69 FR 67309, November 17, 2004

A-201-822
Sunset Review
Public Document

MEMORANDUM TO: Jeffrey A. May
Acting Assistant Secretary
for Import Administration

FROM: Ronald K. Lortenzen
Acting Director
Office of Policy

SUBJECT: Issues and Decision Memorandum for the Preliminary Results of the Full Sunset Review of Stainless Steel and Sheet Strip in Coils from Mexico

Summary:

We have analyzed the substantive responses and rebuttal comments of interested parties in the full sunset review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico and 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 for we received comments and rebuttal comments from parties:

1. Likelihood of continuation or recurrence of dumping
   A. Weighted-average dumping margin
   B. Volume of imports
   C. Other factors

2. Magnitude of the margin likely to prevail
   A. Margins from the investigation

History of the Order:

The Department of Commerce (the "Department"), published in the Federal Register its final results of sales at less than fair value ("LTFV") on stainless steel sheet and strip in coils ("SSSS") from Mexico. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Mexico, 64 FR 30790 (June 8, 1999) ("Final Determination"). In the Final Determination the Department calculated a weighted-average dumping margin of 30.86 percent for Mexinox S.A. de C.V. ("Mexinox") and "All Others".
On July 27, 1999, the Department published the amended final determination of the antidumping duty order to reflect the amended rate for Mexinox and "All Others" from 30.86 percent to 30.85 percent.

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 Mexico, 64 FR 40560 (27 July 1999). The Department has completed three administrative reviews of this antidumping duty order.[1] The following is the history of margins as found in the final results of the three administrative reviews:

First Review as amended: Period of Review - January 4, 1999 through June 30, 2000

Manufacturer/Exporter/Producer	Margin (percent)
Mexinox	2.28

Second Review: Period of Review - July 1, 2000 through June 30, 2001.

Manufacturer/Exporter/Producer	Margin (percent)
Mexinox	6.15

Third Review: Period of Review - July 1, 2001 through June 30, 2002

Manufacturer/Exporter/Producer	Margin (percent)
Mexinox	7.43

On August 22, 2003, the Department initiated the fourth administrative review of the antidumping duty order. See Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 68 FR 50750 (August 22, 2003). Currently, this review is pending.

On July 26, 2002, the Department published final results of a changed circumstances review. In the final results of that review, the Department determined that ThyssenKrupp Mexinox S.A. de C.V. is the successor-in-interest to Mexinox S.A. de C.V., and that ThyssenKrupp Mexinox S.A. de C.V. should retain the deposit rate assigned to Mexinox S.A. de C.V. by the Department for all entries of the subject merchandise produced or exported by ThyssenKrupp Mexinox S.A. de C.V. See Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Changed Circumstances Antidumping Duty Administrative Review, 67 FR 48878 (July 26, 2002).

The Department made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response from interested parties. See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 69 FR 6259 (February 10, 2004).

[1] See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 67 FR 6490 (February 12, 2002), Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 68 FR 6889 (February 11, 2003), Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 69 FR 6259 (February 10, 2004).

Background:

On June 1, 2004, the Department published its notice of initiation of the first sunset review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico, in accordance with section 751(c) of the Tariff Act of 1930, as amended, ("the Act"). See Initiation of Five-Year ("Sunset") Reviews, 69 FR 30874 (June 1, 2004).

The Department received Notices of Intent to Participate on behalf of Allegheny Ludlum Corporation, North America Stainless, Nucor Corporation, Local 3303 United Auto Workers (formerly Butler Armco Independent Union), the United Steelworkers of America, AFL-CIO/CLC, and the Zanesville Armco Independent Organization, Inc. (collectively, "domestic interested parties"), within the applicable deadline specified in section 351.218(d)(1)(i) of the Department's regulations. Domestic interested parties claimed interested party status pursuant to sections 771(9)(C) and (D) of the Act. The Department received a complete substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in the Department's regulations under section 351.218(d)(3)(i). The Department received a complete substantive response from respondent interested parties, ThyssenKrupp Mexinox S.A. de C.V. ("Mexinox") and Mexinox USA, Inc. ("Mexinox USA"), (collectively, "respondent"), within the applicable deadline specified in section 351.218(d)(3)(i).

