

April 1, 2008

TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

RE: Issues and Decision Memorandum for the Final Results in the Expedited Sunset Reviews of the Antidumping Duty Orders on Ferrovandium from the People's Republic of China and the Republic of South Africa

SUMMARY

We have analyzed the substantive responses of the domestic interested parties in the sunset reviews of the antidumping duty orders on ferrovandium from the People's Republic of China ("PRC") and the Republic of South Africa ("South Africa").¹ We recommend that you approve the positions we describe in this memorandum. Below is a complete list of issues in these sunset reviews for which we received a substantive response:

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

HISTORY OF THE ORDER

On November 29, 2002, the Department of Commerce ("Department") published the final determinations in the investigations of ferrovandium from the PRC and South Africa. *See Notice of Final Determination of Sales at Less Than Fair Value: Ferrovandium from the People's Republic of China*, 67 FR 71137 (November 29, 2002); *Notice of Final Determination*

¹ The domestic interested parties jointly filing submissions in these sunset reviews are the Vanadium Producers and Reclaimers Association, and its members Gulf Chemical & Metallurgical Corporation ("Gulf"), Gulf's wholly owned subsidiary Bear Metallurgical Company, Metallurg Vanadium Corporation, and Strategic Minerals Corporation (on behalf of its wholly owned subsidiary, Stratcor, Inc.) (collectively "Domestic Producers").

of Sales at Less Than Fair Value: Ferrovandium from the Republic of South Africa, 67 FR 71136 (November 29, 2002). On January 16, 2003, the International Trade Commission (“ITC”) issued its affirmative injury determinations in both investigations. *See Ferrovandium From China and South Africa*, 68 FR 2361 (January 16, 2003).

Thereafter, the Department issued an amended final determination in the PRC investigation, as well as the antidumping duty orders on ferrovandium from the PRC and South Africa. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Ferrovandium From the People’s Republic of China*, 68 FR 4168 (January 28, 2003) (“PRC Order”); *Notice of Antidumping Duty Order: Ferrovandium from the Republic of South Africa*, 68 FR 4169 (January 28, 2003) (“South Africa Order”). The calculated margins set forth in the PRC Order were 12.97 percent for Pangang Group International Economic & Trading Corporation, and a PRC-wide rate of 66.71 percent. The calculated margins set forth in the South Africa Order were 116.00 percent for Highveld Steel and Vanadium Corporation, Ltd., and Xstrata South Africa (Proprietary) Limited, as well as for the “all-others” rate. There have been no administrative reviews since issuance of the PRC Order and the South Africa Order. There have been no related findings or rulings (*e.g.*, changed circumstances review, scope ruling, duty absorption review) since issuance of the PRC Order and the South Africa Order. Both the PRC Order and the South Africa Order remain in effect for all manufacturers, producers, and exporters of subject merchandise.

BACKGROUND

On December 3, 2007, the Department initiated sunset reviews of the PRC Order and the South Africa Order, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“Act”). *See Initiation of Five-Year (“Sunset”) Reviews*, 72 FR 67890 (December 3, 2007). On December 18, 2007, Domestic Producers jointly filed notice of intent to participate in each sunset review. On January 2, 2008, Domestic Producers jointly filed a substantive response in each sunset review; the Department did not receive a substantive response from any respondent interested party in either sunset review. On January 22, 2008, the Department made its adequacy determination in both sunset reviews, finding that the Department did not receive a substantive response from any respondent interested party. *See “Sunset Reviews of the Antidumping Duty Order on Ferrovandium from the People’s Republic of China and South Africa: Adequacy Determination” Memorandum from Juanita H. Chen, Special Assistant to the Senior Enforcement Director, to Edward Yang, Director, SEC Office, dated January 22, 2008.* Based on the lack of an adequate response in either sunset review from any respondent party, the Department is conducting expedited (120-day) sunset reviews consistent with section 751(c)(3)(B) of the Act and 19 C.F.R. 351.218(e)(1)(ii)(C)(2). *See also Procedures for Conducting Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516, 13523 (March 20, 1998)(the Department normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response). Our analysis of Domestic Producers’ comments submitted in their joint substantive responses is set forth in the “Discussion of the Issues” section, *infra*.

