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Sunset Reviews

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September 29, 2020

MEMORANDUM TO: Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

FROM: James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited First Sunset  
Reviews of the Antidumping Duty Orders on Certain Steel Nails  
from the Republic of Korea, Malaysia, Taiwan, and the Socialist  
Republic of Vietnam

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## I. SUMMARY

We have analyzed the substantive responses of the domestic interested parties in the first sunset reviews of the antidumping duty (AD) orders covering certain steel nails (nails) from the Republic of Korea (Korea), Malaysia, Taiwan, and the Socialist Republic of Vietnam (Vietnam).<sup>1</sup> No other interested party submitted a substantive response. Accordingly, we conducted expedited (120-day) sunset reviews pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

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

## II. BACKGROUND

On June 1, 2020, Commerce published the notice of initiation of the first sunset reviews of the *Orders* on nails from Korea, Malaysia, Taiwan, and Vietnam pursuant to section 751(c) of the Act.<sup>2</sup> On June 9, 2020, Commerce received notice of intent to participate from Mid Continent Steel & Wire, Inc. (Mid Continent) within the 15-day deadline specified in 19 CFR

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<sup>1</sup> See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015) (*Orders*).

<sup>2</sup> See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 33088 (June 1, 2020).



351.218(d)(1)(i).<sup>3</sup> Mid Continent claimed interested party status under section 771(9)(C) of the Act as a producer of nails in the United States.

On July 1, 2020, Commerce received adequate substantive responses to the notice of initiation from Mid Continent within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>4</sup> We received no substantive responses from respondent interested parties with respect to any of the orders covered by these sunset reviews.

On July 21, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.<sup>5</sup> As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the *Orders* on nails from Korea, Malaysia, Taiwan, and Vietnam.

### **III. SCOPE OF THE *ORDERS***

The merchandise covered by these orders is certain steel nails having a nominal shaft length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. 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 may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. 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. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope of the orders are nails packaged in combination with one or more nonsubject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article falls into one of the following eight groupings: (1) builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their

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<sup>3</sup> See Mid Continent's Letter, "Certain Steel Nails from the Republic of Korea, the Sultanate of Oman, Malaysia, the Republic of China ("Taiwan"), and the Socialist Republic of Vietnam: Notice of Intent to Participate," dated June 9, 2020.

<sup>4</sup> See Mid Continent's Letter, "Certain Steel Nails from the Republic of Korea, the Sultanate of Oman, Malaysia, Taiwan, and the Socialist Republic of Vietnam: Substantive Response to the Notice of Initiation of Sunset Reviews," dated July 1, 2020 (Substantive Response).

<sup>5</sup> See Commerce's Letter, "Sunset Reviews Initiated on June 1, 2020," dated July 21, 2020.

frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (e.g., furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following HTSUS subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of the orders are nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision).

Also excluded from the scope of the orders are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under United States Harmonized Tariff Schedule (HTSUS) subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of the orders are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (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.

Also excluded from the scope of the orders are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of the orders are thumb tacks, which are currently classified under HTSUS subheading 7317.00.10.00.

Nails subject to the orders are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Nails subject to the orders also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

#### **IV. HISTORY OF THE *ORDERS***

On May 20, 2015, Commerce published its final affirmative determinations in the less-than-fair-value (LTFV) investigations of nails from Korea, Malaysia and Taiwan and on May 22, 2015,

published its final affirmative determination in the LTFV investigation of nails from Vietnam.<sup>6</sup> On July 13, 2015, Commerce published the *Orders*.<sup>7</sup> The following is Commerce's finding for each country:

Exporter/Producer	Weighted-Average Margin (percent)
<b>Korea<sup>8</sup></b>	
Daejin Steel	11.80
Jinheung Steel Corporation	0.00
Duo-Fast Korea Co., Ltd	0.00
Jinsco International Corporation	0.00
All Others	11.80
<b>Malaysia<sup>9</sup></b>	
Inmax Sdn. Bhd.	39.35
Region International Co. Ltd. and Region System Sdn. Bhd.	2.61
Tag Fasteners Sdn. Bhd.	39.35
All Others	2.61
<b>Taiwan<sup>10</sup></b>	
Quick Advance Inc	0.00
PT Enterprises Inc	2.24
All Others	2.24
<b>Vietnam<sup>11</sup></b>	
Kosteel Vina Limited Company (producer/exporter)	323.99
Vietnam-Wide Entity	323.99

