A-570-862
Sunset Review
Public Document
E&C/V: CC

August 28, 2017

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: Expedited Third Sunset Review of the Antidumping Duty Order on
Foundry Coke Products from the People's Republic of China:
Issues and Decision Memorandum

Summary

In the third sunset review of the antidumping duty (AD) order covering foundry coke products (foundry coke) from the People's Republic of China (the PRC), domestic interested parties, ABC Coke, Erie Coke, and Tonawanda Coke (collectively, the petitioners), submitted an adequate Substantive Response on May 31, 2017.[1] No respondent interested party submitted a substantive response. In accordance with our analysis of the petitioners Substantive Response, we recommend adopting the positions described below. The following is a complete list of issues in this sunset review for which we received substantive responses:

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

Background

On May 1, 2017, the Department of Commerce (the Department) published a notice of initiation of the third sunset review of the order on foundry coke from the PRC.[2] On May 10, 2017, the petitioners timely notified the Department of their intent to participate within the deadline specified in 19 CFR 351.218(d)(1)(i), claiming domestic interested party status under section

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[1] *See* Petitioners' May 31, 2017 submission (Substantive Response).
[2] *See Initiation of Five-Year (Sunset) Review*, 82 FR 20314 (May 1, 2017) (*Notice of Initiation*).

771(9)(C) of the Tariff Act of 1930, as amended (the Act).[3] On May 31, 2017 the petitioners timely submitted their Substantive Response. The Department did not receive a substantive response from any respondent interested party. Consequently, the Department is conducting an expedited (120-day) sunset review consistent with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Order

The product covered under the antidumping duty order is coke larger than 100 mm (4 inches) in maximum diameter and at least 50 percent of which is retained on a 100 mm (4 inch) sieve, of a kind used in foundries. The foundry coke products subject to the antidumping duty order were classifiable under subheading 2704.00.00.10 (as of January 1, 2000) and are currently classifiable under subheading 2704.00.00.11 (as of July 1, 2000) of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.[4]

History of the Order

On July 31, 2001, the Department published the *Final Determination* of sales at less than fair value (LTFV) in the *Federal Register* with respect to imports of foundry coke from the PRC at the following rates:[5]

Manufacturers/Exporters/Producers	Weighted-Average Margin
Shanxi Dajin International (Group) Co. Ltd.	101.62
Sinochem International Co. Ltd.	105.91
Minmetals Townlord Technology Co. Ltd.	75.58
CITIC Trading Company, Ltd.	48.55
PRC-Wide Rate	214.89

The Department initiated the antidumping investigation on October 17, 2000,[6] issued its preliminary determination on March 8, 2001,[7] and issued its final determination on July 31, 2001.[8] The Department issued and published in the *Federal Register* an amended final

[3] *See* Petitioners' May 10, 2017, submission.
[4] *See Foundry Coke Products from the People's Republic of China,* 77 FR 34012 (June 8, 2012).
[5] *See Final Determination of Sales at Less Than Fair Value: Foundry Coke Products from the People's Republic of China,* 66 FR 39487 (July 31, 2001) (*Final Determination*).
[6] *See Initiation of Antidumping Duty Investigation: Foundry Coke Products from the People's Republic of China,* 65 FR 61303 (October 17, 2000) (*Initiation*).
[7] *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Foundry Coke Products from the People's Republic of China,* 66 FR 13885 (March 8, 2001) (*Preliminary Determination*).
[8] *See Final Determination of Sales at Less Than Fair Value: Foundry Coke Products from the People's Republic of China,* 66 FR 39487 (July 31, 2001) (*Final Determination*).

determination of the sales at LTFV and antidumping duty order on foundry coke from the PRC on September 17, 2001.[9] The dumping margins for CITIC Trading Company, Ltd. (CITIC) and Sinochem International Co. Ltd. (Sinochem) were adjusted as the result of judicial review; the Court of International Trade (CIT) affirmed the Department's remand, resulting in margins of 47.62% for CITIC and 103.26% for Sinochem.[10] The dumping margins for Shanxi Dajin International (Group) Co. Ltd. (Shanxi Dajin), Minmetals Townlord Technology Co. Ltd. (Minmetals), and the PRC-wide entity remained the same from the final determination.

Since the original investigation, the Department has completed one administrative review and two sunset reviews in this proceeding. The administrative review covered only CITIC and assigned CITIC a dumping margin of 214.89% based on adverse facts available for the period 2001 to 2002.[11] On August 1, 2006, the Department initiated a sunset review of the *Order* on foundry coke from the PRC.[12] In this first sunset review, pursuant to section 751(c) of the Act, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the same rates as found in the original investigation.[13] On January 10, 2007, the Department published the notice of continuation of the antidumping duty order.[14]

On December 1, 2011, the Department initiated the second sunset review of the *Order* on foundry coke from the PRC.[15] In the second sunset review, pursuant to section 751(c) of the Act, the Department found again that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the same rates as found in the original investigation.[16] On June 8, 2012, the Department published the notice of continuation of the antidumping duty order.[17] On May 1, 2017, the Department initiated the third sunset review of the *Order* on foundry coke from the PRC.[18]

