



A-570-504
Sunset Review
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July 2, 2021

MEMORANDUM TO: Christian Marsh
Acting 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 Fifth Sunset Review of the Antidumping Duty Order on Certain Petroleum Wax Candles from the People's Republic of China

I. SUMMARY

We have analyzed the response of domestic producers of certain petroleum wax candles (candles) in the expedited fifth sunset review of the antidumping duty (AD) order on candles from the People's Republic of China (China). No other 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 amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2). 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 in this sunset review for which we received a substantive response:

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

II. BACKGROUND

On August 28, 1986, the Department of Commerce (Commerce) published the AD order on candles from China.¹ On April 1, 2021, Commerce initiated a sunset review of the AD order on candles from China pursuant to section 751(c) of the Act.² Commerce received a notice of intent to participate from a domestic interested party, the National Candle Association (the petitioner),

¹ See *Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China*, 51 FR 30686 (August 28, 1986) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 86 FR 16701 (March 31, 2021), where the applicable date of initiation was April 1, 2021.



within the deadline specified in 19 CFR 351.218(d)(1)(i).³ The petitioner claimed interested party status under section 771(9)(C) of the Act as the petitioner in the less-than-fair-value (LTFV) investigation whose members are manufacturers, producers, or wholesalers of the domestic like product. On April 29, 2021, Commerce received an adequate substantive response from the petitioner within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁴ Commerce received no responses from respondent interested parties with respect to the *Order* covered by this sunset review.

On May 21, 2021, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁵ 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 *Order*.

III. SCOPE OF THE *ORDER*

The products covered by the *Order* are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. The products were originally classifiable under the Tariff Schedules of the United States item 755.25, Candles and Tapers. The products are currently classifiable under the Harmonized Tariff Schedule (HTSUS) subheading 3406.00.00. The HTSUS subheading is provided for convenience and customs purposes. The written description remains dispositive.

IV. HISTORY OF THE *ORDER*

On July 10, 1986, Commerce published its *Final Determination* in the LTFV investigation with respect to imports of candles from China.⁶ Commerce found the following *ad valorem* dumping margin:⁷

Exporter	Weighted-Average Margin (%)
All Producers/Manufacturers/Exporters	54.21

Following the issuance of Commerce's *Final Determination*, the ITC found that the U.S. industry was materially injured by reason of imports from China pursuant to section 735(b)(1)(A)(i) of the Act.⁸ Subsequently, Commerce published the *Order*.

³ See Petitioner's Letter, "Notice of Intent to Participate," dated April 2, 2021.

⁴ See Petitioner's Letter, "Substantive Response," dated April 29, 2021 (Substantive Response).

⁵ See Commerce's Letter, "Sunset Reviews for April 2021," dated May 21, 2021.

⁶ See *Petroleum Wax Candles from the People's Republic of China: Final Determination of Less Than Fair Value*, 51 FR 25085 (July 10, 1986) (*Final Determination*).

⁷ *Id.*, 51 FR at 25088.

⁸ See *Determination of the Commission in Investigation No. 731-TA-282 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation*, ITC Pub. No. 1888 (August 1986).

Commerce has conducted eight administrative reviews (ARs), two anti-circumvention inquiries, four sunset reviews, and numerous scope inquiries since the issuance of the *Order*. In the first AR, conducted in 1988, Commerce assigned a margin of 54.21 percent to the producer/exporter.⁹

On January 4, 1999, Commerce initiated its first sunset review of the *Order*.¹⁰ On June 17, 1999, in the final results of the first sunset review, Commerce determined that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping and reported the margin of 54.21 percent.¹¹ After the ITC determined that revocation of the *Order* would lead to a continuation or recurrence of injury to the domestic industry, Commerce published a notice of continuation on September 23, 1999.¹²

In the second AR, conducted in 2001, Commerce determined a margin of 54.21 percent existed for all reviewed producer/exporters and resellers.¹³ In the third AR, the China-wide rate remained 54.21 percent, and the producer/exporter under review received a margin of 65.02 percent.¹⁴ In the fourth AR, Commerce determined a margin of 108.30 percent for the producer/exporter under review, and both the China-wide rate and the rate assigned to separate rate applicants also increased to 108.30 percent.¹⁵ The fifth and sixth ARs were both rescinded and, thus, no margins were calculated.¹⁶

