

71 FR 59074, October 6, 2006

A-357-810
A-475-816
A-588-835
A-580-825
2nd Sunset Review
Public Document
AD/CVD Operations
Office 6-7: MD/FB

DATE: September 29, 2006

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 Final Results of the
Second Five-Year (“Sunset”) Reviews of the Antidumping Duty
Orders on Oil Country Tubular Goods from Argentina, Italy, Japan,
and Korea

Summary

We have analyzed the responses of the interested parties in the second sunset reviews of the antidumping duty orders on oil country tubular goods (“OCTG”) from Argentina, Italy, Japan, and Korea. We recommend that you approve the positions we developed 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
3. Adequacy

History of the Orders

ARGENTINA: On August 11, 1995, the Department of Commerce (“the Department”) published in the Federal Register the antidumping duty order (“AD order”) on oil country tubular goods (“OCTG”) from Argentina. See Antidumping Duty Order; Oil Country Tubular Goods from Argentina; 60 FR 41055 (August 11, 1995). In the AD order, the Department determined that a weighted-average dumping margin of 1.36 percent exists for Siderca S.A.I.C., and for “all other” Argentine manufacturers, producers, and exporters of the subject merchandise not covered in the investigation.

On November 7, 2000, the Department published the final results of the first sunset review on

OCTG from Argentina. See Final Results of Expedited Sunset Review: Oil Country Tubular Goods from Argentina, 65 FR 66701 (November 7, 2000). In the final results of review, the Department determined that revocation of the AD order would likely lead to the continuation or recurrence of dumping. On July 10, 2001, the International Trade Commission (“ITC”) determined, pursuant to section 751(c) of the Act, that revocation of the AD order from Argentina would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Oil Country Tubular Goods from Argentina, Italy, Japan, and Korea, 66 FR 35997 (July 10, 2001), and USITC Publication 3434 (June 2001), entitled Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico; Investigations Nos. 701-TA-364 (Review) and 731-TA-711 and 713-716 (Review). Accordingly, the Department published a notice of continuation of the AD order, pursuant to 19 CFR 351.218(f)(4). See Continuation of Countervailing and Antidumping Duty Orders on Oil Country Tubular Goods from Argentina, Italy, Japan, Korea and Mexico, and Partial Revocation of Those Orders from Argentina and Mexico with Respect to Drill Pipe, 66 FR 38630, 38631 (July 25, 2001).

During the sunset period the Department completed one review of respondent Acindar Industria Argentina de Aceros S.A. (Acindar) for the period August 2000 through July 2001. The Department found a weighted-average margin of 60.73 percent for Acindar. See Notice of Final Results and Recision in Part of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina, 68 FR 13262 (March 19, 2003). During the following review period the Department again initiated a review of Acindar, but Acindar declined to respond to the Department’s questionnaires. Therefore, as adverse facts available, we assigned Acindar its previous antidumping rate of 60.73 percent because it was the highest rate for any respondent in this proceeding. See Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, from Argentina, 68 FR 39516 (July 2, 2003).

Also following each of the five anniversary months during the sunset period the Department initiated, at petitioner’s request, a review of Siderca. Each time the Department found that Siderca had no entries of subject merchandise, and therefore rescinded the respective review. See Notice of Final Results and Recision in Part of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina, 68 FR 13262 (March 19, 2003); Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, from Argentina, 68 FR 39516 (July 2, 2003); Notice of Rescission of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina, 69 FR 25562 (May 7, 2004); Notice of Final Rescission of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, from Argentina, 70 FR 52983 (September 6, 2005); Notice of Rescission of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, from Argentina, 71 FR 13963 (March 20, 2006).

ITALY: On August 11, 1995, the Department published in the Federal Register the antidumping

duty order (“AD order”) on oil country tubular goods (“OCTG”) from Italy. See Antidumping Duty Order; Oil Country Tubular Goods from Italy, 60 FR 41057 (August 11, 1995). In the AD order, the Department determined weighted-average dumping margins of 49.78 percent for Dalmine S.p.A., 49.78 percent for Acciaierie Tubificio Arvedi S.p.A., 49.78 percent for General Sider Europa S.p.A., and 49.78 percent for “all other” Italian manufacturers, producers, and exporters of the subject merchandise not covered in the investigation. Id.

On November 7, 2000, the Department published final results of the first sunset review on OCTG from Italy. See Final Results of Expedited Sunset Review: Oil Country Tubular Goods from Italy, 65 FR 66701 (November 7, 2000). In the final results of review, the Department determined that revocation of the AD order would likely lead to the continuation or recurrence of dumping. On July 10, 2001, the International Trade Commission (“ITC”) determined, pursuant to section 751(c) of the Act, that revocation of the AD order from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Oil Country Tubular Goods from, Italy, Japan, and Korea, 66 FR 35997 (July 10, 2001), and USITC Publication 3434 (June 2001), entitled Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico; Investigations Nos. 701-TA-364 (“Review”) and 731-TA-711 and 713-716 (Review). Accordingly, the Department published a notice of continuation of the AD order, pursuant to 19 CFR 351.218(f)(4). See Continuation of Countervailing and Antidumping Duty Orders on Oil Country Tubular Goods from Argentina, Italy, Japan, Korea and Mexico, and Partial Revocation of Those Orders from Argentina and Mexico with Respect to Drill Pipe, 66 FR 38630, 38631 (July 25, 2001). No administrative reviews have been conducted of this AD order.

