

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 Full Sunset Review of
the Antidumping Duty Order on Oil Country Tubular Goods
("OCTG") from Mexico; Final Results

Summary:

We have analyzed the case briefs submitted on behalf of Tubos de Acero de Mexico, S.A. ("TAMSA") and Hylsa, S.A. de C.V. ("Hylsa"), and the rebuttal briefs submitted on behalf of United States Steel Corporation ("U.S. Steel") and IPSCO Tubulars Inc., Lone Star Steel Company, Koppel Steel (NS Group), Newport Steel (NS Group) and V&M Star LP (collectively "IPSCO"), petitioners, in the full sunset review of the antidumping duty order on OCTG from Mexico. 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 full sunset review for which we received comments by parties:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margin likely to prevail

Background:

The Department of Commerce ("the Department") published the preliminary results of this sunset review on December 26, 2006. See Oil Country Tubular Goods from Mexico; Preliminary Results of the Sunset Review of Antidumping Duty Order, 71 FR 77372 (December 26, 2006) and accompanying Issues and Decision Memorandum ("Preliminary Results"). In the Preliminary Results, the Department found that revocation of the order would likely result in continuation or recurrence of dumping with net margins of 21.70 percent for TAMSA and "all others," and 0.62 percent for Hylsa.

On February 14, 2007, within the deadline specified in 19 CFR § 351.309(c)(1)(i), the Department received case briefs on behalf of both TAMSA and Hylsa. On February 20, 2007, the Department rejected the case brief on behalf of Hylsa under 19 CFR § 351.302(d), as the Department determined that the brief contained new factual information submitted subsequent to the deadline for new factual information as proscribed in 19 CFR § 351.301(b)(3). The

Department requested that Hylsa re-file the case brief no later than February 22, 2007, and extended the deadline for rebuttal briefs to February 28, 2007. On February 20, 2007, the Department received a rebuttal brief on behalf of petitioner IPSCO. On February 22, 2007, the Department received the corrected case brief on behalf of Hylsa. On February 28, the Department received rebuttal briefs on behalf of petitioner U.S. Steel.

Although a hearing was requested by petitioner IPSCO, the request was subsequently withdrawn and no hearing was held in this full sunset review.

Discussion of the Issues:

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c)(1) of the Act provides that, in making this determination, 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 order. Section 752(c)(2) of the Act provides that, if good cause is shown, the Department will consider such other factors as it deems relevant in making this determination. 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 order were revoked.

Below we address the comments and rebuttals of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

A) The First Sunset Review, the World Trade Organization (“WTO”) and the North American Free Trade Agreement (“NAFTA”)

In its case brief of February 14, 2007, TAMSA challenges several aspects of this sunset review. TAMSA’s primary argument is that the initiation and conduct of this review, and in fact the continuation of the antidumping order, “was and remains illegal.” See TAMSA’s case brief at 1. TAMSA bases their claim on two sources. First, TAMSA argues that the WTO’s Dispute Settlement Body (“DSB”) concluded that the first sunset review was inconsistent with the United States’ obligations under Article 11.3 of the Agreement on Implementation of Article VI of the GATT (AD Agreement). TAMSA argues that the order should be revoked on this basis.

In response to the DSB’s adopted conclusions, the Department conducted an analysis pursuant to Section 129(b) of the Uruguay Rounds Agreement Act (“URAA”). TAMSA acknowledges that the Department conducted proceedings pursuant to Section 129, and that the United States informed the WTO that this new decision brought the country into compliance with its obligations, but argues that the Section 129 analysis is “now being contested by the Government of Mexico.” It thus speculates that “it seems almost certain” that the Section 129 analysis “will be found to be inconsistent” with the AD Agreement. On this basis, TAMSA argues that the Department should determine the antidumping duty order must be revoked and this sunset review terminated. *Id.* at 2-3

Furthermore, TAMSA argues that a NAFTA dispute resolution panel found the first

sunset review determination to be in error in four separate remands. Although the Department's most recent remand filed in the NAFTA litigation covering the first sunset review continued to find that dumping is likely to continue or recur, TAMSA argues that the Department "has never made a legally sufficient determination." Thus, on this basis as well, TAMSA advocates the revocation of the antidumping duty order and the termination of this sunset review. *Id.*

In its rebuttal brief of February 20, 2007, petitioner IPSCO argues that while the present sunset review is not the proper forum for arguing the legal merits of the first sunset review, the Department nevertheless acted in accordance with U.S. law during the first sunset review. *See* IPSCO's rebuttal brief at 2. IPSCO argues that the NAFTA panel and WTO decisions cited by TAMSA do not indicate that the Department's decision in the first sunset review was illegal. Rather, argues IPSCO, in the case of the NAFTA panel the remands were for clarification, and the Department complied with the requests. *Id.* Similarly, IPSCO states that the Department complied with the WTO panel decision instructions to consider the "other factors" raised by TAMSA in the first sunset review. *Id.* Therefore, IPSCO argues that the Department's conduct of this second sunset review is proper and consistent with U.S. law and U.S. international obligations.

