



A-570-909
Sunset Review
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May 13, 2019

TO: P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Issues and Decision Memorandum for the Final Results of the Expedited
Sunset Review of the Antidumping Duty Order on Certain Steel Nails from the
People's Republic of China

I. Summary

We have analyzed the response of Mid Continent Steel & Wire, Inc. (the petitioner), a domestic producer of certain steel nails, in the second expedited sunset review of the antidumping duty order on certain steel nails (nails) from the People's Republic of China (China). No respondent interested party submitted a substantive response. We recommend that you approve the positions described in the "Discussion of Issues" section of this memorandum. Below is the complete list of the issues addressed for the final results:

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

II. Background

On December 3, 2018, the Department of Commerce (Commerce) published the notice of initiation of the second sunset review of the antidumping duty order on nails from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the act), and 19 CFR 351.218.(c)(2).¹ On December 4, 2018, pursuant to 19 CFR 351.218(d)(1)(i) and 19 CFR 351.218(d)(1)(ii), Commerce received a timely and complete notice of intent to participate in the sunset review from the petitioner.² The petitioner claimed interested party status pursuant to section 771(9)(C) of the Act.³ On January 2, 2019, pursuant to 19 CFR 351.218(d)(3),

¹ See *Initiation of Five-Year (Sunset) Reviews*, 83 FR 62296 (December 3, 2008) (*Sunset Initiation*).

² See Letter from the petitioner, "Entry of Appearance, Notice of Intent to Participate in Review, and APO Application," dated January 2, 2019.

³ *Id.* at 1-2.



Commerce received a timely and adequate substantive response from the petitioner.⁴ Commerce did not receive 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), Commerce conducted an expedited (120-day) sunset review of the antidumping duty order on nails from China.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.⁵ If the tolled deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for this final determination is now May 13, 2019.

III. Scope of the Order

The merchandise covered by this order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction, or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, 7317.00.75, 7907.00.6000,⁶ 7318.29.0000, and 8206.00.0000.⁷

Excluded from the scope of this order are steel roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20

⁴ See Letter from the petitioner, "Certain Steel Nails from the People's Republic of China: Substantive Response to Notice of Initiation," dated January 2, 2019 (Substantive Response).

⁵ See memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

⁶ Commerce added HTSUS category 7907.00.6000, "Other articles of zinc: Other," to the language of the *Order*. See Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office 9, Antidumping and Countervailing Duty Operations, regarding "Certain Steel Nails from the People's Republic of China: Cobra Anchors Co. Ltd. Final Scope Ruling," dated September 19, 2013.

⁷ Commerce added the HTSUS categories 7318.29.000 and 8206.00.0000 per a request by U.S. Customs and Border Protection (CBP) on February 24, 2017.

nails. Also excluded from the scope are the following steel nails: 1) Non-collated (*i.e.*, hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500" to 8", inclusive; and an actual shank diameter of 0.1015" to 0.166", inclusive; and an actual washer or cap diameter of 0.900" to 1.10", inclusive; 2) Non-collated (*i.e.*, hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500" to 4", inclusive; an actual shank diameter of 0.1015" to 0.166", inclusive; and an actual head diameter of 0.3375" to 0.500", inclusive; 3) Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500" to 1.75", inclusive; an actual shank diameter of 0.116" to 0.166", inclusive; and an actual head diameter of 0.3375" to 0.500", inclusive; and 4) Non-collated (*i.e.*, hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75" to 3", inclusive; an actual shank diameter of 0.131" to 0.152", inclusive; and an actual head diameter of 0.450" to 0.813", inclusive.

Also excluded from the scope of this order are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this order are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.0020 and 7317.0030. Also excluded from the scope of this order are thumb tacks, which are currently classified under HTSUS 7317.00.1000.

Also excluded from the scope of this order are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this order are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

IV. History of the Order

On June 16, 2008, Commerce published its final determination in the less-than-fair-value (LTFV) investigation of nails from China.⁸ On August 1, 2008, Commerce published the antidumping duty order on nails from China.⁹ In doing so, Commerce found the following weighted-average dumping margins:

⁸ See *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (*LTFV Investigation*).

⁹ See *Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China*, 73 FR 44961 (August 1, 2008) (*Order*).

Exporter	Weighted-Average Margin
Paslode Fasteners (Shanghai) Co., Ltd. ¹⁰	0.00 %
Xingya Group: Suzhou Xingya Nail Co., Ltd Senco-Xingya Metal Products (Taicang) Co., Ltd. Hong Kong Yu Xi Co., Ltd.	21.24 %
Jisco Corporation	21.24 %
Koram Panagene Co., Ltd.	21.24 %
Handuk Industrial Co., Ltd.	21.24 %
Kyung Dong Corp.	21.24 %
Xi'an Metals & Minerals Import and Export Co., Ltd.	21.24 %
Hebei Cangzhou New Century Foreign Trade Co., Ltd.	21.24 %
Chongqing Hybest Tools Group Co., Ltd.	21.24 %
China Silk Trading & Logistics Co., Ltd.	21.24 %
Beijing Daruixing Global Trading Co., Ltd.	21.24 %
Huanghua Jinhai Hardware Products Co., Ltd.	21.24 %
Beijing Daruixing Nail Products Co., Ltd.	21.24 %
Beijing Tri-Metal Co., Ltd.	21.24 %
Cana (Tianjin) Hardware Ind., Co., Ltd.	21.24 %
China Staple Enterprise (Tianjin) Co., Ltd.	21.24 %
Hengshui Mingyao Hardware & Mesh Products Co, Ltd.	21.24 %
Nanjing Dayu Pneumatic Gun Nails Co., Ltd.	21.24 %
Qidong Liang Chyuan Metal Industry Co., Ltd.	21.24 %
Romp (Tianjin) Hardware Co., Ltd.	21.24 %
Shandong Dinglong Import & Export Co., Ltd.	21.24 %
Tianjin Jinchi Metal Products Co., Ltd.	21.24 %
Tianjin Jurun Metal Products Co., Ltd.	21.24 %
Zhejiang Gem-Chun Hardware Accessory Co., Ltd.	21.24 %
Huanghua Xionghua Hardware Products Co., Ltd.	21.24 %
Zhaoqing Harvest Nails Co., Ltd.	21.24 %
SDC International Australia Pty., Ltd.	21.24 %
Tianjin Universal Machinery Imp & Exp Corporation	21.24 %
Certified Products International Inc.	21.24 %
Dezhou Hualude Hardware Products Co., Ltd.	21.24 %
Shanxi Tianli Industries Co.	21.24 %

¹⁰ Because Commerce found that the weighted-average dumping margin for subject merchandise produced and exported by Paslode Fasteners (Shanghai) Co., Ltd. was *de minimis*, Commerce instructed CBP not to suspend liquidation of any entries of nails from the PRC as described in the “Scope of the Order” section that were produced and exported by Paslode and were entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *LTFV Investigation*. See *LTFV Investigation*, 73 FR at 33984.

Suntec Industries Co., Ltd.	21.24 %
Sinochem Tianjin Imp & Exp Shenzhen Corp.	21.24 %
Qingdao D&L Group Ltd.	21.24 %
Tianjin Xiantong Material & Trade Co., Ltd.	21.24 %
Zhongshan Junlong Nail Manufactures Co., Ltd.	21.24 %
Shandong Minmetals Co., Ltd.	21.24 %
Shouguang Meiqing Nail Industry Co., Ltd.	21.24 %
S-mart (Tianjin) Technology Development Co., Ltd.	21.24 %
Tianjin Lianda Group Co., Ltd.	21.24 %
Union Enterprise (Kunshan) Co., Ltd.	21.24 %
Beijing Hong Sheng Metal Products Co., Ltd.	21.24 %
PT Enterprise Inc.	21.24 %
Shanxi Hairui Trade Co., Ltd.	21.24 %
Shanxi Pioneer Hardware Industrial Co., Ltd.	21.24 %
Shanxi Yuci Broad Wire Products Co., Ltd.	21.24 %
Yitian Nanjing Hardware Co., Ltd.	21.24 %
Chiieh Yung Metal Ind. Corp.	21.24 %
Shanghai Seti Enterprise International Co., Ltd.	21.24 %
Shanghai Curvet Hardware Products Co., Ltd.	21.24 %
Shanghai Tengyu Hardware Tools Co., Ltd.	21.24 %
Xuzhou CIP International Group Co., Ltd.	21.24 %
Wuhu Shijie Hardware Co., Ltd.	21.24 %
Wuhu Xin Lan De Industrial Co., Ltd.	21.24 %
Tianjin Zhonglian Metals Ware Co., Ltd.	21.24 %
Jining Huarong Hardware Products Co., Ltd.	21.24 %
Huarong Hardware Products Co., Ltd.	21.24 %
Mingguang Abundant Hardware Products Co., Ltd.	21.24 %
Shandong Oriental Cherry Hardware Group Co., Ltd.	21.24 %
Shandong Oriental Cherry Hardware Import and Export Co., Ltd.	21.24 %
Shanghai Chengkai Hardware Product. Co., Ltd.	21.24 %
Shanghai Jade Shuttle Hardware Tools Co., Ltd.	21.24 %
Shanghai Yueda Nails Industry Co., Ltd.	21.24 %
Besco Machinery Industry (Zhejiang) Co., Ltd.	21.24 %
The Stanley Works (Langfang) Fastening Systems Co., Ltd.	21.24 %
Guangdong Foreign Trade Import & Export Corporation	21.24 %
Tianjin Jinghai County Hongli Industry and Business Co., Ltd.	21.24 %
PRC-Wide Rate	118.04 %

On November 13, 2013, Commerce completed the first sunset review of the *Order*, in which it determined that revocation of the *Order* would likely lead to continuation or recurrence of

dumping at the same rates of dumping as the agency determined in the *LTFV Investigation*.¹¹ On December 26, 2013, the International Trade Commission (ITC) published its first sunset review determination.¹² On January 10, 2014, Commerce published in the *Federal Register* the continuation of the *Order*.¹³

Administrative Reviews and New Shipper Reviews

Since the publication of the *Order*, Commerce has completed nine administrative reviews.¹⁴ In addition, the Department conducted three new shipper reviews. We calculated a rate of 34.14 percent in the *First NSR* and rescinded the other two new shipper reviews.¹⁵

Changed Circumstances Reviews, Scope Inquiries, and Duty Absorption

Commerce has completed one changed circumstances review and issued 14 final scope

¹¹ See *Certain Steel Nails From the People's Republic of China: Final Results of Expedited First Sunset Review of Antidumping Duty Order*, 78 FR 69644 (November 20, 2013).

¹² See *Steel Nails From China; Determination*, 78 FR 78382 (December 26, 2013).

¹³ See *Certain Steel Nails From the People's Republic of China: Continuation of Antidumping Duty Order*, 79 FR 1830 (January 10, 2014) (*Continuation Order*).

¹⁴ See *Certain Steel Nails From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 16379 (March 23, 2011), as amended *Certain Steel Nails From the People's Republic of China: Amended Final Results of the First Antidumping Duty Administrative Review*, 76 FR 23279 (April 26, 2011); see also *Certain Steel Nails From the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012), as amended *Certain Steel Nails From the People's Republic of China: Amended Final Results of the Second Antidumping Duty Administrative Review*, 77 FR 24462 (April 24, 2012); *Certain Steel Nails From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2010-2011*, 78 FR 16651 (March 18, 2013), as amended *Certain Steel Nails From the People's Republic of China: Amended Final Results of the Third Antidumping Duty Administrative Review; 2010-2011*, 78 FR 24721 (April 26, 2013); *Certain Steel Nails From the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), as amended *Certain Steel Nails From the People's Republic of China: Amended Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 27283 (May 13, 2014); *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 18816 (April 8, 2015); *Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14092 (March 16, 2016), as corrected *Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 19136 (April 4, 2016); *Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments and Final Partial Rescission; 2014-2015*, 82 FR 14344 (March 20, 2017), as amended *Certain Steel Nails From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 19217 (April 26, 2017); *Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 11683 (March 16, 2018); *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Final Determination of No Shipments; 2016-2017*, 84 FR 17134 (April 24, 2019).

¹⁵ See *Certain Steel Nails from the People's Republic of China: Final Results of the First New Shipper Review*, 75 FR 34425 (June 17, 2010) (*First NSR*); see also *Certain Steel Nails From the People's Republic of China: Rescission of New Shipper Review*, 75 FR 38080 (July 1, 2010); *Certain Steel Nails From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review*, 76 FR 75871 (December 5, 2011).

rulings since the issuance of the *Order*.^{16,17} There have been no duty absorption findings.

V. Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the antidumping duty 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, Commerce shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before, and the periods after, the issuance of the order.

In accordance with guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4178 (*SAA*); House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report); and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), Commerce's determination of likelihood will be made on an order-wide, rather than company-specific, basis.¹⁸ In addition, Commerce normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (a) dumping continued at any level above *de minimis* after issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.¹⁹

¹⁶ See *Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 76 FR 30101 (May 24, 2011).

¹⁷ See Memoranda, "Scope Determination: Certain Steel Nails From the People's Republic of China" dated September 15, 2008; Memorandum, "Certain Steel Nails From the People's Republic of China: Final Scope Ruling on Shanghai March's Horseshoe Nails," dated June 5, 2009; "Certain Steel Nails From the People's Republic of China: Final Scope Ruling on National Nail's Plastic Cap Steel Nails," dated January 13, 2010; "Certain Steel Nails From the People's Republic of China: Final Scope Ruling on Itochu Building Product's Plastic Cap Steel Nails," dated May 14, 2010; "Certain Steel Nails From the People's Republic of China: Final Scope Ruling on Grip Rite Nails," dated July 21, 2010; "Final Scope Ruling - Certain Steel Nails From the People's Republic of China, Request by Target Corporation," dated August 10, 2010; "Certain Steel Nails From the People's Republic of China: Final Scope Ruling on Mazel's Steel Roofing Nails" dated December 22, 2010; "Certain Steel Nails From the People's Republic of China: Cobra Anchor Co. Ltd. Final Scope Ruling," dated September 19, 2013; "Certain Steel Nails from the People's Republic of China: Lumber Liquidators Services, LLC's Final Scope Ruling on L-Cleat Flooring Brads," dated July 23, 2015; "Antidumping and Countervailing Duty Orders on Certain Steel Nails from the People's Republic of China; Final Scope Ruling on Simpson Strong-Tie Company's Anchors," dated March 20, 2017; "Antidumping Duty Order on Certain Steel Nails from the People's Republic of China: Final Scope Ruling on Midwest Fastener Strike Pin Anchors," dated August 2, 2017; Antidumping and Countervailing Duty Orders on Certain Steel Nails from the People's Republic of China: Final Scope Ruling on Fastenal Company Purchasing's Anchors," dated October 13, 2017; "Antidumping and Countervailing Duty Orders on Certain Steel Nails from the People's Republic of China: Final Scope Ruling on Simpson Strong-Tie Company's Anchors," dated December 1, 2017; "Antidumping Duty Order on Certain Steel Nails from the People's Republic of China: Final Scope Ruling on Simpson Strong-Tie Company's "Crimp Drive" Anchors," dated March 6, 2018.

¹⁸ See *SAA* at 879, and House Report at 56.

¹⁹ See *SAA* at 889-90, House Report at 63-64, and Senate Report at 52.

Alternatively, the Department may determine that revocation of an antidumping order is not likely to lead to continuation or recurrence of dumping where dumping margins declined or were eliminated and import volumes remained steady or increased after issuance of the order.²⁰

As a base period of import comparison, it is Commerce's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes, and, thus, skew the comparison.²¹ When analyzing import volumes for second and subsequent sunset reviews, Commerce's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.²²

Further, section 752(c)(3) of the Act states that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, Commerce selects the dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.²³ 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, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review").²⁴

In February 2012, Commerce announced it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that are calculated using zeroing.²⁵ In the *Final Modification for Reviews*, Commerce stated that "only in the most extraordinary circumstances" would it rely on margins other than those calculated and published in prior determinations.²⁶ Commerce further stated that apart from the most extraordinary circumstances, it would "limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent" and that it "may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available,

²⁰ See SAA at 889-90.

²¹ 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.

²² See *Ferrovandium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014) and accompanying Issues and Decision Memorandum.

²³ See SAA at 890; see also *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008) (*Persulfates Second Sunset Review*) and accompanying Issues and Decision Memorandum at Comment 2.

²⁴ See SAA at 890-891.

²⁵ 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*).

²⁶ *Id.*

and dumping margins where no offsets were denied because all comparison results were positive.”²⁷

Pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require Commerce to determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at LTFV.²⁸

VI. Discussion of the Issues

Comment 1: Likelihood of Continuation or Recurrence of Dumping

The petitioner argues that revocation of the antidumping duty order on nails from China would likely result in the continuation of dumping in the United States. The petitioner asserts that this is evident in the triple-digit dumping margin applicable to almost all subject imports, the continued significant dumping demonstrated in each of the administrative reviews, and the decrease in subject import volumes.²⁹ The petitioner further asserts that a large number of Chinese companies have the ability to produce subject nails and have a demonstrated interest in exporting such subject merchandise to the United States.³⁰ Additionally, the petitioner argues that because the U.S. market for steel nails is highly price-sensitive, any new source of nails would lower its prices below those of existing suppliers to gain a market share.³¹

Commerce’s Position: As explained in the Legal Framework section above, 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 Commerce to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. According to the SAA, existence of dumping margins after the order “is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping.”³² In addition, “declining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-*Order* volumes.”³³ Alternatively, the legislative history provides that declining (or no) dumping margins accompanied by steady or increasing

²⁷ *Id.*

²⁸ See *Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

²⁹ See Substantive Response at 20-21.

³⁰ *Id.* at 22-24.

³¹ *Id.* at 24-25.

³² See SAA at 890.

³³ *Id.* at 889, the House Report at 63, and the Senate Report at 52.

imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.³⁴

In the instant review, for the reasons stated below, we find the revocation of the antidumping duty order on nails from China would likely result in the continuation of dumping in the United States. In this sunset proceeding, Commerce has relied on a dumping margin consistent with the *Final Modification for Reviews*.³⁵ We consider the rates from the *LTFV Investigation* as demonstrating a likelihood of continuation or recurrence of dumping, given that they are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place and that some of them continue to be applicable during the sunset review period.³⁶

Pursuant to section 752(c)(1)(A) of the Act, Commerce first considered the weighted-average dumping margins determined in the investigation and any subsequent reviews. As discussed above in the *Final Modification for Reviews*, Commerce's practice in sunset reviews is that it does not rely on weighted-average dumping margins that are calculated using the "zeroing" methodology. In the *LTFV Final Determination*, Commerce assigned a margin of 118.04 percent based on total adverse facts available (AFA) to the PRC-wide entity. As this margin was established in the investigation and did not rely on a methodology that employed zeroing, it is reflective of the level of dumping without the discipline of an order in place. Further, this margin is above *de minimis* and has remained in effect since the LTFV. This margin provides the best evidence of dumping behavior, and there is no evidence on the record of this sunset review that indicates dumping has ceased. Accordingly, it is reasonable to conclude that dumping would continue if the *Order* were revoked.

Moreover, the petitioner provided import volume data to Commerce from 2006 to 2017, which illustrate that imports of nails from China declined for the period following imposition of the *Order*.³⁷ Based on the import data provided by the petitioner, Commerce finds that import volumes from China under that Harmonized Tariff Schedule categories specific to subject steel nails have declined sharply after imposition of the *Order* in August 2008, and fluctuated within a narrow band, relative to this much lower level of imports, during the period of the sunset review (*i.e.*, 2013-2017). As noted above, when analyzing import volumes for the second and subsequent reviews, Commerce's practice is to compare import volumes during the year preceding initiation of the underlying investigation, to import volumes since the issuance of the last continuation notice. The last continuation notice for this sunset review was issued January 10, 2014.³⁸ Therefore, for this sunset review, we examined imports prior to the initiation of the antidumping duty investigation as compared to import volumes during the second sunset review period.³⁹ The import data on the record

³⁴ See SAA at 889-90, House Report at 63, and Senate Report at 52.

³⁵ See *Final Modification for Reviews*, 77 FR 8103.

³⁶ See SAA at 890; see also *Persulfates Second Sunset Review* and accompanying Issues and Decision Memorandum at Comment 2; *Final Modification of Investigations*.

³⁷ See Substantive Response at 20-21.

³⁸ See *Continuation Order*.

³⁹ See Substantive Response at 20-21.

demonstrate that the import volumes during the second sunset review period never recovered to the level of pre-investigation imports.⁴⁰ Commerce finds that the continued sharp decrease in imports during the second sunset review period, versus the level of imports before the initiation of the underlying investigation, reflects the effect that the *Order* has had on the companies that are subject to it, and that the significant decrease in imports of subject merchandise, coupled with the continued existence of dumping margins, supports a finding of likelihood of continuation or recurrence of dumping absent of the *Order*.

Comment 2: Magnitude of the Margin of Dumping Likely to Prevail

The petitioner contends that Commerce should report to the ITC that the magnitude of the dumping margin that is likely to prevail is identical to the dumping margin determined in the original investigation.⁴¹

Commerce's Position: Pursuant to section 752(c)(3) of the Act, the administering authority shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. Normally, Commerce will select a weighted-average dumping margin from the LTFV investigation to report to the ITC.⁴² Commerce's preference for selecting a margin from the LTFV investigation is based on the fact that it is the only calculated rate that reflects the behavior of the manufacturers, producers, and exporters without the discipline of an order in place.⁴³ Because dumping continued following the issuance of the *Order* and given the absence of argument and evidence to the contrary, Commerce finds that the margins calculated in the original investigation are probative of the behavior of producers and exporters of subject merchandise from China if this *Order* were revoked. As indicated in the "Legal Framework" section above, consistent with *Final Modification for Reviews*, Commerce's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology. The 118.04 percent rate applied in the LTFV investigation was based on a rate from the petition and was calculated without zeroing.⁴⁴ Accordingly, consistent with section 752(c) of the Act, Commerce will report to the ITC the rate as indicated in the Final Results of Sunset Review section below.

VII. Final Results of Sunset Review

Commerce determines that revocation of the *Order* on nails from China would be likely to

⁴⁰ *Id.*

⁴¹ *Id.* at 25-26.

⁴² See SAA at 890; see also, e.g., *Persulfates Second Sunset Review* and accompanying Issues and Decision Memorandum at Comment 2.

⁴³ See SAA at 890 and *Policies Regarding the Conduct of Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*; *Policy Bulletin 98.3*, 63 FR 18871,18872 (April 16, 1998) at section II.B.1; see also *Persulfates Second Sunset Review* and accompanying Issues and Decision Memorandum at Comment 2.

⁴⁴ See *Certain Steel Nails From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination*, 73 FR 3928 (January 23, 2008) and *Certain Steel Nails From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 7254 (February 7, 2008) unchanged at *LTFV Investigation*.

lead to continuation or recurrence of dumping. Commerce also determines that the magnitude of the dumping margins likely to prevail would be weighted-average margins up to 118.04 percent.

VIII. Recommendation

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

Agree

Disagree

5/13/2019



Signed by: PRENTISS SMITH

P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations