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Sunset Review
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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Full Sunset Review of the Antidumping Duty Order on Oil Country Tubular Goods ("OCTG") from Mexico; Preliminary Results

Summary:

We have analyzed the substantive responses and rebuttals of interested parties in the full sunset review of the antidumping duty order on OCTG from Mexico. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this full sunset review for which we received comments by parties:

1. Likelihood of continuation or recurrence of dumping
    - A. Weighted-average dumping margin
    - B. Volume of imports
    - C. "Other factors"
2. Magnitude of the margin likely to prevail
    - A. Margins from the investigation
    - B. Use of a more recent margin

History of the Order:

On July 20, 1994, the Department of Commerce ("the Department") initiated an investigation on sales at less than fair value of OCTG from Mexico in the United States.[1] The Department reached a negative preliminary determination on February 2, 1995 (see Preliminary Determination of Sales at Not Less Than Fair Value: Oil Country Tubular Goods From Mexico, 60 FR 6510), and a final affirmative determination on June 28, 1995 (see Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Mexico, 60 FR 33567 ("LTFV Determination")), finding a weighted-average margin of 23.79 percent. After affirmative

[1] See Initiation of Antidumping Duty Investigations: Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, 59 FR 37962.

investigations by both the Department and the International Trade Commission ("the ITC"), the Department published an antidumping duty order ("Order") on August 11, 1995. See Antidumping Duty Order: Oil Country Tubular Goods From Mexico, 60 FR 41056. The only company investigated in the proceeding was Tubos de Aceros de Mexico, S.A. ("TAMSA"), for which the Department calculated a rate of 23.79 percent.[2]

Subsequent to the Order, TAMSA challenged the Department's findings and requested that a Bi-National Panel constituted under the North American Free Trade Agreement ("NAFTA") review the final determination. That Panel remanded the Department's final determination and directed the Department to (1) substitute a weighted-average factor for the adverse factor used in the calculation of nonstandard costs for certain products and (2) provide a complete explanation of its reasoning for its use of 1994 data in calculating general and administrative ("G&A") expenses. See In the Matter of: Oil Country Tubular Goods from Mexico; Final Determination of Sales at Less Than Fair Value, USA-95-1904-04 (July 31, 1996).

The Department recalculated the nonstandard costs using a weighted-average factor and provided an explanation of its use of 1994 data in calculating G&A expenses. The Department submitted its remand determination on October 25, 1996. On December 2, 1996, the Panel affirmed the remand determination of the Department. See Oil Country Tubular Goods From Mexico: Notice of Panel Decision, Amended Order and Final Determination of Antidumping Duty Investigation in Accordance With Decision Upon Remand, 62 FR 5612 (February 6, 1997). As a result, the margin for TAMSA decreased from 23.79 percent to 21.70 percent.

The Department initiated the automatic five-year sunset review for this order on July 3, 2000. See Notice of Initiation of Five-Year ("Sunset") Reviews, 65 FR 41053 (July 3, 2000). The Department published the final results of the review on March 9, 2001. See Oil Country Tubular Goods ("OCTG") from Mexico; Final Results of Sunset Review of Antidumping Order, 66 FR 14131 ("First Sunset Review"). Prior to the completion of the First Sunset Review, the Department conducted two administrative reviews. The Department terminated the review for the first administrative review period because it found that no requesting party had shipments of subject merchandise during the relevant period. See Oil Country Tubular Goods from Mexico; Notice of Termination of Antidumping Duty Administrative Review, 62 FR 19309 (April 21, 1997). However, the Department conducted the second administrative review, covering the period from August 1, 1996, through July 31, 1997, for both TAMSA and Hylsa, and the third administrative review, covering the period August 1, 1997, through July 31, 1998, for TAMSA. See, respectively, Oil Country Tubular Goods from Mexico: Final Results of Antidumping Administrative Review, 64 FR 13962 (March 23, 1999) ("OCTG Second Administrative Review"), and Oil Country Tubular Goods from Mexico: Final Results of Antidumping Review,

[2] After the initiation of the antidumping duty investigation, the Department sent antidumping surveys to three firms, including Hylsa S.A. de CV ("Hylsa"), to determine which firms would be mandatory respondents. See Preliminary Determination of Sales at Not Less Than Fair Value: Oil Country Tubular Goods From Mexico, 60 FR 6510 (February 2, 1995). After reviewing the responses, the Department determined that TAMSA would be the sole mandatory respondent, as it accounted for at least 60 percent of exports of OCTG from Mexico during the period of investigation.

65 FR 1593 (January 11, 2000) ("OCTG Third Administrative Review"). For both reviews, TAMSA had a single sale of a small quantity of subject merchandise. In the OCTG Second Administrative Review, Hylsa had a very small number of sales of subject merchandise. The Department assigned a zero margin to both TAMSA and Hylsa for the sales reviewed in this administrative review.

