



A-570-904
2nd Sunset Review
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June 1, 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 Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Second Expedited
Sunset Review of the Antidumping Duty Order on Certain
Activated Carbon from the People's Republic of China

I. Summary

We have analyzed the response of Calgon Carbon Corporation, Cabot Norit Americas, Inc., and ADA Carbon Solutions LLC, domestic producers of certain activated carbon (collectively, domestic interested parties), in the second expedited sunset review of the antidumping duty order on certain activated carbon from the People's Republic of China (China). No respondent interested party submitted a substantive response. 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: Likelihood of continuation or recurrence of dumping
Comment 2: Magnitude of the dumping margin likely to prevail.

II. Background

On February 1, 2018, the Department of Commerce (Commerce) published the notice of initiation of the second sunset review of the antidumping duty order on certain activated carbon from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(c)(2).¹ On February 14, 2018, pursuant to 19 CFR 351.218(d)(1)(i), Commerce received a timely and complete notice of intent to participate in the sunset review from domestic

¹ See *Initiation of Five-Year (Sunset) Review*, 83 FR 4681 (February 1, 2018) (*Sunset Initiation*).



interested parties.² On March 5, 2018, pursuant to 19 CFR 351.218(d)(3)(i), domestic interested parties filed timely and adequate substantive responses within 30 days after the date of publication of the *Sunset Initiation*.³ Commerce did not receive substantive responses from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the antidumping duty order on certain activated carbon from China.

III. Scope of the Order

The merchandise subject to the order is certain activated carbon. Certain activated carbon is a powdered, granular, or pelletized carbon product obtained by “activating” with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite, and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas (CO₂) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO₂ gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of the order covers all forms of activated carbon that are activated by steam or CO₂, regardless of the raw material, grade, mixture, additives, further washing or post-activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of the order covers all physical forms of certain activated carbon, including powdered activated carbon (PAC), granular activated carbon (GAC), and pelletized activated carbon.

Excluded from the scope of the order are chemically activated carbons. The carbon-based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid, zinc chloride, sulfuric acid, or potassium hydroxide that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO₂ gas) activated carbons are within the scope, and those containing more than 50 percent chemically activated carbons are

² See Letter from domestic interested parties, re: “Five-Year (“Sunset”) Review of the Antidumping Duty Order on Certain Activated Carbon from the People’s Republic of China – Domestic Interested Parties’ Notice of Intent to Participate,” dated February 14, 2018.

³ See Letter from domestic interested parties, re: “Five-Year (“Sunset”) Review of the Antidumping Order on Certain Activated Carbon from the People’s Republic of China – Domestic Interested Parties’ Substantive Response,” dated March 5, 2018 (Substantive Response).

outside the scope. This exclusion language regarding blended material applies only to mixtures of steam and chemically activated carbons.

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use through the application of heat, steam and/or chemicals.

Also excluded from the scope is activated carbon cloth. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within the scope. The products subject to the order are currently classifiable under the HTSUS subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

IV. History of the Order

On March 2 and 30, 2007, Commerce published its final determination and amended final determination, respectively, in the less-than-fair-value (LTFV) investigation of certain activated carbon from China.⁴ On April 27, 2007, Commerce published the antidumping duty order on certain activated carbon from China.⁵ In so doing, Commerce found the following weighted-average dumping margins:

Manufacturer/Exporter	Weighted-Average Dumping Margin (percent)
Beijing Pacific Activated Carbon Products Co., Ltd.	67.14
Calgon Carbon Tianjin Co., Ltd.	69.54
Datong Juqiang Activated Carbon Co., Ltd.	67.14
Datong Locomotive Coal & Chemicals Co., Ltd.	67.14
Datong Municipal Yunguang Activated Carbon Co., Ltd.	67.14
Datong Yunguang Chemicals Plant	67.14
Hebei Foreign Trade and Advertising Corporation	67.14
Jacobi Carbons AB	61.95
Jilin Bright Future Chemicals Company, Ltd.	228.11
Jilin Province Bright Future Industry and Commerce Co., Ltd.	228.11
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.	67.14
Ningxia Huahui Activated Carbon Co., Ltd.	67.14

⁴ See *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007) (*LTFV Investigation*); *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 15099 (March 30, 2007) (*LTFV Amended Final*).

