

December 20, 2010

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

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

SUBJECT: Issues and Decision Memorandum for the Preliminary Results of  
the Full Five-Year (“Sunset”) Review of the Antidumping Duty  
Order on Stainless Steel Sheet and Strip in Coils from Italy

### Summary

We have analyzed the responses of the interested parties in the second sunset review of the antidumping duty order covering stainless steel sheet and strip (“SSSS”) in coils from Italy. 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 for which we received substantive responses:

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

### History of the Order

The petitioners are: AK Steel Corporation; Allegheny Ludlum Corporation; North American Stainless; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union; United Auto Workers (“UAW”) Local 3303; and UAW Local 4104 (collectively, “petitioners” or “domestic interested parties”).

### *Less-Than-Fair-Value Investigation and Administrative Reviews*

On May 19, 1999, the Department of Commerce (“the Department”) signed its final affirmative determination of sales at less than fair value (“LTFV”) with respect to imports of SSSS in coils from Italy. The Department published the final determination of sales at LTFV with respect to

imports of SSSS in coils from Italy on June 8, 1999, in the *Federal Register*.<sup>1</sup> The Department applied partial adverse facts available to 84 sales<sup>2</sup> by the respondent Acciai Speciali Terni S.p.A. (“AST”) and assigned a weighted-average margin of 11.17 percent to AST. This rate also served as the “all others” rate. On June 4, 1999, AST and the domestic interested parties alleged ministerial errors in the Department’s margin calculation. As a result, the Department issued an amended weighted-average margin of 11.23 percent to AST and all others.<sup>3</sup> Following an affirmative decision by the International Trade Commission (“the Commission”), the Department issued the antidumping duty order on SSSS in coils from Italy on July 27, 1999. *See Italian AD Order*. AST and the petitioners challenged various aspects of the final determination before the Court of International Trade (“CIT”). However, following a stipulation of dismissal by the parties, the case was subsequently dismissed by the CIT.

On February 22, 2007, the Department initiated a proceeding under Section 129 of the Uruguay Round Agreements Act in response to findings of the World Trade Organization (“WTO”) Panel in US Zeroing (EC).<sup>4</sup> During the course of the Section 129 proceeding, ThyssenKrupp Acciai Speciali Terni S.p.A. (“TKAST” (formerly AST))<sup>5</sup> alleged that the dumping margin from the LTFV investigation was based in part on a mathematical error regarding the application of partial adverse facts referenced above. The Department did not correct this error in the Section 129 determination on the ground that such a correction was beyond the scope of the Section 129 determination. On August 20, 2007, the Department issued its final results for the Section 129 determination and implemented its findings effective August 31, 2007.<sup>6</sup> As a result, the original investigation margins were revised to 2.11 percent for TKAST and all others.

TKAST subsequently challenged the *Section 129 Implementation*, stating that the Department failed to correct an alleged clerical error in the original investigation. The CIT upheld the Department’s determination that the correction of alleged errors exceeded the scope of the Section 129 determination. The Court of Appeals for the Federal Circuit subsequently upheld the CIT’s decision.<sup>7</sup>

Since the issuance of the antidumping order, the Department has conducted six administrative reviews of the antidumping duty order. In the first four administrative reviews, the Department determined weighted-average dumping margins of 0.66 percent, 3.34 percent, 1.62 percent, and

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<sup>1</sup> *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750 (June 8, 1999).

<sup>2</sup> *See* Substantive Response entitled “Stainless Steel Sheet and Strip in Coils from Italy (second sunset review): TKAST Response to the Department’s Notice of Initiation,” dated July 2, 2010 (“TKAST response”) at 7.

<sup>3</sup> *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 40567 (July 27, 1999) (“*Italian AD Order*”).

<sup>4</sup> *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).

<sup>5</sup> The respondent underwent a name change from Acciai Speciali Terni S.p.A. to ThyssenKrupp Acciai Speciali Terni S.p.A. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 51224 (August 7, 2002), at footnote 1.

<sup>6</sup> *See Implementation of the Findings of the WTO Panel in US-Zeroing (EC): Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils From Italy*, 72 FR 54640 (September 26, 2007) (“*Section 129 Implementation*”).

<sup>7</sup> *See ThyssenKrupp Acciai Speciali, Terni S.P.A. v. United States*, 602 F. Supp. 2d 1362 (CIT 2009), *affirmed* in 603 F.3d 928 (Fed. Cir. 2010).

3.73 percent, respectively.<sup>8</sup> In the fifth and sixth administrative reviews, TKAST withdrew its requests for review and the Department, therefore, rescinded the reviews.<sup>9</sup> There have been no further administrative reviews, and no reviews have been conducted during the period covered by this sunset review.

#### *Changed Circumstances Reviews*

The Department has made no changed circumstances determinations concerning SSSS in coils from Italy.

#### *Scope Rulings*

The Department has completed one scope ruling since the issuance of the order. On August 15, 2005, the Department determined that suspension foil, other than the type specifically described in the scope exclusion language, is subject to the antidumping duty order on SSSS in coils from Italy.<sup>10</sup>

#### *Duty Absorption Finding*

The Department has made no duty absorption findings concerning SSSS in coils from Italy.

#### *Sunset Reviews*

On June 1, 2004, the Department published the notice of initiation of the first sunset review of the antidumping duty order pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”).<sup>11</sup> On November 22, 2004, the Department published the final results of its expedited sunset review of the antidumping duty order.<sup>12</sup> On July 18, 2005, the Commission determined that revocation of the order would be likely to lead to continuation or recurrence of material

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<sup>8</sup> See *Stainless Steel Sheet and Strip in Coils From Italy; Final Results of Antidumping Duty Administrative Review*, 67 FR 1715,1717 (January 14, 2002); *Stainless Steel Sheet and Strip in Coils From Italy: Final Results of Antidumping Administrative Review*, 68 FR 6719, 6722 (February 10, 2003) amended by *Stainless Steel Sheet and Strip in Coils from Italy: Notice of Amended Final Results of Antidumping Administrative Review*, 68 FR 11521 (March 11, 2003); *Stainless Steel Sheet and Strip in Coils from Italy: Final Results of Antidumping Administrative Review*, 68 FR 69382, 69384 (December 12, 2003); and *Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy*, 70 FR 7472, 7474 (February 14, 2005), amended by *Stainless Steel Sheet and Strip in Coils From Italy: Amended Final Results of Antidumping Duty Administrative Review*, 70 FR 13009, 13010 (March 17, 2005).

<sup>9</sup> See *Notice of Rescission of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 69 FR 57265 (September 24, 2004), and *Notice of Rescission of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 70 FR 76775 (December 28, 2005).

<sup>10</sup> See Final Recommendation Memorandum – Scope Ruling Request by Hutchinson Technology Inc. on Whether Certain Stainless Steel Suspension Foil is Subject to the Scope of the Antidumping and Countervailing Duty Orders on Stainless Steel Sheet and Strip in Coils from Subject Countries, dated August 15, 2005.

<sup>11</sup> *Initiation of Five-Year (“Sunset”) Reviews*, 69 FR 30874 (June 1, 2004).

<sup>12</sup> See *Stainless Steel Sheet and Strip in Coils From Italy; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 69 FR 67894 (November 22, 2004).

injury to the domestic industry.<sup>13</sup> On August 4, 2005, the Department published a notice of the continuation of the antidumping duty order on SSSS in coils from Italy.<sup>14</sup>

On June 2, 2010, the Department initiated the instant sunset review of the *Italian AD Order* pursuant to section 751(c) of the Act.<sup>15</sup> The Department received a notice of intent to participate in the sunset review of the antidumping duty order on SSSS in coils from Italy from the domestic interested parties on June 17, 2010, within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act as producers and certified unions representing workers in the domestic industry processing SSSS in coils.

The Department received a complete substantive response to the *Notice of Initiation* from the domestic interested parties<sup>16</sup> on July 2, 2010. The submission by domestic interested parties were submitted within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). On July 2, 2010, the Department also received a complete substantive response from the respondent TKAST.<sup>17</sup> The submission by the respondent was also within the applicable deadline specified in 19 CFR 351.218(d)(3)(i).

On July 6, 2010, the Department received a request from domestic interested parties for an extension of the deadline for filing rebuttal comments to the substantive responses submitted by respondent parties. All parties were granted an extension to file rebuttal comments to the substantive responses until July 9, 2010.

On July 9, 2010, the Department received rebuttal comments to the substantive responses from the domestic interested parties<sup>18</sup> and the respondent.<sup>19</sup> Pursuant to 751(c)(5)(B) of the Act, the Department published a notice in the *Federal Register* extending the time period for making a determination in the instant sunset review on September 23, 2010.<sup>20</sup>

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<sup>13</sup> See *Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom*, 70 FR 41236 (July 18, 2005) and USITC Publication 3788 (Investigation Nos. 701-TA-381-382 and 731-TA-797-804 (Review) (July 2005).

<sup>14</sup> See *Continuation of Antidumping Duty Orders on Stainless Steel Sheet and Strip in Coils from Germany, Italy, Japan, the Republic of Korea, Mexico, and Taiwan, and Countervailing Duty Orders on Stainless Steel Sheet and Strip in Coils from Italy and the Republic of Korea*, 70 FR 44886 (August 4, 2005).

<sup>15</sup> See *Initiation of Five-Year ("Sunset") Review*, 75 FR 30777 (June 2, 2010).

<sup>16</sup> See Substantive Response entitled "Stainless Steel Sheet and Strip in Coils from Italy: Five Year ("Sunset") Review of Antidumping Duty Order," dated July 2, 2010 ("domestic interested parties' response").

<sup>17</sup> See TKAST response.

<sup>18</sup> See rebuttal comments entitled "Five Year ("Sunset") Review of Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Italy: Domestic Industry's Rebuttal Comments," dated July 9, 2010 ("domestic interested parties' rebuttal comments").

<sup>19</sup> See rebuttal comments entitled "Stainless Steel Sheet and Strip in Coils from Italy (second sunset review): Rebuttal Comments of ThyssenKrupp Acciai Speciali Terni S.p.A. on the July 2, 2010 Substantive Response of Domestic Interested Parties," dated July 9, 2010 ("TKAST rebuttal comments").

<sup>20</sup> See *Certain Stainless Steel Sheet and Strip in Coils from Italy and Mexico: Extension of Time Limits for Preliminary and Final Results of Full Five-year ("Sunset") Reviews of Antidumping Duty Orders*, 75 FR 57899 (September 23, 2010).

## 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 likely 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 orders. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the Commission the magnitude of the margins of dumping likely to prevail if the orders were revoked. Below we address the comments of the interested parties.

### 1. Likelihood of Continuation or Recurrence of Dumping

#### Interested Party Comments

##### Domestic Interested Parties

The domestic interested parties argue that the Department should determine that revocation of the order would likely lead to continuation or recurrence of dumping. *See* the domestic interested parties' response at 15. They state that if the order were revoked, producers and/or exporters of SSSS in coils from Italy would need to continue to dump in order to maintain pre-order volumes. Citing to the Statement of Administrative Action ("SAA"), and the Department's *Sunset Policy Bulletin*<sup>21</sup>, the domestic interested parties claim that the weighted-average dumping margins from the original investigation and subsequent reviews, as well as the volume of imports after the issuance of the order, are the first factors to be considered by the Department in determining the likelihood of continuation or recurrence of dumping. *Id.* at 12, 13. The domestic interested parties reference the significant reduction in volume of imports of SSSS in coils from Italy since the order was put into place in 1999. *Id.* at 14. Further, the domestic interested parties note that the Department found dumping in each administrative review since the imposition of the order. *Id.* at 15. The domestic interested parties cite to the *Sunset Policy Bulletin*, which states that the Department normally will find revocation of an order inappropriate when "dumping continued at any level above *de minimis* after the issuance of the order..." *Id.* at 15. The domestic interested parties reiterate that, given the continued existence of dumping margins and the significant decline in imports since the imposition of the antidumping duty order, the Department should not revoke the order because dumping of imports of SSSS in coils from Italy is likely to continue or recur if revocation occurs and that revocation would result in imports of SSSS in coils from Italy returning to their substantial pre-order levels. *Id.*

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<sup>21</sup> *See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) ("*Sunset Policy Bulletin*") (quoting the SAA, H.R. Doc. No. 103-316, Vol. 1, 103d Cong. 2d Sess. at 889 (1994)); the House Report, H.R. Rep. No. 103-826, at 63 (1994); and the Senate Report, S. Rep. No. 103-412, at 52 (1994).

## TKAST

TKAST argues that while the Department must determine whether revocation would likely lead to a continuation or recurrence of dumping, the Department may determine the factors to analyze on a case-by-case basis in considering whether to revoke the order. *See* TKAST's response at 4 (citing the SAA at 890). TKAST argues that should the order be revoked on SSSS in coils from Italy, it would not lead to the continuation or recurrence based on its claim that the 2.11 percent margin assigned in the Section 129 determination was based on a mathematical error from the LTFV investigation and, without this "error," the margin would have been negative. *Id.* at 5, 6. Furthermore, TKAST cites to one instance<sup>22</sup> where the Department adjusted the investigation rate as part of a sunset review in order to make a more accurate prediction of the rate likely to prevail upon revocation. *Id.* at 7, 8. TKAST further argues that it is focusing on supplying its home and European markets, and that this fact is the reason for the decline in export volumes to the United States. *Id.* at 5. In addition, TKAST argues that ThyssenKrupp Steel USA and ThyssenKrupp Stainless USA are scheduled to open a plant in Alabama later in 2010, which reduces the likelihood that TKAST would sell SSSS in coils to the United States at LTFV in the future. *Id.*

## Domestic Interested Parties' Rebuttal

The domestic interested parties argue that the Department should reject TKAST's argument because it is not based on the facts of this record, but on what the margin would have been if the Department had calculated it differently by correcting an alleged mathematical error. *See* the domestic interested parties' rebuttal comments at 2, 3. The domestic interested parties state that the Department is required to use in its analysis the actual dumping margins as originally determined. *Id.* at 3. The domestic interested parties further note that the actual dumping margins have been above *de minimis* in the original investigation and in each of the four completed administrative reviews. *Id.* at 4. The domestic interested parties point out that TKAST's claim of a mathematical error was not upheld in court because it was found to be beyond the scope of the Section 129 proceeding. *Id.* The domestic interested parties claim that the original investigation rate stands at 2.11 percent and that this is the rate the Department should use in its sunset analysis. *Id.* Further, the domestic interested parties highlight that the 2.11 percent rate was calculated even when zeroing was not employed. *Id.* The domestic interested parties also cite to the 3.73 percent margin found in the 2002-2003 administrative review and argue that this is the current margin in effect, which the domestic interested parties state is the highest margin under the order. *Id.* at 5. The domestic interested parties claim that TKAST's assertions that the margins would be reduced to zero in the reviews, were zeroing not employed, is speculative. Furthermore, domestic interested parties state that the Department has found that it is not appropriate for it to recalculate dumping margins from prior reviews without zeroing where zeroing had been applied in the review. *Id.* at 5, 6.<sup>23</sup> Citing to the Department's

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<sup>22</sup> *See Stainless Steel Plate in Coils from Belgium; Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 69 FR 64277 (November 4, 2004) ("*Belgium Sunset Countervailing Plate*") and the accompanying Issues and Decision Memorandum at Comment 11.

<sup>23</sup> *See, e.g., Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order; Brake Rotors from the People's Republic of China*, 73 FR 1319 (January 8, 2008) and accompanying Issues and Decision Memorandum at Comment 4, and *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007) and accompanying Issues and Decision Memorandum at Comments 1, 2.

*Sunset Policy Bulletin*, given the existence of above *de minimis* dumping margins for TKAST after the order was imposed, and the most recent review margin for TKAST is the highest margin calculated in any segment of this proceeding, the domestic interested parties believe that the Department should find that dumping of SSSS in coils by TKAST will likely continue or recur upon revocation of the order. *Id.* at 7.

With respect to TKAST's claims that it is unlikely to dump in the future because it is focused on the European market, the domestic interested parties argue that any reduction of exports to the United States is a result of the efficacy of the dumping order. *Id.* Citing to proprietary as well as official import statistics, the domestic interested parties argue that the dramatic decline in imports further demonstrates that Italian respondents, including TKAST, would likely continue dumping if revocation were to occur. *Id.* at 8.

Concerning TKAST's claims regarding the opening by ThyssenKrupp Steel USA and ThyssenKrupp Stainless USA of a new mill in Alabama, the domestic interested parties note that not only is the facility not yet complete or operational, but there is no guarantee that SSSS in coils will be produced at the facility in the foreseeable future. Therefore, the Department cannot, according to domestic interested parties, assess the impact of the new facility on the sales of SSSS in coils by TKAST from Italy. *Id.* at 9. Citing to the sunset review of brass sheet and strip from the Netherlands, the domestic interested parties claim that the Department has determined that dumping is likely to continue or recur notwithstanding the establishment of a new U.S. production facility after the issuance of an antidumping duty order. *Id.* at 9, 10.<sup>24</sup>

#### TKAST Rebuttal

TKAST argues that no antidumping duty order has ever been imposed solely because of a mathematical error and that the petitioners do not acknowledge the extraordinary nature of this case. *See* TKAST's rebuttal comments at 2. TKAST asserts that, absent a mathematical error in the original investigation, TKAST's calculated investigation rate would be negative 0.32 percent. *Id.* at 3. TKAST also states that the petitioners ignore the fact that dumping cannot continue if it never existed, and that any antidumping duty rates calculated in administrative reviews rest solely on the Department's use of zeroing. *Id.* at 4.

TKAST further states that the new production facility being built in Alabama is an important consideration which meets the "good cause" provision of the statute (section 752(C)(2) of the Act) for other factors to be considered by the Department in its decision. *Id.* at 5. TKAST states that the domestic interested parties previously acknowledged the market-changing effect of a new production facility in Alabama in their substantive response to the Commission. *Id.* and Exhibit 1 of TKAST's rebuttal comments referencing the petitioners' July 1, 2010 submission to the Commission. TKAST claims that the domestic interested parties highlighted both the immediacy in which production is expected to start as well as the capacity of the mill to produce subject merchandise. *Id.* Additionally, TKAST argues that while the Department must consider the volume of subject imports before and after the imposition of the order, TKAST believes consideration of this factor alone is not determinative and that the Department is permitted to

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<sup>24</sup> *See Final Results of Full Sunset Review: Brass Sheet and Strip From the Netherlands*, 65 FR 735 (January 6, 2000).

consider intervening events in its analysis. Finally, TKA<sup>ST</sup> contends that “the Department should exercise the authority delegated to it by Congress” and should conclude that there is no basis for the assertion that TKA<sup>ST</sup> would export at pre-order levels when they can produce the subject merchandise at the mill in Alabama. *Id.*

#### Department’s Position:

Consistent with the guidance provided in the legislative history accompanying the *Uruguay Round Agreements Act*, specifically the SAA, H. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (“House Report”), and the Senate Report, S. Rep. No. 103-412 (1994) (“Senate Report”), the Department’s determinations of likelihood of the continuation or recurrence of dumping will be made on an order-wide basis. In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level *above de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. 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 duty order.

In analyzing whether dumping is likely to continue or recur if the order on SSSS in coils from Italy was revoked, the Department first compared the volume of imports during the five-year sunset period of 2005-2009 with that in 1997. When comparing imports of subject merchandise for the five-year sunset review period, the Department’s practice is to look at the full year prior to initiation of the investigation (as opposed to prior to issuance of the order).<sup>25</sup> The data for this period demonstrate that, subsequent to the imposition of the antidumping duty order, imports of SSSS in coils from Italy decreased from 26,659 short tons in 1997 to 163 short tons in 2009. *See* domestic interested parties’ response at 14. The Department confirmed the data using tariff and trade data from the Department and the Commission. *See* Import Volumes for the Preliminary Results of the Full Second Sunset Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip (“SSSS”) in Coils from Italy (“Import Volumes Memorandum”), dated December 20, 2010, in which the Department confirmed that in the full year prior to initiation of the investigation, *i.e.*, 1997, the import volume of SSSS in coils from Italy was 24,180 metric tons. *See* Import Volumes Memorandum at 1. During the 2005-2009 periods of review, imports of SSSS in coils from Italy averaged 445 metric tons, indicating an overall and dramatic decline in imports from the pre-order period. *Id.*

The Department notes that the only calculated, published rates in the history of this order are positive and above *de minimis*. In the first review, which covered the period of January 4, 1999

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<sup>25</sup> *See, e.g., Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1; *Furfuryl Alcohol From Thailand; Preliminary Results of the Second Sunset Review of the Antidumping Duty Order*, 71 FR 62583 (October 26, 2006) and accompanying Issues and Decision Memorandum at Comment 1 (unchanged in *Furfuryl Alcohol from Thailand; Final Results of the Second Sunset Review of the Antidumping Duty Order and Revocation of the Order*, 72 FR 9729 (March 5, 2007)); *Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Mexico; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 70 FR 53159 (September 7, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

through June 30, 2000, AST was assigned a dumping margin of 0.66 percent *ad valorem*.<sup>26</sup> In the July 1, 2000, through June 30, 2001 review, TKAST received a dumping margin of 3.34 percent.<sup>27</sup> In the July 1, 2001, through June 30, 2002 review, TKAST received a dumping margin of 1.62 percent.<sup>28</sup> In the July 1, 2002, through June 30, 2003 review, TKAST received a dumping margin of 3.73 percent.<sup>29</sup>

TKAST claims that but for a mathematical error in the original investigation that carried over in the Section 129 proceeding, there would be a negative margin and therefore no order in place. However, TKAST does not mention that the information that was necessary for it to raise the alleged error was available to TKAST during the original investigation and well before the beginning of the Section 129 proceeding. TKAST was responsible for the identification of any supposed errors during the investigation consistent with the statute and the regulations. *See, e.g.*, section 351.224 of the Department's regulations. The Department will not now consider, as part of this sunset review, an alleged error that TKAST failed to identify over ten years ago during the investigation. To re-consider this alleged ministerial error almost a decade after a final and conclusive decision by the court would undermine the finality of both administrative and judicial proceedings.

Therefore, the Department concludes that the amended rate from the investigation (that is, 2.11 percent), established by the Section 129 determination, is the proper rate to consider for this sunset review with respect to the rate to be analyzed from the investigation.

With respect to TKAST's claims that the margins from administrative reviews would not be positive but for zeroing, the Department agrees with the domestic interested parties that such argument is speculative in nature. Though TKAST cites *Belgium Sunset Countervailing Plate* as evidence that the Department can adjust the investigation rate, TKAST fails to mention that the case cited was related to a countervailing duty order. *See* TKAST's response at 8. As the domestic interested parties noted, the Department's *Sunset Policy Bulletin* allows for certain adjustments to be made to the countervailing rate under certain circumstances, such as where programs have terminated, where there have been program-wide changes, or the original investigation rates ignore a program found to be countervailable in a subsequent review. The Department agrees with the domestic interested parties that such categories of adjustments are not envisaged with respect to published weighted-average dumping margins.

TKAST also argues that the effect of a new Alabama mill should be considered in the Department's decision. However, as the domestic interested parties have indicated, the mill's effect is speculative in nature, and the Department will not predict the impact this new facility will have on TKAST's decisions with respect to SSSS in coils from Italy. Moreover, as the domestic interested parties indicated, the Department has previously determined that "dumping is

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<sup>26</sup> *See Stainless Steel Sheet and Strip in Coils From Italy: Final Results of Antidumping Duty Administrative Review*, 67 FR 1715 (January 14, 2002).

<sup>27</sup> *See Stainless Steel Sheet and Strip in Coils from Italy: Notice of Amended Final Results of Antidumping Administrative Review*, 68 FR 11521 (March 11, 2003).

<sup>28</sup> *See Stainless Steel Sheet and Strip in Coils From Italy: Final Results of Antidumping Administrative Review*, 68 FR 69382, 69384 (December 12, 2003).

<sup>29</sup> *See Stainless Steel Sheet and Strip in Coils From Italy: Amended Final Results of Antidumping Duty Administrative Review*, 70 FR 13009, 13010 (March 17, 2005).

likely to continue or recur notwithstanding the establishment of a U.S. production facility after the issuance of an order.” See the domestic interested parties’ rebuttal comments at 9, 10 citing *Final Results of Full Sunset Review: Brass Sheet and Strip From the Netherlands*, 65 FR 737 (January 6, 2000) at Comment 2.

Furthermore, we agree with domestic interested parties that evidence on the record indicates that there has been a dramatic decline in subject imports by TKAST in the U.S. market subsequent to the imposition of the antidumping duty order. The U.S. market is one of the largest stainless sheet markets in the world. The large decline in subject imports from Italy over recent years, as evidenced by the official import statistics, and TKAST’s acknowledgement that it accounted for all exports of subject merchandise to the United States over the course of the last five years,<sup>30</sup> indicates that the antidumping duty order is having the effect of disciplining sales that would have been made at LTFV. Accordingly, the Department finds that exporters of SSSS in coils from Italy would likely be unable to export at pre-order levels without dumping.

In summary, evidence on the record indicates that there is a published amended investigation rate of 2.11 percent and there are subsequent administrative review rates which are above *de minimis*. The results of the administrative reviews as published indicate that Italian producers have continued to dump when selling their product in the U.S. market during the post-order period. Additionally, evidence on the record indicates a substantial and sustained decline in imports of SSSS in coils from Italy after the imposition of the antidumping duty order. Moreover, for the reasons explained above, the Department finds that TKAST’s arguments with respect to the alleged error from the original investigation and the establishment of the Alabama mill are insufficiently persuasive in the light of the other information on the record.

Accordingly, based on the continued existence of dumping margins and the substantial decline in subject imports from Italy as a result of the order, the Department preliminarily determines that dumping is likely to continue if the order were revoked.

## 2. Magnitude of the Margin Likely to Prevail

### Interested Party Comments

#### Domestic Interested Parties

Citing to the SAA, the domestic interested parties claim that the Department normally selects the dumping margins established in the original investigation as this is the only calculated rate that reflects the behavior of the exporters without the discipline of an order in place. See domestic interested parties’ response at 16. However, citing to the Department’s *Sunset Policy Bulletin*, the domestic interested parties claim that a more recently calculated rate may be reported because a company may choose to increase dumping in order to maintain or increase market share. The domestic interested parties claim that the Department should report the highest margin calculated in any segment of the proceeding for any of the original respondents, as the rate most indicative of the dumping margin that is likely to prevail upon revocation. *Id.* at 17,

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<sup>30</sup> See TKAST’s response at 11.

18. Citing to a number of cases,<sup>31</sup> domestic interested parties claim that such cases endorse the view that the fourth administrative review rate should be reported because it is higher than the rate assigned during the original investigation.

#### TKAST

As noted above, TKAST claims that the initial dumping margin from the investigation contained a mathematical error in the calculation of average unit values for 84 sales. TKAST states that without this mathematical error, its dumping margin would be negative 0.32 percent. *See* TKAST response at 7. TKAST states that the Department is required to determine a margin that is likely to prevail if the order were revoked after correcting for all mistakes. *Id.* TKAST believes that a margin of negative 0.32 percent is the accurate dumping margin likely to prevail if the antidumping order were revoked and that this is the accurate dumping margin for TKAST, after the Department's Section 129 Determination is adjusted for what TKAST claims is a "clear mathematical error." *Id.*

TKAST also states that "more recent administrative review data confirm the investigation data" and that if the administrative review data were not subject to the zeroing methodology, the Department would conclude that TKAST has not dumped in the United States. *Id.* at 8. Claiming that the Department would not resort to zeroing in a new investigation, TKAST argues that if the administrative review data were analyzed with this policy, the dumping margin would also be zero in such reviews. *Id.* Citing to evidence filed by the European Union in connection with two WTO proceedings raising the zeroing issue, TKAST argues that such evidence establishes that TKAST has not dumped the subject merchandise if zeroing is not used. *Id.* Therefore, based on the investigation and administrative reviews conducted, TKAST believes that the dumping margin to be reported to the Commission should be zero.

#### Domestic Interested Parties' Rebuttal

The domestic interested parties reject TKAST's claims that the Department should report a margin of zero to the Commission. According to the domestic interested parties, the statute directs the Department to consider "the weighted-average dumping margins determined in the original investigation and subsequent reviews." *See* domestic interested parties' rebuttal comments at 3. With respect to TKAST's claims concerning a proposed adjustment for an alleged mathematical error in the Department's Section 129 determination, the domestic interested parties claim that the Department should only consider the amended investigation rate of 2.11 percent and not base its analysis on a notional rate that is not based on actual, published margins. The domestic interested parties argue that in sunset reviews, the Department does not undertake recalculation of duties from previous segments of the proceeding. *Id.* at 11. As previously noted, the domestic interested parties argue that TKAST's inference regarding the legality of zeroing in reviews is wrong. Domestic interested parties state that based on legal

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<sup>31</sup> *See* domestic interested parties' response at 11, citing, e.g., *Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 75 FR 13489 (March 22, 2010) ("*Paint Brushes*"), and accompanying Issues and Decision Memorandum at Comment 2, and *Certain Iron Construction Castings From The People's Republic of China; Five-year ("Sunset") Review of Antidumping Duty Order; Final Results*, 70 FR 24511 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 2.

precedent, zeroing in administrative reviews is legal under U.S. law. *Id.* at 6. In the domestic interested parties' view it would be improper to report a margin based on TKAST's proposed recalculations or on TKAST's speculation "as to the results of any future unannounced Section 129 determinations." *Id.* at 7. Rather, the domestic interested parties reiterate that the higher 3.73 percent margin currently in place for TKAST should be the margin reported to the Commission as a reasonable measure of the minimum amount of dumping that would continue or recur if the order is revoked. Domestic interested parties also state that the 2.11 percent, from the original investigation, should be relied upon for the all-others rate. *Id.* at 12.

#### TKAST's rebuttal

TKAST again claims that this sunset review presents a unique factual scenario in that TKAST's "correctly" calculated margin, as amended in the Section 129 determination, is negative 0.32 percent. TKAST asserts that the only reason this order exists is because of what TKAST claims was a mathematical error. TKAST states that dumping cannot continue if it never existed in the first place, and that any findings of dumping by TKAST after the investigation rests on the Department's use of zeroing in reviews. *See* TKAST's rebuttal comments at 3 and 4.

With respect to the domestic interested parties' claims that a higher rate from the fourth review should be reported, TKAST claims that with or without zeroing, TKAST's margins went down from the investigation to the reviews. *Id.* at 4 and 5. TKAST reiterates its belief that a zero margin should be reported to the Commission. *Id.* at 5.

#### Department's Position:

Normally, the Department will provide to the Commission the company-specific margin from the investigation for each company.<sup>32</sup> 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. *See Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006), and accompanying Issues and Decision Memorandum at Comment 2. 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.*; *see also* SAA at 890. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the Commission. *See* section 752(c)(3) of the Act;<sup>33</sup> *see also* SAA at 890.

We find it appropriate to report to the Commission the amended final determination rates from the LTFV investigation and subsequent 129 proceeding of SSSS in coils from Italy because these

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<sup>32</sup> *See Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999). *See also Sunset Policy Bulletin*, 63 FR at 18873.

<sup>33</sup> *See also Final Results of Full Sunset Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands*, 65 FR 65294 (November 1, 2000), and accompanying Issues and Decision Memorandum at Comment 3.

margins best reflect the behavior of producers/exporters of SSSS in coils from Italy without the discipline of an order in place.

In reporting the 2.11 percent from the investigation, the Department disagrees with domestic interested parties that it should report the 3.73 percent assigned to TKAST in the fourth administrative review covering the period July 1, 2002, to June 30, 2003. 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.<sup>34</sup> No such evidence has been placed on the record of this proceeding.<sup>35</sup> Therefore, the Department lacks evidence on the record sufficient to depart from its normal practice of reporting the rates from the original investigation for all companies. Thus, with respect to the order on SSSS in coils from Italy, the Department will report the rates determined in the final determination from the investigation, as amended by the Section 129 determination, to the Commission.

Moreover, although the Department may report a more recently calculated margin for a particular company where a company has increased dumping to increase market share,<sup>36</sup> in the instant case, unlike in *Paint Brushes*, the domestic interested parties have not provided information to the Department to demonstrate that TKAST has increased its imports to the United States or its market share. To the contrary, domestic interested parties have argued that the discipline of the order has caused total import volumes to decrease. In fact, there is no evidence on the record of the proceeding that shows TKAST has increased its imports to the United States or its market share.<sup>37</sup>

With respect to TKAST's claims regarding the margin to be reported to the Commission, for the reasons set forth in the "Likelihood of Continuation or Recurrence of Dumping" section above, the Department finds that any allegations of mathematical errors in the calculation of TKAST's dumping margin on sales made during the period of investigation should have been addressed at the time of the Department's original investigation, including at the time set aside for ministerial error allegations, or even in the course of subsequent court proceedings on the Department's original investigation determination. The time for such allegations has past, and the Department finds that in the interest of finality, it is not proper for such allegations of error from the original investigation to be addressed in the context of a sunset review being conducted years later. Accordingly, the Department does not consider TKAST's submission of its own alternative dumping margin as a valid substitute for the Department's determination of TKAST's weighted average margin of dumping in the original antidumping investigation, as amended by the Department. Therefore, the Department determines to report to the Commission the rate of 2.11 percent as the margin likely to prevail if the antidumping order were revoked.

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<sup>34</sup> 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.

<sup>35</sup> *Id.* and accompanying Issues and Decision Memorandum at Comment 2.

<sup>36</sup> *Sunset Policy Bulletin*, 63 FR at 18873; see also SAA at 890 ("In certain instances, a more recently calculated rate may be more appropriate. For example, if dumping margins have declined over the life of an order and imports have remained steady or increased, Commerce may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review period.")

<sup>37</sup> See domestic interested parties' response at 14.

The Department notes that although administrative reviews have been conducted, imports from Italy are significantly below pre-order levels, especially in the five-year period covered by this sunset review. While imports have decreased since the imposition of the orders, the existence of continued dumping margins throughout the life of the order demonstrates that if the orders were revoked, it is likely that the Italian producers/exporters would continue dumping and selling in significant volumes. Thus, the amended final determination rates from the LTFV investigation, as amended by the Section 129 determination, reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. The Department will therefore report to the Commission the margins listed in the “Preliminary Results of Review” section, below.

Preliminary Results of Review

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

Manufacturers/Exporters	Weighted-Average Margin (percent)
<u>Italy</u>	
TKAST	2.11
All-Others Rate	2.11

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 these preliminary results of this sunset review in the *Federal Register* and notify the Commission of our determination.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

\_\_\_\_\_  
 Ronald K. Lorentzen  
 Deputy Assistant Secretary  
 for Import Administration

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 Date