JAPAN: On August 11, 1995, the Department published the AD order on OCTG from Japan. In the AD order, the Department determined weighted-average dumping margins of 44.20 percent for Sumitomo Metal Industries, Ltd., 44.20 percent for Nippon Steel Corporation, and 44.20 percent for “all others.” See Antidumping Duty Order; Oil Country Tubular Goods from Japan, 60 FR 41058 (August 11, 1995). In the final results of the first sunset review the Department determined that revocation of the AD order would likely lead to the continuation or recurrence of dumping. See Final Results of Expedited Sunset Review: Oil Country Tubular Goods from Japan, 65 FR 66701 (November 7, 2000) (“First Sunset Review Final”). On July 10, 2001, pursuant to section 751(c) of the Act, the ITC determined that revocation of the AD order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico, 66 FR 35997 (July 10, 2001), and USITC Publication 3434 (June 2001), entitled Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico, Investigations Nos. 701-TA-364 (Review) and 731-TA-711 and 713-716 (Review). As a result, the Department published a notice of continuation of the AD order, pursuant to 19 CFR 351.218(f)(4). See Continuation of Countervailing and Antidumping Duty Orders on Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico, and Partial Revocation of Those Orders from Argentina and Mexico with Respect to Drill Pipe, 66 FR 38630, 38631 (July 25, 2001).

Only one administrative review was completed since the issuance of the First Sunset Review Final. See Oil Country Tubular Goods from Japan; Final Results of Antidumping Duty Administrative Review, 66 FR 13285 (March 5, 2001). On March 5, 2001, the Department issued the final results of administrative review covering the period August 1, 1998 through July 31, 1999. The Department determined weighted-average margins of 44.20 percent for Hallmark Tubulars Ltd., 44.20 percent for Itochu Corp., 44.20 percent for Itochu Project Management Corp., 44.20 percent for Nippon Steel Corporation, and 44.20 percent for “all others.” Id.

On August 27, 2001, the Department rescinded the administrative review for the period August 1, 1999 through July 31, 2000. See Fifth Administrative Review of Oil Country Tubular Goods from Japan; Rescission of Antidumping Duty Administrative Review, 66 FR 45004 (August 27, 2001). On May 10, 2002, the Department rescinded the administrative review covering the period August 1, 2000 through July 31, 2001. See Oil Country Tubular Goods From Japan: Rescission of Antidumping Duty Administrative Review, 67 FR 31768 (May 10, 2002). On January 3, 2006, the Department rescinded the review covering the period August 1, 2003 through July 31, 2004, with respect to NKK and SMI. In addition, the Department determined a 44.20 percent dumping margin for JFE Steel Corp., Nippon, and “all others”. See Oil Country Tubular Goods from Japan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 95 (January 3, 2006). On September 21, 2006, rescission of antidumping duty administrative review covering the period August 1, 2004 through July 3, 2005 was published. See Oil Country Tubular Goods from Japan: Final Results and Rescission of Antidumping Duty Administrative Review, 71 FR 55166 (September 21, 2006).

KOREA: On August 11, 1995, the Department published the AD order on OCTG from Korea. In the AD order, the Department determined weighted-average dumping margins of 12.17 percent for Union Steel Manufacturing Company, 00.00 percent for Hyundai Steel Pipe Company, Ltd., and 12.17 percent for “all others.” See Antidumping Duty Order; Oil Country Tubular Goods from Korea, 60 FR 41057 (August 11, 1995). The Department excluded Hyundai Steel Pipe Company, Ltd. from the AD order. On November 7, 2000, the Department published final results of the first sunset review, pursuant to section 751(c) of the Act. In the final results of review, the Department found that revocation of the AD order would likely lead to the continuation or recurrence of dumping. See Final Results of Expedited Sunset Review: Oil Country Tubular Goods from Argentina, Italy, Japan, and Korea, 65 FR 66701 (November 7, 2000). On July 10, 2001, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the AD order on OCTG from Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico, 66 FR 35997 (July 10, 2001), and USITC Publication 3434 (June 2001), entitled Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico, Investigations Nos. 701-TA-364 (Review) and 731-TA-711 and 713-716 (Review). Accordingly, the Department published a notice of continuation of the AD order, pursuant to 19 CFR 351.218(f)(4). See Continuation of Countervailing and Antidumping Duty Orders on Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico, and Partial

Revocation of Those Orders from Argentina and Mexico with Respect to Drill Pipe, 66 FR 38630, 38631 (July 25, 2001).

The following reviews were conducted during this second sunset review period. On August 28, 2001, the Department determined that Hyundai Steel Company (“Hyundai Hysco”) is the successor-in-interest to Hyundai Pipe Company, Ltd. (“HPD”). See Oil Country Tubular Goods from the Republic of Korea; Final Results of Changed Circumstances Review, 66 FR 45278 (August 28, 2001). The Department had excluded HPD from the AD order in the original investigation. See AD Order. On March 19, 2002, the Department issued the final results of administrative review covering the period August 1, 1999 through July 31, 2000. The Department determined weighted-average margins of 1.56 percent for SeAH Steel Corporation (“SeAH”), and 12.17 percent for “all others”. See Oil Country Tubular Goods, Other Than Drill Pipe from Korea: Final Results of Antidumping Duty Administrative Review, 67 FR 12520 (March 19, 2002). On January 16, 2003, the Department issued the final results of administrative review covering the period August 1, 2000 through July 31, 2001. The Department determined a de minimis weighted-average margin for SeAH, and 12.17 percent for “all others”. See Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of New Shipper Review and Antidumping Duty Administrative Review, 68 FR 2313 (January 16, 2003). On February 2, 2003, the Department rescinded an administrative review, covering the period August 1, 2001 through July 31, 2002, based on interested parties’ timely withdrawal of request of review. See Oil Country Tubular Goods, Other Than Drill Pipe, From Korea; Rescission of Antidumping Duty Administrative Review, 68 FR 6412 (February 2, 2003). On March 14, 2006, the Department issued the final results of administrative review covering the period August 1, 2003 through July 31, 2004. Id. The Department determined weighted-average margins of 6.84 percent for SeAH, 12.30 percent for Husteel Company, Ltd. (“Husteel”), and 12.17 percent “all others”. See Oil Country Tubular Goods, Other Than Drill Pipe from Korea: Final Results of Antidumping Duty Administrative Review, 71 FR 13091 (March 14, 2006).

Background

On June 1, 2006, the Department initiated and the ITC instituted second sunset reviews of the AD orders on OCTG from Argentina, Italy, Japan, and Korea, pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Reviews, 71 FR 31153 (June 1, 2006), and Institution of Five-Year Sunset Reviews, 71 FR 31207 (June 1, 2006). The Department received notices of intent to participate from IPSCO Tubulars, Inc., Lone Star Steel Company, Koppel Steel (“NS Group”), Maverick Tube Corporation, Newport Steel Company (“NS Group”), and V&M Star LP, United States Steel Corporation (“U.S. Steel”) (collectively, domestic interested parties), within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. The domestic interested parties claimed interested party status under section

771(9)(C) of the Act as U.S. manufacturers, producers, and wholesalers of the subject merchandise.¹

For all four cases, the Department received a complete substantive response to the notice of initiation from the domestic interested parties within the deadline specified in 19 CFR 351.218(d)(3)(i). We did not receive responses from respondent interested parties in the reviews of the orders on Italy, Japan, or Korea. We did receive a response from Siderca in the review of the order on Argentina, though the Department determined it to be inadequate. See July 25, 2006, memorandum from the sunset team to Stephen J. Claeys regarding “Adequacy Determination,” on file in room B-099 of the Department of Commerce building. Pursuant to 19 CFR 351.218(e)(1)(ii)(C)(1), the Department notified the ITC that respondent interested parties provided inadequate responses to the Notice of Initiation. In accordance with section 751(c)(3)(B) of the Act, the Department conducted expedited sunset reviews of these AD orders.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department has conducted these sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department will 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 period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin of dumping likely to prevail if the order 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 argue that revocation of the AD orders on OCTG from Argentina, Italy, Japan, and Korea, will likely lead to the continuation or recurrence of dumping. In their substantive responses, domestic interested parties contend that import levels declined significantly following the issuance of the AD orders, and dumping margins above de minimis continue to exist. See Substantive response of domestic interested parties, July 29, 2006, at 3-7, and July 3, 2006, at 5-14.

¹ U.S. Steel and USS/Kobe Steel were petitioners in the investigation. (U.S. Steel notes that Lorain Tubular Company LLC became the successor in interest to USS/Kobe Steel, in August 1999. In December 1999, U.S. Steel took ownership of 100 percent of the equity in Lorain Tubular.) Where these entities make the same argument, we will refer to them collectively as “the domestic interested parties.” Where U.S. Steel presents an argument different from that of the other entities, we will refer to U.S. Steel as “petitioners.”

ARGENTINA: Domestic interested parties argue that import levels of OCTG from Argentina dropped dramatically following the issuance of the AD order. Domestic interested parties believe that the AD order has affected the level of shipments of OCTG to the United States, demonstrating that Argentine producers and exporters cannot maintain pre-order shipment levels with the discipline of the AD order in place. See Domestic interested parties, June 29, 2006 substantive response, at 3-4, and July 3, 2006 substantive response at 11-14. Domestic interested parties argue that this decrease in shipments to the United States indicates a strong likelihood that dumping would continue or recur were the AD order revoked.

Furthermore, domestic interested parties argue that Argentine producers continued to dump at levels above de minimis during the sunset period. With respect to Siderca, domestic interested parties support this argument by citing the fact that Siderca continues to be subject to the cash deposit rate determined in the investigation. With respect to Acindar, domestic interested parties support this argument by citing the results of two administrative reviews of Acindar's U.S. sales that occurred during the sunset period, in which Acindar was both times assigned a dumping margin rate of 60.73 percent. See Notice of Final Results and Recision in Part of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina, 68 FR 13262 (March 19, 2003) and Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, from Argentina, 68 FR 39516 (July 2, 2003).

Siderca argues that there is good cause for the Department not to rely only on post-order volume declines of Argentine OCTG imports and the existence of the original dumping order in making its determination. It argues that the Department should make its likelihood determination based on an evaluation of whether Siderca is likely to dump because Siderca is the only Argentine manufacturer of subject merchandise. It states that in its own view, it has never dumped in the United States. The dumping margin imposed in 1995 was unwarranted, Siderca argues, and is not meaningful in considering the likely effect of revocation in 2006. It states that it has no intention of selling at dumped prices, has no desire to be involved in antidumping procedures, and believes the cost of defending against such allegations to be excessive and the process too uncertain to justify any shipments that could be alleged to cause injurious dumping. It also argues that it and its affiliates export to many other markets around the world, and have not been accused of dumping in any of those markets.

Domestic interested parties argue that Siderca's contention that it does not intend to sell at dumped prices is not supported by any record evidence, and should be rejected for this reason alone. Domestic interested parties also argue that even if the contention were supported, Siderca's subjective intent is irrelevant to the Department's determination of likelihood. Domestic interested parties argue that the undisputed facts in this case show that immediately following issuance of the antidumping order Siderca ceased shipping the subject merchandise to the United States. The only conclusion that can be drawn from these facts, domestic interested parties state, is that Siderca could not ship the subject merchandise without dumping.

Furthermore, domestic interested parties argue that Siderca's argument that it has not been accused of dumping in other world markets is also without support, and even if it were supported, fails to demonstrate that dumping is not likely to continue. Domestic interested parties argue that, if anything, Siderca's export orientation shows that Siderca has the means and incentive to resume dumping in the United States.

Petitioners also note that Siderca's statements that in its view it has "never dumped in the United States," and that the 1.36 percent dumping margin calculated in 1995 is "not meaningful" in 2006, seem to suggest that Siderca believes the 1.36 percent margin determined for Siderca in 1995 is not probative of the likelihood of continuation of dumping. Petitioners state Siderca is wrong for two reasons. First, petitioners believe the correct margin for Siderca is not 1.36 percent, but 41.60 percent. (For petitioners' basis for this claim, see the section "Magnitude of the Margin Likely to Prevail" below.) Second, petitioners argue that even assuming the margin for Siderca were zero, that is not dispositive for the Department's likelihood determination because the determination is made on an order-wide basis. Here, there has been a more recent determination of dumping margins. Specifically, in the 2000-01 review period the Department calculated a margin of 60.73 percent for Acindar.

Finally, domestic interested parties argue that Siderca has failed to show what "good cause" exists for which the Department should question the validity of the 1.36 percent margin calculated in 1995. Petitioners also argue that Siderca is wrong in contending that "good cause" is even relevant to the Department's determination regarding the magnitude of the margin to report to the ITC. Petitioners state that section 752(c) of the Act provides that the Department will consider other factors only when good cause is shown with respect to the likelihood determination, not the determination of the margin likely to prevail.

ITALY: Domestic interested parties compared pre-order to post-order shipments of OCTG to the United States immediately following the imposition of the order, noting that post-order levels declined to a range of 0.03 percent to 9.98 percent of pre-order levels. See domestic interested parties, June 29, 2006 substantive response, at 4, and July 3, 2006 substantive response, at 8-9. In addition, the period covering this second sunset review continues to show that post-order level of imports remain below pre-order levels. Domestic interested parties argue that, in accordance with the Department's applicable law and policy, the significant decline of imports warrants the continuation of the AD order.

With respect to weighted-average dumping margins, domestic interested parties contend that the margins from the investigation remain in effect. No administrative reviews have been conducted. Margins continue above de minimis. Moreover, the Department's guidelines to determine the likelihood of continuation or recurrence of dumping, state that, "dumping continued at any level above de minimis after the issuance of the order" will normally lead to the continuation or recurrence of dumping. Dumping margins of 49.78 percent continue to exist.

JAPAN: Domestic interested parties compared pre-order to post-order shipments of OCTG to the United States, and point to trade statistics covering this second sunset review period. They note that since the issuance of the AD order, shipments of OCTG have dropped to a range of 15.81 percent to 74.07 percent of pre-order levels. See Domestic interested parties, June 29, 2006, substantive response, at 4-5, and July 3, 2006 substantive response, at 12-14. Import volumes during this sunset review period remain below pre-order volumes. Id. Although most of these imports may be products excluded from the scope of the AD order, domestic interested parties state that the significant decline of imports alone warrants the continuation of the AD order. Domestic interested parties argue that the discipline of the AD order affected shipment levels and believe that Japanese producers/manufacturers/exporters cannot maintain pre-order level of imports with the discipline of the AD order. See domestic interested parties, June 29, 2006 substantive response, at 4-5.

Weighted-average dumping margins above de minimis remain in effect for the AD order on OCTG from Japan. Domestic interested parties argue that, under the Department's guidelines, "dumping continued at any level above de minimis after the issuance of the order" will normally lead to the continuation or recurrence of dumping.

