UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-428-815, A-580-816
Sunset Reviews
Public Document
Office 3: JT

November 30, 2012

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of Full Sunset Reviews of the Antidumping Duty Orders on Corrosion-Resistant Carbon Steel Flat Products from Germany and the Republic of Korea

Summary

We have analyzed the briefs submitted by the interested parties for the final results of these full third sunset reviews of the antidumping duty orders covering corrosion-resistant carbon steel flat products ("CORE") from Germany and the Republic of Korea ("Korea"). We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in these sunset reviews:

1. Likelihood of continuation or recurrence of dumping

2. Magnitude of the margins likely to prevail

Background

The Department of Commerce ("the Department") published the preliminary results of these sunset reviews on July 27, 2012.[1] In the *Preliminary Results*, the Department found that revocation of the orders would likely result in the continuation or recurrence of dumping. The magnitude of the margins of dumping likely to prevail was based on the weighted-average dumping margins from the original investigation, which were revised subject to certain conservative assumptions to ensure that they were consistent with WTO decisions and the *Final Modification for Reviews*.[2]

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[1] *See Corrosion-Resistant Carbon Steel Flat Products from Germany and the Republic of Korea: Preliminary Results of Full Sunset Reviews*, 77 FR 44213 (July 27, 2012) and accompanying Issues and Decision Memorandum ("*Preliminary Results*").

[2] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification for Reviews*, 77 FR 8101 (February 14, 2012) ("*Final Modification for Reviews*").

Specifically, in the *Preliminary Results*, the Department found that, for Germany, in the absence of administrative reviews, the only rates available for consideration were the rates from the underlying investigation. However, because the underlying investigation rate did not include the application of offsets, the rate derived from the investigation is not consistent with recent WTO decisions. Therefore, we revised the weighted-average dumping margin from the underlying investigation so that it is no longer WTO-inconsistent based on conservative assumptions regarding the value of the offsets from the investigation. Specifically, we assumed that, for all U.S. sales with negative comparison results, the normal value is zero. As such, the maximum possible value of offsets is the total value of U.S. sales with negative comparison results. Under this approach, the Department preliminarily determined that the magnitude of the margin of dumping likely to prevail is at least 9.35 percent for Thyssen Stahl AG and for all other German producers and exporters of CORE.[3]

With respect to Korea, there have been numerous administrative reviews since the issuance of order, however none of the weighted-average dumping margins calculated in the investigation or any of the administrative reviews were calculated with offsets. Thus, in the *Preliminary Results*, the Department determined that it is appropriate to provide the International Trade Commission ("ITC") with the rates from the investigation after making the same conservative assumptions as described above for Germany. On this basis, the Department preliminarily determined that the estimated magnitude of the margin of dumping likely to prevail would be at least 12.85 percent for all Korean producers and exporters except Pohang Iron & Steel Co., Ltd. and Pohang Coated Steel Co., Ltd. (collectively, POSCO), which has been revoked from the order for Korea.[4]

Discussion of the Issues

On September 17, 2012, we received case briefs from domestic interested parties ArcelorMittal USA LLC ("AMUSA") and United States Steel Corporation (U.S. Steel"). Below we address the comments of the interested parties.

1. *Likelihood of Continuation or Recurrence of Dumping*

There were no interested party comments on this issue.

2. *Magnitude of the Margins Likely to Prevail*

U.S. Steel argues that there is no basis for recalculating the investigation rate and that, according to the SAA, the investigation margin is the best predictive measure.[5] U.S. Steel also argues that neither the *Final Modification for Reviews* nor the adverse WTO decisions affect what the Department should report to the ITC; rather, the change in practice in the *Final Modification for Reviews* and WTO decisions is limited to the first step of determining likelihood of continued

[3] *See* Memorandum from Dennis McClure to Melissa Skinner, WTO-Consistent Margin Calculation for CORE from Germany, dated July 23, 2012.

[4] *See* Memorandum from Dennis McClure to Melissa Skinner, WTO-Consistent Margin Calculation for CORE from Korea, dated July 23, 2012. As noted in the "Final Results of Reviews" section of the *Preliminary Results*, the order on CORE from Korea was revoked with respect to POSCO in the final results of the 2009-2010 administrative review.

[5] *See* Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994).

dumping, not the magnitude of dumping likely to prevail, and the *Final Modification for Reviews* and WTO decisions are silent with regard to what the Department must report to the ITC. Finally, U.S. Steel argues that the Department cannot use zero as the normal value for comparisons that had negative margins because no record evidence supports this assumption, it violates the statute because it is not a "fair comparison," and the Department admits it is an "over-estimation" rather than the most accurate weighted-average dumping margin.

