



A-580-868
1st Sunset Review
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MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty

SUBJECT: Preliminary Decision Memorandum for the First Sunset Review of
the Antidumping Duty Order on Large Residential Washers from
the Republic of Korea

Summary

We have analyzed the responses of the interested parties in the first sunset review of the antidumping duty order covering large residential washers from the Republic of Korea (Korea). We recommend that you approve the positions we developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this sunset review:

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

History of the Order

On February 15, 2013, the Department of Commerce (Commerce) published its antidumping duty order on large residential washers from Korea in the *Federal Register*.¹ Commerce has completed four administrative reviews since we issued the *Order*.² Commerce initiated an

¹ See *Large Residential Washers from Mexico and the Republic of Korea: Antidumping Duty Orders*, 78 FR 11148 (February 15, 2013) (*Order*). We determined the following weighted-average dumping margins for the three mandatory respondents, one of which was based entirely on adverse facts available: 1) Daewoo Electronics Corporation (Daewoo), 82.41 percent; 2) LG Electronics Inc. (LGE), 13.02 percent; and 3) Samsung Electronics Co., Ltd. (Samsung), 9.29 percent. The All Others dumping margin was established as 11.86 percent. *Id.* at 11150.

² See *Large Residential Washers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2012–2014*, 80 FR 55595, 55596 (September 16, 2015) (*Washers From Korea AR1 Final*



administrative review of the period February 1, 2017, through January 31, 2018.³ On March 22, 2018, we received a request from Whirlpool for a changed circumstances review for the purpose of partially revoking the *Order* with respect to large residential washers that meet all of the following conditions: (1) have a horizontal rotational axis; (2) are front loading; and (3) have a drive train consisting, *inter alia*, of (a) a controlled induction motor (CIM), and (b) a belt drive.⁴ As of the issuance date of these preliminary results of this sunset review, we have not yet initiated this requested changed circumstances review.

There have been no circumvention determinations or duty absorption findings concerning the *Order*. There have also been no scope rulings since the imposition of the *Order*.

Background

On January 2, 2018, Commerce initiated the first sunset review of the antidumping duty order on large residential washers from Korea, in accordance with section 751(c) of the Tariff Act of 1930, as amended (the Act).⁵ Commerce received a notice of intent to participate from Whirlpool Corporation (Whirlpool), within the deadline specified in 19 CFR 351.218(d)(1)(i).⁶ Whirlpool claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of large residential washers.

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through January 22, 2018. As a result, the revised deadline for the preliminary results of this review is now April 25, 2018.⁷

Commerce received substantive responses from Whirlpool⁸ and from LG Electronics Inc. (LGEKR), LG Electronics U.S.A., Inc. (LGEUS), and LG Electronics Alabama, Inc. (LGEAI)

Results), as amended, *Large Residential Washers from the Republic of Korea: Amended Final Results of the Antidumping Duty Administrative Review; 2012–2014*, 80 FR 68508 (November 5, 2015) (finding weighted-average dumping margins of 1.38 percent for LGE, and 82.41 percent for Daewoo and Samsung based on adverse facts available); *Large Residential Washers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2014–2015*, 81 FR 62715 (September 12, 2016) (finding a dumping margin of 1.62 for LGE); *Large Residential Washers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 82 FR 42788 (September 12, 2017) (finding a margin of 0 percent for LGE); *Large Residential Washers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 4467 (January 31, 2018) (finding a margin of 0.64 percent for LGE).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 16298 (April 16, 2018).

⁴ See Letter from Whirlpool re: “Large Residential Washers from the Republic of Korea and Mexico: Request for Changed Circumstances Review,” dated March 22, 2018.

⁵ See *Initiation of Five-Year (Sunset) Review*, 83 FR 100 (January 2, 2018) (*Initiation*).

⁶ See Letter from Whirlpool re: “Five-Year (“Sunset”) Review of Antidumping and Countervailing Duty Orders on Large Residential Washers from Mexico and the Republic of Korea: Notice of Intent to Participate,” dated January 17, 2018.

⁷ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

⁸ See Letter from Whirlpool re: “Five-Year (“Sunset”) Review of Antidumping Duty Order on Large Residential Washers from Korea: Substantive Response of Whirlpool Corporation to the Notice of Initiation of First Sunset Review,” dated February 5, 2018 (Whirlpool Substantive Response).

(collectively LGE)⁹ within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). LGEKR claimed interested party status under section 771(9) of the Act as a foreign producer and foreign exporter of subject merchandise. LGEUS claimed interested party status under section 771(9) of the Act as a U.S. importer and a U.S. producer of subject merchandise. LGEAI claimed interested party status under section 771(9) of the Act as an importer and distributor or parts.

