UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-983
Sunset Review
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DATE: July 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**:** Wendy J. Frankel
Director, U.S. Customs and Border Protection Liaison Unit
Antidumping and Countervailing Duty Operations
Enforcement and Compliance

SUBJECT: Issues and Decision Memorandum for the Expedited First Sunset Review of the Antidumping Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China

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Summary

We have analyzed the substantive response of a domestic interested party in the first sunset review of the antidumping duty order covering drawn stainless steel sinks from the People's Republic of China (China).[1] No other interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping

2. Magnitude of the dumping margins likely to prevail

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[1] *See Drawn Stainless Steel Sinks from the People's Republic Of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 21592 (April 11, 2013), as amended, *Drawn Stainless Steel Sinks from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination of Antidumping Duty Investigation*, 79 FR 63079 (October 22, 2014). *See also*, *Drawn Stainless Steel Sinks from the People's Republic of China: Notice of Court Decision Not in Harmony With Amended Final Determination Pursuant to Court Decision*, 81 FR 58474 (August 25, 2016) (*Order*).

Background

On March 5, 2018, the Department of Commerce (Commerce) initiated the first sunset review of the antidumping duty order on drawn stainless steel sinks from China pursuant to section 751(c) of the Act.[2] On March 16, 2018, Commerce received a notice of intent to participate from Elkay Manufacturing Company (Elkay), a domestic interested party, within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] Elkay claimed interested party status under section 771(9)(C) of the Act as a producer of clad steel plate in the United States.

On April 2, 2018, Commerce received an adequate substantive response to the notice of initiation from Elkay 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 the order covered by this sunset review.

On April 10, 2018, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the antidumping duty order on drawn stainless steel sinks from China.

History of the Order

Commerce published the antidumping duty order on drawn stainless steel sinks from China on April 11, 2013, finding margins of dumping ranging from 36.59 to 76.53 percent, after remand.[6]

Since the publication of the order, Commerce has completed four administrative reviews.[7] In addition, Commerce rescinded the new shipper review of Hubei Foshan Success Imp. & Exp.

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[2] *See Initiation of Five-Year (Sunset) Reviews*, 83 FR 9279 (March 5, 2018).
[3] *See* Letter from Elkay "First Five-Year ('Sunset') Review of Antidumping Duty Order on Drawn Stainless Steel Sinks from The People's Republic of China/Elkay Manufacturing Company's Notice of Intent to Participate," dated March 16, 2018.
[4] *See* Letter from Elkay "First Five-Year ('Sunset') Review of The Antidumping Duty Order on Drawn Stainless Steel Sinks from The People's Republic of China/Substantive Response to the Notice of Initiation," dated April 2, 2018 (Elkay Substantive Response).
[5] *See* Letter to the ITC re: "Sunset Reviews Initiated on March 5, 2018," dated April 10, 2018.
[6] *See Order*.
[7] *See Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012–2014*, 80 FR 69644 (November 10, 2015) finding margins ranging from 2.82 to 8.06; *Drawn Stainless Steel Sinks from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015*, 81 FR 54042 (August 15, 2016) finding margins of 1.65; *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016*, 82 FR 28639 (June 23, 2017) finding margins ranging from 1.68 to 1.80; and *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2016–2017*, 83 FR 23424 (May 21, 2018) finding margins of 1.78.

Co., Ltd. on the basis that its sale was not *bona fide*.[8] Commerce also completed one changed circumstances review finding that Ningbo Afa Kitchen and Bath Co., Ltd. (Ningbo) is the successor-in-interest to Yuyao Afa Kitchenware Co., Ltd. (Yuyao).[9] Finally, Commerce has issued two scope rulings.[10]

On June 6, 2018, Commerce initiated the fifth administrative review covering the period April 1, 2017 through May 31, 2018.[11]

Scope of the Order

The merchandise covered by the order includes drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this order if they are included within the sales price of the drawn stainless steel sinks.[12] For purposes of this scope definition, the term "drawn" refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the order. Drawn stainless steel sinks are covered by the scope of the order whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the order are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as "zero radius" or "near zero radius" sinks. The products covered by this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under statistical reporting number 7324.10.0000 and 7324.10.0010.