On December 16, 2004, Commerce initiated its second sunset review of the *Order*.¹⁷ In the final results of the second sunset review, Commerce determined that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping. While the dumping margin from the LTFV investigation was 54.21 percent, Commerce also noted that it may, in certain instances, determine that a more recently-calculated rate for a company may be appropriate, such as when, for the particular company, dumping margins increased after the issuance of the order, even if the increase was as a result of the application of best information available or facts available.¹⁸

⁹ See *Petroleum Wax Candles from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 53 FR 47742 (November 25, 1988).

¹⁰ See *Initiation of Five-Year ("Sunset") Reviews*, 64 FR 364 (January 4, 1999).

¹¹ See *Final Results of Expedited Sunset Review: Petroleum Wax Candles from the People's Republic of China*, 64 FR 32481 (June 17, 1999), and accompanying Issues and Decision Memorandum (IDM).

¹² See *Continuation of Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China*, 64 FR 51514 (September 23, 1999).

¹³ See *Petroleum Wax Candles from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 66 FR 14545 (March 13, 2001).

¹⁴ See *Petroleum Wax Candles from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 13264 (March 19, 2003).

¹⁵ See *Notice of Final Results and Rescission in Part, of the Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 69 FR 12121 (March 15, 2004) (2004 Final Results); see also *Petroleum Wax Candles from the People's Republic of China: Amended Notice of Final Results of the Antidumping Duty Administrative Review*, 69 FR 20858 (April 19, 2004) (2004 Amended Final Results).

¹⁶ See *Petroleum Wax Candles from the People's Republic of China: Rescission of Antidumping Duty Administrative Review*, 69 FR 18871 (April 9, 2004); see also *Notice of Rescission of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 70 FR 33733 (June 9, 2005).

¹⁷ See *Initiation of Five-Year ("Sunset") Reviews*, 69 FR 46134 (August 2, 2004).

¹⁸ See *Petroleum Wax Candles from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 69 FR 75302 (December 16, 2004) (*Sunset II*), and accompanying IDM; 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*).

Thus, in *Sunset II*, Commerce determined the rate of 108.30 percent (the China-wide rate in the most recently completed AR that occurred during the period covered by *Sunset II*) to be the magnitude of dumping that would exist if the *Order* were lifted.¹⁹ After the ITC determined that revocation of the *Order* would lead to a continuation or recurrence of injury to the domestic industry, Commerce published a second notice of continuation on September 29, 2005.²⁰

In the seventh and eighth ARs, completed in 2006 and 2007, respectively the China-wide rate remained 108.30 percent, which was the same rate given to the reviewed producer/exporters in each of those reviews.²¹ During this time period, Commerce also conducted two anti-circumvention inquiries. On October 6, 2006, Commerce determined in the first anti-circumvention inquiry that candles composed of petroleum wax and over fifty percent or more of palm and/or other vegetable oil-based waxes (“mixed-wax candles”) were later-developed merchandise that circumvented the *Order* under section 781(d) of the Act.²² In that segment of the proceeding, Commerce also determined that mixed-wax candles containing any amount of petroleum are covered by the scope of the *Order*.²³ Further, on June 5, 2007, Commerce issued a final determination in the second anti-circumvention inquiry, finding that the importation by, or sale to, three U.S. importers of wickless petroleum wax forms from China, which subsequently underwent insertion of a wick and clip assembly in the United States, constituted circumvention of the *Order* pursuant to section 781(a) of the Act.²⁴

On July 9, 2010, Commerce initiated its third sunset review of the *Order*.²⁵ On November 18, 2010, in the final results of the third sunset review, Commerce determined that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping and reported the margin of 108.30 percent.²⁶ After the ITC determined that revocation of the *Order* would lead to a continuation or recurrence of injury to the domestic industry, Commerce published a notice of continuation on January 6, 2011.²⁷

On December 1, 2015, Commerce initiated its fourth sunset review of the *Order*.²⁸ In *Sunset IV*, we found that revocation of the *Order* would be likely to lead to continuation or recurrence of

¹⁹ See *Sunset II*.

