

March 9, 2010

**MEMORANDUM TO:** Ronald K. Lorentzen  
Deputy Assistant Secretary  
For Import Administration

**FROM:** John M. Andersen  
Acting Deputy Assistant Secretary  
For Antidumping and Countervailing Duty Operations

**RE:** Issues and Decision Memorandum for the Final Results in the Expedited Sunset Review of the Antidumping Duty Order on Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China

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## Summary

In the sunset review of the antidumping duty order on natural bristle paint brushes and brush heads from the People's Republic of China ("PRC"), the Paint Applicators Trade Action Coalition ("PATAC"), a trade association whose members are the Wooster Brush Company, True Value Manufacturing, and Elder and Jenks, Inc. (collectively, "domestic interested parties"), U.S. manufacturers of a domestic like product, have submitted an adequate substantive response. No respondent interested party has submitted a substantive response. In accordance with our analysis of the domestic interested parties' adequate 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 February 14, 1986, the Department of Commerce (the "Department") issued an antidumping duty order on imports of natural bristle paintbrushes and brush heads from the PRC.<sup>1</sup> The calculated weighted-average margin set forth in the *Order* was 127.07 percent as the PRC-wide rate. Since the issuance of the *Order*, the Department has conducted several administrative

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<sup>1</sup> See *Antidumping Duty Order: Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China*, 51 FR 5580 (February 14, 1986) and *Amended Antidumping Duty Order; Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China*, 51 FR 8342 (March 11, 1986) ("*Order*").

reviews with respect to imports of natural paint brushes and brush heads from the PRC.<sup>2</sup> There has been one scope ruling since issuance of the *Order*. The *Order* remains in effect for all exporters of subject merchandise. The Department conducted two previous sunset reviews of the *Order*. On May 10, 1999, the Department completed the first sunset review of the *Order*.<sup>3</sup> In the *1999 Sunset Review*, the Department found that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping. In that determination, the Department also reported to the International Trade Commission (“ITC”) as the likely dumping margin for Hebei Animal By-Products Import/Export Corporation (“Hebei”) a rate of 351.92 percent. On October 21, 2004, the Department completed the second sunset review of the *Order*.<sup>4</sup> In the *2004 Sunset Review*, the Department found that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping. In that determination, the Department also reported to the ITC as the likely dumping margins for Hebei, Hunan Provincial Native Produce and Animal By-Products Import/Export Corp., Peace Target, Inc. and the PRC a rate of 351.92 percent. There have been no reviews of this order since the *2004 Continuation Notice*.

On November 2, 2009, the Department initiated the third sunset review of the *Order* covering the sunset period of review 2004-2008 (“sunset POR”) pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”).<sup>5</sup> On November 17, 2009, the Department received a timely and complete notice of intent to participate in the sunset review from the domestic interested parties, pursuant to 19 CFR 351.218(d)(1).<sup>6</sup> On December 2, 2009, the domestic interested

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<sup>2</sup> See *Natural Bristle Paint Brushes and Brush Heads From the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 55 FR 42599 (October 22, 1990); *Natural Bristle Paint Brushes and Brush Heads From the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 61 FR 52917 (October 9, 1996); *Natural Bristle Paint Brushes and Brush Heads From the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 11823 (March 13, 1997); *Natural Bristle Paintbrushes and Brush Heads From the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 12449 (March 13, 1998); *Natural Bristle Paintbrushes and Brush Heads From The People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 64 FR 27506 (May 20, 1999); *Natural Bristle Paint Brushes and Brush Heads From the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 65 FR 45753 (July 25, 2000); *Natural Bristle Paint Brushes and Brush Heads From the People’s Republic of China; Amended Final Results of Antidumping Duty Administrative Review*, 65 FR 55941 (September 15, 2000); *Notice of Final Results of Administrative Review: Natural Bristle Paintbrushes and Brush Heads From the People’s Republic of China*, 68 FR 31683 (May 28, 2003). In these reviews, Hunan Provincial Native Produce and Animal By-Products I/E Corp. (“Hunan”); Peace Target, Inc.; and Hebei all received separate rates apart from the PRC-wide rate.

<sup>3</sup> See *Final Results of Expedited Sunset Review: Natural Bristle Paintbrushes and Brush Heads From the People’s Republic of China*, 64 FR 25011 (May 10, 1999) and the accompanying Issues and Decision Memorandum (“*1999 Sunset Review*”). Based on the findings in the first sunset review, the Department continued the antidumping duty order on natural bristle paint brushes and brush heads from the PRC on August 6, 1999. See *Continuation of Antidumping Duty Order: Natural Bristle Paint Brushes From the People’s Republic of China*, 64 FR 42911 (August 6, 1999).

