



**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**  
Washington, D.C. 20230

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Sunset Review  
Public Document  
AD/CVD I: MR

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of  
Expedited First Sunset Review of the Antidumping Duty Order on  
Small Diameter Graphite Electrodes from the People's Republic of  
China

### Summary

We analyzed the substantive response of domestic interested parties in the first sunset review of the antidumping duty order covering small diameter graphite electrodes (SDGEs) from the People's Republic of China (PRC). No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review. We recommend that you approve the positions we developed 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 substantive responses:

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

### Background

On January 2, 2014, the Department of Commerce (the Department) published the notice of initiation of the sunset review of the antidumping duty order on SDGEs from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>1</sup> The Department received a notice of intent to participate from domestic interested parties, GrafTech USA LLC, SGL Carbon LLC, and Superior Graphite Company (collectively, domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>2</sup> The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers of the domestic like product. On January 27, 2014, the Department received an adequate substantive response from

<sup>1</sup> See *Initiation of Five-Year ("Sunset") Review*, 79 FR 110 (January 2, 2014) (*Initiation*).

<sup>2</sup> See letter of Intent to Participate from the domestic interested parties to Secretary Penny Pritzker, entitled "Five-Year ("Sunset") Review of the Antidumping Order on Small Diameter Graphite Electrodes from the People's Republic of China: Domestic Interested Parties' Notice of Intent to Participate" {emphasis removed} dated, January 13, 2014, (Domestic Substantive Response).



the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department received no responses from respondent interested parties regarding the order covered by this sunset review. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the antidumping duty order on SDGEs from the PRC.

### History of the Order

On January 14, 2009, the Department published its final affirmative determination of sales at less than fair value (LTFV) with respect to imports of SDGEs from the PRC.<sup>3</sup> The Department found the following *ad valorem* dumping margins:<sup>4</sup>

Fushun Carbon Co., Ltd. Produced by: Fushun Carbon Co., Ltd.	159.64%
Fangda Carbon New Material Co., Ltd. Produced by: Fangda Carbon New Material Co., Ltd.	159.64%
Beijing Fangda Carbon Tech Co., Ltd. Produced by: Chengdu Rongguang Carbon Co., Ltd.; Fangda Carbon New Material Co., Ltd.; or Fushun Carbon Co., Ltd.	159.64%
Chengdu Rongguang Carbon Co., Ltd. Produced by: Chengdu Rongguang Carbon Co., Ltd.	159.64%
Jilin Carbon Import and Export Company Produced by: Sinosteel Jilin Carbon Co., Ltd.	132.90%
Guanghan Shida Carbon Co., Ltd. Produced by: Guanghan Shida Carbon Co., Ltd.	132.90%
Nantong River–East Carbon Joint Stock Co., Ltd. Produced by: Nantong River–East Carbon Co., Ltd.; or Nantong Yangzi Carbon Co., Ltd.	132.90%
Xinghe County Muzi Carbon Co. Ltd. Produced by: Xinghe County Muzi Carbon Co., Ltd.	132.90%
Brilliant Charter Limited Produced by: Nantong Falter New Energy Co., Ltd.; or Shanxi Jinneng Group Co., Ltd.	132.90%
Shijiazhuang Huanan Carbon Factory Produced by: Shijiazhuang Huanan Carbon Factory	132.90%
Shenyang Jinli Metals & Minerals Imp & Exp Co., Ltd. Produced by: Shenyang Jinli Metals & Minerals Imp. & Exp. Co., Ltd.	132.90%
Shanghai Jinneng International Trade Co., Ltd. Produced by: Shanxi Jinneng Group Datong Energy Development Co., Ltd.	132.90%
Dalian Thrive Metallurgy Import and Export Co., Ltd. Produced by: Linghai Hongfeng Carbon Products Co., Ltd.; Tianzhen Jintian Graphite Electrodes Co., Ltd.; Jiaozuo Zhongzhou Carbon Products Co., Ltd.; Heilongjiang Xinyuan Carbon Products Co., Ltd.; Xuzhou Jianglong Carbon Manufacture Co., Ltd.; or Xinghe Xinyuan Carbon Products Co., Ltd.	132.90%

<sup>3</sup> See *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People’s Republic of China*, 74 FR 2049 (January 14, 2009) (*LTFV Determination*).

<sup>4</sup> *Id.*, 74 FR at 2054-55.

GES (China) Co., Ltd. Produced by: Shanghai GC Co., Ltd.; Fushun Jinli Petrochemical Carbon Co., Ltd.; Xinghe County Muzi Carbon Plant and Linyi County Lubei Carbon Co., Ltd. Shandong Province	132.90%
Qingdao Haosheng Metals & Minerals Imp & Exp Co., Ltd. Produced by: Sinosteel Jilin Carbon Co., Ltd.	132.90%
PRC–Wide Entity	159.64%

Following the issuance of the Department’s final determination, the International Trade Commission (ITC) found that the U.S. industry was threatened with material injured by reason of subject imports from the PRC pursuant to section 735(b) of the Act.<sup>5</sup> Subsequently, the Department published the antidumping duty order on SDGEs from the PRC.<sup>6</sup>

Since the issuance of the *Antidumping Duty Order*, the Department completed three administrative reviews<sup>7</sup> and is currently conducting two additional administrative reviews of the *Antidumping Duty Order*.<sup>8</sup> There has not been any new-shipper, changed-circumstances or duty-absorption reviews of the *Antidumping Duty Order*. There have been two circumvention scope determinations on SDGEs from the PRC. The order remains in effect for all producers and exporters of SDGEs from the PRC.

### Circumvention

The products covered by the first circumvention determination are SDGEs (or graphite pin joining systems) that were 1) produced by UK Carbon and Graphite Co., Ltd. (UKCG) from PRC-manufactured artificial/synthetic graphite forms (*e.g.*, blanks, rods, cylinders, billets, blocks, *etc.*), 2) which required additional machining processes (*i.e.*, tooling and shaping) that UKCG performed in the United Kingdom (UK), and 3) were re-exported to the United States as UK-origin merchandise. As a result of this circumvention determination Harmonized Tariff Schedule of the United States (HTSUS) subheading 3801.10 was added to the scope of the *Antidumping Duty Order*.<sup>9</sup>

<sup>5</sup> See *Small Diameter Graphite Electrodes from China*, International Trade Commission Publication 4062, Investigation No. 731-TA-1143 (Final) (February 2009) (*ITC Final Determination*) at 1.

<sup>6</sup> See *Antidumping Duty Order: Small Diameter Graphite Electrodes from the People’s Republic of China*, 74 FR 8775 (February 26, 2009) (*Antidumping Duty Order*).

<sup>7</sup> See *Small Diameter Graphite Electrodes from the People’s Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order and Final Rescission of the Administrative Review, in Part*, 76 FR 56397 (September 13, 2011), amended in *Small Diameter Graphite Electrodes From the People’s Republic of China: Amended Final Results of the First Administrative Review of the Antidumping Duty Order*, 77 FR 15042 (March 14, 2012) (*First Review*); *Small Diameter Graphite Electrodes From the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review*, 77 FR 40854 (July 11, 2012) (*Second Review*); and *Small Diameter Graphite Electrodes From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 55680 (September 11, 2013) (*Third Review*).

<sup>8</sup> See *Small Diameter Graphite Electrodes from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission; 2012–2013*, 79 FR 15944 (March 24, 2014); and *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 18262 (April 1, 2014).

<sup>9</sup> See *Small Diameter Graphite Electrodes From the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596 (August 9, 2012) and accompanying Issues and Decision Memorandum (IDM) (*First Circumvention Determination*).

The second circumvention determination established that imports of SDGEs from the PRC produced and/or exported by Sinosteel Jilin Carbon Co., Ltd. and Jilin Carbon Import & Export Company (collectively, Jilin Carbon), with an actual or nominal diameter of 17 inches, and otherwise meeting the description of inscope merchandise, constitute merchandise altered in form or appearance in such minor respects that it is included within the scope of the *Antidumping Duty Order*, pursuant to section 781(c) of the Act.<sup>10</sup> These imports are classified under HTSUS 8545.11.0020.

### Scope of the Order

The merchandise covered by the order includes all SDGEs of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining system or any other type of joining system or hardware. The merchandise covered by the order also includes graphite pin joining systems for SDGEs, of any length, whether or not finished, of a kind used in furnaces, and whether or not the graphite pin joining system is attached to, sold with, or sold separately from, the SDGE. SDGEs and graphite pin joining systems for SDGEs are most commonly used in primary melting, ladle metallurgy, and specialty furnace applications in industries including foundries, smelters, and steel refining operations. SDGEs and graphite pin joining systems for SDGEs that are subject to the order are currently classified under the HTSUS subheadings 8545.11.0010,<sup>11</sup> 3801.10,<sup>12</sup> and 8545.11.0020.<sup>13</sup> The HTSUS numbers are provided for convenience and customs purposes, but the written description of the scope is dispositive.

### Discussion of the Issues

#### *Legal Framework*

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the 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.

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<sup>10</sup> See *Small Diameter Graphite Electrodes From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order and Recission of Later-Developed Merchandise Anticircumvention Inquiry*, 78 FR 56864 (September 16, 2013) and accompanying IDM (*Second Circumvention Determination*) at Comment 1; see also the Department's instruction to Customs and Border Protection, Automatic Customs Enforcement Message No. 3261316 at paragraph 6.

<sup>11</sup> The scope described in the order refers to the HTSUS subheading 8545.11.0000. We note that, starting in 2010, imports of SDGEs are classified in the HTSUS under subheading 8545.11.0010 and imports of large diameter graphite electrodes are classified under subheading 8545.11.0020.

<sup>12</sup> See *First Circumvention Determination*, and accompanying IDM at Comment 6 (the scope of the order is amended to include imports classifiable under HTSUS 3801.10, *i.e.*, un-finished SDGEs).

<sup>13</sup> See *Second Circumvention Determination*, and accompanying IDM at Comment 2 and 1 (the scope of the order is amended to include large diameter graphite electrodes, specifically those of 17" inches produced by Jilin Carbon classifiable under HTSUS 8545.11.0020).

As explained in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), the Department 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. Alternatively, the Department 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.<sup>14</sup> In addition, as a base period for import volume comparison, it is the Department's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew comparison.<sup>15</sup>

Further, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the margin(s) from the final determination in the original investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.<sup>16</sup> However, the Department may use a rate from a more recent review where the dumping margin increased, as this rate 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).<sup>17</sup> Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of "zero or *de minimis* shall not by itself require" the Department to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at LTFV.

In the *Final Modification for Reviews*, the Department announced that it was modifying its practice in sunset reviews, such that 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.<sup>18</sup> The Department also noted that "*only in the most extraordinary circumstances* will the Department rely on margins other than those calculated and published in prior determinations."<sup>19</sup> The Department further noted that it does not anticipate that it will need to recalculate the dumping margins in sunset determinations to avoid WTO inconsistency, apart from the "most extraordinary circumstances" provided for in its regulations.<sup>20</sup>

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<sup>14</sup> See SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90.

<sup>15</sup> 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 IDM at Comment 1.

<sup>16</sup> See SAA at 890. 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 IDM at Comment 2.

<sup>17</sup> See SAA, at 890-91.

<sup>18</sup> 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*).

<sup>19</sup> See *id.* (emphasis added)

<sup>20</sup> See *id.*

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

## 1. Likelihood of Continuation or Recurrence of Dumping

### *Interested-Party Comments*

The domestic interested parties assert that revocation of the antidumping duty order would lead to a continuation or recurrence of dumping by producers and exporters of SDGEs from the PRC.<sup>21</sup>

The domestic interested parties argue that dumping margins established in the investigation, remain in force for numerous companies at above *de minimis* levels.<sup>22</sup> Even though zero margins were found for certain respondents during the *Third Review*, the domestic interested parties argue that dumping continued at above *de minimis* levels, after the issuance of the order, and therefore revocation of the order would likely lead to continuation or recurrence of dumping.<sup>23</sup> Further the domestic interested parties argue that the continued existence of sales at LTFV by the majority of Chinese respondents during multiple completed reviews suggests that respondents are unable to sell in the United States without dumping, and the revocation of the *Antidumping Duty Order* would lead to renewed and even increased dumping.<sup>24</sup>

The domestic interested parties assert that U.S. imports of SDGEs from the PRC were well below those of the pre-order period.<sup>25</sup> The domestic interested parties explain that for 2005 through 2007, the period prior to the order, subject imports were 12,342 metric tons (MT) annually, that subject imports were 13,000 MT in 2008, the year the petition was filed, and averaged 2,057 MT for the current review period of 2009 through 2013.<sup>26</sup> The domestic interested parties cite the *Policy Bulletin*<sup>27</sup> to argue that this situation is clearly defined in our practice, insofar as a decline of imports combined with the continued existence of dumping margins above *de minimis* after the imposition of the order provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence indicates that the exporter needs to dump to sell at pre-order volumes.<sup>28</sup> The domestic interested parties conclude that for these reasons the Department should conclude that revocation of the order would be likely to lead to continuation or recurrence of dumping in the United States by Chinese producers and/or exporters of SDGE.<sup>29</sup>

### *Department's Position*

Drawing on the guidance provided in the legislative history accompanying the URAA, specifically the SAA, the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and

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<sup>21</sup> See Domestic Substantive Response at 14.

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> See *id.*, at 15.

<sup>25</sup> See *id.*, at 17.

<sup>26</sup> See *id.*

<sup>27</sup> See *id.*, at 17-18 (citing *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 18871 at 18872 (April 16, 1998) (*Policy Bulletin*) quoting the SAA at 889).

<sup>28</sup> See *id.*

<sup>29</sup> See *id.* at 18.

the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's determination of likelihood of continuation or recurrence will be made on an order-wide basis for each case.<sup>30</sup> Further, 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 the Department 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. In addition, the Department will normally determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of an order and import volumes for the subject merchandise declined significantly.<sup>31</sup> For reasons discussed below, we find that revocation of the antidumping order on SDGE from the PRC would likely result in the continuation or recurrence of dumping in the United States.

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and any subsequent reviews. As stated above, if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were removed.<sup>32</sup> The SAA also provides that the existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping.<sup>33</sup> As stated in the *Final Modification for Reviews*, “{i}f the dumping margins determined in a manner not found to be WTO-inconsistent in these disputes indicate that dumping continued with the discipline of the order in place, those dumping margins alone can form the basis for a determination that dumping will continue or recur if the order were to be revoked.”<sup>34</sup> With respect to imports from the PRC, WTO-consistent investigation rates remain in effect for some producers and/or exporters. Other producers and/or exporters received revised rates during the sunset period that are WTO-inconsistent.<sup>35</sup> More specifically, in the investigation, non-examined producers and/or exporters with a separate rate received an adverse facts available (AFA) rate that was a simple average of the petition rates, 132.90 percent, and that rate remained unchanged by administrative reviews.<sup>36</sup> Examined exporters with a separate rate and the PRC-wide entity were assigned a WTO-consistent rate of 159.64 percent, an AFA rate based on the highest petition rate.<sup>37</sup> The 159.64 percent rate was modified in subsequent administrative reviews and as a result became WTO-inconsistent (*i.e.*, containing zeroing).<sup>38</sup> In summary, because there is a continued existence of above *de minimis* margins for U.S. imports of SDGEs from the PRC, the Department finds dumping is likely to continue or recur if the order on SDGEs from the PRC was revoked.

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<sup>30</sup> See SAA at 879 and House Report at 56.

<sup>31</sup> See SAA at 889-890, House Report at 63-64, and Senate Report at 52.

<sup>32</sup> See SAA at 890.

<sup>33</sup> See *id.*

<sup>34</sup> See *Final Modification for Reviews*, 77 FR at 8103.

<sup>35</sup> See *id.*

<sup>36</sup> See *LTFV Investigation* at 2054-55, *First Review*, 77 FR at 15042, *Second Review*, 77 FR at 40856, and *Third Review*, 78 FR at 55681.

<sup>37</sup> See *LTFV Investigation* at 2054-55

<sup>38</sup> See *First Review*, 77 FR at 15042, *Second Review*, 77 FR at 40856, and *Third Review*, 78 FR at 55681.

In considering import volumes, pursuant to section 752(c)(1)(B) of the Act, the Department will consider the volume of imports of subject merchandise for the period before and after the issuance of an antidumping order.

We analyzed import volumes under HTSUS subheading 8545.11.0010, as described in the scope of the order,<sup>39</sup> using ITC Interactive Tariff and Trade DataWeb (DataWeb)<sup>40</sup> import data placed on the record by the domestic interested parties for the period 2010 through 2013.<sup>41</sup> Prior to 2010 imports of SDGEs were categorized in a basket category with all graphite electrodes (HTSUS 8545.11.0000) therefore, the ITC developed more specific data during the LTFV investigation for the purposes of establishing the level of imports of subject merchandise. The domestic interested parties reported this ITC data in lieu of DataWeb imports of HTSUS 8545.11.0000 for 2007 to establish the level of pre-investigation imports of subject merchandise.<sup>42</sup> We find this data to be reliable and representative of the pre-investigation level of imports. ITC data of this sort was not available for 2009, only import volume data for HTSUS 8545.11.0000 was available. For the purposes of this sunset review, we followed both the ITC's approach in the LTFV investigation and the Department's approach that has emerged over the course of the sunset period with respect to HTSUS 8545.11.000 and disregarded its use with respect to establishing the volume of imports of SDGEs in 2007 and 2009. Further, we disregarded an estimate, provided by the domestic interested parties, based on later years in the sunset period to establish the level of 2009 imports. Normally, we consider data for each of the five years subject to the sunset period to determine the effect of the order on the level of imports of subject merchandise. However, in this case we determine that there is no reliable or representative 2009 data available for SDGEs and therefore we compared the yearly import volumes of HTSUS 8545.11.0010 for 2010 through 2013 to the import volume for the year immediately preceding the initiation of the LTFV investigations, *i.e.*, 2007 - as established by the ITC in the LTFV investigation, to determine the order's effect on the level of imports. Additionally, we relied on the DataWeb volume of imports for 2013 rather than the January to November annualized data supplied by the domestic interested parties. The SAA provides that 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.<sup>43</sup> Our review of import statistics for

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<sup>39</sup> In the LTFV investigation the scope provided that subject merchandise was classifiable under HTSUS 8545.11.0000, however in 2010 CBP created two 10 digit subheadings, one for graphite electrodes up to 425 mm in diameter, HTSUS 8545.11.0010, and the other for graphite electrodes greater than 425 mm in diameter, HTSUS 8545.11.0020. The scope of the order in the *First Circumvention Determination* first recognized the emergence of HTSUS 8545.11.0010. Later proceedings replaced HTSUS 8545.11.0000 with 8545.11.0010 in the scope of the order. Subject merchandise includes all graphite electrodes up to and including 400 mm in diameter, as such HTSUS 8545.11.0010, is a better indicator of subject merchandise than the broader basket category HTSUS 8545.11.0000 which contains all graphite electrodes.

<sup>40</sup> See <http://dataweb.usitc.gov/>.

<sup>41</sup> With two exceptions 1) We disregarded the 2009 import volume calculated by the petitioners (a three year average ratio of HTSUS8545.11.0010 to 8545.11.000 applied to 2009 imports of 8545.11.000) as unreliable and not representative of imports of subject merchandise, 2) we used the actual DataWeb value for 2013 imports of 8545.11.0010 rather than annualize January through November 2013 import volume as in the data submitted by domestic interested parties. See Attachment.

<sup>42</sup> See Domestic Substantive Response at 16.

<sup>43</sup> See SAA at 889.

SDGEs from the PRC under HTSUS subheadings 8545.11.0010 demonstrates that imports of subject merchandise from the PRC declined since the imposition of the *Antidumping Duty Order* and have not returned to pre-order volumes.<sup>44</sup> In the LTFV investigation the ITC established that there were 13,784 metric tons (MT) of SDGEs imported from the PRC in 2007. During 2010 through 2013, imports of HTSUS subheading 8545.11.0010, as reflected in ITC DataWeb data, amounted to a maximum of 2,792 MT in 2010, and a minimum of 1,190 MT in 2011.<sup>45</sup> Import statistics show that imports of SDGEs from the PRC declined substantially after the imposition of the order and fluctuated between 20.26 percent and 8.63 percent of the pre-investigation volume and remained significantly below pre-order volumes.<sup>46</sup>

Here, the decreased volumes of imports of SDGEs from the PRC support a conclusion that exporters and importers of subject merchandise are declining to enter into transactions at dumped prices that would have been made prior to the application of antidumping duties, and likely would be made again if the possibility of antidumping duties were removed.<sup>47</sup> Furthermore, we find that declining import volumes accompanied by the continued existence of dumping margins at above *de minimis* levels after the issuance of an order (as described above) provide a strong indication that, absent the order, dumping would be likely to continue. Therefore, the Department concludes that dumping is likely to continue or recur if the *Antidumping Duty Order* were revoked.

## 2. Magnitude of the Margin of Dumping Likely to Prevail

### *Interested-Party Comments*

According to the domestic interested parties, the *Policy Bulletin* and SAA indicate that, when determining the magnitude of the margin of dumping likely to prevail if an order were revoked normally, the Department is to select a dumping margin from the original investigation.<sup>48</sup> The domestic interested parties cite the rationale provided in the SAA which provides that “[t]he Administration intends that Commerce normally will select the rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters . . . without the discipline of an order or suspension agreement in place.”<sup>49</sup> The domestic interested parties assert that the *Policy Bulletin* acknowledges that the SAA reflects appropriate policy and provides the following guidance:

{T}he Department normally will provide the company-specific margin from the investigation for each company regardless of whether the margin was calculated using a company’s own information or based on best information available or facts available.<sup>50</sup>

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<sup>44</sup> See Attachment.

<sup>45</sup> See SAA at 889.

<sup>46</sup> See, e.g., *Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines; Final Results of the Expedited Five-year (“Sunset”) Reviews of Antidumping Duty Orders*, 71 FR 26748 (May 8, 2006); see also Attachment.

<sup>47</sup> See SAA at 890.

<sup>48</sup> See Domestic Substantive Response at 18-19 (citing *Policy Bulletin* at 18873, and SAA at 890).

<sup>49</sup> *Id.* (quoting SAA at 890).

<sup>50</sup> *Id.* (quoting *Policy Bulletin*, 63 FR at 18875-76).

Additionally, the domestic interested parties assert that in the *Final Modification for Reviews*, the Department stated that it would continue to rely on dumping margins that were not WTO-inconsistent, including margins that were based on the use of AFA and margins where no offsets were denied.<sup>51</sup> Here, all of the dumping margins from the original investigation were based on either total AFA (the highest margin in the petition) or a simple average of the margins alleged in the original petition, and, as a result, are consistent with the *Final Modification for Reviews*.

The domestic interested parties argue that the investigation margins reflect the behavior of Chinese producers and exporters without the discipline of the order.<sup>52</sup> Thus, the application of the principles set forth in the SAA and *Policy Bulletin* and *Final Modification for Reviews* call for the Department to rely on the margins from the original investigation as listed below:

<u>Producers/Exporters</u>	<u>Weighted-Average Margin (Percent)</u>
Fangda Group <sup>53</sup>	159.64
Non-examined Separate Rate Companies	132.90
PRC-wide entity	159.64

#### *Department's Position*

Normally, the Department will provide to the ITC the company-specific, weighted-average dumping margins from the investigation for each company.<sup>54</sup> For companies not individually examined, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a rate based on the all-others rate from the investigation.<sup>55</sup> However, for the PRC, which the Department considers to be a non-market economy under section 771(18)(A) of the Act, the Department does not have an all-others rate. Thus, in non-market economy cases, instead of an all-others rate, the Department uses separate rates for non-examined respondents as well as a country-wide rate which applies to all exporters that have not established their eligibility for a separate rate.<sup>56</sup>

The Department prefers to select a margin from the investigation because it is the only calculated rate that reflects the behavior of producers or exporters without the discipline of an order or

<sup>51</sup> See Domestic Substantive Response at 20 citing *Final Modification for Reviews* at 8109.

<sup>52</sup> See *id.*

<sup>53</sup> See *LTFV Determination*, 74 FR at 2050, and footnote 2 (The following companies comprise the Fangda Group: Fushun Carbon Co., Ltd., Fangda Carbon New Material Co., Ltd., Chengdu Rongguang Carbon Co., Ltd., Beijing Fangda Carbon Tech Co., Ltd., and Hefei Carbon Co., Ltd. (Fangda Group)), unchanged in the *Antidumping Duty Order*.

<sup>54</sup> See *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (Ct. Int'l Trade 1999).

<sup>55</sup> See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006), and accompanying IDM at Comment 2.

<sup>56</sup> See *Bristol Metals L.P. et al. v. United States*, 703 F. Supp. 2d 1370, 1378 (Ct. Int'l Trade 2010) (citation omitted); see also *Amanda Foods (Vietnam) Ltd v. United States*, 647 F. Supp. 2d 1368, 1379 (Ct. Int'l Trade 2009) (citation omitted).

suspension agreement in place.<sup>57</sup> Under certain circumstances, however, the Department may select a more recent rate to report to the ITC. As explained above, in accordance with the *Final Modification for Reviews*, the Department will not rely on weighted-average dumping margins that were calculated using the WTO-inconsistent methodology.<sup>58</sup>

All antidumping duty margins calculated during the administrative reviews completed during the sunset period are WTO-inconsistent, *i.e.*, include zeroing, therefore the Department relies on antidumping duty rates from the LTFV investigation that were not affected by the WTO-inconsistent methodology. In the LTFV investigation, Fangda Group and the PRC-wide entity received the highest petition rate as AFA, and the non-examined separate rate companies received a rate that was the simple average of the petition rates as AFA.<sup>59</sup> Thus, the Department finds it appropriate to report to the ITC the rates from the original investigation, in accordance with our normal practice, as the magnitude of the margin of dumping likely to prevail because they are WTO-consistent rates that best reflect the behavior of the producers and exporters subject to the orders without the discipline of the orders in place.

Final Results of Review

We determine that revocation of the antidumping duty order on SDGEs from the PRC would be likely to lead to continuation or recurrence of dumping, and the magnitude of the margin of dumping likely to prevail is at the following rates:

Exporters	Rate (Percent)
Fangda Group	159.64
Non-examined exporters with a separate rate	132.90
PRC-wide entity	159.64

<sup>57</sup> See *Eveready Battery*, 77 F. Supp. 2d at 1333; see also SAA at 890.

<sup>58</sup> See *Final Modification for Reviews*, 77 FR at 8103.

<sup>59</sup> See *LTFV Determination*, 74 FR at 2050, unchanged in the *Antidumping Duty Order*.

Recommendation

Based on our analysis of the received 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

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

1 MAY 2014  
Date

Attachment  
(chart of Import Volumes used in this sunset review)

Import Volumes

Small Diameter Graphite Electrodes (SDGEs). Volume of imports in the period before and after the imposition of the order for the purposes of this sunset review.

Year	Source	Item	Volume				% 07' Vol.
2007	ITC LTFV Final Report	SDGEs			13,784	metric tons	
2009	DataWeb	8545110010	n/a	kilograms	n/a	metric tons	
2010	DataWeb	8545110010	2,792,408	kilograms	2,792	metric tons	20.26%
2011	DataWeb	8545110010	1,190,098	kilograms	1,190	metric tons	8.63%
2012	DataWeb	8545110010	2,406,406	kilograms	2,406	metric tons	17.46%
2013	DataWeb	8545110010	2,352,038	kilograms	2,352	metric tons	17.06%

Sources:

DataWeb: See <http://dataweb.usitc.gov/>. (Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission).

SDGEs: First Unit of Quantity by HTS Number and First Unit of Quantity for China - U.S. Imports for Consumption

HTS - 8545110010: GRAPHITE ELECTRODES, NOT EXCEEDING 425 MM IN DIAMETER, OF A KIND USED FOR FURNACES

ITC LTFV Final Report: Small Diameter Graphite Electrodes from China, International Trade Commission Publication 4062, Investigation No. 731-TA-1143 (Final) (February 2009) at IV-2 (Table IV-2) (Attachment 2).

Data for 2007, 2010, 2011, 2012 also available in the Domestic Substantive Response at 16.

Data for 2013 from DataWeb.