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1st Sunset Review
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DATE: September 4, 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: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of the Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

Summary

We have analyzed the comments of the interested parties in the first full sunset review of the antidumping duty order (*Order*) on large residential washers from the Republic of Korea (Korea). 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 addressed for the final results:

- Comment 1: Whether Commerce’s Preliminary Conclusion that Revocation of the Antidumping Order Would be Likely to Lead to Continuation or Recurrence of Dumping is Contradicted by the Evidentiary Record and Contrary to Law
- Comment 2: Whether Commerce’s Preliminary Conclusion that, Upon Revocation, LGE Would Engage in Dumping of 82.41 Percent is Contrary to Law and Contradicted by the Evidentiary Record

Background

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 administrative review of the period February 1, 2017, through January 31, 2018.³ On May 11, 2018, we initiated a changed circumstances review in response to 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 final results of this sunset review, we have not yet issued the final results of this 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*.

On April 26, 2018, Commerce issued the *Preliminary Results*⁵ of this full sunset review, finding that dumping was likely to continue or recur if the *Order* were revoked, and determined 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.⁶ We invited parties to comment on the *Preliminary Results*. On May 29, 2018, we received a case brief from LG Electronics Inc. (LGEKR), LG Electronics U.S.A., Inc. (LGEUS), and LG Electronics Alabama, Inc. (LGEAI) (collectively LGE), representing the respondent interested parties.⁷ On June 4, 2018,

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 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, 68509 (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 *Large Residential Washers from the Republic of Korea and Mexico: Initiation of Changed Circumstances Reviews, and Consideration of Revocation, in Part, of the Antidumping Duty Orders on Large Residential Washers from the Republic of Korea and Mexico and the Countervailing Duty Order on Large Residential Washers from the Republic of Korea*, 83 FR 22006, 22007 (May 11, 2018).

⁵ See *Large Residential Washers from the Republic of Korea: Preliminary Results of the First Five-Year Sunset Review of the Antidumping Duty Order*, 83 FR 18275 (April 26, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

⁶ See *Preliminary Results*, 83 FR at 18276.

⁷ See Letter from LGE re: “*LG Electronics’ Case Brief Large Residential Washers from Korea*,” (LGE Case Brief)

we received a rebuttal brief from the domestic interested party, Whirlpool Corporation (Whirlpool).⁸ On May 29, 2018, LGE requested a hearing and on June 5, 2018, LGE withdrew its request.⁹

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 tubs¹⁰ designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets¹¹ designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper;¹² (b) a base; and (c) a drive hub;¹³ and (4) any combination of the foregoing subassemblies.

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;¹⁴ (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

dated May 29, 2018.

⁸ See Letter from Whirlpool re: “Large Residential Washers from Korea: Whirlpool’s Rebuttal Brief,” (Whirlpool Rebuttal Brief) dated June 4, 2018.

⁹ See Letters from LGE re: “*LG Electronics’ Request for Hearing Large Residential Washers from Korea*,” dated May 29, 2018 and “*LG Electronics’ Withdrawal of Request for Hearing Large Residential Washers from Korea*,” dated June 5, 2018.

¹⁰ A “tub” is the part of the washer designed to hold water.

¹¹ A “basket” (sometimes referred to as a “drum”) is the part of the washer designed to hold clothing or other fabrics.

¹² A “side wrapper” is the cylindrical part of the basket that actually holds the clothing or other fabrics.

¹³ A “drive hub” is the hub at the center of the base that bears the load from the motor.

¹⁴ “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.

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;¹⁵ 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,¹⁶ 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 3.70 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.

Discussion of the Issues

Likelihood of the Continuation or Recurrence of Dumping

Comment 1: Whether Commerce’s Preliminary Conclusion that Revocation of the Antidumping Order Would be Likely to Lead to Continuation or Recurrence of Dumping is Contradicted by the Evidentiary Record and Contrary to Law

LGE Case Brief:¹⁷

LGE argues that Commerce’s preliminary conclusion that there is only speculation of imminent U.S. production by LGE and Samsung is contradicted by the evidence on the record. LGE argues that the evidence on the record with respect to its building a production facility for large residential washers in Clarksville, TN, demonstrates that its construction is not contested and

¹⁵ 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.

¹⁶ “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).

¹⁷ See LGE Case Brief at 2 – 19 (citing to “LG Electronics’ Notice of Intent to Participate and Substantive Response to Notice of Initiation of Sunset Review,” dated February 5, 2018 (LGE Sunset Questionnaire Response)).

has, in fact, already begun.

Additionally, LGE argues that evidence on the record demonstrates that virtually all future imports of washers will be replaced by washers produced in the new U.S. production facilities of both LGE and Samsung and the very tiny volume of imports from Korea will consist of very high priced premium products that will have no dumping. As such, LGE argues that imminent U.S. production demonstrates that revocation of the *Order* would not be likely to lead to continuation or recurrence of dumping.

Further, LGE asserts that imminent U.S. production is not irrelevant to Commerce's sunset analysis. Because the statute provides that Commerce must determine what is "likely" to happen in the event of termination, Commerce must consider the direct evidence on the record as to how LGE will act in the future. Additionally, LGE asserts that Commerce must consider other key competitive dynamics, including the imposition of new safeguard duties on imports of large residential washers, as evidence suggests that the significant duties will likely be an important factor for at least the next three years, if not longer.

LGE argues that the presumptions in the *Sunset Policy Bulletin* are only the starting point for Commerce's analysis and they cannot replace reasoned and objective consideration of the actual facts. As such, Commerce cannot satisfy the statutory obligation by only looking backwards and refusing to consider fair and objective evidence of what is likely to happen. LGE concludes by stating that the sworn evidence of LGE's plans, combined with the regulatory environment that makes the economic logic for following those plans compelling, means that the effects are not at all speculative and that it is not likely that dumped imports will continue or resume.

Petitioner Rebuttal Brief:¹⁸

The petitioner argues that Commerce's *Preliminary Results* followed the statutory framework, as informed by the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), and past practice. The petitioner notes that the statute instructs Commerce to consider: (1) the weighted average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order and, only if "good cause is shown," is Commerce permitted to also consider such other price, cost, market, or economic factors as it deems relevant.

The petitioner notes that dumping margins continued after the issuance of the *Order* and, in such circumstances, the SAA counsels that it is reasonable to assume that dumping would continue if the *Order* were revoked. Further, the petitioner notes that LGE's exports of washers from Korea diminished after the imposition of the *Order* and, LGE, by stating that it was only able to sell its highly-featured washers into the United States at higher prices to avoid dumping, essentially concedes that it ceased shipping all other washers because it was unable to do so without dumping. The petitioner notes that Samsung and Daewoo ceased shipping Korean-produced washers altogether. The petitioner asserts that the current safeguard measures are a

¹⁸ See Whirlpool Rebuttal Brief at 1 – 11.

result of the “country-hopping” strategy adopted by both LGE and Samsung first moving production to China, and after the issuance of an order on washers from China, moving production to Thailand and Vietnam. The petitioner claims that the diminished import volumes from Korea and the persistent evasive behavior by LGE and Samsung confirm that they cannot supply the U.S. market with washers from Korea without dumping.

In addition, the petitioner argues that Commerce’s preliminary determination that future U.S. production by LGE is speculative is supported by substantial evidence and is in accordance with law. The petitioner argues that LGE has yet to produce a single washer in the United States, that LGE has admitted that it is not currently producing washers in the United States and, even by its own admission, will not be producing and selling washers from its Tennessee facility until the end of 2018. The petitioner asserts that without a commitment not to ship any Korean washers to the United States in the future, there is no basis to conclude that U.S. production of washers will even occur without the discipline of the *Order*. The petitioner further argues that LGE’s speculative future U.S. production is not a relevant factor for consideration in this sunset review because LGE has failed to demonstrate that good cause exists to consider it.

Further, the petitioner argues that the imposition of a safeguard remedy is not a relevant factor in Commerce’s analysis. The petitioner notes that the safeguard remedy imposed is limited in duration: a maximum of three years. The petitioner states that just as antidumping duty orders have not precluded the imposition of safeguard measures, the existence of a safeguard measure should not cause Commerce to terminate antidumping relief. In sum, the petitioner asserts that Commerce should not terminate the antidumping duty order.

Commerce’s Position:

As discussed in the *Preliminary Results*, sections 752(c)(1)(A) and (B) of the Tariff Act of 1930, as amended (the Act) provide that, in determining whether revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping, 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. Further, in accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA,¹⁹ the House Report,²⁰ and the Senate Report,²¹ Commerce’s determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.²² A review of the record evidence demonstrates that dumping has continued since the issuance of the *Order*. While we agree with LGE that the margins calculated by Commerce for LGE have decreased from the investigation through the administrative reviews, significant margins remain in place for other Korean producers of washers. Additionally, a review of the import volume statistics placed on the record by both the petitioner and LGE demonstrates a significant decrease in the volume of

¹⁹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA), *reprinted in* 1994 U.S.C.C.A.N. 4040 (1994).

²⁰ See H. Rep. No. 103-826, pt. 1 (1994) (House Report), *reprinted in* 1994 U.S.C.C.A.N. 3773 (1994).

²¹ See S. Rep. No. 103-412 (1994) (Senate Report).

²² See SAA at 879; *see also* House Report at 56.

imports from Korea after the imposition of the *Order*.²³ Thus, we agree with the petitioner that the continued existence of the weighted-average dumping margins and the significant decrease in the volume of imports from Korea of subject merchandise is highly probative of the likelihood of continuation or recurrence of dumping.²⁴

As to LGE's arguments regarding future U.S. production and the existence of safeguard duties, as the petitioner noted, section 752(c)(2) of the Act provides that, for good cause shown, Commerce also will consider other information regarding price, cost, market or economic factors it deems relevant. The SAA notes that this provision "permit{s} interested parties to provide information indicating that observed patterns regarding dumping margins and import volumes are not necessarily indicative of the likelihood of dumping."²⁵ We disagree with LGE that its future U.S. production should lead us to conclude that there is no likelihood of the continuation or recurrence of dumping by all Korean producers of washers if the *Order* were revoked. Although we agree, in principle, that what is "likely" to take place in the future may be relevant to our analysis, as we explained in the *Preliminary Results*, 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.²⁶ As the petitioner correctly observes, and as the record indicates, LGE has yet to produce a single large residential washer in the United States.²⁷ LGE only claims that it "*will be* producing and selling washers from its U.S. Clarksville, TN factory by the end of 2018."²⁸ LGE's attempt to distinguish *SSSS from Italy* is also unavailing. That determination stands for the salient point that, when it comes to a respondent purporting to shift its production to the United States, an analysis of how a respondent would act without the discipline of an order in place would need to be based on an examination of how the newly constructed production facility affects the respondent's commercial behavior "once it is fully operational."²⁹ Regardless, LGE's production plans, and even those of Samsung, do not address the totality of Korean producers. Further, we note that the scope of the *Order* covers not only complete washers; it covers subassemblies as well, and it is not possible to conclude that dumping of such in-scope subassemblies would be eliminated and not recur and be manufactured at U.S. production facilities.

Additionally, we agree with the petitioner that the existence of safeguard duties, the duration of

²³ See LGE Case Brief at 20. See also 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, at 9.

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 890.

²⁶ See PDM at 9 (quoting *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*)).

²⁷ See LGE Case Brief at 7 where LGE states "LGE will be producing and selling washers from its U.S. Clarksville, TN factory by the end of 2018."

²⁸ See LGE Case Brief at 7 (emphasis added).

²⁹ See *SSSS from Italy*, 76 FR at 25670, and accompanying Issues and Decision Memorandum at Comment 1.

which cannot be known for certain, is not a basis to determine that the continuation or recurrence of dumping is not likely were the *Order* to be revoked.

Therefore, given the continuation of dumping and the decrease in imports of washers from Korea, we determine that dumping is likely to continue or recur if the *Order* were revoked.

The Magnitude of the Margins of Dumping Likely to Prevail

Comment 2: Whether Commerce’s Preliminary Conclusion that, Upon Revocation, LGE Would Engage in Dumping of 82.41 Percent is Contrary to Law and Contradicted by the Evidentiary Record

LGE Case Brief:³⁰

LGE asserts that the *Sunset Policy Bulletin* makes it clear that Commerce was required to analyze the magnitude of the margin likely to prevail on a company-specific basis and it establishes a practice of providing a more recently calculated margin for a particular company where that company has shown declining margins and increasing shipments. LGE argues that the evidentiary record (*i.e.*, the rates calculated for LGE in the first through fourth reviews) demonstrates that LGE’s likely dumping margin upon revocation would be under two percent. LGE acknowledges that Commerce has a regulation that defines *de minimis* dumping for administrative reviews as less than 0.5 percent but argues that, for forward looking sunset reviews, it is more appropriate to utilize the two percent *de minimis* threshold applicable to AD margins in original investigations.

