

March 30, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

SUMMARY

We have analyzed the substantive response of the domestic interested parties¹ in the sunset review of the antidumping duty order on foundry coke products (“foundry coke”) from the People’s Republic of China (“PRC”). We recommend that you approve the positions we describe in this memorandum. Below is a complete list of issues in this sunset review for which we received a substantive response:

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

History of the Order

On July 31, 2001, the U.S. Department of Commerce (“Department”) published its final affirmative determination of sales at less than fair value (“LTFV”) in the Federal Register with respect to imports of foundry coke from the PRC at the following rates:²

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

¹ ABC Coke, Erie Coke, Tonawanda Coke, and Walker Coke (collectively, the “domestic interested parties”).

² See Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From the People’s of Republic China, 66 FR 39487 (July 31, 2001) (“LTFV Investigation Final”)

The Department later published in the Federal Register the antidumping duty order on foundry coke from the PRC.³

In the first sunset review on imports of foundry coke from the PRC, pursuant to section 751(c) or the Tariff Act of 1930, as amended (“Act”), the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the same rates as found in the original investigation.⁴ On January 10, 2007, the Department published the notice of continuation of the antidumping duty order.⁵ On December 1, 2011, the Department published the notice of initiation of the second sunset review of the antidumping duty order on foundry coke from the PRC, pursuant to section 751(c) of the Act.⁶

Background

On December 1, 2011, the Department published the notice of initiation of the sunset review of the antidumping duty order on foundry coke from the PRC pursuant to section 751(c) of the Act.⁷ On December 13, 2011, the Department received a notice of intent to participate from the domestic interested parties. Submission of the notice of intent to participate filed by the domestic interested parties was within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as these parties are all domestic manufacturers of foundry coke in the United States. On December 13, 2011, the Department received an adequate substantive response from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department’s regulations. We did not receive substantive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department’s regulations, the Department determined to conduct an expedited review of the order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting a sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the International Trade Commission (“ITC”) the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments made by the domestic interested party in this proceeding.

³ See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Foundry Coke Products From The People’s Republic of China 66 FR 48025 (September 17, 2001) (“Order”).

⁴ See Foundry Coke Products from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 71 FR 70956 (December 7, 2006) (“Sunset I”).

⁵ See Foundry Coke Products from the People’s Republic of China: Continuation of the Antidumping Duty Order, 72 FR 1214 (January 10, 2007).

⁶ See Initiation of Five-Year (“Sunset”) Review, 76 FR 74775 (December 1, 2011).

⁷ See id.

1. Likelihood of continuation or recurrence of dumping

Interested Party Comments

Domestic interested parties argue that revocation of the antidumping duty order is likely to lead to continued or recurring dumping, as the order has effectively restricted Chinese imports of subject merchandise.⁸ The domestic interested parties argue that the fact that Chinese producers have made no attempt to sell foundry coke during the current review period, or to have their antidumping duties rates reviewed, is evidence that the Chinese producers are not able to sell foundry coke in the United States without dumping.

Domestic interested parties argue that the import data show the remedial effect of the order.⁹ The chart infra demonstrates how the order affects the volume of imports of foundry coke from the PRC.¹⁰

HTS - 2704.00.0011: COKE A SMCK OF CL FR FL NT IN BRQTS GT 100MM (50%)							
Quantity (MT)							
1999	2000	2001	2007	2008	2009	2010	2011
0	57,468	4,087	0	0	0	0	0

Source: GTA.

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"),¹¹ the Department normally determines 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

⁸ See Domestic Interested Parties' Substantive Response at 4, dated December 13, 2011 ("Substantive Response"). The domestic interested parties cite to the ITC Investigation No. 731-TA-891.

⁹ See id. at 6.

¹⁰ Albeit the Petitioner submitted the data from the ITC, the Department notes that the data from the ITC is not revised at the end of the reporting period. Therefore, the Department hereby expresses its preference for the data from Global Trade Atlas ("GTA"). Consistent with our practice in sunset reviews involving non-market economy countries, the Department has used GTA data for periods after 1990. See, e.g., Magnesium Metal From the People's Republic of China and the Russian Federation: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders, 75 FR 38983 (July 7, 2010) and accompanying Issues and Decision Memorandum at Comment 1; and Chlorinated Isocyanurates from Spain and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders, 75 FR 49464 (August 13, 2010) and accompanying Issues and Decision Memorandum at Comment 1; and Porcelain-on-Steel Cooking Ware from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 76 FR 7534 (February 10, 2011).

¹¹ See e.g., Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103-316, vol. 1, 889 (1994) ("SAA"); House Report, H. Rep. No. 103-826, pt. 1 (1994); and Senate Report, S. Rep. No. 103-412 (1994).

significantly.¹² The Department compared the GTA data from that of the ITC Dataweb submitted by the domestic parties and found that the GTA data pertaining to the decade series 2001-2011 coincides with that of the ITC, with the exception of different quantities in the pre-Order years. Nevertheless, in this case, the Department determines after the issuance of the Order, import volumes for subject merchandise have ceased, as domestic parties alleged.¹³

The Department finds that the cessation of imports of subject merchandise from the PRC with an order in place is highly probative of the likelihood of continuation or recurrence of dumping, if the order were to be revoked. Therefore, the Department determines that dumping would likely continue or recur if the order were revoked.

2. Magnitude of the Margins Likely to Prevail

Interested Party Comments

The domestic interested parties assert that it is the Department's policy to normally “provide the Commission {ITC} the margin that was determined by the final determination of the original investigation” since it is the “only calculated rate that reflects the behavior of the exporter...without the discipline of an order or suspension agreement in place.”¹⁴

Department's Position

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Normally, the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.¹⁵ For companies not investigated individually, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all-others rate from the investigation.¹⁶ However, because this case involves the PRC, which the Department considers to be a non-market economy as defined by section 771(18) of the Act, the Department does not have an “all others” rate; instead, there is a PRC-wide rate which applies to all imports from an exporter that has not established its eligibility for a separate rate. The Department's preference for selecting margins from the investigation is based on the fact that they are the only dumping rates that reflect the behavior of

¹² See e.g., Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1; see also Pure Magnesium in Granular Form from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 5417 (February 6, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

¹³ See Substantive Response at Exhibit I.

¹⁴ See SAA at 890.

¹⁵ See 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.

¹⁶ See Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine: Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders, 71 FR 70506 (December 5, 2006), and accompanying Issues and Decision Memorandum at Comment 2, “Magnitude of the Margins Likely to Prevail.”

manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.¹⁷

In the first sunset review, we determined that revocation of the order would likely lead to continuation or recurrence of dumping at the rates found at the LTFV investigation.¹⁸ For this proceeding, we continue to find that the revocation of the order would likely lead to continuation or recurrence of dumping at the rates found at the LTFV investigation

Pursuant to section 752(c) of the Act, the Department will report to the ITC the margin as indicated in the “Final Results of Review” section, below.

Final Results of Review

We determine that revocation of the antidumping duty order on foundry coke from the PRC would be likely to lead to continuation or recurrence of dumping at the following percentage margins:

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

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the Federal Register.

Paul Piquado
Assistant Secretary
for Import Administration

Date

¹⁷ See SAA at 890-891.

¹⁸ See Sunset I, 71 FR at 70957.