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, the Department conducted these sunset reviews to determine whether revocation of either of these antidumping orders 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 this determination, the Department shall consider both the weighted-average dumping margins determined in the investigations and subsequent reviews, and the volume of imports of the subject merchandise for the period before and the period after the issuance of these antidumping orders. In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margins of dumping that are likely to prevail if these antidumping orders were revoked.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

Domestic Producers assert that imports of ferrovanadium from the PRC “virtually ceased” after issuance of the PRC Order. Domestic Producers state that import data, after “revisions” made by the United States Census Bureau (“Census Bureau”), indicates that imports into the United States from the PRC totaled 500,000 kilograms in 2001 (the year the petition was filed), imports dropped to 50,000 kilograms in 2002, and there were no imports in 2003 (the year the PRC Order went into effect) or in 2004. Domestic Producers further state that the 265 kilograms imported in 2005 and 531 kilograms imported in 2006 were negligible, and that during the first three quarters of 2007 there were no imports into the United States. Domestic Producers provide import data from the ITC, correspondence with the Census Bureau, printouts from the Census Bureau website, and various spreadsheets in support.

Domestic Producers also assert that imports of ferrovanadium from South Africa “ceased - virtually, if not absolutely” after issuance of the South Africa Order. Domestic Producers state that import data, after “revisions” made by the Census Bureau, indicates that imports into the United States from South Africa totaled 1.1 million kilograms in 2001 (the year the petition was filed), imports dropped to 200,000 kilograms in 2002, and there were no imports in 2003 (the year the South Africa Order went into effect) through 2006. Domestic Producers further state that 8,000 kilograms were imported in July 2007. Domestic Producers provide import data from the ITC, correspondence with the Census Bureau, printouts from the Census Bureau website, and various spreadsheets in support.

Domestic Producers note that the Department’s policy bulletin, drawing from the legislative history of the Uruguay Round Agreements Act (“URAA”) states that: “{i}f imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the United States market, they would have to resume dumping.” *See* Domestic Producers’ Ferrovanadium from the People’s Republic of China

substantive response, at 5 (January 2, 2008) (“Response for PRC”), and Domestic Producers’ Ferrovanadium from the Republic of South Africa substantive response, at 5 (January 2, 2008) (“Response for South Africa”) (quoting *Policies Regarding the Conduct of Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 18871, 18872 (April 16, 1998) (“*Policy Bulletin 98:3*”). As a result, based on the lack of or negligible imports into the U.S. after the PRC Order and the South Africa Order were issued, Domestic Producers argue it is reasonable to assume that PRC and South African exporters could not sell ferrovanadium in the United States without dumping and that they would have to resume dumping to reenter the U.S. market. Therefore, Domestic Producers state the Department should conclude there is a likelihood that dumping would continue or recur if either the PRC Order or the South Africa Order were revoked.

Department’s Position

Consistent with the guidance provided in the legislative history accompanying the URAA, specifically the Statement of Administrative Action (“SAA”), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department’s determination of likelihood will be made on an order-wide basis. In addition, the Department normally determines that revocation of an antidumping 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 issuance of the order, or (c) dumping was eliminated after the issuance of the order, and import volumes for the subject merchandise declined significantly. *See SAA* at 889-90. Moreover, pursuant to section 752(c)(1)(B) of the Act, the Department also will consider the volume of imports of subject merchandise for the period before and after the issuance of these antidumping orders.

In conducting our analysis, we reviewed the data provided by Domestic Producers, which included correspondence with the Census Bureau indicating that, after revision of its published import statistics on ferrovanadium from the PRC and South Africa, the import volume of ferrovanadium from both countries for the sunset review period was non-existent or in quantities smaller than those prior to the imposition of the PRC Order and the South Africa Order. While Domestic Producers argue that imports of the subject merchandise from the PRC “virtually ceased” and from South Africa “ceased - virtually, if not absolutely,” we note that the Census Bureau statistics provided by Domestic Producers do not indicate that imports of the merchandise actually ceased; there were periods where imports, although in smaller quantities, continued to enter from the PRC and South Africa. As detailed above, the Department normally will determine revocation of an order is likely to lead to continuation or recurrence of dumping because “imports of the subject merchandise ceased after issuance of the order.” *See Policy Bulletin 98:3*, 63 FR at 18872. Accordingly, as imports did not cease, the Department cannot find that revocation of an order is likely to lead to continuation or recurrence of dumping where imports of the subject merchandise ceased after issuance of the order.

However, the Department also normally will determine that revocation of an order is likely to lead to continuation or recurrence of dumping where “dumping continued at any level above *de minimis* after issuance of the order.” See Section 752(c)(1)(A) of the Act. The Department determined rates above *de minimis* for all PRC manufacturers and exporters during the original investigation. See PRC Order, 67 FR 71140. The Department also determined rates above *de minimis* for all South African manufacturers and exporters during the original investigation. See South Africa Order, 67 FR 71137. As the Department has not conducted any administrative reviews since issuance of the PRC Order and the South Africa Order, the margins from the original investigations are the prevailing margins. Using Domestic Producers’ data submitted on the record, because dumping has continued at levels above *de minimis* during the period of these sunset reviews, we determine that revocation of either the PRC Order or the South Africa Order is likely to lead to continuation or recurrence of dumping.

