

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

FROM: Ronald Lorentzen
Acting Director of Policy
for Import Administration

SUBJECT: Issues and Decision Memorandum of the Full Sunset Review on
Certain Stainless Steel Sheet and Strip in Coils from Mexico; Final
Results

Summary:

We have analyzed the case and rebuttal briefs of interested parties in the full sunset review of the antidumping duty order on certain stainless steel sheet and strip in coils (“SSSS”) from Mexico. We recommend that, for our full results, you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Based on our analysis of comments received, we have not made changes to our preliminary results. Below is the complete list of the issues in this full sunset review for which we received comments by domestic and respondent interested parties:

Background:

On November 17, 2004, the Department of Commerce (the “Department”) published in the Federal Register a notice of preliminary results of the full sunset review of the antidumping duty order on SSSS from Mexico, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Certain Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of the Sunset Review of Antidumping Duty Order, 69 FR 67309 (November 17, 2004) (“Preliminary Results”). In our preliminary results, we found that revocation of the order would likely result in continuation or recurrence of dumping with a margin of 30.85 percent for Mexinox S.A. de C.V. and “all others” the margin determined in the original investigation.

We invited parties to comment on our Preliminary Results. On January 3, 2005, the respondent, ThyssenKrupp Mexinox S.A. de C.V. and Mexinox USA, Inc. (collectively “Mexinox”), submitted its case brief in response to the Department’s preliminary results. On January 7, 2005, Allegheny Ludlum Corporation, North American Stainless, Local 3303 United Auto Workers, the United Steelworkers of America, AFL-CIO/CLC, and the Zanesville Armco Independent Organization, Inc., (collectively

“domestic interested parties”) submitted rebuttal comments. No hearing was requested by parties.

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 International Trade Commission (“ITC”) the magnitude of the margin of dumping likely to prevail if the antidumping duty order were revoked.

Below we address interested party comments:

1. Magnitude of the margin likely to prevail

Interested Parties Comments

Comment 1

Respondent interested party, Mexinox, disagrees with the Department’s preliminary results of review. Mexinox asserts that it is entitled to an updated margin. See Mexinox’s Case Brief, January 3, 2005 at 1. Mexinox maintains that it has lowered its margins below the margins determined in the investigation. Id. In addition, Mexinox notes that the Department is required under the statute, its Sunset Policy Bulletin, and administrative precedent, to instead calculate an updated margin based upon Mexinox’s most recent administrative review results.

Domestic interested parties, in rebuttal to Mexinox’s case brief, asserts that an updated margin is not supported by the record and is inconsistent with the statute and the Department’s policy. See Domestic Interested Parties, Rebuttal Brief, January 7, 2005, at 2. Domestic interested parties state that Mexinox is incorrect in its assertion that both its history of dumping following the order and its volumes of post-order imports support assigning an updated margin. Id. Following the imposition of the order, and the initial decline of the margin, margins subsequently rose significantly. Id. at 2. Although the margins calculated since the imposition of the order are lower than the final determination margin, dumping margins have increased since the first administrative review. Id.

Department’s Position

The Department normally will provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order is revoked and will select a margin from the investigation because that is the only

calculated rate that reflects the behavior of exporters without the discipline of an order in place. The Department may report a more recently calculated margin under certain circumstances. For example, reporting a more recently calculated margin may be appropriate where dumping margins declined after the issuance of the order and import volumes remained steady or increased, or where dumping margins increased after the issuance of the order and import volumes increased. In the preliminary results of this sunset review, we found that dumping continued in the first, second, and third administrative reviews and that import volumes were below pre-order levels. Therefore, reporting a more recently calculated margin is not appropriate.

Comment 2

Mexinox argues that it has increased its import volume and market share since the original investigation, whether the point of comparison is the post-order period from 1999 through 2003 (as compared to the market share held in 1997 and 1998) or the post-investigation period of 1998 through 2003 (as compared to the market share held in 1997). See Mexinox's Case Brief, January 3, 2005 at 7. In either case, Mexinox notes that while there was some fluctuation in the market share held by Mexinox over the subsequent review periods, the overall market share either stayed the same or increased. Id. Mexinox also notes that domestic interested parties do not seriously contest these figures but instead provide alternative measures of apparent consumption or market shares arguing on the base of absolute volumes to show that Mexinox's participation in the market has been adversely affected by the order. This, Mexinox asserts, is factually and legally incorrect. Id. Mexinox claims that absolute volumes did increase absolutely relative to 1997 levels in four of the six subsequent years (i.e., in 1998, 1999, 2000, and 2003). Compared to the average over 1997 and 1998, Mexinox's absolute volumes were equal to or higher in three of the five years (i.e., 1999, 2000, and 2003). Id. Mexinox maintains that the assertion by domestic interested parties that absolute import volumes have been lowered or dampened since the order is incorrect. Id. 7-8.

Domestic interested parties argue that Mexinox's own data of import volumes do not support a finding that imports remained steady or increased after the imposition of the order. See Domestic Interested Parties, Rebuttal Brief, January 7, 2005, at 3. After 1998's volume of [] short tons, imports [] in 1999, but then [] in 2000, 2001, 2002, and 2003. Id. Imports in 2001, 2002 and 2003 were [] the 1998 figure. Id. Domestic interested parties note Mexinox's use of a two-year pre-order benchmark calculated as the average of annual figure, for the period 1997-1998, i.e. [] short tons, and assert that even this random benchmark does not support Mexinox's argument. Id. Imports in 2001, 2002, and 2003 were [] the two-year average that Mexinox selected. Id. Similarly, following the imposition of the order, import volumes in each two year period [] the pre-order (1997-1998) two year average. Id. at 4. Domestic interested parties maintain that Mexinox's comment that relative market share and not absolute volumes are relevant to the Department's determination contradicts the Department's policy, which is to analyze whether import volumes remained steady or increased in relation to relative market share. Domestic interested parties assert that the argument that

the Department's practice of taking into account relative market share in its analysis can be twisted to preclude consideration of absolute volume, should be rejected. Id. They note that the facts do not support Mexinox's desired conclusion. Id. Domestic interested parties maintain that measured against any of the proposed benchmarks, relative market share was [] during several of the post-order years. Id. In sum, domestic interested parties assert that the record shows that dumping margins rose steadily after the order and that import volumes did not increase or remain steady. Id. For these reasons, domestic interested parties assert that neither criterion for relying on a more recent margin has been satisfied. Id.

Department's Position

In determining whether imports have remained steady or increased in a full sunset review, the Department considers a company's relative market share. The effect of the discipline of the order may force subject producers either to increase their prices or to significantly reduce the volume exported to the United States. Here, however, official import statistics of SSSS from Mexico and Mexinox's own data indicate that import volumes have decreased since 1999, and were below pre-order (1998) volumes in 2001, 2002, and 2003. Further, Mexinox's own data shows that its relative market share was below pre-order (1998) levels in 2000, 2001 and 2003.

Comment 3

Mexinox asserts that the margin of 2.28 percent calculated in the first administrative review, is the most probative of the more recently calculated because during that period its margin of dumping was at its lowest while its export volumes and market share were at their highest. Id. at 10. However, should the Department not apply the rate from the first administrative review, 2.28 percent, Mexinox asserts that the Department should determine a margin based on the results of Mexinox's most recent administrative review, 5.97 percent based on the preliminary results of the fourth administrative review. Id. at 10-11. Mexinox maintains that the margin from the fourth review also coincides with a relatively high market share and clearly probative of margins likely to prevail if the order is revoked.

Domestic interested parties argue that the margin from the original investigation is probative of exporter's behavior absent the discipline of the order because neither criterion for relying on a more recent margin has been satisfied. Id. at 4.

Department's Position

Although Mexinox's margins of dumping declined in the first administrative review, we continue to find an upward trend of dumping for Mexinox in the second and third review, coupled with a decline of import volumes over a period of time since the issuance of the order. Following the first administrative review of the order, dumping margins increased to 6.15 percent in the second administrative review,

and further to 7.43 percent in the third administrative review.¹ Because Mexinox continues dumping with the discipline of the order, at reduced import volumes, we find that Mexinox’s rate and “all others” rate from the original investigation is the appropriate rate to report to the ITC. Therefore, for Mexinox and “all others” the Department will provide to the ITC the rate from the original investigation because it is the only calculated margin that reflects the behavior of exporters without “Final Results of Review” section of this decision memo.

Final Results of Review

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

Manufacturer/Exporter/Producer	Margin (percent)
Mexinox	30.85
All Others	30.85

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. In these recommendations are accepted, we will publish Final Results of Review in the Federal Register.

Agree _____

Disagree _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

(Date)

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). The fourth administrative review is ongoing.