



A-570-939
Sunset Review
Public Document
EC/OIV: LA

October 24, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Expedited First Sunset
Review of the Antidumping Duty Order on Certain Tow-Behind
Lawn Groomers and Certain Parts Thereof from the People's
Republic of China

Summary

In the sunset review of the antidumping duty (“AD”) order covering certain tow-behind lawn groomers and certain parts thereof (“lawn groomers”) from the People’s Republic of China (“PRC”), Agri-Fab, Inc. (“Domestic Producers”), submitted a timely and complete notice of intent to participate as well as a substantive response. No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review. We recommend adopting the positions described below. The following is a complete list of issues in this sunset review for which we received substantive responses:

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

Background

On July 1, 2014, the Department of Commerce (“Department”) published the notice of initiation of the sunset review of the AD order on lawn groomers from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the “Act”).¹ On July 15, 2014, pursuant to 19 CFR 351.218(d)(1), the Department received a timely and complete notice of intent to participate in

¹ See *Initiation of Five-Year (“Sunset”) Review*, 79 FR 37292 (July 1, 2014) (“*Sunset Initiation*”).



the sunset review from the Domestic Producer.² On July 31, 2014, pursuant to 19 CFR 351.218(d)(3), the Domestic Producer filed a timely and adequate substantive response within 30 days after the date of publication of the *Sunset Initiation*.³ The Department received no substantive responses from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the AD order on lawn groomers from the PRC.

Scope of the Order

The scope of this order covers certain non-motorized tow behind lawn groomers, manufactured from any material, and certain parts thereof. Lawn groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of this order, even if the lawn groomer is designed to perform additional non-subject functions (e.g., mowing).

All lawn groomers are designed to incorporate a hitch, of any configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of this order. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the order. Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a “plug aerator”), a series of discs with protruding spikes (a “spike aerator”), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface. Dethatchers consist of a frame, as well as a series of tines designed to remove material (e.g., dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (i.e., a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (“broadcast spreader”), a rotating agitator that allows the media to be released at a consistent rate (“drop spreader”), or any other configuration.

Lawn dethatchers with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the order. Other lawn groomers—sweepers, aerators, and spreaders—with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the order.

² See Letter regarding “Five-Year (“Sunset”) Review Of Antidumping Duty Order On Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From The People’s Republic Of China: Notice Of Intent To Participate,” dated July 15, 2014.

³ See Letter regarding, “Five-Year (“Sunset”) Review of Antidumping Duty Order On Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From The People’s Republic Of China,” dated July 31, 2014.

Also included in the scope of the order are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units—when imported with one or more lawn grooming modules—with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the order. Modular unit chasses, imported without a lawn grooming module and with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the order. When imported separately, modules that are designed to perform subject lawn grooming functions (i.e., sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

Lawn groomers, assembled or unassembled, are covered by this order. For purposes of this order, “unassembled lawn groomers” consist of either 1) all parts necessary to make a fully assembled lawn groomer, or 2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following “major components”:

- 1) an assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;
- 2) a sweeper brush;
- 3) an aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;
- 4) a spreader hopper;
- 5) a rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;
- 6) dethatcher tines;
- 7) aerator spikes, plugs, or other aerating component; or
- 8) a hitch, defined as a complete hitch assembly comprising of at least the following two major hitch components, tubing and a hitch plate regardless of the absence of minor components such as pin or fasteners. Individual hitch component parts, such as tubing, hitch plates, pins or fasteners are not covered by the scope.

The major components or parts of lawn groomers that are individually covered by this order under the term “certain parts thereof” are: (1) brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

The scope of this order specifically excludes the following: 1) agricultural implements designed to work (e.g., churn, burrow, till, etc.) soil, such as cultivators, harrows, and plows; 2) lawn or farm carts and wagons that do not groom lawns; 3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; 4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle,

rather than towed; 5) “push” lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; 6) dethatchers with a net assembled weight (i.e., without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers—sweepers, aerators, and spreaders—with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of more than 200 pounds; and 7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (e.g., “drum-style” spike aerators).

The lawn groomers that are the subject of this order are currently classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.80.0010, 8432.90.0030, 8432.90.0080, 8479.89.9896, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in this order.

