



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-588-838
Sunset Review
Public Document
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Expedited Third Sunset
Review of the Antidumping Duty Order on Clad Steel Plate from
Japan

Summary

We have analyzed the response of the interested party in the sunset review of the antidumping duty order covering clad steel plate from Japan. 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 a substantive response:

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

History of the Order

On May 9, 1996, the Department of Commerce (the Department) published its final determination in the less than fair value (LTFV) investigation of clad steel plate from Japan. See Notice of Final Determination of Sales at Less than Fair Value: Clad Steel Plate From Japan, 61 FR 21158 (May 9, 1996) (Final Determination). For the respondents in the investigation, the Department found the following weighted-average dumping duty margins:

The Japan Steel Company	118.53
All Others	118.53

On October 5, 2001, and January 31, 2007, the Department published the final results of the first and second expedited sunset reviews, respectively, finding that the revocation of the antidumping order would likely lead to a continuation or recurrence of dumping. See Final Results of Expedited Sunset Review: Clad Steel Plate From Japan, 66 FR 51007 (Oct. 5, 2001); and Clad Steel Plate from Japan: Final Results of Expedited Sunset Review (Second Review) of the Antidumping Order, 72 FR 4482 (Jan. 31, 2007).



Since the issuance of the antidumping order regarding imports of clad steel plate from Japan, the Department has conducted no administrative reviews or changed circumstances reviews. The order remains in effect for all manufacturers, producers, and exporters of the subject merchandise from Japan.

On February 1, 2012, the Department initiated the third sunset review of the antidumping duty order on clad steel plate from Japan. See Initiation of Five-Year (Sunset) Review, 77 FR 4995 (Feb. 1, 2012). On February 15, 2012, the Department received a notice of intent to participate from ArcelorMittal USA, LLC (AMUSA), within the deadline specified in 19 CFR 351.218(d)(1)(i). AMUSA claims interested party status under section 771(9)(C) of the Tariff Act of 1930, as amended (the Act), as a domestic manufacturer of clad steel plate.

The Department received a complete substantive response from AMUSA within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We did not receive a substantive response from respondent interested parties in this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting an expedited, 120-day sunset review of this antidumping duty order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this third sunset review to determine whether revocation of the antidumping duty order would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the United States International Trade Commission (ITC) the magnitude of the margins of dumping likely to prevail if the order were revoked. Below we address the comments of the interested party.

Consistent with our implementation under section 123 of the Uruguay Round Agreements Act (URAA), in this sunset review we have not relied on any weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization (WTO)-inconsistent. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (Feb. 14, 2012) (Final Modification for Reviews). Here, the Department assigned a weighted-average dumping margin of 118.53 percent in the LTFV investigation on the basis of total adverse facts available using the sole rate contained in the petition. See Final Determination, 61 FR at 21159. Thus, our reliance on this rate for reporting both the likelihood of dumping to continue or recur, and the magnitude of the dumping margin likely to prevail, is consistent with our Final Modification for Reviews, because we are relying on past dumping margins determined on the basis of adverse facts available and not in a manner found to be WTO-inconsistent.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

AMUSA believes that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping by the manufacturers/producers and exporters of the subject merchandise, as well as material injury to the U.S. industry. See the substantive response of AMUSA (March 2, 2012) at page 7.

AMUSA notes that the Department assigned a weighted-average dumping margin of 118.53 percent to all Japanese producers/exporters, a rate that has continued for the life of the order. See the substantive response of AMUSA (March 2, 2012) at page 10. Because the Department has not conducted an administrative review since the issuance of the order, AMUSA asserts that dumping at above de minimis levels has continued to exist for the life of the order. According to AMUSA, this is a sufficient basis for the Department to conclude that Japanese producers are likely to continue dumping if the order on clad steel plate from Japan were to be revoked.

With respect to volume of imports, AMUSA asserts that the imposition of the order has had a dramatic impact on the volume of imports of clad steel plate from producers and exporters. AMUSA points to record history of the order to demonstrate that subject imports have remained at or close to zero since 1997, the first full year following the imposition of the order, indicating that Japanese producers cannot ship clad steel plate to the United States at pre-order volumes without dumping. See the substantive response of AMUSA (March 2, 2012) at page 12.