⁵ See *Notice of Antidumping Duty Order: Certain Activated Carbon from the People's Republic of China*, 72 FR 20988 (April 27, 2007) (*Order*).

Manufacturer/Exporter	Weighted-Average Dumping Margin (percent)
Ningxia Mineral & Chemical Limited	67.14
Shanxi DMD Corporation	67.14
Shanxi Industry Technology Trading Co., Ltd.	67.14
Shanxi Newtime Co., Ltd.	67.14
Shanxi Qixian Foreign Trade Corporation	67.14
Shanxi Sincere Industrial Co., Ltd.	67.14
Shanxi Xuanzhong Chemical Industry Co., Ltd.	67.14
Tangshan Solid Carbon Co., Ltd.	67.14
Tianjin Maijin Industries Co., Ltd.	67.14
United Manufacturing International (Beijing) Ltd.	67.14
Xi'an Shuntong International Trade & Industrials Co., Ltd.	67.14
PRC-Wide Entity	228.11

On June 6, 2012, Commerce completed the first sunset review of the *Order*, in which it determined that revocation of the *Order* would likely lead to continuation or recurrence of dumping at the same rates of dumping as the agency determined in the *LTFV Amended Final*.⁶ On March 1, 2013, the International Trade Commission (ITC) published its first sunset review determination.⁷ On March 18, 2013, Commerce published in the *Federal Register* the continuation notice of the *Order*.⁸

⁶ See *Certain Activated Carbon from the People's Republic of China; Final Results of the Expedited Sunset Review of Antidumping Duty Order*, 77 FR 33420 (June 6, 2012) (*First Carbon Sunset*), and accompanying Issues and Decision Memorandum.

⁷ See *Certain Activated Carbon from China*, 78 FR 13894 (March 1, 2013).

⁸ See *Certain Activated Carbon from the People's Republic of China: Continuation of Antidumping Duty Order*, 78 FR 16654 (March 18, 2013) (*Continuation Order*).

Administrative Reviews and New Shipper Reviews

Since the publication of the *Order*, Commerce has completed nine administrative reviews.⁹ There have been no new shipper reviews. In the completed administrative reviews, Commerce found that the producers/exporters continued to dump subject merchandise at levels above *de minimis* with the *Order* in place.

Scope Inquiries, Changed Circumstances Reviews, and Duty Absorption

On December 7, 2009, Commerce issued a final scope ruling stating that certain Chinese-origin fitted fish tank filters containing (1) less than 500 grams of activated carbon or (2) a combination of activated carbon and zeolite are outside the scope of the *Order*.¹⁰ On December 17, 2012, Commerce issued a final scope ruling stating that hookah charcoal tablets are outside the scope of the *Order*.¹¹

On January 27, 2009, Commerce issued the initiation and preliminary results of a changed circumstance review to revoke in part the *Order* with respect to certain fish tank filters described above.¹² On January 7, 2010, Commerce rescinded the changed circumstance review based on the above scope ruling.¹³

On April 30, 2009, Commerce initiated a changed circumstance review requested by Hebei Foreign Trade and Advertising Corporation (Hebei Foreign) to determine whether Hebei Foreign

⁹ See *First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009), as amended *Certain Activated Carbon from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review*, 74 FR 66952 (December 17, 2009); *Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208 (November 17, 2010) (AR2 Carbon); and *Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review*, 76 FR 67142 (October 31, 2011) (AR3 Carbon); *Certain Activated Carbon from the People's Republic of China; 2010–2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337, 67339 at footnote 22 (November 9, 2012) (AR4 Carbon); *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 70533 (November 26, 2013) (AR5 Carbon); *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 70163 (November 25, 2014) (AR6 Carbon); *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 61172 (October 9, 2015) (AR7 Carbon); *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 81 FR 62088 (September 8, 2016) (AR8 Carbon); and *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 82 FR 51607 (November 7, 2017) (AR9 Carbon).

¹⁰ See Memorandum for John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: “Final Scope Ruling: Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China,” dated December 7, 2009; see also *Notice of Scope Rulings*, 75 FR 14138 (March 24, 2010).

¹¹ See Memorandum for Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: “Certain Activated Carbon from the People's Republic of China: Scope Ruling on Hookah Charcoal Tablets,” dated December 17, 2012; see also *Notice of Scope Rulings*, 78 FR 32372 (May 30, 2013).

¹² See *Certain Activated Carbon from the People's Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part*, 74 FR 4736 (January 27, 2009).

¹³ See *Certain Activated Carbon from the People's Republic of China: Notice of Rescission of Changed Circumstances Review*, 75 FR 981 (January 7, 2010).

had been succeeded by Hebei Shenglung Advertising and Exhibit Corporation.¹⁴ On September 24, 2009, Commerce rescinded the changed circumstance review because Commerce determined that there had been no change in Hebei Foreign's operations from the period of investigation and because the changed circumstance review was initiated on information that was later determined to be false.¹⁵

In the second administrative review, published May 13, 2010, Commerce determined that antidumping duties were being absorbed on Jacobi Carbon AB's (Jacobi) U.S. sales of the subject merchandise through its affiliated importer, given that Jacobi did not rebut the duty absorption presumption with evidence that the unaffiliated U.S. purchaser paid the full duty ultimately assessed on the subject merchandise.¹⁶

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 antidumping duty order would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, Commerce shall consider both the weighted-average dumping margin determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before, and the periods after, the issuance of the antidumping duty order.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4178 (SAA), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), Commerce's determination of likelihood will be made on an order-wide, rather than company-specific, basis.¹⁷ In addition, Commerce normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (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.¹⁸

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

¹⁴ See *Certain Activated Carbon from the People's Republic of China: Notice of Initiation of Changed Circumstances Review*, 74 FR 19934 (April 30, 2009).

¹⁵ See *Certain Activated Carbon from the People's Republic of China: Notice of Rescission of Changed Circumstances Review*, 74 FR 48723 (September 24, 2009).

¹⁶ See *Certain Activated Carbon from the People's Republic of China: Notice of Preliminary Results of the Second Antidumping Duty Administrative Review, and Preliminary Rescission in Part*, 75 FR 26927, 26930-31 (May 13, 2010), unchanged in AR2 Carbon.

¹⁷ See SAA at 879 and House Report at 56.

¹⁸ See SAA at 889-90, House Report at 63-64, and Senate Report at 52. See also *Policies Regarding the Conduct of Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*; Policy Bulletin 98.3, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).

pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.¹⁹ Also, 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.²⁰

Further, section 752(c)(3) of the Act states that Commerce shall provide to the International Trade Commission (ITC) the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, Commerce selects the dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.²¹ 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").²²

In February 2012, Commerce announced it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using zeroing.²³ 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.²⁴ 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 that were not affected by the WTO-inconsistent methodology, such as 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."²⁵

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 antidumping duty order would not be likely to lead to a continuation or recurrence of sales at LTFV.²⁶

¹⁹ 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), and accompanying Issues and Decision Memorandum at Comment 1.

²⁰ See *Ferrovanadium 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 Issues and Decision Memorandum.

²¹ See SAA at 890; see also *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) (*Persulfates Second Sunset Review*), and accompanying Issues and Decision Memorandum at Comment 2.

²² See SAA at 890-91.

²³ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

²⁴ *Id.*

²⁵ *Id.*

²⁶ 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), and accompanying Issues and Decision Memorandum at Comment 1.

VI. Discussion of the Issues

1. Likelihood of Continuation or Recurrence of Dumping

Domestic interested parties argue that revocation of the antidumping duty order on certain activated carbon from China would likely result in the continuation of dumping in the United States. Specifically, domestic interested parties contend that dumping has continued at rates exceeding *de minimis* levels since the order was imposed in 2007.²⁷ In addition, domestic interested parties assert that since the imposition of the order, the import volumes of certain activated carbon into the United States from China have generally declined.²⁸

Department's Position: As explained in the Legal Framework section above, when determining whether revocation of the order would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct 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 after the issuance of the antidumping duty order. According to the SAA, existence of dumping margins 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. If 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 U.S. market, they would have to resume dumping.”²⁹ In addition, “declining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-Order volumes.”³⁰

In the instant review, for the reasons stated below, we find that revocation of the antidumping duty order on certain activated carbon from China would likely result in the continuation of dumping in the United States. In this sunset proceeding, Commerce has relied on certain dumping margins consistent with the *Final Modification for Reviews*.³¹ Specifically, in the *LTFV Investigation*, Commerce calculated dumping margins where no offsets were denied because Commerce determined that it would apply the *Final Modification of Investigations* for the final determination.³²

We consider these rates from the *LTFV Investigation* as demonstrating a likelihood of continuation or recurrence of dumping, given that they are the only calculated rates that reflect

²⁷ See Substantive Response at 16.

²⁸ *Id.* at 16-18.

²⁹ See SAA at 890.

³⁰ *Id.* at 889, the House Report at 63, and the Senate Report at 52.

³¹ See *Final Modification for Reviews*, 77 FR at 8103.

³² See *LTFV Investigation*, 72 FR at 9509 (citing *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006) (*Final Modification of Investigations*)), and accompanying Issues and Decision Memorandum at Comment 4.

the behavior of exporters without the discipline of an order in place and continue to be applicable during the sunset review period.³³

Moreover, the domestic interested parties provided import volume data from Commerce from 2003 to 2017, showing that imports of certain activated carbon from China declined for the period following imposition of the *Order*. Based on import data provided by domestic interested parties, Commerce found that import volumes from China under the HTSUS numbers listed in the scope of the *Order* have declined and subsequently fluctuated over the period of this sunset review. As noted above, when analyzing import volumes for the 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. The last continuation notice for this sunset review was issued in March 18, 2013.³⁴ Therefore, for this sunset review we examined import volumes prior to the initiation of the antidumping duty investigation as compared to import volumes during the second sunset review period (*i.e.*, 2013-2017).³⁵ In the year before the filing of the petition (*i.e.*, 2005), imports of activated carbon from China totaled 84.01 million pounds.³⁶ During the second review period from 2013 – 2017, imports of activated carbon from China remained averaged 25.2 million pounds or just 30 percent of the pre-petition level.³⁷ Accordingly, we find that dumping is likely to continue or recur if the *Order* is revoked because import volumes for the subject merchandise declined after imposition of the *Order* and, thus, it "is reasonable to assume that exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping."³⁸

Finally, no respondent interested party filed a substantive response, pursuant to 19 CFR 351.218(d)(3)(i). Thus, we find that respondent interested parties have failed to file an adequate response in this sunset review. As no respondent interested party submitted any evidence to the contrary, we find that dumping is likely to continue or recur if the *Order* is revoked.

2. Magnitude of the Dumping Margin Likely to Prevail

Domestic interested parties contend that Commerce's modification of its practice for future sunset reviews in *Final Modification for Reviews* to no longer rely on dumping margins that were calculated using the "zeroing" methodology does not change the results in this proceeding because the weighted-average dumping margins calculated in the investigation were determined on the basis of partial adverse facts available, the China-wide rate was calculated without the use of zeroing, and, finally, there are no extraordinary circumstances where Commerce would need to recalculate dumping margins.³⁹

³³ See SAA at 890; see also *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; *Final Modification of Investigations*.

³⁴ See *Continuation Order*.

³⁵ See Petitioners' Substantive Response at 27-28.

³⁶ *Id.*

³⁷ *Id.*

³⁸ See, *e.g.*, SAA at 889-90.

³⁹ See Petitioners' Substantive Response at 22.

Additionally, domestic interested parties contend that, based on Commerce's duty absorption finding in the second administrative review, Commerce should report the higher of the margins that Commerce would have reported to the ITC for Jacobi or the most recent margin for Jacobi adjusted to account for Commerce's duty absorption finding.⁴⁰ Finally, the domestic interested parties suggest that Commerce should report to the ITC the weighted-average dumping margins calculated in the investigation of certain activated carbon from China, which is in accordance with the *Sunset Policy Bulletin*.⁴¹

Department's Position: Pursuant to section 752(c)(3) of the Act, 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, Commerce will select a weighted-average dumping margin from the investigation to report to the ITC.⁴² Commerce's preference is to select a weighted-average dumping margin from the LTFV investigation because it is the only calculated rate that reflects the behavior of the producers and exporters without the discipline of an order or suspension agreement in place.⁴³ Under certain circumstances, however, Commerce may select a more recent rate to report to the ITC. Finally, as explained above, in accordance with the *Final Modification for Reviews*, Commerce will not rely on weighted-average dumping margins that were calculated using the methodology found to be WTO-inconsistent.⁴⁴

In the *First Carbon Sunset* Issues and Decision Memorandum, Commerce relied on the rates from the *LTFV Amended Final* and *Order* to demonstrate a likelihood of continuation or recurrence of dumping because, *inter alia*, they are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.⁴⁵ Furthermore, Commerce determined that the margins calculated in the investigation were calculated without zeroing and are, therefore, consistent with the *Final Modification for Reviews*.⁴⁶ We have received no information in this second sunset review to contradict these findings.

Given that dumping continued following the issuance of the *Order* and given the absence of argument and evidence to the contrary, Commerce finds that the margins calculated in the original investigation are probative of the behavior of producers and exporters of subject merchandise from China if this order were revoked. However, we determine that it is not appropriate, in this second sunset review covering 2013 to 2017, to report to the ITC our duty-absorption findings from the first sunset-review period (*i.e.*, the second administrative review covering 2008 to 2009).⁴⁷ Commerce's duty-absorption findings in the second administrative

⁴⁰ See Substantive Response at 24.

⁴¹ *Id.* at 23; see also *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*).

⁴² See SAA at 890; see also, *e.g.*, *Persulfates Second Sunset Review* 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

⁴³ See *Eveready Battery Company v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999); see also SAA at 890.

⁴⁴ See *Final Modification for Reviews*, 77 FR at 8103.

⁴⁵ See *First Carbon Sunset Review* Issues and Decisions Memorandum at 8.

⁴⁶ *Id.* at 6.

⁴⁷ This position is consistent with Commerce's position in the second sunset review of the order on wooden bedroom furniture from China and the third sunset review of the order on freshwater crawfish tail meat from China. see *Wooden Bedroom Furniture from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order*, 81 FR 12462 (March 9, 2016), and accompanying Issues and Decision Memorandum at 13-14; *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of the*

review correspond to the first sunset-review period (*i.e.*, 2007-2012). Further, there are no duty-absorption findings that correspond to the second sunset review period, and the Federal Circuit has held that the statute only authorizes Commerce to conduct duty-absorption inquiries in the second and fourth administrative reviews after publication of the order.⁴⁸ Accordingly, consistent with section 752(c) of the Act, Commerce will report to the ITC the margins up to the highest rate from the investigation concerning subject merchandise from China as indicated in the “Final Results of Sunset Review” section of this memorandum.

Final Results of Sunset Review

We determine that revocation of the antidumping duty order on certain activated carbon from China would likely lead to continuation or recurrence of dumping, and that the magnitude of the dumping margin likely to prevail would be weighted-average dumping margins up to 228.11 percent.

Recommendation

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

☒

☐

Agree

Disagree

6/1/2018

X 

Signed by: GARY TAVERMAN

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

Third Expedited Sunset Review of the Antidumping Duty Order, 79 FR 13278 (March 10, 2014), and accompanying Issues and Decision Memorandum at 8.

⁴⁸ See *FAG Italia S.p.A. v. United States*, 291 F.3d 806, at 815 n.3 (CAFC 2002) (rejecting the claim that the Department has the authority to conduct duty absorption inquiries every second and fourth year after each successive sunset review because “neither the statute nor its legislative history suggests that Commerce may conduct duty absorption inquiries beyond the initial sunset review, and the plain language of the statute provides that duty absorption inquiries be conducted ‘2 years or 4 years after the publication of an antidumping duty order.’”).