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Sunset Reviews
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Susan Kuhbach 
Director, Office 1
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Preliminary 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 substantive responses and comments of the interested parties for the preliminary 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 for which we received substantive responses and comments:

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

History of the Orders

The Department of Commerce (the Department) issued antidumping duty orders on CORE from Germany and Korea countries on August 19, 1993.¹ In the first and second five-year (sunset) reviews of these orders, the Department found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and the International Trade Commission (ITC) determined, pursuant to section 751(c) of the Tariff Act of 1930, as amended

¹ See Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion Resistant Carbon Steel Flat Products from Korea, 58 FR 44159 (August 19, 1993); and Antidumping Duty Orders and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Germany, 58 FR 44170 (August 19, 1993). See also Amended Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Germany, 65 FR 58044 (September 27, 2000).



(the Act), that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. On December 15, 2000, and February 14, 2007, the Department published the notices of continuation of the antidumping duty orders.²

Since the 2007 continuation of these orders, the Department has completed a new shipper review³ and four administrative reviews⁴ of the order on Korea. The Department found above de minimis dumping margins for one or more respondents in each of the administrative reviews. In addition, in the final results of the 2009/10 administrative review, the Department revoked the Korean order with respect to Pohang Iron & Steel Co., Ltd. and Pohang Coated Steel Co., Ltd. (collectively, POSCO) in accordance with 19 CFR 351.222(b). Further, there is an ongoing administrative review of the order on Korea for the 2010/11 review period. For Germany, the Department initiated but later rescinded an administrative review.⁵

Background

On January 3, 2012, the Department published the notice of initiation of the third sunset reviews of the antidumping duty orders on CORE from Germany and Korea pursuant to section 752(a) of the Act.⁶ The Department received notices of intent to participate from the following domestic interested parties: United States Steel Corporation (U.S. Steel); ArcelorMittal USA LLC (AMUSA); and Nucor Corporation (Nucor) (hereinafter, collectively “domestic interested parties”), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the domestic like product. We received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).

² See Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, 65 FR 78469 (December 15, 2000); and Continuation Pursuant to Second Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany and Korea, 72 FR 7009 (February 14, 2007).

³ See Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Notice of Final Results of Antidumping Duty New Shipper Review, 73 FR 35366 (June 23, 2008).

⁴ See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission, 74 FR 11082 (March 16, 2009), as amended at Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Amended Final Results of the Fourteenth Administrative Review, 74 FR 19199 (April 28, 2009); Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review, 75 FR 13490 (March 22, 2010); Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review, 76 FR 15291 (March 21, 2011), as corrected at Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review, 76 FR 17381 (March 29, 2011); and Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the 2009-2010 Administrative Review and Revocation, in Part, 77 FR 14501 (March 12, 2012).

⁵ See Corrosion-Resistant Carbon Steel Flat Products from Germany: Rescission of Antidumping Duty Administrative Review, 73 FR 3943 (January 23, 2008).

⁶ See Initiation of Five-Year (“Sunset”) Reviews, 77 FR 85 (January 3, 2012).

The Department did not receive a substantive response from any respondent in either of these sunset reviews of the antidumping duty orders on CORE from Germany and Korea. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department determined that it would conduct expedited reviews of these orders.

On April 20, 2012, the Department revised its original adequacy determination and determined to conduct full sunset reviews.⁷ The Department provided interested parties with an opportunity to comment on how the implementation of the Final Modification for Reviews⁸ applies to the sunset reviews of the antidumping duty orders on CORE from Germany and Korea. U.S. Steel, Nucor, and AMUSA submitted comments on June 8, 2012. ThyssenKrupp Steel Europe AG (ThyssenKrupp), a German producer and exporter, submitted comments on June 8, 2012. U.S. Steel, Nucor, and AMUSA submitted rebuttal comments on June 15, 2012.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting these sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of 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.

In the Final Modification for Reviews, the Department announced that in five-year (“sunset”) reviews, it will not rely on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be WTO-inconsistent. The Department also noted that “*only in the most extraordinary circumstances* will the Department rely on margins other than those calculated and published in prior determinations.”⁹

⁷ See Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Antidumping Duty and Countervailing Duty Operations, from Melissa G. Skinner, Director, Office 3, on “Sunset Reviews of the Antidumping Duty Orders on Corrosion-Resistant Carbon Steel Flat Products from Germany and South Korea: Adequacy Redetermination Memorandum” and Corrosion-Resistant Carbon Steel Flat Products from Germany and South Korea: Extension of Time Limits for Preliminary and Final Results of Third Antidumping Duty Sunset Reviews, 77 FR 25141 (April 27, 2012).

⁸ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012) (Final Modification for Reviews).

⁹ See Final Modification for Reviews, 77 FR at 8103 (emphasis added).

Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

In their substantive responses, the domestic interested parties state that revocation of these antidumping duty orders would be likely to lead to a continuation or recurrence of dumping of CORE from Germany and Korea.

Germany: The domestic interested parties argue that the circumstances in this review are not extraordinary and do not require the Department to recalculate the weighted-average dumping margin from the investigation. The domestic interested parties contend that dumping has continued since the existence of the order and import volumes are significantly below the pre-order volume.

ThyssenKrupp argues that the facts of this case clearly satisfy the “extraordinary circumstances” standard established in the Final Modification for Reviews and the Department is required to recalculate the weighted-average dumping margin from the investigation using a WTO-consistent methodology without zeroing. ThyssenKrupp argues that the Department should revoke the order if it finds that the recalculated margins from the original investigation are zero or de minimis. Further, ThyssenKrupp argues that if the Department no longer has the underlying data from the original investigation, then fairness and due process dictate that the Department must revoke the order.

The domestic interested parties assert that there is no need to recalculate the margins from the investigation because there were imports of subject merchandise from Germany while the current rates were in place and no German producer or exporter requested a review to demonstrate that the rates were not appropriate. They also argue that attempting to recalculate the dumping margins from the investigation would raise a number of difficult questions as there have been many changes to the Department's calculation methodology since the order was issued. Additionally, domestic interested parties argue that the burden is on the respondent to provide evidence of zeroing and there is no evidence on the record to support ThyssenKrupp's assertion that the dumping margins in this proceeding are the result of a WTO-inconsistent methodology. Finally, the domestic interested parties argue that the significant decrease in imports of subject merchandise from Germany is sufficient, by itself, to support a finding of likelihood of continuation or recurrence of dumping.

Korea: The domestic interested parties state that the Department has calculated rates above de minimis in multiple periods of review. The domestic interested parties assert that imports of Korean CORE decreased after the order was imposed. In addition, they contend that imports of CORE from Korea decreased dramatically from 2006 to 2010.¹⁰

¹⁰ See substantive response from domestic interested parties to the Department, Five-Year Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from Korea (February 2, 2012) at 21-22 (Substantive Response for Korea).

The domestic interested parties argue that there are acceptable, WTO-consistent margins on the record upon which the Department may rely and, therefore, the Department need not recalculate the weighted-average dumping margin from the investigation. The domestic interested parties contend that dumping has continued since the existence of the order and import volumes are significantly below the pre-order volume.

The domestic interested parties argue that the Department should rely on the 17.70% rate from the investigation because it has relied on that rate in the prior two sunset reviews and there is no evidence on the record of zeroing in the underlying investigation. In addition, they note that the Department applied the investigation rate to Dongshin Special Steel Company Ltd. (Dongshin) as adverse facts available (AFA) in both the 10th and 11th review. As a rate based on AFA, 17.70% is an appropriate basis for finding likelihood of continuation or recurrence of dumping.

The domestic interested parties argue that if the Department does not rely on the AFA rate for Dongshin, then it should recalculate the margins from the five reviews covering the sunset review period. Although the domestic interested parties assert that the burden is on the respondents to place information on the record, relying on information currently available, U.S. Steel: (1) recalculated the weighted-average dumping margins by comparing weighted-average normal values to weighted-average U.S. prices without zeroing (using data from the 15th, 16th, and 17th reviews) and found that Union Steel Manufacturing Co., Ltd. (Union) had an above de minimis margin in the 15th review; and (2) applied the “nails test”¹¹ to the data from the 15th – 17th reviews and found above de minimis weighted-average dumping margins.

In addition, the domestic interested parties assert that the decline in import volumes is a sufficient basis to determine that dumping is likely to continue. They argue that import volumes fell by 57 percent in the five years following the imposition of the order relative to the period before the order and imports decreased dramatically from 2006 to 2010.

Department’s Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the 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) (“House Report”), and the Senate Report, S. Rep. No. 103-412 (1994) (“Senate Report”), the Department’s determinations of likelihood will be made on an order-wide basis.¹² In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.¹³ In considering import volumes,

¹¹ See Certain Steel Nails From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value, 77 FR 17029 (March 23, 2012) and accompanying Issues and Decision Memorandum at Comment 4.

¹² See SAA at 879 and House Report at 56.

¹³ See SAA at 889-890, House Report at 63-64, and Senate Report at 52.

pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping order. As noted above, in the Final Modification for Reviews, the Department announced that in sunset reviews, it will not rely on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be WTO-inconsistent.

Germany: Our review of import statistics confirms, as the domestic interested parties alleged, that import volumes from Germany have decreased significantly relative to the pre-order levels. In the Final Modification for Reviews, the Department noted that “if there are no dumping margins during the five-year sunset period, decreased volumes may provide another basis to determine that dumping is likely to continue or recur if the discipline of the order is removed.” The decreased volumes support a conclusion that exporters and importers of subject merchandise are declining to enter into some transactions at dumped prices that would have been made prior to the possible application of antidumping duties, and likely would be made again if the possibility of antidumping duties was removed. Therefore, the Department preliminarily determines that dumping is likely to continue or recur if the order were revoked.

Korea: Contrary to the domestic interested parties’ allegations, our review of the import statistics reveals that although imports decreased immediately after the issuance of the order, the annual volume of imports has, since 1999, significantly exceeded pre-order levels every year other than 2003 and 2010.¹⁴ As such, we do not agree with the domestic interested parties that import volumes can serve as a basis for finding likelihood. We also do not agree with the domestic interested parties that it is appropriate to rely on a targeted dumping analysis of prior reviews as the Department has not yet decided that a targeted dumping analysis is appropriate for reviews or further whether it is appropriate to employ a targeted dumping analysis when recalculating a weighted-average dumping margin in the context of a sunset review. Nor do we believe that it is necessary to place any additional data on the record from the respondents from the 13th and 14th reviews.

We agree with the domestic interested parties that a rate based entirely on AFA may serve as a basis for finding likelihood and further, that the Department applied an AFA rate to Dongshin in both the 10th and 11th reviews and that the rate remains applicable to Dongshin.¹⁵ Additionally, we agree with U.S. Steel’s recalculation of Union’s rate from the 15th review, which results in an above de minimis margin without the use of zeroing. As noted in the SAA, at 890, “[i]f companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed.” Therefore, the Department preliminarily determines that dumping is likely to continue or recur if this order was revoked.

¹⁴ See Substantive Response for Korea at 22.

¹⁵ See Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 70 FR 12443 (March 14, 2005), and Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006), as amended in Notice of Amended Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 13962 (March 20, 2006).

2. Magnitude of the Margins Likely to Prevail

Interested Party Comments

In their February 2, 2012, substantive responses, the domestic interested parties request that the Department report to the ITC the margins that were determined in the final determinations of the original less-than-fair-value investigations of Germany and Korea.¹⁶

Germany: In comments concerning the implementation of the new zeroing methodology as it relates to sunset reviews, domestic interested parties argue that the Department should report to the ITC the dumping margin calculated from the investigation. U.S. Steel contends that the Department's practice is to select a rate "from the investigation, because that is the only calculated rate that reflects the behavior of exporters . . . without the discipline of an order or suspension agreement in place."¹⁷ U.S. Steel argues that the Final Modification for Reviews has no effect on this conclusion. Moreover, U.S. Steel contends that the WTO findings leading to the Final Modification for Reviews only concerned the reliance on rates that were calculated using the zeroing methodology when determining whether dumping is likely to continue or recur if an order is revoked.

AMUSA contends that there are four reasons the Final Modification for Reviews does not require the Department to recalculate the original investigation dumping margins. First, the dumping margins in the original investigation were calculated before the existence of the WTO. Second, the dumping margin from the investigation was determined on the basis of partial best information available, which is the predecessor to AFA. Third, there is no evidence showing any negative dumping margins. Finally, the most extraordinary circumstances do not exist as stated in the Department's Policy Bulletin¹⁸ because dumping margins have not declined and imports have decreased over the life of the order. Moreover, AMUSA states that since implementing the Final Modification for Reviews, the Department has selected the dumping margins from the original investigation as most probative of the behavior of producers/exporters without the discipline of the order for sunset reviews.

Korea: The domestic interested parties argue that the SAA and Policy Bulletin make it clear that the Department normally selects the weighted-average dumping margins from the investigation and they argue that nothing in the dispute settlement reports that led to the issuance of the Final Modification for Reviews, or the Final Modification for Reviews itself, says anything about the rate the Department will report to the ITC. Further, they argue that the weighted-average dumping margins from the investigation are WTO-consistent and were used in prior sunset review as the rate likely to prevail. In addition, they argue that there is no evidence of zeroing and, in the absence of respondent participation, the Department lacks sufficient evidence to deviate from the normal practice of relying of rates from the investigation. Finally, they argue

¹⁶ See Substantive Response for Germany at 12-13; and Substantive Response for Korea at 23-24.

¹⁷ See SAA at 890.

¹⁸ See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin, 63 FR 18871, 18874 (April 16, 1998) (Policy Bulletin).

that if the Department does not rely on the rates from the investigation, it should rely on the margins assigned to Dongshin in the 10th and 11th reviews because those margins were based on AFA.

Department's Position

The Department will normally provide to the ITC the company-specific weighted-average dumping margin from the investigation for each company.¹⁹ For companies not investigated specifically or that did not begin shipping until after the order was issued, the Department normally will provide a rate based on the "All Others" rate from the investigation.²⁰ The Department prefers to select a rate from the investigation because it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.²¹ Under certain circumstances, however, the Department may select a more recently calculated rate to report to the ITC.²² Moreover, the Department recently published the Final Modification for Reviews which makes it necessary to take into consideration the changes in its calculation to make its decision WTO-consistent.

Germany: In the absence of administrative reviews, the only rates available for consideration are the rates from the underlying investigation. We do not agree with ThyssenKrupp that the Department must revise the weighted-average dumping margin from the underlying investigation based on our current methodology. Nor do we agree with the domestic interested parties that the Department must rely on the margins from the underlying investigation. The record contains the printout of the SAS program log and output from the remand and conclusive litigation for the original investigation. The information therein confirms that there were sales with negative comparison results and, therefore, the final weighted-average dumping margin was not WTO-consistent. Because the underlying investigation rate did not include the application of offsets, and there have been no administrative reviews, we have no WTO-consistent rates. Therefore, we agree that we must revise the weighted-average dumping margin from the underlying investigation so that it is no longer WTO-inconsistent.

Therefore, we have revised the weighted-average dumping margin from the original investigation relying on information contained in the output from the SAS program, and based on conservative assumptions regarding the value of the offsets from the investigation. Specifically, we have assumed that, for all U.S. sales with negative comparison results, that 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. When this estimated value of offsets is applied to the total amount of dumping found in the investigation, the Department preliminarily determines that the estimated magnitude of dumping using a method found to be WTO-consistent, would be at

¹⁹ See Eveready Battery Co., Inc. v. United States, 77 F. Supp. 2d 1327, 1333 (Ct. Int'l Trade 1999) and SAA at 890.

²⁰ See section 752(c)(3) of the Act; see also, e.g., Internal-Combustion Forklift Trucks from Japan; Final Results of the Expedited Sunset Review of the Antidumping Order, 70 FR 58373 (October 6, 2005), and accompanying Issues and Decision Memorandum at "Magnitude of the Margin Likely to Prevail."

²¹ See SAA at 890.

²² Id. at 890-891.

least 9.35 percent for Thyssen Stahl AG and for all other German producers and exporters of CORE.²³

Korea: 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 reviews have been calculated with offsets. While we agree with the domestic interested parties that the Department applied total AFA to Dongshin in the 10th and 11th administrative reviews, we note that the rate relied on as AFA was the highest previously calculated rate which was not WTO-consistent. The Department finds that it is appropriate to provide the ITC with the 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. Therefore, we find it appropriate to revise the rate from the investigation by making the same conservative assumptions and resulting over-estimation of the value of offsets described above for Germany. On this basis, the Department preliminarily determines that the estimated magnitude of dumping using a method found to be WTO-consistent would be at least 12.85 percent for all Korean producers and exporters besides POSCO, who has been revoked from the order for Korea.²⁴

Preliminary Results of Reviews

We preliminarily find that dumping will be likely to continue or to recur if the antidumping duty orders on CORE from Germany and Korea would be revoked. Further, we preliminarily determine that the magnitude of the margin likely to prevail were the antidumping duty orders on CORE from Germany and Korea to be 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% for all Korean producers and exporters of CORE, other than POSCO.²⁵

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

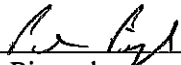
²⁴ See Memorandum from Dennis McClure to Melissa Skinner, WTO-Consistent Margin Calculation for CORE from Korea, dated July 23, 2012.

²⁵ As noted above in the "History of the Orders" section of this memorandum, the order on CORE from Korea was revoked with respect to POSCO in the final results of the 2009-2010 administrative review.

Recommendation

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

AGREE ✓ DISAGREE _____


Paul Piquado
Assistant Secretary
for Import Administration

23 July 2012
(Date)