



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-904]

Certain Activated Carbon from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results With Respect to Ningxia Huahui Activated Carbon Company, Ltd.

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On April 27, 2017, the Court of International Trade (CIT) issued its final judgment, sustaining the Department of Commerce's (the Department's) remand results pertaining to the third administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (PRC) covering the period of review (POR) of April 1, 2009, through March 31, 2010. The Department is notifying the public that the final judgment in this case is not in harmony with the final results of the administrative review, and that the Department is amending the final results with respect to Ningxia Huahui Activated Carbon Company, Ltd. (Huahui).

EFFECTIVE DATE: May 7, 2017

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SUPPLEMENTARY INFORMATION:

Background

On October 31, 2011, the Department issued the *AR3 Final Results* in its review of

certain activated carbon from the PRC,¹ in which the Department calculated zero and *de minimis* weighted-average dumping margins for the individually-examined respondents.² In the *AR3 Final Results*, the Department determined that averaging the individually-examined respondents' zero and *de minimis* rates to establish separate rates for non-selected exporters would not be reasonably reflective of potential dumping margins during the POR.³ In particular, the Department assigned to Huahui the \$0.44/kg dumping margin it had assigned Huahui as an individually-examined respondent in the second administrative review, and assigned to all other separate rate respondents a dumping margin of \$0.28/kg, which was the margin the Department had assigned to separate rate respondents in the second administrative review.⁴

Certain separate rate respondents and their respective U.S. importers⁵ challenged the Department's separate rate determinations in the CIT.⁶ The CIT, in *Albemarle I*, remanded the Department's determination with regard to the separate rates assigned to Shanxi DMD and GHC/BPAC, and ordered the Department to reconsider its assignment of the \$0.28/kg dumping margin to those separate rate respondents.⁷ The CIT reserved any decision regarding whether the \$0.44/kg dumping margin assigned to Huahui was permissible until its review of the Department's remand redetermination.⁸ On remand following *Albemarle I*, the Department, under protest, averaged the zero and *de minimis* margins assigned to the individually-examined respondents in the third administrative review and assigned a dumping margin of zero to the separate rate respondents other than Huahui.⁹ The Department declined to reconsider Huahui's

¹ See *Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 67142 (October 31, 2011) (*AR3 Final Results*) and accompanying Issues and Decision Memorandum.

² The individually examined respondents were Jacobi Carbons AB and Calgon Carbon (Tianjin) Co., Ltd.

³ See *AR3 Final Results* and accompanying Issues and Decision Memorandum at 5.

⁴ *Id.* at 67145 and accompanying Issues and Decision Memorandum at 2-7.

⁵ Plaintiffs were Huahui and its affiliated U.S. importer Albemarle Corporation; Shanxi DMD Corporation (Shanxi DMD); and Ningxia Guanghua Cherishmet Activated Carbon Company and Beijing Pacific Activated Carbon Products Company, Ltd. (GHC/BPAC) and their affiliated U.S. importer Cherishmet Inc.

⁶ *Albemarle Corp. v. United States*, 931 F. Supp. 2d 1280 (CIT 2013) (*Albemarle I*).

⁷ *Id.* at 1296-97.

⁸ *Id.* at 1293.

⁹ See Final Results of Redetermination Pursuant to Court Remand, *Albemarle Corp. v. United States*, Consol. Ct.

dumping margin on remand, and, therefore, continued to assign the previous rate of \$0.44/kg.¹⁰

Upon review of the Department's First Remand Redetermination, the CIT sustained the Department's assignment of the zero dumping margins to Shanxi DMD and GHC/BPAC, as well as the Department's assignment of a \$0.44/kg dumping margin to Huahui.¹¹ On December 5, 2014, the Department issued amended final results notifying the public that the final judgment in the case, with respect to Shanxi DMD and GHC/BPAC, was not in harmony with the *AR3 Final Results*. Accordingly, the Department revised the weighted-average dumping margins for Shanxi DMD and GHC/BPAC to zero dollars per kilogram.¹²

Multiple parties appealed to the United States Court of Appeals for the Federal Circuit (Federal Circuit). The Federal Circuit, in *Albemarle III*, affirmed the CIT's judgment sustaining the Department's First Remand Redetermination with respect to Shanxi DMD and GHC/BPAC, but reversed the CIT's judgment as to the \$0.44/kg dumping margin assigned to Huahui.¹³ Specifically, with regard to Huahui, the Federal Circuit found that, given Huahui's history of dumping in the immediately preceding review, the Department had substantial evidence to support a determination that averaging the zero and *de minimis* rates assigned to the mandatory respondents may not reasonably reflect Huahui's potential dumping margin during the POR.¹⁴ Nonetheless, although the Federal Circuit held that the Department was entitled to use "other reasonable methods" in assigning a rate to Huahui, the Federal Circuit found that the chosen method of carrying forward Huahui's data from the second administrative review was unreasonable.¹⁵ In particular, citing the statute's preference for contemporaneity in periodic administrative reviews, the Federal Circuit held that "Commerce could not on this record utilize

No. 11-00451 at 13 (January 9, 2014) (First Remand Redetermination).

¹⁰ *Id.* at 22.

¹¹ *Albemarle Corp. v. United States*, 27 F. Supp. 3d 1336, 1352 (CIT 2014) (*Albemarle II*).

¹² *Certain Activated Carbon from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review; 2009-2010*, 79 FR 72165 (December 5, 2014) (*Amended AR3 Final Results*).

¹³ *Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345 (Fed. Cir. 2016) (*Albemarle III*).

¹⁴ *Id.* at 1355.

¹⁵ *Id.* at 1355-56.

data from the previous review,” and, “having declined to collect additional information, was required to follow the ‘expected method’ of utilizing the *de minimis* margins of the individually examined respondents from the contemporaneous period.”¹⁶ The Federal Circuit remanded the case to the CIT to issue appropriate instructions to the Department regarding the dumping margin to be assigned to Huahui.¹⁷

The CIT, in turn, remanded the issue to the Department with the instruction to “redetermine a margin for Huahui in accordance with the holding of the Court of Appeals in *Albemarle III*.”¹⁸ In its Second Remand Redetermination, the Department averaged the zero and *de minimis* rates calculated for the individually-examined respondents in the third administrative review and assigned the resulting zero dumping margin to Huahui.¹⁹ On April 27, 2017, the CIT sustained the Second Remand Redetermination and entered judgment accordingly.²⁰ The CIT’s judgment in *Albemarle IV* constitutes a final decision that is not in harmony with the Department’s *AR3 Final Results* and the *Amended AR3 Final Results*.

Timken Notice

In its decision in *Timken*,²¹ as clarified by *Diamond Sawblades*,²² the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision.

This notice is published in fulfillment of the publication requirement of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject

¹⁶ *Id.* at 1359.

¹⁷ *Id.*

¹⁸ See *Albemarle Corp. v. United States*, Consol. Court No. 11-00451, Slip Op. 16-84 (CIT September 7, 2016) at 5-6.

¹⁹ See Final Results of Redetermination Pursuant to Court Remand, *Albemarle Corp. et al. v. United States*, Consol. Court No. 11-00451, Slip Op. 16-84 (CIT September 7, 2016) (Second Remand Redetermination).

²⁰ See *Albemarle Corp. et al. v. United States*, Consol. Court No. 11-00451, Slip Op. 17-51 (CIT April 27, 2017) (*Albemarle IV*).

²¹ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

²² See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

merchandise at issue in the Second Remand Redetermination and *Albemarle IV* pending expiration of the period to appeal or, if appealed, a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, the Department amends the *AR3 Final Results* with respect to Huahui. Based on the Second Remand Redetermination, as affirmed by the Court in *Albemarle IV*, the revised weighted-average dumping margin for Huahui for the period April 1, 2009, through March 31, 2010, is zero.

In the event that the CIT's ruling is not appealed or, if appealed, is upheld by a final and conclusive court decision, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise based on the revised dumping margin listed above.

Cash Deposit Requirements

Because there have been subsequent administrative reviews for Huahui, the cash deposit rate for Huahui will remain the rate established in the recently-completed *AR8 Final Results*, which is \$1.36/kg.²³

²³ See *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62088, 62089 (September 8, 2016) (*AR8 Final Results*).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: May 5, 2017.

Gary Taverman
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for Antidumping and Countervailing Duty Operations

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