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Sunset Reviews
Public Document
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MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
For Import Administration

FROM: Susan H. Kuhbach
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset
Reviews of the Antidumping Duty Orders on Stainless Steel Plate
in Coils from Belgium, Italy, South Africa, South Korea, and
Taiwan

Summary

We have analyzed the responses of the interested parties in the sunset reviews of the antidumping duty orders covering stainless steel plate in coils (SSPC) from Belgium, Italy, South Africa, South Korea, and Taiwan. 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 these sunset reviews 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 Orders

Belgium

On March 31, 1999, the Department of Commerce (the Department) published its final determination in the less than fair value (LTFV) investigation of SSPC from Belgium.¹ On May

¹ See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Belgium, 64 FR 15476 (Mar. 31, 1999).

21, 1999, the Department published the antidumping duty order on SSPC from Belgium.² For Belgium, the Department found the following antidumping duty margins:

| | |
|-----------------|-------------------|
| AMS Belgium* | 8.54 ³ |
| All-Others Rate | 8.54 ⁴ |

*AMS Belgium is the successor-in-interest to ALZ N.V.

Italy

On March 31, 1999, the Department published its final determination in the LTFV investigation of SSPC from Italy.⁵ On May 21, 1999, the Department published the antidumping duty order on SSPC from Italy.⁶ For Italy, the Department found the following antidumping duty margins:

| | |
|---|-------|
| Thyssen Krupp Acciai Speciali Terni S.p.A** | 45.09 |
| All-Others Rate | 39.69 |

**Thyssen Krupp Acciai Speciali Terni S.p.A is the successor-in-interest to Acciai Speciali Terni SpA

South Africa

On March 31, 1999, the Department published its final determination in the LTFV investigation of SSPC from South Africa.⁷ On May 21, 1999, the Department published the antidumping duty order on SSPC from South Africa.⁸ For South Africa, the Department found the following antidumping duty margins:

² See Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan, 64 FR 27756 (May 21, 1999); as amended by Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan, 68 FR 11520 (Mar. 11, 2003); as corrected by Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan, 68 FR 16117 (Apr. 2, 2003); and as corrected by Notice of Correction to the Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan, 68 FR 20114 (Apr. 24, 2003) (AD Order).

³ As a result of the Section 129 proceedings to implement the findings of the WTO Panel in US-Zeroing (EC), the margin changed from 9.86 percent to 8.54 percent. See Implementation of the Findings of the WTO Panel in US – Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 FR 25261 (May 4, 2007). (Section 129 Determination).

⁴ Id.

⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Italy, 64 FR 15458 (Mar. 31, 1999).

⁶ See AD Order.

⁷ See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From South Africa, 64 FR 15459 (Mar. 31, 1999).

⁸ See AD Order.

| | |
|--------------------|-------|
| Columbus Stainless | 41.63 |
| All-Others Rate | 41.63 |

South Korea

On March 31, 1999, the Department published its final determination in the LTFV investigation of SSPC from South Korea.⁹ On May 21, 1999, the Department published the antidumping duty order on SSPC from South Korea.¹⁰ For South Korea, the Department found the following antidumping duty margins:

| | |
|------------------------------|-------|
| Pohang Iron & Steel Co., Ltd | 16.26 |
| All-Others Rate | 16.26 |

Taiwan

On March 31, 1999, the Department published its final determination in the LTFV investigation of SSPC from Taiwan.¹¹ On May 21, 1999, the Department published the antidumping duty order on SSPC from Taiwan.¹² For Taiwan, the Department found the following antidumping duty margins:

| | |
|-------------------------------|-------|
| Yieh United Steel Corporation | 8.02 |
| YUSCO/Ta Chen | 10.20 |
| All-Others Rate | 7.39 |

Administrative Reviews and Section 129 Proceeding

Since the issuance of the antidumping duty orders, the Department has conducted no administrative reviews with respect to SSPC from South Africa. The Department has conducted eleven administrative reviews with respect to SSPC from Belgium, one administrative review with respect to SSPC from Italy, three administrative reviews with respect to SSPC from South Korea, and six administrative reviews with respect to SSPC from Taiwan.

On May 4, 2007, the Department published a Notice of Determination under section 129 of the Uruguay Round Agreements Act (URAA) in response to the report of a WTO dispute settlement panel.¹³ One of the proceedings covered by the section 129 determination was the LTFV

⁹ See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils (SSPC) from the Republic of South Korea, 64 FR 15444 (Mar. 31, 1999).

¹⁰ See AD Order.

¹¹ See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan, 64 FR 15493 (Mar. 31, 1999).

¹² See AD Order.

¹³ See Section 129 Determination.

investigation of SSPC from Belgium. The recalculated margin for respondent AMS Belgium and the all-others rate decreased from 9.84 percent to 8.54 percent.

Duty Absorption, Changed Circumstances Reviews, and Scope Inquiries

The Department has conducted one scope ruling with respect to SSPC from Belgium, Italy, South Africa, South Korea, and Taiwan, in which the Department determined that SSPC with a nominal thickness of 4.75 millimeters (mm), but with an actual thickness that is less than 4.75 mm, is within the scope of all of the orders on SSPC.¹⁴ The scope ruling was challenged at the Court of International Trade (CIT) by Belgian producer AMS Belgium and the case was remanded back to the Department.¹⁵ Although a final decision is still pending before the CIT, the Department recently issued its final results of redetermination pursuant to remand, determining that it is not possible to conclude definitively based on record evidence that the scope of the orders on SSPC includes stainless steel products with a nominal thickness of 4.75mm, but with an actual thickness that is less than 4.75mm.¹⁶

Background

In 2004, the Department conducted the first sunset review on imports of SSPC from Belgium, Italy, South Africa, South Korea, and Taiwan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the same rates as found in the original investigations.¹⁷ In July 2005, the International Trade Commission (ITC) determined, pursuant to section 751(c) of the Act, that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹⁸ Thus, on July 18, 2005, the Department published a notice of continuation of these antidumping duty orders.¹⁹

On June 2, 2010, the Department published the notice of initiation of the second sunset review of the antidumping duty orders on SSPC from Belgium, Italy, South Africa, South Korea, and Taiwan, pursuant to section 751(c) of the Act.²⁰

¹⁴ See Notice of Scope Rulings, 74 FR 14521 (Mar. 31, 2009).

¹⁵ See ArcelorMittal Stainless Belgium N.V. v. United States, Court No. 08-00434 (Mar. 30, 2010).

¹⁶ See Final Results of Redetermination Pursuant to Remand: ArcelorMittal Stainless Belgium N.V. v. United States, Court No. 08-00434 (July 29, 2010).

¹⁷ See Stainless Steel Plate in Coils From Canada, South Africa, and Taiwan; Notice of Expedited Sunset Review; Final Results, 69 FR 47416 (Aug. 5, 2004); and Stainless Steel Plate in Coils From Belgium, Italy, and the Republic of Korea; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Orders, 69 FR 61798 (Oct. 21, 2004).

¹⁸ See Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan, 70 FR 38710 (July 5, 2005).

¹⁹ See Continuation of Antidumping Duty Orders on Certain Stainless Steel Plate in Coils From Belgium, Italy, South Korea, South Africa, and Taiwan, and the Countervailing Duty Orders on Certain Stainless Steel Plate in Coils From Belgium, Italy, and South Africa, 70 FR 41202 (July 18, 2005).

²⁰ See Initiation of Five-Year ("Sunset") Review, 75 FR 30777 (June 2, 2010).

On June 17, 2010, the Department received a notice of intent to participate from Allegheny Ludlum Corporation, North American Stainless and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (domestic interested parties), 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 U.S. producers of SSPC in the United States or a certified union whose workers are engaged in the production of SSPC in the United States.

The Department received adequate substantive responses to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to any of the orders covered by these sunset reviews. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the antidumping duty orders on SSPC from Belgium, Italy, South Africa, South Korea, and Taiwan.

The orders on SSPC from Belgium, Italy, South Africa, South Korea, and Taiwan remain in effect for all manufacturers, producers, and exporters of the subject merchandise.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting these sunset reviews to determine whether revocation of the antidumping duty orders 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 these determinations, 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 ITC 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

The domestic interested parties believe that revocation of these antidumping duty orders 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 the domestic interested parties for Belgium (July 2, 2010) at page 15; for Italy (July 2, 2010) at page 10; for South Africa (July 2, 2010) at page 9; for South Korea (July 2, 2010) at page 11; and for Taiwan (July 2, 2010) at page 13.

With respect to volume of exports, the domestic interested parties assert that the imposition of the orders has had a dramatic impact on the volume of imports of SSPC from producers and exporters. The domestic interested parties point to record history of the orders to demonstrate that the discipline of the orders has forced foreign producers of subject merchandise either to increase their prices to reduce dumping levels or to significantly reduce their volume of sales to the United States. See the substantive response of the domestic interested parties for Belgium

(July 2, 2010) at page 17; for Italy (July 2, 2010) at page 11; for South Africa (July 2, 2010) at page 10; for South Korea (July 2, 2010) at page 12; and for Taiwan (July 2, 2010) at page 14.

Nonetheless, the domestic interested parties state that the administrative reviews conducted by the Department reveal that the subject producers and exporters are incapable of shipping the product to the United States in the significant pre-order quantities without dumping. See the substantive response of the domestic interested parties for Belgium (July 2, 2010) at page 18; for Italy (July 2, 2010) at page 12; for South Africa (July 2, 2010), at page 11; for South Korea (July 2, 2010) at page 13; for Taiwan (July 2, 2010) at page 15.

Citing to the Department's Policy Bulletin, the domestic interested parties conclude that the Department should determine that revocation of an antidumping duty order is inappropriate where dumping continued at any level above *de minimis* after the issuance of the order.²¹ In sum, the domestic interested parties argue that record evidence strongly supports the conclusion that dumping of SSPC by producers, manufacturers, and exporters from Belgium, Italy, South Africa, South Korea, and Taiwan would be likely to continue or recur if the orders were to be revoked.

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.²² 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.²³ 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.

Belgium: The Department examined the ITC data for the relevant periods which show that imports of SSPC from Belgium fluctuated between 624,215 kilograms (kg.) and 5,565,994 kg. after the sunset review in 2004. The pre-order level in 1998 was 10,471,203 kg. See the memorandum to the file from Hector Rodriguez entitled, "Placing Data from the ITC Trade Dataweb on the Record of the Expedited Sunset Reviews of Stainless Steel Plate in Coils (SSPC) from Belgium, Italy, South Africa, South Korea, and Taiwan" (ITC Dataweb Memo). Given that dumping margins continue at above *de minimis* levels and imports are below pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

²¹ 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).

²² See SAA at 879 and House Report at 56.

²³ See SAA at 889 and 890, House Report at 63-64, and Senate Report at 52.

Italy: The Department examined the ITC data for the relevant periods which show that imports of SSPC from Italy fluctuated between 50,070 kg. and 404,322 kg. after the sunset review in 2004. The pre-order level in 1998 was 18,850,513 kg. See ITC Dataweb Memo. Given that dumping margins continue at above *de minimis* levels and imports are below pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

South Africa: The Department examined the ITC data for the relevant periods which show that imports of SSPC from South Africa fluctuated between 1,938 kg. and 309,028 kg. after the sunset review in 2004. The pre-order level in 1998 was 13,947,752 kg. See ITC Dataweb Memo. Given that dumping margins remain unchanged since the original investigation and import volumes have remained below pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

South Korea: The Department examined the ITC data for the relevant periods which show that imports of SSPC from South Korea fluctuated between 27,300 kg. and 29,521 kg. after the sunset review in 2004. The pre-order level in 1998 was 3,093,753 kg. See ITC Dataweb Memo. Given that dumping margins continue at above *de minimis* levels and imports are below pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

Taiwan: The Department examined the ITC data for the relevant periods which show that imports of SSPC from Taiwan fluctuated between 0 kg. and 337,993 kg. after the sunset review in 2004. The pre-order level in 1998 was 4,539,759 kg. See ITC Dataweb Memo. Given that dumping margins continue at above *de minimis* levels and imports are below pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

The domestic interested parties request that the Department report to the ITC the antidumping duty margins that were determined in the investigations, as amended, in accordance with the Policy Bulletin. These rates are set forth in the “History of the Orders” section, above.

Department’s Position:

Normally, the Department will provide to the ITC the company-specific margin from the investigation for each company. See *Eveready Battery Co. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999). For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the “All-Others” rate from the investigation. 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 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. See *Hot-Rolled* at Comment 2. Under certain

circumstances, however, the Department may select a more recently calculated 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 Netherlands, 65 FR 65294 (Nov. 1, 2000), and accompanying Issues and Decision Memorandum at Comment 3.

As noted above, the LTFV investigation margin for SSPC from Belgium was recalculated from 9.84 percent to 8.54 percent pursuant to the publication of the Section 129 Determination in 2007.²⁴ This recalculated margin is the margin reported to the ITC, for purpose of the sunset review.

Since the orders, the Department has conducted no administrative reviews of the antidumping duty order on SSPC from South Africa. Exports from South Africa 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 SSPC from South Africa because this is the only calculated antidumping duty rate that exists.

We also find it appropriate to provide the ITC with the final determination rates from the LTFV investigations of SSPC from Italy, South Korea, and Taiwan. Although administrative reviews have been conducted, exports from Belgium, Italy, South Korea, and Taiwan are significantly below pre-order levels. This indicates that the orders have imposed a discipline on exports. Thus, the final determination rates from the LTFV investigations reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on SSPC from Belgium, Italy, South Africa, South Korea, and Taiwan would be likely to lead to the continuation or recurrence of dumping at the following weighted-average percentage margins:

| Manufacturers/Exporters/Producers | Weighted-Average Margin (percent) |
|---|-----------------------------------|
| <u>Belgium</u> | |
| AMS Belgium*** | 8.54 |
| All-Others Rate | 8.54 |
| ***AMS Belgium is the successor-in-interest to ALZ N.V. | |
| <u>Italy</u> | |
| Tyssen Krupp Acciai Speciali Terni S.p.A**** | 45.09 |
| All-Others Rate | 39.69 |

****Thyssen Krupp Acciai Speciali Terni S.p.A is the successor-in-interest to Acciai Speciali Terni SpA

²⁴ See Section 129 Determination.

South Africa

| | |
|--------------------|-------|
| Columbus Stainless | 41.63 |
| All-Others Rate | 41.63 |

South Korea

| | |
|------------------------------|-------|
| Pohang Iron & Steel Co., Ltd | 16.26 |
| All-Others Rate | 16.26 |

Taiwan

| | |
|-------------------------------|-------|
| Yieh United Steel Corporation | 8.02 |
| YUSCO/Ta Chen | 10.20 |
| All-Others Rate | 7.39 |

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 reviews in the Federal Register, and notify the ITC of our determination.

Agree_____

Disagree_____

 Ronald K. Lorentzen
 Deputy Assistant Secretary
 for Import Administration

 Date