A-570-977
Sunset Review
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DATE 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 Doyle
Director, Office V
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on High Pressure Steel Cylinders from the People's Republic of China

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Summary

We analyzed the substantive response of the sole participating interested party in the first sunset review of the antidumping duty (AD) order covering high pressure steel cylinders (HPSCs) from the People's Republic of China (PRC).[1] We recommend that you approve the positions we describe in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues in this sunset review for which we received substantive responses:

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

Background

The Department is conducting the first sunset review of the order on HPSCs from the PRC. On May 1, 2017, the Department of Commerce (the Department) published a notice of initiation of the sunset review of the AD order on HPSCs from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (Act).[2] On May 8, 2017, Norris Cylinder Company (Norris)[3]

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[1] *See High Pressure Steel Cylinders from the People's Republic of China: Antidumping Order*, 77 FR 37377 (June 21, 2012) (*Order*).
[2] *See Initiation of Five-Year (Sunset) Review*, 82 FR 20314 (May 1, 2017) (*Notice of Initiation*).
[3] Norris Cylinder Company (the petitioner).

filed a timely letter of intent to participate in this sunset review, pursuant to 19 CFR 351.218(d)(1).[4] On May 25, 2017, the petitioner filed its Substantive Response in the sunset review within the 30-day deadline, as specified in 19 CFR 351.218(d)(3).[5] The Department did not receive a response from any respondent in this sunset review. No party commented on import data submitted in the petitioner's May 25, 2017 letter. Accordingly, the Department conducted 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 merchandise covered by the *Order* is seamless steel cylinders designed for storage or transport of compressed or liquefied gas (high pressure steel cylinders). High pressure steel cylinders are fabricated of chrome alloy steel including, but not limited to, chromium-molybdenum steel or chromium magnesium steel, and have permanently impressed into the steel, either before or after importation, the symbol of a U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (DOT)-approved high pressure steel cylinder manufacturer, as well as an approved DOT type marking of DOT 3A, 3AX, 3AA, 3AAX, 3B, 3E, 3HT, 3T, or DOT-E (followed by a specific exemption number) in accordance with the requirements of sections 178.36 through 178.68 of Title 49 of the Code of Federal Regulations, or any subsequent amendments thereof. High pressure steel cylinders covered by the *Order* have a water capacity up to 450 liters, and a gas capacity ranging from 8 to 702 cubic feet, regardless of corresponding service pressure levels and regardless of physical dimensions, finish or coatings.

Excluding from the scope of the *Order* are high pressure steel cylinders manufactured to UN-ISO-9809-1 and 2 specifications and permanently impressed with ISO or UN symbols. Also excluded from the *Order* are acetylene cylinders, with or without internal porous mass, and permanently impressed with 8A or 8AL in accordance with DOT regulations.

Merchandise covered by the *Order* is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7311.00.00.30. Subject merchandise may also enter under HTSUS subheadings 7311.00.00.60 or 7311.00.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the *Order* is dispositive.

History of the *Order*

On June 8, 2011, the Department initiated an AD investigation of HPSCs from the PRC.[6] On December 15, 2011, the Department preliminarily determined that HPSCs were being sold in the

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[4] *See* High Pressure Steel Cylinders from the People's Republic of China; Notice of Appearance and of Intent to Participate on Behalf of the petitioner, Norris Cylinder Company in Sunset Review of Antidumping Duty Order (May 8, 2017); Letter to the Secretary from the petitioner, High Pressure Steel Cylinders from the People's Republic of China' Substantive Response to Notice of Initiation of Norris Cylinder Company (May 25, 2017) (Substantive Response).
[5] *See* Substantive Response.
[6] *See High Pressure Steel Cylinders from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 76 FR 33213 (June 8, 2011).

United States at less than fair value (LTFV).[7] The Department published the final affirmative determination of sales at LTFV on May 7, 2012.[8] For the individually-investigated respondent Beijing Tianhai Industry Co., Ltd (BTIC), the Department calculated a company-specific weighted-average dumping margin of 6.62 percent.[9] The Department assigned Shanghai J.S.X. International Trading Corporation, Zhejiang Jindun Pressure Vessel Co, Ltd, and Shijiazhuang Enric Gas Equipment Co., Ltd the separate rate of 6.62 percent.[10] The PRC wide-rate was determined to be 31.21 percent.[11] On June 21, 2012, the Department published the *Order*.[12] Since the issuance of the *Order*, the Department has initiated, but rescinded in full, four administrative reviews with respect to the *Order*.[13] Finally, the Department has issued two scope rulings with respect to this *Order*.[14] The Department has not conducted any changed circumstances, circumvention, or new shipper reviews in connection with the *Order*. There have also been no duty absorption findings concerning the *Order*.

