

A-570-970
Sunset Review
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March 29, 2023

MEMORANDUM TO: Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China

I. SUMMARY

We analyzed the substantive response of the domestic interested party¹ in this sunset review of the antidumping duty (AD) order² covering multilayered wood flooring (MLWF) from the People's Republic of China (China), and recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review of the *Order*.³ The following is a complete list of the issues that we address in this expedited sunset review:

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Dumping Margin Likely to Prevail

¹ The domestic interested party is the American Manufacturers of Multilayered Wood Flooring (AMMWF).

² This is the second sunset review of this order. See *Multilayered Wood Flooring from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 76 FR 76690 (December 8, 2011); see also *Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders*, 77 FR 5484 (February 3, 2012), wherein the scope of the *Order* was modified (collectively, *Order*).

³ See *Procedures for Conducting Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005) (Commerce normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response.).



II. BACKGROUND

On December 1, 2022 the U.S. Department of Commerce (Commerce) published the notice of initiation of the second sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).⁴ On December 13, 2022, Commerce received a timely and complete notice of intent to participate in this sunset review from the domestic interested party, within the deadline specified in 19 CFR 351.218(d)(1)(i).⁵ The domestic interested party claimed interested party status under section 771(9)(F) of the Act as an association of producers of the domestic-like product in the United States.⁶

On January 3, 2023, the domestic interested party filed a timely and adequate substantive response, within the deadline specified in 19 CFR 351.218(d)(3)(i).⁷ Commerce did not receive substantive responses from any respondent interested party. On January 25, 2023, we notified the U.S. International Trade Commission (ITC) that no respondent interested party submitted a substantive response.⁸ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), we determined that no respondent interested party provided an adequate response to the notice of initiation and, therefore, conducted an expedited (120-day) sunset review of the *Order*.

III. SCOPE OF THE ORDER

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s)⁹ in combination with a core.¹⁰ The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, *e.g.*, “engineered wood flooring” or “plywood flooring.” Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.*, without a finally finished surface to protect the face veneer from wear and tear) or “prefinished” (*i.e.*, a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes). The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is

⁴ See *Initiation of Five-Year (“Sunset”) Reviews*, 87 FR 73757 (December 1, 2022).

⁵ See Domestic Interested Party’s Letter, “Notice of Intent to Participate in Sunset Review,” dated December 13, 2022 (Notice of Intent to Participate Letter).

⁶ *Id.*

⁷ See Domestic Interested Party’s Letter, “Substantive Response to Notice of Initiation of Sunset Review,” dated January 3, 2023 (Domestic Interested Party’s Substantive Response).

⁸ See Commerce’s Letter, “Sunset Reviews Initiated December 1, 2022,” dated January 23, 2023.

⁹ A “veneer” is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

¹⁰ Commerce Interpretive Note: Commerce interprets this language to refer to wood flooring products with a minimum of three layers.

included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-density fiberboard (HDF), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (e.g., circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product. Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS)¹¹: 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.3175; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4160; 4412.31.4175; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5225; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.0640; 4412.32.0665; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2625; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3225; 4412.32.5600; 4412.32.5700; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500;

¹¹ On October 31, 2018, and March 10, 2022, we added the following HTSUS numbers to update the ACE Case Reference File: 4412.33.0640, 4412.33.0665, 4412.33.0670, 4412.33.2625, 4412.33.2630, 4412.33.3225, 4412.33.3235, 4412.33.3255, 4412.33.3275, 4412.33.3285, 4412.33.5700, 4412.34.2600, 4412.34.3225, 4412.34.3235, 4412.34.3255, 4412.34.3275, 4412.34.3285, 4412.34.5700, 4412.51.1030, 4412.51.1050, 4412.51.3105, 4412.51.4100, 4412.51.5100, 4412.52.1030, 4412.52.1050, 4412.52.3105, 4412.52.4100, 4412.52.5100, 4412.59.6000, 4412.59.7000, 4412.59.8000, 4412.59.9000, 4412.59.9500, 4412.91.0600, 4412.91.1030, 4412.91.1040, 4412.91.3110, 4412.91.3120, 4412.91.3130, 4412.91.3140, 4412.91.3160, 4412.91.3170, 4412.91.5105, 4412.92.0700, 4412.92.1130, 4412.92.1140, 4412.92.3120, 4412.92.3160, 4412.92.3170, 4412.92.4200, 4412.92.5205, 4412.99.5800, 4412.99.6100, 4412.99.7100, 4412.99.8100, 4412.99.9100, 4412.99.9700, 4418.74.2000, 4412.74.9000, 4418.75.4000, and 4418.75.7000. See Memoranda “Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File,” dated October 31, 2018; and “Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File,” dated March 10, 2022.

