

November 15, 2004

MEMORANDUM TO: James J. Jochum
Assistant Secretary, Import Administration

FROM: Ronald K. Lorentzen
Acting Director, Office of Policy

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Germany; Final Results

Summary

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

1. Likelihood of continuation or recurrence of dumping
 - A. Weighted-average dumping margin
 - B. Volume of imports
2. Magnitude of the margin likely to prevail
 - Margins from investigation

History of the Order

On June 8, 1999, the Department of Commerce (“Department”) published its final affirmative determination of sales at less than fair value (“LTFV”) in the *Federal Register* with respect to imports of SSSSC from Germany. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Germany, Part II*, 64 FR 30710 (June 8, 1999) amended at 64 FR 40557 (July 27, 1999). On July 27, 1999, the Department published in the *Federal Register* an antidumping duty order on SSSSC from Germany. *See Notice of Amended*

Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Germany, 64 FR 40557 (July 27, 1999). Following publication of the amended final determination and order, Thyssen Krupp Nirosta GmbH (“TKN”), formerly Krupp Thyssen Nirosta GmbH (“KTN”), and Krupp Hoesch Steel Products, Inc. (“KHSP”), a wholly-owned U.S. subsidiary of KTN, filed a lawsuit with the Court of International Trade challenging certain aspects of the Department's findings in the antidumping investigation. As a result of this litigation, we amended our final determination of the antidumping duty investigation for KTN based on our recalculation of KTN's rates pursuant to the remand. *See Stainless Steel Sheet and Strip in Coils from Germany: Amended Final Determination of Antidumping Duty Investigation*, 67 FR 15178 (March 29, 2002). The amended final determination margin for KTN is 13.48 percent. As a result of these changes, the “all others” rate also changed to 13.48 percent.

Since the issuance of the antidumping order, the Department conducted three administrative reviews with respect to TKN.¹ In those administrative reviews, the Department determined dumping margins with respect to TKN of 2.61 percent, 4.74 percent, and 3.72 percent, respectively. *Id.*

The Department completed two changed circumstances reviews regarding imports of SSSSC from Germany since the issuance of the order.² The first changed circumstances review revoked the order, in part, with regard to permanent magnet iron-chromium-cobalt stainless steel strips, currently supplied under the trade name Semi Vac 90. *Id.* The second changed circumstances review determined that TKN is the successor-in-interest to KTN and that TKN should retain the deposit rate assigned to KTN. *Id.*

In the fourth period of review, the Department preliminarily found that TKN had absorbed antidumping duties for all U.S. sales through its unaffiliated importers.³ A final decision on duty absorption is pending.

On June 1, 2004, the Department published the notice of initiation of the sunset review of the antidumping duty order on SSSSC from Germany pursuant to section 751(c) of the Tariff Act of 1930,

¹*See Stainless Steel Sheet and Strip in Coils from Germany: Notice of Final Results of Antidumping Duty Administrative Review*, 67 FR 7668 (February 20, 2002); *Stainless Steel Sheet and Strip in Coils from Germany: Final Results of Antidumping Duty Administrative Review*, 68 FR 6716 (February 10, 2003) amended by 68 FR 14193 (March 24, 2003); *Stainless Steel Sheet and Strip in Coils from Germany: Final Results of Antidumping Duty Administrative Review*, 69 FR 6262 (February 10, 2004) amended by 69 FR 18872 (April 9, 2004).

²*Stainless Steel Sheet and Strip in Coils from Germany: Final Results of Changed Circumstances Review*, 66 FR 50173 (October 2, 2001); *SSSSC from Germany: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 67 FR 61319 (September 30, 2002).

³*Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 47900, 47902 (August 6, 2004).

as amended (“the Act”).⁴ The Department received a Notice of Intent to Participate from the domestic interested parties Nucor Corporation; Allegheny Ludlum Corporation; North American Stainless; the United Steelworkers of America, AFL-CIO; the local 3303 United Auto Workers; and Zanesville Armco Independent Organization, Inc. (collectively “the domestic interested parties”) within the deadline specified in section 351.218(d)(1)(i) of the Department’s Regulations (“Sunset Regulations”). The domestic interested parties claimed interested party status under section 771(9)(C) and (D) of the Act, as domestic manufacturers of SSSSC or certified unions whose workers are engaged in the production of SSSSC in the United States. We received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department received no response from respondent interested parties. As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this order.

Discussion of the Issues:

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order 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 shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the 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 shall provide to the International Trade Commission (“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

The domestic interested parties contend that revocation of this antidumping duty order would likely lead to a continuation or recurrence of dumping by the German producers of the subject merchandise due to continued dumping. *See* Substantive Response of the Domestic Interested Parties (“Domestic Response”) (July 1, 2004) at 45. The domestic interested parties also contend that German SSSSC imports declined dramatically in response to the imposition of the antidumping duty order and have remained well below their pre-order levels. *Id.* at 49-50. The domestic interested parties point out that the German industry exported to the United States 21,851 tons of SSSSC in 1998; however, upon imposition of the order, the German SSSSC imports substantially decreased to 5,611 tons in 1999. *Id.* at 49. Consequently, the domestic interested parties state that the German

⁴ *Initiation of Five-Year (“Sunset”) Reviews*, 69 FR 30874 (June 1, 2004).

producers cannot export commercially significant volumes to the United States without dumping the subject merchandise. *Id.*

Department's Position

In accordance with the legislative history accompanying the Uruguay Round Agreements Act (“URAA”), specifically the Statement of Administrative Action (“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”), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. *See Policies Regarding the Conduct of the Five-Year (“Sunset”) Reviews of Antidumping & Countervailing Duty Orders, Policy Bulletin, No. 98.3 (“Sunset Policy Bulletin”)* 63 FR 18871 (April 16, 1998). The Department clarified that determinations of likelihood will be made on an order-wide basis. *See Sunset Policy Bulletin* at section II.A.2. In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. *See Sunset Policy Bulletin* at section II.A.3.

Consistent with the *Sunset Policy Bulletin*, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where, *inter alia*, dumping continued at any level above *de minimis* after the issuance of the order. The Department has conducted three administrative reviews since issuance of the order in which it found that dumping continued at levels above *de minimis*. *See* Footnote 1. In addition, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping order. Using statistics provided by the ITC Dataweb (see attached), the Department finds that imports have significantly decreased after the issuance of the order. Given that dumping continued at levels above *de minimis* and import volumes fluctuated since the imposition of the order, the Department determines that dumping would likely continue or recur if the order were revoked.

2. Magnitude of the Margin Likely to Prevail:

Interested Party Comments

In its substantive response, the domestic interested parties argue that the antidumping duty margins from the investigation are the margins that will likely prevail if the order were revoked in accordance with the SAA and the *Sunset Policy Bulletin*. *See* Domestic Response at 58. Accordingly, they contend that the Department should inform the ITC that the following margins for German companies covered by the order will likely prevail if revocation occurs:

TKN	13.48 percent
All Others	13.48 percent

Id. at 59.

Department's Position

The Department normally provides to the ITC the company-specific margin from an investigation of each company. For companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally provides a margin based on the “All Others” rate from the investigation. Exceptions to this policy provide for the use of a more recently calculated margin, where appropriate. The Department prefers to select a margin from the investigation because the investigation margin is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.

After considering the weighted-average dumping margins determined in the investigation and subsequent reviews, the Department determines that it is appropriate to report to the ITC the rates from the amended final determination because they are the only calculated rates that reflect the behavior of companies without the discipline of the order. Therefore, we will report to the ITC the rates as published in the amended final determination, as listed in the next section.

Final Results of Review

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

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
TKN	13.48 percent
All Others	13.48 percent

Recommendation

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

AGREE _____

DISAGREE _____

ORIGINAL SIGNED

James J. Jochum
Assistant Secretary
for Import Administration

11/15/04

(Date)