

FOURTH REDETERMINATION ON REMAND
OIL COUNTRY TUBULAR GOODS FROM MEXICO:
SUNSET REVIEW

In the Matter of:

Oil Country Tubular Goods from Mexico; Final Results of Sunset Review of Antidumping Duty
Order,

Secretariat File No. USA-Mex-2001-1904-03 (Panel Decision, January 17, 2007)

Introduction

For the reasons explained below, the Department continues to find that revocation of the Order would likely lead to a continuation or recurrence of dumping. In so doing, and in accordance with the Panel's instructions, the Department has provided a reasoned analysis to support its conclusion. Specifically, the Department explains why the elimination of TAMSA's foreign debt does not outweigh the likelihood presumption derived from the post-order reduction of TAMSA's exports, has utilized the actual financial expense ratio in its analysis, and has provided an explanation supported by sunset review law indicating why TAMSA's zero margin calculations have no predictive value.

Background

The Department of Commerce ("the Department") detailed the background of the case in its August 17, 2006 redetermination. See Redetermination on Remand, Oil Country Tubular Goods from Mexico: Final Results of Sunset Review of Antidumping Duty Order ("Third Redetermination") at 1 - 5.

The Panel's Remand

On January 17, 2007, the North American Free Trade Agreement (“NAFTA”) Bi-National Panel (“Panel”) in the above-referenced case issued a Decision of the Panel (“Fourth Decision”),¹ again remanding the review to the Department. The Panel first addressed the order-wide basis for a likelihood determination. The Panel rejected the Department’s reliance on the margin in the fourth administrative review period for Hylsa S.A. de CV (“Hylsa”) because it is not on the record of this proceeding. Id. at 14-15.² Second, the Panel addressed the Department’s treatment of post-order exports by Hylsa and Tubos de Acero de Mexico S.A. (“TAMSA”). The Panel found that the Department improperly treated a “virtual cessation” of post-order exports as a “cessation” as defined in the SAA. Id. at 15. The Panel declared that the Department provided “no support for its interpretation of ‘virtual cessation’ as synonymous with ‘cessation’ and cites no authority in the CIT or elsewhere on the question.” Id. at 16. However, the Panel accepted that the post-order volume decline establishes a presumption that dumping is likely to resume absent the discipline of the order, but the Panel stated that the Department must still determine whether this presumption is outweighed by the change in TAMSA’s “other factors.” Id.

Third, the Panel addressed the probative value of TAMSA’s zero margins during the administrative reviews in the Department’s likelihood determination. The Panel rejected the Department’s finding that the zero margins have no probative value as “an unreasonable interpretation of the Statute and the SAA.” Id. at 17. The Panel cited 19 U.S.C. § 1675a(c)(4),

¹ See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Sunset Review of Antidumping Duty Order, Secretariat File No. USA-Mex-2001-1904-03 (Panel Decision, January 17, 2007)

² See Oil Country Tubular Goods From Mexico: Final Results of Antidumping Review and Determination Not To Revoke in Part, 66 FR 15832 (March 21, 2001) (“OCTG Fourth Administrative Review”).

which states in relevant part that a zero margin “shall not by itself require the administering authority to determine that revocation of an antidumping duty order . . . would not be likely to lead to continuation or recurrence of sales at less than fair value.” Id. The Panel stated that the SAA repeated the statutory language and added that “exporters may have ceased dumping because of the existence of an order . . . Therefore, the present absence of dumping is not necessarily indicative of how exporters would behave in the absence of the order.” Id. The Panel concluded that although it “does not weigh the probative value of the zero margins, in the present circumstances, it is clearly unreasonable to give them no weight.” Id.

Fourth, the Panel addressed the Department’s analysis of TAMSA’s financial expense ratio. The Panel stated that the Department did not follow the Panel’s instructions in the last remand to either issue a finding of no likelihood or explain why TAMSA’s financial expense ratio was likely to recur. The Panel found that in the Department’s consideration of TAMSA’s debt levels and the effect of currency fluctuation on those debt levels, the Department improperly speculated that there could be further peso devaluations and that TAMSA may take on foreign currency-denominated debt in the future. The Panel stated that such speculation does not rise to the legal standard of “likely” occurrences. The Panel then found that the Department unreasonably repeated its use of an artificial financial expense ratio given that the record contains TAMSA’s actual financial expense ratio. The Panel stated that the use of the artificial ratio was, therefore, contrary to law. Id.