On February 12, 2108, we received rebuttal comments from Whirlpool within the deadline specified in 19 CFR 351.218(d)(4).¹⁰

On February 23, 2018, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.¹¹ On February 26, 2018, Commerce notified the ITC that it had inadvertently not taken into consideration a substantive response from a respondent interested party and that, in accordance with 19 CFR 351.218(e)(2), it would conduct a full sunset review of this antidumping duty order.¹²

Scope of the Order

The products covered by the order are all large residential washers and certain subassemblies thereof from Korea.

For purposes of this order, the term “large residential washers” denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) all assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) at least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs¹³ designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets¹⁴ designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper;¹⁵ (b) a base; and (c) a drive hub;¹⁶ and (4) any combination of the foregoing subassemblies.

⁹ See Letter from LGE re: “LG Electronics’ Notice of Intent to Participate and Substantive Response to Notice of Initiation of Sunset Review – Large Residential Washers from Korea,” dated February 5, 2018 (LGE Substantive Response).

¹⁰ See Letter from Whirlpool re “Five-Year (“Sunset”) Review of Antidumping Duty Order on Large Residential Washers from Korea: Rebuttal Comments on LGE’s Substantive Response to the Notice of Initiation of First Sunset Review,” dated February 12, 2018 (Whirlpool Rebuttal).

¹¹ See Letter re: “Sunset Reviews Initiated on January 2, 2018,” dated February 23, 2018.

¹² See Letter re: “Sunset Reviews Initiated on January 2, 2018,” dated February 26, 2018.

¹³ A “tub” is the part of the washer designed to hold water.

¹⁴ A “basket” (sometimes referred to as a “drum”) is the part of the washer designed to hold clothing or other fabrics.

¹⁵ A “side wrapper” is the cylindrical part of the basket that actually holds the clothing or other fabrics.

¹⁶ A “drive hub” is the hub at the center of the base that bears the load from the motor.

Excluded from the scope are stacked washer-dryers and commercial washers. The term “stacked washer-dryers” denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term “commercial washer” denotes an automatic clothes washing machine designed for the “pay per use” market meeting either of the following two definitions:

(1) (a) it contains payment system electronics;¹⁷ (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;¹⁸ or

(2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,¹⁹ the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.7 cubic feet, as certified to the U.S. Department of Energy pursuant to 10 CFR 429.12 and 10 CFR 429.20, and in accordance with the test procedures established in 10 CFR Part 430.

The products subject to this order are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

¹⁷ “Payment system electronics” denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

¹⁸ A “security fastener” is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a “center pin reject” feature to prevent standard Allen wrenches or Torx drivers from working.

¹⁹ “Normal operation” refers to the operating mode(s) available to end users (*i.e.*, not a mode designed for testing or repair by a technician).

Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the antidumping duty 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 periods before and the periods after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that Commerce shall provide to the International Trade Commission (ITC) the magnitude of the margin of dumping that is 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),²⁰ the House Report,²¹ and the Senate Report,²² Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.²³ 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 orders; (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.²⁴ 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.²⁵ 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.²⁶

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

²⁰ See Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (SAA), *reprinted in* 1994 U.S.C.C.A.N. 4040 (1994).

²¹ See H. Rep. No. 103-826, pt. 1 (1994) (House Report), *reprinted in* 1994 U.S.C.C.A.N. 3773 (1994).

²² See S. Rep. No. 103-412 (1994) (Senate Report).

²³ See SAA at 879; *see also* House Report at 56.

²⁴ See SAA at 889-890; House Report at 63-64; Senate Report at 52; *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).

²⁵ See SAA at 889-890; *see also* House Report at 63.

²⁶ 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 at Comment 1.

the behavior of exporters without the discipline of an order in place.²⁷ 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”).²⁸ Finally, pursuant to section 752(c)(4)(A) of the Act, a margin of dumping like to prevail of “zero or *de minimis* shall not by itself require” Commerce to 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.²⁹ 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.³⁰ 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.³¹ Commerce further stated that, apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available (AFA), and dumping margins where no offsets were denied because all comparison results were positive.”³²

Below we address the comments of the interested parties.

Issue 1: Likelihood of Continuation or Recurrence of Dumping

Whirlpool Comments:³³

Whirlpool argues that revocation of the *Order* would likely lead to a continuation or recurrence of dumping of large residential washers from Korea and would also result in significant increases in the volume of dumped imports, as Korean producers would not be subject to the discipline of the *Order*. Citing to the final results of the four administrative reviews completed by Commerce, Whirlpool argues that the results of every review except one demonstrate that

²⁷ See SAA at 890; *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.