Discussion of the Issues

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 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, the Department 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 *Order*.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (SAA),[15] the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House

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[7] *See High Pressure Steel Cylinders from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 76 FR 77964 (December 15, 2011).
[8] *See High Pressure Steel Cylinders from Mexico: Final Determination of Sales at Less Than Fair Value,* 77 FR 26739 (May 7, 2012) (*HPSC Final Determination*) and accompanying Issues and Decision Memorandum.
[9] *Id.* at 26742.
[10] *Id.*
[11] *Id.*
[12] *See Order*, 77 FR at 37377.
[13] *See High Pressure Steel Cylinders from the People's Republic of China: Rescission of Antidumping Duty Administrative Review, 2011-1013,* 78 FR 55679 (September 11, 2013); *High Pressure Steel Cylinders from the People's Republic of China: Rescission of Antidumping Duty Administrative Review, 2013-2014,* 79 FR 59477 (October 2, 2014); *High Pressure Steel Cylinders from the People's Republic of China: Rescission of Antidumping Duty Administrative Review, 2014-2015,* 80 FR 73701 (November 25, 2015); *High Pressure Steel Cylinders from the People's Republic of China: Rescission of Antidumping Duty Administrative Review, 2015-2016,* 81 FR 70090 (October 11, 2016).
[14] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary, "High Pressure Steel Cylinders from the People's Republic of China: Lenz Sales & Dist., Inc. Final Scope Ruling" (September 12, 2014); Memorandum to James Maeder, Senior Director, performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "High Pressure Steel Cylinders from the People's Republic of China: Kivlan Final Scope Ruling" (July 17, 2017).
[15] Reprinted in 1994 U.S.C.C.A.N. 4040 (1994).

Report),[16] and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's determination of likelihood will be made on an order-wide, rather than company-specific, basis.[17] 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.[18] Alternatively, the Department may 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.[19] However, 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 AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.[20] 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.[21]

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.[22] However, in certain circumstances, 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, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review").[23]

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, the Department 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.[24] However, the

[16] Reprinted in 1994 U.S.C.C.A.N. 3773 (1994).
[17] *See* SAA at 879, and House Report at 56.
[18] *See* SAA at 889-90, House Report at 63-64, and Senate Report at 52.
[19] *See* SAA at 889-90.
[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 Issues and Decision Memorandum at Comment 1.
[21] *See*, *e.g.*, *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 79 FR 26208 (May 7, 2014) and accompanying Issues and Decision Memorandum at 8; *see also 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.
[22] *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.
[23] *See* SAA at 890-91.
[24] *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*).

Department 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.[25] 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.[26] The Department 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 total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive."[27]

Our analysis of the petitioner's comments follows.

Analysis

1. *Likelihood of Continuation or Recurrence of Dumping*

Relevant Arguments of the petitioner:

- "{T}he consistent conduct of PRC exporters since the issuance of the Order shows that, in the absence of a check against less-than-fair-value imports, these exporters are ready, willing and able to sell substantial quantities of high pressure steel cylinders in the U.S. market at unusually low prices."[28]
- Despite a decrease in market share since the *Order*, PRC producers continue to undersell the petitioner's prices.[29] If the revocation of the *Order* occurs, PRC producers would return to selling larger quantities of HPSCs at lower prices than currently under the *Order*.[30]
- Also, after the implementation of the *Order*, imports from the PRC decreased three years in row from 731,564 pieces in 2011 to 80,167 pieces in 2015.[31] At the same time that imports dropped, the domestic industry market share increased.[32] Although imports increased to 370,370 pieces in 2016, this is still significantly lower than PRC market share in 2011.[33]

Department's Position: As discussed above, the Department's determination of likelihood of continuation or recurrence of dumping will be made on an order-wide basis.[34] In addition, the

[25] *Id.* at 8102, 8105, 8109.
[26] *Id.*
[27] *Id.*
[28] *See* Substantive Response at 3.
[29] *See* the petitioner's Substantive Response to the International Trade Commission at 13-14.
[30] *Id.* at 21.
[31] *Id.* at Attachment 7 (citing USITC Dataweb).
[32] *Id.*
[33] *Id.* at 13-14.
[34] *See* SAA at 879.

Department normally will determine that revocation of an AD duty order is likely to lead to a 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.[35] In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the AD duty order.

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. In determining whether revocation of an AD order is likely to lead to continuation or recurrence of dumping, one consideration is whether the Department has continued to find dumping above *de minimis* levels in administrative reviews subsequent to imposition of the order. "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."[36] According to the SAA, "{d}eclining 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."[37] As discussed above in the "History of the Order" section, since the issuance of the *Order*, there have been no subsequently-completed administrative reviews. Therefore, the rates determined in the investigation remain in place. In the original investigation, the Department determined weighted-average dumping margins of up to 31.21 percent.[38]