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[8] *See Drawn Stainless Steel Sinks from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review; 2012–2013*, 80 FR 4247 (January 27, 2015).
[9] *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Drawn Stainless Steel Sinks from the People's Republic of China*, 81 FR 16138 (March 25, 2016).
[10] *See Notice of Scope Rulings*, 81 FR 14421 (March 17, 2016) announcing our finding in response to Component Hardware Group Inc. that Industrial Handwashing Sinks are within the scope of the order because they possess all the physical characteristics of subject drawn stainless steel sinks; July 2, 2015. *See also Notice of Scope Rulings*, 79 FR 73552 (December 11, 2014) announcing our finding in response to Speakman Company's request that Speakman's industrial bowls (that are used in Speakman's Safety Products such as Speakman eyewashes, Speakman eye/face washes, and Speakman's combination units or decontamination stations that include a shower and eyewash) are outside the scope of the orders because Speakman's industrial bowls have different ultimate purchasers, a different ultimate use, different channels of trade, and different manners in which the products are advertised or displayed than subject merchandise; July 24, 2014.
[11] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 26258 (June 6, 2018).
[12] Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of this order if they are not included within the sales price of the drawn stainless steel sinks, regardless of whether they are shipped with or entered with drawn stainless steel sinks.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce is conducting this first sunset review to determine whether revocation of the order would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, Commerce shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margins of dumping likely to prevail if the order were revoked.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action (*SAA*),[13] the House Report,[14] and the Senate Report,[15] Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.[16] In addition, Commerce normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the orders; or (c) dumping was eliminated after the issuance of the orders and import volumes for the subject merchandise declined significantly.[17] Alternatively, Commerce normally will determine that revocation of an antidumping duty order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.[18]

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.[19]

In addition, section 752(c)(3) of the Act states that the magnitude of the margin of dumping that is likely to prevail if the order were revoked shall be provided by Commerce to the ITC. Generally, Commerce selects the weighted-average dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.[20] In certain circumstances,

[13] *See* H.R. Doc. 103-316, vol. 1 (1994) (*SAA*).
[14] *See* H. Rep. No. 103-826, pt. 1 (1994) (House Report).
[15] *See* S. Rep. No. 103-412 (1994) (Senate Report).
[16] *See SAA* at 879; *see also* House Report at 56.
[17] *See SAA* at 889-890; House Report at 63-64; Senate Report at 52; and *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).
[18] *See SAA* at 889-890; *see also* House Report at 63.
[19] *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.
[20] *See SAA* at 890 and *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second*

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").[21] Finally, pursuant to section 752(c)(4)(A) of the Act, a margin of dumping likely to prevail of "zero or *de minimis* shall not by itself require" Commerce to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at less-than-fair value (LTFV).[22]

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.[23] 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.[24] 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.[25] 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."[26]

<u>Discussion of the Issues</u>

Below we address the comments of the interested party.

Sunset Review of Antidumping Duty Order, 73 FR 11868 (March 5, 2008), and accompanying IDM at Comment 2.

[21] *See SAA* at 890-91.

[22] *See Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007), and accompanying IDM at Comment 1.

[23] *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*).

[24] *Id.* at 8102, 8105, 8109.

[25] *Id.*

[26] *Id.*

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments[27]

Elkay notes that Commerce determined substantial dumping margins in the original investigation and ensuing administrative reviews. Elkay notes that in each of the three completed administrative reviews as well as in the preliminary results of the ongoing fourth review, Commerce consistently has found margins above *de minimis*. Elkay argues that consistent with the *Sunset Policy Bulletin*, this is a sufficient basis to conclude that dumping is likely to continue if the order were revoked.

With respect to volume of imports, Elkay asserts that the volume and value of subject imports from China declined dramatically after Commerce issued its preliminary determination in the underlying investigation.[28] Elkay notes that the annual volume of imports from China fell by over 50 percent in the years following the imposition of the order relative to the period before the order. Elkay argues that this indicates that Chinese exporters/producers cannot ship drawn stainless steel sinks to the United States at pre-order volumes without dumping.

Elkay concludes that given that (1) imports have significantly decreased since the imposition of the order, and (2) no exporter or producer has been able to achieve a zero or *de minimis* margin, the record supports the conclusion that dumping is likely to continue or recur if the order is 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.[29] In addition, Commerce normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.[30] In addition, pursuant to section 752(c)(1)(B) of the Act, Commerce considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

In this case, Commerce found dumping at above *de minimis* levels in the underlying antidumping duty investigation. In addition to the company-specific margins of 36.59 percent and 50.11 percent as calculated on remand, Commerce relied on the margin presented in the petition as the basis for the China-wide entity. Additionally, we examined the statistics placed on the record by Elkay with respect to imports of the subject merchandise for the period before and after the issuance of the order, pursuant to section 752(c)(1)(B) of the Act. These data show that import

[27] *See* Elkay Substantive Response at 4–13. We note that Elkay's substantive response was filed prior to the issuance of the final results of the fourth administrative review.
[28] *See id.* at 12 and Exhibit 1 (citing to U.S. Imports for Consumption statistics compiled from the USITC Dataweb).
[29] *See SAA* at 879; House Report at 56.
[30] *See SAA* at 889-890; House Report at 63-64; Senate Report at 52.

volumes drastically decreased with the issuance of the order, and by 2017, were less than half of pre-order volumes. Given the continued existence of above *de minimis* margins calculated without zeroing since the imposition of the order and the overall decrease in the volume of imports, we determine that it is unlikely that Chinese producers of subject merchandise would be able to sell at pre-order volumes without dumping.[31] Accordingly, we determine that dumping would likely continue or recur if the order were revoked.[32]

2. Magnitude of the Dumping Margins Likely to Prevail

Interested Party Comments[33]

Elkay asserts that, consistent with the *Policy Bulletin*, Commerce should report the margins of dumping determined in the original investigation. Elkay notes that the calculated dumping margins in the underlying investigation were changed on remand and ranged from 36.59 percent to 50.11 percent with a PRC-wide rate of 76.45 percent determined based on the application of adverse facts available and as adjusted for export subsidies and estimated domestic subsidy pass through. Accordingly, Elkay argues that pursuant to the principles set forth in the *SAA*, and the *Policy Bulletin*, Commerce should report the dumping margins as determined in the original investigation.

Commerce's Position:

Section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. Commerce's preference is to select a rate from the investigation because it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order in place.[34] 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.[35] 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, in accordance with the *Final Modification for Reviews*.[36]

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[31] *See SAA* at 889 (explaining that "declining import volume 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").
[32] *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").
[33] *See* Elkau Substantive Response at 13–14.
[34] *See* SAA at 890; and *Sunset Policy Bulletin*, 63 FR at 18873 (section II.B.1); *see also, e.g., Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 43063 (July 21, 2015), and accompanying IDM at Issue 2.
[35] *See* Section 752(c)(3) of the Act.
[36] *See Final Modification for Reviews*, 77 FR at 8103.

As noted in the "History of the Order" section above, and under Issue 1, Commerce relied on adverse facts available in assigning a margin to China-wide entity in the investigation. This rate was based on the petition and did not involve the practice of zeroing. Thus, we determine that revocation of the order would be likely lead to continuation or recurrence of dumping at the magnitude of weighted-average margins up to 76.53 percent. Accordingly, in accordance with section 752(b)(3) of the Act, Commerce will provide the ITC with the margin from the *Final Determination* as the margin of dumping that is likely to prevail if the order were revoked.

Final Results of Review

Commerce determines that revocation of the antidumping duty order on drawn stainless steel sinks from 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 76.53 percent.

Recommendation

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

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Agree Disagree

7/2/2018

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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