On July 2, 2004, the Department received a request from the domestic interested parties for an extension of the deadline for filing rebuttal comments to the substantive response. Pursuant to Section 351.302(b) of the Department's regulations, domestic and respondent parties were granted an extension to file rebuttal comments to the substantive responses until July 9, 2004. On July 9, 2004, the Department received rebuttal comments to the substantive response from the domestic interested parties and the respondent.

On September 27, 2004, the Department published a notice of extension of time limits for for its preliminary results of review until November 4, 2004.[2] Final results in the full sunset review of this antidumping duty order is scheduled for April 27, 2005.

Section 351.218(e)(1)(ii)(A) of the Department's regulations provides that the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where it receives complete substantive responses from respondent interested parties accounting on average for more than 50 percent, by volume, or value basis, if appropriate, of the total

[2] See Stainless Steel Sheet & Strip in Coils from Mexico; Extension of Time Limits for Preliminary and Final Results of Full ("Sunset") Review of Antidumping Duty Order, 69 FR 57673 (September 27, 2004).

exports of the subject merchandise to the United States over the five calender years preceding the year of publication of the notice of initiation. On July 21, 2004, the Department determined that Mexinox's response constituted an adequate response to the notice of initiation. In accordance with section 351.218(e)(2)(i) of the Department's regulations, the Department determined to conduct a full sunset review of this antidumping duty order. See Letter to Mr. Robert Carpenter, Director, Office of Investigations, International Trade Commission July 21, 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 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 ITC the magnitude of the margin of dumping likely to prevail if the antidumping duty order were terminated. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Parties' Responses

The domestic interested parties assert that revocation of the antidumping duty order on SSSS from Mexico would likely lead to continued dumping by foreign producers/exporters. See Domestic interested parties substantive response ("Domestic Response"), July 1, 2004, at 45.

In support of its assertion, domestic interested parties note the history of dumping margins on SSSS from Mexico with respect to Mexinox and its affiliate Mexinox USA. Domestic interested parties maintain that in the first administrative review, the Department found a 2.28 percent margin, in the second administrative review, 6.15 percent, and in the third administrative review, 7.43 percent. See Domestic Response, Exhibit 1 at 2. In addition, domestic interested parties contend that the imposition of the antidumping duty order on SSSS from Mexico had a significantly depressing impact on the volume of imports in mid-1999. See Domestic Response, Attachment 2. In its substantive response, domestic interested parties provided import statistics of U.S. imports on SSSS from Mexico. See Domestic Response, Attachment 2. Using the Harmonized Tariff Schedule item numbers from the scope of the order, domestic interested parties point to subject imports from Mexico that totaled 99,661 short tons in 1999, 90,860 short tons in 2000, 62,419 short tons in 2001, 62,636 short tons in 2002, and 82,828 short tons in 2003. Domestic interested parties stated that the history of the trends in Mexican margins compared to import volumes shows that Mexican producers rely on continued dumping to sustain its access to the U.S. market, and that increased margins have had a direct, dampening effect on subject imports. See Domestic Response at 54

Respondents states that revocation of this antidumping duty order on SSSS from Mexico would not have material effect on the price or volume of Mexinox's shipments of subject merchandise to the United States, nor would revocation affect the domestic industry in the United States. See Respondent's Response, July 1, 2004, at 5. Respondents argues that 1) Mexinox is an established member of the Specialty Steel Institute of North America, and its selling practices are consistent with U.S. competitors, 2) revocation of the antidumping duty order on SSSS from Mexico will not alter market conditions or incentives for Mexinox, and 3) Mexinox's margins of dumping that occurred under the order are extremely modest and have little or no commercial significance. See Respondent's Response at 5-6. Respondent provided a complete report of its annual export volumes, values, and market share to demonstrate that since the imposition of the antidumping duty order, Mexinox has increased or has maintained its pre-investigation export volume while maintaining or increasing market share and decreasing its dumping margins. See Respondent's Response at Exhibit 1. Respondent concludes that it has not been commercially affected by the existence of the antidumping duty order on SSSS.