Separately, pursuant to section 752(c)(1)(B) of the Act and in accordance with the Department's practice, the Department considers the volume of imports of the subject merchandise for the one-year period immediately preceding the initiation of the investigation as a base period for comparison to the sunset review period, in determining whether revocation of the *Order* would likely lead to continuation or recurrence of dumping. The petitioner provided U.S. Census Bureau USITC Dataweb import figures under HTS number 7311.00.0030 indicating that imports of subject merchandise decreased from a pre-*Order* level of 731,564 pieces in 2011, 380,717 units in 2012, and 162,994 pieces in 2013. Imports increased to 191,537 pieces in 2014 but dropped significantly to 80,157 pieces in 2015. Finally, in 2016, imports increased to 370,370 pieces.[39] Based on the data on the record, the Department finds that imports decreased after the issuance of the *Order* and remain significantly lower than pre-*Order* levels, and that dumping continued at levels above *de minimis*.[40] This indicates that PRC producers and exporters have not been able to maintain pre-investigation import levels without selling merchandise at dumped

[35] *Id.* at 889-890; House Report at 63-64; Senate Report at 52.
[36] *See* SAA at 890.
[37] *Id.* at 889.
[38] *See HPSC Final Determination*, 77 FR at 26742.
[39] *See* Substantive Response at Attachments 1 and 7.
[40] *See* Import Data Memo.

prices.[41] Therefore, given that: (1) dumping has continued following the issuance of the *Order*, (2) import volumes declined after the issuance of the *Order*, (3) respondent interested parties have not participated in these sunset reviews, and (4) we have no argument or evidence to the contrary, we find that dumping is likely to continue or recur if the *Order* were revoked.

In sum, and pursuant to section 752(c)(1) of the Act, because evidence on the record indicates that dumping has continued at levels above *de minimis* during the period of the sunset review, and the Department has found dramatically lower import volumes in the five years examined in comparison to pre-initiation import volumes, we determine that revocation of the *Order* is likely to lead to continuation or recurrence of dumping.

2. *Magnitude of the Margins Likely to Prevail*

The Petitioner's Arguments:

- Consistent with the Department's normal practice, the Department should find that the magnitude of the margin of dumping that is likely to prevail is identical to the margins determined to exist in the original investigation. At a minimum, an antidumping margin of at least 6.62 percent is likely to prevail if the *Order* is revoked, which is the original investigation margin.[42]

Department's Position: Section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin likely to prevail if the order were revoked. Normally, the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.[43] As indicated above, the Department's current practice is not to rely on weighted-average dumping margins calculated using the zeroing methodology.

The Department has determined that the weighted-average dumping margins established in the investigation of HPSCs from the PRC are the most likely to prevail if the *Order* were revoked. In this sunset review, the Department has relied on a weighted-average dumping margin that was not affected by the methodology addressed in the *Final Modification for Reviews*.[44] In the LTFV investigation, the Department employed an analysis under section 777A(d)(1)(B) of the Act for the single individually-investigated respondent, BTIC, and relied on the alternative average-to-transaction comparison methodology to calculate BTIC's weighted-average dumping margin.[45] This was based on the Department's finding that BTIC had engaged in "targeted dumping."[46]

[41] *See*, *e.g.*, *Barium Chloride from the People's Republic of China: Final Results of Expedited Fourth Sunset Review of the Antidumping Duty Order*, 80 FR 36973 (June 29, 2015) and accompanying Issues and Decision Memorandum at Issue 1; *see also Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order,* 78 FR 72639 (December 3, 2013) and accompanying Issues and Decision Memorandum at Issue 1.
[42] *See* Substantive Response at 4.
[43] *See* SAA at 890; *see also* section 752(c)(3) of the Act.
[44] *See Final Modification for Reviews*, 77 FR at 8103.
[45] *See HPSC Final Determination*, 77 FR at 26739 and accompanying Issues and Decision Memorandum at Comment IV.
[46] *Id.*

When the Department applied the average-to-transaction comparison methodology to BTIC in the investigation, the Department did not have a practice of granting offsets for non-dumped sales under that comparison methodology.[47] Nonetheless, in the *Final Modification for Reviews*, the Department retained its discretion "on a case-by-case basis, to apply an alternative methodology, when appropriate" under section 777A(d)(1)(B) of the Act.[48] Application of this comparison methodology in an investigation, and its reliance as the margin likely to prevail in a sunset review, was not foreclosed by the *Final Modification for Reviews*. The rate for the separate rate respondents was based on BTIC's calculated margin.[49] The Department based the PRC-wide entity's margin of 31.21 percent upon the highest transaction-specific rate calculated for BTIC, which did not incorporate zeroing.[50] For this sunset review, we will report to the ITC the weighted-average dumping margin listed in the "Final Results of Review" section below.

Final Results of Sunset Review

We determine that revocation of the *Order* on HPSCs from the PRC 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 31.21 percent.[51]

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[47] *Id.*
[48] *See Final Modification for Reviews*, 77 FR at 8104, 8105-06; *see also Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722, 77724 (December 27, 2006).
[49] *See HPSC Final Determination*, 77 FR at 26741.
[50] *Id.* at 26742.
[51] *Id.*

Recommendation

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