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Sunset Review
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April 28, 2011

MEMORANDUM TO: Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Full Five-Year ("Sunset") Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Italy

Summary:

We have analyzed the case brief and the rebuttal brief of interested parties in the full second sunset review of the antidumping duty order on stainless steel sheet and strip ("SSSS") in coils from Italy and recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received a case brief and rebuttal brief from interested parties:

1. Likelihood of the Continuation of Dumping
2. Magnitude of the Margin Likely to Prevail

Background:

On December 27, 2010, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on SSSS in coils from Italy pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Stainless Steel Sheet and Strip in Coils From Italy: Preliminary Results of the Full Second Five-Year ("Sunset") Review of the Antidumping Duty Order*, 75 FR 81214 (December 27, 2010) ("*Preliminary Results*"). In those *Preliminary Results*, we provided interested parties an opportunity to comment on our preliminary results. On February 4, 2011, Department officials met with counsel to the respondent ThyssenKrupp Acciai ("TKAST" or "respondent").[1] The Department received a case brief from TKAST on February 15, 2011[2]. On February 22, 2011, the

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[1] *See* Memorandum to the File from Angelica Mendoza, dated February 8, 2011, in which the Department also placed on the record the Foreign Trade Zone Board ("FTZB") Examiner's Report and the FTZB Determination on the Alabama Mill.
[2] In support of TKAST's positions, the European Union ("EU") also filed comments on the same day.

Department received a rebuttal brief from the domestic interested parties.[3] A hearing request, submitted by the respondent, was withdrawn on February 23, 2011. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

Discussion of the Issues:

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping. In this case, the Department considered the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of SSSS in coils from Italy for the period before, and the period after, the issuance of the antidumping duty order.[4] In reaching our conclusion, the Department finds the following indicative of the likely continuation or recurrence of dumping: whether dumping continued at any level above *de minimis* after the issuance of the antidumping duty order; whether the imports ceased after the issuance of the order; and whether dumping was eliminated and import volumes declined significantly after the issuance of the order.[5]

In our *Preliminary Results*, the Department found that dumping of the subject merchandise continued at levels above *de minimis* after the issuance of the order, including throughout the five years preceding this sunset review. The Department also found that imports of the subject merchandise declined significantly after the issuance of the order, and have remained at depressed levels throughout the pendency of the order, including throughout the five years preceding this sunset review. We address the comments of the interested parties below.

1. Likelihood of the Continuation of Dumping

Respondent's Comments:

TKAST argues that the Department has considerable discretion to determine, on a case-by-case basis, the factors to analyze in considering whether to revoke an antidumping duty order in the context of a sunset review. *See* TKAST's case brief dated February 15, 2011, at 3. TKAST argues that the construction of the TK Stainless USA mill in Alabama means, in effect, that TKAST is not likely to sell subject merchandise in the United States, regardless of whether the order is revoked. *Id.* at 4. Citing to the Department's placement of the FTZB Examiner's report regarding the Alabama mill on the record of this proceeding, TKAST argues that the Department should revise its

[3] AK Steel Corporation; Allegheny Ludlum Corporation; North American Stainless; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union; United Auto Workers ("UAW") Local 3303; and UAW Local 4104 (collectively, domestic interested parties").

[4] *See* Import Volumes for the Preliminary Results of the Full Second Sunset Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip ("SSSS") in Coils from Italy ("Import Volumes Memorandum"), dated December 20, 2010, in which the Department confirmed that in the full year prior to initiation of the investigation, *i.e.*, 1997, the import volume of SSSS in coils from Italy was 24,180 metric tons. *See* Import Volumes Memorandum at 1. During the 2005-2009 periods of review, imports of SSSS in coils from Italy averaged 445 metric tons, indicating an overall and dramatic decline in imports from the pre-order period. *Id.*

[5] *See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin").*

findings in the *Preliminary Results*, in which the Department concluded that "the mill's effect is speculative in nature." *Id.* at 5. TKAST argues that its parent company has invested more than 4.6 billion dollars in the construction of the mill, which TKAST claims will have an annual production capacity for stainless steel flat products of nearly one million metric tons and, furthermore, TKAST claims the mill has already begun producing SSSS in coils. *Id.* Citing to the FTZB Examiner's report, TKAST alleges that the company has shifted from importing product into the United States to actual domestic production and, moreover, that its parent company has indicated that the Alabama mill's production will displace sales sourced from abroad. *Id.* TKAST avers that the FTZB Examiner's report indicates that Import Administration has concluded that the construction and implementation of the Alabama mill should suggest that future sales of SSSS in coils from Italy to the U.S. market are not likely and, therefore, the Department should find that revocation of the order will not lead to a continuation or recurrence of dumping. *Id.* at 6.

Referencing the Department's examination of the volume of imports before and after the imposition of the order, TKAST notes the reduction of its exports to the United States since the order was implemented. *See* TKAST's case brief dated February 15, 2011, at 7. Furthermore, TKAST claims the Alabama mill already has had an impact on ThyssenKrupp's sourcing of stainless steel products in the United States. TKAST consequently concludes that it is unlikely TKAST will resume sales of subject merchandise to the United States at less than fair value because of the metric ton capacity of the mill in Alabama. *Id.* Additionally, TKAST disputes the Department's reliance on the final results in *Brass Sheet and Strip from the Netherlands,*[6] stating that unlike that case, there is no evidence that production of SSSS in coils will move from Alabama to Italy. TKAST states that rather than rely on the final results of *Brass Sheet and Strip from the Netherlands*, the Department should examine the preliminary results of that proceeding, where it stated that if a company invests in a U.S. plant, there is no longer a need to dump as the U.S. facility has the capacity to meet the demand in the U.S. market. *Id.* at 8. Once again citing to the FTZB Examiner's report, TKAST claims that Import Administration has concluded the new Alabama mill will displace existing sales from overseas markets. Therefore, TKAST believes that *Brass Sheet and Strip from the Netherlands* and the reduction of TKAST's shipments to the U.S. market support a finding that TKAST is not likely to supply SSSS in coils to the U.S. market if the order were to be revoked. *Id.* at 9.

Turning to the margins from the investigation and administrative reviews, TKAST claims that the calculated rates, as published, are not controlling in a sunset review and cites to the Department's recent request for comments on changes with respect to zeroing. *See* TKAST's case brief dated February 15, 2011, at 10-11. TKAST claims that the statute does not require the Department to rely on weighted-average dumping margins in sunset reviews where such reliance would render the determination inconsistent with the United States' international obligations. *Id.* at 11. With respect to the investigation rate, TKAST cites to a countervailing duty case before the Court of International Trade ("CIT"), in which the CIT noted that in a sunset review, the rate is not applied retroactively. *Id.* at 12, citing *AG der Dillinger Huttenwerke, EKO v. United States;* 193 F. Supp. 2d 1339, 1357 (CIT 2002). TKAST alleges that correction of a mathematical error would reduce

[6] *See Final Results of Full Sunset Review: Brass Sheet and Strip From the Netherlands*, 65 FR 735, 737-38 (January 6, 2000) ("*Brass Sheet and Strip from the Netherlands*") (finding that U.S. facility could easily shift production of any type of subject merchandise without necessarily competing with a U.S. facility).

the likely margin going forward to a *de minimis* level. *Id.* Therefore, TKAST believes that the Department should not rely on the calculated margin from the investigation for TKAST. *Id. at 13.*

With respect to the margins from the administrative reviews, TKAST argues that the Department's recent proposal to abandon zeroing in administrative and sunset reviews means that the Department has recognized such determinations are inconsistent with the United States' obligations within the World Trade Organization ("WTO"). *Id.* at 14. TKAST claims that the margins, once corrected for zeroing, become *de minimis* and, therefore, add to the evidence that TKAST is not likely to make sales at less than fair value because, as calculated under WTO rules, TKAST has never sold SSSS in coils at less than fair value to the United States. *Id.* Thus, TKAST believes the published administrative review margins are not valid predictors of whether TKAST is likely to sell the subject merchandise at less than fair value if the order were revoked. TKAST concludes that while the statute requires the Department to consider the published calculated rates, it should not rely upon them to support the continuation of the order. *Id.* at 15.

The EU contends that the Department must take into account the calculation error alleged to have been made during the investigation. The EU argues that when taken into account, no dumping exists, so it is impossible for dumping to continue or recur in the future. *See* EU brief at 3.

Domestic Interested Parties' Rebuttal Comments:

The domestic interested parties dispute TKAST's claims that the establishment of the Alabama mill is indicative that future sales of SSSS in coils from Italy at dumped prices are unlikely. *See* domestic interested parties' rebuttal brief dated February 22, 2011, at 3. They argue that the establishment of the mill has no bearing on the question as to whether dumping is likely to recur or continue if the order were revoked. Rather, any such argument that TKAST raises are related to the impact on the domestic industry and, as such, should be raised at the International Trade Commission ("ITC") during the injury phase of the review. *Id* at 4. Further, the domestic interested parties agree with the Department's preliminary results in which the Department concluded that the mill's effect is speculative in nature and claims that nothing TKAST has presented changes that conclusion. *Id.*

The domestic interested parties also doubt TKAST's claims with respect to the FTZB Examiner's report. The domestic interested parties claim that the FTZB Examiner did not find that TKAST will cease all sales of SSSS in coils from Italy as a result of the new mill in Alabama. *See* domestic interested parties' rebuttal brief dated February 22, 2011, at 4. Rather, the domestic interested parties claim that the information upon which the FTZB report was made came from TKAST and that, in fact, the report shows that ThyssenKrupp has serviced the U.S. market from multiple sources in the past, despite the fact that it has a mill in Mexico that is largely dedicated to servicing the U.S. market. *Id.* at 5. As such, the domestic interested parties claim that there is a higher likelihood that ThyssenKrupp will continue to supply the market from a variety of sources, both import and domestic. Furthermore, the domestic interested parties note that the Alabama mill is not yet fully operational and the FTZB Examiner's report noted that ThyssenKrupp has admitted that it will continue to import SSSS in coils at least until the mill is fully online, which is currently due to happen in 2014. *Id.*, citing the FTZB Examiner's report at 14.

The domestic interested parties further assert that even after the completion of the Alabama mill, TKAST may choose to supplement its domestic production of SSSS in coils with imports from Italy. *See* domestic interested parties' rebuttal brief dated February 22, 2011, at 5. They base their claim on the numerous potential combinations of size, grade, finish and chemical compositions of the subject merchandise and the belief that not all combinations may be produced at the Alabama mill. Therefore, domestic interested parties aver that ThyssenKrupp may continue to source the subject merchandise from other sources even after completion of the mill. *Id.* at 5. Further, the domestic interested parties claim it is not clear from either the FTZB Examiner's report or the current record what proportion of the Alabama mill's capacity will be dedicated to the production of SSSS in coils. *Id*. at 6. Furthermore, the domestic interested parties argue that the FTZB Examiner's report indicates that half of its domestic production of SSSS in coils will be exported and, as such, claims there is further support for the likelihood that imports of dumped SSSS in coils from TKAST would continue or recur regardless of the Alabama mill. *Id.*

The domestic interested parties reiterate that the record demonstrates ThyssenKrupp will continue to import SSSS in coils into the United States, and there is nothing to preclude it from importing SSSS in coils from TKAST. *See* domestic interested parties' rebuttal brief dated February 22, 2011, at 6. They argue that if there are likely to be any imports of SSSS in coils from ThyssenKrupp during the next five years, the Department needs to employ its standard methodology to determine if those imports will likely be sold at less than fair value. Thus, in the domestic interested parties' view, the Department should continue to find that revocation of the order is likely to lead to a recurrence or continuation of dumping by TKAST. *Id.*

The domestic interested parties assert that TKAST has erroneously claimed that its Alabama mill has already had a significant impact on the sourcing of SSSS products in the U.S. market. *See* domestic interested parties' rebuttal brief dated February 22, 2011, at 7. They argue that TKAST attempts to attribute the decline in its imports to the construction of the Alabama mill when the decline in imports of SSSS in coils from Italy is really attributable to the effects of the order. *Id.* at 7. The domestic interested parties also dispute TKAST's attempts to portray the *Brass Sheet and Strip from the Netherlands* preliminary results as support for finding that TKAST is unlikely to resume dumping because of its investment in the Alabama mill, pointing out that the final results overturned the preliminary findings in that case. Furthermore, the domestic interested parties claim that unlike *Brass Sheet and Strip from the Netherlands*, there is no established history of a production shift and that, in this case, the Department does not have direct evidence of how ThyssenKrupp would act without the discipline of the order in place as it had in *Brass Sheet and Strip from the Netherlands*. *Id.* at 8. The domestic interested parties argue that any alleged future elimination of imports in the absence of the order remains speculative and that ThyseenKrupp's established practice is to serve the U.S. market from multiple sources. Thus, the domestic interested parties assert that the establishment of a U.S. mill is not evidence that TKAST will not continue or resume dumping if the order were revoked. *Id.* at 9.

With respect to TKAST's and the EU's arguments that the calculated rates from the original investigation and subsequent reviews are not controlling in a sunset review, the domestic interested parties believe such arguments to be unpersuasive and not in line with the Department's statutory obligations. *See* domestic interested parties' rebuttal brief dated February 22, 2011, at 9. In the domestic interested parties' view, the margins that TKAST is proposing to use are based on speculation rather than the facts of record. Citing to the statutory provision for the Department to consider the weighted average dumping margins determined in the investigation and subsequent reviews, the domestic interested parties state that the plain meaning of the statute does not permit the Department to recalculate margins that it has established as final and, furthermore, that no adjustments can be made to such margins. *Id.* at 10. With respect to the investigation margin, the domestic interested parties claim that the published margin is 2.11 percent and that this is the margin to be considered by the Department in its final sunset analysis. *Id.*

The domestic interested parties further note that the margins in the subsequent reviews have all been positive and the current margin of 3.73 percent is the highest margin under the order. *See* domestic interested parties' rebuttal brief dated February 22, 2011, at 11. Despite TKAST's claims that the margins would be zero without employing zeroing, the domestic interested parties believe that the Department's established practice does not allow for such a speculative recalculation of the margins. *Id.* at 11. In fact, the domestic interested parties cite to other sunset cases involving brake rotors from the People's Republic of China[7] and stainless steel bars from Germany,[8] to demonstrate that the Department's consistent practice, in accordance with the statute, is to rely on calculated margins without modification in the sunset context as these actual margins remain the only valid predictors of TKAST's behavior. *Id.* at 12.

The domestic interested parties also discount TKAST's claims that the recent invitation for comments on the Department's proposal to alter its zeroing methodology in administrative reviews permits the Department to change its practice in this review. The domestic interested parties note that this Department proposal has not been finalized, much less implemented. *See* domestic interested parties' rebuttal brief dated February 22, 2011, at 13. They believe any presumption that eliminating zeroing would eliminate dumping margins for TKAST is entirely speculative. *Id.* at 13. With respect to TKAST's claims that the use of zeroing is inconsistent with international obligations, the domestic interested parties claim that absent any successful appeals under U.S. law or actual implementation of WTO panel decisions, adjustments to statutorily calculated margins are neither appropriate nor permissible. *Id.* at 14. The domestic interested parties cite to U.S. court decisions to argue that WTO panel decisions are not self-executing and that, in fact, under U.S. law, zeroing in administrative reviews is legal according to decisions made by the U.S. courts. *Id.*

Department's Position:

As part of its determination of whether revocation of an antidumping order is likely to lead to the continuation or recurrence of dumping, the Department will examine whether: a) dumping continued at any level above *de minimis* after the issuance of the order or the suspension agreement, as applicable; b) imports of the subject merchandise ceased after issuance of the order or the suspension agreement, as applicable; or c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined. *See* section II.A.3 of the *Sunset Policy Bulletin*. In this particular case, the record is clear that 1) dumping has continued at a level above

[7] *Brake Rotors from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 1319 (January 8, 2008), and accompanying Issues and Decision Memorandum.
[8] *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.

de minimis as evidenced by the margins calculated in the administrative reviews under this proceeding, and 2) that imports declined as a result of the discipline of the order.

TKAST's arguments, at base, urge the Department to disregard the calculated and published dumping margins in the history of the proceeding. However, the Department's regulations specify that the Department will disregard calculated and published margins, "only under the most extraordinary circumstances." *See* 19 CFR 351.218(e)(2)(i). Further, section 752(c)(2) of the Act and 19 CFR 351.218(e)(2)(iii) instruct the Department to consider other factors if "good cause" is shown.

TKAST argues that the Department has considerable discretion to determine, on a case-by-case basis, the factors to analyze in considering whether to revoke an antidumping duty order in the context of a sunset review. With respect to its arguments that the new Alabama mill will result in a shift from importing subject merchandise to domestic production, the Department finds that such a claim is speculative in nature and there is no established history of a production shift having taken place in this case. Similarly, the Department does not have direct evidence of how ThyssenKrupp would act without the discipline of the order in place and any such analysis would need to be based on an examination of how the Alabama mill effects ThyssenKrupp/TKAST's commercial behavior once it is fully operational. Accordingly, the Department remains unconvinced that the operation of the Alabama mill will mean that a recurrence or continuation of dumped imports from Italy is not likely if the order were revoked.

TKAST claims that the FTZB Examiner's report demonstrates that Import Administration has concluded that the new mill is indicative that future sales of SSSS in coils from Italy to the U.S. market are not likely and, therefore, the Department should find that revocation of the order will not lead to a continuation or recurrence of dumping. The Department disagrees that Import Administration has made such a determination and, furthermore, while the FTZB is housed within Import Administration, its role and purpose is very different from the administration of the antidumping laws. The FTZB's primary role is to administer the FTZ Act and to determine whether or not to grant the privilege of establishing a foreign-trade zone or of conducting activities in a foreign-trade zone when the statutory criteria are met. In fulfilling this role, the FTZB does not predict whether the FTZB facility will result in an absence of any shipments from current foreign sources. Nor does the FTZB determine whether revocation of an antidumping duty order would be likely to result in the continuation or recurrence of dumped shipments. In addition, as noted by the domestic interested parties, it is not clear from the FTZB Examiner's report or from the record how much of the total capacity of the Alabama mill will be dedicated to the production of SSSS in coils to be able to fulfill the entirety of ThyssenKrupp's required need for SSSS in coils in the United States. Furthermore, the Department finds that the FTZB Examiner's report seems to indicate that approximately half of ThyssenKrupp's domestic production of SSSS in coils will be exported from the Alabama mill.[9]

Turning to TKAST's claims that the calculated rates, as published, are not controlling in a sunset review, the statute states that when determining whether dumping is likely to continue or recur, that the Department shall consider "the weighted-average dumping margins determined in the

[9] *See* FTZB Examiner's Report, at 3.

investigation and subsequent reviews." *See* section 752(c) of the Act. The Department's regulations specify that "even where the Department conducts a full sunset review, only under the most extraordinary circumstances will the Secretary rely on a … dumping margin other than those it calculated and published in its prior determinations."[10] The Statement of Administrative Action states that limiting the Department's reliance on calculated and published dumping margins is to avoid the Department from calculating future dumping margins as such an exercise "would involve undue speculation regarding future selling prices, costs of production, selling expenses, exchange rates, and sales and production volumes."[11] The Department's practice is to consider whether extraordinary circumstances exist to disregard prior calculated and published margins. *See, e.g., Final Results of Expedited Sunset Review: Tapered Roller Bearings From Hungary*, 64 FR 60272 (November 4, 1999) (although conducting an expedited sunset review, the Department noted that Hungary's graduation to market economy status did not constitute most extraordinary circumstances). For the reasons discussed below, the Department disagrees that TKAST has identified an extraordinary circumstance sufficient to require the Department to depart from its normal practice of considering the margin history as calculated and published in its prior determinations.

First, the Department disagrees with TKAST's claims that an alleged error in an investigation conducted over 10 years ago, is an extraordinary circumstance sufficient for the Department to disregard prior calculated and published margins. The 2.11 percent margin is a final, published margin that has not been invalidated by United States courts. The time for alleging and correcting ministerial errors has long passed. *See* section 751(h) of the Act. TKAST had the opportunity to allege this error both administratively and through litigation challenging the Department's determination. *See* section 516(A) of the Act. The Department finds that alleging an error now does not present an extraordinary circumstance sufficient to disregard the margin calculated and published in the investigation. To allow parties to scour the administrative record from prior proceedings to find alleged errors to raise in the sunset proceeding, which could have been timely raised administratively or in litigation, disrupts administrative finality and would render sunset reviews administratively unworkable. It would require the Department, in a sunset review, to conduct a full review of a prior, completed segment of the proceeding to determine whether there was an error and to speculate as to how the Department would have addressed such an error had it been timely raised in the original segment. The Department does not interpret the statute as requiring such an approach. Additionally, the Department's policy and practice is not to address allegations of such errors when parties have failed to raise such issues in the proper form and place. For example, in *Korea Stainless Steel*, the Department decided that correcting an alleged error two years after the final determination "would effectively be allowing time for such allegations far exceeding the time granted to other parties in these and other proceedings." *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From the Republic of Korea; and Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 66 FR 45279, 45282 (August 28, 2001). Further, the administrative burden of conducting prior cases anew would be untenable -- parties may have changed, the issues may have changed, the data may have changed. Finally, the Department questions the reliability of a newly calculated margin without the benefit of all the comments of interested parties and without the full statutory

[10] *See* 19 CFR 351.218(e)(2)(i).
[11] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("SAA"), H.R. Doc. No. 103-316, Vol. 1 (1994), at 891, *reprinted in* 1994 U.S.C.C.A.N. 3773.

timeline to conduct such a review. Therefore, the Department is not adopting such a practice at this time.

In this case, TKAST continued to have margins of 0.66 percent, 3.34 percent, 1.62 percent, and 3.73 percent in the completed administrative reviews and imports of SSSS in coils from Italy decreased from 26,659 short tons in 1997 to 163 short tons in 2009, which indicates that dumping would likely continue without the discipline of the order in place. The Department's long standing practice has been to hold that, declining import volumes, for example, 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 in order to sell at pre-order volumes. *See* SAA at 889. Further, the Department has long held that existence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. *See* SAA at 890.

With respect to TKAST's claims on the use of zeroing in administrative reviews, the Department's proposal with respect to the use of zeroing in administrative reviews has not been finalized and, more importantly, has not yet been implemented. Section 123 of the Uruguay Round Agreements Act mandates a number of steps be fulfilled before the Department is permitted to modify its methodology in response to an adverse WTO report. Those steps have yet to be fulfilled with respect to the December 28 proposal. The Department finds that any presumption that eliminating zeroing would eliminate TKAST's dumping margins is entirely speculative at this time. As TKAST is aware, WTO panel decisions are not self-executing. *See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 69 FR 68309 (November 24, 2004) (in which Congress made clear that reports issued by WTO panels or the Appellate Body "will not have any power to change U.S. law or order such a change.") (citing the SAA at 659). Furthermore, zeroing in administrative reviews is permissible under U.S. law. as evidenced by numerous decisions made by the U.S. courts, when TKAST was under review.[12]

Therefore, based on the record evidence, the Department concludes that extraordinary circumstances do not exist sufficient for the Department to disregard prior calculated and published margins. The Department also does not find good cause to deviate from its statutory obligation pursuant to section 752(c)(1) of the Act and past practice in determining whether dumping would continue or recur if the order were to be revoked. Substantial evidence supports the conclusion that continuation or recurrence of dumping would occur should the order be revoked. In addition, as was noted in the *Preliminary Results,* during the 2005-2009 periods of review, imports of SSSS in

[12] *See, e.g., Andaman Seafood Co. v. United State*s, 2010 Ct. Int'l Trade LEXIS 10, Slip. Op. 2010-12 (Ct. Int'l Trade Feb. 2, 2012); *SKF USA Inc. v. United States*, 2009 WL 4931671 (Ct. Int'l Trade Dec. 21, 2009); *JTEKT Corp. v. United States*, 2009 WL 4897287 (Ct. Int'l Trade Dec. 18, 2009); *SKF USA Inc. v. United States*, 659 F. Supp. 2d 1338, 1346-47 (Ct. Int'l Trade 2009); *Union Steel v. United State*s, 645 F. Supp. 2d 1298, 1305-09 (Ct. Int'l Trade 2009); *Fujian Lianfu Forestry Co., Ltd. v. United States*, 2009 Ct. Intl. Trade LEXIS 92, at *74-78 (Ct. Int'l Trade August 10, 2009); *SKF USA Inc. v. United States*, 611 F. Supp. 2d 1351, 1360 (Ct. Int'l Trade 2009); *NMB Singapore Ltd. v. United States*, 533 F. Supp. 2d 1244 (Ct. Int'l Trade 2007); *Corus Staal BV v. United States*, 2009 Ct. Int'l Trade LEXIS 14, at *1 (Ct. Int'l Trade March 24, 2009); *Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1343-44 (Ct. Int'l Trade 2007); *Corus Staal BV v. United States*, 493 F. Supp. 2d 1276, 1288 (Ct. Int'l Trade 2007); *SKF USA Inc. v. United States*, 491 F. Supp. 2d 1354, 1365-66 (Ct. Int'l Trade 2007); *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1315-16.

coils from Italy indicate an overall and dramatic decline in imports from the pre-order period. If companies continue to dump with the discipline of an order or suspension agreement in place, it is reasonable to consider that dumping would continue if the discipline were removed. Further, if imports decline after issuance of an order, it is reasonable to consider that exporters had to dump to sell at pre-order volumes, and would have to resume so to re-enter the U.S. market. Therefore, based on the significant decline in imports, as well as established margins from the investigation and the administrative reviews, the Department is persuaded that the dumping of SSSS in coils would likely continue or recur upon revocation of the order.

2. Magnitude of the Margin Likely to Prevail

Respondent's Comments:

TKAST argues that the Department is not required to report an antidumping margin for TKAST to the ITC if the Department concludes that TKAST is not likely to sell subject merchandise at less than fair value. *See* TKAST's case brief dated February 15, 2011, at 15. Furthermore, if the Department were to find that dumping is likely to continue or recur, TKAST believes the margin to be reported to the ITC should be zero percent. *Id.* at 16.

TKAST acknowledges that the margin of dumping in the investigation best reflects the behavior of exporters/producers without the discipline of the order in place. However, TKAST believes the 2.11 percent margin reported in the preliminary results is not accurate and should not be reported to the ITC as TKAST alleges that it is based on a mathematical error. *See* TKAST's case brief dated February 15, 2011, at 16. TKAST claims it is not asking the Department to correct errors made in earlier proceedings, and that the finality of previous determinations is not an issue in the sunset review. *Id.* at 17. Rather, TKAST is claiming the Department should "calculate correctly the margin that would apply if the order were revoked." *Id.*

Finally, TKAST claims the Department's regulations permit the Department to rely on a dumping margin other than those calculated and published under the most extraordinary circumstances. *Id.* TKAST claims that this situation meets that criteria and that the Department should reach a result consistent with U.S. law and the *WTO Antidumping Agreement*.[13] *Id.* at 18.

The EU argues the Department should not base its findings on a dumping margin created by a calculation error it alleges occurred in the investigation. *See* EU case brief dated February 15, 2011, at 2. It asserts that, without this error, there would be no dumping. It also claims that the issue at hand is "the calculation of what margin would {be obtained} if the order were revoked and that the exporter did not waive its right to claim error in further proceedings. *Id.* at 3. The EU further asserts that the 2.11 percent margin does not comply with Article 2.4 of the *WTO Antidumping Agreement* because it exists solely due to an error in calculation. *Id*. at 3. Absent this error, the EU claims that a fair comparison between export price and normal value would have shown no dumping. *Id.* at 3 and 4.

Domestic Interested Parties' Rebuttal Comments:

[13] *See Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, reprinted in* H. Doc. 103-316,vol. 1, 103d Cong. 2d. Sess. (1994) ("*WTO Antidumping Agreement*").

The domestic interested parties contend that the Department's normal policy is to select a margin from the investigation "because that is the only calculated rate that reflects the behavior of exporters … without the discipline of an order" in place. *See* domestic interested parties' rebuttal brief at 15, citing the Department's *Sunset Policy Bulletin* and the SAA.[14] Noting that the record shows calculated and published margins that are not *de minimis*, the domestic interested parties assert that neither the statute nor the *Sunset Policy Bulletin* authorizes the Department to rely on a hypothetical margin that it never calculated. *Id.* at 16. Citing to section 752(c)(3) of the Act, the domestic interested parties state that its language directs the Department to use the dumping margins as determined in the final results or an administrative review and that the Department does not undertake recalculation of duties from previous segments of the proceeding in sunset reviews. *Id.*

The domestic interested parties also stress that TKAST's claims that the Department's regulations allow it to rely on a different dumping margin "under the most extraordinary circumstances" is not relevant in this situation. *See* domestic interested parties' rebuttal brief at 16. In their view, the failure to allege a mathematical error in the original investigation does not meet the aforementioned criteria. *Id.* at 16. With respect to TKAST's claims that the use of zeroing in administrative reviews is a matter of relevance, the domestic interested parties note that zeroing was, and is, the established practice under U.S. law. *Id.* at 17. Therefore, the domestic interested parties believe the Department should affirm its preliminary finding that the published investigation rate of 2.11 percent, as amended by the *Section 129 Implementation*,[15] is the likely margin that would prevail upon revocation. *Id.*

Department's Position:

In a sunset review, the Department will normally provide to the ITC the margin that was determined in the final determination of the original investigation. *See SAA* at 890. For companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation because these rates are the only calculated rates that reflect the behavior of exporters without the discipline of the order in place. In certain instances, the Department may, in response to arguments from an interested party, provide the ITC a more recently calculated margin for a particular company.

In this case, the final determination rate, as amended by the Section 129 determination is 2.11 percent. *See Section 129 Implementation.* TKAST claims the Department should "correctly" calculate the margin that would apply if the order were revoked and that if it did so, the margin would be zero. We find that TKAST's claims are based on an alleged mathematical error and, as the statute and regulations clearly indicate, there is a procedure for such ministerial errors to be alleged to the agency or a reviewing court, and that any such allegations must be made within a reasonable time after the determinations are issued. TKAST failed to do so, and, the Department does not consider TKAST's failure to do so is an extraordinary circumstance such that the Department should depart from its practice of relying on the published rate that reflects the behavior

[14] *See* SAA at 838.
[15] *See Implementation of the Findings of the WTO Panel in US-Zeroing (EC): Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils From Italy*, 72 FR 54640 (September 26, 2007) ("*Section 129 Implementation*").

of exporters prior to the issuance of the order, *i.e.*, the final amended published rate of 2.11 percent.

Final Results of Review

After taking into consideration the circumstances of this case, including the history of margins and import volumes, as well as potentially relevant information presented by the respondent, we determine that revocation of the antidumping duty order on SSSS in coils from Italy is likely to lead to the continuation of dumping at the margins listed below:

Manufacturer/producer/exporter	Weighted-average margin
TKAST	2.11 percent
All Others	2.11 percent

Based on our analysis and consideration of the case and rebuttal briefs received, we recommend adopting all of the above positions. If these recommendations are accepted, we will notify the ITC of our determination and publish the final results of this sunset review in the *Federal Register*.

Agree__________ Disagree__________

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Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

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Date