Parties' Rebuttal Comments

Domestic interested parties argue that dumping margins would continue at 30.85 percent if the antidumping duty was revoked. See Domestic Rebuttal, July 9, 2004 at 2. Domestic interested parties assert that Mexinox [XXXX] its shipments to the United States over the part three years Id. Domestic interested parties claim that Mexinox's average import volumes, based on its substantive response, is [XXXX]. Id. Domestic interested parties maintain that [XXXX] of imports of SSSS from Mexinox explains the changes in dumping margins as a result of annual reviews, a decrease from 30.85 percent to 2.28 percent in the first administrative review. Id. Domestic interested parties argue that although Mexinox had high import volumes to the United States in 1999-2000, the Department has found continued dumping by Mexinox, i.e. in the second administrative review, Mexinox's dumping margin increased to 6.15 percent. Id. In the third administrative review Mexinox's dumping margin increased to 7.43 percent while its exports [XXXX]. Id. at 3. Therefore, domestic interested parties assert that the Department should find that revocation of this order would likely lead to continued dumping by Mexinox. Id.

Respondent argues that revocation of the order is not likely to lead to continued dumping and injury. See Respondent's Rebuttal, July 9, 2004 at 2. First, respondent states that it is undisputed that Mexican imports reached an all time peak during 1999 and remained at higher levels than pre-order volumes in 2000; respondent contends that this is not evidence of a "dampening" effect from the order. Id. at 3. Second, domestic interested parties based U.S. consumption and market share figures on publicly available information. Respondent argues that according to domestic interested parties, that data shows that U.S. consumption declined between 17 and 18 percent, generally due to poor economic conditions in the United States, and remained at depressed levels in 2002. In absolute terms, imports from Mexico declined in 2001-2002, although, U.S. consumption was substantially reduced in the same period, and as a result Mexinox's decline in market share during this period was extremely modest and transitory under the circumstances. Id. at 3. Respondent asserts that the Department places its primary emphasis on market share data, not absolute volumes. Id. at 4.

Department's Position:

Drawing on the guidance provided in 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) 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 & 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 the suspension agreement, as applicable; 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.

Here, the Department concludes that the revocation of this order on SSSS from Mexico is likely to lead to a continuation or recurrence of dumping. First, the Department examined the dumping margins determined in the investigation and in subsequent administrative reviews of this order. In the original investigation, the Department found that Mexinox, was selling SSSS at LTFV in the United States at levels greater than de minimis, specifically 30.85 percent. See Final Determination, 64 FR 30790. In each of the subsequent reviews, as shown above, the Department found dumping margins above de minimis levels, and even determined that Mexinox's margins of dumping were increasing in the second and third review when compared to the first administrative review.

With respect to import volumes, we examined statistics compiled from tariff and trade data from the Department, the U.S. Treasury, and the U.S. International Trade Commission, (collectively, "USITC Tariff and Trade DataWeb") and customs reports, and found that total import volumes of SSSS from Mexico import volumes have fluctuated over the life of this order. In 2000, 2001 and 2002, imports decreased compared to 1999 import volumes from Mexinox. Then, in 2003 import volumes of SSSS from Mexinox increased. Based on the record evidence, dumping was not eliminated after the issuance of the order. In fact, since the imposition of the order, dumping continued in the first, second, and third administrative review. Accordingly, because dumping continued even with the discipline of an order in place, the Department reasonably infers that revocation of this order on SSSS from Mexico is likely to lead to a continuation or recurrence of dumping.

2 Magnitude of Margins Likely to Prevail

Interested Parties Comments

Domestic interested parties state that applying the principles set forth in the SAA and the Policy Bulletin, the Department should rely upon the margins of dumping from the investigation as the dumping margins that are likely to prevail if the order is revoked. See Domestic Interested Partie's Response at 58.

Respondent party argues that in certain instances, the Department may report to the ITC a more recently calculated margin. See Respondent's Rebuttal at 7. Therefore, the Department should report a more recent dumping margin for Mexinox. First, respondent maintains that since the imposition of the order, Mexinox has dramatically slashed its dumping margin while maintaining its market share. See Respondent's Response at 8. Respondent points to the margins from the first review, 2.28 percent, compared to the margins from the investigation, 30.85 percent and note that in the Final Results of the Sunset Review on Aramid Fiber Formed of Poly Para-Phenaylene Terephtalamide from the Netherlands, 67 FR 65294, the Department considered it appropriate to report a more recent margin even though there was an initial slight decline and some later fluctuations in import volumes following the imposition of the order. Id. Here, Mexinox argues it experienced significant increases in shipments of subject merchandise and market share with a drastic decline in margins. Id. at 8.

Domestic interested parties disagree with respondent concerning the rate to report to the ITC and state that the 2.28 percent rate from the first administrative review should be rejected. Id. 4-5. The Domestic interested parties reiterate that the Department should select the rate from the original investigation for Mexinox given that dumping margins have increased in the last two administrative reviews, and average import volumes for the review period 2001-2003 have remained lower than pre-investigation levels. See Domestic Rebuttal, July 9, 2004 at 4. Domestic interested parties thus argue that under these facts no other appropriate circumstances exist for the Department to select a margin other than the rate from the original investigation. Id. at 4.

Respondent argues that the margin determined in the first review of 2.28 percent is the most probative of the margins of dumping likely to prevail if the order were revoked. See Respondent's Rebuttal at 10. Respondent notes that the Department normally considers the company's relative market share in determining whether import volumes remained steady or increased. Respondent claims that it has (1) fully satisfied the requirement for reporting a more recent margin, (2) margins have been drastically reduced and (3) in subsequent administrative reviews margins remain at less than a third of the original investigation margin. Id. Therefore, respondent reiterates that the 2.28 percent dumping margin established in the first administrative review is the most probative margin likely to prevail if the order is revoked. Id.

Department's Position

In a sunset review, the Department will normally 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 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 reflect the behavior of exporters without the discipline of the order in place. In certain instances, the Department may, in response to argument from an interested party, provide to the ITC a more recently calculated margin for a particular company where, for that particular company, dumping margins declined or dumping was eliminated after the issuance of the order, and import volumes remained steady or increased.

Here, Mexinox argued for a more recently calculated margin of 2.28 percent. However, since the issuance of the 2.28 percent margin in the first administrative review, Mexinox margins have been increasing. As discussed above, in the original investigation, the Department determined a margin of 30.85 percent. In the first administrative review the Department

determined that Mexinox was dumping at less than normal value at the rate of 2.28 percent. The dumping margin increased to 6.15 percent in the second review, and 7.43 percent in the third review.

Given the increase of dumping margins since the first administrative review of the antidumping duty order, the Department finds that the dumping rate from the first administrative review does not reflect the behavior of exporters without the discipline of the order in place. Therefore, consistent with the SAA at 890, and the House Report at 64, and the Policy Bulletin, the Department will report to the ITC the margin from the original investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.

Preliminary Results of Review

We preliminarily determine that revocation of the antidumping duty order on stainless steel sheet and strip in coils from Mexinox is likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/producer/exporter	Weighted-average margin (percent)
Mexinox	30.85
All Others	30.85

Based on our analysis of the substantive responses and rebuttal comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the preliminary results of review in the Federal Register.

Agree   _____X_____   Disagree   _________

ORIGINAL SIGNED

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Jeffrey A. May
Acting Assistant Secretary
  for Import Administration

November 4, 2004________
(Date)