<sup>4</sup> See *Natural Bristle Paint Brushes and Brush Heads From the People’s Republic of China; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 69 FR 61795 (October 21, 2004) and the accompanying Issues and Decision Memorandum (“*2004 Sunset Review*”). Based on findings in the second sunset review, the Department continued the antidumping order on natural paint brushes and brush heads from the PRC on December 2, 2004. See *Continuation of Antidumping Duty Order: Natural Bristle Paint Brushes and Brush Heads From the People’s Republic of China*, 69 FR 70124 (December 2, 2004) (“*2004 Continuation Notice*”).

<sup>5</sup> See *Initiation of Five-Year (“Sunset”) Review*, 74 FR 56593 (November 2, 2009) (“*Sunset Initiation*”).

<sup>6</sup> See Letter from domestic interested parties titled, “Five-Year (“Sunset”) Review of Antidumping Order on Natural Bristle Paint Brushes & Brush Heads from the People’s Republic of China/Domestic Industry Notice of Intent to Participate in Sunset Review,” dated November 17, 2009.

parties filed a complete substantive response in the sunset review within the 30-day deadline, as specified in 19 CFR 351.218(d)(3).<sup>7</sup> The Department did not receive a substantive response from any respondent interested party in the sunset review. Based on the lack of an adequate response in the sunset review from any respondent interested party, the Department is conducting an expedited (120-day) sunset review consistent with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).<sup>8</sup> Our analysis of the domestic interested parties' comments submitted in their substantive response is set forth in the "Analysis" section, *infra*.

## Legal Framework

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether the revocation of this *Order* would be likely to lead to continuation or recurrence of dumping. In a review conducted under section 751(c) of the Act, to determine whether revocation would be likely to lead to the continuation or recurrence of sales of the subject merchandise at less than fair value, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews as well as the volume of imports of the subject merchandise for the period before and after the issuance of this *Order*. See section 752(c)(1) of the Act. As explained in the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, 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.<sup>9</sup> Additionally, 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>10</sup> It is the Department's practice to use as a base period of import volume comparison 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>11</sup>

In addition, 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

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<sup>7</sup> See Letter from domestic interested parties titled, "Third Five-Year ("Sunset") Review of Antidumping Duty Order On Natural Bristle Paint Brushes From the People's Republic of China: The Domestic Industry's Substantive Response To Notice Of Initiation," dated December 2, 2009.

<sup>8</sup> See Letter to ITC titled, "Expedited Sunset Review of the Antidumping Duty Orders Initiated in November 2009," dated December 22, 2009. See also *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005) (the Department normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response).

<sup>9</sup> See SAA, H.R. Rep. No. 103-316, Vol. 1, at 889-90; See also, *Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>10</sup> See *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

<sup>11</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 Issues and Decision Memorandum at Comment 1 ("*Stainless Steel Bar from Germany Final*").

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>12</sup> However, the Department may use a rate from a more recent review where the dumping margin increased as this rate may be a better 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>13</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" that the Department determine that revocation of an antidumping duty order would not be likely to lead to a continuation of recurrence of sales at less than fair value.

## Analysis

### 1. Likelihood of Continuation or Recurrence of Dumping

#### Domestic Interested Parties' Comments

The domestic interested parties assert that the Department should determine that revocation of the *Order* on imports of natural bristle paint brushes and brush heads from the PRC would likely result in the continuation of dumping in the United States. The domestic interested parties contend that dumping has continued at significant margins since the order was imposed in 1986. The domestic interested parties contend that the history of the proceeding demonstrates that the Department has made affirmative determinations of dumping for nine PRC exporters or producers since 1986. The domestic interested parties argue that the Department has made a determination of zero or *de minimis* margins for imports from only one PRC exporter or producer for three administrative review periods since the *Order* was imposed. The domestic interested parties maintain that because the Department must make its determination of "likelihood" on an order-wide basis, and because only one of at least 48 exporters has been able to establish that it did not dump during any twelve-month period since the *Order* was imposed, the Department should determine that dumping has continued since the *Order* was imposed and that dumping would likely continue if the *Order* were revoked.

Furthermore, the domestic interested parties argue that imports of natural bristle paint brushes from the PRC have decreased significantly. The domestic interested parties contend that 38,153,000 natural bristle paint brushes were imported from the PRC in 1984, the last full year before the petition was filed. The domestic interested parties argue that the annual volume of imports of natural bristle paint brushes from the completion of the second sunset review in 2004 through 2008 were, on average, just 13 percent of the volume of imports during 1984. In 2007 and 2008, the volume of imports of natural bristle paint brushes was only six percent of the volume of imports in 1984. The domestic interested parties maintain that import volume during

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<sup>12</sup> See the 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.

<sup>13</sup> See the SAA at 890-91 and *Sunset Policy Bulletin* at section II.B.2. See, *e.g.*, *Stainless Steel Bar from Germany; Preliminary Results of the Sunset Review of Antidumping Duty Order*, 72 FR 29970 (May 30, 2007), and accompanying Issues and Decision Memorandum at Comment 2, as corrected in 72 FR 31660 (June 7, 2007) (unchanged in *Stainless Bar from Germany Final*).

the post-order period was significantly lower than pre-order volumes, and imports have further declined since the previous sunset review in 2004.

The domestic interested parties state that at the time of the original investigation, all paint brushes imported from the PRC were made with natural hog bristles. The domestic interested parties assert that, subsequent to the order, however, PRC producers began to manufacture and export synthetic filament paint brushes. The domestic interested parties contend that the import statistics show that the increase in imports of paint brushes from the PRC in the early 1990s reflects imports of synthetic filament paint brushes. The domestic interested parties argue that, in 1994, the first year for which there are statistical separation of brush types, 11 percent of the total volume of paint brushes imported from the PRC were natural bristle and the remainder synthetic bristle. The domestic interested parties contend that the volume of natural bristle paint brushes imported from the PRC has decreased as a percentage of total paint brush imports to 2.6 percent, as of 2008. The domestic interested parties argue that the data strongly suggest that the relative proportion of imports of natural bristle to synthetic filament paint brushes prior to the statistical separation was similar. The domestic interested parties contend that the import statistics from the period just prior to the imposition of the *Order* to the most recent year for which full-year data are available demonstrate that imports of natural bristle paint brushes from the PRC declined significantly after the *Order* was imposed.

Consequently, the domestic interested parties argue that because imports of natural bristle paint brushes from the PRC significantly decreased, it is reasonable to assume that revocation of the *Order* would likely result in a significant increase of PRC exports of natural bristle paint brushes to the United States at dumped prices. The domestic interested parties conclude that the Department should determine that dumping would continue to recur at significant margins if the order covering natural bristle paint brushes were revoked.

### **Department Position**

As explained in the Legal Framework section above, the Department's determination concerning whether revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping is based, in part, upon guidance provided in the SAA. Consistent with the SAA, the Department will make its likelihood determination on an order-wide basis.<sup>14</sup> One consideration is whether the Department has continued to find dumping above *de minimis* levels in administrative reviews subsequent to imposition of the antidumping duty order.<sup>15</sup> In this proceeding, the Department indeed found dumping at above *de minimis* levels in the administrative reviews it has conducted since the issuance of the *Order* for all but one company. Additionally, there have been no reviews of this *Order* conducted since the *2004 Sunset Review*. In the *2004 Sunset Review* we found that dumping had continued at levels above *de minimis* over the life of the *Order*.

As discussed above, 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

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<sup>14</sup> See *Sunset Policy Bulletin* at section II.A.2.

<sup>15</sup> See *id* at section II.A.3.

before and after the issuance of the antidumping duty order when determining whether revocation of the order would be likely to lead to continuation or recurrence of dumping. In the original investigation, the Department determined a dumping margin of 127.07 percent and in subsequent reviews the Department determined a weight-average dumping margin of 351.92 percent. Additionally, in the previous sunset reviews of the *Order*, i.e., *1999 Sunset Review* and *2004 Sunset Review*, we evaluated the volume of imports of the subject merchandise for the period before and after the issuance of the *Order* based on import data, taken from the Global Trade Atlas, in HTSUS category 9603.40.40.40. In those sunset reviews we found that the volume imports of the subject merchandise had fallen significantly since the imposition of the *Order*.

Finally, although no respondent interested party filed a statement of waiver pursuant to 19 CFR 351.218(d)(2) in this sunset review, the Department did not receive any substantive response from any interested party pursuant to 19 CFR 351.218(d)(3). Accordingly, pursuant to the Department's practice, we find that respondent interested parties have decided not to participate in this sunset review.<sup>16</sup> Section 751(c)(4)(B) of the Act provides that, in a sunset review in which an interested party declines to participate, the Department shall conclude that revocation of the antidumping duty order would be likely to lead to a continuation or recurrence of dumping with respect to that interested party.

The Department determined rates above *de minimis* for all but one PRC exporter during the administrative reviews conducted under the *Order*. In the most recently completed sunset review, *2004 Sunset Review*, the Department found that dumping is likely to continue or recur if the order was revoked because dumping had continued at levels above *de minimis* and import volumes had declined overall. Since the *2004 Sunset Review*, we have not received a request to conduct another review of this *Order*. Therefore, the Department has concluded that dumping remains at the levels found in the *2004 Sunset Review*. Additionally, the Department has determined that the volume of imports of PRC natural bristle paint brushes and brush heads have significantly declined since the levels reviewed in the *2004 Sunset Review*. Therefore, because the Department has found declining import volumes accompanied by the continued existence of dumping margins after the issuance of the *Order*, pursuant to section 752(c)(1) of the Act, and because no party argued or submitted any evidence to the contrary, we determine that revocation of the *Order* is likely to lead to continuation or recurrence of dumping.<sup>17</sup>

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

### Interested Party Comments

The domestic interested parties assert that since the issuance of the *Order*, PRC exporters or producers, with the exception of Peace Target, Hunan, and Founder, have consistently dumped subject merchandise in the United States at a margin substantially higher than the original 127.07

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<sup>16</sup> See, e.g., Issues and Decision Memoranda accompanying *Polyethylene Retail Carrier Bags From the People's Republic of China, Thailand, and Malaysia: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 74 FR 53470 (October 19, 2009) and *Pressure Sensitive Plastic Tape From Italy: Final Results of Expedited Sunset Review*, 74 FR 40811 (August 13, 2009).

<sup>17</sup> See Attachment I to this memorandum.

percent margin. The domestic interested parties contend that the Department has issued final determinations of dumping margins of 351.92 percent for a total of seven companies in six different review periods as well as maintained the 351.92 percent margin rate for all other PRC manufacturers and producers through the 1998-1999 and 2001-2002 administrative reviews.

The domestic interested parties argue that the history of this proceeding demonstrates a consistent pattern of dumping at a margin that is approximately three times higher than the margin determined in the original investigation. The domestic interested parties assert that the Department should find that this behavior is probative of the likely behavior of the PRC manufacturers and exporters of natural bristle paintbrushes and brush heads if the *Order* were revoked. The domestic interested parties contend that there is no question that should the *Order* be lifted, dumping would resume at extremely significant levels. The domestic interested parties maintain that the Department should, based on a consistent pattern of behavior of PRC companies, report to the ITC the more recent and higher margin of 351.92 percent for all PRC manufacturers and exporters as the margin of dumping likely to prevail if the *Order* were revoked.

#### Department Position

Normally, the Department will provide to the ITC the company-specific margin from the investigation for each company.<sup>18</sup> For companies not investigated specifically, or for companies that did not begin shipping until after the *Order* was issued, the Department normally will provide a margin based on the all-others rate from the investigation.<sup>19</sup> However, because this case involves the PRC, which the Department considers to be a non-market economy as defined by section 771(18) of the Act, the Department does not have an all-others rate; instead, there is a PRC-wide rate which applies to all imports from an exporter that has not established its eligibility for a separate rate. The Department'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 manufacturers, producers, and exporters, without the discipline of an order or suspension agreement in place.<sup>20</sup> In the *1999 Sunset Review*, the Department reported to the ITC a margin from a recently completed administrative review rather than the margin calculated in the investigation. The Department used that number because it was able to find a correlation between a significant rise in the dumping margin for the 1994-1995 period of review and a substantial increase in imports during that period of review; moreover, after publication of the results of that review, imports dramatically decreased.<sup>21</sup> These same numbers were reported to the ITC in the *2004 Sunset Review*. There have been no requests for administrative reviews of this *Order* since the *2004 Sunset Review*. Accordingly, based on the facts in this sunset review (e.g., that dumping has increased since the issuance of the *Order*), the Department has determined that the dumping margins reported to the ITC in the *2004 Sunset Review* are the most relevant and probative of the behavior of all PRC producers and exporters of natural paint

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<sup>18</sup> See, e.g., *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

<sup>19</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 Issues and Decision Memorandum at Comment 2.

<sup>20</sup> See the SAA at 890 and *Sunset Policy Bulletin* at section II.B.1. See also *id.*

<sup>21</sup> See *1999 Sunset Review*, 64 FR at 25013.

brushes if the *Order* were revoked. Thus, we will report to the ITC margins of 351.92 percent for Hebei, Hunan, and Peace Target, Inc. and 351.92 percent for the PRC-wide rate.

Final Results of Review

We have determined that revocation of the *Order* on natural bristle paint brushes and brush heads from the PRC would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margin:

Exporter/Manufacturer	Margin(percent)
Hebei Animal By-Products Import/Export Corp.....	351.92
Hunan Provincial Native Produce and Animal By-Products Import/Export Corp.....	351.92
Peace Target, Inc. ....	351.92
PRC-wide rate.....	351.92

Recommendation

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

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Ronald K. Lorentzen  
Deputy Assistant Secretary  
For Import Administration

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(Date)