

DATE: September 19, 2011

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Sunset Review of the
Antidumping Duty Order on Brass Sheet and Strip from Germany;
Preliminary Results

Summary

We have analyzed the responses of the interested parties in the third sunset review of the antidumping duty order covering brass sheet and strip from Germany. 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 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 brass sheet and strip from Germany at the following rates:¹

Germany

Wieland-Werke AG (“Wieland”)	3.81 Amended
Langenberg Kupfer-und Messingwerke GmbH KG (“Langenberg”)	16.18 Amended
All Others	7.30 Amended

¹ See Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip From the Federal Republic of Germany, 52 FR 822 (January 9, 1987), amended at Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Brass Sheet and Strip From the Federal Republic of Germany, 52 FR 35750 (September 23, 1987) (“Amended Order”).

The Department later published in the Federal Register the antidumping duty order on brass sheet and strip from Germany.²

Since the issuance of the antidumping duty order, the Department has conducted nine administrative reviews with respect to brass sheet and strip from Germany.³ There have been no changed-circumstances determinations concerning the brass sheet and strip antidumping duty order. In the eleventh administrative review, the Department determined that antidumping duties were being absorbed on all of Wieland's U.S. sales of the subject merchandise through its affiliated importer, based on adverse facts available.⁴

On January 11, 1989, domestic interested parties⁵ requested the Department conduct an anti-circumvention inquiry, alleging that Wieland had been selling C.D.A. 667-series manganese brass, nearly identical to C.D.A. 200-series brass sheet and strip, in order to circumvent the antidumping duty order. Domestic interested parties claimed that C.D.A. 667-series manganese brass was only slightly chemically distinguishable from C.D.A. 200-series brass by the presence of a small amount of manganese, but both brass series were identical in their commercial uses and purposes. On December 19, 1991, the Department determined that C.D.A. 667-series manganese brass was not a minor alteration of C.D.A. 200-series brass sheet and strip and, thus, Wieland was not circumventing the antidumping duty order on brass sheet and strip from Germany.⁶ The order remains in effect for all manufacturers, producers, and exporters of the subject merchandise from Germany.

The Department conducted the first sunset review of the order on brass sheet and strip from

² See Antidumping Duty Order: Brass Sheet and Strip From the Federal Republic of Germany, 52 FR 6997 (March 6, 1987), amended at Amended Order.

³ See Brass Sheet and Strip From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 60087 (November 27, 1991), amended at Brass Sheet and Strip From the Federal Republic of Germany; Amendment to Final Results of Antidumping Duty Administrative Review, 57 FR 276 (January 3, 1992), and amended again at Brass Sheet and Strip From Germany; Amended Final Results of Antidumping Duty Administrative Review, 62 FR 38256 (July 17, 1997); Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Reviews, 60 FR 38542 (July 27, 1995), amended at Brass Sheet and Strip From Germany; Amendment of Final Results of Antidumping Duty Administrative Reviews, 61 FR 18720 (April 29, 1996); Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review, 60 FR 38031 (July 25, 1995); Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 61 FR 49727 (September 23, 1996); Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review, 63 FR 42823 (August 11, 1998); Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip From Germany, 64 FR 43342 (August 10, 1999); Brass Sheet and Strip From Germany; Amended Final Results of Antidumping Duty Administrative Review, 75 FR 66347 (October 28, 2010).

⁴ See Brass Sheet and Strip from Germany; Final Results of the Antidumping Duty Administrative Review, 64 FR at 43342-43343.

⁵ Domestic interested parties consist collectively of GBC Metals, LLC, of Global Brass and Copper, Inc., doing business as Olin Brass; Heyco Metals, Inc.; Luvata North America, Inc.; PMX Industries, Inc.; Revere Copper Products, Inc.; and International Association of Machinists and Aerospace Workers, United Auto Workers (Local 2367 and Local 1024), and United Steelworkers AFL-CIO CLC.

⁶ See Brass Sheet and Strip From Germany; Negative Final Determination of Circumvention of Antidumping Duty Order, 56 FR 65884 (December 19, 1991).

Germany pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), and found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping.⁷ The International Trade Commission (“ITC”) determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁸ Thus, the Department published the notice of continuation of the antidumping duty order.⁹

The Department conducted the second sunset review of the order on brass sheet and strip from Germany, pursuant to section 751(c) of the Act, and found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the same rates as found in the original investigations.¹⁰ After the ITC determined that revocation of the order would lead to continuation or recurrence of injury to the domestic industry, the Department published a notice of continuation of the order.¹¹ Respondent interested parties unsuccessfully appealed the ITC’s injury determination to the Court of International Trade (“CIT”).¹²

BACKGROUND

On March 1, 2011, the Department initiated the third sunset review of the antidumping duty order pursuant to section 751(c) of the Act.¹³ The Department invited parties to comment and received a notice of intent to participate from domestic interested parties within the deadline specified in 19 CFR 351.218(d)(1)(i). Domestic interested parties claimed interested party status under sections 771(9)(C) of the Act as a manufacturer, producer, or wholesaler in the United States of a domestic like product and under 771(9)(D) of the Act as a certified union or recognized union or group of workers representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product.

On March 31, 2011, the Department received a substantive response from domestic interested parties. In addition to meeting the other requirements of 19 CFR 351.218(d)(3), domestic interested parties provided information on the volume and value of exports of brass sheet and strip from Germany. On March 31, 2011, the Department also received a response from respondent interested parties in Germany: Wieland; Schwermmetall Halbzeugwerk GmbH & Co. KG (“Schwermmetall”); and Messingwerk Plettenberg Herfeld GmbH & Co. KG (“Plettenberg”)

⁷ See Final Results of Expedited Sunset Review: Brass Sheet and Strip From Germany, 64 FR 49767 (September 14, 1999).

⁸ See Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, 65 FR 20832 (April 18, 2000).

⁹ See Continuation of Antidumping Duty Orders and Countervailing Duty Orders: Brass Sheet and Strip From Brazil, Canada, France, Italy, Germany, and Japan, 65 FR 25304 (May 1, 2000).

¹⁰ See Brass Sheet and Strip from Germany: Final Results of the Full Sunset Review of the Antidumping Duty Order, 71 FR 4348 (January 26, 2006).

¹¹ See Brass Sheet and Strip from France, Italy, Germany, and Japan: Continuation of Antidumping Duty Orders, 71 FR 16552 (April 3, 2006).

¹² See Wieland-Werke AG v. United States, 525 F. Supp. 2d 1353 (CIT 2007), aff’d without opinion, 290 Fed. Appx. 348 (Fed. Cir. 2008).

¹³ See Initiation of Five-Year (“Sunset”) Review, 76 FR 11202 (March 1, 2011).

(collectively, “respondent interested parties”). On April 1, 2011, the Department received a request from domestic interested parties for an extension to the deadline for filing rebuttal comments to the substantive responses submitted by the respondent interested parties. On April 4, 2011, the Department received a request from respondent interested parties for an extension to the deadline to submit their rebuttal comments to domestic interested parties’ substantive response. Pursuant to 19 CFR 351.302(b), domestic and respondent interested parties were granted an extension until April 12, 2011, to file rebuttal comments to the substantive responses. On April 12, 2011, the Department received these rebuttals.

On April 14, 2011, the Department released data obtained from U.S. Customs and Border Protection (“CBP”) with respect to entries of brass sheet and strip from Germany for the five years of the sunset review period, which includes years 2006 through 2010. The Department allowed parties to comment on this CBP entry data, and both domestic and respondent interested parties filed comments on April 25, 2011. On May 2, 2011, domestic interested parties filed rebuttal comments. On May 6, 2011, respondent interested parties filed rebuttal comments. On May 9, 2011, domestic interested parties filed surrebuttal comments within the prescribed statutory deadlines in 19 CFR 351.309(e)(ii). After considering the comments and import data on the record of this proceeding, the Department decided to conduct a full sunset review.¹⁴

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 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 ITC the magnitude of the margins of dumping likely to prevail if the order was revoked. Below we address the comments of the interested parties:

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

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 state that the antidumping margins have fluctuated between zero to 16.18 percent in previous administrative reviews. Domestic interested parties note that despite receiving de minimis or zero margins in three consecutive reviews, the Department did not grant Wieland’s partial revocation request because it was not evident that Wieland sold brass sheet and strip in

¹⁴ See Memorandum to Edward C. Yang, Acting Deputy Assistant Secretary for AD/CVD Operations, from Susan H. Kuhbach, Director, Office 1, AD/CVD Operations entitled, “Adequacy Determination: Third Five-Year (“Sunset”) Review of the Antidumping Duty Order on Brass Sheet and Strip from Germany,” (June 7, 2011).

commercial quantities during the more recent administrative reviews. Domestic interested parties conclude that revocation of the current antidumping order on imports of brass sheet and strip from Germany would result in continued dumping because of Wieland's apparent inability to sell subject merchandise in commercial quantities in the United States at fair value after the imposition of the antidumping order.¹⁵

Respondent interested parties state that the Department should recognize that Wieland would not have incurred a dumping margin but for the Department's use of a zeroing methodology in the original investigation. Thus, say respondent interested parties, the Department should determine that, if the order was terminated as a consequence of this sunset review, Wieland would not "resume" dumping.¹⁶

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("SAA"), H. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department normally determines 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. In this case, since the issuance of the Amended Order on brass sheet and strip from Germany, the Department has conducted a number of reviews in which it found that dumping continued at levels above de minimis. See Attachment 1.

In addition, pursuant to 752(c)(1)(B) of the Act, the Department is to consider the volume of imports of the subject merchandise for the period before and after the issuance of the Amended Order. The record in this case indicates imports of the subject merchandise from Germany fell in the years immediately following imposition of the Amended Order. Using statistics provided by domestic interested parties in their March 31, 2011, Substantive Response to Notice of Initiation at page 29, the Department finds that pre-order volumes of imports of brass sheet and strip averaged 53.63 million pounds annually in the four-year period (1983-1986) before the imposition of the antidumping duty order. The Department relies on domestic interested parties' data from their Substantive Response at Enclosure 5 to find that imports of brass sheet and strip from Germany from 2006 to 2010 have fluctuated between 2,667,570 and 5,582,493 pounds, remaining significantly below pre-order volumes.

We agree with the domestic interest parties that dumping margins and cash deposits rates have fluctuated in recent years, but rates above de minimis levels remain in effect for several German companies. The Department finds that the existence of dumping margins after the Amended

¹⁵ See Substantive Response of domestic interested parties dated March 31, 2011, at page 32.

¹⁶ See Substantive Response of respondent interested parties dated March 31, 2011, at pages 12 and 13.

Order is highly probative of the likelihood of continuation or recurrence of dumping if the Amended Order were to be revoked. As Congress explained in the SAA, if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were removed. See SAA at 890. We address respondent interested parties' comments regarding the Department's zeroing methodology, *infra*, at Comment 2.

Moreover, in the recent 22nd administrative review of Wieland, the Department calculated a margin of 0.00 percent. However, this rate was based on a single U.S. sale described in public versions of business proprietary submissions on the record of this proceeding as within a +/- ten percent range of only 4,700 pounds. Prior to that administrative review, the Department had assigned as adverse facts available a rate of 16.18 percent to Wieland. See Attachment 1. Given the relatively small amount of subject merchandise at issue in the 22nd administrative review, the Department does not find the margin from the 22nd administrative review as probative of the likelihood of recurrence or continuation of dumping with respect to Wieland. Therefore, the Department determines that dumping would likely continue or recur if the Amended Order was revoked.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

Domestic interested parties submit that, in spite of the current judicial activity spurred by United States – Continued Existence and Application of Zeroing Methodology, WT/DS350/AB/R (February 4, 2009), adopted, February 19, 2009, and Dongbu Steel Co., Ltd. v. United States, Court No. 2010-1271 (Fed. Cir. March 31, 2011) (“Dongbu Steel”), the Department can follow its normal practice under the Act and the current regulations by concluding that the likely margins of dumping in the event of revocation would be 3.81 percent for Wieland and 7.30 percent for all other German respondents.¹⁷

In the alternative, say domestic interested parties, if the Department chooses to exercise its discretion and deviate from its normal practice, it should find the likely margin of dumping for Wieland to be the 14.65 percent margin calculated for the first administrative review. Domestic interested parties state that this margin was based on substantial import volumes and suggest that Wieland's strategy in the period of the first review was to maintain U.S. market share. Domestic interested parties also note that the 14.65 percent margin calculated in the first administrative review covered entries during an 18-month period, as opposed to the relatively short six-month period covered by the investigation.

Respondent interested parties state that the Department cannot rely on margins from the original investigation or any administrative review that were computed by setting any negative margins to zero (“zeroing”) because it would be inconsistent with the United States' international legal

¹⁷ Referencing the SAA at 890 and 19 CFR 351.218(d)(e)(ii)(G).

obligations.¹⁸ Respondent interested parties also argue that the Court of Appeals for the Federal Circuit (“CAFC”)’s recent decision in Dongbu Steel requires the Department to change its methodology in the instant sunset review, as the terms “dumping margin” and “margin of dumping” apply in both administrative reviews and sunset reviews. Respondent interested parties request that the Department apply the modifications to practice outlined in the December 28, 2010 proposal (“December 28 proposal”) concerning the application of zeroing in administrative and sunset reviews, and recalculate Wieland’s original investigation margin without the use of zeroing.¹⁹

Respondent interested parties also note that the Sunset Policy Bulletin²⁰ names two exceptions wherein the Department may deviate from its practice of relying upon rates calculated in the investigation. They state that the first exception is applicable only if import volumes for the producer remained steady or increased. Respondent interested parties note that import volumes have declined since the imposition of this Amended Order, thus, this exception is not applicable. The second exception, say respondent interested parties, permits the Department to use a more recently determined margin that includes findings of duty absorption. They state that this exception is also not applicable, as the Department has not made such a finding for Plettenberg or Schwermittal. Further, although the Department made a finding of duty absorption for Wieland, respondent interested parties assert that the Department subsequently realized that it did not have the legal authority to make this finding and, thus, the duty absorption finding cannot be used in sunset reviews of this Amended Order. See Brass Sheet and Strip from Germany: Preliminary Results of the Sunset Review of Antidumping Duty Order, 70 FR 62093 (October 28, 2005).

Respondent interested parties recommend the following dumping margins:²¹

Wieland	0.00 percent
All Others	7.30 percent

Domestic interested parties rebut respondent interested parties’ assertions regarding the inapplicability of the exception in the Sunset Policy Bulletin for reliance upon a later calculated rate. Domestic interested parties assert that the Department will normally consider market share when (1) dumping margins have declined over the life of an order and imports have remained steady or increased, or (2) when a respondent increases its dumping in order to maintain or increase market share. Domestic interested parties assert that respondent interested parties should have provided the Department with information on Wieland’s relative market share.

Domestic interested parties claim that, in the absence of company-specific information on

¹⁸ See Substantive Response of respondent interested parties dated March 31, 2011, at page 7-11.

¹⁹ See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings, 75 FR 81533 (December 28, 2010).

²⁰ 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”).

²¹ See Substantive Response of respondent interested parties dated March 31, 2011, at page 6.

relative market share, the best information is the trade data they have compiled, which shows declining import volumes of subject merchandise from Germany following imposition of the Order. Nevertheless, domestic interested parties assert that despite such declining import volumes, the increase in Wieland's margin from the investigation rate of 3.81 percent to 14.65 percent in the first administrative review shows that Wieland's initial reaction to the antidumping duty proceeding was to lower its U.S. prices for purposes of retaining or increasing its U.S. market share. Domestic interested parties conclude that the Sunset Policy Bulletin exception for using the later calculated rate is thus satisfied, as Wieland arguably attempted to raise its market share by means of an increase in dumping of sufficient magnitude and duration.

Domestic interested parties recommend the following dumping margins:

Wieland	14.65 percent
All Others	7.30 percent

Domestic interested parties argue that the Department's December 28 proposal has no legal effect in this review because the Department has not published a final rule or modification to its practice with respect to the application of zeroing in administrative and sunset reviews.²² Domestic interested parties also argue that Department has declined to consider margins other than those previously calculated by the Department in prior reviews.²³ Domestic interested parties note that Wieland's argument that it would have received a zero margin, absent the Department's zeroing methodology, is premised upon Weiland's own recalculation, not the Department's.

Department's Position

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company. 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. 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. Under certain circumstances, however, the Department may select a more recent margin to report to the ITC.²⁴

With respect to respondent interested parties' claims on the use of zeroing in the instant sunset review, the Department's proposal with respect to the use of zeroing in sunset reviews has not been finalized and, more importantly, has not yet been implemented. Section 123 of the URAA mandates a number of steps must be fulfilled before the Department is permitted to modify its methodology in response to an adverse WTO report. Those steps have yet to be completed with

²² See domestic interested parties' letter dated May 9, 2011, at page 3.

²³ See *id.*

²⁴ See 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).

respect to the December 28 proposal. The Department finds that any presumption that eliminating zeroing would eliminate respondent interested parties' dumping margins is entirely speculative at this time. As respondent interested parties are 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, numerous decisions made by the U.S. courts have consistently upheld the application of zeroing in administrative reviews as permissible under U.S. law.²⁵

We disagree with respondent interested parties' argument that the CAFC's recent decision in Dongbu Steel requires us to change our methodology in this sunset review. The holding of Dongbu Steel and the recent decision in JTEKT Corp. v. United States, 642 F.3d 1378 (CAFC 2011) ("JTEKT") were limited to finding that the Department had not adequately explained the different interpretations of section 771(35) of the Act in the context of investigations versus administrative reviews, but the CAFC did not hold that these differing interpretations were contrary to law. Importantly, neither Dongbu Steel nor JTEKT overturned prior CAFC decisions affirming zeroing in administrative reviews, including SKF, which we cite above, in which the Court affirmed zeroing in administrative reviews notwithstanding the Department's determination to no longer use zeroing in certain investigations. For all these reasons, we find that our determination is consistent with the holdings in Dongbu Steel, JTEKT, and SKF.

Moreover, 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."²⁶ The Department does not find in this case that there are extraordinary circumstances that would warrant the Department to disregard prior calculated and published margins. In the first and second sunset reviews, the Department found that it was appropriate to provide the ITC with the rate from the investigation for Wieland because it was the only calculated rate that reflected the behavior of exporters without the discipline of an order in place.²⁷ In this third sunset review, the Department again finds that it is appropriate to provide the ITC with the rates from the

²⁵ See, e.g., SKF USA Inc. v. United States, 630 F.3d 1365 (CAFC 2011) ("SKF"); Andaman Seafood Co. v. United States, 2010 Ct. Int'l Trade LEXIS 10, Slip. Op. 2010-12 (Ct. Int'l Trade Feb. 2, 2010); 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 States, 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 (Ct. Int'l Trade 2006).

²⁶ See 19 CFR 351.218(e)(2)(i).

²⁷ See Final Results of Expedited Sunset Review: Brass Sheet and Strip From Germany, 64 FR 49767; Brass Sheet and Strip from Germany: Final Results of the Full Sunset Review of the Antidumping Duty Order, 71 FR 4348.

investigation because these are the only calculated rates that reflect the behavior of the manufacturers, producers and exporters without the discipline of an order in place. In reporting the 3.81 percent margin from the investigation, the Department notes its disagreement with domestic interested parties that it should report the 14.65 percent rate assigned to Wieland in the first administrative review covering the period August 22, 1986 to February 29, 1988. No party has provided information to the Department to demonstrate that Wieland increased its exports to the United States or its relative market share. In the absence of such evidence, the Department cannot make a speculative finding regarding Wieland's intent. To the contrary, domestic interested parties have shown that the discipline of the order has caused total market share to decrease. Evidence placed on the record by domestic interested parties demonstrates a continuous and consistent decline in the aggregate share of German imports of subject merchandise to the United States in the period following imposition of the order.

PRELIMINARY RESULTS OF REVIEW

We determine that revocation of the antidumping duty order on brass sheet and strip 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)
Wieland	3.81
All Others	7.30

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 _____

 Ronald K. Lorentzen
 Deputy Assistant Secretary
 for Import Administration

 Date

Attachment 1

History of the Order

Investigation		
<i>Country</i>	<i>Citation</i>	<i>Margins</i>
Germany	<u>Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip From the Federal Republic of Germany</u> , 52 FR 822 (January 9, 1987), amended at <u>Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Brass Sheet and Strip From the Federal Republic of Germany</u> , 52 FR 35750 (September 23, 1987)	<ul style="list-style-type: none"> • Wieland = 3.81% • Langenberg = 16.18% • All Others = 7.30%

Administrative and Sunset Reviews		
<i>Segment</i>	<i>Citation</i>	<i>Margins</i>
1 st Sunset Review	<u>See Final Results of Expedited Sunset Review: Brass Sheet and Strip From Germany</u> , 64 FR 49767 (September 14, 1999)	<ul style="list-style-type: none"> • Wieland = 3.81% • Langenberg = 16.18% • All Others = 7.30%
2 nd Sunset Review	<u>See Brass Sheet and Strip from Germany: Final Results of the Full Sunset Review of the Antidumping Duty Order</u> , 71 FR 4348 (January 26, 2006)	<ul style="list-style-type: none"> • Wieland = 3.81% • All Others = 7.30%
1 st Administrative Review POR: August 22, 1986 – February 29, 1988	<u>Brass Sheet and Strip From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review</u> , 56 FR 60087 (November 27, 1991) amended at <u>Brass Sheet and Strip From the Federal Republic of Germany; Amendment to Final Results of Antidumping Duty Administrative Review</u> , 57 FR 276 (January 3, 1992) and amended again at <u>Brass Sheet and Strip From Germany; Amended Final</u>	<ul style="list-style-type: none"> • Wieland Group = 14.65% • Wieland = 14.65% • Langenberg = 14.65% • William Prym = 19.59% • Schwermetall = 7.30% • All Others = 23.49%

	<u>Results of Antidumping Duty Administrative Review</u> , 62 FR 38256 (July 17, 1997)	
4 th Administrative Review POR: March 1, 1990 – February 28, 1991	<u>Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Reviews</u> , 60 FR 38542 (July 27, 1995) amended at <u>Brass Sheet and Strip From Germany; Amendment of Final Results of Antidumping Duty Administrative Reviews</u> , 61 FR 18720 (April 29, 1996)	<ul style="list-style-type: none"> • Wieland = 2.57%
5 th Administrative Review POR: March 1, 1991 – February 29, 1992	<u>Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Reviews</u> , 60 FR 38542 (July 27, 1995) amended at <u>Brass Sheet and Strip From Germany; Amendment of Final Results of Antidumping Duty Administrative Reviews</u> , 61 FR 18720 (April 29, 1996)	<ul style="list-style-type: none"> • Wieland = 2.37%
6 th Administrative Review POR: March 1, 1992 – February 28, 1993	<u>Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Reviews</u> , 60 FR 38542 (July 27, 1995) amended at <u>Brass Sheet and Strip From Germany; Amendment of Final Results of Antidumping Duty Administrative Reviews</u> , 61 FR 18720 (April 29, 1996)	<ul style="list-style-type: none"> • Wieland = 0.46%
7 th Administrative Review POR: March 1, 1993 – February 29, 1994	<u>Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review</u> , 60 FR 38031 (July 25, 1995)	<ul style="list-style-type: none"> • Wieland = 0.495%
8 th Administrative Review	<u>Brass Sheet and Strip From Germany; Final Results of Antidumping Duty</u>	<ul style="list-style-type: none"> • Wieland = 0.00%

POR: March 1, 1994 – February 28, 1995	<u>Administrative Review and Determination Not To Revoke in Part</u> , 61 FR 49727 (September 23, 1996)	
10 th Administrative Review POR: March 1, 1996 – February 28, 1997	<u>Brass Sheet and Strip from Germany: Final Results of Antidumping Duty Administrative Review</u> , 63 FR 42823 (August 11, 1998)	<ul style="list-style-type: none"> • Wieland = 16.18%
11 th Administrative Review March 1, 1997 – March 28, 1998	<u>Final Results of the Antidumping Duty Administrative Review: Brass Sheet and Strip From Germany</u> , 64 FR 43342 (August 10, 1999)	<ul style="list-style-type: none"> • Wieland = 16.18%
21 st Administrative Review POR: March 1, 2007 – February 29, 2008	<u>Brass Sheet and Strip from Germany: Amended Notice of Rescission of Antidumping Duty Administrative Review</u> , 73 FR 52646 (September 10, 2008)	<ul style="list-style-type: none"> • Review rescinded at the request of Wieland
22 nd Administrative Review POR: March 1, 2008 – February 29, 2009	<u>Brass Sheet and Strip From Germany: Amended Final Results of Antidumping Duty Administrative Review</u> , 75 FR 66347 (October 28, 2010).	<ul style="list-style-type: none"> • Wieland = 0.00%
23 rd Administrative Review POR: March 1, 2009 – February 29, 2010	<u>Brass Sheet and Strip from Germany: Notice of Rescission of Antidumping Duty Administrative Review</u> , 75 FR 47548 (August 6, 2010)	<ul style="list-style-type: none"> • Review rescinded at the request of Wieland