In its determination in the First Sunset Review, the Department found that the revocation of the Order would likely lead to the continuation or recurrence of dumping. First Sunset Review, 66 FR at 11431. TAMSA challenged the Department's findings in the First Sunset Review and requested that a Bi-National Panel under the NAFTA review the final results. See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Sunset Review of Antidumping Duty Order, USA-Mex-2001-1904-03, February 11, 2006 (First Panel Decision, Sunset Review). TAMSA also challenged the Department's findings before the World Trade Organization. See United States – Anti-dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico, WT/DS282/R. Both proceedings are ongoing.

Subsequent to the completion of the First Sunset Review, the Department completed three additional administrative reviews. The Department completed the fourth administrative review, covering the period August 1, 1998, through July 31, 1999, approximately one week after the completion of the First Sunset Review. The Department reviewed sales by both TAMSA and Hylsa during this administrative review. Both companies requested revocation. After analyzing the information on the record, the Department determined not to revoke the order for either company. The Department assigned a zero margin to the one sale made by TAMSA during the administrative review. However, the Department assigned a margin of 0.79 percent to sales made by Hylsa. See Oil Country Tubular Goods From Mexico: Final Results of Antidumping Review and Determination Not To Revoke in Part, 66 FR 15832 (March 21, 2001) ("OCTG Fourth Administrative Review"). The Department made a negative duty absorption finding with respect to TAMSA in the fourth administrative review period. Subsequent to the completion of the fourth administrative review, both TAMSA and Hylsa challenged the Department's findings and requested that a Bi-National Panel under the NAFTA review the final results. See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Review and Determination Not to Revoke, USA-Mex-2001-1904-05, January 27, 2006 (First Panel Decision, Fourth Administrative Review).

In addition, the Department completed both the ninth administrative review, covering the period August 1, 2003, through July 31, 2004, and the tenth administrative review, covering the period August 1, 2004, through July 31, 2005. In both cases, the Department rescinded the reviews with respect to TAMSA because TAMSA had no entries of OCTG from Mexico into the United States during the period of review. The Department assigned a margin of 1.48 percent to entries from Hylsa during the ninth administrative review, and a margin of 0.62 percent to entries from Hylsa during the tenth administrative review. See, respectively, Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from Mexico, 70 FR 60492 (October 18, 2005) ("OCTG Ninth Administrative Review") and Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from Mexico, 71 FR 54614 (September 18, 2006) ("OCTG Tenth Administrative Review").

Background:

On June 1, 2006, the Department initiated a sunset review of the antidumping duty order on OCTG from Mexico (71 FR 31153) ("Second Sunset Review") pursuant to section 751(c) of the Tariff Act of 1930, as amended, ("the Act"). The Department received notices of intent to participate on behalf of United States Steel Corporation ("U.S. Steel"), and IPSCO Tubulars Inc., Lone Star Steel Company, Koppel Steel (NS Group), Maverick Tube Corporation, Newport Steel (NS Group) and V&M Star LP (collectively "IPSCO"), domestic interested parties, within the applicable deadline specified in 19 CFR § 351.218(d)(1)(i). IPSCO and U.S. Steel submitted substantive responses for the Second Sunset Review on June 29, 2006 ("IPSCO's substantive response") and July 3, 2006 ("U.S. Steel's substantive response"), respectively. On June 30, 2006, respondent interested party Hylsa submitted a substantive response for the Second Sunset Review ("Hylsa's substantive response"). On July 3, 2006, respondent interested party TAMSA also submitted a substantive response for the Second Sunset Review ("TAMSA's substantive response"). Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as the U.S. producers of a domestic like product; Hylsa and TAMSA are interested parties pursuant to section 771(9)(A) of the Act as foreign producers and exporters of subject merchandise.

U.S. Steel states that it is involved in this proceeding as both a petitioner and a successor to a petitioner in the investigation. See U.S. Steel's substantive response at 2. IPSCO states that certain parties represented in the substantive response were petitioners in the original investigation and have participated in subsequent administrative reviews. See IPSCO's substantive response at 3. Hylsa indicates that while it did not receive a questionnaire in the original investigation, it did participate as a respondent in the 1995-96, 1996-97, 1998-99, 2003-04, and 2004-05 administrative reviews. See Hylsa's substantive response at 2. TAMSA indicates that it participated in the original investigation, as well as multiple administrative reviews. See TAMSA's substantive response at 2.

The Department received rebuttal comments from IPSCO on July 5, 2006, and from U.S. Steel on July 14, 2006. See Letter from Schagrin Associates to the Secretary of Commerce, July 5, 2006 ("IPSCO's rebuttal brief") and Letter from Skadden, Arps, Slate, Meagher & Flom LLP to the Secretary of Commere, July 6, 2006, ("U.S. Steel's rebuttal brief"). On September 19, 2006, the Department determined to conduct a full sunset review of the order purusant to 19 CFR § 351.218(e)(2). See Oil Country Tubular Goods from Mexico; Extension of Time Limits for Preliminary and Final Results of Full Five-year ("Sunset") Review of Antidumping Duty Order, 71 FR 55774 (September 25, 2006).

Discussion of the Issues:

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c)(1) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order. Section 752(c)(2) of the Act provides that, if good cause is shown, the Department will consider such other factors as it deems relevant in making this determination. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked.

