A-570-910
Sunset Review
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April 10, 2019

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 Expedited Second Sunset Review of the Antidumping Duty Order on Circular Welded Carbon Quality Steel Pipe from the People's Republic of China

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Summary

In this second sunset review of the antidumping duty order covering circular welded carbon quality steel pipe (CWP) from the People's Republic of China (China), Zekelman Industries (Zekelman), Bull Moose Tube Company (Bull), EXLTUBE (EXL), TMK IPSCO (TMK), Wheatland Tube (Wheatland), Independence Tube Corporation (Independence), and Southland Tube Incorporated (Southland) (collectively, domestic interested parties), domestic producers of CWP, submitted adequate and timely notices of intent to participate[1] and a substantive response.[2] No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as

[1] *See* Zekelman's letter, "Circular Welded Carbon Quality Steel Pipe from The People's Republic of China: Domestic Industry Notice of Intent to Participate in Sunset Reviews," dated November 15, 2018; Bull's, EXL's, TMK's, and Wheatland's letter, "Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Intent to Participate in Sunset Reviews," dated November 15, 2018; Independence's and Southland's letter, "Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Intent to Participate in Sunset Review," dated November 16, 2018 (collectively, Domestic Interested Parties' Notice of Intent).
[2] *See* Domestic's Interested Parties' letter, "Circular Welded Carbon Quality Steel Pipe from The People's Republic of China: Domestic Industry Substantive Response," dated November 29, 2018 (collectively Substantive Response).

amended (the Act) and 19 CFR 351.218(e)(1)(ii)(C)(2).[3] In accordance with our analysis of domestic interested parties' Substantive Response, we recommend that you approve the positions described in the instant memorandum. The following is a complete list of issues in the instant sunset review for which we received a substantive response:

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

Background

On November 1, 2018, the Department of Commerce (Commerce) published the notice of initiation of the second sunset review of the antidumping duty order on CWP from China, pursuant to section 751(c) of the Act.[4] From November 15, 2018, through November 16, 2018, pursuant to 19 CFR 351.218(d)(1), Commerce received timely and complete notices of intent to participate in the sunset review from domestic interested parties.[5] Domestic interested parties claimed interested party status pursuant to section 771(9)(C) of the Act. On November 29, 2018, pursuant to 19 CFR 351.218(d)(3), domestic interested parties filed a timely and adequate substantive response.[6] 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 CWP from China.

Scope of the Order

The merchandise subject to the order is certain welded carbon quality steel pipes and tubes, of circular cross-section, and with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), whether or not stenciled, regardless of wall thickness, surface finish (e.g., black, galvanized, or painted), end finish (e.g., plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (e.g., ASTM, proprietary, or other), generally known as standard pipe and structural pipe (they may also be referred to as circular, structural, or mechanical tubing).

Specifically, the term "carbon quality" includes products in which (a) iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:
(i) 1.80 percent of manganese;
(ii) 2.25 percent of silicon;

[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).
[4] *See Initiation of Five-Year (Sunset) Review*, 83 FR 554915 (November 1, 2018).
[5] *See* Domestic Interested Parties' Notice of Intent.
[6] *See* Substantive Response.

(iii) 1.00 percent of copper;
(iv) 0.50 percent of aluminum;
(v) 1.25 percent of chromium;
(vi) 0.30 percent of cobalt;
(vii) 0.40 percent of lead;
(viii) 1.25 percent of nickel;
(ix) 0.30 percent of tungsten;
(x) 0.15 percent of molybdenum;
(xi) 0.10 percent of niobium;
(xii) 0.41 percent of titanium;
(xiii) 0.15 percent of vanadium; or
(xiv) 0.15 percent of zirconium.

Standard pipe is made primarily to American Society for Testing and Materials ("ASTM") specifications, but can be made to other specifications. Standard pipe is made primarily to ASTM specifications A-53, A-135, and A-795. Structural pipe is made primarily to ASTM specifications A-252 and A-500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. This is often the case, for example, with fence tubing. Pipe multiple-stenciled to a standard and/or structural specification and to any other specification, such as the American Petroleum Institute ("API") API-5L specification, is also covered by the scope of the order when it meets the physical description set forth above and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish. (The term "painted" does not include coatings to inhibit rust in transit, such as varnish, but includes coatings such as polyester.)

The scope of the order does not include: (a) pipe suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) mechanical tubing, whether or not cold-drawn; (c) finished electrical conduit; (d) finished scaffolding; (e) tube and pipe hollows for redrawing; (f) oil country tubular goods produced to API specifications; and (g) line pipe produced to only API specifications.