4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; 4418.74.2000; 4418.74.9000; 4418.75.4000; 4418.75.7000; 4418.79.0100; and 9801.00.2500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

IV. HISTORY OF THE *ORDER*

On October 18, 2011, Commerce published its final determination in the less-than-fair value (LTFV) investigation of MLWF from China.¹² On December 8, 2011, Commerce published an amended final determination and the *Order* on MLWF from China.¹³ Commerce calculated final company-specific weighted-average dumping margins of 0.00; 3.97; and 2.63 percent; a separate rate of 3.30 percent; and a China-Wide entity rate of 58.84 percent.¹⁴ As a result of litigation, Commerce revised the amended final determination and *Order* and modified the mandatory respondents' dumping margins that were 3.97 and 2.63 percent to zero or *de minimis*, and revised the China-wide entity rate to 25.62 percent.¹⁵ Commerce also re-calculated the separate rate by averaging the three zero margins with the 25.62 percent China-wide entity rate, yielding a separate rate of 6.41 percent.¹⁶ This separate rate determination was sustained by the Court of International Trade (CIT);¹⁷ however, this rate was subsequently remanded to Commerce by the Court of Appeals for the Federal Circuit for reconsideration.¹⁸ On remand, Commerce assigned a zero percent margin to the separate rate respondents based on the weighted average of the individually-investigated respondents' zero and *de minimis* dumping margins.¹⁹ The CIT's final judgment affirming Commerce's redetermination constitutes a final decision with respect to the China-wide entity rate.

Since publication of the *Order*, Commerce has completed 11 new shipper reviews, nine administrative reviews, and the preliminary results of review for a tenth administrative review.²⁰

¹² See *Notice of Final Determination of Sales at Less Than Fair Value: Multilayered Wood Flooring from the People's Republic of China*, 76 FR 64318 (October 18, 2011) (*Final Determination*).

¹³ See *Order*.

¹⁴ *Id.*

¹⁵ See *Multilayered Wood Flooring from the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination and Amended Final Determination of the Antidumping Duty Investigation*, 80 FR 44029 (July 24, 2015) (*Investigation Timken Notice*); see also *Multilayered Wood Flooring from the People's Republic of China: Notice of Court Decision Not in Harmony with the Final Determination and Amended Final Determination of the Antidumping Duty Investigation*, 79 FR 25109 (May 2, 2014).

¹⁶ See *Changzhou Hawd Flooring Co., Ltd. v. United States*, 77 F. Supp. 3d 1351 (CIT 2015).

¹⁷ *Id.*

¹⁸ See *Changzhou Hawd Flooring Co., Ltd. v. United States*, 848 F.3d 1006, 1013 (Fed. Cir. 2017).

¹⁹ See *Changzhou Hawd Flooring Co., Ltd. v. United States*, 324 F. Supp. 3d 1317 (CIT 2017).

²⁰ See *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review; 2011-2012*, 78 FR 52502 (August 23, 2013); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014) (see also *Multilayered Wood Flooring from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35314 (June 20, 2014); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews; 2012-2013*, 79 FR 66355 (November 7, 2014); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41476 (July 15, 2015); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46899 (July 19, 2016); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Final Partial Rescission of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 25766 (June 5, 2017); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping*

In addition, Commerce has issued 21 scope rulings during the course of this *Order*.²¹ Commerce has also conducted five changed circumstances reviews during the course of this *Order*²² and has not conducted any duty absorption reviews.

Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission; 2015-2016, 83 FR 35461 (July 26, 2018); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 38002 (August 5, 2019); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review and Final Determination of No Shipments; 2017-2018*, 85 FR 78118 (December 3, 2020); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Successor-in-Interest Determination, and Final Determination of No Shipments; 2018-2019*, 86 FR 59987 (October 29, 2021); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019-2020*, 87 FR 39464 (July 1, 2022); and *Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, Preliminary Successor-in-Interest Determination, and Rescission of Review, in Part; 2020-2021*, 87 FR 79859 (December 28, 2022).

²¹ See Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Zhejiang Lingge (July 2, 2012); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Alston (March 12, 2013); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by M-Wave International, LLC; Final Scope Ruling for Real Wood Floors, LLC's Engineered Wood Flooring from the People's Republic of China (December 4, 2013); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Shenzhen Huanwei Woods Co., Ltd. (May 13, 2014); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Zhejiang Dadongwu GreenHome Wood Co., Ltd. (August 7, 2015); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Zhejiang Fuma Warm Technology Co., Ltd. (October 16, 2015); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Jiangsu Keri Woods Co., Ltd. (October 16, 2015); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Old Master Products, Inc.; Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China (February 4, 2016): Request by Jiashan Huijiale Decoration Material Co., Ltd.; Final Scope Ruling on Dunhua Jisen's Wood Flooring, Product Nos. JS-2L1602, JS-2L1603, JS- 2L1604 (April 4, 2016); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Dunhua Shengda Wood Industry Co., Ltd. (April 25, 2016); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Zhejiang Biyork Wood Co., Ltd. (May 23, 2016); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Dunhua City Hongyuan Wood Industry Co., Ltd. (June 6, 2016); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Jiangsu Beier Decoration Material Co., Ltd. (June 21, 2016); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Fusong Jinlong Wooden Group Co., Ltd.: Product TL1601 (October 6, 2016); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Baishan Huafeng Wooden Product Co., Ltd. (October 6, 2016); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Dunhua Shengda Wood Industry Co., Ltd. (December 14, 2016); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Jiangsu Keri Wood Co., Ltd. (January, 6, 2017); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Huzhou Zhanbang Industry Co. Ltd.; (February 21, 2017); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Geenlong International Limited (February 21, 2017); Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Multilayered Wood Flooring from the People's Republic of China: Request by Fusong Jinlong Group (February 21, 2017).

²² See *Multilayered Wood Flooring from the People's Republic of China: Final Results of Changed Circumstances Review*, 79 FR 58740 (September 30, 2014); *Multilayered Wood Flooring from the People's Republic of China:*

On March 9, 2017, Commerce published the notice of the final results of the first sunset review of the *Order* in which it determined that the revocation of the *Order* on MLWF from China would be likely to lead to the continuation or recurrence of dumping.²³ On July 5, 2016, the ITC published its determination that the revocation of the *Order* would be likely to lead to continuation or recurrence of material injury to a U.S. industry within a reasonably foreseeable time.²⁴ Based on these results, Commerce published a notice of continuation of the *Order* on January 3, 2018.²⁵ Since the issuance of the *Continuation Notice*, Commerce has completed six administrative reviews, one new shipper review, and one changed circumstances review.

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, Commerce shall consider 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 after the issuance of the *Order*.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA) (specifically the Statement of Administrative Action),²⁶ the House Report,²⁷ and the Senate Report,²⁸ Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.²⁹ In addition, Commerce normally determines that revocation of an order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after 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.³⁰ Alternatively, Commerce normally will determine that revocation of an 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.³¹

In addition, 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 an investigation may dampen import volumes and,

Final Results of Changed Circumstances Review, 79 FR 58740 (September 30, 2014); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Changed Circumstances Review*, 80 FR 39998 (July 13, 2015); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Changed Circumstances Review*, 80 FR 70756 (November 16, 2015); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 87 FR 55395 (September 9, 2022).

²³ See *Multilayered Wood Flooring from the People's Republic of China: Final Results of Expedited First Sunset Review of Antidumping Duty Order*, 82 FR 13092 (March 9, 2017) (*2017 Sunset Review*).

²⁴ See *Multilayered Wood Flooring from China; Determinations*, 82 FR 60214 (December 19, 2017).