Nonetheless, LGE argues that Commerce, in calculating the margins in each of the administrative reviews, applied its “zeroing” methodology that the World Trade Organization (WTO) Appellate Body determined was “as such” inconsistent with the WTO AD Agreement. LGE argues that had Commerce not applied its zeroing methodology, LGE’s dumping margins would have been zero. LGE concludes, therefore, that the evidence before Commerce is that, since the imposition of the *Order*, LGE has exported substantial quantities of subject washers to the United States with no dumping margin.

Additionally, LGE argues that the recent imposition of safeguard duties will ensure no future dumping by LGE. LGE notes that both the “in quota” and “out of quota” duty rates of 20 percent, and 50 percent, respectively, dwarf the margin of dumping of 13.02 percent for LGE and 9.29 percent for Samsung found in the original investigation, even though those rates were calculated using the now-discredited zeroing methodology. LGE asserts that the purpose of antidumping duties, which is to eliminate injurious dumping, has been superseded by the imposition of prohibitive safeguard duties. LGE argues that with the imposition of the safeguard duties, LGE will have to raise U.S. prices to cover the cost of the duties and, thus, will be limited to exporting the very high-priced models, whose demand is less elastic such that they can absorb the cost of the duties. Given that there are no comparable duties on home market sales, the duties will have the effect of further increasing U.S. price levels above home market

³⁰ See LGE Case Brief at 19 – 23.

price levels, thereby eliminating the economic conditions for adverse price discrimination. LGE concludes that, since the section 201 duties are not deductible from U.S. price, the impact of the rising U.S. prices will result in dumping margins that are even more negative than the rates found in recent annual reviews.

Petitioner Rebuttal Brief:³¹

The petitioner asserts that, contrary to LGE's statements, the margins from the final determination of the original investigation are the only available reflection of the rates of dumping without the discipline of the *Order*. As such, the petitioner states that Commerce acted in accordance with the law and its practice by concluding that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping at a rate of up to 82.41 percent. The petitioner notes that LGE itself had a rate of 13.02 percent in the investigation, which demonstrates that LGE engaged in dumping without the discipline of the *Order* and would continue to do so were the *Order* revoked.

With respect to LGE's assertion that Commerce should rely on two percent as the *de minimis* threshold in sunset reviews, the petitioner notes that Commerce explained in the *Sunset Policy Bulletin* that it will treat as *de minimis* any weighted-average margin that is less than 0.5 percent *ad valorem*.

In conclusion, the petitioner asserts that Commerce should continue to determine that revocation of the *Order* would likely lead to continuation or recurrence of dumping at weighted-average margins of up to 82.41 percent.

Commerce's Position:

Section 752(c)(3) of the Act provides that Commerce will report to the ITC the magnitude of the margin likely to prevail if the order were revoked. Normally, Commerce 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.³² As indicated above, Commerce's current practice is not to rely on weighted-average dumping margins calculated using the zeroing methodology found to be WTO-inconsistent and subject to the *Final Modification for Reviews*.

With regard to LGE's argument that Commerce must consider company-specific margins in determining the magnitude of the margin likely to prevail, we note that LGE makes this argument in the context of urging us to consider LGE's own margins from the first through fourth administrative reviews, subsequent to the imposition of the *Order*. However, the SAA explains that Commerce "normally will select the rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters . . . without the discipline of an order .

³¹ See Whirlpool Rebuttal Brief at 11 – 12.

³² See SAA at 890.

.. in place.”³³ Given that LGE’s margins from the first through fourth administrative reviews do not reflect LGE’s behavior without the discipline of the *Order* being in place, we are not relying on any of them as the magnitude of the margin likely to prevail for purposes of this sunset review, consistent with our normal approach.³⁴ We note that the SAA also provides that “[i]n certain circumstances, a more recently calculated rate may be more appropriate” to report to the ITC, such as a more recent review rate in circumstances where “dumping margins have declined over the life of an order and imports have remained steady or increased.”³⁵ As we discussed above in our response to Comment 1, imports have decreased significantly since the imposition of the *Order*; they have not remained steady or increased. Moreover, import volumes would have to have achieved pre-order volumes for us to find these subsequent rates appropriate, which has not occurred here.³⁶ For this additional reason, we decline to report these later review rates as the magnitude of the margin likely to prevail.

We continue to disagree with LGE that the appropriate *de minimis* standard should be two percent, given that LGE’s administrative review margins were below this threshold for purposes of this sunset review. As we noted in the *Preliminary Results*,³⁷ section 752(c)(4)(B) of the Act and 19 CFR 351.106(c)(1), provide that Commerce will treat as *de minimis* any dumping margin that is less than 0.5 percent. Further, we noted that Commerce has previously 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*.³⁸ In addition, 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*.³⁹

We are also not persuaded by LGE’s argument that the imposition of safeguard duties will result in increases to U.S. price such that any margin of dumping will be eliminated. Further, we note that both LGE and the petitioner assert that the duration of safeguard duties is subject to reconsideration and we agree with the petitioner that the existence of a safeguard measure should not be the basis for a determination.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 890-891.

³⁶ See *Preliminary Results of Full Sunset Review: Carbon Steel Wire Rod From Argentina*, 64 FR 28975, 28978 (May 28, 1999) (finding, in response to a respondent’s suggestion to use an administrative review rate as the magnitude of the margin likely to prevail that “the consistently low level of imports of the subject merchandise that have existed since the imposition of the order is not indicative of the behavior of Argentine producers/exporters in the absence of the order”), unchanged in *Final Results of Sunset Review: Carbon Steel Wire Rod From Argentina*, 64 FR 53321, 53322 (October 1, 1999) (Comment 1).

³⁷ See *Preliminary Results* and accompanying Preliminary Decision Memorandum at 9

³⁸ See *id.* at 9 (citing to *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))).

³⁹ 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))).

As to LGE's assertion that Commerce must determine the magnitude of company-specific margins likely to prevail, section 752(c)(3) of the Act states that Commerce "shall provide to the Commission the magnitude of the margin likely to prevail if the order is revoked . . .," and also provides that Commerce shall normally report a margin determined in an investigation.⁴⁰ The SAA further clarifies that Commerce "normally will select the rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order . . . in place."⁴¹ Notwithstanding LGE's arguments, Commerce's practice in recent sunset reviews has been to report margins of "up to" the highest margin that was calculated without the practice of zeroing, which was found to be WTO-inconsistent and was subject to the *Final Modification for Reviews*.⁴²

Pursuant to section 752(c)(3) of the Act, we find that the behavior of manufacturers, producers, and exporters demonstrates that margins up to 82.41 percent are likely to prevail. This rate was based on the petition, and did not involve the practice of zeroing found to be WTO-inconsistent and that was subject to the *Final Modification for Reviews*. Thus, we will report to the ITC margins up to 82.41 percent as those likely to prevail, because Commerce did, in fact, assign this rate during this sunset review period.

⁴⁰ See section 752(c)(3) of the Act.

⁴¹ SAA at 890.

⁴² See, e.g., *Sulfanilic Acid from India and the People's Republic of China: Final Results of Expedited Fourth Sunset Reviews of Antidumping Duty Orders*, 82 FR 1321 (January 5, 2017) ("the Department determines that revocation of the AD orders on sulfanilic acid from India and the PRC would likely lead to a continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average margins **up to** 71.09 percent for India, and **up to** 85.20 percent for the PRC") (emphasis added); *Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China and Thailand: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 81 FR 44275 (July 7, 2016) (*Expedited Shrimp Sunset*) ("the Department determines that revocation of the AD Orders on certain frozen warmwater shrimp from Brazil, India, the PRC, and Thailand would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average margins **up to** 67.80 percent for Brazil, **up to** 110.90 percent for India, **up to** 112.81 percent for the PRC, and **up to** 5.34 percent for Thailand.") (emphasis added); and *Certain Steel Grating from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 60119 (October 5, 2015) ("the Department determines that revocation of the Order would likely lead to continuation or recurrence of dumping at weighted-average dumping margins **up to** 145.18 percent.") (emphasis added). *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

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 final results of review in the *Federal Register*.



Agree

Disagree

9/4/2018

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
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Assistant Secretary for Enforcement and Compliance