History of the Order

On June 19, 2009, the Department published its final determination in the less-than-fair-value (“LTFV”) investigation of lawn groomers from the PRC.⁴ On August 3, 2009, the Department published the AD order on imports of lawn groomers from the PRC.⁵ The Department found the following weighted-average dumping margins in the LTFV investigation:

Exporter/Producer	Weighted-Average Percentage Margin
Nantong D & B Machinery Co., Ltd.	154.72
Qingdao Huatian Truck Co., Ltd., a.k.a. Qingdao Huatian Hand Truck Co., Ltd.	154.72
PRC-Wide Rate	386.28

Administrative Reviews and New Shipper Reviews

Since the issuance of the AD order, there have been no administrative reviews or new shipper reviews of the order.

Scope Inquiries, Changed Circumstances Reviews, and Duty Absorption

There have been no scope inquiries, changed circumstances reviews or duty absorption findings in connection with this AD order.

⁴ See *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 29167 (June 19, 2009) (“*Final Determination*”).

⁵ See *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Antidumping Duty Order*, 74 FR 38395 (August 3, 2009) (“*Antidumping Duty Order*”).

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 AD order would likely 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 AD order.

As explained in the Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act, the Department 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 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 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.⁶ 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.⁷

Further, section 752(c)(3) of the Act states that the Department shall provide to the International Trade Commission (“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.⁸ However, in certain circumstances, 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, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review.”).⁹ 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 AD order would not be likely to lead to a continuation or recurrence of sales at less than fair value.¹⁰

⁶ See SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90, reprinted at 1994 U.S.C.C.A.N. 4040, 4213-14.

⁷ 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.

⁸ 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 Issues and Decision Memorandum at Comment 2.

⁹ See SAA, at 890-91.

¹⁰ See *Citric Acid and Certain Citrate Salts From Canada and the People’s Republic of China: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders*, 79 FR 45763 (August 6, 2014) and accompanying Issues and Decision Memorandum.

In the *Final Modification for Reviews*, the Department announced that in five-year (“sunset”) reviews, it will not rely on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be World Trade Organization (“WTO”) to be WTO-inconsistent.¹¹ 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.”¹² 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.¹³

Below we address the comments submitted by the Domestic Producers.

1. Likelihood of continuation or recurrence of dumping

Domestic Producers’ Comments

- Revocation of the *Antidumping Duty Order* would likely lead to the continuation or recurrence of sales at less than fair value at margins equivalent to or greater than those found in the original investigation. The record demonstrates that, since the issuance of the order, (i) dumping has continued, and (ii) shipments of the subject merchandise have decreased significantly, thus indicating that PRC exporters could not ship the subject merchandise under the discipline of the order.

Department’s Position: As explained in the “Legal Framework” section above, the Department’s determination concerning whether revocation of an AD order would be likely to lead to continuation or recurrence of dumping is based, in part, upon guidance provided by the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, the SAA; House Report, H. Rep. No. 103-826, pt. 1 (1994) (“House Report”);¹⁴ and Senate Report, S. Rep. No. 103-412 (1994)). Consistent with the SAA, the Department will make its likelihood determination on an order-wide basis.¹⁵ 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. Thus, one consideration is whether the Department continued to find dumping above *de minimis* levels in administrative reviews subsequent to imposition of the AD order.¹⁶ According to the SAA and the House Report, “if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed.”¹⁷ For the reasons discussed below, we find that revocation of the AD order on tow-behind lawn groomers

¹¹ 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*”).

¹² *Id.* (emphasis added); see also 19 CFR 351.218(e)(2)

¹³ *Id.*

¹⁴ Reprinted at 1994 U.S.C.C.A.N. 3773.

¹⁵ See SAA, at 879.

¹⁶ *Id.* at 890.

¹⁷ *Id.*; see also House Report, at 63-64.

from the PRC would be likely to 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. In the final determination, the Department assigned to two separate-rate companies a dumping margin of 154.72 percent. The Department found that the PRC-wide entity failed to cooperate to the best of its ability and, as adverse facts available (“AFA”), assigned it the highest control number (“CONNUM”)-specific dumping margin, *i.e.*, 386.28 percent, which was calculated in the final determination for two mandatory respondents who failed to cooperate after the preliminary determination.¹⁸ There have been no reviews of the *Antidumping Duty Order*. Thus, any entries of subject merchandise into the United States after issuance of the *Antidumping Duty Order* were assessed at above *de minimis* AD rates. As noted above, the Department normally determines that revocation of an AD order would be likely to lead to continuation or recurrence of dumping when dumping continued at any level above *de minimis* after issuance of the order.

In addition, pursuant to section 752(c)(1)(B) of the Act, the Department also considered the volume of imports of the subject merchandise in determining whether revocation of the AD order would be likely to lead to continuation or recurrence of dumping. As discussed above, it is the Department’s practice to compare the volume of imports for the one-year period preceding the initiation of the LTFV investigation (*i.e.*, 2007) to the volume of imports after the issuance of the order (the order was issued in 2009). We analyzed import volumes for four years following the issuance of the order using U.S. Bureau of Census import statistics which the Domestic Producer obtained from the USITC Dataweb. The data show that the volume of U.S. imports of lawn groomers from the PRC during calendar years 2009 through 2013 ranged from 53.13 percent to 16.80 percent of the total import volume during calendar year 2007.¹⁹ As noted above, the SAA explained that the Department normally determines that revocation of an AD order would be likely to lead to continuation or recurrence of dumping when, among other things, imports of the subject merchandise ceased after issuance of the order. While imports from the PRC have not ceased, record evidence shows significantly lower imports over the five-year period examined when compared to pre-initiation import volumes. This indicates that PRC exporters may not be able to maintain pre-investigation import levels without selling merchandise at dumped prices.²⁰

Therefore, pursuant to section 752(c)(1) of the Act, because above *de minimis* dumping margins applied to post-order entries of subject merchandise, and the Department found dramatically lower import volumes in the four years examined in comparison to the import volumes prior to the initiation, we find that dumping would be likely to continue or recur if the *Antidumping Duty Order* were revoked.

¹⁸ See *Final Determination*, and accompanying Issues and Decision Memorandum, at Comment 2.

¹⁹ See Attachment 1 to this memorandum.

²⁰ See, *e.g.*, *Certain Activated Carbon From the People’s Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 77 FR 33420 (June 6, 2012), and accompanying Issues & Decision Memorandum at Comment 1.

2. Magnitude of the dumping margins likely to prevail

Domestic Producers' Comments

- The Department should rely on the dumping margins from the original investigation as the dumping margins likely to prevail in the event of a revocation of the *Antidumping Duty Order*.
- Because none of these dumping margins were calculated using “zeroing,” the *Final Modification for Reviews* has no effect on this conclusion.

Department's Position: Section 752(c)(3) of the Act provides that the Department shall provide to the ITC “the magnitude of the margin of dumping that is likely to prevail if the order is revoked or the suspended investigation is terminated.” The Department prefers to select a rate from the investigation, because such a rate reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.²¹ Under certain circumstances, however, we may select a more-recently calculated rate to report to the ITC. For companies not investigated individually, or for companies that did not begin shipping until after the order was issued, the Department will normally provide a rate based on the “All-Others” rate from the investigation. However, the Department considers the PRC to be a nonmarket economy country under section 771(18) of the Act and, thus, the Department does not have an “All-Others” rate in PRC cases. Rather, in PRC cases, instead of an “All-Others” rate, the Department uses a rate established for the PRC-wide entity, which it applies to all imports from an exporter that has not established its eligibility for a separate rate.²²

As indicated in the “Legal Framework” portion of this memorandum, consistent with the *Final Modification for Reviews*, the Department's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology. No administrative reviews of tow-behind lawn groomers from the PRC have been conducted. Consistent with the Department's practice, we considered the dumping margins from the LTFV investigation to be the best evidence of the exporters' behavior in the absence of an order. Furthermore, the margin for the PRC-wide entity does not include zeroing and, thus, this dumping margin is also consistent with the *Final Modification for Reviews*.

Final Results of Review

We determine that revocation of the AD order on tow-behind lawn groomers from the PRC would be likely to 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 386.28 percent.

²¹ See SAA at 890.

²² See *Paper Clips from the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order*, 76 FR 26242 (May 6, 2011), and accompanying Issues and Decision Memorandum at Comment 2; see also 19 CFR 351.107(d).

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If these recommendations are accepted, we will publish these final results of this expedited sunset review in the *Federal Register* and notify the ITC of our determination.

Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

Date

Attachment 1

Year	Qty (net tons)	(% of total 2007 import volume)
2007	112,850	
2008	n/a	
2009	59,961	53.13%
2010	59,904	53.08%
2011	28,515	25.27%
2012	37,961	33.64%
2013	18,962	16.80%

Source: U.S. Bureau of Census import statistics, obtained from USITC Dataweb and original petition.