²⁸ See SAA at 890-91.

²⁹ 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*).

³⁰ *Id.* at 8102, 8105, 8109.

³¹ *Id.*

³² *Id.*

³³ See Whirlpool Substantive Response at 5 – 10.

dumping has not ceased. Whirlpool argues that this, by itself, is a sufficient basis for Commerce to conclude that dumping is likely to continue or recur if the *Order* were revoked.

Whirlpool also claims that the post-*Order* decrease in import volumes and the relatively steady volume of imports since the imposition of the *Order*³⁴ also support a determination that dumping is likely to recur. Whirlpool notes that Samsung's cessation of exports from Korea and LGE's decrease in the volume of its exports are the result of these companies moving production facilities for the U.S. market to China. Whirlpool argues that LGE and Samsung have proven that they cannot make sales into the U.S. market without dumping, as evidenced by the fact that Commerce found dumping margins as high as 57.37 percent *ad valorem* in its subsequent antidumping duty investigation on large residential washers from China.³⁵

In conclusion, Whirlpool argues that continuation of the antidumping duty order is necessary because Korean producers would likely continue or resume selling subject large residential washers into the United States at less than fair value without the discipline of the *Order*.

LGE Comments.³⁶

LGE argues that there are multiple reasons why revocation of the *Order* would not likely lead to continuation or recurrence of dumping by Korea respondents. First, LGE notes that by the time this sunset review concludes (the end of 2018), both LGE and Samsung will have brand new U.S. washer production facilities from which they will supply the U.S. market, thereby virtually eliminating the need for washer imports from Korea. LGE clarifies that more than 95 percent of LGE and Samsung large residential washers will be supplied from these LGE and Samsung U.S. production facilities. Second, since LGE plans to produce the high volume, lower-priced and less featured models in its production facility in Clarksville, TN, any future imports from Korea will consist of very high priced premium washers at non-dumped prices. LGE submits that the construction of brand new U.S. production facilities is relevant to Commerce's analysis as an "other factor" that Commerce must consider, in accordance with section 752(c)(2) of the Act. LGE argues that past events are not sufficient to predict future behavior of Korean producers, as the completion of two new U.S. production facilities will drastically alter the industry and virtually eliminate the need for imports from Korea.³⁷

Third, LGE argues that it has already proven that it can export substantial quantities to the United States with virtually no dumping. LGE states that in the four administrative reviews of LGE, Commerce found margins ranging from 0.00 percent to 1.62 percent. Although recognizing that *de minimis* dumping is defined as lower than 0.5 percent in administrative reviews, LGE argues that for purposes of forward-looking sunset reviews, it is more appropriate to utilize the two percent *de minimis* threshold applicable to investigations. LGE further argues that, had Commerce not employed its WTO-illegal "zeroing" methodology, each of the review

³⁴ See *id.* at 9 (citing to import statistics compiled from tariff and trade data from the U.S. Department of Commerce).

³⁵ *Id.* at 9-10 (citing *Large Residential Washers from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Order*, 82 FR 9371 (February 6, 2017)).

³⁶ See LGE Substantive Response at 6 – 22 and 29 – 30.

³⁷ *Id.* at 29-30.

margins calculated for LGE would have actually been 0.00 percent. LGE asserts that Commerce's entire zeroing practice in antidumping administrative reviews was found to be inconsistent "as such" with the WTO AD Agreement in *US – Washing Machines (AB)*.³⁸ Thus, to LGE, it has exported substantial quantities of large residential washers to the United States with no dumping margin.

Fourth and finally, LGE argues that the President's decision to impose safeguard tariff/rate quotas on imports of washers from Korea will further eliminate future dumping margins. LGE notes that the "in quota" and "out of quota" duty rates of 20 percent and 50 percent, respectively, dwarf the margins of dumping of 13.02 percent for LGE and 9.29 percent for Samsung found in the original investigation, even though those calculated margins were based on the now-discredited zeroing methodology. LGE asserts that the imposition of these prohibitive duties has superseded the elimination of injurious dumping proscribed by the antidumping duty law. Lastly, LGE argues that the imposition of these trade remedies will result in much higher U.S. prices and because Section 201 duties are not deductible from U.S. price, the impact of the rising U.S. prices will translate directly into overall dumping margins that are even more negative than the ones found in recent administrative reviews.

