

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for 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 Certain Hot-Rolled Flat-Rolled
Carbon-Quality Steel Products from Japan

SUMMARY:

We have analyzed the substantive responses of the interested parties participating in the first sunset review of the antidumping duty order on certain hot-rolled flat-rolled carbon-quality steel products (“hot-rolled steel”) from Japan. 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 expedited sunset review for which we received comments by the domestic interested parties. Respondent interested parties did not comment.

1. Likelihood of Continuation or Recurrence of Dumping
 - A. Weighted-average dumping margins
 - B. Volume of imports
2. Magnitude of the Margin Likely to Prevail
 - A. Margins from the investigation

History of the Antidumping Duty Order

On May 6, 1999, the Department of Commerce (“the Department”) made its final determination that hot-rolled steel from Japan was being sold at less than fair value (“LTFV”). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329 (May 6, 1999) (“Final Determination”). On June 18, 1999, the International Trade Commission (“ITC”) notified the Department that an industry in the United States was materially injured by reason of LTFV imports of subject merchandise from Japan pursuant to section 735(b)(1)(B) of the Tariff Act of 1930, as amended (“the Act”). In the final

determination, the Department included a finding that critical circumstances existed with respect to Kawasaki Steel Corporation (“Kawasaki”) and the “All Others” respondents, but did not exist with respect to NKK Corporation (“NKK”) and Nippon Steel Corporation (“Nippon”). See Final Determination, 64 FR at 24337. However, the ITC found that critical circumstances did not exist with respect to the subject merchandise from Japan. See Certain Hot-Rolled Steel Products From Japan, 64 FR 34778 (June 23, 1999). Based on the Department’s and the ITC’s findings, the Department published in the Federal Register an antidumping duty order on hot-rolled steel from Japan. See Antidumping Duty Order: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan 64 FR 34778 (June 29, 1999) (“AD Order”). The antidumping duty order reflected the same weighted-average dumping margins as in the final determination.

| -----Manufacturers/Producers/Exporters (Percent) | Weighted-Average Margin |
|---|-------------------------|
| Nippon Steel Corporation (“Nippon”) | 19.65 |
| NKK Corporation (“NKK”) | 17.86 |
| Kawasaki Steel Corporation (“Kawasaki”) | 67.14 |
| All Others | 29.30 |

As a result of World Trade Organization dispute settlement, on December 3, 2002, the Department published its notice of implementation of the Final Determination. Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan (“Section 129 Determination”), 67 FR 71936, 71937. This new determination resulted in revised margins for each of the individual respondents, and a revised “All Others” margin:

| -----Manufacturers/Producers/Exporters Percent | Weighted-Average Margin |
|---|-------------------------|
| Nippon | 18.37 |
| NKK | 17.70 |
| Kawasaki | 40.26 |
| All Others | 22.92 |

The Final Determination was also challenged in two cases brought in U.S. courts. The final determination in the first case upheld the Department's determination;¹ the litigation in the second case is not yet final.²

The Department has completed one administrative review of the antidumping duty order on hot-rolled steel from Japan. In that review, the Department found a zero margin with respect to the only respondent, Kawasaki. See Final Results of Antidumping Duty Administrative Review, 67 FR 2408 (January 17, 2002) ("First Review"). The Department rescinded the second and third administrative reviews. See Rescission of Antidumping Duty Administrative Review, 67 FR 30873 (May 8, 2002) ("Second Review") and Rescission of Antidumping Duty Administrative Review, 68 FR 1039 (January 8, 2003) (Third Review). No other administrative reviews of this order have been requested.

During the course of the order, the Department has made one scope determination. On April 24, 2000, the Department determined that cold-reduced steel sheets in coils from El Salvador processed from Japanese hot-rolled steel are outside the scope of the antidumping duty order. See Notice of Scope Rulings, 65 FR 41958 (July 7, 2000).

Background

On May 3, 2004, the Department initiated the first sunset review of the antidumping duty order on hot-rolled steel products from Japan in accordance with section 751(c) of the Act. See Initiation of Five-year ("Sunset") Reviews, 69 FR 24118 (May 3, 2004).

The Department received a Notice of Intent to Participate within the deadline specified in the section 351.218(d)(1)(i) of the Department's regulations on behalf of Nucor Corporation, United States Steel Corporation, International Steel Group, Inc., Gallatin Steel Company, IPSCO Steel Inc., Steel Dynamics, Inc., and Ispat Inland Inc. (collectively "domestic interested parties").³ The domestic interested parties claimed interested party status as defined under section 771(9)(C) of the Act. The Department received complete substantive responses from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. However, the Department determined that the respondent interested party response was inadequate because no

¹ Kawasaki Steel Corp. v. United States, 110 F. Supp. 2d 1029 (CIT 2000).

² Nippon Steel Corp. v. United States, 337 F.3d 1373. On November 28, 2003, the Department filed its Final Results of Remand in this case; the Court of International Trade has not yet ruled on those Final Results, which affect only Nippon.

³ Gallatin Steel Company, IPSCO Steel, Inc., Steel Dynamics, Inc., United States Steel and Ispat Inland Inc. were petitioners in the original investigation.

response was received from respondents. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited, 120-day sunset review of this antidumping duty order. The Department's final results of this review were previously scheduled for August 31, 2004; however, in making its final determination the Department required additional time to analyze the issues raised by the domestic interested parties. Because of the issues in this proceeding, the Department extended the deadline for issuance of the final results. See Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China and Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Extension of Final Results of Expedited Sunset Reviews, 69 FR 54118 (September 7, 2004). In accordance with sections 751(c)(5)(B) and (C)(ii) of the Act, the Department intends to issue the final results of hot-rolled steel from Japan on or about October 15, 2004.

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 likely lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, 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 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 ITC the magnitude of the margin of dumping likely to prevail if the antidumping duty 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 assert that dumping is likely to continue if the order is revoked given that dumping continued and import volumes have declined since the imposition of the antidumping duty order. See Domestic Interested Parties, Substantive Response ("Domestic Response"), June 2, 2004, at 2 and 6.

The domestic interested parties note that the history of this order demonstrates that dumping has continued and is likely to continue. Id. at 7-9. In the investigation, the Department found dumping margins ranging from 17.70 percent to 40.26 percent, including an All Others rate of 22.92 percent. Id. at 7. Domestic interested parties further note that import volumes of hot-rolled steel from Japan declined significantly after the imposition of the antidumping duty order. Id. at 6 and Figure 1. In the first administrative review, Kawasaki received a zero margin based on low import volumes; the second and third administrative reviews were rescinded because there were no shipments of subject merchandise by respondent during either period of review. Domestic interested parties conclude that Japanese producers cannot sell at pre-order volumes without dumping. Id. at 15.

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreement Act ("URAA"), specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, Vol. 1 (1994) at 826; the House Report, H. Rep. No. 103-826, pt. 1 (1994); and the Senate Report, S. Rep. No. 103-412 (1994), 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 and Countervailing Duty Orders, Policy Bulletin, No.98.3 (April 16, 1998) ("Sunset Policy Bulletin"). The Department clarified that determinations of likelihood will be made on an order-wide (country-wide) basis. See Sunset Policy Bulletin at section II.A.2. Further, in a sunset review, the Department normally will determine that revocation of an antidumping order or termination of a suspended dumping investigation 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 or suspension agreement; (b) imports of the subject merchandise ceased after issuance of the order or the suspension agreement, as applicable; or (c) dumping was eliminated after the issuance of the order or the suspension agreement, as applicable, and import volumes for the subject merchandise declined significantly. See Sunset Policy Bulletin at section II.A.3.

The Department considered the company-specific dumping margins and "All Others" rate from the investigation on hot-rolled steel from Japan and found several companies dumping subject merchandise in the United States at above de minimis levels. Although these margins were amended as a result of the Section 129 Determination, dumping continues. The Sunset Policy Bulletin and the SAA state that 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. Declining 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, the exporter would need to dump to sell at pre-order volumes. If imports cease after the order 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. Based on our analysis of import data provided by domestic interested parties and import data from the ITC's Trade Dataweb, we found that import volumes of hot-rolled steel declined after the imposition of the order and have not reached pre-order volumes.

Consistent with the SAA and the Sunset Policy Bulletin, we find that there is likelihood of continued dumping or recurrence of dumping by Japanese producers/exporters, given that dumping continued and import volumes declined after the imposition of the order.

2. Magnitude of Margins Likely to Prevail

Interested Party Comments

The domestic interested parties assert that the Department should find that the dumping margins likely to prevail were the order revoked are the margins determined in the investigation because these are the levels at which the Japanese producers last shipped subject merchandise. See Domestic Response at 19.

Department's Position

In the Sunset Policy Bulletin, the Department stated that it normally will provide to the ITC the margin that was determined in the final determination in the original investigation. For companies not specifically investigated or for companies that did not begin shipping until after the order or suspended investigation was issued, the Department normally will provide a margin based on the "All Others" rate from the investigation because these rates are the only calculated rates that best reflect the behavior of exporters without the discipline of the order in place. See Sunset Policy Bulletin at section II.B.1. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration duty absorption determinations. See Sunset Policy Bulletin at section II.B.2 and 3. In this proceeding, there have been no findings of duty absorption and no request for the use of a margin calculated in a more recent proceeding than the investigation.

The Department agrees with the domestic interested parties concerning the margin rates to be reported to the ITC. In the investigation, the Department found dumping above de minimis levels for Japanese producers/exporters of hot-rolled steel. In addition, no respondents provided comments. Consistent with section II.B.1 of the Sunset Policy Bulletin and the SAA at 890, we determine that the rates from the investigation, as amended by the Section 129 Determination, are probative of the behavior of producers and exporters of hot-rolled steel from Japan without the discipline of the order, because these margins are the only final calculated rates available.⁴ Because these are the only final calculated rates that reflect the behavior of exporters without the discipline of the order, we will report to the ITC the company-specific rates and "All Others" rate from the investigation, as amended by the Section 129 Determination.

Final Results of Review

We determine that revocation of the antidumping duty order on hot-rolled steel from Japan would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

| -----Manufacturers/Producers/Exporters (Percent) | Weighted-Average Margin |
|---|-------------------------|
|---|-------------------------|

⁴The Court of International Trade has not yet ruled on a revised rate calculated for Nippon as a result of litigation arising out of the investigation.

| | |
|------------|-------|
| Nippon | 18.37 |
| NKK | 17.70 |
| Kawasaki | 40.26 |
| All Others | 22.92 |

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 review in the Federal Register.

Agree _____

Disagree _____

James J. Jochum
Assistant Secretary
for Import Administration

(Date)