²⁵ See *Multilayered Wood Flooring from the People's Republic of China: Continuation of Antidumping Duty Orders*, 83 FR 344 (January 3, 2018) (*Continuation Notice*).

²⁶ See Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, vol 1 (1994) (SAA).

²⁷ See H. Rep. No. 103-826, pt. 1 (1994) (House Report).

²⁸ See S. Rep. No. 103-412 (1994) (Senate Report).

²⁹ See SAA at 879; see also House Report at 56.

³⁰ See SAA at 889-90; see also House Report at 63-64; Senate Report at 52; and *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).

³¹ See SAA at 889-90; see also *Sunset Policy Bulletin*.

thus, skew the comparison.³² Furthermore, when analyzing import volumes for second and subsequent sunset reviews, Commerce's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.³³

Further, section 752(c)(3) of the Act states that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, Commerce selects the dumping margin from the final determination in the investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.³⁴ However, in certain circumstances, 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").³⁵ Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require Commerce to determine that revocation of an order would not be likely to lead to a continuation or recurrence of sales at LTFV.³⁶

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 that was the subject of the *Final Modification for Reviews*.³⁷ 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.³⁸ 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.³⁹ 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, and dumping margins where no offsets were denied because all comparison results were positive."⁴⁰

Below we address the comments submitted by the domestic interested party.

³² See, e.g., *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007) (*Stainless Steel Bar*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

³³ See *Ferrovaniadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying IDM.

³⁴ See SAA at 890; see also *Sunset Policy Bulletin* at section II.B.1; *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 IDM at Comment 2.

³⁵ See SAA at 890-91; see also *Sunset Policy Bulletin* at section II.B.2.

³⁶ See *Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007) (*Folding Gift Boxes from China*), and accompanying IDM at Comment 1.

³⁷ See *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*).

³⁸ *Id.* 77 FR at 8105-6.

³⁹ *Id.* 77 FR at 8103.

⁴⁰ *Id.* 77 FR at 8109.

VI. DISCUSSION OF THE ISSUES

1. Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Party's Comments:

- Revocation of the *Order* would likely lead to continuation or recurrence of dumping at margins equivalent to or greater than those found in the investigation.⁴¹
- In determining whether revocation of an order would be likely to lead to continuation or recurrence of dumping, Commerce considers: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; (2) the volume of imports for the period before and the period after the issuance of the antidumping order.⁴²
- As stated in the SAA accompanying the URAA, “existence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If 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.”⁴³
- In the most recently completed review of the *Order*, Commerce calculated a 39.27% margin, demonstrating that subject producers are continuing to dump subject merchandise in the U.S. market, and would have reason to dump in greater volumes absent the *Order*, despite prior reviews wherein Commerce calculated *de minimis* dumping margins.⁴⁴
- Chinese producers and exporters of subject merchandise are unable to sell MLWF in the U.S. market without dumping, and as Commerce found in the *2017 Sunset Review*, import volume of subject merchandise increased despite above *de minimis* dumping margins remaining in effect.⁴⁵

Commerce's Position:

Drawing on the guidance provided in the legislative history accompanying the URAA,⁴⁶ Commerce normally determines that revocation of an order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.⁴⁷

Consistent with the legal framework provided above and in section 752(c)(1)(A) of the Act, we first considered the weighted-average dumping margins determined in the investigation of this proceeding and subsequent reviews. As stated above, in the investigation, Commerce found a dumping margin of 25.62 percent for the China-wide entity and zero percent for the mandatory

⁴¹ See Domestic Interested Party's Substantive Response at 14-18.

⁴² *Id.*

⁴³ *Id.* at 15, citing *Sunset Policy Bulletin* (citing the SAA at 889).

⁴⁴ *Id.* at 15.

⁴⁵ *Id.* at 16.

⁴⁶ See, e.g., SAA at 889.

⁴⁷ *Id.* at 889-890; see also *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 74 FR 5819 (February 2, 2009), and accompanying IDM at 3; and *Folding Gift Boxes from China* IDM at 5.

respondents and certain separate rate respondents.⁴⁸ As noted above, there have been six completed administrative reviews in this proceeding since the issuance of the *Continuation Notice*, and rates assigned in those reviews have ranged from 0.0 percent up to 85.13 percent.