Whirlpool Rebuttal:³⁹

Whirlpool contends that because LGE, as it admits itself, has not yet produced a single large residential washer in the United States, it does not qualify as a domestic interested party for purposes of this sunset review. Whirlpool also argues that, in the final results of the full sunset review of the antidumping duty order on stainless steel sheet and strip in coils from Italy, Commerce previously found that the potential displacement of imports by future U.S. production to be speculative and irrelevant for purposes of its sunset review analysis.⁴⁰ Whirlpool states that, similar to *SSSS From Italy*, there is no evidence of how LGE will behave without the discipline of the *Order*, because LGE has not yet produced any large residential washers in the United States. Finally, Whirlpool argues that the safeguard remedy does not obviate the need for the antidumping duty order, given that the scope of the safeguard remedy is not coextensive with the scope of the *Order*, LGE's reported annual volume of exports, and the fact that the duration of any safeguard remedy remains uncertain.

Commerce Position:

As explained in the Legal Framework section above, Commerce's determinations of likelihood will be made on an order-wide basis.⁴¹ In addition, Commerce normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of

³⁸ *Id.* at 21-22 (citing Appellate Body Report, *United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, WT/DS464/AB/R and Add.1, adopted September 26, 2016 (*US – Washing Machines (AB)*)).

³⁹ See Whirlpool Rebuttal at 2 – 5.

⁴⁰ *Id.* at 2-3 (citing *Stainless Steel Sheet and Strip in Coils from Italy: Final Results of the Full Five-Year ("Sunset") Review of the Antidumping Duty Order*, 76 FR 25670 (May 5, 2011), and accompanying Issues and Decision Memorandum at Comment 1 (*SSSS From Italy*)).

⁴¹ See SAA at 879; House Report at 56.

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.⁴² 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.

As an initial matter, we agree with Whirlpool that potential future U.S. production by LGE and Samsung and such production's effect on imports is speculative and has no place in Commerce's sunset review analysis. Although record evidence indicates that LGE and Samsung are in the process of setting up U.S. production facilities for certain large residential washers, there is currently no "direct evidence of how {LGE or Samsung} would act without the discipline of the {Order} in place," and any such analysis would need to be based on an examination of how the respondents' new plants affect their commercial behavior once they are fully operational.⁴³ The same is true with respect to the imposition of safeguard measures. As Whirlpool notes, the products covered by the *Order* and by the safeguard measures are not identical, and further, the duration of the safeguard measures is unknown. As such, even if the safeguard measures were to result in increased prices of some subject merchandise and, therefore, reduce or eliminate dumping, it is not possible to conclude that dumping would be eliminated and not recur.

The evidence on the record before Commerce indicates, instead, that dumping has continued since imposition of the *Order*. With respect to LGE's argument that, for purposes of sunset reviews, the appropriate *de minimis* standard should be two percent, we disagree. LGE points to nothing in the statute or regulations to support this proposed interpretation. Furthermore, in accordance with section 752(c)(4)(B) of the Act and 19 CFR 351.106(c)(1), Commerce will treat as *de minimis* any dumping margin that is less than 0.5 percent. The statute states that Commerce "shall apply the *de minimis* standards applicable to reviews conducted under subsections (a) and (b)(1) of section 751" of the Act,⁴⁴ for which Commerce has established a *de minimis* standard of 0.5 percent. Furthermore, the legislative history supports the application of the 0.5 percent standard for *de minimis* in sunset reviews. In *Malleable Cast Iron Pipe Fittings from Thailand*, Commerce determined that both the statute and regulations clearly provide that, in reviews of orders, Commerce will treat as *de minimis* any weighted-average margin that is less than 0.5 percent *ad valorem*.⁴⁵

While LGE argues that there is no likelihood of continuation or recurrence of dumping because the LGE dumping margins calculated by Commerce are not WTO-consistent, and its margins calculated without zeroing would be zero, we disagree with this argument. First, LGE's line of argument ignores that Commerce's determination of likelihood of recurrence of dumping is to be made on an order-wide basis.⁴⁶ LGE's arguments disputing its own rates in subsequent

⁴² See SAA at 889-890; House Report at 63-64; Senate Report at 52.

⁴³ See *SSSS From Italy*, 76 FR at 25670, and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁴ See section 752(c)(4)(B) of the Act.

⁴⁵ See *Final Results of Sunset Review: Countervailing Duty Order on Certain Pasta from Italy*, 66 FR 51640 (October 10, 2001), and accompanying Issues and Decision Memorandum at Comment 4 (citing *Final Results of Full Sunset Review: Malleable Cast Iron Pipe Fittings From Thailand*, 64 FR 66884 (November 30, 1999)).

