

DATE: March 29, 2007

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 Sunset Review of the
Antidumping Duty Order on Steel Concrete Reinforcing Bars from
Latvia; Final Results

Summary

We have analyzed the case brief and the rebuttal comments of interested parties in the sunset review of the antidumping duty order covering steel concrete reinforcing bars (“rebar”) from Latvia. 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 for which we received case brief and rebuttal comments from interested parties:

1. The margin of dumping from the original investigation is not representative of the magnitude of LM’s likely margin of dumping because U.S. price was based upon partial facts available and because normal value was based upon third country sales rather than Latvian home market sales.
2. LM’s cessation of exports of the subject merchandise to the United States was not related to the margins of dumping determined by the Department.

Background

On August 1, 2006, the Department published the notice of initiation of the sunset review of the antidumping duty order on steel concrete reinforcing bars from Latvia pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Initiation of Five-Year (“Sunset”) Reviews, 71 FR 43443 (August 1, 2006). The Department received a notice of intent to participate from the following domestic parties: the Rebar Trade Action Coalition and its individual producer members, Nucor Corporation, CMC Steel Group, and Gerdau Ameristeel, as well as domestic producers TAMCO Steel and Schnitzer Steel Industries, Inc. (“Schnitzer”)

(collectively “domestic interested parties”), within the deadline specified in 19 CFR 351.218(d)(1)(i). The companies claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic-like product in the United States.

The Department received a complete substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). In this response, Cascade Steel Rolling Mills, Inc. (“Cascade”) was substituted for Schnitzer as a domestic interested party. Cascade is a wholly owned subsidiary of Schnitzer. Also, Steel Dynamics, Inc. (“SDI”) was added as a domestic producer. Because SDI did not file a notice of intent to participate in this review, it is not eligible to file a substantive response. See 19 CFR 351.218(d)(iii)(A). Therefore, the domestic interested parties are now the Rebar Trade Action Coalition and its individual producer members Nucor Corporation, CMC Steel Group, and Gerdau Ameristeel, as well as TAMCO Steel, and Cascade.

The Department received a complete substantive response from respondent interested party, Joint Stock Company Liepajas Metalurgs (“LM” or the “respondent interested party”) within the deadline specified in 19 CFR 351.218(d)(3)(i). On September 5, 2006, the Department received a rebuttal to LM’s substantive response from the domestic interested parties.

19 CFR 351.218(e)(1)(ii)(A) provides that the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where the Department receives complete substantive responses from respondent interested parties accounting, on average, for more than 50 percent, by volume, or value, if appropriate, of the total exports of the subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation. On September 20, 2006, the Department found that LM accounted for more than 50 percent of exports by volume of the subject merchandise from Latvia to the United States. See Memorandum to Susan H. Kuhbach, Director, from Damian Felton entitled, “Adequacy Determination in Antidumping Duty Sunset Review of Steel Concrete Reinforcing Bars from Latvia,” (September 20, 2006). In accordance with 19 CFR 351.218(e)(2)(i), the Department determined to conduct a full sunset review of this antidumping duty order.

On November 27, 2006, the Department published a notice of preliminary results of the full sunset review of the antidumping duty order on rebar from Latvia pursuant to section 751(c) of the Act. See Steel Concrete Reinforcing Bars from Latvia; Preliminary Results of the Sunset Review of Antidumping Duty Order, 71 FR 68544 (November 27, 2006) (“Preliminary Results”). We provided interested parties an opportunity to comment on our preliminary results. The Department received a case brief from LM on January 16, 2007, and a rebuttal brief from the domestic interested parties on January 22, 2007. A hearing was not held because none was requested. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the antidumping duty order would likely lead to the continuation or recurrence of dumping. In this case, the Department considered the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of rebar from Latvia for the period before, and the period after, the issuance of the antidumping duty order. In making these considerations, the Department finds the following indicative of the likely continuation or recurrence of dumping: whether dumping continued at any level above de minimis after the issuance of the antidumping duty order; whether the imports ceased after the issuance of the order; and whether dumping was eliminated and import volumes declined significantly after the issuance of the order. In addition, pursuant to section 752(c)(2) of the Act, the Department considered whether good cause to consider other price, cost, market or other economic factors was shown in this case.

The Department found that margins have decreased for LM during the course of the five-year sunset period, but were not zero or de minimis. The Department also found that imports from 2000 through 2005 were below pre-order levels, and ceased in September 2005. We address the comments of the interested parties below.

Comment 1: The margin of dumping from the original investigation is not representative of the magnitude of LM’s likely margin of dumping because U.S. price was based upon partial facts available and because normal value was based upon third country sales rather than Latvian home market sales.

LM’s Argument:

LM argues that the margin calculated in the investigation was based, in large part, upon adverse facts available (“AFA”). The Department resorted to AFA after finding that LM and its largest U.S. customer were affiliated parties, and based upon the U.S. company’s refusal to provide information concerning its sales of LM’s products. As AFA, the Department used the single lowest U.S. price for any sale not involving the affiliated importer, compared to the highest normal value for any product. Because the sales to the affiliated importer accounted for over 50 percent of LM’s sales in the investigation, LM now argues that the application of its margin from the investigation would result in margins that were more reflective of a U.S. price based on facts available than actual U.S. sales prices to unaffiliated U.S. customers.

LM contends that none of the factors that led the Department to rely on AFA continue to exist. As determined by the Department in each of the subsequent administrative reviews, LM is not controlled by any of its U.S. importers. Therefore, LM argues that the use of the investigation margin in the sunset review would be arbitrary and capricious, and has no support based upon the four administrative reviews of this order completed by the Department.

LM argues further that in the investigation, the Department determined that the home market was not viable because LM’s home market sales quantity of subject merchandise constituted less than five percent of LM’s U.S. sales quantity of subject merchandise. LM argues that in all

subsequent reviews, however, the Department determined that the home market was viable and based normal value on home market sales instead of third country sales. LM contends that the home market for rebar has grown in recent years and it is likely that if the Department were to determine LM's margin in a future proceeding, it would be calculated using home market sales. Thus, LM argues, using the margin from the initial investigation would hardly reflect the magnitude of LM's likely margin.

Given that neither the U.S. price nor the normal value would likely be calculated as it was in the investigation, LM argues that the investigation rate should not be reported as the rate likely to prevail if the order were revoked. Instead, LM recommends the use of a simple average of the margins calculated by the Department in the four complete administrative reviews.

Domestic Interested Parties' Rebuttal:

The domestic interested parties argue that the Department's use of the investigation margins in the Preliminary Results was proper because it relied on the mandate of the Statement of Administrative Action¹ accompanying the Uruguay Round Agreements Act and Department precedent. Domestic interested parties further argue that there are no unique facts in this case that would justify a departure from the Department's clear and consistent practice.

Domestic interested parties argue that the SAA allows for the Department to select a more recently calculated margin in the limited instance when "dumping margins have declined over the life of the order and imports have remained steady or increased." However, domestic interested parties argue that such facts are not present in this case and the Department correctly used the investigation margins.

Domestic interested parties argue that LM's arguments do not justify the use of a margin other than the one calculated in the investigation. Concerning LM's argument about adverse facts available, domestic interested parties cite to the Department's Policy Bulletin which states that "the Department normally will provide the company-specific margin from the investigation for each company regardless of whether the margin was calculated using a company's own information or based on best information available or facts available." See Policy Bulletin 98.3, 63 FR 18871 (April 16, 1998) ("Policy Bulletin"). Domestic interested parties also cite to the Ball Bearings and Parts Thereof from Japan and Singapore; Five-year Sunset Reviews of Antidumping Duty Orders; Final Results, 71 FR 26321 (May 4, 2006) ("Ball Bearings") and the accompanying Issues and Decision Memorandum at Comment 2 page 10 which states that, "In addition, the margin from the investigation that was based, in part, on facts available is not *per se* invalid. See Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan, 54 FR 19101 (May 3, 1989)."

¹ 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").

Therefore, domestic interested parties argue that Commerce should reject LM's argument concerning facts available, especially since LM admitted that it failed to provide requisite information requested by the Department in the investigation. Further, domestic interested parties argue that the Department does not disregard a margin that is based, in part, on facts available simply because the respondent has become more cooperative during recent administrative review proceedings. Also, domestic interested parties argue that LM's affiliation with one of its customers in the investigation is no basis for the Department to change its practice of using the investigation margin in sunset proceedings. Finally, the domestic interested parties argue that the margin from the investigation is the only calculated margin that reflects the behavior of exporters without the discipline of an order in place. Therefore, domestic interested parties argue that the Department should reject LM's argument and continue to use the margin from the investigation.

Domestic interested parties also object to LM's suggestion that the Department calculate a new margin using the simple average of the administrative review margins. Domestic interested parties cite to the SAA which states that "{o}nly under the most extraordinary circumstances should Commerce rely on dumping margins or net countervailable subsidies other than those it calculated and published in a prior determination." See SAA at 891. Domestic interested parties argue that LM has not shown that it meets the threshold of "most extraordinary circumstances," especially in light of the fact that the Department did not recalculate a margin in Uranium from the Russian Federation when Russia argued that its status had changed from a non-market economy to a market economy. See Final Results of Five-Year Sunset Review of Suspended Antidumping Duty Investigation on Uranium From the Russian Federation, 71 FR 32517 (June 6, 2006) ("Uranium from the Russian Federation") and accompanying Issues and Decision Memorandum at Issue 3 page 22.

Department Position:

As we stated in the Preliminary Results, the Department does not agree with LM's argument that its lower antidumping margins in recent administrative reviews are more reflective of its pricing practices, or that the investigation antidumping margin is unusable because it was calculated using partial facts available. There is no basis to reject margins we calculated in the investigation because of subsequent changes in methodology because such changes do not invalidate margins calculated under a prior methodology. See Final Results of Expedited Sunset Reviews: Antifriction Bearings From Japan, 64 FR 60275, 60279 (November 4, 1999).

Further, mechanisms are in place to ensure that the information used as AFA is probative. The Department is required to corroborate secondary information used to make an adverse inference. "Corroborate means that {the Department} will satisfy {itself} that the secondary information to be used has probative value." See SAA at 870. Further, the fact that the home market was not viable in the investigation does not negate the validity of LM's investigation rate. If dumping margins have declined over the life of an order and imports have remained steady or increased, the Department may conclude that exporters are likely to continue dumping at the lower margins found in a more recent review. However, this is not the case here. LM's administrative review

margins have been lower than the investigation margin, but imports have decreased significantly, and ceased as of September 2005. The Department's practice is to use the margin from the investigation because it is the only margin that reflects the behavior of an exporter or producer without the discipline of an order in place. Therefore, for these final results, we will continue to use the margin from the investigation for LM.

Comment 2: LM's cessation of exports of the subject merchandise to the United States was not related to the margins of dumping determined by the Department.

LM's Argument:

LM argues that the Department's assumption that the antidumping duty margin was the sole reason that LM's exports to the United States declined after the imposition of the order is incorrect. LM notes that by the completion of the first administrative review, LM had established a margin of under one percent with the result that the antidumping duty order was no longer an impediment to LM's exports to the United States. LM claims that the value of its exports to the United States in 2004 more than doubled over 2003. LM also argues that even though its margin rose to 3.01 percent in the second administrative review, the margin remained in the low single digits and did not impede LM's exports to the United States. Finally, LM notes that its exports to the United States ceased in 2005. Because LM's margin was so low, LM contends that conditions of competition within the steel market contributed to the decline in, and end to, exports to the United States.

LM argues that two macro-economic factors caused the cessation of exports to the United States. First, according to LM, Latvia's admission to the European Union gave it unfettered access to its primary and traditional export markets in Central and Western Europe. LM argues that as sales to Europe increased, sales to the United States declined because of production capacity constraints at its single plant. Second, LM claims that the cessation of exports to the United States is also attributable to changes in the U.S. dollar exchange rate. LM argues that the steep decline in the dollar's value in comparison with the Euro and the Latvian lat caused LM's export sales to the United States (denominated in U.S. dollars) to generate smaller returns when they are converted to Latvian lats. LM concludes by stating that these macro-economic factors caused the cessation of exports to the United States, and not LM's single-digit antidumping margin.

Domestic Interested Parties' Rebuttal:

Domestic interested parties argue that the Department should disregard LM's attempts to explain why its exports to the United States have declined because they are irrelevant. Domestic interested parties argue that there has been an antidumping duty order in place throughout the period of review and the only calculated margin that reflects the behavior of LM without the discipline of an order in place is the margin calculated in the investigation. Further, domestic interested parties argue that only where imports increase as margins decline is the Department authorized to exercise its discretion to use a margin other than the investigation margin. See SAA at 890-91.

Department Position:

The Department agrees with the domestic interested parties. Whether macro-economic factors impacted LM's sales and pricing strategies to decrease sales to the United States is irrelevant. We believe that LM's macro-economic factors as the cause of the cessation of imports are not sufficient to overcome the highly probative nature of the existence of dumping margins above de minimis over the second, third, and fourth administrative reviews. Subsequently, consistent with the SAA, we may use a more recent margin only when exports have remained steady or increased.

Final Results of Review

We determine that revocation of the antidumping duty order on steel concrete reinforcing bars from Latvia 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)
Joint Stock Company Liepajas Metalurgs	17.21
All Others	17.21

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 _____

David M. Spooner
Assistant Secretary
for Import Administration

Date