²⁰ See *Continuation of Antidumping Duty Order: Petroleum Wax Candles from the People’s Republic of China*, 70 FR 56890 (September 29, 2005); see also *Petroleum Wax Candles from China*, 70 FR 44695 (August 3, 2005).

²¹ See *Petroleum Wax Candles from the People’s Republic of China: Final Results of the 2004-2005 Antidumping Duty Administrative Review*, 71 FR 62417 (October 25, 2006); see also *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People’s Republic of China*, 72 FR 52355 (September 13, 2007).

²² See *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 71 FR 59075 (October 6, 2006) (*Anticircumvention I*).

²³ *Id.*

²⁴ See *Petroleum Wax Candles from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 72 FR 31053 (June 5, 2007).

²⁵ See *Initiation of Five-Year (“Sunset”) Review*, 75 FR 39494 (July 9, 2010).

²⁶ See *Petroleum Wax Candles from the People’s Republic of China: Final Results of Expedited Third Sunset Review of Antidumping Duty Order*, 75 FR 70713 (November 18, 2010) (*Sunset III*), and accompanying IDM.

²⁷ See *Petroleum Wax Candles from the People’s Republic of China: Continuation of Antidumping Duty Order*, 76 FR 773 (January 6, 2011).

²⁸ See *Initiation of Five-Year (“Sunset”) Review*, 80 FR 75064 (December 1, 2015).

dumping at a WTO-consistent rate of 95.86 percent based on available record information.²⁹ In addition, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³⁰ Thus, Commerce published the notice of continuation of the *Order*.³¹

Throughout the history of the *Order*, Commerce has received more than 107 scope ruling requests.³² Additionally, in 2011, Commerce issued a clarified interpretation of the scope of the *Order*.³³

Commerce is conducting the fifth sunset review of the *Order* on candles from China. The *Order* remains in effect for all manufacturers, producers, and exporters of candles from China.

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 both 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 the periods after the issuance of the AD order. In addition, section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA,³⁴ the House Report,³⁵ and the Senate Report,³⁶ Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.³⁷ In addition, Commerce normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when: (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.³⁸ Alternatively,

²⁹ See *Certain Petroleum Wax Candles from the People's Republic of China: Final Results of Expedited Fourth Sunset Review of the Antidumping Duty Order*, 81 FR 17665 (March 30, 2016) (*Sunset IV*), and accompanying IDM.

³⁰ See *Petroleum Wax Candles from China*, 81 FR 31256 (May 18, 2016).

³¹ See *Certain Petroleum Wax Candles from the People's Republic of China: Continuation of Antidumping Duty Order*, 81 FR 33466 (May 26, 2016).

³² A listing of Commerce's final rulings on scope requests related to this *Order* is available at <http://enforcement.trade.gov/download/candles-prc-scope/index.html>. The number of individual candles subject to the scope requests ranges from one to 270.

³³ See *Petroleum Wax Candles from the People's Republic of China: Final Results of Request for Comments on the Scope of the Antidumping Duty Order*, 76 FR 46277 (August 2, 2011).

³⁴ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA).

³⁵ See H. Rep. No. 103-826, pt. 1 (1994) (House Report).

³⁶ See S. Rep. No. 103-412 (1994) (Senate Report).

³⁷ See SAA at 879; see also House Report at 56.

³⁸ See SAA at 889-890; House Report at 63-64; Senate Report at 52; and *Sunset Policy Bulletin*.

Commerce normally will determine that revocation of an AD 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.³⁹

Furthermore, 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 the investigation may dampen import volumes and, thus, skew the comparison.⁴⁰ 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.⁴¹

In addition, section 752(c)(3) of the Act states that the magnitude of the margin of dumping that is likely to prevail if the order were revoked shall be provided by Commerce to the ITC. Generally, Commerce selects the weighted-average 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.⁴² In certain circumstances, however, 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").⁴³ Finally, pursuant to section 752(c)(4)(A) of the Act, a margin of dumping likely to prevail 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 LTFV.⁴⁴

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 found to be World Trade Organization (WTO)-inconsistent.⁴⁵ 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 ARs pursuant to

³⁹ See SAA at 889-890; see also House Report at 63.