The *Final Modification for Reviews* provides that, “{i}f the dumping margins determined in a manner not found to be WTO-inconsistent in these disputes indicate that dumping continued with the discipline of the order in place, those dumping margins alone can form the basis for a determination that dumping will continue or recur if the order were to be revoked.”⁴⁹ In the LTFV investigation, the calculation of the China-wide rate was based on the highest calculated transaction-specific margin on the record and did not involve the denial of offsets.⁵⁰ We also note that, in recent reviews conducted after the *Final Modification for Reviews* became effective, Commerce continued to assess above *de minimis* margins for certain companies. According to the SAA and the House Report, “if 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.”⁵¹

In addition, pursuant to section 752(c)(1)(B) of the Act and in accordance with Commerce’s practice, in order to determine whether revocation of an order would be likely to lead to continuation of dumping, Commerce considers the volume of imports of the subject merchandise for the one-year period immediately preceding the initiation of the investigation as a base period for comparison to the sunset review period.⁵² In this sunset review, we examined import volumes from 2010 (the year prior to the LTFV investigation) as compared to import volumes during this sunset review period (*i.e.*, 2018-2022). As discussed below, Commerce examined import volume data for the sunset review period from ITC Data Web.⁵³

Furthermore, in the *Final Modification for Reviews*, Commerce noted that decreased import volumes may also provide a basis to determine whether dumping is likely to recur or continue if the order is revoked.⁵⁴ Our review of the available data indicates that U.S. imports of subject merchandise from China during the sunset review period entered under the HTSUS subheadings referenced in the scope of the *Order*. In comparing import volumes in 2010 to import volumes during the sunset review period (*i.e.*, 2018 - 2022), the ITC Data Web statistics⁵⁵ demonstrate that the annual import volumes of MLWF from China from 2018 through 2022 averaged 43.55 percent of the import volume in 2010.⁵⁶ The fact that imports from China have significantly declined compared to the volume of pre-*Order* imports supports a conclusion that exporters are unable to sell at pre-*Order* volumes without dumping, and dumping would likely continue if the antidumping duties were removed.

⁴⁸ See *Order*.

⁴⁹ See *Final Modification for Reviews*, 77 FR at 8103.

⁵⁰ See *Investigation Timken Notice*.

⁵¹ See *Sunset Policy Bulletin* (citing SAA at 889).

⁵² See *Stainless Steel Bar IDM* at Comment 1.

⁵³ See Attachment to this memorandum (for import data in cubic meters and calculated rates of change comparing the pre-order and sunset period volumes). Source: ITC Data Web.

⁵⁴ See *Final Modification for Reviews*, 77 FR at 8109.

⁵⁵ The ITC Data Web reported import volume data on a square meter, cubic meter, and kilogram basis. Commerce used a conversion factor (0.015 cubic meter/square meter) derived from previous administrative reviews to convert import data from square meter to cubic meter. Because Commerce was unable to reliably convert kilograms to cubic meters, we excluded this data from the analysis.

⁵⁶ Although the domestic interested party stated that it relied on data for 29 10-digit HTSUS subheadings that it considered to be the most likely categories under which MLWF would enter the United States, it did not provide these subheadings in its substantive response. Therefore, to conduct our analysis, we relied on the complete list of HTSUS subheadings in the scope of the *Order*.

As explained above, Commerce normally will determine that revocation of an order is likely to lead to continuation or recurrence of dumping where dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.⁵⁷ Here, the substantial decline of imports since the imposition of the *Order* demonstrates that Chinese respondents have not been able to sell at pre-*Order* volumes without dumping.

Accordingly, given the continued existence of dumping margins not affected by the zeroing methodology and the decline of imports since the issuance of the *Order*, Commerce determines that dumping is likely to continue or recur if the *Order* were revoked pursuant to section 752(c)(1) of the Act.

2. Magnitude of the Dumping Margin Likely to Prevail

Domestic Interested Party's Comments:

- In determining the magnitude of the dumping margins likely to prevail in the event of revocation, the SAA and Commerce's *Sunset Policy Bulletin* state that the agency will normally select the dumping margins established in the investigation.⁵⁸
- Applying the principles set forth in the SAA and *Sunset Policy Bulletin*, Commerce will normally rely on a final margin from the agency's underlying LTFV investigation, as those margins best reflect the behavior of the respondents in the absence of an order.⁵⁹
- According to the *Sunset Policy Bulletin*, Commerce can provide a more recently calculated margin if, for that particular company, dumping margins increased after the issuance of the *Order* even if the increase was a result of application of best information available or adverse facts available.
- The dumping margin that Commerce should report to the ITC is either 85.13 percent, which is the margin calculated during the sixth administrative review, or 39.27 percent, the rate calculated in the ninth administrative review.⁶⁰ These rates are more current than the LTFV rate and, in light of steadily increasing imports, are a stronger indication of the level of dumping respondents are willing to pursue to preserve their share of the U.S. market.
- Should Commerce choose not to rely on the rates mentioned above, it should rely on the 25.62 percent China-wide entity rate calculated in the underlying LTFV investigation. Commerce's preference is to utilize margins calculated in the investigation because those margins are the only calculated rates that reflect the behavior of respondents without the discipline of the AD order.⁶¹

Commerce'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 an order were revoked. Commerce prefers selecting margins from the investigation because such rates are the only

⁵⁷ See SAA at 889-90, House Report at 63-64, and Senate Report at 52; see also *Sunset Policy Bulletin*, 63 FR at 18872.

⁵⁸ See Domestic Interested Party's Substantive Response at 18.

⁵⁹ *Id.*

⁶⁰ *Id.* at 19.

⁶¹ *Id.*

calculated rates that reflect the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.⁶²

As indicated in the “Legal Framework” section above, consistent with the *Final Modification for Reviews*, Commerce’s current practice is not to rely on weighted-average dumping margins calculated using the zeroing methodology that was found to be WTO-inconsistent. As noted above, the rates applied in the LTFV investigation did not involve the denial of offsets. The China-wide rate determined in the investigation was based on the highest transaction-specific margin on the record of the investigation.⁶³

As discussed above, since the publication of the *2017 Sunset Review*, Commerce has completed six administrative reviews of this *Order*. Consistent with the final results of the *2017 Sunset Review*, we find that the 25.62 percent China-wide rate in the LTFV investigation is probative of the behavior of producers/exporters from China if the *Order* was revoked because this margin is the only margin which reflects the behavior of these producers/exporters absent the discipline of the *Order*. Thus, Commerce determines that the magnitude of the margin of dumping likely to prevail in the event of revocation of this *Order* would be a weighted-average margin up to 25.62 percent.

VII. FINAL RESULTS OF SUNSET REVIEW

For the reasons stated above, we determine that revocation of the *Order* on MLWF from China would likely lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be a weighted-average margin up to 25.62 percent.

VIII. RECOMMENDATION

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the *Federal Register* and notify the ITC of our determination.

Agree

Disagree

3/29/2023

X 

Signed by: ABDELALI ELOUARADIA
Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

⁶² See *Eveready Battery Co. v. United States*, 77 F. Supp. 2d 1327, 1333 n.9 (CIT 1999); see also SAA at 890.

⁶³ See *Final Determination*.

Attachment

Imports For Consumption Annual Data							
Data Row Count		3					
Data Type	Quantity Description	Year 2010	Year 2018	Year 2019	Year 2020	Year 2021	Year 2022
First Unit of Quantity	cubic meters	1,437,108	1,262,368	468,001	404,269	504,480	462,908
First Unit of Quantity	kilograms	0	0	0	3,711,803	4,249,186	2,501,662
First Unit of Quantity	square meters	1,271,116	2,164,364	935,872	389,322	535,662	559,140
	Square meters converted to cubic meters (x *.015)	19,067	32,465	14,038	5,840	8,035	8,387
Total:*	cubic meters	1,456,175	1,294,833	482,039	410,109	512,515	471,295
% of 2010 Volume			88.92%	33.10%	28.16%	35.20%	32.37%
	2018-2022 Avg.	43.55%					

*Commerce used a conversion factor 0.015 to convert square meters to cubic meters. We are unable to convert kilograms to cubic meters therefore we have excluded this data from the total.