Below we address the comments and rebuttals of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

In their substantive response of June 29, 2006, petitioner IPSCO asserts that revocation of the order is likely to lead to a continuation or recurrence of dumping by margins equivalent to or greater than those found in the investigation. IPSCO notes that imports from Mexico of OCTG increased dramatically prior to and during the investigation, and that the import levels decreased dramatically with the imposition of the order. See IPSCO's substantive response at 4. Furthermore, IPSCO notes that the Department has found dumping margins for Hylsa in the OCTG Fourth Administrative Review and the OCTG Ninth Administrative Review. Id. at 5. IPSCO maintains that the imposition of antidumping duty measures impacted import levels of OCTG from Mexico, and that Mexican producers could not maintain pre-order import levels. Id. at 4 and 5. Citing to the Department's Sunset Policy Bulletin,[3] IPSCO argues that the Department normally will determine that the revocation of an antidumping duty order is likely to lead to a 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 issuance of the order . . . ; or (c) dumping was eliminated after the issuance of the order . . . and import volumes for the subject merchandise declined significantly." Id. at 6. Given the decrease in imports of Mexican OCTG to the United States subsequent to the order, IPSCO argues that the decrease indicates a strong likelihood of a recurrence of dumping should the order be revoked. In its substantive response of July 3, 2006, petitioner U.S. Steel cites to section 752(c)(1) of the Act, stating that the Act instructs the Department to consider the weighted-average margin found in the investigation and subsequent reviews, and the volume of imports of subject merchandise before and after the issuance of the antidumping duty order. See U.S. Steel's substantive response at 7 and 8. U.S. Steel states that the Sunset Policy Bulletin, quoting the Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("SAA"),[4] provides specific guidance to the Department in making its likelihood determination. Specifically, according to U.S. Steel, the SAA states that:

> {D}eclining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes

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[3] Policies regarding the conduct of Five-Year ("Sunset") Review of Antidumping and Countervailing Duty Orders: Policy Bulletin, 63 FR 18871 (April 16, 1998).

[4] SAA, H.R. 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").

and that the

> {E}xistence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed.

Id. at 8. Therefore, according to U.S. Steel, if there is evidence that dumping continues at any level above de minimis after the issuance of an order, or if imports of subject merchandise cease after the issuance of an order, or if dumping is eliminated but import volumes decline significantly, the Department normally determines that revocation of an order is likely to lead to a continuance or recurrence of dumping. Id. at 8 and 9, citing the Sunset Policy Bulletin.

U.S. Steel notes that there has been dumping at levels above de minimis after the issuance of the order on Mexican OCTG. Id. at 9. Furthermore, U.S. Steel asserts that annual shipments of OCTG from Mexico have declined significantly since the imposition of the order. Import volumes subsequent to the order, according to U.S. Steel, have ranged from 2 percent to 48 percent of the average import volume for the two years preceding the issuance of the order. Id. at 10. Therefore, since there are dumping margins above de mimimis and import volumes have declined substantially, U.S. Steel argues that the Department should make an affirmative likelihood determination.

Respondent Hylsa argues that the revocation of the order with respect to Hylsa will not lead to a recurrence of dumping. See Hylsa's substantive response at 2. Hylsa claims that it has never properly been found to have sold OCTG in the United States at less-than-fair-value. Id. Furthermore, Hylsa alleges that its sales of OCTG are highly profitable and that it is unlikely that Hylsa will be found to have engaged in dumping in the future. Recent record profits, coupled with the acquisition of Hylsa by the Techint Group in 2005, have, according to Hylsa, resulted in a stronger financial position that will likely not lead to a finding of sales at less-than-fair-value. Id. at 3 and 9. This is especially true, according to Hylsa, in light of the strong OCTG market. Id. Finally, Hylsa notes that recent decisions by the World Trade Organization ("WTO") Appellate Body confirm that the practice of "zeroing" is not allowed. The proper implementation of the WTO decisions will, according to Hylsa, make it highly likely that Hylsa will not be found to have engaged in dumping in the future. Id. at 3 and 4.

In its substantive response, TAMSA indicates that it will participate fully in the sunset review, despite the fact that TAMSA believes the current order is illegal. TAMSA maintains that the Department's findings in the First Sunset Review were inconsistent with U.S. law. See TAMSA's substantive response at 3. TAMSA also states that a reviewing NAFTA panel and the WTO Dispute Settlement Body agree that the Department's previous findings were inconsistent with U.S. law and the U.S. obligations under Article 11.3 of the WTO Antidumping Agreement. Id. Therefore, according to TAMSA, the order should have been revoked effective August of 2000 and the instant sunset review never initiated. Id.

Nevertheless, TAMSA's substantive response in the Second Sunset Review states that the revocation of the antidumping duty order on OCTG from Mexico is not likely to lead to a recurrence or continuation of dumping. TAMSA states that it has no intention of selling OCTG products at dumped prices in the United States. Id. TAMSA states that its management "considers that the costs of defending against allegations of dumping are excessive, and that the process is too uncertain to justify any shipments that could be alleged to cause injurious dumping." Id.

TAMSA states that no antidumping duty rate is likely to prevail were the Department to revoke the order. In support of this contention, TAMSA points to the original investigation. In contrast to the preliminary determination, where the Department preliminarily determined that TAMSA was not dumping, the final determination established a margin of more than 23 percent. Id. at 4. TAMSA contends that the margin is the result of the Department increasing TAMSA's cost of production to include the cost of foreign exchange losses resulting from the Mexican peso devaluation in 1994. Id. The effect, according to TAMSA, was to increase TAMSA's cost of production dramatically, resulting in an increase in the financial expense ratio from 2.9 percent to 37 percent. The impact on the cost of production was a reflection, according to TAMSA, of TAMSA's unusually large dollar-denominated debt at the time, and the peso devaluation. Id. According to TAMSA, the Department must consider facts that demonstrate that the rate calculated in the original investigation is not probative of the likelihood of whether dumping will continue or recur. TAMSA points to the results in the OCTG Second Administrative Review, OCTG Third Administrative Review, and OCTG Fourth Administrative Review, where TAMSA received zero margins and where the financial expense ratios in the reviews were significantly lower, as evidence of TAMSA's ability to export OCTG to the United States without dumping. Id. at 4 and 5. TAMSA asserts that the results of those reviews are the best evidence of what would occur if the antidumping order were revoked. Id. at 5.

In their rebuttal comments, IPSCO argues that the existence of a dumping margin of 1.48 percent for Hylsa in the OCTG Ninth Administrative Review contradicts Hylsa's assertion that it has never been properly found to have sold OCTG at less-than-fair-value. See IPSCO's rebuttal brief at 2. IPSCO states that Hylsa's filing of an appeal of the Department's determination in the OCTG Ninth Administrative Review to the U.S. Court of International Trade does not indicate that the determination is improper. Id. at 3. Therefore, consistent with the SAA, IPSCO argues that the Department should find that the existence of a dumping margin above the de minimis level is indicative that the revocation of the order would lead to a continuation or recurrence of dumping. Id.

In its rebuttal comments, U.S. Steel argues that the Department should reject claims by Hylsa and TAMSA as their arguments are without merit. See U.S. Steel's rebuttal brief at 2. U.S. Steel believes that the Department acted in accordance with the statute when it did not revoke the order for OCTG from Mexico in the previous sunset review. U.S. Steel states that TAMSA's assertions with respect to the NAFTA Binational Panel and the WTO panel are untrue. Id. Specifically, U.S. Steel challenges TAMSA's statement that the NAFTA Binational Panel found the Department's First Sunset Review to be "illegal." Rather, according to U.S. Steel, the Department followed the Panel's instructions in each remand and considered whether TAMSA's alleged "other factors" (i.e., TAMSA's high level of U.S. dollar-denominated debt and the large devaluation of the Mexican peso in 1994) were relevant to the Department's likelihood determination. Id. at 3 and 4. With respect to the WTO findings, U.S. Steel argues that the Department has likewise fully complied with the WTO panel instructions to consider the "other factors" raised by TAMSA. Id. at 4. Thus, according to U.S. Steel, the Department has fully complied with the instructions of both panels and has continued to find that dumping was likely to continue or recur. Id. at 5.

Next, U.S. Steel states that dumping has occurred subsequent to the issuance of the order. U.S. Steel notes that the Department found a margin of 1.48 percent for sales by Hylsa during the OCTG Ninth Administrative Review. Id. As this margin is above de minimis, U.S. Steel argues that the SAA and the statute indicate that dumping above de minimis levels is sufficient to make a finding of a likelihood of continuance of dumping. Id. U.S. Steel maintains that Hylsa's arguments regarding the profitable nature of OCTG in the U.S. market, and Hylsa's fixed production costs, are refuted by the finding of dumping margins in the OCTG Ninth Administrative Review. Id. at 6 and 7. With respect to Hylsa's arguments regarding zeroing and the WTO decisions on this issue, U.S. Steel states that the arguments should be rejected by the Department. First, according to U.S. Steel, the WTO decision cited by Hylsa pertains only to investigations and not administrative or sunset reviews. Id. at 8. Second, according to U.S. Steel, the implementation of the decision would be contrary to U.S. law. Id. Even if it were not contrary to U.S. law, according to U.S. Steel, zeroing is a reasonable methodology upheld by U.S. courts on numerous occasions. Id. at 9. In addition, U.S. Steel asserts that the U.S. Federal Circuit has found that WTO decisions have no binding effect under U.S. law and are owed no deference. Id. Finally, U.S. Steel states that the Department has already rejected Hylsa's argument with respect to zeroing in a separate sunset review. Id. at 10 and 11. Therefore, U.S. Steel argues, the issue has no merit.

U.S. Steel also asserts that Hylsa has failed to show good cause to consider the "other factors" raised by Hylsa, as required pursuant to section 752(c)(2) of the Act. Id. at 11. Even assuming that Hylsa has demonstrated good cause to consider these "other factors," U.S. Steel maintains that Hylsa has not submitted sufficient information to support its claims. Id. at 12.

With respect to TAMSA, U.S. Steel again asserts that TAMSA has failed to show good cause to consider the "other factors" raised by TAMSA. Id. at 13. However, assuming that TAMSA had shown good cause to consider the "other factors," U.S. Steel maintains that TAMSA has presented this information previously in the First Sunset Review and that the Department has found the "other factors" not to be probative in making the likelihood determination. Id. at 13 and 14. In summarizing TAMSA's arguments, U.S. Steel states:

> TAMSA claims that since the investigation, the company has "significantly reduced its foreign exchange exposure and its debt." According to TAMSA, this reduction in its foreign exchange exposure and debt lessens "TAMSA's vulnerability to foreign exchange fluctuations," has led to a decrease in its financial expense ratio, and now makes it much less likely that the company will dump in the future"

Id. at 14. U.S. Steel states that the Department has already considered, and rejected, these arguments in the First Sunset Review and the subsequent NAFTA Binational Panel and WTO Section 129 determinations. Id. at 14 and 15. Specifically, U.S. Steel states that TAMSA's reduction in exposure to exchange rate changes in the peso and the reduction in the financial expense do not outweigh the evidence showing significant declines in Mexican OCTG shipments and continued dumping since the imposition of the order. Id. at 15. According to U.S. Steel, the Department found that the factors cited by TAMSA do not explain the near cessation of exports by TAMSA subsequent to the imposition of the antidumping duty order. Id.

Additionally, U.S. Steel states that TAMSA's assertion that the original investigation rate is a facts available rate is false. Id. U.S. Steel speculates that TAMSA's assertions with respect to the investigation rate may be an attempt to demonstrate that the rate is aberrant and not suggestive of TAMSA's future behavior. Id. However, according to U.S. Steel, the investigation rate uses TAMSA's own information and is not adverse. Id. at 16 and 17. U.S. Steel states that TAMSA was uncooperative during the investigation and did not comply with the Department's requests for the financial statements covering the investigation. Id. at 16. The Department obtained these financial statements late in the investigation from counsel for another petitioner. Id. Thus, the fact that TAMSA obtained a zero margin in the preliminary results of the investigation is of no merit, according to U.S. Steel, because the Department did not have all of the information before it that is necessary to calculate an accurate margin for the preliminary results. Id. at 17. Furthermore, U.S. Steel notes that the Department's determination in the investigation was upheld by a separate NAFTA Binational Panel. Id. at 16. Thus, the investigation margin was properly calculated using all of the necessary information.

With respect to TAMSA's assertions regarding its margins in the second, third and fourth administrative reviews, U.S. Steel states that the Department has already rejected these results as probative of TAMSA's behavior absent the antidumping duty order. Id. at 18. U.S. Steel maintains that TAMSA was "only able to obtain a zero or de minimis margin the second, third, and fourth administrative reviews referenced by the company based on a single shipment of a token quantity of the subject merchandise in each review period." Id. According to U.S. Steel, TAMSA was not able to obtain a zero or de minimis margin while selling at commercially meaningful levels in the U.S. market during the review periods. Id. Therefore, U.S. Steel argues, the zero margins found in the previous reviews are not probative of TAMSA's behavior absent the order. In fact, TAMSA's failure to ship any merchandise during the current sunset review period is more indicative that TAMSA is unable to ship Mexican OCTG to the United States without dumping. Id. at 19.

U.S. Steel contends that TAMSA's statements regarding sales to other countries are of no import. Id. Finally, U.S. Steel argues that TAMSA "has failed to provide any support for {its} contentions, much less demonstrate their relevance to the Department's likelihood determination." Id. Therefore, U.S. Steel argues, TAMSA's arguments should be rejected.

Department's Position:

Section 751(d)(2) of the Act provides in part that:

> the administering authority shall revoke a countervailing duty order or an antidumping duty order or finding, or terminate a suspended investigation, unless
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> (A) the administering authority makes a determination that dumping or a countervailable subsidy, as the case may be, would be likely to continue or recur . . .

Section 752(c) of the Act provides the framework within which the Department will conduct sunset reviews. The relevant portion of the statute states the following:

> (1) In general
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> In a review conducted under section 1675(c) of this title, the administering authority shall determine whether revocation of an antidumping duty order or termination of a suspended investigation under section 1673c of this title would be likely to lead to continuation or recurrence of sales of the subject merchandise at less-than-fair-value. The administering authority shall consider -
>
> (A) the weighted average dumping margins determined in the investigation and subsequent reviews, and
>
> (B) the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order or acceptance of the suspension agreement.
>
> (2) Consideration of other factors
>
> If good cause is shown, the administering authority shall also consider such other price, cost, market, or economic factors as it deems relevant.

In addition to the provisions set forth in the Act, the U. S. Congress further addressed this issue in the SAA. The SAA gives specific guidance on how the Department should interpret the factors it must consider when conducting a sunset review. With respect to sunset reviews, the SAA states:

> The administration believes that the existence of dumping margins after the order or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping
>
> New section 752(c)(2) {19 USC § 1675a(c)(2)} provides that, for good cause shown, Commerce also will consider other information regarding price, cost, market or economic factors it deems relevant. Such factors might include the market share of foreign producers subject to the antidumping proceedings; changes in exchange rates, inventory levels, production capacity, and capacity utilization; any history of sales below cost of production; changes in manufacturing technology in the industry; and prevailing prices in relevant markets. In practice this will permit interested parties to provide information indicating that the observed patterns regarding dumping margins and import volumes are necessarily indicative of the likelihood of dumping. The list of

factors is illustrative, and the Administration intends that Commerce will analyze such information on a case-by-case basis.[5]

The continued existence of dumping margins after an order, or the cessation of imports, is highly probative of the likelihood of the continuation or recurrence of dumping. However, where good cause is shown, the Department will consider other factors that may indicate that observed patterns regarding dumping margins and import volumes are not necessarily indicative of the likelihood of dumping. Finally, the determination of likelihood of continuation or recurrence of dumping is on an order-wide basis, and not on a company-specific basis.

The Department normally will determine that revocation of an antidumping order is likely to lead to a 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 decline specifically. See SAA at 889-890, House Report at 63-64, and Senate Report at 52.

Evidence on the record indicates that TAMSA's shipments of Mexican OCTG to the United States ceased during the Second Sunset Review period. While exports of Mexican OCTG from Hylsa did not cease, evidence on the record indicates that dumping of OCTG by Hylsa continued at levels above de minimis after the issuance of the order. Specifically, in both the OCTG Ninth Administrative Review and the OCTG Tenth Administrative Review the Department found dumping margins for sales by Hylsa above de minimis levels.[6] Therefore, in accordance with the statute and the SAA, the existence of dumping margins above de minimis by Hylsa and the cessation of exports by TAMSA are both "highly probative of the likelihood of continuation or recurrence of dumping" were the order to be revoked.

Both TAMSA and Hylsa have presented "other factors" to the Department for consideration under section 752(c)(2) of the Act. If parties have shown "good cause" to consider these "other factors," the Department will consider these "other factors" to determine if they are sufficient to overcome the existence of dumping margins and cessation of imports, which the SAA indicates are "highly probative" of the likelihood of continuation or recurrence of dumping.

With respect to the issue of whether there is good cause to consider "other factors," the burden is on an interested party to provide information or evidence that would warrant consideration of the other factors in question. See 19 CFR § 351.218(d)(3)(iv). The Department will then analyze the information provided, request more information if necessary, and determine

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[5] SAA at 890.

[6] While the Department found dumping margins for Hylsa above de minimis levels in OCTG Fourth Administrative Review, a NAFTA Binational Panel has ordered the Department to recalculate the margin in that review. Based on the recalculation, the margin for Hylsa for the review is zero. The litigation before the NAFTA Binational Panel is ongoing. See In the Matter of Oil Country Tubular Goods from Mexico: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke, USA-MEX-01-1904-05, Decision of the Panel, January 27, 2006.

if the information and/or evidence affects the Department's likelihood determination. Both TAMSA and Hylsa provided arguments and claims regarding purported changes in U.S. law and the financial positions of the companies that may affect future findings of dumping. As the arguments speak directly to the question of whether dumping is likely to continue or recur given these changes, we will consider these factors in our determination.

TAMSA's argument focuses on how purported changes in its financial expense ratio affect the finding of dumping. TAMSA claims that the Department's original finding of sales at less-than-fair-value in the investigation was due to the Department's increase of TAMSA's cost of production,[7] which in turn derived from fluctuations in the value of the Mexican peso at a time when TAMSA held significant dollar-denominated debts. The increase in the cost of production was due to a large increase in the financial expense ratio, according to TAMSA. See TAMSA's substantive response at 4. TAMSA argues that it has reduced its foreign exchange exposure and debt, and Mexican peso fluctuations have been low throughout the sunset review period. As a result, according to TAMSA, the financial expense ratio decreased substantially during the second, third, and fourth administrative review periods. The Department's finding of zero margins for TAMSA during these periods is, according to TAMSA, indicative of TAMSA's future behavior absent the order.

TAMSA has provided no evidence to support its assertion that debt levels have decreased, or that the Mexican peso fluctuations have been mild during the sunset review period. The Department believes that TAMSA's "other factors" are not sufficient to overcome the highly probative nature of the existence of dumping margins and the cessation of imports in its likelihood determination. TAMSA's reasoning assumes that there is a direct correlation between changes in the financial expense ratio and whether the Department will find dumping during an investigation or administrative review. This is not supported by the facts. While it is true that changes in the financial expense ratio will affect the cost of production and the Department's decision whether to disregard sales made below the cost of production, and possibly result in the Department using constructed value for its comparisons, there is no direct link between the presence or absence of sales below the cost of production in the comparison market, or use of constructed value, and a dumping finding.

The Department has conducted administrative reviews where it disregarded sales below COP and did not find dumping. See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 28659 (May 17, 2006).[8] In this administrative review, the Department disregarded sales

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[7] The Department notes for the record that it did not increase TAMSA's cost of production, as alleged by TAMSA. Instead, the Department used TAMSA's own 1994 financial data, which was unavailable at the time of the preliminary determination. See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Mexico, 60 FR 33567 (June 28, 1995).

[8] The Department revoked Sahaviriya Steel Industries Public Company Limited, the company subject to the administrative review in the cited proceeding, from the order.

below cost of production while finding no dumping. Therefore, a finding of sales below cost of production does not necessarily result in the finding of a dumping margin.

Conversely, it is not necessary for the Department to conduct a sales below cost of production investigation in order to find dumping. The Department has found dumping when comparing sales in the United States to sales in the comparison market without investigating whether there were sales made below cost of production in the comparison market. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from the Netherlands, 70 FR 28275 (May 17, 2005) and Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From the Netherlands, 69 FR 77205 (December 27, 2004).

Similarly, there are numerous instances where the Department compared sales in the United States to constructed value that did not result in a finding of dumping.[9] Therefore, it is clear that there is no direct correlation between sales below cost or constructed value, and a finding of dumping. Even if TAMSA's assertions regarding changes in its debt position and fluctuations in the Mexican peso were true, they have no direct correlation to whether the Department would find dumping in an administrative review.

TAMSA further disputes that the Department's findings in the second, third, and fourth administrative review are indicative of TAMSA's future behavior. In these reviews, the Department determined that TAMSA did not make sales of Mexican OCTG in commercial quantities. See OCTG Fourth Administrative Review. It is not possible to ascertain TAMSA's future behavior based on sales made at less than commercial quantities. Thus, the Department finds that the results of the second, third, and fourth administrative reviews with respect to TAMSA have no probative value in its likelihood determination.

Hylsa argues that the Department's implementation of WTO decisions regarding "zeroing" will "reduce the chance that Hylsa's highly profitable sales of OCTG could be found to be dumped."[10] With regard to Hylsa's argument concerning the Appellate Body report in

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[9] See, e.g., Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta from Italy 70 FR 30083 (May 25, 2005), Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833 (August 19, 1996) (the Department compared U.S. price to Constructed Value for all companies), Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative and New Shipper Reviews, 65 FR 50179 (August 17, 2000) (the Department used Constructed Value for normal value for respondent Cablesa), and Notice of Final Determination of Sales at Not Less Than Fair Value: Collated Roofing Nails From Korea, 62 FR 51420 (October 1, 1997) (the Department compared U.S. price to Constructed Value for respondent Kabool in the investigation).

[10] Hylsa's substantive response at 3. Hylsa cites citing United States - Laws, Regulations, and Methodology for Calculating Dumping Margins "Zeroing" ("AB Zeroing Decision"), WT/DS294/AB/R (April 18, 2006), United States - Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R, (August 11, 2004) ("Softwood Lumber"),

Softwood Lumber, the Department implemented the WTO report on May 2, 2005. Under section 129, the implementation of the WTO report affects only the specific administrative determination that was the subject of the dispute before the WTO: the antidumping duty investigation of softwood lumber from Canada. See 19 U.S.C. Part 3538. The implementation of Softwood Lumber has no bearing on this or any other antidumping duty proceeding. See Corus Staal v. United States, 387 F. Supp. 2d 1291, 1299-1300 (CIT 2005). With respect to the AB Zeroing Decision, the United States has not yet completed the statutorily mandated process of implementation. With respect to Corrosion Resistant Steel, the Federal Circuit refused to find the Department's interpretation of the Act unreasonable based on the Appellate Body's report. See Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1349 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023 (2006)(Corus). The Federal Circuit stated that neither the panel report nor the Appellate Body report has any direct effect on U.S. law. Id. As such, the WTO decisions cited by Hylsa are not relevant to our determination.

Hylsa's claim that it has never properly been found to have dumped Mexican OCTG in the United States is incorrect. The fact that Hylsa was not selected as a mandatory respondent in the original investigation does not imply that a party did not engage in dumping. The Department is not required to investigate every company in a specific country to make the determination. Companies that manufacture and/or export merchandise and do not believe themselves to be making sales at less than fair value may become voluntary respondents under 19 CFR § 351.204(d). "Commerce assumes that companies which are not dumping will submit voluntary responses." Serampore Industries Pvt. Ltd., et. al, v. U.S. Department of Commerce, 696 F. Supp. 665, 668 (CIT 1988). Hylsa did not submit a voluntary response to the Department as part of the investigation. Further, Hylsa received margins above de minimis in the two most recent administrative reviews.

Finally, Hylsa has not provided any evidence to substantiate its claims with respect to profitability or a strengthened financial position. As noted above, in both the OCTG Ninth Administrative Review and the OCTG Tenth Administrative Review, Hylsa received a margin above de minimis. Given that the Department found margins in the review after the acquisition of Hylsa by the Techint Group in 2005, and at a time when Hylsa alleges it had record profits during a strong OCTG market, the existence of a dumping margin indicates that Hylsa's "other factors" concerning its financial position do not indicate the cessation of dumping absent the order.

Therefore, based on our analysis, we do not find that TAMSA's or Hylsa's "other factors" overcome the presumption, based on the absence of exports and the existence of dumping margins above de minimis, that dumping is likely to continue or recur.

2. Magnitude of the Margin Likely to Prevail:

Interested Party Comments

IPSCO states that the Department's normal policy is to provide to the ITC the margin that

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and United States - Sunset Review of Anti-Dumping Duties on Corrosion - Resistant Carbon Steel Flat Products from Japan, WT/DS244/AB/R, (December 15, 2003) ("Corrosion Resistant Steel").

was determined in the investigation. Therefore, the Department should find that the margin likely to prevail is identical to the one found as a result of the investigation. See IPSCO's substantive response at 6 and 7. U.S. Steel cites to the Sunset Policy Bulletin and the Department's normal practice to advocate that the Department report to the ITC the margin found in the investigation, or 21.70 percent. See U.S. Steel's substantive response at 12. U.S. Steel also argues that respondents' assertions that the Department should report a zero rate to the ITC are incorrect. See U.S. Steel's rebuttal brief at 20. U.S. Steel argues that the statute and the SAA indicate clearly that an analysis of "other factors" pertains only to the Department's likelihood determination and not to the determination of the likely margin. Id. Both Hylsa's and TAMSA's arguments for the Department to report a zero margin are without merit and unsubstantiated by facts, and should be rejected. Id. at 20 and 21.

Both TAMSA and Hylsa maintain that the Department should report to the ITC that no antidumping duty rate is likely to prevail if the order is revoked. Both companies base their claims on the "other factors" previously mentioned as the basis for revoking the order.

Department's Position:

Section 752(c)(3) of the Act and the SAA at 890 provide that the Department normally will select a margin determined in the final determination of the original investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of the order. Specifically, the Department normally will provide the company-specific margin from the investigation for each company regardless of whether the margin was calculated using a company's own information or was based on best information available or facts available. For companies that were not investigated, or 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. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. Specifically, the SAA at 890-91 states that if dumping margins have declined over the life of the order and imports have remained steady or increased, the Department may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review.[11]

In the case of TAMSA, exports of OCTG from Mexico to the United States ceased during the Second Sunset Review period. However, Hylsa's exports of OCTG to the United States showed a marked increase during the Second Sunset Review period. See Hylsa's substantive response at 8, and Memorandum to Stephen J. Claeys from Richard O. Weible, Adequacy Determination: Sunset Review of the Antidumping Duty Order on Oil Country Tubular Goods from Mexico, July 21, 2006. In determining whether import volumes remained steady or increased, pursuant to the SAA, the Department will also normally consider a company's relative

[11] See Final Results of Full Sunset Review: Aramid Fiber Formed of PolyPara-Phenylene Terephthalamide from the Netherlands, 65 FR 65294 (November 1, 2000) and accompanying Issues and Decision Memorandum at Comment 1.

market share.[12] During the investigation, Hylsa accounted for less than 40 percent of all shipments of OCTG from Mexico to the United States. See Preliminary Determination of Sales at Not Less Than Fair Value: Oil Country Tubular Goods from Mexico, 60 Fed. Reg. 6510 (February 2, 1995), as affirmed in LTFV Determination.[13] In 2005, Hylsa accounted for more than 50 percent of all shipments of OCTG from Mexico to the United States. Memorandum to The File from John K. Drury, Sunset Review of Oil Country Tubular Goods from Mexico ("OCTG"); Calculation of the Market Share of Respondent Interested Parties for Adequacy Determination, July 21, 2006. The dumping margins for sales by Hylsa during the Second Sunset Review period are substantially below those of the "all others" rate in the investigation, the rate applied to exports by Hylsa after the publication of the order. Thus, the lower dumping margins for Hylsa's sales in the Second Sunset Review period occurred while Hylsa increased shipments of OCTG from Mexico to the United States and captured larger market share of the Mexican OCTG market in the United States. Therefore, we find that a more recent rate obtained in an administrative review is a more appropriate rate for Hylsa in this sunset review.

As such, the Department will report to the ITC, as the magnitude of the margin likely to prevail if the order were revoked, the original margin from the final determination as adjusted in the amended order, for TAMSA. However, for Hylsa, the Department will report to the ITC the margin from the most recently completed administrative review as the magnitude of the margin likely to prevail if the order were revoked. These margins are listed in the Preliminary Results of Review section of this decision memorandum.

Preliminary Results of Review:

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

Manufacturers/exporters	Margin (percent)
TAMSA	21.70
Hylsa	0.62
All Others	21.70

[12] See Ball Bearings and Parts Thereof from Japan and Singapore; Five-year Sunset Reviews of Antidumping Duty Orders; Final Results, 71 FR 26321, Issues and Decision Memorandum at Comment 2 (May 4, 2006). See also Final Results of Expedited Sunset Review: Stainless Steel Plate from Sweden, 63 FR 67658 (December 8, 1998).

[13] The Department found that TAMSA, the sole respondent in the investigation, accounted for at least 60 percent of exports of OCTG from Mexico to the United States.

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 Preliminary Results of Review in the Federal Register.

Agree _________ Disagree ________

____
David M. Spooner
Assistant Secretary
for Import Administration

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Date