Fifth, the Panel addressed TAMSA’s argument that its withdrawal from the U.S. market was a “business decision.” The Panel stated that it “has not altered its view of TAMSA’s business decision arguments. TAMSA has not produced evidence to demonstrate its contention. Simply

stating that withdrawal from the market constituted a ‘business decision’ will not rebut the presumption in favor of a likelihood finding, especially when the Department has made opposing reasonable assertions regarding the healthy market conditions that existed during the sunset review period.” Id. at 20.

In its remand order, the Panel directed the Department “to reconsider its likelihood determination and either issue a determination of no likelihood or give a reasoned analysis to support a conclusion that TAMSA’s dumping is likely to continue or recur.” Id. at 21-22. The Panel further instructed the Department that if it reissued a likelihood determination,

to explain in detail why the elimination of TAMSA’s foreign debt does not outweigh the likelihood presumption derived from the post-order reduction of TAMSA’s exports. In its evaluation of TAMSA’s ‘other factors,’ the Department is directed to utilize the actual financial expense ratio established in the record of this proceeding. The Department is also directed to provide an explanation supported by sunset review law indicating why TAMSA’s zero margin calculations have no predictive value.

Id. at 22.

Analysis

_____ For the reasons explained below, the Department continues to find that revocation of the Order would likely lead to a continuation or recurrence of dumping. The Department addresses each of the Panel’s specific items referenced above in turn - namely, utilization of the financial expense ratio, the probative value of the zero margins, and the elimination of TAMSA’s foreign debt.

_____ 1. _____ TAMSA’s Actual Financial Expense Ratio

The Department finds that the elimination of TAMSA’s foreign debt does not outweigh the likelihood presumption derived from the post-order reduction of TAMSA’s exports. The Panel has

directed the Department “to utilize the actual financial expense ratio established in the record of this proceeding” in making the Department’s likelihood determination. See Fourth Remand at 22. Therefore, based on the Panel’s instructions, the Department will assume that the levels of TAMSA’s financial expense ratios during the antidumping administrative reviews are likely to recur at similar levels. Also, pursuant to the Panel’s instructions, the Department will assume that TAMSA’s financial expense ratio during the investigation is aberrational, temporary in nature, and unlikely to recur. The Department’s analysis of TAMSA’s actual financial expense ratio is discussed below in the context of the Department’s likelihood determination of whether dumping will continue or recur absent the discipline of the order.

2. Predictive Value of TAMSA’s Zero Margins

As explained below, the Department does not find that TAMSA’s zero margins have predictive (i.e. probative) value in light of the level of TAMSA’s shipments to the United States. In its third remand determination, the Department stated that TAMSA’s zero margins had no probative value “given that TAMSA did not ship in commercial quantities during the administrative review periods.”³ In its analysis of the Department’s remand, the Panel concluded that TAMSA’s zero margins “may” have probative value and that the Department did not provide a proper analysis of the probative value of the zero margins based upon the statutory and regulatory framework. Based upon a reasonable interpretation of the relevant statutes, regulations, and Department practice, the Department finds that TAMSA’s zero margins have only minimal probative value.

³ See Third Redetermination at 21.

19 U.S.C. § 1675a(c)(4)(A) states in relevant part that “[a] dumping margin . . . that is zero or de minimis shall not by itself require the administering authority to determine that revocation of an antidumping duty order . . . would not be likely to lead to a continuation or recurrence of sales at less than fair value.” Although the statute does not provide any specific guidance on how to weigh the probative value of a zero margin, it does indicate that a zero margin should be examined before any probative value is assigned to it that would indicate dumping would not be likely to continue or recur. In other words, the existence of a zero or de minimis margin does not automatically lead to a finding of no likelihood of continuance or recurrence of dumping.

The Department must also consider shipment volumes when weighing the probative value of zero margins. 19 U.S.C. § 1675a(c)(1)(B) states that the Department shall consider “the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. . . .” The Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. 1, at 889-890 (1994) (SAA), addresses volume, stating that “[d]eclining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.” See SAA at 889-890. The SAA further indicates that “the cessation of imports after the order is highly probative of the likelihood of continuation of continuation or recurrence of dumping.” Id. at 890.