We note that while Domestic Producers’ data was sufficient for our analysis, we independently and separately conducted a search of import data available from the ITC Dataweb website (“ITC Dataweb”), at <http://dataweb.usitc.gov/>. Our ITC Dataweb search revealed that imports of ferrovanadium from the PRC fluctuated and are shown to have been lower in volume, with the exception of 2005, during the sunset review period than before the PRC Order was put in place. In 2002, the import volume of ferrovanadium from the PRC was 80,000 kilograms. In 2003, the year the PRC Order was put into place, imports ceased entirely; imports increased to 36,079 kilograms in 2004, increased to 155,795 kilograms in 2005, dropped to 1,000 kilograms in 2006, and increased to 19,000 kilograms in 2007. See Attachment I to this memorandum. Import data available from the ITC Dataweb also revealed that imports of ferrovanadium from South Africa decreased to volumes significantly lower than before the South Africa Order was put in place, and ceased entirely for 2004 through 2006. In 2002, the import volume of ferrovanadium from South Africa was 250,278 kilograms. In 2003, the year the South Africa Order was put into place, imports dropped to 58,672 kilograms, in 2004 through 2006 imports ceased entirely, and increased to 10,000 kilograms in 2007. See Attachment II to this memorandum.

While the ITC Dataweb statistics from our search do not correspond exactly with the import statistics provided by Domestic Producers, both sets of data indicate that imports of subject merchandise declined significantly during the period of the sunset reviews and, in some years, ceased entirely. Thus, both sets of data indicate that dumping has continued at levels above *de minimis* during the period of the sunset reviews, pursuant to section 752(c)(1)(A) of the Act. Accordingly, we determine that revocation of either the PRC Order or the South Africa Order is likely to lead to continuation or recurrence of dumping.

2. Magnitude of the Dumping Margin Likely to Prevail

Interested Party Comments

Domestic Producers note that in selecting the magnitude of the dumping margin that is likely to prevail if the order were revoked, the Department normally will provide to the ITC company-specific margin(s) from the original investigation “because that is the only calculated rate that reflects the behavior of exporters . . . without the discipline of an order” in place. *See* Domestic Producers’ Response for PRC, at 6; Domestic Producers’ Response for South Africa, at 6 (citing *Policy Bulletin 98:3*, 63 FR at 18873, SAA at 890, and the Senate Report, S. Rep. No. 103-412 (1994)).

Domestic Producers argue that for the specifically named companies, and those companies subject to the PRC-wide or all-others rates, the margins calculated in the original investigations are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place. Accordingly, Domestic Producers assert that the Department should use the final margins from the original investigations (*i.e.*, 12.97 percent for Pangang Group International Economic & Trading Corporation, and the 66.71 percent PRC-wide rate from the PRC Order; 116.00 percent for Highveld Steel and Vanadium Corporation, Ltd., Xstrata South Africa (Proprietary) Limited, and the “all-others” rate from the South Africa Order).

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 that is likely to prevail if the order were revoked. Normally, the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place. *See* SAA at 890. The Department has conducted no administrative reviews to consider a more recently calculated margin from either the PRC Order or the South Africa Order.

Therefore, consistent with section 752(c) of the Act, the Department will report to the ITC the corresponding individual company rates and the PRC-wide or all-others rates from the original investigations as noted in the “Final Results of Reviews” section, *infra*, because they are more probative of the behavior of exporters without the discipline of an order in place.

Final Results of Reviews

For the reasons stated above, we determine that revocation of the PRC Order would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

<u>Manufacturers/Exporters/Producers</u>	<u>Margin (Percent)</u>
Pangang Group International Economic & Trading Corporation	12.97
PRC-Wide Entity	66.71

For the reasons stated above, we determine that revocation of the South Africa Order would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

<u>Manufacturers/Exporters/Producers</u>	<u>Margin (Percent)</u>
Highveld Steel and Vanadium Corporation, Ltd.	116.00
Xstrata South Africa (Proprietary) Limited	116.00
All-Others	116.00

Recommendation

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

AGREE _____

DISAGREE _____

 David M. Spooner
 Assistant Secretary
 for Import Administration

 Date

ATTACHMENT 1

ATTACHMENT 2