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the *Order* would likely lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the

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[9] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Foundry Coke Products from the People's Republic of China,* 66 FR 48025 (September 17, 2001) (*Order*).
[10] *See CITIC Trading Co., Ltd. v. United States,* 27 CIT 356 (March 4, 2003).
[11] *See Final Results of Antidumping Administrative Review: Foundry Coke from the People's Republic of China,* 69 Fed. Reg. 4108 (January 28, 2004).
[12] *See Initiation of Five-Year (Sunset) Review,* 71 Fed. Reg. 43443 (August 1, 2006).
[13] *See Foundry Coke Products from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 71 FR 70956 (December 7, 2006).
[14] *See Foundry Coke Products from the People's Republic of China: Continuation of the Antidumping Duty Order,* 72 FR 1214 (January 10, 2007).
[15] *See Initiation of Five-Year (Sunset) Review*, 76 FR 74775 (December 1, 2011).
[16] *See Foundry Coke Products from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order*, 77 FR 20788 (April 6, 2012).
[17] *See Foundry Coke Products from the People's Republic of China: Continuation of the Antidumping Duty Order,* 77 FR 34012 (June 8, 2012).
[18] *See Initiation of Five-Year (Sunset) Review*, 82 FR 20314 (May 1, 2017).

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 *Order*.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (SAA),[19] the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report),[20] and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's determinations of likelihood of continuation or recurrence of dumping will be made on an order-wide, rather than company-specific, basis.[21] In addition, the Department 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 issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.[22]

Alternatively, the Department normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping margins declined or were eliminated and import volumes remained steady or increased after issuance of the order.[23] In addition, as a base period of import volume comparison, it is the Department'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 an investigation may dampen import volumes and, thus, skew comparison.[24] Also, when analyzing import volumes for second and subsequent sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.[25]

Further, section 752(c)(3) of the Act states that the Department shall provide to the U.S. International Trade Commission (ITC) the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the dumping margins from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.[26]

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[19] Reprinted in 1994 U.S.C.C.A.N. 4040 (1994).
[20] Reprinted in 1994 U.S.C.C.A.N. 3773 (1994).
[21] *See* SAA at 879, and House Report at 56.
[22] *See* SAA at 889-90, House Report at 63-64, and Senate Report at 52; *see also 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*).
[23] *See* SAA at 889-90, and House Report at 63.
[24] *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.
[25] *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.
[26] *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.

In February 2012, the Department announced it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using the zeroing methodology.[27] In the *Final Modification for Reviews*, the Department stated that "only in the most extraordinary circumstances" would it rely on margins other than those calculated and published in prior determinations.[28] The Department further stated that apart from the "most extraordinary circumstances," it did not anticipate needing to recalculate dumping margins in the vast majority of future sunset determinations 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" 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 total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive."[29]

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require the Department to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at LTFV.[30] Our analysis of the comments submitted by the petitioners follows.

Discussion of the Issues

Analysis

1. *Likelihood of Continuation or Recurrence of Dumping*

The petitioners Comments:

- The domestic producers argue that revocation of the antidumping duty order is likely to lead to continued or recurring dumping, as the order has effectively restricted Chinese imports of subject merchandise.[31]
- The domestic producers contend that the fact that the Chinese producers have made no attempt to sell foundry coke during the current review period, or to have their antidumping duties rate reviewed, is evidence that the Chinese producers are not able to sell foundry coke in the United States without dumping.

Department's Position: As explained above, when determining whether revocation of the order would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject

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[27] *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*).
[28] *Id*.
[29] *Id*., at 8109.
[30] *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.
[31] *See* Substantive Response at 6 - 8.

merchandise for the period before and after the issuance of the AD order. In addition, the Department normally determines that revocation of an AD 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; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.[32] Thus, one consideration is whether the Department continued to find dumping at above *de minimis* levels in administrative reviews subsequent to the imposition of the AD order.[33] 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] We find 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*.

The petitioners note that dumping has continued at above *de minimis* rates after the issuance of the order, most Chinese producers and exporters are currently subject to margins that are well above *de minimis*, and the PRC-wide entity continues to have a substantial margin.[35] Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and any subsequent reviews. As discussed above and in the *Final Modification for Reviews*, the Department 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. Accordingly, the Department first reviewed the administrative record to establish whether the dumping margins determined in the LTFV investigation of the proceeding were calculated using zeroing. Based upon our review of the limited record relating to the Department's original margin calculations and methodology for CITIC, Sinochem, Shanxi Dajin, and Minmetals, we are unable to determine if the calculation of these weighted-average margins involved the zeroing methodology found to be WTO-inconsistent as described in the *Final Modification for Reviews*. Therefore, we are not relying on these margins in this sunset review analysis. However, the weighted-average margin assigned as the PRC-wide rate in the investigation did not involve zeroing and thus we are still relying on it. Specifically, the PRC-wide entity rate of 214.89 percent was based on a rate from the petition that did not involve the denial of offsets – it was based on a single comparison. The one subsequent administrative review margin for CITIC relied on an AFA rate and also did not involve zeroing. Accordingly, a dumping margin and cash deposit rate above *de minimis* levels remain in effect for PRC companies.

Separately, pursuant to section 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the *Order*. The import data on the record, gathered from the ITC Dataweb,[36] reflects that the volume of imports of foundry coke from China in the year prior to the filing of the petition and the initiation of the

[32] *See* SAA at 889-90, House Report at 63-64, and Senate Report at 52.
[33] *See* SAA at 890.
[34] *Id.*; *see also* House Report, at 63-64.
[35] *See* Substantive Response at 6.
[36] The Department has used ITC Dataweb data in prior proceedings. *See, e.g. Circular Welded Carbon-Quality Steel Line Pipe from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order*, 79 FR 19052 (April 7, 2014) and accompanying Issues and Decision Memorandum at 5.

investigation were 146,785 short tons for the year 2000.[37] Following the issuance of the *Order*, the volume of imports of foundry coke from China dropped significantly below pre-petition levels, with no recorded imports from 2012-2016.[38] We find that record evidence presented by the petitioners show that imports of foundry coke are lower when compared to pre-initiation levels.[39]

In comparing these import volumes, we find that since the issuance of the *Order*, import volumes of foundry coke from the PRC into the United States have dramatically declined to the point of very few to no imports. The decrease in imports accompanied by continued existence of dumping margins indicates that exporters of foundry coke from the PRC must dump in order to sell subject merchandise in the U.S. market. Given the decrease in imports and that dumping margins above a *de minimis* level remain in effect, pursuant to section 752(c)(1) of the Act, the Department determines that dumping would likely continue or recur if the *Order* were revoked.

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

The petitioners Comments:
- The petitioners note that the revocation of the *Order* on foundry coke from the PRC would likely lead to the continuation or recurrence of dumping.[40]
- In determining the margins of dumping that would be likely to prevail in the event of revocation and that should be reported to the ITC, the SAA and the Department's policy state that the Department will normally select the dumping margins established in the original investigation.[41]

Department's Position: Pursuant to section 752(c)(3) of the Act, the administering authority shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. Normally, the Department will select a weighted-average dumping margin from the investigation to report to the ITC.[42] The Department's preference is to select a weighted-average dumping margin from the LTFV investigation because it is the only calculated rate that reflects the behavior of the producers and exporters without the discipline of an order or suspension agreement in place.[43] Under certain circumstances, however, the Department may select a more recent rate to report to the ITC. Finally, as explained above, in accordance with the *Final Modification for Reviews*, the Department will not rely on weighted average dumping margins that were calculated using the methodology found to be WTO-inconsistent.[44]

In prior sunset reviews of the *Order*, we determined that it was appropriate to provide the ITC all of the margins from the LTFV investigation for the magnitude of the margin likely to prevail;

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[37] *See* Substantive Response at 7.
[38] *Id.* (citing USITC Dataweb).
[39] *See* Substantive Response at 7.
[40] *Id.*
[41] *Id.*
[42] *See SAA* at 890; *see, e.g., Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008) and accompanying Issues and Decision Memorandum at Comment 2.
[43] *See Eveready Battery Company v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999); *see also* SAA at 890.
[44] *See Final Modification for Reviews*, 77 FR at 8103.

these margins best reflected the behavior of manufacturers, producers, and exporters without the discipline of an order in place. However, as indicated in the "Legal Framework" section above, consistent with the *Final Modification for Reviews*, the Department's current practice is not to rely on weighted-average dumping margins calculated using the zeroing methodology that was found to be WTO-inconsistent as described in the *Final Modification for Review*.

As discussed above, we cannot determine, based upon our review of the limited record relating to the Department's original margin calculations and methodology for CITIC, Sinochem, Shanxi Dajin, and Minmetals, that the calculation of their weighted-average margins did not involve the zeroing methodology found to be WTO-inconsistent as described in the *Final Modification for Reviews*. Accordingly, the Department finds that it is not appropriate to rely on the margins from the LTFV investigation for CITIC, Sinochem, Shanxi Dajin, and Minmetals as margins likely to prevail were the *Order* revoked. The PRC-wide rate of 214.89 percent was based on a rate from the petition that did not involve the denial of offsets. Accordingly, after considering the previously determined dumping margins, pursuant to section 752(c)(3) of the Act, the Department will report to the ITC the PRC-wide entity rate of 214.89 percent, as indicated in the "Final Results of Review" section below.

<u>Final Results of Sunset Review</u>

Based on the foregoing, we determine that revocation of the order on foundry coke products from the PRC would likely lead to continuation or recurrence of dumping and that the magnitude if the margin of dumping likely to prevail would be weighted-average margins up to 214.89 percent.[45]

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[45] *See Final Determination*.

Recommendation

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

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Agree Disagree

8/28/2017

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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