⁴⁶ See SAA at 879; House Report at 56.

administrative reviews ignores the fact that Daewoo received an above *de minimis* margin following imposition of the *Order*, in the first administrative review.⁴⁷ So, too, did Samsung.⁴⁸ These rates have not been revised since the first administrative review. We add that both Samsung's and Daewoo's margins post-*Order* were based on total adverse facts available and, thus, were not based on any zeroing methodology, because they were based on the highest margin stated in the original petition.⁴⁹ In sum, we find for these preliminary results that dumping has continued at above *de minimis* rates since imposition of the *Order*. With regard to LGE's argument as to its own rates following imposition of the *Order*, LGE relies entirely on *US – Washing Machines (AB)*. However, the Court of Appeals for the Federal Circuit has held that “WTO decisions are not binding on the United States,” “unless and until such ruling has been adopted pursuant to the specified statutory scheme.”⁵⁰ We note that, to date, Commerce has issued no new determination and the United States has adopted no change to its methodology pursuant to the URAA's statutory procedure.

Additionally, we examined the statistics placed on the record by Whirlpool and LGE 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.⁵¹ These data show that, while import volumes rebounded slightly in 2016, they remain significantly below pre-*Order* levels throughout the five-year period.⁵² Given the continued existence of above *de minimis* margins calculated without zeroing since imposition of the *Order* and the overall decrease in the volume of exports, we preliminarily determine that it is unlikely that Korean producers of subject merchandise would be able to sell at pre-*Order* volumes without dumping.⁵³ Accordingly, we preliminarily determine that dumping would likely continue if the *Order* were revoked.⁵⁴

⁴⁷ See *Large Residential Washers from the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 12456, 12457 (March 9, 2015), and accompanying Preliminary Decision Memorandum (*Washers from Korea AR1 Preliminary Results*), unchanged in *Washers from Korea AR1 Final Results*, 80 FR at 55596.

⁴⁸ See *Large Residential Washers from the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 12456, 12457 (March 9, 2015), and accompanying Preliminary Decision Memorandum (*Washers from Korea AR1 Preliminary Results*), unchanged in *Washers from Korea AR1 Final Results*, 80 FR at 55596.

⁴⁹ See *Washers from Korea AR1 Preliminary Results*, 80 FR at 12456, and accompanying Preliminary Decision Memorandum at “2. Selection of the AFA Rate,” unchanged in *Washers from Korea AR1 Final Results*, 80 FR at 55596.

⁵⁰ See *Corus Staal BV v. United States*, 395 F.3d 1343, 1347-1349 (Fed. Cir. 2005), cert. denied 546 U.S. 1089 (2006); accord *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007).

⁵¹ See Whirlpool Substantive Response at 9. See also LGE Substantive Response at 26 – 27.

⁵² *Id.*

⁵³ 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”).

⁵⁴ 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”).

Issue 2: Magnitude of the Margin Likely to Prevail

Whirlpool Comments:⁵⁵

Whirlpool argues that Commerce should report to the ITC the dumping margins that were determined in the original investigation. Whirlpool argues that, although Commerce's calculation of these margins has been challenged at the WTO, Commerce has not yet addressed *US – Washing Machines (AB)* and, further, WTO reports have no direct effect upon U.S. law. Whirlpool argues therefore that Commerce should report to the ITC the margins determined in the investigation.

LGE' Comments:⁵⁶

LGE argues that, for all the reasons discussed above under Issue 1 as to whether dumping is likely to continue or recur, the dumping margin likely to prevail if the *Order* were revoked is 0.00 percent.

Commerce 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.⁵⁷ 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.⁵⁸ As indicated in the Legal Framework section above, Commerce's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology found to be WTO-inconsistent, in accordance with the *Final Modification for Reviews*.⁵⁹

We disagree with LGE's arguments that the margins likely to prevail are zero. We note that sunset determinations are made on an order-wide basis and LGE does not address the margins assigned to other Korean producers of large residential washers. 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 Daewoo in the investigation. This rate was based on the petition, and did not involve the practice of zeroing found to be WTO-inconsistent and subject to the *Final*

⁵⁵ See Whirlpool Substantive Response at 10 – 11.

⁵⁶ See LGE Substantive Response at 24.

⁵⁷ See SAA at 890; and Sunset Policy, 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 Issues and Decision Memorandum at Issue 2.

⁵⁸ See Section 752(c)(3) of the Act.

⁵⁹ See *Final Modification for Reviews*, 77 FR at 8103.

Modification for Reviews. Thus, we preliminarily 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 82.41 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 the preliminary results of review in the *Federal Register*.

Agree ☒ _____ Disagree ☐ _____

4/19/2018

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance