A-428-602
Third Sunset Review
Public Document
MK/Office 1/Ext.0914

DATE: January 25, 2012

MEMORANDUM TO: Paul Piquado
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; Final Results

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Summary

On September 26, 2011, the Department of Commerce ("the Department") published in the *Federal Register* the preliminary results of the full third sunset review of the antidumping duty order ("*AD Order*") on Brass Sheet and Strip from Germany. *See Brass Sheet and Strip From Germany: Preliminary Results of the Third Five-Year ("Sunset") Review of the Antidumping Duty Order*, 76 FR 59386 (September 26, 2011) ("*Preliminary Results*") and accompanying Issues and Decision Memorandum. We preliminary found that dumping was likely to continue or recur at the following weighted-average margins:

Manufacturers/Exporters/Producers	**Weighted-Average Margin (Percent)**
Wieland	3.81
All Others	7.30

See Preliminary Results, 76 FR 59386.

We invited parties to comment on the *Preliminary Results* and received case briefs from Heyco Metals, Inc., Aurubis Buffalo, Inc., Olin Brass (a division of Global Brass and Copper, Inc.), PMX Industries, Inc. Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, United Auto Workers (Local 2367 and Local 1024), and United

Steelworkers AFL-CIO CLC (collectively, "Petitioners")[1], and Wieland-Werke AG, Schwermetall Halbzeugwerk GmbH & Co. KG, and Messingwerk Plettenberg Herfeld & Co. KG (collectively, "Respondents") on November 15, 2011. We received rebuttal briefs from Petitioners and Respondents on November 21, 2011. We have analyzed those comments, which are summarized below. We recommend that you approve these positions, which we have developed in the "Discussion of Issues" section. The issues addressed in the final results are:

Comment 1: Whether the Department Should Recalculate Wieland's Dumping Margin

Comment 2: Whether the Department Should Request Wieland's Proprietary Data from the Investigation to Recalculate Wieland's Dumping Margin

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:[2]

<u>Germany</u>

Wieland-Werke AG ("Wieland")	3.81 Amended
Langenberg Kupfer-und Messingwerke GmbG KG ("Langenberg")	16.18 Amended
All Others	7.30 Amended

The Department later published in the *Federal Register* the *AD Order* on brass sheet and strip from Germany.[3]

Since the issuance of the *AD Order*, the Department has conducted nine administrative reviews with respect to brass sheet and strip from Germany.[4] There have been no changed-circumstances

[1] Petitioners noted in their November 15, 2011, case brief that Aurubis Buffalo, Inc. was previously Luvata Buffalo, Inc., and before then had been Outokumpu American Brass. Petitioners also noted in the case brief that Aurubis AG announced that it completed its purchase of Luvata Buffalo, Inc. on September 1, 2011.

[2] *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*" or "*AD Order*").

[3] *See Antidumping Duty Order; Brass Sheet and Strip From the Federal Republic of Germany*, 52 FR 6997 (March 6, 1987), amended at *Amended Order*.

[4] *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

determinations concerning the brass sheet and strip *AD 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.[5]

On January 11, 1989, Petitioners 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 *AD Order*. Petitioners 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 *AD Order* on brass sheet and strip from Germany.[6] The *AD 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 *AD Order* on brass sheet and strip from Germany pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), and found that revocation 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 *AD 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 *AD Order*.[9]

The Department conducted the second sunset review of the *AD Order* on brass sheet and strip from Germany, pursuant to section 751(c) of the Act, and found that revocation of the *AD Order* would be likely to lead to continuation or recurrence of dumping at the same rates as found in the

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(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).

[5] The Department's authority for the duty absorption finding was in accordance with section 751(c)(6)(C) of the Act, (*i.e.*, antidumping orders in effect as of January 1, 1995), and section 351.213(j)(2) of the Department's regulations, which provide that the Department will make such a determination, if requested, for an administrative review initiated in 1996 or 1998. *See Brass Sheet and Strip from Germany: Final Results of the Antidumping Duty Administrative Review*, 64 FR at 43342-43343.

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

[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).

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] Respondents 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 *AD 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 Petitioners within the deadline specified in 19 CFR 351.218(d)(1)(i). Petitioners 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 Petitioners. In addition to meeting the other requirements of 19 CFR 351.218(d)(3), Petitioners 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 substantive response from Respondents. On April 1, 2011, the Department received a request from Petitioners for an extension to the deadline for filing rebuttal comments to the substantive responses submitted by Respondents. On April 4, 2011, the Department received a request from Respondents for an extension to the deadline to submit their rebuttal comments to Petitioners' substantive response. Pursuant to 19 CFR 351.302(b), Petitioners and Respondents were granted an extension until April 12, 2011, to file rebuttal comments. 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 the Petitioners and Respondents filed comments on April 25, 2011. On May 2, 2011, Petitioners filed rebuttal comments. On May 6, 2011, the Respondents filed rebuttal comments. On May 9, 2011, Petitioners filed surrebuttal comments within the deadlines prescribed by 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]

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[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).
[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

On June 23, 2011, the Department extended the deadlines for the preliminary and final results of this sunset review. *See Brass Sheet and Strip: Extension of Time Limits for Preliminary and Final Results for Full Third Five-Year ("Sunset") Antidumping Duty Review*, 76 FR 36901 (June 23, 2011).

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 *AD 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 *AD 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.

Comment 1: Whether the Department Should Recalculate Wieland's Dumping Margin

<u>Affirmative Argument</u>

Respondents note that the Department preliminarily determined that revocation of the *AD Order* would likely lead to continuation or recurrence of dumping at the rates calculated in the LTFV investigation. Respondents assert that this violates U.S. domestic law in following two ways. First, the dumping margin from the LTFV investigation uses zeroing, and, thus, does not qualify as a "dumping margin" within the Department's current interpretation of section 735 of the Act.[15] Second, because the Department's current interpretation of the term "dumping margin" precludes zeroing in investigations, basic principles of statutory construction require applying that same interpretation to the term "dumping margin" as used in the statutory provisions governing sunset reviews.[16] Respondents cite to *Dongbu Steel v. United States ("Dongbu")* and *JTEKT Corp. v. United States* ("*JTEKT*"), where the court determined that the Department inconsistently interpreted a single ambiguous statutory term during different phases of an antidumping duty proceeding, and ordered the Department to explain why it employed two discrete understandings of the same statutory terms.[17]

Further, Respondents assert that there is no procedural impediment precluding the Department

("Sunset") Review of the Antidumping Duty Order on Brass Sheet and Strip from Germany," (June 7, 2011).

[15] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006).

[16] *See Ratzlaf v. United States*, 510 U.S. 135, 143 (1994); *Gustafson v. Alloyd Co.*, 513 U.S. 561, 570 (1995); *Dongbu Steel Co., Ltd. v. United States*, 635 F.3d 1363, 1365; *JTEKT Corp. v. United States*, 642 F.3d 1378 (Fed. Cir. 2011).

[17] *See Dongbu Steel v. United States*, 635 F.3d 1363 (Fed. Cir. 2011) and *JTEKT Corp. v. United States*, 642 F.3d 1378 (Fed. Cir. 2011).

from applying its anti-zeroing construction of the relevant statutory terms in both investigations and this sunset review. Respondents dismiss the Department's *Preliminary Results*, wherein the Department cited the WTO zeroing dispute and the consequent requirements under Section 123 of the URAA as obstacles to departing from the LTFV margins. Respondents assert that Section 123 of the URAA is utterly irrelevant in this context because the U.S. antidumping statute cannot be construed as permitting zeroing in sunset review based on U.S. law alone. Thus, the Department's references to the WTO report and Section 123 are irrelevant in light of actions the Department has already taken and reinterpretations of the statute it has already made.

Respondents also take issue with the Department's conclusion that the extraordinary circumstances which would permit deviation from the LTFV margin, as described in 19 CFR 218(e)(2)(i), do not exist here. They describe the following two problems with this Department's preliminary conclusion. First, Respondents assert that the Department may not rely on a regulation to overcome the plain language of the statute. Second, Respondents assert that the Department's interpretive change of how a "dumping margin" must be calculated in investigations results in the LTFV margin no longer meeting statutory requirements. Further, Respondents assert that using the zeroed LTFV margins also violates U.S. international legal obligations. If these do not constitute "extraordinary circumstances," say Respondents, then it is hard to imagine what would.

Respondents argue that as a result of the dispute settlement body's ("DSB") adoption of the WTO Panel and Appellate Body reports in the DS 350 case, the U.S. is obligated to implement the decision as applied under the German brass antidumping order.[18] Respondents assert that this implementation is not limited to the 2006 second sunset review at issue in the DS 350 case, but also this instant sunset review. Respondents contend that the U.S. expressly acknowledged its intent to comply with the DS 350 rulings.[19] Respondents cite to *Murray v. Charming Betsy*, 6 U.S. 64 (1804) ("*Charming Betsy*"), and argue that, under U.S. domestic law, the Department must construe the antidumping statute in a manner consistent with its acknowledged international legal obligation. Respondents assert that the *Charming Betsy* doctrine applies here because no statute precludes the Department from using a non-zeroed margin and no statute precludes the Department from recognizing its international legal obligation.

Moreover, Respondents assert that the Department itself has relied upon *Charming Betsy* to support its decision to eliminate zeroing in investigations as a result of WTO panel and Appellate Body decision antedating the DS 350 case.[20] Surely, say Respondents, the *Charming Betsy* doctrine does not apply only when the Department finds it convenient. Respondents argue that where this doctrine applies, as it does here, the Department cannot decide not to apply it. Because *Charming Betsy* is a rule of statutory construction applied so as to eliminate statutory ambiguity, argue Respondents, the Department does not have discretion to select its own

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[18] *See United States – Continued Zeroing* (EC), WT/DS350/R (October 1, 2008) ("DS350"); *United States – Continued Zeroing (EC)*, WT/DS350/AB/R (February 4, 2009).
[19] *See, e.g.*, Minutes of Meeting, WTO Dispute Settlement Body, WT/DSB/M/266 (May 19, 2009).
[20] *See Final Second Remand Determination, JTEKT Corp. v. United States*, Consol. Ct. No. 07-00377, filed with the CIT on September 19, 2011.

interpretation. Respondents contend that application of *Charming Betsy* supports their conclusion that the statue may no longer be construed as permitting the Department to use zeroed margins in sunset review.

Finally, Respondents take issue with the Department's preliminary conclusion that, "any presumption that eliminating zeroing would eliminate Respondents' dumping margin is entirely speculative." They assert that they have placed evidence on the record that demonstrates Wieland's dumping margin would be zero if calculated without zeroing, and note that there is no evidence to the contrary. Respondents assert that the Department has a legal obligation to base its final result on this record evidence.

Rebuttal

Petitioners state that U.S. domestic law does not require recalculation of Wieland's dumping margin from the LTFV investigation. Further, Petitioners argue that recalculating Wieland's margin in this sunset review is impermissible under the U.S. domestic law's statutory protocol that exists in Section 123 and Section 129 of the URAA. Petitioners argue that it is under that statutory protocol, and not in this sunset review, that the Department is directed by to consider whether and how the WTO's dispute settlement is implemented in U.S. domestic law.

Petitioners also take issue with Respondent's assertion that "extraordinary" circumstances exist in this sunset review, which justifies margin recalculations. Petitioners assert that the plain meaning of the statutory language described at sections 752(c)(1) and 752(c)(3) does not permit recalculations of final margins.

Petitioners note that the *Charming Betsy* doctrine involved the internationally well-recognized principle of neutrality during wartime. Petitioners make the point that the Appellate Body's piecemeal rejection of zeroing cannot be reasonably categorized as an internationally well-recognized principle under public international law. Petitioners imply that *Charming Betsy* doctrine is inapplicable to the instant argument.

Petitioners urge the Department to disregard the WTO's decision against zeroing because the WTO's skewed interpretation and illegitimate rulemaking has wrongly created new rights and obligations under the WTO's Antidumping Agreement. Petitioners cite to the Vienna Convention on the Law of Treaties to indicate that consent is necessary for establishing a nation's obligations under public international law. Petitioners assert that the Appellate Body has, by ignoring and miscasting the Uruguay Round's negotiations that did not reach a consensus against zeroing, slighted this preeminent rule of consent.

With regard to data supplied by Wieland for purposes of margin recalculation, Petitioners note that the legitimacy of this data has not been established. Petitioners themselves expressed concerns regarding certain data deficiencies in a letter dated April 12, 2011. Moreover, Petitioners note that eliminating zeroing in the dumping calculation is more complicated than simply deleting a line in the margin program. As such, Petitioners assert that there is no

evidence that a calculation without zeroing would result in zero or *de minimis* margins.

Department's Position

We find that the Department should not modify its analysis in this sunset review to exclude margins from the sunset analysis which were calculated using the zeroing methodology.

The Federal Circuit cases, *Dongbu* and *JTEKT* do not apply to the margins used in this sunset analysis. At the time Commerce issued the 1987 margins relied on in this sunset review, Commerce used its Federal Circuit approved[21] zeroing methodology in *both* investigations and administrative reviews. Because the margins relied on in this sunset proceeding were derived at a time at which the Department applied its zeroing methodology in both investigations and reviews, the *Dongbu* and *JTEKT* decisions are not pertinent to this case.[22]

WTO findings are not self-executing under U.S. law and can only be implemented through the statutory procedure for such implementation. The *Charming Betsy* doctrine does not overturn the express statutory procedures for implementation. The United States has implemented WTO findings concerning zeroing in investigations with and effective date of February 2007, long after the margins used in this sunset were calculated.[23] Therefore, *Final Modification for Investigations*, does not apply to the circumstances of this sunset review, because it is not an investigation and because the effective date of the *Final Modification for Investigations* was long after the margins used in this sunset review were calculated. With regard to the WTO findings concerning administrative reviews, those findings have not yet been implemented under U.S. law. The Department cannot circumvent the statutory process established for implementing WTO findings. Finally, the Uruguay Round Agreements did not exist in 1987 when the margins at issue were calculated.

Furthermore, it is not the Department's normal practice to recalculate antidumping duty margins calculated in less than fair value investigations or administrative reviews in sunset reviews. 19 CFR 351.218(e)(2)(i)(". . . only under the most extraordinary circumstances will the Secretary

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[21] *See, e.g., SKF U.S.A., Inc. v. United States*, 537 F.3d 1373 (Fed. Cir. 2008)*; NSK Ltd. v. United States*, 510 F.3d 1375 (Fed. Cir. 2007)*; Corus Staal BV v. United States*, 502 F.3d 1370 (Fed. Cir. 2007); *Timken Co. v. United States*, 354 F.3d 1334 (Fed. Cir. 2004).

[22] In any event, the Department's current practice of applying its zeroing methodology in the calculation of dumping margins except in the investigations using average-to-average comparisons was not overturned by the Federal Circuit in *Dongbu* and *JTEKT*. These cases merely remanded the underlying administrative decisions to the Department for further explanation. *See JTEKT*, 642 F.3d at 1385-1385 and *Dongbu*, 635 F.3d at 1373. The Department has provided its full explanation of why the Department's current practice is reasonable and consistent with U.S. law. *See, e.g., Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order*, 76 FR 77772 (December 14, 2011), Issues and Decision Memorandum, Comment 5.

[23] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71FR 77,722 (Dep't of Commerce Dec. 27, 2006) ("*Final Modification for Investigations*"), 71FR 77,722; and *Antidumping Proceedings: Calculation of the Weighted–Average Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification*, 72 FR 3783 (Jan. 26, 2007).

rely on . . .a dumping margin other than those calculated and published in its prior decisions.”). U.S. Court decisions and WTO findings which are not applicable to the 1987 margins do not constitute extraordinary circumstances necessary for the Department to consider using a margin other than those previously calculated. Moreover, to impose such a requirement on the Department would be an unreasonable interpretation of the law given that throughout the life of an order, the Department may change many times its interpretation of statutory provisions as it faces new or different circumstances or develops different understanding of the situation. That is the fundamental nature of administrative law. A change in policy does not retroactively invalidate the policy interpretations of prior determinations. Otherwise, the Department would be required to recalculate almost all margins relied on in sunset reviews, a position which is neither supported by the statute nor legislative history of the sunset provisions.

Comment 2: Whether the Department Should Request Wieland’s Proprietary Data from the Investigation to Recalculate Wieland’s Dumping Margin

Interested Party Comments

Petitioners assert that the Department erred when it declined asking Wieland to submit its U.S. sales volume data from the original investigation and the first administrative review, so that the Department could analyze whether Wieland increased its exports or relative market share after the *AD Order* was issued. Petitioners state that their request for Wieland’s sales volume data is consistent with the Department’s Policy Bulletin, 63 FR at 18873, which states that information on a company’s relative market share “should be provided to the Department by the parties” to the sunset review. Petitioners claim that Wieland’s failure to supply this sales data should lead to an adverse inference.

Petitioners believe that Wieland attempted to increase its market share following issuance of the AD order, and, thus, the higher margin calculated for Wieland in the first administrative review (14.65%) is more probative of the magnitude of the margin likely to prevail. Petitioners assert that the Department’s reliance on the 3.81% margin for Wieland is unlawful, as it punishes Petitioners for failing to submit proprietary data that they do not posses (citing Olympic Adhesives, Inc. v. United States, 899 F.2d 1565, 1572 (Fed. Cir. 1990)). Petitioners ask that the Department exercise its discretion and rely on a more recently calculated rate for Wieland’s margin likely to prevail.

Respondents counter that Petitioners’ request is untimely, as this sunset review examines factual and legal developments from the past five years, and does not encompass the period covered by the first AR. Second, Respondents assert that Petitioners’ request for additional data was made after the record already closed, and is, thus, doubly untimely.

Department’s Position

The Department disagrees with Petitioners’ request to use a more recently calculated margin for Wieland. The margins calculated for Wieland have fluctuated over the life of the order and the

mere fact that a higher margin exists does not, *per se*, warrant the use of a more recently calculated margin for Wieland. Rather, the *Sunset Policy Bulletin* provides that the Department may forward to the Commission a more recently calculated margin for a particular company where dumping margins increased after the issuance of the order and that particular company increased dumping to maintain or increase market share. Petitioners provide no specific information concerning an attempt by Wieland to maintain or increase market share by increased dumping. Therefore, consistent with the *Sunset Policy Bulletin*, the Department finds that the margins calculated in the original investigation are probative of the behavior of the producers/exporters if the order were revoked as they are the only margins which reflect Respondents' behavior absent the discipline of the order.

Moreover, the Department's practice establishes that the onus is on the party requesting more recent rates to be reported to the Commission to provide the Department with the necessary data.[24] In the instant case, the Petitioners have not placed such evidence on the record of this proceeding. Therefore, the Department lacks sufficient evidence on the record to depart from its normal practice of reporting the rates from the original investigation for all companies. Thus, with respect to the antidumping order on brass sheet and strip from Germany, the Department will report to the Commission the rates from the original investigation as contained in the *Preliminary Results* of this sunset review.

RECOMMENDATION

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

AGREE _____ DISAGREE_____

_____
Paul Piquado
Assistant Secretary
for Import Administration

_____
Date

[24] *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order*, 75 FR 19364 (April 14, 2010) and accompanying Issues and Decision Memorandum at 8.

Attachment 1

History of the Order

Investigation		
Country	*Citation*	*Margins*
Germany	*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)	• Wieland = 3.81% • Langenberg = 16.18% • All Others = 7.30%

Administrative and Sunset Reviews		
Segment	*Citation*	*Margins*
1st Sunset Review	*Final Results of Expedited Sunset Review: Brass Sheet and Strip From Germany*, 64 FR 49767 (September 14, 1999)	• Wieland = 3.81% • Langenberg = 16.18% • All Others = 7.30%
2nd Sunset Review	*Brass Sheet and Strip from Germany: Final Results of the Full Sunset Review of the Antidumping Duty Order*, 71 FR 4348 (January 26, 2006)	• Wieland = 3.81% • All Others = 7.30%
1st Administrative Review POR: August 22, 1986 – February 29, 1988	*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*	• Wieland Group = 14.65% • Wieland = 14.65% • Langenberg = 14.65% • William Prym = 19.59% • Schwermetall = 7.30% • All Others = 23.49%

	of Antidumping Duty Administrative Review, 62 FR 38256 (July 17, 1997)	
4th Administrative Review POR: March 1, 1990 – February 28, 1991	*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)	• Wieland = 2.57%
5th Administrative Review POR: March 1, 1991 – February 29, 1992	*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)	• Wieland = 2.37%
6th Administrative Review POR: March 1, 1992 – February 28, 1993	*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)	• Wieland = 0.46%
7th Administrative Review POR: March 1, 1993 – February 29, 1994	*Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review*, 60 FR 38031 (July 25, 1995)	• Wieland = 0.495%
8th Administrative Review	*Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and*	• Wieland = 0.00%

POR: March 1, 1994 – February 28, 1995	*Determination Not To Revoke in Part*, 61 FR 49727 (September 23, 1996)	
10th Administrative Review POR: March 1, 1996 – February 28, 1997	*Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review*, 63 FR 42823 (August 11, 1998)	• Wieland = 16.18%
11th Administrative Review March 1, 1997 – March 28, 1998	*Final Results of the Antidumping Duty Administrative Review: Brass Sheet and Strip From Germany*, 64 FR 43342 (August 10, 1999)	• Wieland = 16.18%
21st Administrative Review POR: March 1, 2007 – February 29, 2008	*Brass Sheet and Strip from Germany: Amended Notice of Rescission of Antidumping Duty Administrative Review*, 73 FR 52646 (September 10, 2008)	• Review rescinded at the request of Wieland
22nd Administrative Review POR: March 1, 2008 – February 29, 2009	*Brass Sheet and Strip From Germany: Amended Final Results of Antidumping Duty Administrative Review*, 75 FR 66347 (October 28, 2010).	• Wieland = 0.00%
23rd Administrative Review POR: March 1, 2009 – February 29, 2010	*Brass Sheet and Strip from Germany: Notice of Rescission of Antidumping Duty Administrative Review*, 75 FR 47548 (August 6, 2010)	• Review rescinded at the request of Wieland