Department's Position:

Consistent with the guidance provided in the legislative history accompanying the 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) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's determinations of likelihood will be made on an order-wide basis.¹ 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.² 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 this case, the Department found dumping at above de minimis levels in the original antidumping duty investigation. The cash deposit rates established in the original investigation remain in effect and there have been no administrative reviews of the antidumping duty order. In addition, import statistics provided by AMUSA and confirmed by the ITC Dataweb demonstrate

¹ See SAA at 879 and House Report at 56.

² See SAA at 889 and 890, House Report at 63-64, and Senate Report at 52.

that import volumes decreased significantly following the imposition of the antidumping duty order. Specifically, ITC Dataweb indicates no imports of subject merchandise between 2006 and 2008, imports of 200,237 kilograms and 35,634 kilograms in 2009 and 2010, respectively, and no imports in 2011. See Exhibit 1. The pre-order import level was 1,421,882 kilograms in 1995. See the Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, entitled, “Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order on Clad Steel Plate from Japan,” dated January 31, 2007, at Exhibit 1.

The Department normally will determine that revocation of an order is not likely to lead to continuation of dumping where dumping has declined accompanied by steady or increasing imports.³ During the period of this sunset review, dumping margins have continued to exist at levels above de minimis since the issuance of the order, and there have been substantially lower import levels after the imposition of the order when compared to pre-order levels. See Exhibit 1. Therefore, the Department finds that dumping would likely continue or recur if the order were revoked.

2. Magnitude of the Dumping Margins Likely to Prevail

Interested Party Comments

AMUSA requests that the Department report to the ITC the weighted-average dumping margins that were determined in the investigation, in accordance with the Department’s Policy Bulletin.⁴ These rates are set forth in the “History of the Order” section, above.

Department’s Position:

Normally, the Department will provide to the ITC the weighted-average dumping margins from the investigation for each company. See Eveready Battery Co. v. United States, 77 F. Supp. 2d 1327, 1333 (CIT 1999). For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a dumping 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 (Dec. 5, 2006) (Hot-Rolled), and accompanying Issues and Decision Memorandum at Comment 2. The Department’s preference for selecting a rate from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. See Hot-Rolled at Comment 2. Under certain circumstances, however, the Department may select a more recently calculated weighted-average dumping margin to report to the ITC. See section 752(c)(3) of the Act. See also Final Results of Full Sunset Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the

³ See SAA at 888 and 890.

⁴ See Policies Regarding the Conduct of five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (Apr. 16, 1998) (Policy Bulletin).

Netherlands, 65 FR 65294 (Nov. 1, 2000), and accompanying Issues and Decision Memorandum at Comment 3.

Since the order was published, the Department has conducted no administrative reviews of the antidumping duty order on clad steel plate from Japan. Exports from Japan are also below pre-order levels. Therefore, the Department finds that it is appropriate to provide the ITC with the final determination rate from the LTFV investigation of clad steel plate from Japan. This rate is probative of the behavior of most Japanese producers and exporters if the order were revoked, as it is the only dumping margin that reflects their actions absent the discipline of the order.

Final Results of Review

We determine that revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to the continuation or recurrence of dumping at the following weighted-average dumping margins:

Manufacturers/Exporters	Weighted-Average Dumping Margin (percent)
The Japan Steel Company	118.53
All Others	118.53

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 final results of review in the Federal Register, and notify the ITC of our determination.

Agree

Disagree


 Paul Piquado
 Assistant Secretary
 for Import Administration

22 MAY 2012
 Date

EXHIBIT 1

Clad Steel Plate from Japan
A-588-838
Quantity of Measure: Short Ton

Country		1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
		<i>In Actual Units of Quantity</i>															
Japan	Kilograms	193,198	63,535	71,051	0	3,583	0	0	0	0	39,509	0	0	0	200,237	35,634	0
Japan	Short tons	213	70	78	0	4	0	0	0	0	44	0	0	0	221	39	0

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.