⁴⁰ See *Stainless Steel Bar from Germany: Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying IDM at Comment 1.

⁴¹ See, e.g., *Certain Welded Carbon Steel Pipes and Tubes from India, Thailand, and Turkey: Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders*, 82 FR 46485 (October 5, 2017), and accompanying IDM; and *Ferrovanadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying IDM.

⁴² 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 IDM at Comment 2.

⁴³ See SAA at 890-91.

⁴⁴ 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 IDM at Comment 1.

⁴⁵ 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*).

section 777A(d)(1)(B) of the Act.⁴⁶ 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.⁴⁷ 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.”⁴⁸

VI. DISCUSSION OF THE ISSUES

1. Likelihood of Continuation or Recurrence of Dumping

Petitioner’s Comments⁴⁹

The petitioner argues that revocation of the *Order* is likely to lead to continued or recurring dumping, which is illustrated by the fact that dumping has continued without interruption since the issuance of the *Order*.⁵⁰

The petitioner also argues that three other factors should be considered in determining that dumping would continue if the *Order* were revoked. First, the petitioner argues that persistent and widespread circumvention of the *Order* throughout its history indicates that dumping would continue if the *Order* were revoked. Second, the petitioner argues that the Chinese candle industry is export-oriented and has massive idle production capacity. And third, the petitioner argues that a recent decision by the Government of China to increase the export rebate for candles would enable Chinese candle exporters to undersell U.S. producers by an even more significant margin.⁵¹

Commerce’s Position

As explained in the “Legal Framework” section above, when determining whether revocation of the order would be likely to lead to the 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 AD 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

⁴⁶ *Id.*, 77 FR at 8102, 8105, and 8109.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See Substantive Response at 5-21.

⁵⁰ *Id.* at 7-10 and Exhibits C-D and F.

⁵¹ *Id.* at 21 and Exhibits L.1 and L.2.

could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping.”⁵² 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.”⁵³ Alternatively, the legislative history provides that declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.⁵⁴

Dumping margins have persisted at margins above *de minimis* since the *Order* was established, and in 2004, Commerce determined that the original dumping margin of 54.21 percent should be increased to 108.30 percent.⁵⁵ In addition, pursuant to section 752(c)(1)(B) of the Act, Commerce considered the volume of imports of the subject merchandise in determining whether revocation of the *Order* would likely lead to continuation or recurrence of dumping. The petitioner states that the volume of imports of candles from China would increase dramatically if the *Order* was revoked. While HTSUS subheading 3406.00.00 is a basket category (thereby only allowing for an approximation of subject imports), these data represent the best data available.

Based on the data on the record, Commerce finds that imports have decreased since *Anticircumvention I* and throughout the fourth sunset period. For the fifth sunset period, imports have steadily increased. However, the import volume is still less than the import volumes during the year preceding initiation of the underlying investigation as well as prior to *Anticircumvention I*.⁵⁶ This indicates that Chinese exporters have not been able to maintain pre-investigation import levels without selling merchandise at dumped prices.⁵⁷ Moreover, respondent interested parties have not participated in this sunset review. Therefore, given that: (1) dumping has continued following the issuance of the *Order* at above *de minimis* margins; (2) import volumes are still less than import volumes during the year preceding initiation of the underlying investigation; (3) respondent interested parties have not participated in these sunset reviews; and (4) we have no argument or evidence to the contrary, pursuant to section 752(c)(1) of the Act, we determine that revocation of the *Order* would likely result in the continuation of dumping in the United States.

⁵² See SAA at 890.

⁵³ *Id.* at 889; see also House Report at 63; and Senate Report at 52.

⁵⁴ See SAA at 889-90; see also House Report at 63; and Senate Report at 52.

⁵⁵ See 2004 *Final Results*; see also 2004 *Amended Final Results*.

⁵⁶ See Substantive Comments at Exhibit D.

⁵⁷ See, e.g., *Barium Chloride from the People's Republic of China: Final Results of Expedited Fifth Sunset Review of the Antidumping Duty Order*, 86 FR 7257 (January 27, 2021), and accompanying IDM at 5-6; see also *Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order*, 78 FR 72639 (December 3, 2013), and accompanying IDM at 6-8.

2. Magnitude of the Margins Likely to Prevail

Petitioner's Comments⁵⁸

The petitioner cites to the SAA and the *Sunset Policy Bulletin* and notes that Commerce normally will select the rate from the original investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place. The petitioner further explains that paragraph 11.B.2 provides an exception for Commerce to use a “more recently calculated margin for a particular company where, for the particular company, dumping margins increased after the issuance of the *Order*, even if the increase was as a result of the application of best information available or facts available.”⁵⁹ Therefore, the petitioner argues that, consistent with the SAA and the *Sunset Policy Bulletin*, Commerce should rely upon the dumping margin of 108.30 percent because this is the rate that remains in effect for all Chinese producers of subject merchandise. Lastly, the petitioner disagrees with the approach taken in *Sunset IV*, where Commerce relied upon the margins published in the *2004 Final Results* and not the *2004 Amended Final Results* to calculate a WTO-consistent margin, and argues that if Commerce intends to continue to calculate a WTO-consistent margin in this instant review, Commerce should use the *2004 Amended Final Results*.

Commerce'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.⁶⁰ Commerce's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of the manufacturers, producers, and exporters without the discipline of an order in place.⁶¹ As noted in *Sunset II*, *Sunset III*, and *Sunset IV*, Commerce may, in certain instances, determine that a more recently-calculated rate for a company may be appropriate. As a result of the *2004 Final Results*, which included 97 entities who failed to cooperate with Commerce to the best of their ability, Commerce determined to apply a China-wide rate of 108.30 percent, the dumping margin calculated for the producer/exporter under review in that segment. Since *Sunset IV*, Commerce has not had any ARs. Currently, no exporters of candles from China have a rate that differs from 108.30 percent.

As indicated in the “Legal Framework” section above, consistent with the *Final Modification for Reviews*, Commerce's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology. The *2004 Final Results* and *2004 Amended Final Results* were calculated prior to the *Final Modification for Reviews* and are based on a methodology deemed to be WTO-inconsistent. Thus, for these final results of the expedited sunset review, we find that it is no longer appropriate to report the 108.30 percent margin

⁵⁸ See Substantive Response at 21-24.

⁵⁹ *Id.* at 22 (citing *Sunset Policy Bulletin*, 63 FR at 18875).

⁶⁰ See SAA at 890; see also, e.g., *Persulfates Second Sunset Review* IDM at Comment 2.

⁶¹ See SAA at 890; and *Sunset Policy Bulletin* at 18872 at section II.B.1; see also *Persulfates Second Sunset Review* IDM at Comment 2.

calculated in the *2004 Final Results*. Instead, Commerce has determined that it is appropriate to revise the margin calculated in the *2004 Amended Final Results* by deleting language from the margin calculations which removes negative margins from the overall margin calculation.⁶² The resulting margin is 104.33 percent.⁶³ Accordingly, consistent with *Final Modification for Reviews* and section 752(c) of the Act, Commerce will report to the ITC the rate as indicated in the Final Results of Sunset Review section below.

VII. FINAL RESULTS OF SUNSET REVIEW

We determine that revocation of the *Order* would likely lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be weighted-average margins up to 104.33 percent.

VIII. RECOMMENDATION

Based on our analysis of the substantive response, 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

7/2/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

⁶² In *Sunset IV*, Commerce calculated a WTO-consistent margin using the margin program and data that was used to calculate the margin reported in the *2004 Final Results*, based on the available record evidence. In this instant review, Commerce started from the *2004 Final Results* margin program and data and then revised the program to apply the changes made in the *2004 Amended Final Results*. See Memorandum, “Revised Margin Calculation,” dated concurrently with this memorandum.

⁶³ *Id.*