AMUSA argues that the original investigation itself has never been found to be WTO-inconsistent and that the rates from the tenth and eleventh reviews were based on adverse facts available ("AFA"), and are therefore not WTO-inconsistent. Further, because the investigation rate used partial "best information available" ("BIA"), the statutory precursor to the AFA provision, and such margins are recognized as WTO-consistent, the investigation margin should be used. AMUSA argues that the source of the AFA in those rates is irrelevant and that the Department recently relied on AFA rates in the sunset review of polyester staple fiber from the People's Republic of China.[6] AMUSA further argues that no extraordinary circumstances are present which justify the Department's methodology here. AMUSA also argues that if the Department continues use the methodology from the *Preliminary Results*, it should, at a minimum, calculate an average of the original investigation rate and the recalculated rate from the *Preliminary Results*.

AMUSA also claims that no record evidence supports the conservative assumption that normal value was zero and that this methodology could lead to false negative results in other cases. AMUSA argues that it is insufficient to guarantee that this methodology will lead to no false positive results and that the Department should also make clear that it will not employ this methodology in other cases where it might lead to false negative results. AMUSA argues that the Department should, at the least, average the original investigation rate with the revised investigation rate. It notes that the SAA and the statute require weighted-average dumping margins to be calculated in the most accurate way possible and that the *Final Modification for Reviews* does not alter the requirement of calculating the most accurate weighted-average dumping margin. It further claims that the new methodology is not predictive of future behavior and that it is inaccurate and unfair to report a rate of "at least" some number; rather it should be a specific rate. Finally, AMUSA argues that, as an alternative approach, instead of assuming a normal value of zero, it would have been viable to assume a normal value equal to the U.S. price.

Department's Position

Sections 752(c)(1)(A) and (B) of the Tariff Act of 1930, as amended ("the Act") provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigations and subsequent reviews and the volume of imports of the subject merchandise for the periods before and after the issuance of the antidumping duty orders. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margins of dumping likely to prevail if the orders were revoked.

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[6] *Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 77 FR 54898 (September 6, 2012) and accompanying Issues and Decision Memorandum (*Polyester Staple Fiber*).

In the *Final Modification for Reviews*, we stated that we will not rely in our sunset reviews on weighted-average dumping margins that were based on a methodology found to be WTO-inconsistent. As a general matter, weighted-average dumping margins may include rates calculated in investigations and new administrative reviews where zeroing was not used, rates recalculated in proceedings conducted pursuant to section 129, rates determined based on the use of facts available, and rates where no zeroing took place because all comparison results were positive. In extraordinary circumstances, we stated that we would recalculate weighted-average dumping margins to avoid WTO-inconsistencies. In this case, we made the conservative assumption that normal values in comparisons with negative results should instead be set to zero.

As an initial matter, we disagree with U.S. Steel that the *Final Modification for Reviews* was not intended to affect the magnitude of the margin of dumping likely to prevail we report to the ITC. The Department explained that it was changing its practice so that it would "it will not rely on weighted-average dumping margins that were calculated using the methodology determined . . . to be WTO-inconsistent."[7] The Department finds that not relying on these in a sunset review includes not relying on them when determining what rates to report to the ITC as the margin of dumping likely to prevail. We disagree with U.S. Steel and AMUSA that we should use the unmodified weighted-average dumping margins from the investigation. Indeed, in the *Final Modification for Reviews*, we specifically stated that "[t]he Department is also modifying its practice in five-year ('sunset') reviews, such that it will not rely on weighted-average dumping margins that were calculated using the methodology found to be WTO-inconsistent."[8] Contrary to the argument that the SAA requires the use of unmodified investigation rates as the best predictive measure of future behavior, the SAA says that the Department "normally will select the rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters ... without the discipline of an order ... in place."[9] The SAA makes no mention of "unmodified" rates from the investigation and, indeed, rates from the investigation may be modified, such as pursuant to remand. For these and future sunset reviews, the Department has modified its practice to comply with adverse WTO findings pursuant to section 123 of the Uruguay Round Agreements Act ("URAA"). More specifically, the Department stated that "it will not rely on dumping margins determined in a manner found to be WTO-inconsistent in US-Zeroing (EC), US-Zeroing (Japan), US-Stainless Steel (Mexico), and in US-Continued Zeroing (EC). While it is possible that in some instances, weighted-average dumping margins will need to be recalculated to avoid reliance on rates which are WTO-inconsistent, the Department finds that those situations can be addressed on a case-specific basis."[10] As we indicated, certain situations must be evaluated case-by-case which may require recalculations to be done.

With regard to arguments that neither the *Final Modification for Reviews* nor the WTO decisions affect the number to be reported for magnitude of the margin of dumping likely to prevail, we disagree. As stated above, in these sunset reviews we are following the Department's policy promulgated in the *Final Modification for Reviews*. The United States responds to WTO findings through a statutory process set out in section 123 of the URAA. Here, we are following the Department's practice with respect to sunset reviews that we announced in the section 123

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[7] *See Final Modification for Reviews*, 77 FR at 8103.
[8] *See id.*, 77 FR at 8101.
[9] SAA at 890.
[10] *See Final Modification for Reviews*, 77 FR at 8109.

Final Modification for Reviews.

With regard to the suggestion for the Korean sunset review that we should use an AFA-based rate, on the ground that such an approach would be WTO-consistent, regardless of the source of AFA, the Department finds that it is appropriate to provide the ITC with the revised rates from the investigation rather than using the AFA-based weighted-average dumping margin because the investigation rates are the only calculated rates that reflect behavior without the order in place and thus predict future behavior. In response to AMUSA's argument that the Department should use the unrevised partial BIA rate from the investigation as the magnitude of the margin likely to prevail because it is WTO-consistent, we disagree. That rate still relied on a weighted-average dumping margin calculated using a methodology applying offsets determined to be WTO-inconsistent. As for using the AFA-based rate from the tenth and eleventh administrative reviews, that would be using a more recent rate, which is not the Department's preference as stated in the SAA at 890. On this basis, in the *Preliminary Results*, the Department found it appropriate to provide the ITC with revised rates from the investigation because these are the only calculated rates that reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place.

Regarding AMUSA's argument that none of the instances cited as being "most extraordinary circumstances" are present here and, therefore, it is inappropriate for the Department to perform these recalculations, we disagree. The instances cited are examples of most extraordinary circumstances, not a definitive list. As the Department stated, we evaluate the factual record on a case-by-case basis. Based on the unique circumstances of the factual record of this review, we determine that most extraordinary circumstances are present and, as such, the recalculations are appropriate.

Regarding the argument that our approach was flawed and unreasonable, we disagree. As stated above, we have a clear priority of policy preferences. Similarly, we disagree that our methodology is not predictive of future behavior. In other cases, when faced with a similar factual record we have recalculated rates using the appropriate methodology.[11] The record of this case is novel in that we do not have the databases and programs in a useable electronic format on the records of these sunset reviews that would allow us to perform the complete recalculation as accurately as possible. Instead, the records only have hard copies of portions of the underlying data necessary to perform the calculations completely. Faced with this factual situation, which is different from that in *Polyester Staple Fiber*, we developed a reasonable method to achieve the desired result—reliance on an investigation rate based on a methodology that was not found to be WTO-inconsistent.

Regarding the arguments that the Department cannot use zero as normal value, we disagree with the premise of the argument. The calculation revision reflects a conservative assumption employed as a parameter in our analysis to estimate a margin based on a methodology that was not found to be WTO-inconsistent based on the information available from the original investigations, not a determination that normal values are zero. We use this methodology

[11] *See, e.g., Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders on Steel Concrete Reinforcing bars from Belarus, Indonesia, Latvia, Moldova, Poland, the People's Republic of China, and Ukraine* 77 FR 70410 (November 23, 2012).

because of data limitations—we do not have access to a detailed list of home market prices from the relevant databases on the record of these sunset reviews. In the absence of the information necessary to perform a complete recalculation, we determined that this was a reasonable approach given the data that was available. Regarding AMUSA's argument that we should assume that normal value is equal to U.S. price, we disagree. That alternative methodology equating normal value and U.S. price is tantamount to disallowing offsets and, as such, is inappropriate in this context. The methodology chosen is reasonable and consistent with the Department's stated policy in the *Final Modification for Reviews*. Thus, in light of the facts of these records, we disagree that our approach is unfair or unsupported by the records; rather, we have made a reasonable determination based on the evidence that is actually available on these records.

With respect to AMUSA's argument that our methodology could lead to false negative results in other cases, it is speculative to conclude what methodology we may use in future cases with different fact patterns. We make our findings in each review based on the factual record in that review. As to AMUSA's concern that we should make clear that we will not employ this methodology in other cases where it might lead to false negative results, we again note that the case-by-case approach ensures that an appropriate methodology will be used. In future reviews, we will evaluate the appropriate methodology based on the factual record of each review. Finally, with regard to AMUSA's suggested alternative that we average the original investigation rates with the recalculated rates from the *Preliminary Results*, we disagree. The *Final Modification of Reviews* states that the Department will not rely on a rate based on a methodology found to be WTO-inconsistent, and including the investigation rates in this way would be contrary to this statement.

Final Results of Reviews

We continue to find that dumping would be likely to continue or to recur if the antidumping duty orders on CORE from Germany and Korea are revoked. Further, we determine that the magnitude of the margin of dumping likely to prevail, if the antidumping duty orders are revoked, is at least 9.35 percent for Thyssen Stahl AG and all other German producers and exporters of CORE, and at least 12.85 percent for all Korean producers and exporters of CORE, other than POSCO.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of these reviews in the *Federal Register* and notify the ITC of our determinations.

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

November 30, 2012

(Date)