

DATE: May 22, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Sunset Review of the
Antidumping Duty Order on Stainless Steel Bar from Germany;
Preliminary Results

Summary

We have analyzed the responses of the interested parties in the sunset review of the antidumping duty order covering stainless steel bar (“SSB”) from Germany. We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review:

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

History of the Order

The Department of Commerce (“Department”) published its final affirmative determination of sales at less than fair value (“LTFV”) in the Federal Register with respect to imports of SSB from Germany on January 23, 2002. It subsequently amended the final determination and published the order simultaneously.¹

The manufacturers, producers, and exporters investigated, and the margins assigned to them in the amended final results follow:

¹ See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Germany, 67 FR 3159 (January 23, 2002); and Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Bar from Germany, 67 FR 10382 (March 7, 2002).

BGH Edelstahl Seigen GmbH / BGH Edelstahl Freital GmbH	13.63 amended
Walzwerke Einsal GmbH	4.17 amended
Edelstahl Witten-Krefeld GmbH	15.40 amended
Krupp Edelstahlprofile	32.32 amended
All Others	16.96 amended

Since the issuance of the antidumping duty order, the Department conducted three administrative reviews with respect to SSB from Germany.² The preliminary results of a new shipper review were published on March 19, 2007.³ The final results are due no later than June 11, 2007. On March 1, 2007, the Department initiated Section 129 proceedings to implement the findings of the WTO Panel in US Zeroing (EC).⁴ On February 26, 2007, the Department issued draft results.⁵ On April 9, 2007, the Department issued its final results.⁶ The revised margins for Germany are:

BGH Edelstahl Seigen GmbH / BGH Edelstahl Freital GmbH	2.59, as amended
Walzwerke Einsal GmbH	0.64 , revoked
Edelstahl Witten-Krefeld GmbH	10.82, as amended
Krupp Edelstahlprofile	31.25, as amended
All Others	15.16, as amended

There have been no changed-circumstances determinations, duty absorption findings, or scope determinations concerning the SSB from Germany antidumping order. Effective April 23, 2007, Walzwerke Einsal GmbH has been revoked from the order as a result of the Section 129 Final Results.⁷

² See Stainless Steel Bar From Germany: Final Results of Antidumping Duty Administrative Review, 69 FR 32982 (June 14, 2004); Stainless Steel Bar From Germany: Final Results of Antidumping Duty Administrative Review, 70 FR 19419 (April 13, 2005); and Stainless Steel Bar From Germany: Final Results of Antidumping Duty Administrative Review, 71 FR 42802 (July 28, 2006), as amended at 71 FR 52063 (September 1, 2006).

³ See Stainless Steel Bar from Germany: Preliminary Results of New Shipper Review, 72 FR 12765 (March 19, 2007).

⁴ See Implementation of the Findings of the WTO Panel in US Zeroing (EC): Notice of Initiation of Proceedings under Section 129 of the URAA: Opportunity to Request Administrative Protective Orders: and Proposed Timetable and Procedures, 72 FR 9306 (March 1, 2007).

⁵ See May 14, 2007, Memorandum to the File entitled, "Calculation of the Weighted Average Dumping Margins" for the preliminary results for the Section 129 determinations.

⁶ See May 14, 2007, Memorandum to the file entitled, "Issues and Decision Memorandum for the Final Results of the Section 129 Determinations" ("Section 129 Final Results").

⁷ See Implementation of the Findings of the WTO Panel in US - Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 FR 25261 (May 4, 2007).

On February 1, 2007, the Department published the notice of initiation of the sunset review of the antidumping duty order on SSB from Germany pursuant to section 751(c) of the Tariff Act of 1930, as amended (the “Act”). See Initiation of Five-Year (“Sunset”) Reviews, 72 FR 4689 (February 1, 2007). The Department received the Notice of Intent to Participate from Carpenter Technology Corp.; North American Stainless; Crucible Specialty Metals Division of Crucible Materials Corp.; Electralloy; Outokumpu Stainless Bar, Inc.; Universal Stainless & Alloy Products, Inc.; and Valbruna Slater Stainless, Inc. (collectively “the domestic interested parties”), within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic-like product in the United States.

We received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received a response from respondent interested parties in Germany; BGH Edelstahl Freital GmbH, BGH Edelstahl Lippendorf GmbH, BGH Edelstahl Lugau GmbH, and BGH Edelstahl Siegen GmbH (collectively “BGH” or “the respondent interested parties”). We found this response to be adequate because BGH accounted for more than 50 percent of the exports of subject merchandise from Germany to the United States during the sunset review period (January 1, 2002 through December 31, 2006). See Memorandum to Susan H. Kuhbach entitled, “Adequacy Determination in Antidumping Duty Sunset Review of Stainless Steel Bar from Germany,” (March 23, 2007) (“Adequacy Memo”). Therefore, we are conducting a full sunset review of the antidumping duty order on SSB from Germany as provided for at section 751(c)(5)(A) of the Act, and at 19 CFR 351.218 (e)(2)(i).

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 be likely to lead to a 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 periods before and the periods after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the International Trade Commission (“ITC”) the magnitude of the margins of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties believe that revocation of this antidumping duty order would be likely to lead to a continuation or recurrence of dumping by the German manufacturers, producers, and exporters of the subject merchandise due to continued dumping. See Substantive Response of domestic interested parties (March 5, 2007) at 22.

The domestic interested parties state that the volume of imports subject to this order declined significantly after the imposition of the order, and has not recovered. Domestic interested parties argue that the average imports for the five-year sunset period are 48 percent lower than in the two years prior to the filing of the petition. Because antidumping duty margins have been reduced but imports have remained well below pre-order levels, the domestic interested parties conclude that German producers are incapable of shipping SSB to the United States in significant quantities without dumping the product. Thus, domestic interested parties argue that the Department should conclude that dumping of SSB from Germany is likely to recur if the order is revoked. See id. at 24-25.

BGH does not believe that the revocation of the antidumping duty order on SSB from Germany is likely to lead to a continuation or recurrence of dumping. BGH argues that even after initiation of the antidumping duty investigation, it maintained a substantial level of exports to the United States. BGH argues that since 2004, its annual exports of subject merchandise to the United States have exceeded the level of imports prior to initiation of the antidumping duty investigation. Moreover, BGH argues that the average unit value of its exports has risen steadily throughout the last five years. BGH argues that it has maintained this substantial level of exports without any significant dumping. See Substantive Response of BGH (March 5, 2007) at 3-4.

BGH also argues that because the WTO Appellate Body report in dispute DS294 and the Department's Preliminary Results in the Section 129 proceeding were issued after the closing of the record in the last administrative review subject to this sunset review, good cause exists to consider this information in the sunset review pursuant to section 752(c)(2). See Substantive Response of BGH (March 5, 2007) at footnote 1.

In their rebuttal comments, the domestic interested parties argue that the BGH group now includes four companies, whereas the investigation only involved two companies. Therefore, domestic interested parties contend that the total export figures may not accurately reflect changes in export trends over the five-year sunset period. See Rebuttal Comments of domestic interested parties (March 12, 2007) at 4-5.

Domestic interested parties also argue that the fact that the average unit value of imports has risen steadily shows that the discipline of the order has had a significant effect on German manufacturers and exporters, and the rise in average unit values would tend to result in decreased dumping margins. Therefore, domestic interested parties contend that it is the discipline of the order that has caused the dumping to decrease and average unit values to rise, and that revocation of the order would lead to continuation or recurrence of dumping. See Rebuttal Comments of domestic interested parties (March 12, 2007) at 4.

In its rebuttal comments, BGH argues that the domestic interested parties' comparison of pre-order import levels with import levels in 2002 and 2003 is not a representative indicator of post-order import volumes because import volumes in those years were drastically impacted by the

safeguard measure imposed by President Bush on March 5, 2002.⁸ BGH states that this safeguard measure imposed a 12-15 percent additional duty for the period March 20, 2002, through December 4, 2003. BGH claims that import levels during the 2004 through 2006 period are comparable to the import levels during the period 1996 through 1999. BGH also reiterates that unit values of imports have been very high and increasing. Finally, BGH argues that the volume of its own post-order exports to the United States has exceeded pre-order levels. See Rebuttal Comments of BGH (March 12, 2007) at 2-3.

Department's Position

The Department makes its determinations of likelihood on an order-wide basis. See section 751(c)(1) (“{T}he administering authority and the Commission shall conduct a review to determine . . . whether revocation of the countervailing or antidumping duty order . . . would be likely to lead to continuation or recurrence of dumping{.}”) Thus, we have not examined BGH’s trade volumes for our likelihood analysis. Instead, we have focused on import volumes from Germany and the margins of all producers.

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. Final Results of Expedited Sunset Review: Tapered Roller Bearings from Hungary, 64 FR 60272, 60273 (November 4, 1999). In addition, 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.

We reviewed public customs data obtained from the U.S. International Trade Commission Dataweb for imports of German SSB for the period of 2000 through 2006. See Attachment 1. Imports of German SSB for the sunset period of review of 2002 through 2006 numbered 4,749,360; 2,853,446; 6,413,210; 8,976,618; and 9,855,229 kilograms, respectively. In 2000 (the year preceding the year of initiation of the dumping investigation), imports totaled 15,548,209 kilograms. Therefore, imports fell after the imposition of the order, possibly as a result of the safeguard measures, and did not return to pre-initiation levels even after the safeguard measures expired in 2003.

BGH was the only company that participated in administrative reviews. The margins for BGH were 0.52 percent in the first review, 0.01 percent in the second review, and 0.73 percent in the third review. The other companies’ margins continue to be the margins calculated in the investigation. Therefore, dumping has continued at levels above *de minimis* for all the companies covered by the antidumping order. In summary, import levels during the five-year

⁸ Proclamation 7529, 67 FR 10553 (March 5, 2002).

sunset review period fell when compared to the import level for the year prior to initiation. Moreover, dumping has continued in the sunset period. Consequently, the Department 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

In their March 5, 2007, substantive response, the domestic interested parties request that the Department report to the ITC the margins that were determined in the investigation because those margins best reflect the behavior of the respondents free of the constraints of the antidumping duty order. See Substantive Response of domestic interested parties (March 5, 2007) at 27-28. The domestic interested parties recommend the following dumping margins: BGH Edelstahl Seigen GmbH / BGH Edelstahl Freital GmbH, 13.63 percent; Walzwerke Einsal GmbH, 4.17 percent; Edelstahl Witten-Krefeld GmbH, 15.40 percent; Krupp Edelstahlprofile, 32.32 percent; and the all others rate of 16.96 percent.

BGH believes that its dumping margin likely to prevail is *de minimis*. BGH argues that it would have received a *de minimis* margin in each administrative review if the Department had not applied its zeroing methodology. BGH notes that the Department has revised the investigation calculations in light of the WTO decision, but has not yet revised any of the administrative review calculations. BGH notes additionally that on October 2, 2006, the European Communities requested further consultations with the United States at the WTO on the issue of zeroing and specifically listed BGH's administrative reviews.⁹ BGH argues that its administrative review margins will drop below the *de minimis* threshold once the Department brings the calculations into conformity with the WTO Antidumping Agreement and, therefore, the Department should notify the ITC that the likely margin of dumping is *de minimis*. See Substantive Response of BGH (March 5, 2007) at 3-5.

BGH contends that the margin calculated in the original investigation is not representative of its current dumping margin or the margin likely to prevail upon revocation of the order. BGH argues that the entire dumping margin in the original investigation was caused by an improper comparison of high-volume U.S. sales with home market transactions having extremely small order volumes. See Substantive Response of BGH (March 5, 2007) at 5 and Appendix 2.

In their rebuttal comments, the domestic interested parties argue that the Department has already made its preliminary determination in the Section 129 proceeding and that BGH's margin was not *de minimis*. Therefore, the domestic interested parties urge the Department to report the investigation margin to the ITC since it is the Department's policy to report the investigation margin as it is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place. See Rebuttal Comments of domestic interested parties (March

⁹ See request for Consultations by the European Communities, WT/DS350/1 (October 2, 2006) attached at Appendix 1 of BGH's Substantive Response (March 5, 2007).

12, 2007) at 2-3.

The domestic interested parties also argue that any future changes in the administrative review margins will not affect the investigation margin, which will remain above *de minimis*. Moreover, domestic interested parties claim that it would be inappropriate to speculate as to any potential changes to these margins at this time given that the Department has not yet published any notices about revising margins in prior administrative reviews. See Rebuttal Comments of domestic interested parties (March 12, 2007) at 3.

In its rebuttal comments, BGH argues that the Department should not use the rates found in the original investigation since the WTO Dispute Settlement Body found that these original dumping margins were incorrectly calculated. BGH believes that any rate reported to the ITC must be calculated without zeroing. BGH reiterates that the Department should report a *de minimis* rate to the ITC because the margin in each administrative review would have been *de minimis* if the Department had not applied its zeroing methodology. See Rebuttal Comments of BGH (March 12, 2007) at 3-4.

Department's Position

Although we make likelihood determinations on an order-wide basis in sunset reviews, for determining the magnitude of the margin likely to prevail we report company-specific margins to the ITC. Therefore, it is appropriate that our determinations regarding the magnitude of the margin likely to prevail be based on company-specific information.

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company. See Eveready Battery Co. v. United States, 77 F. Supp.2d 1327, 1333 (CIT 1999). 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 margin based on the "all others" rate from the investigation. 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. The Department's preference for selecting a margin 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. Id.

The Department may provide a more recently calculated margin for a particular company, however, where declining (or zero or *de minimis*) dumping margins are accompanied by steady or increasing imports which would reflect that the exporter is likely to dump at a lower rate found in a more recent review. Similarly, if an exporter chooses to increase dumping in order to increase or maintain market share, the Department may provide the ITC with an increased margin that is more representative of that exporter's behavior in the absence of an order. Section 752(c)(3) of the Act. See, e.g., 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 Margin Likely to Prevail Comment 3.

The Department will consider using a more recently calculated margin in response to argument from an interested party.¹⁰ In determining whether a more recently calculated margin is probative of the behavior of an exporter were the order to be revoked, the Department considers company-specific exports and company-specific margins and, when available, a company's share of imports.¹¹

As noted above, BGH was the only company that participated in any administrative reviews. BGH's margins were 0.52 percent in the first review, 0.01 percent in the second review, and 0.73 percent in the third review. These margins are all lower than the original investigation rate for BGH of 13.63 percent. They are also lower than the rate calculated in the Section 129 Final Results for BGH of 2.59 percent. The record shows that, for the period covered by this sunset review, the margins for BGH declined when compared to the investigation margin. Therefore, BGH has demonstrated decreased margins with the discipline of the order in place.

The Department has also analyzed BGH's reported imports of subject merchandise from Germany to the United States for the five-year sunset review period and compared these to BGH's imports from October 1, 1999, through September 30, 2000, which was the period of investigation and preceded the initiation of the dumping investigation. BGH's average annual level of imports during the sunset period is higher than its pre-initiation imports. See Substantive Response of BGH (March 5, 2007) at 7 and Appendix 4. Thus, the information provided by BGH reflects an overall upward trend in its imports of German SSB to the United States, eventually surpassing pre-initiation levels.

Based on the above analysis, we conclude that BGH has demonstrated that it is appropriate to provide the ITC with the more recently calculated margin of 0.73 percent as the magnitude of the margin likely to prevail. We disagree with BGH that the dumping margin likely to prevail is *de minimis*. Although Commerce has modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations, it has not adopted any such modifications for administrative reviews. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006). Consequently, we agree with the domestic interested parties that it would be inappropriate for the Department to speculate as to any potential changes in the administrative review margins.

¹⁰ See, e.g., Final Results of Expedited Sunset Reviews: Antifriction Bearings From Japan, 64 FR 60275, 60280 (November 4, 1999); and Ball Bearings and Parts Thereof from Japan and Singapore; Five-Year Sunset Reviews of Antidumping Duty Orders; Final Results, 71 FR 26321 (May 4, 2006), and accompanying issues and decision memorandum at Comment 2.

¹¹ Id.

Concerning the other companies in the investigation, we agree with the domestic interested parties that it is the Department's practice to provide to the ITC the margins that from the final determination in the original investigation because they are the only calculated rates that reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. However, the Department will use the investigation rates as recalculated in the Section 129 Final Results because they supercede the original investigation rates.

Accordingly, we will report to the ITC the margins indicated below.

Preliminary Results of Review

We determine that revocation of the antidumping duty order on SSB from Germany would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (Percent)
BGH Edelstahl Seigen GmbH / BGH Edelstahl Freital GmbH	0.73
Edelstahl Witten-Krefeld GmbH	10.82, as amended
Krupp Edelstahlprofile	31.25, as amended
All Others	15.16, as amended

Recommendation

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

AGREE _____

DISAGREE _____

David. M. Spooner
Assistant Secretary
for Import Administration

Date

Attachment 1

HTS		2000	2001	2002	2003	2004	2005	2006
7222110005	kg	109,000	43,500	-	998	11,864	6,833	1,386
7222110050	kg	769,460	417,997	157,288	31,365	197,628	283,387	586,279
7222190005	kg	4,403	8,805	11,509	2,637	-	-	-
7222190050	kg	3,728,115	1,496,497	771,259	585,715	936,721	795,711	1,156,179
7222200005	kg	125,241	7,226	4,748	1,275	7,716	23,170	2,488
7222200045	kg	2,058,223	632,274	216,266	54,827	39,848	48,789	141,608
7222200075	kg	7,266,975	5,936,203	3,142,109	1,933,160	4,884,964	7,394,452	6,632,062
7222300000	kg	1,483,792	379,767	446,181	243,469	334,469	424,276	1,335,227
Total		15,545,209	8,922,269	4,749,360	2,853,446	6,413,210	8,976,618	9,855,229

Source: U.S.ITC Dataweb