The pipe products that are the subject of the order are currently classifiable in HTSUS statistical reporting numbers 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90, 7306.50.10.00, 7306.50.50.50, 7306.50.50.70, 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. However, the product description, and not the Harmonized Tariff Schedule of the United States ("HTSUS") classification, is dispositive of whether merchandise imported into the United States falls within the scope of the order.

History of the Proceeding

Investigation and Order

The following summarizes the history of the decisions that led to the *Order*. On June 22, 2008, Commerce published its final affirmative determination in the less than fair value (LTFV), investigation of CWP from China in the *Federal Register*.[7] Following the publication of Commerce's final determination, the International Trade Commission (ITC) found that the U.S. industry was materially injured by reason of imports of subject merchandise.[8] On July 22, 2008, Commerce published the antidumping duty order on CWP from China.[9] Commerce determined dumping margins ranging from 69.20 percent to 85.55 percent.[10] Moreover, on August 4, 2015, the U.S. Trade Representative (USTR) instructed Commerce to implement its determinations under section 129 of the Uruguay Round Agreements Act (URAA) regarding the antidumping duty investigation of CWP from China.[11] Accordingly, Commerce revised the antidumping cash deposit rates to account for double remedies, reflecting rates ranging from 45.35 percent to 68.24 percent.[12] However, on October 8, 2015, Commerce issued its Final Remand Redetermination, in which it denied the adjustment to the AD cash deposit rates granted to respondents in the Final Section 129 Determination.[13] As a result, Commerce revised the AD cash deposit rates to 69.20 percent for the separate rate respondents and 85.55 percent for the China-wide entity.[14] On October 22, 2015, the CIT sustained Commerce's Final Remand Redetermination.[15]

Administrative Reviews and New Shipper Reviews

Since the issuance of the antidumping duty order, Commerce has not completed any administrative or new shipper reviews. Commerce has rescinded nine administrative reviews[16]

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[7] *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970 (June 5, 2008) (*Final Determination*).
[8] *See Circular Welded Carbon Quality Steel Pipe from China*, Investigation Nos. 701-TA-447 and 731-TA-1116 (Final), USITC Publication 4019 (July 2008).
[9] *See Notice of Antidumping Duty Order: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 42547 (July 22, 2008) (*Order*).
[10] *Id.*, 73 FR at 42548.
[11] *See Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 77 FR 52683 (August 30, 2012) (*Section 129 Determination*; as corrected by *Correction to Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 77 FR 65672 (October 30, 2012) (*Correction to Section 129 Determination*).
[12] *Section 129 Determination*, 77 FR at 52685.
[13] *See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Determination and Amended Final Determination Under Section 129 of the Uruguay Round Agreements Act*, 80 FR 70758 (November 16, 2015) (*CWP Timken Notice*).
[14] *Id.*
[15] *Id.*
[16] *See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Rescission of

and is currently conducting an antidumping duty administrative review covering the period July 1, 2017, through June 30, 2018. The preliminary results of this review are currently scheduled to be issued on May 13, 2019.

Scope Inquiries, Changed Circumstances Reviews, and Duty Absorption

Commerce has issued eight scope rulings on CWP from the China.[17] There have been no changed circumstances reviews or duty absorption findings in connection with the *Order*.

First Sunset Review

On October 3, 2013, Commerce determined that the revocation of the antidumping duty order on CWP from the China would likely lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be 45.35 percent for separate rate exporters and 68.24 percent for all other exporters within the China-wide entity.[18] On December 4, 2013, Commerce published the notice of continuation of the *Order*.[19]

Antidumping Duty Administrative Review, 74 FR 57149 (November 4, 2009) (*CWP AR 1*); *see also Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Rescission of Antidumping Duty Administrative Review*, 75 FR 81968 (December 29, 2010) (*CWP AR 2*); *Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Rescission of the 2010–2011 Antidumping Duty Administrative Review*, 76 FR 76944 (December 9, 2011) (*CWP AR 3*); Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2011–2012, 78 FR 5170 (January 24, 2013) (*CWP AR 4*); *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 18012 (March 31, 2014) (*CWP AR 5*); *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 10665 (February 27, 2015) (*CWP AR 6*); *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 735 (January 7, 2016) (*CWP AR 7*); *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 4301 (January 13, 2017) (*CWP AR 8*); and *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2016-2017*, 82 FR 52274 (November 13, 2017) (*CWP AR 9*).