KOREA: Domestic interested parties argue that import levels of OCTG from Korea dropped dramatically following the issuance of the AD order. They believe that the AD order has affected the level of shipments of OCTG to the United States, thus, Korean producers and exporters cannot maintain pre-order shipment levels with the discipline of the AD order in place. See domestic interested parties, June 29, 2006 substantive response, at 4. Domestic interested parties provide import data covering this second sunset review period. While this data shows imports increased, domestic interested parties note that the majority of these imports are likely from Hysco, the excluded company. Id. at 6. Domestic interested parties argue that the decrease in shipments to the United States following the issuance of the order indicates a strong likelihood that dumping would continue or recur were the AD order revoked. Therefore, domestic interested parties argue, this AD order should not be terminated.

With respect to weighted-average dumping margins, domestic interested parties state that the Department found SeAH to be dumping at above de minimis margins in the second, third, fifth, and ninth review. See domestic interested parties response, July 3, 2006, at 6. Husteel Co. Ltd., previously known as Shinho Steel Corp., ("Husteel or Shinho/Husteel"), in the ninth administrative review, was found to be dumping at margins above de minimis. Id. Domestic interested parties assert that under the Department's guidelines, "dumping continued at any level above de minimis after the issuance of the order" will normally lead the Department to determine that there will be the continuation or recurrence of dumping. Therefore, domestic interested parties contend that dumping will likely continue or recur if the AD order were revoked.

Department's Position

Consistent with the Statement of Administration Action, H.R. Doc. No. 103-316, Vol. 1, at 879 (1994) ("SAA"), the Department makes its determination of likelihood on an order-wide basis. The Department also determines that revocation of an 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 an order and import volumes for the subject merchandise declined significantly. In addition, pursuant to section 752(c)(1) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the AD order.

ARGENTINA: We agree with domestic interested parties that revocation of the AD order is likely to lead to continuation or recurrence of dumping. As noted in the first sunset review, import levels declined significantly immediately following the issuance of the AD order. See Final Results of Expedited Sunset Reviews: Oil Country Tubular Goods from Argentina, Italy, Japan, and Korea, 65 FR 66701 (November 7, 2000), Decision Memorandum, p. 5. Trade statistics from the ITC databse indicate that import volumes did not reach pre-order levels during this second sunset review. See Note to File regarding Import Volumes of the Antidumping Duty Orders on Oil Country Tubular Goods from Argentina, Italy, Japan, and Korea; Second Sunset Review, dated September 29, 2006, and on file in the Central Records Unit (CRU) (Note to File). That the import levels have dropped significantly since imposition of the order indicates that Argentine producers are unable to sell in the United States without dumping. See SAA, H.R. Doc. No. 103-316, Vol. 1, at 879 (1994). In addition, weighted-average margins established in the investigation continue to exist at above de minimis levels, and reached as high as 60.73 percent.

We do not find compelling any of Siderca's arguments that there is no likelihood of continuation or recurrence of dumping. Siderca's statement that in its view it has never dumped in the United States is not supported by any evidence on the record. The Department conducted an antidumping investigation and found that dumping did occur. Nor can we base our determination on a respondent's statement that it has no intention of dumping. The application of the AD law is not based upon the intent of parties, but rather upon whether dumping has, in fact, occurred. That Siderca has not been accused of dumping in other world markets is also not compelling, as Siderca's pricing practices in other markets do not tell us anything about its future pricing practices in the United States. The salient factors here, as indicated above, are that import volumes dropped sharply following imposition of the order, they did not rise to anywhere near the pre-order levels, and that dumping margins above de minimis continued to exist during this sunset period. Therefore, we find that there is a likelihood of continuation or recurrence of dumping.

Furthermore, we disagree with Siderca that the determination should be based solely on whether Siderca is likely to continue or resume dumping. As indicated above, during the sunset period

we completed two administrative reviews of Acindar, and found a dumping margin of 60.73 percent. Notice of Final Results and Recision in Part of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina, 68 FR 13262 (March 19, 2003) and Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, from Argentina, 68 FR 39516 (July 2, 2003). Though information on the record indicates that Acindar ceased producing subject merchandise in 2001, this means only that Acindar is no longer a producer. Siderca has acknowledged that Acindar is still in business, and nothing on the record indicates that Acindar could not still function as an exporter. Therefore, its dumping margin of 60.73 percent during the sunset period is relevant to our likelihood determination.

ITALY: We agree with domestic interested parties that revocation of the AD order would be likely to lead to the continuation or recurrence of dumping. As noted in the first sunset review, import levels declined significantly immediately following the issuance of the AD order. Trade statistics from ITC dataweb indicate that import volumes did not reach pre-order levels during this second sunset review. See Note To File. In addition, weighted-average margins established in the investigation continue to exist at above de minimis levels. No administrative reviews have been conducted since the issuance of the AD order. We have no further information to consider.

JAPAN: Weighted-average margins established in the investigation continue to exist at above de minimis levels. As noted in the final results of the first sunset review, the level of imports declined following the issuance of the AD order. Import levels during this second sunset review period have not reached pre-order levels. See Note to File. Collection and assessment of antidumping duties on entries of subject merchandise continue. Dumping continued at any level above de minimis after the issuance of the order is an indication that continued dumping is likely. Margins above de minimis continue to exist with respect to this AD order. As such, we find that revoking the AD order would be likely to lead to continuation or recur of dumping.

KOREA: Weighted-average margins established in the investigation continue to exist at above de minimis levels. As noted in the final results of the first sunset review, the level of imports declined following the issuance of the AD order. In this second sunset review, while import levels exceeded pre-order levels, dumping margins above de minimis levels continue. The collection of antidumping duties on entries of subject merchandise continue. Dumping continued at any level above de minimis after the issuance of the order is an indication that dumping is likely to continue. Margins above de minimis continue to exist with respect to this AD order. As such, we find that revoking the AD order would be likely to lead to continuation or recur of dumping.

The Department has analyzed import volumes of OCTG from Argentina, Italy, Japan and Korea to determine whether shipments to the United States have declined and have remained below pre-order levels. In the case history, evidence indicates that dumping margins continue to exist with respect to the AD orders from Argentina, Italy, Japan, and Korea. Using import data from the ITC dataweb, import volumes covering this second sunset review confirm that import levels have

remained below pre-order levels, with the exception of OCTG from Korea. Although import volumes from Korea exceeded pre-order levels, continued dumping has been found repeatedly in administrative reviews. Margins continue to exist above de minimis for the AD orders on OCTG from Argentina, Italy, Japan, and Korea. This analysis is highly probative of the likelihood of continuation or recurrence of dumping if the AD orders were to be revoked.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

The domestic interested parties argue that the Department should report to the ITC the margins established in the investigation for the AD orders on OCTG from Italy, Japan, and Korea. With respect to Argentina, the domestic interested parties argue that the Department should report to the ITC the margins established in the investigation for Siderca and “all others” (i.e., 1.36 percent) but for Acindar report the margin the Department calculated in the 2000-01 administrative review (i.e., 60.73 percent). Petitioners agree with domestic interested parties with respect to Acindar, but with respect to Siderca, petitioners argue that the Department should report a margin of 41.60 percent, a figure drawn from the petition in the original antidumping investigation. As described below, petitioners argue that “extraordinary circumstances” exist in this case to justify using a number other than the calculated margin from the investigation.

First, petitioners argue that the law has changed since the Department calculated Siderca’s margin in the investigation. In the investigation, the Department calculated Siderca’s margin by comparing U.S. price to a foreign market value for sales to a third-country market. The Department determined Siderca’s margin in this way because the home market was not viable under then-effective U.S. law. Under the law then in effect, a respondent’s home market was not viable if home market sales did not equal at least five percent of the sales to third countries. After the investigation, U.S. law was changed to establish that the respondent’s home market is viable if the respondent’s volume of sales therein is at least five percent of the volume of sales to the United States.

Second, petitioners argue that under current law, Siderca has been able to avoid administrative reviews by not shipping to the United States. Siderca thereby avoided an administrative review that would have calculated its dumping margin based on a viable home market. Calculating the margin in this way, petitioners argue, would have resulted in a margin significantly higher than the 1.36 percent calculated in the investigation.

Third, petitioners argue the Department’s policy preference for reporting the most probative dumping margin to the ITC in a sunset review warrants reporting the 41.60 percent margin from the petition, rather than the 1.36 percent margin from the investigation. They state that the preference for reporting the margin from the investigation that is stated in section 752(c)(3) of the Act and the SAA is based on a presumption that the investigation margin will be more probative of a respondent’s dumping behavior in the absence of an order, and will not require the Department to speculate by calculating a margin. Petitioners state that with respect to Siderca,

this means the Department should report the 41.60 percent margin because, being based on actual dumping behavior from a viable home market, it is more probative than the margin from the investigation which was based on third-country sales.

Furthermore, petitioners argue that the Department's investigation of Acindar in the 2000-01 administrative review underscores the fact that the 1.36 percent margin determined in the investigation is not probative of Siderca's actual margin. The Department conducted that investigation of Acindar using the post-URAA methodology, and found the dumping margin to be 60.73 percent, rather than 1.36 percent. Thus, petitioners argue that, the 1.36 percent margin calculated in the investigation is not probative, and if anything, the 41.60 percent margin found in the petition is conservative, and possibly understates the margin.

Moreover, petitioners argue that if Siderca's 1.36 percent margin were indicative of its actual dumping behavior, Siderca could have revised its pricing to eliminate the margin. Instead, petitioners contend, it was shut out of the market by it. Thus, petitioners argue, the 41.60 percent margin from the petition is the most accurate indication of Siderca's likely dumping margin absent the discipline of an order because it is based on Siderca's historical dumping behavior using viable home market data prior to the imposition of the order.

Furthermore, petitioners argue that the Department should consider whether "extraordinary circumstances" exist in this case even if it conducts an expedited review. Petitioners state that in the previous five-year sunset review the Department concluded it was precluded from considering whether there were extraordinary circumstances in an expedited review. Petitioners disagree with the Department's conclusion.

First, petitioners argue that nothing in the statute, legislative history, or the regulation precludes the Department from considering extraordinary circumstances in an expedited review. They note that the statute does not address the issue, and that the SAA merely states that "{o}nly under the most extraordinary circumstances should Commerce rely on dumping margins...other than those it calculated and published in its prior determination." SAA, at 891, reprinted in 1994 U.S.C.C.A.N. 4040, 4214.

Second, petitioners argue that if the Department continues to believe that in an expedited review it may never report to the ITC a margin other than the one previously calculated, the Department effectively cedes control of the margin decision to the respondents. Petitioners state that the reason is straightforward. If respondents are satisfied with their margins from the investigation, they can simply refuse to respond to the Department's notice of initiation of a sunset review. This will precipitate an expedited review which will lock in their preferred rates.

With respect to Acindar, domestic interested parties base their argument on the Department's policy bulletin, which states:

{A} company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order. Therefore, unless the Department finds no likelihood of continuation or recurrence of dumping, the Department may, in response to argument from an interested party, provide to the Commission a more recently calculated margin for a particular company where, for that particular company, dumping margins increased after the issuance of the order, even if the increase was as a result of the application of best information available or facts available.

See Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 18871, 18872 (April 16, 1998) (Policy Bulletin).

Domestic interested parties reason that since Acindar's market share rose from zero percent during the investigation to 1.1 percent by the 2000-01 administrative review, and its margin rose from 1.36 percent during the investigation to 60.73 percent during the 2000-01 administrative review, under the section of the Policy Bulletin quoted above the Department should report that the margin likely to prevail for Acindar is 60.73 percent.

Department's Position

In accordance with section 752(c)(3) of the Act, the Department reports to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. The Department normally will select a margin from the final determination of the original investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. See SAA, at 890, and the House Report at 64. For companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide margins based on the "all others" rate from the investigation.

The Department agrees with the domestic interested parties concerning the margins to report to the ITC with respect to the orders on subject merchandise from Italy, Japan, and Korea. In the final results of the first sunset review, the Department found that the margins calculated in the investigation are probative of the behavior of the producers and exporters of OCTG from Italy, Japan, and Korea without the discipline of the order. Respondents did not challenge the Department with respect to these rates, in the first, or, in the second sunset review. Cash deposit rates remain in effect. The Department, therefore, finds that the margins from the original investigation are probative of the behavior of producers and exporters without the discipline of the AD order. Consistent with section 752(c) of the Act, the Department reported to the ITC company-specific and "all others" rates from the investigations as indicated in the "Final Results of Review" section of this memorandum.

With respect to the order on Argentina, the Department agrees with the domestic interested parties that the proper margin to assign to Siderca and "all others" is the 1.36 percent margin from the investigation because it is the only calculated rate that reflects Siderca's behavior

without the discipline of an order, and that the proper margin to assign to Acindar is the 60.73 percent rate calculated in the 2000-01 review. We explain below our basis for these determinations.

With respect to Siderca, petitioners' argument that the Department should assign a margin of 41.60 percent to Siderca is virtually identical to the argument it presented in the first sunset review. We quote here our response:

As noted in the Sunset Regulations and Sunset Policy Bulletin, only under the most extraordinary circumstances will the Department rely on dumping margins other than those it calculated and published in its prior determinations. The Sunset Regulations, at section 351.218(e)(2)(i), explain that "extraordinary circumstances" may be considered by the Department in the context of a full sunset review, where the substantive response from both domestic and respondent interested parties are adequate.² In the Argentine case, however, the Department determined to conduct an expedited review because of its finding that Siderca did not provide adequate substantive responses. Thus, the instant case does not warrant consideration of "extraordinary circumstances" as requested by the domestic interested parties because it is not a full sunset review. Assuming, arguendo, that the Department had conducted a full review, we are not persuaded that the margin from the petition is appropriate based on the assertions of domestic interested parties that the petition rate is more probative of Siderca's behavior in the absence of an order than the calculated investigation rate. Domestic interested parties' assertion that the Argentine home market would have been viable had an administrative review been conducted, and that Siderca's shipments ceased to avoid administrative reviews and the higher margins that would have resulted, are, at best, conjecture and do not give rise to extraordinary circumstances that would warrant furnishing the ITC with a rate other than the rate from the investigation. Therefore, consistent with the Sunset Policy Bulletin, the Department determines that the margin calculated in the original investigation is probative of the behavior of Siderca if the order were revoked as it is the only rate that reflects the behavior of Siderca without the discipline of the order.

See Final Results of Expedited Sunset Reviews: Oil Country Tubular Goods from Argentina, Italy, Japan, and Korea, 65 FR 66701 (November 7, 2000), Decision Memorandum, p. 7.

We do not find persuasive petitioner's argument that the 60.73 percent found for Acindar in the 2000-01 administrative review "compels the conclusion" that the 1.36 percent margin found in the investigation is not probative, and that the 41.60 percent margin from the petition should be reported for Siderca. There are various reasons why a particular company may have a high margin (e.g., start-up costs) which cannot legitimately be imputed to another company. Furthermore, that the Department based its calculation of Acindar's margin on its post-URAA

² See, e.g., Final Results of Expedited Sunset Review: Tapered Roller Bearings from Romania, 64 FR 60269, 60272 (November 4, 1999).

methodology is irrelevant with respect to Siderca because, while use of the post-URAA may result in a finding that Siderca has a viable home market, the Department did not base the computation of Acindar's margin on Acindar's home market sales. Acindar's margin was calculated using normal value that was entirely based upon constructed value. See Notice of Preliminary Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods from Argentina, 67 FR 57215, 57216 (September 9, 2002). Thus, Acindar's 60.73 percent rate tells us nothing about what Siderca's margin might have been had we based a margin calculation for Siderca on its home market sales.

With respect to Acindar, the Department will report 60.73 percent to the ITC as the margin likely to prevail. Acindar began producing and exporting subject merchandise to the United States several years after the imposition of the order and the 60.73 percent margin, from the 2000-2001 period of review, is the only calculated rate for Acindar in this proceeding.

Therefore, as indicated above, we have determined to report to the ITC that the expected margins of dumping if the order were revoked are 1.36 percent for Siderca and "all others," and 60.73 percent for Acindar.

3. Adequacy Determination

Interested Party Comments

In the sunset review of the order on OCTG from Argentina, the Department determined that respondent Siderca's substantive response was inadequate, and therefore determined to conduct an expedited review. The background to its determination was that Acindar sold its OCTG production facilities to Siderca's affiliate SIAT. The Department found the record unclear as to when this sale took place, or even whether it occurred before or after start of the second sunset period. Furthermore, in its July 3, 2006 substantive response, Siderca stated that it had no shipments of subject merchandise to the United States during the sunset period. Siderca did not report the shipments produced and shipped by Acindar to the United States during this sunset period. Therefore, the Department reasoned that if Siderca owned Acindar's OCTG-producing assets during the sunset POR, Siderca's substantive response was inadequate because it failed to report Acindar's shipments. Conversely, if Siderca did not own Acindar's OCTG-producing assets during the sunset POR, its response was inadequate because Siderca had no shipments during the sunset POR, and thus accounted for less than fifty percent of total shipments of subject merchandise from Argentina. For a further explanation of the Department's determination, see the July 25, 2006 memorandum from the sunset team to Stephen J. Claeys regarding "Adequacy Determination" on file in room B-099 of the Department of Commerce building.

Siderca argues that, contrary to a statement made in the Department's July 25, 2006 memorandum, it did provide the Department with the information required under 19 CFR 351.218(d)(3)(iii) by stating that its volume and value of exports to the United States during the sunset POR was zero. With respect to Acindar, Siderca states that the Department's

July 25, 2006 memorandum fails to mention that Acindar stopped producing the subject merchandise in 2001, during the sunset period.

Regarding the purchase of Acindar's OCTG-producing assets, Siderca states that a tentative agreement to purchase the assets was announced in May 2005, but that tentative agreement was subject to the approval of the Argentine antitrust authorities. SIAT did not obtain that approval until November 2005. Only after that did SIAT submit an offer for the assets. Siderca states that the final agreement and transfer of the assets did not occur until January 31, 2006.

Based on the above information and argument, Siderca argues the Department should base its prospective determination of whether dumping is likely to recur on the fact that Siderca is the only Argentine producer of OCTG.

Department's Position

We disagree with Siderca that we should base our likelihood determination on the fact that Siderca is the only producer of OCTG in Argentina. The Department makes its likelihood determinations on a country-wide basis based on, *inter alia*, the dumping history during the sunset period. The fact that Acindar sold OCTG in the United States at less-than-fair-value prices during the sunset period shows that an Argentine producer facing the economic conditions current in Argentina during the sunset period found it necessary to dump in order to sell in the United States. Insofar as domestic economic conditions are one factor that determines domestic selling prices (and hence the Department's determination of dumping), this fact suggests the possibility that other Argentine producers may also have found it necessary to dump in order to sell in the United States. More importantly, as Siderca has acknowledged, Acindar has not gone out of business. Acindar could therefore still function as an exporter of subject merchandise by exporting subject merchandise produced by other Argentine producers. Thus, the level at which Acindar was found to have dumped during the sunset period is still relevant to the Department's determination of the likelihood of future dumping.

Final Results of Review

As a result of these sunset reviews, the Department determines that revocation of the AD orders on OCTG from Argentina, Italy, Japan, and Korea would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

ARGENTINA:

Manufacturers/Exporters/Producers	Margin (percent)
Siderca S.A.I.C.	1.36
Acindar Industria Argentina de Aceros S.A.	60.73
All Others	1.36

ITALY:

Manufacturers/Exporters/Producers	Margin (percent)
Dalmine S.p.A.	49.78
Acciaierie Tubificio Arvedi S.p.A.	49.78
General Sider Europa S.p.A.	49.78
All Others	49.78

JAPAN:

Manufacturers/Exporters/Producers	Margin (percent)
Sumitomo Metal Industries, Ltd. (SMI)	44.20
Nippon Steel Corporation (Nippon)	44.20
All Others	44.20

KOREA:

Manufacturers/Exporters/Producers	Margin (percent)
Union Steel Manufacturing Company	12.17
All Others	12.17

Hyundai Steel Pipe Company, Ltd., succeeded by Hyundai Hysco, was excluded from the order.

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of these sunset reviews in the Federal Register.

AGREE _____

DISAGREE _____

Stephen Claeys
Acting Assistant Secretary
for Import Administration

(Date)