

DATE: October 1, 2007

MEMORANDUM TO: Joseph A. Spetrini  
Deputy Assistant Secretary  
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Sunset Review of the  
Antidumping Duty Order on Stainless Steel Bar from Germany;  
Final Results

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### Summary

We have analyzed the case brief and the rebuttal comments of interested parties in the sunset review of the antidumping duty order covering stainless steel bar (“SSB”) from Germany. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues upon which we received case brief and rebuttal comments from interested parties:

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margin Likely to Prevail

### Background

On February 1, 2007, the Department of Commerce (“the Department”) published the notice of initiation of the sunset review of the antidumping duty order on SSB from Germany pursuant to section 751(c) of the Tariff Act of 1930, as amended (the “Act”).<sup>1</sup> The Department received the Notice of Intent to Participate from Carpenter Technology Corp.; North American Stainless; Crucible Specialty Metals Division of Crucible Materials Corp.; Electralloy; Outokumpu Stainless Bar, Inc.; Universal Stainless & Alloy Products, Inc.; and Valbruna Slater Stainless, Inc. (collectively, “the domestic interested parties”), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic-like product in the United States.

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<sup>1</sup> See Initiation of Five-Year (“Sunset”) Reviews, 72 FR 4689 (February 1, 2007).

We received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received a response from respondent interested parties in Germany, *i.e.*, BGH Edelstahl Freital GmbH, BGH Edelstahl Lippendorf GmbH, BGH Edelstahl Lugau GmbH, and BGH Edelstahl Siegen GmbH (collectively, “BGH” or “the respondent interested parties”). We found this response to be adequate because BGH accounted for more than 50 percent of the exports of subject merchandise from Germany to the United States during the sunset review period (January 1, 2002, through December 31, 2006).<sup>2</sup> Therefore, we are conducting a full sunset review of the antidumping duty order on SSB from Germany as provided for in section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(2)(i).

On May 30, 2007, the Department published a notice of preliminary results of the full sunset review of the antidumping duty order on SSB from Germany pursuant to section 751(c) of the Act.<sup>3</sup> We preliminarily determined that revocation of the order would likely lead to a continuation or recurrence of dumping.

In the Preliminary Results, we provided interested parties an opportunity to comment on our preliminary results. The Department received a case brief from BGH on June 29, 2007, and a rebuttal brief from domestic interested parties on July 5, 2007. A hearing was not held because none was requested.

#### Discussion of the Issues

The Department is conducting this sunset review to determine whether revocation of the antidumping duty order on SSB from Germany would likely lead to continuation or recurrence of dumping. Consistent with section 752(c)(1) of the Act, the Department considered the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of SSB from Germany 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 likely to prevail.

Normally, the Department will provide to the ITC the company-specific margin from the investigation for each company.<sup>4</sup> The Department may provide a more recently calculated margin for a particular company where declining (or zero or *de minimis*) dumping margins are accompanied by steady or increasing imports which would reflect that the exporter is likely to dump at a lower rate found in a more recent review.

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<sup>2</sup> See Memorandum to Susan H. Kurbach entitled, “Adequacy Determination in Antidumping Duty Sunset Review of Stainless Steel Bar from Germany,” (March 23, 2007) (“Adequacy Memo”).

<sup>3</sup> See Stainless Steel Bar from Germany; Preliminary Results of the Sunset Review of Antidumping Duty Order, 72 FR 29970 (May 30, 2007), as corrected in 72 FR 31660 (June 7, 2007) and accompanying Issues and Decision Memorandum (“Preliminary Results”).

<sup>4</sup> See Eveready Battery Co. v. United States, 77 F. Supp.2d 1327, 1333 (CIT 1999).

## Comment 1: Likelihood of Continuation or Recurrence of Dumping

### BGH's Argument:

BGH argues that dumping is not likely to continue if the antidumping duty order on SSB from Germany is revoked. BGH points out that imports of the subject merchandise from Germany neither ceased nor declined significantly after the issuance of the order, as seen in a comparison of 2006 imports to 1996-1999 imports. BGH claims imports in 2000 should not be used as the pre-order basis for comparison because imports in that year were unusually high. Instead, BGH argues that 1996-1999 is the most accurate period to use as the pre-order period because these years give the best indication of normal import levels. Also, BGH claims that 2002 and 2003 should not be considered in the post-order period because imports in those years were drastically impacted by safeguard measures imposed by President Bush.

Further, BGH argues that dumping has been essentially eliminated since the issuance of the antidumping duty order. BGH contends that the rates calculated in each administrative review would have been well below the *de minimis* level if the Department had not applied its zeroing methodology. BGH argues that the Department should not continue to use its zeroing methodology in administrative reviews in light of the [Section 129 Final Results](#)<sup>5</sup> which affected BGH's investigation margin. BGH notes that the same U.S. legal provisions and WTO precedent that underpin the Department's elimination of zeroing in antidumping investigations support the elimination of zeroing in administrative reviews.

### Domestic Interested Parties' Rebuttal:

Domestic interested parties refute BGH's claim that dumping is not likely to continue. Domestic interested parties point out that the Department will normally determine that revocation of a dumping order is likely to lead to continuation or recurrence of dumping when dumping continues at any level above *de minimis* after the issuance of the order, and that BGH has had above *de minimis* margins in the investigation and all subsequent reviews. Therefore, in domestic interested parties' view, BGH's argument that imports have not ceased or declined significantly since the issuance of the order is irrelevant because the Department has found that BGH has continued to dump.

In addition, domestic interested parties contend that BGH's pricing practices and export volumes are correlated to the discipline of the antidumping duty order. Domestic interested parties conclude that BGH has continued to have above *de minimis* dumping margins and, therefore, revocation of the dumping order is likely to lead to continuation or recurring of dumping.

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<sup>5</sup>See [Implementation of the Findings of the WTO Panel in US - Zeroing \(EC\): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders](#), 72 FR 25261 (May 4, 2007), and accompanying Issues and Decision Memorandum ("[Section 129 Final Results](#)").

## Department Position:

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.<sup>6</sup> In addition, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.<sup>7</sup> As explained below, we continue to find that imports decreased after issuance of the order and dumping occurred at more than a *de minimis* level.

In conducting an analysis of pre- and post-order import levels, we find that imports of SSB from Germany decreased significantly after the order was issued. See Attachment 1. In conducting this analysis we used imports in 2000 as the measure of pre-order levels. This is consistent with our practice of using the one-year period immediately preceding the initiation of the investigation.<sup>8</sup> We use this period because the pre-order comparison period should not reflect any trade-dampening effects caused by the initiation of the proceeding.

BGH has objected to using the year 2000, and has suggested using the years 1996-1999 instead. However, we will not reject the year 2000 as the base year simply because BGH claims that it was a year of unusually high import levels. Moreover, BGH did not point to any flaws in the import volumes we relied upon. Further, the Department normally does not use multiple years as a base period, but rather uses a single year.<sup>9</sup>

Regarding the post-order period, BGH has argued that we should not consider import levels in 2002-2003 because of the safeguard measures in place at that time. Whether we consider those years or not, the trade statistics show that the level of imports in each of the post-order years (2002-2006) was less than the level of imports in the year 2000 base period. Therefore, we conclude that imports declined after issuance of the order.

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<sup>6</sup> See Final Results of Expedited Sunset Review: Tapered Roller Bearings from Hungary, 64 FR 60272, 60273 (November 4, 1999).

<sup>7</sup> See Section 752(c)(1)(B) of the Act.

<sup>8</sup> See Furfuryl Alcohol from Thailand; Preliminary Results of the Second Sunset Review of the Antidumping Duty Order, 71 FR 62583 (October 26, 2006) and accompanying Issues and Decision Memorandum at 5 (unchanged in final results). See also Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Mexico; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders, 70 FR 53159 (September 7, 2005) and accompanying Issues and Decision Memorandum at 6-7.

<sup>9</sup> See, e.g., Silicomanganese from India, Kazakhstan, and Venezuela: Final Results of Expedited Five-year ("Sunset") Reviews of the Antidumping Duty Orders, 72 FR 42393 (August 2, 2007) and accompanying Issues and Decision Memorandum at Comment 1; Stainless Steel Bar from France, Italy, South Korea and the United Kingdom: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders, 72 FR 30772 (June 4, 2007) and accompanying Issues and Decision Memorandum at Comment 1; and Honey From Argentina and the People's Republic of China; Final Results of the Expedited Five-Year ("Sunset") Reviews of Antidumping Duty Orders, 72 FR 10150 (March 7, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

Finally, we disagree with BGH that we should consider what its margins would have been had the Department not applied its zeroing methodology. As we stated in the Preliminary Results, “{a}lthough Commerce has modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations, it has not adopted any such modifications for administrative reviews. See Antidumping Proceedings: Calculation of the Weighted–Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006).”<sup>10</sup> Therefore, we find that BGH, and all other companies, have continued to dump at above *de minimis* levels.

In summary, U.S. imports of SSB from Germany during the five-year sunset review period fell when compared to the import level for the year prior to initiation. Also, dumping has continued at levels above *de minimis* for all the companies covered by the antidumping duty order. Therefore, we continue to find a likelihood of continuation or recurrence of dumping if the order were revoked.

## **Comment 2: Magnitude of the Margin Likely to Prevail**

BGH’s Argument:

BGH states that the Department was correct in determining that BGH’s rate of dumping if the order were revoked would be the most recently calculated margin for BGH instead of BGH’s margin from the investigation. However, BGH contends that the Department should have recalculated the third administrative review margin without zeroing to conform with its modified practice in antidumping duty investigations. BGH argues that the definition of “dumping margins” contained in section 771(35) of the Act applies equally to investigations, administrative reviews, and sunset reviews, and there is no provision of U.S. law that would permit different definitions of this term to be applied to various segments of a proceeding. Thus, the Department should find that a *de minimis* margin of dumping is likely to prevail for BGH if the antidumping duty order is revoked.

Domestic Interested Parties’ Rebuttal:

Domestic interested parties argue that the Department should reject BGH’s arguments. First, domestic interested parties note that BGH was still found to be dumping in the investigation even after the Department stopped using its zeroing methodology. Therefore, if the Department used its normal methodology of reporting the investigation rate to the ITC, BGH’s margin would be above *de minimis*.

Second, domestic interested parties argue that it would be inappropriate for the Department to speculate about any potential changes to BGH’s margins in administrative reviews because the Department has not published any notices revising the margins in those administrative reviews. Further, domestic interested parties note that the United States has filed two communications

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<sup>10</sup> See Preliminary Results Issues and Decision Memorandum at 8-9.

with the WTO which may cause the WTO to revisit the zeroing issue outside the Dispute Settlement context to reexamine whether zeroing can be accommodated within the WTO regime.

Finally, domestic interested parties cite to several court cases which have upheld the Department's practice of zeroing despite the WTO rulings, such as, Timken Co. v. United States, 354 F.3d 1334, 132-43 (Fed. Cir. 2004), and Corus Steel BV v. United States, 387 F. Supp. 2d 1291, 1298 (CIT 2005). Domestic interested parties contend that these precedents are binding on the Department, and nothing in the WTO Appellate Body's decision on zeroing detracts from them. Domestic interested parties argue that it is not the Department's responsibility to interpret and apply the WTO agreements or decisions of its dispute settlement bodies, and that 19 U.S.C. § 3533 expressly prohibits this.

Domestic interested parties conclude that the Department should reject BGH's argument to apply a new and different methodology in this proceeding. Rather, the Department should continue to apply its zeroing methodology in administrative reviews and find that dumping is likely to continue or recur if the antidumping duty order on SSB from Germany is revoked.

#### Department Position:

As we stated in response to Comment 1, the Department recently modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations.<sup>11</sup> In doing so, however, the Department declined to adopt any other modification concerning any other methodology or type of proceeding, such as administrative reviews.<sup>12</sup>

Therefore, we disagree with BGH that there is any basis for the Department to recalculate the margin from the third administrative review. Accordingly, we will report to the ITC the margins indicated below. The margin for BGH is the margin calculated for the third administrative review. For the other two companies and the all others rate, we have used the investigation rates, as recalculated in the Section 129 Final Results,<sup>13</sup> because they supersede the original investigation rates.

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<sup>11</sup> See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation Final Modification, 71 FR 77722 (December 27, 2006).

<sup>12</sup> See Id. at 71 FR 77724.

<sup>13</sup> See Implementation of the Findings of the WTO Panel in US - Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 FR 25261 (May 4, 2007).

Final Results of Review

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

Manufacturers/Exporters/Producers	Weighted-Average Margin (Percent)
BGH Edelstahl Seigen GmbH / BGH Edelstahl Freital GmbH	0.73
Edelstahl Witten-Krefeld GmbH	10.82
Krupp Edelstahlprofile	31.25
All Others	15.16

Recommendation

Based on our analysis and consideration of the case and rebuttal briefs 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 \_\_\_\_\_

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Joseph A. Spetrini  
Deputy Assistant Secretary  
for Import Administration

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Date

# **Attachment 1**

HTS		2000	2001	2002	2003	2004	2005	2006
7222110005	kg	109,000	43,500	-	998	11,864	6,833	1,386
7222110050	kg	769,460	417,997	157,288	31,365	197,628	283,387	586,279
7222190005	kg	4,403	8,805	11,509	2,637	-	-	-
7222190050	kg	3,728,115	1,496,497	771,259	585,715	936,721	795,711	1,156,179
7222200005	kg	125,241	7,226	4,748	1,275	7,716	23,170	2,488
7222200045	kg	2,058,223	632,274	216,266	54,827	39,848	48,789	141,608
7222200075	kg	7,266,975	5,936,203	3,142,109	1,933,160	4,884,964	7,394,452	6,632,062
7222300000	kg	1,483,792	379,767	446,181	243,469	334,469	424,276	1,335,227
<b>Total</b>		<b>15,545,209</b>	<b>8,922,269</b>	<b>4,749,360</b>	<b>2,853,446</b>	<b>6,413,210</b>	<b>8,976,618</b>	<b>9,855,229</b>

Source: U.S. ITC Dataweb