The guidance provided in the SAA is reflected in the Department’s Sunset Policy Bulletin. As cited by the Panel, Section II.A.3.(c) of the Department’s Sunset Policy Bulletin,⁴ referencing 19 U.S.C. 1675a(c)(1), states that the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where dumping was eliminated after the issuance of the order . . . and import volumes for the subject merchandise declined significantly. See Sunset Policy Bulletin, 63 FR at 18872. The Sunset Policy Bulletin indicates that the finding of a zero margin after the imposition of an order, coupled with a “significant decline” in import volumes, would “normally” lead to a likelihood finding that dumping would recur absent an order. It is reasonable to conclude, based upon statutory authority, the SAA, and the Policy Bulletin, that import volumes play an important role in assigning a probative value to a zero margin during a review, particularly when such volumes have declined significantly.

Although the Panel expressed concern that the Department treated the “virtual cessation” of TAMSA’s post-order sales the same as if there was a “cessation” (Fourth Decision at 15-16), the Department’s regulations and practice make clear that a cessation in imports or a significant decline in imports both signify concern with the level of a company’s (or industry’s) commercial participation in the market. Commercial participation is necessary in order to attach probative value to the pricing behavior observed. As will be explained below, the Department finds that the level of TAMSA’s exports constitutes cessation for purposes of the sunset determination and, therefore, the zero margins obtained have minimal probative value.

⁴ See Policies Regarding the Conduct of Five-Year (‘Sunset’) Reviews of Antidumping and Countervailing Duty Orders, 63 FR 18871 (April 16, 1998).

The Department's rules and practice regarding revocation provide a relevant analogy from which to evaluate whether TAMSA's export volume during the sunset period can mean anything other than a cessation of shipments. In particular, the regulations regarding revocation examine whether the continued discipline of an antidumping duty order is otherwise necessary to offset dumping. Although sunset proceedings are on an order-wide basis and revocation is usually a company specific inquiry, both are concerned with how import volumes affect the likelihood of continued dumping. 19 C.F.R. § 351.222 requires that companies seeking revocation must certify that they have not been dumping for at least three consecutive reviews, and that during the period the company "sold the subject merchandise to the United States in commercial quantities."⁵ Thus, 19 C.F.R. § 351.222(e)(1) provides a framework for measuring the probative value of zero margins.

In deciding what represents "commercial quantities," the Department examines "whether sales were made in commercial quantities based upon examination of the normal sizes of sales by the producer/exporter and other producers/exporters of subject merchandise." See Antidumping Duties; Countervailing Duties; Proposed Rule, 61 FR 7308, 7320 (February 27, 1996). In applying this standard, the Department determines whether a company's exports to the United States constitute commercially meaningful participation in the U.S. market. "Sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping." See Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part:

⁵ See 19 C.F.R. § 351.222(d)(1) and 19 C.F.R. § 351.222(e)(1)(ii).

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada, 64 FR 2173, 2175 (January 13, 1999) (“Magnesium from Canada 5”).

In order to make this determination, the Department applies a two-prong process. First, the Department begins by comparing pre- and post-order volumes/values. Post-order sales volumes that are very low as a percentage of pre-order sales may be considered not to be reflective of meaningful commercial participation. See, e.g., Pure Magnesium From Canada: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part, 64 FR 12977, 12978 (March 16, 1999).⁶ Second, if the Department determines that sales during a period of review are an abnormally small quantity in absolute terms, they do not represent meaningful commercial participation in the market. See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part, 68 FR 53127, Issues and Decision Memorandum at Comment 5 (September 9, 2003).

Post-order decreases in sales do not automatically mean that a company did not have commercially meaningful participation in the U.S. market. As the Department has stated,

The Department’s threshold requirement does not mean . . . that the Department is effectively disqualifying companies from revocation if there is a sales drop-off following the imposition of an antidumping duty order. The issue that is analyzed by the Department is the magnitude of the drop-off. In this regard, the Department has expressed its intent to revoke an antidumping duty order even where the sales

⁶ The Department has, for example, determined that post-order exports constituting less than 4.59 percent of pre-order exports were insufficient to satisfy the commercial quantities requirement. See, e.g., Preliminary Results of Third Antidumping Duty Administrative Review and Intent Not To Revoke Order in Part: Polyvinyl Alcohol from Taiwan, 65 FR 35896, 35900 (June 6, 2000), unchanged for the final results, Polyvinyl Alcohol From Taiwan: Final Results of Third Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part, 65 FR 60615 (October 12, 2000).

drop-off has been substantial, so long as the sales used to demonstrate a lack of price discrimination are reflective of the companies' normal commercial experience.

See Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order in Part, 65 Fed. Reg. 55502, Issues and Decision Memorandum at Comment 4 (September 14, 2000) ("Magnesium from Canada 7"). The term "commercial quantities" is not dependant upon the size of individual sales. Rather, the Department has defined the term with respect to aggregate sales by a company during the relevant periods. See Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 66 FR 3540 (January 16, 2001), Issues and Decision Memorandum at Comment 9. The commercial quantities requirement prevents an exporter from engaging in strategic behavior that might undermine the legitimacy of the presumption that revocation is appropriate. As a separate Bi-National Panel under the NAFTA stated,

Under the Department's practice a significant drop in exports following the imposition of an order, absent 'unusual circumstances' that might otherwise account for the decline, indicates that the exporter should not be presumed to be able to participate in the market without engaging in unfair trade practice if the order were revoked under Part 351.222(b). The commercial quantities requirement also prevents an exporter from engaging in strategic behavior that might undermine the legitimacy of the presumption built into Part 351.222(b), for example by making token sales at a high price for a period of time simply to satisfy the test. The Department's practice in beginning its analysis in this manner reflects the not unreasonable assumption that the greater the post-order volumes/values are relative to pre-order levels, the less likely it is that the exporter is acting strategically.

See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Review and Determination Not to Revoke, Secretariat File No. USA-Mex-2001-1904-05 (Panel Decision, January 27, 2006) at 19.

In analyzing TAMSA's sales using the methodology outlined above, the Department, as a threshold matter, must determine whether TAMSA's sales to the United States in each of the antidumping administrative reviews reflects meaningful commercial participation in the U.S. market during that time. The Department previously provided a brief analysis of TAMSA's pre- and post-order volumes to the Panel. See Third Redetermination at 10-11. At most, TAMSA's shipments in each of the antidumping administrative reviews amounts to 0.6 percent or less of its pre-order shipment volumes. These volume comparisons are similar to those found in Magnesium from Canada 5, where the Department determined that such volumes do not constitute meaningful commercial participation in the U.S. market. TAMSA's sales to the United States, in absolute terms, do not represent meaningful commercial participation in the U.S. OCTG market.

As the Department has previously noted, the United States is one of the largest markets for OCTG in the world. See Third Redetermination at 17. Given the overall size of the U.S. market, and the overall export volumes from Mexico to the United States of OCTG prior to the imposition of the order, TAMSA's sale and export volume in each of the administrative review periods is so small that it cannot be considered to be commercially meaningful participation (i.e., sales in commercial quantities) in the market under any reasonable interpretation of the applicable statute, regulations and Department practice. The analysis above demonstrates that the significant decline in TAMSA's sales constitutes cessation relative to TAMSA's pre-order sales, severely undermining the significance of the sales. Shipping at 0.6 percent or less of pre-order levels cannot be considered meaningful commercial participation in the U.S. market.

As the Panel stated, the Panel "does not weigh the probative value of zero margins." See Fourth Decision at 17. Based on the Department's analysis, the probative weight of TAMSA's

sales of subject merchandise to the United States during the antidumping administrative reviews in the sunset review period is minimal. These sales do not represent commercial behavior absent the discipline of the order.⁷

3. TAMSA's Foreign Debt and the Likelihood of Recurrence of Dumping

The Department finds that the elimination of TAMSA's foreign debt does not outweigh the likelihood presumption derived from the post-order reduction of TAMSA's exports. When a company or industry alleges "other factors" in a sunset review, a post-order analysis of shipments generally should indicate the absence of dumping at volumes similar to those that occurred prior to the imposition of the order. Such shipments would support the contention that "other factors" outweigh any presumption of the likelihood of the continuation or recurrence of dumping. Consequently, once TAMSA's foreign currency debt was eliminated completely, and the cash deposit rate reduced, indeed eliminated,⁸ the Department would expect to see shipments of Mexican OCTG to the United States that are not dumped and are, at a minimum, in volumes representing commercially meaningful participation in the U.S. market. Nonetheless, TAMSA's exports to the United States did not increase to a commercially meaningful level. Accordingly, the elimination of TAMSA's foreign debt does not outweigh the likelihood presumption because the

⁷ On page 17 of the Fourth Decision regarding the probative value of TAMSA's U.S. sales, the Panel stated that "{a}s pointed out by TAMSA, during the reviews, the Department was given data on some 7,000 sales, and was able to completely analyze TAMSA's COP." The reference, however, is to home market sales. As the Department stated, as a threshold matter the Department must determine if sales to the United States are, at a minimum, at levels that may represent commercially meaningful activity in the U. S. market. Only then may it be necessary to analyze the comparison market sales volumes and patterns.

