



A-791-815, A-570-873
Sunset Reviews
Public Document
E&C/OII: RIH

April 29, 2020

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

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

SUBJECT: Issues and Decision Memorandum for the Expedited Third Sunset
Reviews of the Antidumping Duty Orders on Ferrovandium from
the Republic of South Africa and the People's Republic of China

I. SUMMARY

We have analyzed the substantive responses of the domestic interested parties in the third sunset reviews of the antidumping duty (AD) orders covering ferrovanadium from the Republic of South Africa (South Africa) and the People's Republic of China (China).¹ No other interested 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 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 January 2, 2020, Commerce published the notice of initiation of the third sunset review of the *Orders* on ferrovanadium from South Africa and China pursuant to section 751(c) of the Act.² On January 17, 2020, Commerce received notices of intent to participate from the Vanadium Producers and Reclaimers Association (VPRA) and its individual members – AMG Vanadium LLC (AMG V), Evergreen Metallurgical LLC, d.b.a. Bear Metallurgical Company (Bear), and

¹ See *Notice of Antidumping Duty Order: Ferrovandium from the Republic of South Africa*, 68 FR 4169 (January 28, 2003); see also *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Ferrovandium from the People's Republic of China*, 68 FR 4168 (January 28, 2003) (the *Orders*).

² See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 67 (January 2, 2020).



U.S. Vanadium, LLC (U.S. Vanadium), within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).³ VPRA claimed interested party status under section 771(9)(E) of the Act as a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States.

On January 27, 2020, Commerce received adequate substantive responses to the notice of initiation from VPRA and its members within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁴ We received no substantive responses from respondent interested parties with respect to either of the orders covered by these sunset reviews.

On February 25, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁵ As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the AD orders on ferrovanadium from South Africa and China.

III. SCOPE OF THE ORDERS

The scope of these orders covers all ferrovanadium regardless of grade, chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as vanadium. It specifically excludes vanadium additives other than ferrovanadium, such as nitride vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues and fly ash. Merchandise under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers 2850.00.2000, 8112.40.3000, and 8112.40.6000 are specifically excluded.

Ferrovanadium is classified under HTSUS item number 7202.92.00. Although the HTSUS item number is provided for convenience and Customs purposes, Commerce's written description of the scope of these orders remains dispositive.

IV. HISTORY OF THE ORDERS

On November 29, 2002, Commerce published its final determinations in the less-than-fair-value (LTFV) investigations of ferrovanadium from South Africa and China.⁶ Commerce relied on

³ See VPRA's Letter, "Ferrovanadium from South Africa: Notice of Intent to Participate," dated January 17, 2020; see also VPRA's Letter, "Ferrovanadium from the People's Republic of China: Notice of Intent to Participate," dated January 17, 2020. VPRA indicated that AMG V and Bear are producers of a domestic like product, ferrovanadium, in the United States and wholesalers of domestically produced ferrovanadium in the United States and that U.S. Vanadium has periodically been a wholesaler of domestically produced ferrovanadium in the United States.

⁴ See VPRA's Letter, "Ferrovanadium from the Republic of South Africa: Substantive Response to the Notice of Initiation," dated January 27, 2020 (South Africa Substantive Response); see also "Ferrovanadium from the People's Republic of China: Substantive Response to the Notice of Initiation," dated January 27, 2020 (China Substantive Response).

⁵ See Commerce's Letter, "Sunset Review {sic} Initiated on January 2, 2020," dated February 25, 2020.

⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the Republic of South Africa*, 67 FR 71136 (November 29, 2002); see also *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China*, 67 FR 71137 (November 29, 2002), as amended by

adverse facts available (the highest margin in the petitions) in establishing the weighted-average dumping margins for the mandatory respondents in the South Africa investigation and for the China-wide entity in the China investigation. On January 28, 2003, Commerce published AD orders on imports of ferrovanadium from South Africa and China.⁷ Commerce found the following weighted-average dumping margins in the LTFV investigations:

Exporter/Producer	Weighted-Average Margin (percent)
South Africa	
Highveld Steel and Vanadium Corporation, Ltd.	116.00
Xstrata South Africa (Proprietary) Limited	116.00
All Others	116.00
China	
Pangang Group International Economic & Trading Corporation	12.97
China-Wide Entity	66.71

Since the issuance of the *Orders*, there have been no administrative reviews, changed circumstances determinations, new shipper reviews, scope rulings, or duty absorption findings in connection with these *Orders*. The *Orders* remains in effect for all South African and Chinese manufacturers, producers, and exporters of the subject merchandise.

On February 18, 2015, Commerce published the notice of continuation of the AD orders on ferrovanadium from South Africa and China at the conclusion of the second sunset reviews of the *Orders*.⁸

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce is conducting these sunset reviews to determine whether revocation of the *Orders* 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 period before and the period after the issuance of the AD 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.

Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Ferrovanadium from the People's Republic of China, 68 FR 4168 (January 28, 2003).

⁷ See the *Orders*.

⁸ See *Ferrovanadium from the People's Republic of China and the Republic of South Africa: Continuation of Antidumping Duty Orders*, 80 FR 8607 (February 18, 2015).

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA,⁹ the House Report,¹⁰ and the Senate Report,¹¹ Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.¹² In addition, Commerce normally determines that revocation of an AD 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 merchandise declined significantly.¹³ Alternatively, Commerce normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.¹⁴

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.¹⁵ When analyzing import volumes for the 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.¹⁶

In addition, section 752(c)(3) of the Act states that Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. 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.¹⁷ 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").¹⁸ 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

⁹ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA).

¹⁰ See H. Rep. No. 103-826, pt. 1 (1994), reprinted in 1994 U.S.C.C.A.N. 3773 (1994) (House Report).

¹¹ See S. Rep. No. 103-412 (1994) (Senate Report).

¹² See SAA at 879.

¹³ See SAA at 889-890; 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*, 63 FR 18871, 18872 (April 16, 1998) (*Policy Bulletin*).

¹⁴ See SAA at 889-890; see also House Report at 64.

¹⁵ 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.

¹⁶ 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 at 3-4 and 5-7.

¹⁷ See SAA at 890; see also *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying IDM at Comment 2.

¹⁸ See SAA at 890-91.

determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.

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.¹⁹ 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.²⁰ In the *Final Modification for Reviews*, Commerce stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.²¹ 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 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 adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”²²

VI. DISCUSSION OF THE ISSUES

Below we address the comments of the interested party.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments²³

VPRA cites the *Policy Bulletin* and the final results of the second sunset review of the *Orders* and argues that Commerce will normally determine that revocation of an AD order is likely to lead to continuation or recurrence of dumping where imports of subject merchandise ceased after the issuance of the order. VPRA notes that, in the second sunset review, Commerce explained its practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the last continuation notice.

With respect to the volume of imports, VPRA asserts that imports of ferrovanadium from South Africa and China declined significantly since the year prior to the filing of the petitions (*i.e.*, 2000) and, since the issuance of the most recent continuation notice (*i.e.*, 2015), imports from

¹⁹ 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*).

²⁰ *Id.* at 8105-6.

²¹ *Id.* at 8102-3 and 8107-10.

²² *Id.*

²³ See South Africa Substantive Response at 5-7 and China Substantive Response at 5-7 (both citing *Ferrovanadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014)).

South Africa and China have been at levels less than one percent of pre-petition imports and therefore, have virtually ceased.²⁴

VPRA argues that, based on these facts and in accordance with the *Policy Bulletin*, Commerce should determine that South African and Chinese exporters could not sell ferrovanadium in the United States without dumping. VPRA therefore argues that Commerce should conclude that it is likely that dumping would continue or recur if the *Orders* were revoked.

Commerce's Position:

As explained in the “Legal Framework” section above, Commerce’s determinations of likelihood will be made on an order-wide basis.²⁵ In addition, Commerce normally will determine that revocation of an AD 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.²⁶ 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 AD order.

In this case, Commerce found dumping at above *de minimis* levels in the underlying AD investigations. As noted above in the “History of the Orders” section, Commerce relied on the margins presented in the petitions to determine margins because the South African respondents and the China-wide entity failed to cooperate to the best of their ability. The cash deposit rates established in the underlying investigations remain in effect and there have been no administrative reviews of the *Orders*. Additionally, we examined the statistics placed on the record by VPRA with respect to imports of the subject merchandise for the year prior to the initiation of the investigations and since the issuance of the most recent continuation notice, pursuant to section 752(c)(1)(B) of the Act.²⁷ These data show substantially decreased import volumes from both South Africa and China when compared with the import volumes from the year prior to the initiation of the investigations to the five-year period (2015 – 2019) since the most recent continuation notice.²⁸ Given the continued existence of above *de minimis* margins calculated without zeroing since the imposition of the *Orders* and the overall decrease in the volume of imports, we determine that it is unlikely that South African or Chinese producers of subject merchandise would be able to sell at pre-*Order* volumes without dumping.²⁹

²⁴ See South Africa Substantive Response at 6-7 and Attachment A (citing import statistics compiled from U.S. Bureau of Census); see also China Substantive Response at 6-7 and Attachment A (citing import statistics compiled from U.S. Bureau of Census).

²⁵ See SAA at 879.

²⁶ See SAA at 889-890; see also House Report at 63-64; and Senate Report at 52.

²⁷ See South Africa Substantive Response at 6-7 and Attachment A; see also China Substantive Response at 6-7 and Attachment A.

²⁸ *Id.*

²⁹ See SAA at 889 (explaining that “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”).

Accordingly, we determine that dumping would likely continue or recur if the *Orders* were revoked.³⁰

2. Magnitude of the Dumping Margins Likely to Prevail

Interested Party Comments³¹

VPRA asserts that, as was done in the second sunset review of the *Orders*, pursuant to the principles set forth in the SAA and *Policy Bulletin*, Commerce should report the margins of dumping determined in the original investigations.

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 *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 in place.³² 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.³³ As indicated in the Legal Framework section *supra*, Commerce's current practice is to not rely on weighted average dumping margins calculated using the zeroing methodology, in accordance with the *Final Modification for Reviews*.³⁴

As noted in the "History of the Orders" section *supra*, Commerce relied on adverse facts available in assigning a margin to the respondents in both investigations. These rates were based on the rates alleged in the petitions and did not involve the practice of zeroing subject to the *Final Modification for Reviews*. Commerce has not conducted an administrative review since the publication of the *Orders*. Thus, we determine that revocation of the *Orders* would be likely lead to continuation or recurrence of dumping at the magnitude of weighted average margins up to 116.00 percent for South Africa and up to 66.71 percent for China. Accordingly, in accordance with section 752(c)(3) of the Act, Commerce will provide the ITC with the margins from the final determinations as the margin of dumping that is likely to prevail if the *Orders* were revoked.

³⁰ See SAA at 890 (explaining that "{i}f 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").

³¹ See South Africa Substantive Response at 7-9; *see also* China Substantive Response at 7-9.

³² See SAA at 890; and *Policy Bulletin*, 63 FR at 18873 (section II.B.1); *see also 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 IDM at Comment 2.

³³ See section 752(c)(3) of the Act; *see also Clad Steel Plate from Japan: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 83 FR 22008 (May 11, 2018), and accompanying IDM at Comment 2.

³⁴ See *Final Modification for Reviews*, 77 FR at 8103.

VII. FINAL RESULTS OF SUNSET REVIEWS

Commerce determines that revocation of the AD orders on ferrovanadium from South Africa and China 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 116.00 percent for South Africa and 66.71 percent for China.

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 these expedited sunset reviews in the *Federal Register*.

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Agree

Disagree

4/29/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler

Assistant Secretary

for Enforcement and Compliance