[17] *See Notice of Scope Rulings*, 75 FR 14138 (March 24, 2010); *see also Notice of Scope Rulings*, 77 FR 52313 (August 29, 2012); *Notice of Scope Rulings*, 78 FR 9370 (February 8, 2013), *Notice of Scope Rulings*, 79 FR 30821 (May 29, 2014), *Notice of Scope Rulings*, 80 FR 57339 (September 23, 2015), *Notice of Scope Rulings*, 82 FR 48799 (October 20, 2017), and *Notice of Scope Rulings*, 83 FR 31733 (July 9, 2018).

[18] *See Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order*, 78 FR 61335 (October 3, 2013) (*First Sunset Review*). These margins were from the order of the original investigation, as modified by the section 129 determination. *See Order,* 73 FR at 42548; *Correction to Section 129 Determination,* 77 FR at 65672.

[19] *See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Continuation of Countervailing Duty Order*, 78 FR 72863 (December 4, 2013) (*Continuation Notice*).

Discussion of the Issues

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. If Commerce determines that revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping, pursuant to section 752(c)(3) of the Act, Commerce shall provide to the ITC with the magnitude of the margin of dumping likely to prevail if the *Order* were revoked.

As explained in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, Commerce normally determines that revocation of an antidumping duty 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.[20] 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 AD order would not be likely to lead to a continuation or recurrence of sales at less than fair value.[21] Alternatively, Commerce normally will determine that revocation of an antidumping duty 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.[22] Consistent with guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, SAA, H.R. Rep. No. 103-316, Vol. 1 (1994);[23] House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report);[24] and Senate Report, S. Rep. No. 103-412 (1994) (Senate Report)), Commerce will make its likelihood determination on an order-wide, rather than company-specific, basis.[25]

Sections 752(c)(1)(A) and (B) of the Act provide that, in determining whether revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping, Commerce shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order. As a base period for import volume comparison, it is Commerce's practice to use the one-year period immediately preceding

[20] *See* SAA at 889-90, House Report at 63-64, and Senate Report at 52; *Policies Regarding the Conduct of Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).
[21] *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*) and accompanying Issues and Decision Memorandum at Comment 1.
[22] *See* SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90; *see also Sunset Policy Bulletin*.
[23] Reprinted at 1994 U.S.C.C.A.N. 4040 (1994).
[24] Reprinted at 1994 U.S.C.C.A.N. 3773 (1994).
[25] *See* SAA at 879, and House Report at 56.

the initiation of the investigation, rather than a period after initiation but before issuance of the order, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.[26] 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.[27]

If Commerce determines that revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping, generally Commerce provides the ITC with the magnitude of the margin of dumping likely to prevail based on the dumping margin(s) from the final determination in the investigation because this is the only calculated dumping margin that reflects the behavior of exporters without the discipline of an order in place.[28] However, in certain circumstances, Commerce may determine that a more recently calculated dumping margin may be more representative of a company's behavior in the absence of an order (*e.g.*, where a company increases dumping to maintain or increase market share with an order in place or "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").[29]

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 methodology determined by the Appellate Body to be World Trade Organization (WTO)-inconsistent, *i.e.*, zeroing/the denial of offsets.[30] Commerce also noted that "only in the most extraordinary circumstances will Commerce rely on margins other than those calculated and published in prior determinations."[31] 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 (AFA), and dumping margins where no offsets were denied because all comparison results were positive."[32]

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[26] *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.
[27] *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.
[28] *See* SAA at 890 and *Sunset Policy Bulletin* at section II.B.1. *See, e.g., 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.
[29] *See* SAA at 890-91; *Sunset Policy Bulletin* at section II.B.2.
[30] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8109 (February 14, 2012) (*Final Modification for Reviews*).
[31] *Id.*; *see also* 19 CFR 351.218(e)(2).
[32] *Id.* at 8109.

Below we address the comments submitted by domestic interested parties.

Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Parties' Comments

- All Chinese exporters of subject merchandise have either ceased shipping CWP or have continued to dump at the rates assigned in the investigation (*i.e.*, a separate rate margin of 69.20 percent and a China-wide margin of 85.55 percent).[33] The investigation margins are in place for all exporters because no administrative reviews or new shipper reviews of the *Order* have been conducted.[34]
- Dumping margins remain in place for all exporters, because no administrative reviews or new shipper reviews of the *Order* have been completed. To the extent that there have been any entries of subject merchandise since the *Order* was issued, the "continued dumping" factor is satisfied. In the first sunset review of the *Order*, Commerce found continued dumping based on these same facts.
- Continuation of the *Order* is appropriate because imports declined significantly following issuance of the *Order*. During 2007 (*i.e.*, the year before the *Order* was imposed), total import quantities under the relevant tariff subheadings were 876,577 metric tons (MT) and have since fallen. The highest annual volume in any year after the *Order* was issued, was in 2016 when import volume reached 81,226 MT (less than one-tenth the volume before the *Order* was issued).
- In the first sunset review of the *Order*, Commerce made an affirmative determination of continued dumping based on similar facts, finding that "PRC exporters may not be able to maintain pre-investigation import levels without selling merchandise at dumped prices."