⁸ See Oil Country Tubular Goods from Mexico: Final Results of Antidumping Administrative Review, 64 FR 13962 (March 23, 1999) ("OCTG Second Review").

reduction in the debt along with zero cash deposit rates did not cause TAMSA to participate in the U.S. OCTG market.

Attachment 1 to this redetermination shows the changes in the financial expense ratio between the investigation and the antidumping administrative reviews, and the number of sales found to be below the cost of production (“COP”) in the comparison market. As TAMSA indicated, the reduction in the financial expense ratio coincides with a drop in the number of comparison market sales below the cost of production.⁹ However, as TAMSA has also stated, “below-cost sales do not mean that the company is dumping, and they may, or may not be, probative of the exporter’s likelihood to dump.”¹⁰

TAMSA has indicated throughout these proceedings that the sole reason for the existence of the dumping margin in the investigation is the high financial expense ratio resulting from its dollar-denominated debt and from currency fluctuations. See, e.g., Letter from White & Case to the Secretary of Commerce, February 25, 2005 at 5-8. All other factors being equal, TAMSA argues that without a high financial expense ratio there would be no dumping. Id. It also argues that a recurrence of a high financial expense ratio is highly unlikely since it had minimal exposure to foreign currency fluctuations after 1998. Id. at 7. Thus, according to TAMSA, “even if a dramatic devaluation were to occur again (which was not likely), it could not significantly increase

⁹ With the reduction of the financial expense ratio, TAMSA dramatically increased shipments of OCTG in the home market in comparison to the levels during the investigation. See Letter from White & Case to the Secretary of Commerce, May 3, 2005, at page 4.

¹⁰ See TAMSA’s Case Brief of September 13, 2006, at 31. The Department notes that TAMSA’s statements on the probative value of sales below COP appear to be contrary to TAMSA’s statements on the same issue in its February 25, 2005, letter. See Letter from White & Case to the Secretary of Commerce, February 25, 2005, at 7-8.

the financial expense component of TAMSA's COP." Id. at 7-8. Therefore, the high financial expense ratio of the investigation period is temporary in nature, and is highly unlikely to recur once TAMSA eliminated is foreign denominated debt.

Given TAMSA's explanation of the events during the investigation, including the lack of a reasonable explanation for a significant decline in export volumes, it is reasonable to assume that post-order shipment volumes of OCTG to the United States would remain at levels similar to those found pre-order. Or, at a minimum, post-order shipment volumes would represent meaningful commercial participation in the U.S. OCTG market. Post-order shipment volumes to the United States are critical factors in the Department's likelihood determination. If the intent of Congress were to look solely at the existence or absence of dumping margins, regardless of shipping volumes, the statute and the SAA would state as much. Instead, the statute, the SAA, and guidance in the Sunset Policy Bulletin direct the Department to consider pre- and post-order shipment volumes.¹¹

As previously noted, TAMSA's long-term foreign denominated debt was eliminated at the end of 1998. The fourth antidumping administrative review covered the period August 1998 through July 1999. See Oil Country Tubular Goods From Mexico: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke in Part, 65 FR 54998 (September 12, 2000). TAMSA received a zero cash deposit margin in March of 1999, as a result of the conclusion of the first antidumping administrative review. See OCTG Second Review. Therefore, by April of 1999 TAMSA's cash deposit rate was zero. As noted in

¹¹ Moreover, in the Fourth Decision, the Panel stated that "the statute, the SAA, and the Sunset Policy Bulletin create a presumption in favor of the likelihood of the recurrence or dumping where post-order volumes decline." See Fourth Decision at 20.

Attachment 1, the number of comparison market sales below COP were less than 2 percent of total comparison market sales. The temporary nature of TAMSA's "other factors" had expired completely. The financial expense ratio for the antidumping administrative review period was also zero. Therefore, TAMSA's "other factors" should not have had any constraint on TAMSA's shipment behavior, in any market, after 1998. As the Panel noted, the Department provided "reasonable assertions regarding the healthy market conditions that existed during the sunset review period." See Fourth Decision at 20. Given all of these facts, it is reasonable to assume that TAMSA would have been able to ship OCTG in commercially meaningful volumes to the United States without dumping after March of 1999. And yet, it did not.

An analysis of TAMSA's sales behavior during the fourth antidumping administrative review and for all of 1999 does not indicate that TAMSA resumed selling practices which reflect normal commercially meaningful activity. See Attachment 2 for a comparison of TAMSA's financial expense ratio and its post-order exports to the United States.¹² In the fourth antidumping administrative review, TAMSA's sales volume was the lowest of any of the three administrative reviews conducted during the sunset review period. See Third Redetermination at 10-11. Subsequent to March 1999, TAMSA's sales to the United States ceased completely for the remainder of the year. See Memorandum to the File: Sunset Review of Oil Country Tubular Goods from Mexico ("OCTG") {A-201-805}; Calculation of the Market Share of Respondent

¹² Source: Letter from White & Case to the Secretary of Commerce, May 3, 2005, at page 7 and Attachment 1; and Letter from Skadden, Arps, Slate, Meagher & Flom to the Secretary of Commerce, August 7, 2000 (Pub. R. 1094, Fiche 04, Frame 11) at page 8. 1994 Volume figure annualized.

Interested Parties for Adequacy Determination, (Prop. R. 1107, Fiche 06, Frame 44), August 22, 2000 (“Adequacy Memo”).

TAMSA’s export behavior in 1999 did not represent commercially meaningful activity in the U.S. market. This at a time when TAMSA no longer had foreign currency debts, its financial expense ratio was at or near zero and was unlikely to increase significantly, and sales in the home market were generally above COP. In other words, TAMSA stopped shipments after March of 1999, after the temporary “other factors” cited by TAMSA had ceased. Additionally, TAMSA’s post-order export behavior contrasts sharply with Hylsa’s post-order export behavior. Like TAMSA, Hylsa had minimal shipments during the sunset review period through 1998. See OCTG Second Review and Adequacy Memo. However, after the completion of the administrative review and a change in the cash deposit rate to zero in March of 1999, Hylsa substantially increased its shipment volume of OCTG to the United States throughout 1999 to commercially meaningful levels.¹³ See Adequacy Memo. TAMSA’s only explanation for the reduction in shipment volumes is that it was a “business decision,” an argument that the Panel rejected. See Fourth Decision at 20.

While the statute, SAA, and Sunset Policy Bulletin clearly indicate the importance of shipment volumes in making a likelihood determination in a sunset review, they do not indicate that a volume decline can only mean that a company is unable to ship without dumping. As the Department has noted in this redetermination, post-order shipments can decline, in some cases by large amounts, and may remain low for a portion of the sunset review period.¹⁴ The critical factor,

¹³ Thus, TAMSA’s “other factors” appear to have no predictive value with respect to sales and shipment patterns by Hylsa.

¹⁴ In fact, the Department has considered arguments that explain permanent reductions in shipment volumes. See Preliminary Results of Full Sunset Review: Brass Sheet and Strip from the

consistent with 19 U.S.C. § 1675a(c)(4), is that post-order shipment volumes at some point during the sunset review period, concurrent with zero or declining margins, are sufficient to show meaningful commercial participation in the U.S. market, to the extent that they would have a predictive value absent the discipline of the order. TAMSA's post-order shipments do not meet this threshold test.

Conclusion

In determining whether the revocation of an antidumping duty order would be likely to lead to continuation or recurrence of dumping, 19 U.S.C. § 1675a(c)(1) specifically directs the Department to consider dumping margins during the investigation and administrative reviews, as well as pre- and post-order imports of subject merchandise into the United States. 19 U.S.C. § 1675a(c)(4) indicates that a zero or de minimis margin during an administrative review may or may not be probative of the likelihood of dumping, and leaves the determination of the exact predictive weight of such margins to the discretion of the Department. 19 U.S.C. § 1675a(c)(2) provides for the consideration of "other factors." Given the statutory language concerning both margins and volumes, any "other factors" considered under 19 U.S.C. § 1675a(c)(2) must adequately overcome a presumption of dumping based on existence of margins, or declining import volumes, or both, as the case may be. They must also provide such adequate explanations on an order-wide basis.

Netherlands, 66 FR 46637 (August 26, 1999). The Department preliminarily determined that while post-order export volumes were less than 4 percent of pre-order volumes, the respondent party appeared to provide a reasonable explanation for the decrease in volumes. The Department reversed its decision in the final results, as the proffered explanation was found to be without merit. See Final Results of Full Sunset Review: Brass Sheet and Strip From the Netherlands, 65 FR 735, 736 (January 6, 2000).

TAMSA's "other factors" do not explain the significant decline in post-order exports after the imposition of the order. For the reasons explained above, the Department finds that the revocation of this Order would likely lead to a continuation or recurrence of dumping.

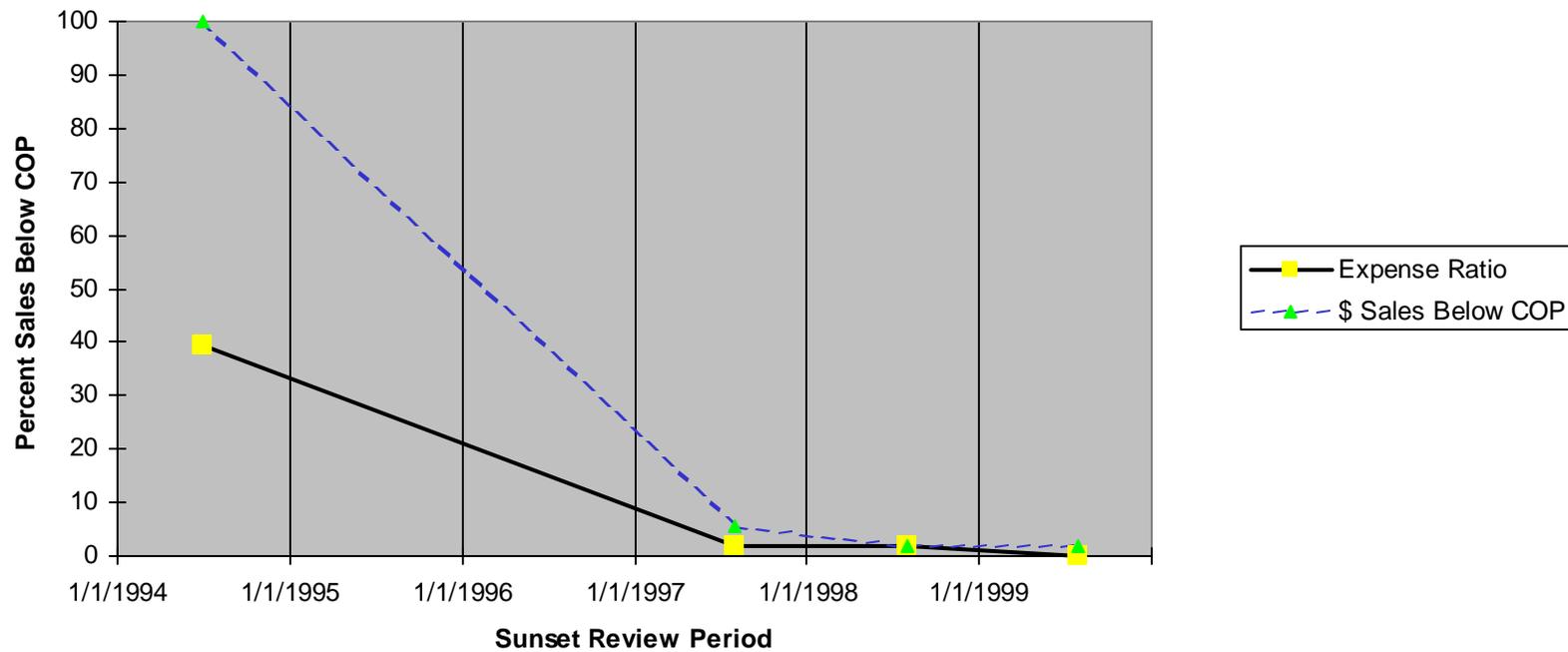
If the Panel affirms this redetermination, we will publish a notice in the Federal Register in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. §1675(a)(1)).

David M. Spooner
Assistant Secretary
for Import Administration

(Date)

Attachment 1

TAMSA's Percent Sales Below COP and Financial Expense Ratio (Source: Letter from White & Case to the Secretary of Commerce, May 3, 2005)



Attachment 2

TAMSA's U.S. OCTG Exports and Financial Expense Ratio