Since the issuance of the *Orders*, Commerce has completed three administrative reviews of each of the *Orders* on Korea, Malaysia, and Taiwan, and one administrative review of the AD order on Vietnam. Commerce found the following weighted-average dumping margins in the first administrative review of nails from Korea, Malaysia, Taiwan, and Vietnam:

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<sup>6</sup> See *Certain Steel Nails From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 28955 (May 20, 2015); see also *Certain Steel Nails From Malaysia: Final Determination of Sales at Less Than Fair Value*, 80 FR 28969 (May 20, 2015); *Certain Steel Nails From Taiwan: Final Determination of Sales at Less Than Fair Value*, 80 FR 28959 (May 20, 2015); and *Certain Steel Nails From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 80 FR 29622 (May 22, 2015).

<sup>7</sup> See *Orders*, 80 FR 39994.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

Exporter/Producer	Weighted-Average Margin (percent)
<b>Korea<sup>12</sup></b>	
Daejin Steel Co., Ltd.	2.76
Korea Wire Co., Ltd.	0.00
Je-il Wire Production Co., Ltd	2.76
<b>Malaysia<sup>13</sup></b>	
Inmax Sdn. Bhd. and Inmax Industries Sdn. Bhd.	1.03
Region International Co. Ltd. and Region System Sdn. Bhd.	1.87
Tag Fasteners Sdn. Bhd.	1.45
<b>Taiwan<sup>14</sup></b>	
Bonuts Hardware Logistic Co., Ltd	78.17
PT Enterprise, Inc./Pro-Team Coil Nail Enterprise, Inc	78.17
Unicatch Industrial Co. Ltd	78.17
Hor Liang Industrial Corp.	78.17
Romp Coil Nails Industries Inc.	78.17
<b>Vietnam<sup>15</sup></b>	
Dicha Sombrilla Co., Ltd	323.99
Rich State, Inc	323.99
Truong Vinh Ltd	323.99

Commerce found the following weighted-average dumping margins in the second administrative review of nails from Korea, Malaysia, and Taiwan:

Exporter/Producer	Weighted-Average Margin (percent)
<b>Korea<sup>16</sup></b>	
Daejin Steel Co	3.02

<sup>12</sup> See *Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 83 FR 4028 (January 29, 2018).

<sup>13</sup> See *Certain Steel Nails from Malaysia: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 83 FR 5757 (February 9, 2018).

<sup>14</sup> See *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015-2016*, 83 FR 6163 (February 13, 2018).

<sup>15</sup> See *Certain Steel Nails from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 82 FR 45266 (September 28, 2017).

<sup>16</sup> See *Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 4770 (February 19, 2019).

Koram Inc	10.64
Korea Wire Co., Ltd	0.96
<b>Malaysia<sup>17</sup></b>	
Inmax Sdn. Bhd.	0.00
Region International Co. Ltd. and Region System Sdn. Bhd.	1.46
<b>Taiwan<sup>18</sup></b>	
Bonuts Hardware Logistic Co., Ltd	78.13
PT Enterprise, Inc./Pro-Team Coil Nail Enterprise, Inc	0.00
Unicatch Industrial Co. Ltd	6.16

Commerce found the following weighted-average dumping margins in the third administrative review of nails from Korea, Malaysia, and Taiwan:

<b>Exporter/Producer</b>	<b>Weighted-Average Margin (percent)</b>
<b>Korea<sup>19</sup></b>	
Daejin Steel Company	5.43
Je-il Wire Production Co., Ltd	6.06
Koram Inc	7.34
Korea Wire Co., Ltd	5.47
<b>Malaysia<sup>20</sup></b>	
Inmax Sdn. Bhd. and Inmax Industries Sdn. Bhd	0.00
Region International Co. Ltd. and Region System Sdn. Bhd.	3.12
<b>Taiwan<sup>21</sup></b>	
Liang Chyuan Industrial Co., Ltd./Integral Building Products Inc	2.54

<sup>17</sup> See *Certain Steel Nails from Malaysia: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 9753 (March 18, 2019).

<sup>18</sup> See *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review, 2016-2017*, 84 FR 11506 (March 27, 2019).

<sup>19</sup> See *Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 56424 (October 22, 2019).

<sup>20</sup> See *Certain Steel Nails from Malaysia: Final Results of the Antidumping Duty Administrative Review; 2017-2018*, 85 FR 14461 (March 12, 2020).

<sup>21</sup> See *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Determination of No Shipments; 2017-2018*, 85 FR 14635 (March 13, 2020).

PT Enterprise, Inc./Pro-Team Coil Nail Enterprise, Inc	6.72
Unicatch Industrial Co. Ltd	27.69
Hor Liang Industrial Corp	12.90
Romp Coil Nail Industries Inc	12.90

We are currently conducting two administrative reviews for each country subject to these *Orders*. We initiated the fourth administrative review of nails from Korea, Malaysia, Taiwan, and Vietnam on September 9, 2019, which covers the period of July 1, 2018, through June 30, 2019.<sup>22</sup> We initiated the fifth administrative review of nails from Korea, Malaysia, Taiwan, and Vietnam on September 3, 2020, which covers the period of July 1, 2019, through June 30, 2020.<sup>23</sup>

Since the issuance of the *Orders*, Commerce has conducted three scope inquiries. In the first, Commerce issued a final scope ruling on OMG, Inc. (OMG)’s zinc anchors, determining that they are covered by the Vietnam AD order and the companion Vietnam countervailing duty (CVD) order.<sup>24</sup> On May 29, 2018, the U.S. Court of International Trade (CIT) remanded Commerce’s scope ruling.<sup>25</sup> On remand, Commerce determined, under protest, that OMG’s zinc anchors do not fall within the scope of the AD and CVD orders on nails from Vietnam.<sup>26</sup> The CIT sustained Commerce’s remand redetermination.<sup>27</sup> The CIT’s decision was appealed to the U.S. Federal Circuit (Federal Circuit), which ultimately upheld the CIT’s decision.<sup>28</sup> The appeal period for the Federal Circuit’s decision has not yet expired as of the time of this sunset review.

In the second, Commerce issued a final scope ruling on Midwest Fastener’s zinc and nylon anchors, determining that they are covered by the AD and CVD orders on nails from Vietnam.<sup>29</sup> On October 1, 2018, the CIT remanded Commerce’s scope ruling.<sup>30</sup> On remand, Commerce determined, under protest, that Midwest Fastener’s zinc and nylon anchors do not fall within the scope of the AD and CVD orders on nails from Vietnam.<sup>31</sup> The CIT sustained Commerce’s remand redetermination.<sup>32</sup> The CIT’s decision was appealed to the Federal Circuit, which

<sup>22</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 47244 (September 9, 2019).

<sup>23</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 54986 (September 3, 2020).

<sup>24</sup> See Memorandum, “Antidumping and Countervailing Duty Orders on Certain Steel Nails from the Socialist Republic of Vietnam: Final Scope Ruling on OMG, Inc.’s Zinc Anchors,” dated February 6, 2017.

<sup>25</sup> See *OMG, Inc. v. United States*, 321 F. Supp. 3d 1262 (CIT 2018).

<sup>26</sup> See Final Results of Redetermination Pursuant to Court Remand, *OMG, Inc. v. United States*, Court No. 17-00036, Slip Op. 18-63 (CIT May 29, 2018), dated August 27, 2018.

<sup>27</sup> See *OMG, Inc. v. United States*, 389 F. Supp. 3d 1312, 1314 (CIT 2019).

<sup>28</sup> See *OMG, Inc. v. United States*, Court No. 2019-2131, ECF No. 67 (Fed. Cir. August 28, 2020).

<sup>29</sup> See Memorandum, “Antidumping and Countervailing Duty Orders on Certain Steel Nails from the Socialist Republic of Vietnam: Final Scope Ruling on Midwest Fastener Corp.’s Zinc and Nylon Anchors,” dated May 17, 2017.

<sup>30</sup> See *Midwest Fastener Corp. v. United States*, 335 F. Supp. 3d 1355, 1365 (CIT 2018).

<sup>31</sup> See Final Results of Redetermination Pursuant to Court Remand, *Midwest Fastener Corp. v. United States*, Court No. 17-00131, Slip Op. 18-132 (CIT October 1, 2018) dated December 21, 2018.

<sup>32</sup> See *Midwest Fastener Corp. v. United States*, 389 F. Supp. 3d 1384, 1386 (CIT 2019).

ultimately upheld the CIT's decision.<sup>33</sup> The appeal period for the Federal Circuit's decision has not yet expired as of the time of this sunset review.

In the third, Commerce issued a final scope ruling on steel to wood roofing nails, determining that they are within the scope of the *Orders*.<sup>34</sup>

Commerce has conducted no anticircumvention inquiries since we issued the *Orders*.

## V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce is conducting these sunset reviews to determine whether revocation of the *Orders* would be likely to lead to a 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 period before and the period after the issuance of the AD order. In addition, section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the SAA,<sup>35</sup> the House Report,<sup>36</sup> and the Senate Report,<sup>37</sup> Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.<sup>38</sup> In addition, Commerce 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 the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.<sup>39</sup> Alternatively, Commerce 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.<sup>40</sup>

Furthermore, as a base period of import volume comparison, it is Commerce's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of

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<sup>33</sup> See *Midwest Fastener Corp. v. United States*, Court No. 2019-2226, ECF No. 59 (Fed. Cir. August 28, 2020).

<sup>34</sup> See Memorandum, "Final Scope Ruling Regarding Steel to Wood Roofing Nails Imported by Magnum Tool Corporation, Inc.," dated April 1, 2019.

<sup>35</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA).

<sup>36</sup> See H. Rep. No. 103-826, pt. 1 (1994), reprinted in 1994 U.S.C.C.A.N. 3773 (1994) (House Report).

<sup>37</sup> See S. Rep. No. 103-412 (1994) (Senate Report).

<sup>38</sup> See SAA at 879; see also House Report at 56.

<sup>39</sup> See SAA at 889-890; see also House Report at 63-64; Senate Report at 52; and *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*; *Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Policy Bulletin*).

<sup>40</sup> See SAA at 889-890; see also House Report at 64.



pre-order import volumes, as the initiation of the investigation may dampen import volumes and, thus, skew the comparison.<sup>41</sup>

In addition, section 752(c)(3) of the Act states that Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. Generally, Commerce selects the weighted-average 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.<sup>42</sup> In certain circumstances, however, 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”).<sup>43</sup> Finally, pursuant to section 752(c)(4)(A) of the Act, a margin of dumping likely to prevail of “zero or *de minimis* shall not by itself require” Commerce to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, Commerce announced that in five-year (*i.e.*, sunset) reviews it will not rely on weighted-average dumping margins that were calculated using the zeroing methodology.<sup>44</sup> However, Commerce explained in the *Final Modification for Reviews* that it “retain{s} the discretion, on a case-by-case basis, to apply an alternative methodology, when appropriate” in both investigations and administrative reviews pursuant to section 777A(d)(1)(B) of the Act.<sup>45</sup> 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.<sup>46</sup> 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 adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”<sup>47</sup>

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<sup>41</sup> See *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 (IDM) at Comment 1.

<sup>42</sup> 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), and accompanying IDM at Comment 2.

<sup>43</sup> See SAA at 890-91.

<sup>44</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8102-3 (February 14, 2012) (*Final Modification for Reviews*).

<sup>45</sup> *Id.* at 8105-6.

<sup>46</sup> *Id.* at 8102-3 and 8107-10.

<sup>47</sup> *Id.*

## VI. DISCUSSION OF THE ISSUES

Below we address the comments of the domestic interested party.

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

#### Interested Party Comments<sup>48</sup>

Mid Continent notes that, in all administrative reviews since the issuance of the *Orders*, Commerce has found continued dumping at above *de minimis* level in all cases, which demonstrates that producers and exporters of subject merchandise from Korea, Malaysia, Taiwan, and Vietnam would continue to dump subject merchandise if the *Orders* were removed.

With respect to the volume of imports, Mid Continent asserts that imports of nails from all subject countries declined significantly since the year prior to the filing of the petitions (*i.e.*, 2014).<sup>49</sup>

Mid Continent states that, based on the continued existence of dumping at above *de minimis* levels, and evidence that official import statistics demonstrate that import volumes decreased from 2014 (prior to the issuance of the *Orders*), Commerce should conclude that it is likely that dumping would continue or reoccur if the *Orders* were revoked.

#### Commerce's Position:

Consistent with the legal framework laid out above, Commerce's determinations of whether the revocation of the order would likely lead to the continuation of dumping will be made on an order-wide basis.<sup>50</sup> In addition, Commerce normally will determine that revocation of an AD order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.<sup>51</sup> In addition, pursuant to section 752(c)(1)(B) of the Act, Commerce considers the volume of imports of the subject merchandise for the period before and after the issuance of the AD order.

In this case, Commerce found dumping at above *de minimis* levels in the AD investigations. Further, as noted above in the "History of the Orders" section, Commerce calculated above-*de minimis* margins in each of the completed administrative reviews of the *Orders*.

Additionally, we examined the statistics placed on the record by Mid Continent with respect to imports of the subject merchandise for the year prior to the initiation of the investigations, pursuant to section 752(c)(1)(B) of the Act.<sup>52</sup> These data show substantially decreased import

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<sup>48</sup> See Substantive Response at 27-34.

<sup>49</sup> See Substantive Response at 29-33.

<sup>50</sup> See SAA at 879.

<sup>51</sup> See SAA at 889-890; *see also* House Report at 63-64; and Senate Report at 52.

<sup>52</sup> See Substantive Response at 29-33.

volumes from Korea, Taiwan, and Vietnam when comparing the import volumes from the year prior to the initiation of the investigations (2013) to the five-year period (2015 – 2019) since the issuance of the *Orders*, while the volume of imports from Malaysia over this period increased.<sup>53</sup> Given the continued existence of above *de minimis* margins calculated without zeroing since the imposition of the *Orders* and the overall decrease in the volume of imports, we determine that it is unlikely that producers of subject merchandise in Korea, Taiwan, and Vietnam would be able to sell at pre-order volumes without dumping.<sup>54</sup> Regarding Malaysia, although import volumes have increased slightly since the imposition of the AD order, the continued existence of above *de minimis* margins indicates it is also unlikely that Malaysian importers would be unable to sell in the United States without dumping. Accordingly, we determine that dumping would likely continue or recur if the *Orders* were revoked.<sup>55</sup>

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

### Interested Party Comments<sup>56</sup>

Mid Continent asserts that, pursuant to the principles set forth in the SAA and *Policy Bulletin*, Commerce should report the margins of dumping determined in the original investigations.

### Commerce's Position:

Section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the *Orders* were revoked. Commerce's preference is to select a rate from the investigation because it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order in place.<sup>57</sup> However, Commerce may provide a more recently calculated margin for a particular company, where declining (or zero or *de minimis*) dumping margins are accompanied by steady or increasing imports, which would reflect that the exporter is likely to dump at a lower rate found in a more recent review. Similarly, if an exporter chooses to increase dumping to increase or maintain market share, Commerce may provide the ITC with an increased margin that is more representative of that exporter's behavior in the absence of an order.<sup>58</sup> As indicated in the Legal Framework section *supra*, Commerce's current practice is to not rely on weighted average dumping margins calculated using the zeroing methodology, in accordance with the *Final Modification for Reviews*.<sup>59</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> See SAA at 889 (explaining that "declining import volumes accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes").

<sup>55</sup> See SAA at 890 (explaining that "{i}f 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").

<sup>56</sup> See Substantive Response at 39-41.

<sup>57</sup> See SAA at 890; see also *Policy Bulletin*, 63 FR at 18873 (section II.B.1); and *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 43063 (July 21, 2015), and accompanying IDM at Comment 2.

<sup>58</sup> See section 752(c)(3) of the Act; see also *Clad Steel Plate from Japan: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 83 FR 22008 (May 11, 2018), and accompanying IDM at Comment 2.

<sup>59</sup> See *Final Modification for Reviews*, 77 FR at 8103.

The rates calculated in in the LTFV investigations were not calculated using zeroing and, thus, these dumping margins are consistent with the practice stipulated in the *Final Modification for Reviews*. Therefore, we determine that revocation of the *Orders* would be likely lead to continuation or recurrence of dumping at the magnitude of weighted average margins up to 11.80 percent for Korea, up to 39.35 percent for Malaysia, up to 2.24 percent for Taiwan, and up to 323.99 percent for Vietnam. Accordingly, pursuant to section 752(c)(3) of the Act, Commerce will provide the ITC with the margins from the final determinations as the margin of dumping that is likely to prevail if the *Orders* were revoked.

## VII. FINAL RESULTS OF SUNSET REVIEWS

Commerce determines that revocation of the *Orders* on nails from Korea, Malaysia, Taiwan and Vietnam would be likely to lead to the continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail if the *Orders* were revoked is the range of weighted-average dumping margins up to 11.80 percent for Korea, 39.35 percent for Malaysia, 2.24 percent for Taiwan, and 323.99 percent for Vietnam.

## VIII. RECOMMENDATION

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish these final results of these expedited sunset reviews in the *Federal Register*.



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Agree



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Disagree

9/29/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance