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Sunset Review (Third)
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DATE: July 26, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Expedited Third Sunset
Review of the Antidumping Duty Order on Certain Small
Diameter Seamless Carbon and Alloy Standard, Line and Pressure
Pipe from Germany

SUMMARY

We have analyzed the substantive response of an interested party in the expedited third sunset review of the antidumping duty order covering certain small diameter seamless carbon and alloy standard, line and pressure pipe (“seamless pipe”) from Germany. We recommend that for our expedited final results 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 in this expedited sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping
 - Weighted-average dumping margin
 - Volume of imports
2. Magnitude of the margin likely to prevail
 - Margins from investigation
 - Use of a more recent margin

HISTORY OF THE ORDER

On August 3, 1995, the Department of Commerce (“the Department”) published an antidumping duty order in the *Federal Register* with respect to imports of seamless pipe from Germany at the following rates, which were based on best information available (the predecessor to adverse facts available) using the highest rate contained in the revised petition:¹

¹ See *Notice of Antidumping Duty Order and Amended Final Determination: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany*, 60 FR 39704 (August 3, 1995).



Mannesmannrohren-Werke AG	57.72
All-Other German Manufacturers and Exporters	57.72

During the first five-year review period, the Department conducted one administrative review of the order for the period 1995-1996, for one company, Mannesmannrohren-Werke AG and Mannesmann Pipe & Steel Corporation (collectively “Mannesmann”). The Department calculated a margin of 21.94 percent for Mannesmann.² Following a decision from the Court of International Trade (“CIT”) in 2001, the Department amended the margin to 20.08 percent.³ On July 3, 2000, the Department initiated the first sunset review of the order.⁴ As a result of the first sunset review, the Department determined that revocation of the antidumping duty order on seamless pipe from Germany would likely lead to continuation or recurrence of dumping, reporting rates of 57.72 percent for Mannesmann and all-other manufacturers/exporters.⁵

On June 29, 2001, the International Trade Commission (“the ITC”), pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), determined that revocation of the antidumping duty order on seamless pipe from Germany would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁶ Accordingly, on July 16, 2001, the Department published a notice of continuation of the antidumping duty order on seamless pipe from Germany pursuant to 19 CFR 351.218(f)(4).⁷

Since the final results of the first sunset review, the Department initiated one administrative review of the order for the period 2004-2005.⁸ The review was timely requested by a domestic interested party, United States Steel Corporation (“U.S. Steel”), for four German manufacturers/exporters of seamless pipe: Vallourec & Mannesmann Tubes - V&M Deutschland GmbH, Mannesmann Pipe & Steel Corporation, Benteler Stahl/Rohr GmbH (“Benteler Stahl”), and Benteler Steel and Tube Corporation. However, U.S. Steel later withdrew its request for review and, as there were no other requesting parties involved with the review, the administrative review was rescinded.⁹

On June 1, 2006, pursuant to section 751(c) of the Act, the Department initiated the second sunset review of the antidumping duty order on seamless pipe from Germany.¹⁰ On the basis of a notice of intent to participate, adequate substantive responses filed on behalf of domestic

² See *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Amendment of Final Results of Antidumping Duty Administrative Review*, 63 FR 20579 (April 27, 1998).

³ See *Small Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipes From Germany: Notice of Amended Final Results of Antidumping Duty Administrative Review in Accordance With Final Court Decision*, 66 FR 12465 (February 27, 2001).

⁴ See *Notice of Initiation of Five-Year (“Sunset”) Reviews*, 65 FR 41053 (July 3, 2000).

⁵ See *Final Results of Expedited Sunset Reviews: Seamless Pipe From Argentina, Brazil, Germany, and Italy*, 65 FR 66708, 66711 (November 7, 2000).

⁶ See USITC Publication 3429 (June 2001), Investigations Nos. 701-TA-362 and 731-TA-707-710 (Review).

⁷ See *Continuation of Antidumping Duty Orders: Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Argentina, Brazil, and Germany*, 66 FR 37004 (July 16, 2001).

⁸ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005).

⁹ See *Rescission of Antidumping Duty Administrative Review: Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany*, 70 FR 76773 (December 28, 2005).

¹⁰ See *Initiation of Five-Year (“Sunset”) Reviews*, 71 FR 31153 (June 1, 2006).

interested parties, and only one notice of intent to participate filed on behalf of a German respondent interested party, Benteler Stahl, whose response the Department determined to be inadequate, the Department conducted an expedited (120-day) sunset review. As a result of the second sunset review, the Department found that revocation of the antidumping duty order would likely lead to the continuation or recurrence of dumping, reporting rates of 57.72 percent for all German manufacturers/exporters.¹¹

In May of 2007, the ITC, pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on seamless pipe from Germany would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹² Accordingly, on May 18, 2007, the Department published a notice of continuation of the antidumping duty order on seamless pipe from Germany pursuant to 19 CFR 351.218(f)(4).¹³

There have been no further segments conducted for this proceeding.

BACKGROUND

On April 2, 2012, the Department initiated the third sunset review of the antidumping duty order on seamless pipe from Germany, pursuant to section 751(c) of the Act.¹⁴

The Department received notice of intent to participate from a domestic interested party, U.S. Steel, within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested party claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of a domestic like product. In accordance with 19 CFR 351.218(d)(3), U.S. Steel filed its substantive response timely on May 2, 2012.¹⁵ The Department did not receive substantive responses from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted an expedited sunset review of this order.

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, the Department has conducted this third sunset review to determine whether revocation of the antidumping duty order would likely lead to the continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before and the periods after the issuance of the

¹¹ See *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Argentina, Brazil and Germany: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 59079, 59081 (October 6, 2006).

¹² See USITC Publication 3918 (May 2007), Investigation Nos. 731-TA-707-709 (Second Review).

¹³ See *Continuation of Antidumping Duty Order on Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Germany*, 72 FR 28026 (May 18, 2007).

¹⁴ See *Initiation of Five-Year ("Sunset") Review*, 77 FR 19643 (April 2, 2012).

¹⁵ See Letter from U.S. Steel, "Third Sunset Review of Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Germany," dated May 2, 2012 ("Substantive Response").

antidumping duty order. 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 order is revoked. Below we address the comments of the interested party. Consistent with our implementation under section 123 of the Uruguay Round Agreements Act (URAA), in this sunset review we have not relied on weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization (WTO)-inconsistent.¹⁶

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested party believes that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping by the German manufacturers, producers, and exporters of the subject merchandise due to continued dumping and decreased import volumes since issuance of the order and the previous sunset reviews.¹⁷

According to the domestic interested party, since the imposition of the order, dumping in excess of a *de minimis* level has continued. To support its argument that dumping would be likely to continue or recur if the order on seamless pipe from Germany was revoked, the domestic party relies upon the first and second sunset reviews of the order, in which the Department determined rates to be above *de minimis* for all German producers and exporters.¹⁸ Furthermore, the domestic party argues that the rate of 20.08 percent from the 1995-1996 administrative review is the only rate calculated and published by the Department since the investigation, and that the continued existence of an above *de minimis* margin is a sufficient basis for the Department to conclude that dumping would be likely to continue should the order on seamless pipe from Germany be revoked.¹⁹

Additionally, the domestic interested party notes that the recent modification in the Department's methodology regarding the calculation of dumping margins and duty assessment rates employed, *inter alia*, in sunset reviews (WTO-consistent), should not affect this analysis since the weighted-average dumping margins calculated in the initial investigation and in the only completed administrative review were based on adverse facts available.²⁰

With respect to import volumes, the domestic party refers to Bureau of the Census IM-145 import data,²¹ and argues that for the period of time covered by the third sunset review shipments of seamless pipe from Germany dropped to a range of 9.39 percent to 45.34 percent of the pre-order level, a reduction which, in itself, warrants continuation of the order.

¹⁶ 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*”).

¹⁷ See Substantive Response at 8 through 9.

¹⁸ See Substantive Response at 8.

¹⁹ See *id.*

²⁰ See *id.* at 9.

²¹ See Substantive Response at 10-11.

Department's Position and Analysis

Consistent with the guidance provided in the legislative history accompanying the URAA, specifically the Statement of Administrative Action ("SAA"), H.R. Doc. 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.²² In addition, the Department normally will determine that revocation of an 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 an order and import volumes for the subject merchandise declined significantly.²³ In addition, pursuant to section 752(c)(1)(B) of the Act, the Department will consider the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping order.

Our review of import statistics confirms that import volumes from Germany have decreased significantly relative to the pre-order levels.²⁴ 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.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

The domestic interested party argues that, in accordance with the legislative history and the Department's normal practice, the Department should find the magnitude of the margin of dumping to be equal to the rates determined to exist in the original investigation.²⁵

²² See SAA at 879 and House Report at 56.

²³ See SAA at 889 and 890, House Report at 63-64, and Senate Report at 52.

²⁴ See Memorandum to the File from Ericka Ukrow, Case Analyst, through Angelica Mendoza, Program Manager, regarding the "Import Volumes for the Final Results of the Expedited Third Five-Year (Sunset) Review of the Antidumping Duty Order on Small Diameter Seamless Carbon and Alloy Standard, Line and Pressure Pipe from Germany," dated concurrently with this Issues and Decision Memorandum.

²⁵ The domestic interested party cites specifically to the *Department's Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998), which states that the Department will "{normally} 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 or suspension agreement in place." See Substantive Response at 12.

Department's Position and Analysis

Section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. Normally, the Department will select the weighted-average dumping margins from the final determination of the investigation.²⁶ For companies not investigated specifically, or for companies 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.²⁷ The Department's preference for selecting a rate from the investigation is based on the fact that 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.²⁸ Under certain circumstances, however, the Department may select a more recently calculated weighted-average dumping margin to report to the ITC.²⁹

The Department has not conducted an administrative review of the order on seamless pipe from Germany since the completion of the first sunset review. The Department continues to find that the margins of dumping in the original investigation are probative of the behavior of all German producers and exporters because these are the only rates that reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. Moreover, the rates determined in the original investigation of seamless pipe from Germany were from the petition,³⁰ and, as such, did not contain negative margins and were not affected by offsets/zeroing. Thus, the use of these rates is in accordance with the *Final Modification for Reviews*. Finally, no party has argued for the use of a more recent rate as the magnitude of dumping likely to prevail if the order would be revoked.

Thus, the Department finds that the rates from the original investigation are the appropriate margins to report to the ITC. Consistent with section 752(c) of the Act, the Department will report to the ITC the company-specific and “all-others” rates from the investigation as indicated in the “Final Results of Review” section of this memorandum below.

FINAL RESULTS OF REVIEW

As a result of this review, the Department determines that revocation of the antidumping duty order of seamless pipe from Germany would be likely to lead to continuation or recurrence of dumping, and that the magnitude of dumping likely to prevail, if the order would be revoked,

²⁶ See *Eveready Battery Co. v. United States*, 77 F. Supp. 2d 1327, 1333 n.9 (CIT 1999).

²⁷ See *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

²⁸ *Id.*

²⁹ See *Final Results of Full Sunset Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands*, 65 FR 65294 (November 1, 2000), and accompanying Issues and Decision Memorandum at Comment 3. See also *Potassium Permanganate from The People's Republic of China: Five-year (“Sunset”) Review of Antidumping Duty Order; Final Results*, 70 FR 24520 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 2.

³⁰ See *Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany*, 60 FR 31974, 31979 (June 19, 1995).

would be 57.72 percent for Mannesmannrohren Werke AG and for all other German manufacturers and exporters of subject merchandise.

Our reliance on this rate for reporting both the likelihood of dumping to continue or recur, and the magnitude of the dumping margin likely to prevail, is consistent with our *Final Modification for Reviews*, because we are relying on past rates determined on the basis of total adverse facts available and not in a manner found to be WTO-inconsistent.

RECOMMENDATION

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

AGREE ✓

DISAGREE _____

Paul Piquado
Paul Piquado
Assistant Secretary
for Import Administration

26 July 2012
Date