Commerce's Position

Consistent with the legal framework laid out above and section 752(c)(1)(A) of the Act, we first considered the weighted-average dumping margins determined in the investigation and subsequent reviews in this proceeding. As stated above, in the investigation, Commerce found dumping margins of 69.20 percent and 85.55 percent for the separate rate respondents and the China-wide entity, respectively.[35] No mandatory respondents participated in the investigation, so the separate rate respondent margin was calculated as the average of rates alleged in the petition, and the China-wide rate was the highest rate alleged in the petition.[36] As discussed above, these rates were amended to 45.35 percent for the separate rate respondents and 68.24 percent for the China-wide entity as a result of a Section 129 proceeding in which Commerce made adjustments

[33] *See CWP Timken Notice*.
[34] No results (preliminary or final) have been issued with respect to the ongoing 2017-2018 antidumping duty administrative review.
[35] *See Final Determination,* 73 FR at 31973; *see also Order* 73 FR at 42548-49.
[36] *See Final Determination*, 73 FR at 31971-72.

to the rates for double remedies.[37] Therefore, during the first sunset review, Commerce determined that revocation of the antidumping duty order on CWP from the China would likely lead to continuance or recurrence of dumping and that the magnitude of dumping likely to prevail would be 45.35 percent for separate rate exporters and 68.24 percent for the China-wide entity.[38] However, Commerce changed its approach and denied the double remedies adjustment in a subsequent remand which was sustained by the CIT.[39] Thus, the investigation rates of 69.20 percent for the separate rate respondents and 85.55 percent for the China-wide entity remain unchanged for purposes of this second sunset review period.[40] With the exception of the 2017-2018 antidumping duty administrative review which is still ongoing, Commerce has rescinded all administrative reviews subsequent to the issuance of the *Order*, having found no entries of subject merchandise from the parties for which a review was requested.[41] Therefore, based on the investigation dumping margins, any entries of subject merchandise after issuance of the order were assessed at above *de minimis* rates.

Pursuant to section 752(c)(1)(B) of the Act, we also considered the volume of imports of the subject merchandise in determining whether revocation of the *Order* is likely to lead to continuation or recurrence of dumping. As noted above, 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 (*i.e.*, 2006 for this sunset review) to import volumes since the issuance of the last continuation notice.[42] The last continuation notice for this sunset review was issued in November 2013.[43]

In analyzing import volumes for the five calendar years following issuance of the notice of continuation of the *Order* (*i.e.*, 2014 through September 2018 (only partial year import data are on the record for 2018)), we have determined that the annual import volumes of subject merchandise from China for the group of harmonized tariff schedule (HTSUS) numbers included in the scope of the *Order* are significantly lower than the pre-initiation volume.[44] During the sunset period, annual import volumes of subject merchandise ranged from approximately 1.83 percent to 13.78 percent of the import volume of the year preceding initiation of the underlying investigation (*i.e.*, 2006).[45] The 13.78 percent figure is for 2016 and most of the import volume for that year comprises imports under one HTSUS number (*i.e.*,7306305085), while almost all of the 2016 imports under the other HTSUS numbers in the scope declined significantly from the pre-initiation volume for the corresponding HTSUS number (*e.g.*, imports under HTSUS

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[37] *See Section 129 Determination*.
[38] *See First Sunset Review*, 78 FR at 61335.
[39] *See CWP Timken Notice*, 80 FR at 70758.
[40] *Id.*
[41] *See CWP AR 1*, *CWP AR 2*, *CWP AR 3*, *CWP AR 4*, *CWP AR 5*, *CWP AR 6*, *CWP AR 7*, *CWP AR 8*, and *CWP AR 9* and footnote 12.
[42] The record contains annual import data from 2006 through September 2018. *See* Substantive Response at Exhibit 1 and 2.
[43] *See Continuation Notice*.
[44] *See* Substantive Response at Exhibit 1 and 2.
[45] *Id*.

7306305055 declined from 149,372 MTs to 872 MTs, imports under HTSUS 7306305090 declined from 103,730 MTs to 1,450 MTs).

As noted in the SAA, "declining import volumes accompanied by the continued existence of dumping margins after the issuance of an 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."[46] Furthermore, 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."[47] Record evidence shows significantly lower import values during the years covering this sunset review compared to the year preceding initiation of the underlying investigation (*i.e.*, 2006). This indicates that Chinese exporters may not be able to maintain pre-initiation import levels without selling subject merchandise at dumped prices.[48] Therefore, pursuant to section 752(c)(1) of the Act, because we found lower levels of imports in each of the years covered by this sunset review compared to the year before initiation, accompanied by the continued existence of dumping after issuance of the *Order*, we recommend finding that dumping is likely to continue or recur if the *Order* is revoked.

Section 752(c)(2) of the Act provides that Commerce shall also consider "other factors" than those listed in section 752(c)(1) of the Act if "good cause is shown." We have concluded that no such "good cause" exists in this case because we find that the continued above *de minimis* margins and the decline in the volume of imports alone support the statutory test for determining if likelihood of dumping would continue or recur in the event of revocation of the *Order*. Therefore, we have not considered the other factors raised by the petitioner in support of its argument that dumping is likely to continue or recur in the event of revocation.

Magnitude of the Dumping Margin Likely to Prevail

Domestic Interested Parties' Comments

- The SAA, at 890, provides that Commerce will normally select a margin determined in the investigation "because that is the only calculated rate that reflects the behavior of exporters… without the discipline of an order." It is also Commerce's policy to normally provide to the ITC the margin that was determined in the investigation "regardless of whether the margin was calculated using a company's own information or based on best information available or the facts available," citing *Sunset Policy Bulletin*, 63 FR at 18873.

[46] *See* SAA at 889, the House Report at 63, and the Senate Report at 52.
[47] *See* SAA at 889; *see also* House Report at 63-64.
[48] *See, e.g.*, *Certain Activated Carbon from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 77 FR 33420 (June 6, 2012), and accompanying Issues & Decision Memorandum at Comment 1.

- Because no antidumping duty administrative reviews of CWP from the China have been conducted,[49] the investigation dumping margins are the best evidence of the Chinese exporters' behavior in the absence of an order. Additionally, while Commerce will not rely on dumping margins calculated using the "zeroing" methodology found to be WTO-inconsistent, "zeroing" was not employed in the calculation of margins in the investigation.
- Although Commerce used amended investigation rates of 45.35 percent for the separate rate companies and 68.24 percent for the China-wide entity in the first sunset review, the original investigation rates of 69.20 percent and 85.55 percent were reinstated after the first sunset review.[50] As such, Commerce should find that the likely dumping margins in the event of a revocation of the *Order* are 69.20 percent for separate rate exporters and 85.55 percent for the China-wide entity. The separate rate was calculated as a simple average of the margins alleged in the petition, while the China-wide entity rate was based on the highest margin alleged in the petition.

<u>Commerce's Position</u>

Pursuant to section 752(c)(3) of the Act, Commerce 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.[51] 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.[52] Under certain circumstances, however, Commerce may select a more recent rate to report to the ITC.

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 zeroing methodology found to be WTO-inconsistent.[53] Neither of the mandatory respondents from the original investigation participated in the investigation, and so both are considered to be part of the China-wide entity.[54] Additionally, there have been no changes to the rate of the separate rate respondents as determined in the investigation. Because no administrative reviews of CWP from the China have been completed, the investigation dumping margins, as amended by the *CWP Timken Notice*, are the best evidence of the Chinese exporters' behavior in the absence of an order, (*i.e.*, 69.20 percent for the separate rate respondents and 85.55 percent for the China-wide entity). The dumping margins for the separate rate companies and the China-wide entity in the antidumping investigation were based on the dumping margins from the petition and, therefore,

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[49] As noted above, the ongoing antidumping duty administrative review has not been completed.
[50] *See CWP Timken Notice*.
[51] *See SAA* at 890; *see also*, *e.g.*, *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.
[52] *Id*.
[53] *See Final Modification for Reviews* at 77 FR at 8103.
[54] *See Final Determination* at 73 FR at 31973.

do not include zeroing and are consistent with the *Final Modification for Reviews*.

Final Results of Review

We determine that revocation of the *Order* on CWP from China would be likely to 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 85.55 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 review in the *Federal Register* and notify the ITC of Commerce's determination.

☒ ☐

____________ ____________
Agree Disagree

4/10/2019

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