97 percent for Guangxi Bayi Ferroalloy Works and Sichuan Emei Ferroalloy Import and Export Co., Ltd, respectively.<sup>54</sup>

#### Ukraine

Eramet notes that, in this case, there has not been an administrative review since the *Ukraine Order*, which means that the dumping margins from the original investigation remain unchanged.<sup>55</sup> Therefore, according to Eramet, the original margins continue to represent the best evidence of Ukrainian producers' and exporters' behavior in the absence of an order.<sup>56</sup> Eramet asserts that Commerce should thus find that the likely dumping margin in the event of revocation of the *Ukraine Order* is the all-others rate of 163 percent.

**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 *AD Orders* 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 or suspension agreement in place.<sup>57</sup> 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*.

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<sup>52</sup> See Eramet Substantive Response at 14.

<sup>53</sup> *Id.* at 13, 14.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 11.

<sup>56</sup> *Id.*

<sup>57</sup> See SAA at 890 and Sunset Policy, at 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.

Commerce agrees with Eramet that it is appropriate to report to the ITC the respective percent rates for Ukraine and China from the investigations as the margins likely to prevail if the *AD Orders* were revoked. Commerce determined the China-wide entity rate of 150 percent and the Ukraine all-others rate of 163 percent in the original investigations and, as such, they reflect the behavior of exporters without the discipline of an order in place.

### Final Results of Reviews

For the reasons stated above, we determine that revocation of the *China Order* on silicomanganese from China would likely lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be weighted-average margins up to 150 percent.

For the reasons stated above, we determine that revocation of the *Ukraine Order* on silicomanganese from Ukraine would likely lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be weighted-average margins up to 163 percent.

### Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of these sunset reviews in the *Federal Register* and notify the ITC of our determination.

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Agree

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Disagree

2/2/2018

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Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance