A-570-890
Sunset Review
Public Document
ITA/E&C/Office IV

DATE: March 2, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Expedited Second Sunset Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China

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Summary

In this second sunset review of the antidumping duty (AD) order on wooden bedroom furniture from the People's Republic of China ("PRC"),[1] the American Furniture Manufacturers Committee for Legal Trade ("Committee")[2] and Vaughan-Bassett Furniture Company, Inc. ("Vaughan-Bassett") (collectively, "Domestic Interested Parties") submitted an adequate and timely 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 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).[3] In accordance with our analysis of the Domestic Interested Parties' adequate substantive response, we recommend that you approve the positions described in the instant memorandum. The following is a complete list of issues in the instant sunset review for which we received a substantive response:

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[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China*, 70 FR 329 (January 4, 2005) ("*Order*").
[2] The Committee is an *ad hoc* association of 11 producers of wooden bedroom furniture, including Caperton Furniture works, LLC dba Oat Creek and Tom Seely Furniture, Carolina Furniture Works, Inc., Century Furniture, LLC, Harden Furniture, Inc., Johnston-Tombigbee Furniture Mfg. Co., L. & J.G. Stickley, Inc., Perdues Inc., Sandberg Furniture Mfg. Co., Inc., Stanley Furniture Company, Inc., T. Copeland & Sons, Inc., and Vaughan-Bassett Furniture Company, Inc.
[3] *See Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061(October 28, 2005) (the Department normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response).

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Dumping Margin Likely to Prevail
3. Duty Absorption

Background

On November 3, 2015, the Department of Commerce (the Department) initiated the second sunset review of the *Order* pursuant to section 751(c) of the Act.[4] On November 18, 2015, the Department received a timely notice of intent to participate in the sunset review from the Domestic Interested Parties, pursuant to 19 CFR 351.218(d)(1).[5] In accordance with 19 CFR 351.218(d)(1)(ii)(A), the Domestic Interested Parties claimed interested party status under section 771(9)(C) of the Act as producers of the domestic like product. On December 3, 2015, the Domestic Interested Parties filed a substantive response within the 30-day deadline, as specified in 19 CFR 351.218(d)(3)(i).[6] In addition to the Domestic Interested Parties, the United Brotherhood of Carpenters and Joiners of America Cabinet Makers, Millmen, and Industrial Carpenters Local 721, the United Brotherhood of Carpenters and Joiners of America, Carpenters Industrial Council Local Union 2445, and Teamsters, Chauffeurs, Warehousemen and Helpers Local 991 stated their willingness to participate in this sunset review and support the continuation of the *Order*. The Department did not receive a substantive response from any respondent interested party.

On January 27, 2016, the Department tolled all administrative deadlines as a result of the government closure due to Snowstorm "Jonas."[7] The tolled deadline for the final results of this expedited sunset review is March 8, 2016.

Scope of the Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other

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[4] *See Initiation of Five-year ("Sunset") Review*, 80 FR 67705 (November 3, 2015) ("Sunset Initiation").
[5] *See* Letter from Domestic Interested Parties "Re: Second Five-Year (Sunset) Review of Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China: Notice of Intent to Participate in Sunset Review," dated November 18, 2015.
[6] *See* Letter from Domestic Interested Parties "Re: Five-Year ("Sunset") Review of Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China/The Domestic Industry's Substantive Response To The Notice Of Initiation" dated December 3, 2015 ("Domestic Interested Parties' Substantive Response").
[7] *See* Memorandum from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, to the Record, Re: "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas,'" dated January 27, 2016.

resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[8] highboys,[9] lowboys,[10] chests of drawers,[11] chests,[12] door chests,[13] chiffoniers,[14] hutches,[15] and armoires;[16] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;[17] (9) jewelry armories;[18] (10) cheval mirrors;[19]

[8] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[9] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[10] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[11] A chest of drawers is typically a case containing drawers for storing clothing.

[12] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[13] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[14] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[15] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[16] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[17] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

[18] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door or one front door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie

(11) certain metal parts;[20] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds[21] ; and (14) toy boxes.[22] Also excluded from the scope are certain enclosable wall bed units, also referred to as murphy beds, which are composed of the following three major sections: (1) a metal wall frame, which attaches to the wall and uses coils or pistons to support the metal mattress frame; (2) a metal frame, which has euro slats for supporting a mattress and two legs that pivot; and (3) wood panels, which attach to the metal wall frame and/or the metal mattress frame to form a cabinet to enclose the wall bed when not in use. Excluded enclosable wall bed units are imported in ready-to-assemble format with all parts necessary for assembly. Enclosable wall bed units do not include a mattress. Wood panels of enclosable wall bed units, when imported separately, remain subject to the order.

Also excluded from the scope are certain shoe cabinets 31.5-33.5 inches wide by 15.5-17.5 inches deep by 34.5-36.5 inches high. They are designed strictly to store shoes, which are intended to be aligned in rows perpendicular to the wall along which the cabinet is positioned.

Parkhill, Office Director, concerning "Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China," dated August 31, 2004. *See also Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part*, 71 FR 38621 (July 7, 2006).

[19] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.*, a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 948 (January 9, 2007).

[20] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheadings 9403.90.7005, 9403.90.7010, or 9403.90.7080.

[21] Upholstered beds that are completely upholstered, *i.e.*, containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part*, 72 FR 7013 (February 14, 2007).

[22] To be excluded the toy box must: (1) be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials ("ASTM") standard F963-03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part*, 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum "Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on a White Toy Box," dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

Shoe cabinets do not have drawers, rods, or other indicia for the storage of clothing other than shoes. The cabinets are not designed, manufactured, or offered for sale in coordinated groups or sets and are made substantially of wood, have two to four shelves inside them, and are covered by doors. The doors often have blinds that are designed to allow air circulation and release of bad odors. The doors themselves may be made of wood or glass. The depth of the shelves does not exceed 14 inches. Each shoe cabinet has doors, adjustable shelving, and ventilation holes.

Also excluded from the scope are certain bed bases consisting of: 1) a wooden box frame, 2) three wooden cross beams and one perpendicular center wooden support beam, and 3) wooden slats over the beams. These bed bases are constructed without inner springs and/or coils and do not include a headboard, footboard, side rails, or mattress. The bed bases are imported unassembled.

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 of the HTSUS as "wooden . . . beds" and under subheading 9403.50.9080 of the HTSUS as "other . . . wooden furniture of a kind used in the bedroom." In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9042 or 9403.50.9045 of the HTSUS as "parts of wood." Subject merchandise may also be entered under subheadings 9403.50.9041, 9403.60.8081, 9403.20.0018, or 9403.90.8041. Further, framed glass mirrors may be entered under subheading 7009.92.1000 or 7009.92.5000 of the HTSUS as "glass mirrors . . . framed." The order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

History of the Proceeding

Investigation and Order

The following summarizes the history of the decisions that led to the *Order*. On November 17, 2004, the Department published its final affirmative determination of sales at less than fair value in the *Federal Register*.[23] Following the publication of the Department's final determination, the International Trade Commission ("ITC") found that the U.S. industry was materially injured by reason of imports of subject merchandise.[24] On January 4, 2005, the Department published in the *Federal Register* a notice amending its final determination and issuing an AD order on wooden bedroom furniture from the PRC.[25] The Department determined company-specific dumping rates from 2.32 percent to 15.78 percent, as well as a PRC-wide rate of 198.08.[26] After completion of multiple rounds of review by the U.S. Court of International Trade ("CIT") and the U.S. Court of Appeals for the Federal Circuit ("CAFC"), on August 26, 2011, the

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[23] *See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004).
[24] *See Wooden Bedroom Furniture From China*, 69 FR 77779 (December 28, 2004); Wooden Bedroom Furniture From China: Investigation No. 731–TA–1058 (Final), USCIT Publication No. 4203 (December 2010).
[25] *See Order*, 70 FR 329 (January 4, 2005).
[26] *Id*., 70 FR at 330-32.

Department published an amended final determination and order pursuant to a court decision. The dumping margins of the cooperative mandatory respondents that were subject to the *Order* continued to range from 2.32 percent to 15.78 percent, while the weighted-average dumping margin applied to the separate-rate respondents that participated in the appeals process was amended to 6.68 percent.[27]

Subsequent Administrative, Changed-Circumstances, and New Shipper Reviews, and Scope Proceedings

The Department has completed nine administrative reviews of the *Order*. In these administrative reviews, the Department found dumping margins at above *de minimis* levels with dumping margins ranging from 3.25 percent to 216.01 percent for the mandatory respondents.[28] The Department is currently conducting the tenth administrative review of the *Order*.[29]

The Department has also conducted 10 changed circumstance reviews, 13 new shipper reviews, and numerous scope proceedings.

Duty-Absorption Findings

The Department made a positive duty absorption finding in the administrative review covering the 2008 POR,[30] *i.e.*, the administrative review initiated four years after publication of the *Order*.

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[27] *See Wooden Bedroom Furniture from the People's Republic of China: Corrected Notice of Court Decision Not in Harmony With the Final Determination of Sales at Less Than Fair Value and Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order Pursuant to Court Decision*, 76 Fed. Reg. 53409 (August 26, 2011).

[28] For the June 24, 2004 to December 31, 2005 period of review ("POR"), *see Second Amended Final Results of Antidumping Duty Administrative Review: Wooden Bedroom Furniture From the People's Republic of China*, 72 FR 62834 (November 7, 2007); for the 2006 POR, *see Amended Final Results of Antidumping Duty Administrative Review: Wooden Bedroom Furniture From the People's Republic of China*, 74 FR 4916 (January 28, 2009); for the 2007 POR, *see Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order/Pursuant to Court Decision: Wooden Bedroom Furniture From the People's Republic of China*, 71 FR 67099 (November 20, 2006); for the 2008 POR, *see Wooden Bedroom Furniture From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision*, 80 FR 4870 (January 29, 2015); for the 2009 POR *see Wooden Bedroom Furniture From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision*, 78 FR 72862 (December 4, 2013); for the 2010 POR *see Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 77 FR 51754 (August 27, 2012); for the 2011 POR *see Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2011*, 78 FR 35249 (June 12, 201 3); for the 2012 POR *see Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2012*, 79 Fed. Reg. 51954 (September 2, 2014); for the 2013 POR *see Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission, In Part, of Administrative Review and Final Results of New Shipper Review; 2013*, 80 FR 34619 (June 17, 2015).

[29] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 11166 (March 2, 2015).

[30] *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part*, 75 FR 5952, 5955 (February 5, 2010), unchanged in *Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010).

There have been no duty-absorption findings during this second sunset review period (*i.e.*, 2010-2014).

Prior Sunset Review

The Department published the final results of the first sunset review on April 14, 2010. In that review, it determined that revocation of the *Order* would likely lead to continuation or recurrence of dumping.[31] As a result, and pursuant to section 751(d)(2) of the Act, the Department published a notice of continuation of the *Order* following the ITC's determination that revocation of the *Order* would likely lead to a continuation or recurrence of material injury to the domestic industry within the foreseeable time.[32]

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. The Department normally determines that revocation of an AD 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 issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.[33] However, 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.[34] 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.[35] Consistent with guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, the Statement of Administrative

[31] *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order*, 75 FR 19364 (April 14, 2010) and the accompanying Issues and Decision Memorandum ("2010 Sunset Review IDM").
[32] *See Wooden Bedroom Furniture From the People's Republic of China: Continuation of Antidumping Duty Order*, 75 FR 82373 (December 30, 2010).
[33] *See* SAA at 889-90, House Report at 63-64, and Senate Report at 52; *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) ("*Sunset Policy Bulletin*").
[34] *See Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007) ("*Folding Gift Boxes*") and accompanying Issues and Decision Memorandum at Comment 1.
[35] *See* SAA at 889-90, and House Report at 63.

Action, SAA, H.R. Rep. No. 103-316, Vol. 1 (1994) ("SAA");[36] House Report, H. Rep. No. 103-826, pt. 1 (1994) ("House Report");[37] and Senate Report, S. Rep. No. 103-412 (1994) ("Senate Report")), the Department will make its likelihood determination on an order-wide, rather than company-specific, basis.[38]

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 for comparison, rather than a period after initiation but before issuance of the order, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.[39] However, when analyzing import volumes for second and subsequent sunset reviews, the Department'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.[40] Since the instant expedited sunset review is the second sunset review of the *Order*, we have used the latter comparison here.

Section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the dumping margin(s) from the final determination in the investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.[41] 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").[42]

In the *Final Modification for Reviews,* the Department announced that in five-year (*i.e.*, 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)-inconsistent, *i.e.*, zeroing/the denial of offsets.[43] 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."[44] The Department 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

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[36] Reprinted at 1994 U.S.C.C.A.N. 4040 (1994).
[37] Reprinted at 1994 U.S.C.C.A.N. 3773 (1994).
[38] *See* SAA at 879, and House Report at 56.
[39] *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.
[40] *See Ferrovanadium From the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014) and accompanying Issues and Decision Memorandum.
[41] *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.
[42] *See* SAA at 890-91.
[43] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8109 (February 14, 2012) ("*Final Modification for Reviews*").
[44] *Id.*; *see also* 19 CFR 351.218(e)(2).

WTO-inconsistent" and that it "may also rely on past dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive."[45]

Below we address the comments submitted by the Domestic Interested Parties.

Likelihood of Continuation or Recurrence of Dumping

<u>Domestic Interested Parties' Comments</u>

- The Department has consistently found high dumping margins with respect to imports of wooden bedroom furniture from the PRC. The average of the weighted average dumping margins found for cooperative mandatory respondents is over 31 percent.
- There is a demonstrated practice of certain exporters seeking to maintain and/or increase their export volumes through increased margins of dumping and illegal circumvention schemes which dictate a determination that Chinese exporters will continue to dump at ever higher dumping margins if the order is revoked.
- The nine respondents that received separate-rate dumping margins in new shipper reviews have since received higher dumping margins in administrative reviews.
- The value of subject imports decreased 67 percent from 2003 to 2014. Moreover, a steady decrease in the value of imports started around the time that the Department first published its preliminary dumping margins for the first review. The decrease in imports from the PRC demonstrates that dumping is likely to continue if the order is revoked.
- According to the SAA, declining import volumes after the imposition of the order suggests that dumping would be likely to continue if the order were revoked, especially if the decline in imports is accompanied by the continued existence of dumping margins.[46] The SAA states that declining imports "indicate that the exporter needs to dump to sell at pre-order volumes."[47]
- The actions of Chinese exporters in past wooden bedroom furniture reviews demonstrate that these exporters will attempt to maintain, and even increase, their exports by increased dumping, given the chance. This is seen by the trend of respondents adopting: (1) aggressive dumping practices (particularly after receiving relatively low cash-deposit rates) that led to the assignment of high dumping margins when the entries were reviewed or (2) funneling practices (*i.e.*, acting as the exporter for other producers with higher dumping rates) that similarly led to the assignment of high dumping margins when the entries were reviewed.

[45] *Id.* at 8109.
[46] *See* SAA at 889.
[47] *Id*.

Department Position

As noted above, when determining whether revocation of an order would likely lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider, among other things, the weighted-average dumping margins determined in the investigation and subsequent reviews. 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."[48] In the investigation and all subsequent administrative reviews of the *Order*, except one review where no party was ultimately reviewed, the Department found dumping above *de minimis* levels, with dumping rates reaching as high as 216.01 percent.[49] While the Department found dumping at *de minimis* levels in certain new shipper reviews, many of the new shippers that received these dumping margins have subsequently received above *de minimis* dumping margins. Also, as noted above, a zero or *de minimis* dumping margin shall not, by itself, require the Department to determine that revocation of an AD order would not likely lead to a continuation or recurrence of sales at less than fair value. Moreover, when the results of all of the administrative and new shipper reviews are considered together, the weight of the record shows that companies have continued to dump with the discipline of an order in place.

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 likely lead to continuation or recurrence of dumping. "{D}eclining 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."[50] As noted above, when analyzing import volumes for second and subsequent sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation (*i.e.*, 2003, as the underlying investigation was initiated in December 2003)[51] to import volumes since the issuance of the last continuation notice (*i.e.*, 2011 to 2014). The last continuation notice for this sunset review was issued in December 2010.[52]

Wooden bedroom furniture imported into the United States from the PRC under the applicable HTSUS numbers listed in the most recent scope of the *Order* (9403.50.9041, 9403.50.9042, 9403.50.9045 (Beds)[53] and 9403.50.9080) in the period since the issuance of the last continuation notice has significantly declined compared to imports in the year immediately preceding the initiation of the investigation (*i.e.*, 2003) and remains below pre-investigation

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[48] *Id.*; *see also* House Report at 63-64.

[49] *See Order* and *Second Amended Final Results of Antidumping Duty Administrative Review: Wooden Bedroom Furniture From the People's Republic of China*, 72 FR 62834 (November 7, 2007).

[50] *See* SAA at 889, the House Report at 63, and the Senate Report at 52.

[51] The Department published the initiation of the investigation in this proceeding in the second half of December, 2003 and so has relied on full year 2003 import data. *See Notice of Initiation of Antidumping Duty Investigation: Wooden Bedroom Furniture from the People's Republic of China*, 68 FR 70228 (December 17, 2003).

[52] *See Wooden Bedroom Furniture From the People's Republic of China: Continuation of Antidumping Duty Order*, 75 FR 82373 (December 30, 2010).

[53] HTSUS category 9403.50.9040 accounted for all beds prior to January 2011.

levels. As an initial matter, it is important to note that the Department used import values, rather than import volumes, in its analysis. The Department explained in prior segments of this proceeding that it cannot use import data based on volume because the volume is reported in different units of measure, (*e.g.*, pieces). Therefore, the Department analyzed imports using import value as a proxy for volume. Using this approach, since issuance of the last continuation notice (*i.e.*, during calendar years 2011 through 2014) the calendar year U.S. imports of wooden bedroom furniture from the PRC were between 56 and 67 percent less than the those in calendar year 2003.[54] As noted in the SAA, "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." Record evidence shows significantly lower imports over this second sunset period examined compared to the pre-initiation import period. This indicates that PRC exporters may not be able to maintain pre-initiation import levels without selling subject merchandise at dumped prices.[55]

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

Magnitude of the Dumping Margin Likely to Prevail

<u>Domestic Interested Parties' Comments</u>

- The Department should identify the magnitude of dumping likely to prevail if the *Order* were revoked as weighted-average dumping margins up to 216.01 percent, which is the current PRC-wide rate (a rate assigned during the first administrative review).
- Since issuance of the antidumping duty order, PRC exporters have continued to dump subject merchandise in the United States at consistently high levels.
- The *Sunset Policy Bulletin* noted that a foreign exporter or producer may "choose to increase dumping in order to maintain or increase market share;" therefore, higher or more recently calculated margins "may be more representative of a company's likely behavior in the absence of an order."[56]
- Accordingly, the Department may provide to the ITC "a more recently calculated margin for a particular company where, for the particular company, dumping margins increase after the issuance of the order, even if the increase was a result of the application of best information available or facts available."[57]

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[54] *See* Domestic Interested Parties' Substantive Response at Attachment 7.
[55] *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.
[56] *See Sunset Policy Bulletin*, 63 FR 18871, 18873 (April 16, 1998).
[57] *Id*.

- The PRC-wide rate increased from 198.08 percent in the investigation to 216.01 percent, despite the presence of the *Order*. Thus, 216.01 percent best reflects the dumping margin likely to occur absent the *Order*.
- Since the first administrative review, the Department continued to use the 216.01 percent dumping margin as the PRC-wide rate, routinely corroborating that rate with transaction-specific margins of mandatory respondents.
- In the alternative, the Department should identify the magnitude of dumping likely to prevail as weighted-average dumping margins up 198.08 percent, which is the PRC-wide rate assigned in the investigation.

Department Position

We find that the weighted-average AD dumping margins established in the investigation represent the margins of dumping most likely to prevail if the *Order* were revoked. This is consistent with the Department's practice of providing to the ITC the weighted-average dumping margin(s) from the investigation[58] because it is the only calculated dumping margin that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.[59]

We disagree with the Domestic Interested Parties' argument that the Department should report dumping margins to the ITC of up to 216.01 percent. In their comments regarding the likelihood of continuation or recurrence of dumping, Domestic Interested Parties indicated that certain exporters sought to maintain and/or increase their export volumes through increased dumping margins. Domestic Interested Parties cited the *Sunset Policy Bulletin* which states that a foreign exporter or producer may "choose to increase dumping in order to maintain or increase market share;" therefore, higher or more recently calculated margins "may be more representative of a company's likely behavior in the absence of an order."[60] However, most of the Domestic Interested Parties' examples of specific-exporters maintaining or increasing exports through increased dumping margins involve periods analyzed in the first expedited sunset review of the *Order*. In that review, the Department noted that steady or increasing imports, alone, is not sufficient to demonstrate steady or increasing market share.[61] For example, domestic consumption may have increased and, as a result, an increase in import volumes for certain exporters would not necessarily indicate a corresponding increase in market share. Moreover, in the period analyzed in this sunset review, overall imports have declined. Furthermore, Domestic Interested Parties have not explained how the company-specific data indicate that the more recent rates are probative of PRC producers/exporters' behavior in the absence of an order. The Department's practice establishes that the onus is on the party requesting that more recent rates be reported to the ITC to provide the Department with the necessary data to support such a request and in this case we find that Domestic Interested Parties have failed to do so.

[58] *See Eveready Battery Co. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999).
[59] *See* SAA at 890.
[60] *See Sunset Policy Bulletin*, 63 FR 18871, 18873 (April 16, 1998).
[61] *See* 2010 Sunset Review IDM at 7.

Because Domestic Interested Parties have not raised an argument sufficient to cause the Department to veer from its preference for selecting the dumping margins from the investigation, and because the dumping margins in the investigation were calculated without the discipline of an order, we find that the weighted-average AD margins established in the investigation represent the margin of dumping most likely to prevail if the *Order* were revoked. We further determine that the 198.08 percent dumping margin from the investigation was not affected by the denial of offsets and thus it is an appropriate dumping margin for this sunset review in accordance with the *Final Modification for Reviews*.[62] This determination is based on the fact that the 198.08 percent dumping margin from the investigation, which was the dumping margin applied to the PRC-wide entity, was based on a dumping margin calculated in the Petition.[63] Accordingly, we will report to the ITC the margins of dumping likely to prevail listed in the "Final Results of Review" section below.

Duty Absorption

<u>Domestic Interested Parties' Comments</u>

- The Department should notify the ITC of the duty absorption findings from the fourth administrative review covering 2008.

<u>Department Position</u>

We determine that it is not appropriate, in this second sunset review covering 2011 through 2014, to report to the ITC our duty-absorption findings from the first sunset-review period (*i.e.*, the fourth administrative review covering 2008). The Department's duty-absorption findings in the fourth administrative review correspond to the first sunset-review period (*i.e.*, 2003-2009). There are no duty-absorption findings that correspond to the second sunset review period (*i.e.*, 2011-2014). Moreover, the CAFC has held that the statute only authorizes the Department to conduct duty-absorption inquiries in the second and fourth administrative reviews after publication of the order. The CAFC has rejected the idea that the Department can conduct duty-absorption inquiries beyond the initial sunset-review period.[64] Therefore, in light of the

[62] *See Final Modification for Reviews*, 77 FR at 8103.

[63] In the initiation of the investigation in this proceeding, the Department noted that the estimated dumping margins calculated in the petition ranged from 158.74 percent to 440.96 percent. *See Initiation of Antidumping Duty Investigation: Wooden Bedroom Furniture from the People's Republic of China* ("*Initiation*"), 68 FR 70228, 70231 (December 17, 2003). In the final determination, the Department assigned a dumping margin derived from the petition, *i.e.*, 198.08 percent, to the PRC-wide entity. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 35312, 35321 (June 24, 2004), *unchanged in Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313, 67316 (November 17, 2004). We have determined, based on information in the petition, that the 198.08 percent dumping margin was calculated without the use of zeroing.

[64] *See FAG Italia S.p.A. v. United States*, 291 F.3d 806, at 815 n.3 (CAFC 2002) (rejecting the claim that the Department has the authority to conduct duty absorption inquires every second and fourth year after each successive sunset review because "neither the statute nor its legislative history suggests that Commerce may conduct duty absorption inquiries beyond the initial sunset review, and the plain language of the statute provides that duty absorption inquiries be conducted '2 years or 4 years after the publication of an antidumping duty order.'").

CAFC's decision in *FAG Italia*, because this is the second sunset review, we determine that it is inappropriate to notify the ITC of our findings on duty absorption from the fourth administrative review based upon the CAFC's ruling. This position is consistent with the Department's position in the third sunset review of crawfish from China.[65]

Final Results of Review

We determine that revocation of the *Order* would likely lead to continuation or recurrence of dumping. We also determine that the magnitude of the margins of dumping likely to prevail would be weighted-average dumping margins up to 198.08 percent.

Recommendation

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

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

2 MARCH 2016
(Date)

[65] *See Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of the Third Expedited Sunset Review of the Antidumping Duty Order*, 79 FR 13278 (March 10, 2014), and accompanying Issues and Decision Memorandum at 8.