Petitioner U.S. Steel submitted two separate rebuttal briefs to the Department on February 28, 2007, corresponding to the case briefs from TAMSA and Hylsa, respectively. In its rebuttal brief regarding TAMSA, U.S. Steel states that the WTO and NAFTA panel decisions regarding the first sunset review in no way show that continuation of the order beyond August 2000 was "illegal." Rather, U.S. Steel contends that the NAFTA panel decisions "simply remanded the matter to the Department, instructing the Department to provide additional analysis and findings." *See* rebuttal brief regarding TAMSA at 2. Similarly, U.S. Steel argues that the United States has fully complied with its obligations under the AD Agreement, as directed by the DSB. *Id.* at 3. Therefore, according to U.S. Steel, there is no basis for TAMSA's claim that either the first sunset review, or this current, sunset review is "illegal." Instead, U.S. Steel states that the Department acted fully in accordance with its statute and regulations. *Id.*

B) Offsetting Dumped Sales by Non-dumped Transactions and the WTO

With respect to the dumping margins above de minimis for Hylsa, TAMSA argues that the Department's calculations were based on calculations that did not offset dumped sales by non-dumped transactions. Citing a recent WTO Appellate Body decision involving Japan,¹ TAMSA claims that the Department cannot lawfully rely on dumping margins in sunset reviews that do not offset for non-dumped sales, and that in refusing to offset for these sales in the current review, the United States is not acting consistent with its international obligations. *See* TAMSA's case brief at 9 (referencing the refusal to offset for non-dumped sales as "zeroing"). Furthermore, citing to the Department's recent decision to modify its calculations in less than fair value investigations, TAMSA asserts that because the United States has indicated a willingness to change its margin calculation methodology "in response to recent WTO decisions," the Department should therefore also refuse to offset for non-dumped transactions in sunset reviews as well. Accordingly, TAMSA states that the Department should not continue to rely on Hylsa's

¹ Report of the Appellate Body, *United States - Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R (Jan. 9, 2007) (Japan-Zeroing).

margins in making a likelihood determination, or, at a minimum, describe why these margins are sufficient evidence to conclude that dumping is likely to continue or recur when the original investigation margin was aberrational. Id.

In its brief of February 22, 2007, Hylsa argues that the Department should not rely on Hylsa's margins, as they were calculated without offsetting for non-dumped sales. See Hylsa's brief at 2. Citing Japan-Zeroing, Hylsa also asserts that the Department cannot rely on dumping margins using this methodology in sunset reviews. Id. at 2 - 3. Hylsa states that if the Department had offset dumped sales by non-dumped sales in its calculations, the margins in the two reviews cited by the Department would not exist. Id. at 2. Therefore, Hylsa argues that the Department should revise its determination "to ensure that it does not rely on above de minimis dumping margins for Hylsa that were found only because they were improperly calculated using zeroing." Id. at 3.

In its rebuttal brief, on this point, IPSCO cites the Department's statement in the preliminary determination that "neither the panel report nor the Appellate Body report has any direct effect on U.S. law." See IPSCO's rebuttal brief at 7. Therefore, according to IPSCO, TAMSA and Hylsa's arguments are baseless, because the conclusions of the WTO Appellate Body with regard to the use of non-dumped transactions in the Department's calculations have no direct effect on U.S. law, and the Department has not otherwise determined through Section 129 or Section 123 proceedings that a change in its methodology with regard to sunset reviews is warranted. Id.

U.S. Steel argues in its rebuttal briefs that the U.S. antidumping statute (specifically 19 U.S.C. § 1677f-1(d)) actually requires the Department to only compare dumped (and not non-dumped) transactions. U.S. Steel notes that as a pure mathematical exercise, the comparison methodologies for investigations between U.S. prices and normal values (i.e. weighted average-to-average and weighted average-to-transaction comparisons), differ as long as the Department does not include non-dumped transactions. Should the Department include non-dumped transactions in its calculations, U.S. Steel states that there would be no difference, and therefore the statute would be impermissibly interpreted in a manner that would make its terms meaningless. See rebuttal brief regarding TAMSA at 11-12, rebuttal brief regarding Hylsa at 2-3. U.S. Steel argues that the U.S. government recognizes the statutory requirement, and has argued as such before the WTO. See rebuttal brief regarding TAMSA at 13-14, rebuttal brief regarding Hylsa at 3-4. U.S. Steel therefore asserts that the U.S. Congress intended for the Department to only compare dumped transactions to normal value. See rebuttal brief regarding TAMSA at 14, rebuttal brief regarding Hylsa at 4. U.S. Steel further argues that its analysis of the differences in 19 U.S.C. § 1677f-1(d) resolves the 'close question' identified in Timken Co. v. United States, 354 F.3d 1334, 1341 (Fed. Cir. 2004). Id.

U.S. Steel also asserts that TAMSA's and Hylsa's reliance on the Appellate Body's analysis in Japan-Zeroing is without merit because WTO Appellate Body decisions have no binding effect under U.S. law and are owed no deference. Accordingly, U.S. Steel argues that the conduct of this review is by no means illegal, because as a matter of law, the Department's calculations are fully consistent with the statute and its practice. Furthermore, U.S. Steel states that the United States has not indicated the means by which it will implement the decision. As any such implementation must conform to the statute and include consultations with the U.S.

Congress, and because the process has not yet even begun, U.S. Steel argues that the Appellate Body's conclusions cannot have any impact on the determination in this sunset review. See rebuttal brief regarding TAMSA at 17, rebuttal brief regarding Hylsa at 8.

Finally, with respect to the Department's recent decision to no longer offset dumped sales with non-dumped sales in investigations, U.S. Steel argues that this decision only applies "to investigations involving average-to-average comparisons and would not apply to any other types of investigations or any other segments of antidumping proceedings." Thus, U.S. Steel argues that the implementation of this change in methodology does not, and should not, extend to sunset reviews. Id.

C) TAMSA's Cessation of Exports and Hylsa's Dumping Margin

TAMSA argues in its case brief that, should the Department continue with this review, it should find that the two bases for the preliminary determination - the existence of dumping margins above de minimis by Hylsa and the cessation of exports by TAMSA - are not sufficient to support a determination that dumping would be likely to continue or recur. See TAMSA's case brief at 4.

With respect to TAMSA's cessation of exports, TAMSA argues that its lack of exports to the United States should not be considered as probative that dumping will be likely to recur because the facts of the case do not fit within the framework of the SAA. See Statement of Administrative Action, H. Doc. 316, Vol. 1., 103d Cong. (1994) ("SAA") at 890. TAMSA argues that the reasoning within the SAA for determining that the cessation of shipments is highly probative that dumping will continue or recur "depends on the assumption . . . that the issuance of the order can be considered to be interpreted to mean that the company under investigation engages in dumping in the normal course of its business operations." See TAMSA's case brief at 5. TAMSA argues that such an assumption does not apply to its exports as the conditions leading to the finding of dumping in the original investigation, where TAMSA was the sole company investigated, were "aberrational, temporary in nature, and unlikely to recur."² Id. at 6.

Specifically, TAMSA argues that due to its possession of long-term dollar-denominated currency during the investigation, at the time when a significant peso devaluation occurred, TAMSA experienced a dramatic increase in its financial expense ratio. As a result, TAMSA alleges, the cost of production rose, and the sales in the comparison market were all found to have been sold at prices below the cost of production, resulting in the margin calculated in the investigation. Id. According to TAMSA, since the basis for calculating the margin in the investigation was aberrational and not reflective of the company's normal business practices, "the existence of the dumping margin and the export behavior of the company can no longer be considered to be 'highly probative' of what is 'likely' to occur upon revocation." Id. at 7.

In addition, TAMSA states that it has undergone three administrative reviews during the history of the order and has not been found to be dumping. Therefore, according to TAMSA, the SAA's use of a volume criterion is not applicable, since the criterion is premised on the

² TAMSA quotes the Department in the Fourth Redetermination on Remand, Oil Country Tubular Goods from Mexico: Sunset Review, USA-MEX-2001-1904-03, February 6, 2007 ("Fourth Redetermination"), at 5.

proposition that “exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping.” *Id.* (quoting the SAA at 890). As TAMSA “reentered the market without dumping,” TAMSA argues that the probative value of the zero margins is more than sufficient to overcome the volume presumption in the SAA. *Id.*

Finally, TAMSA notes that there was not a complete cessation of all imports of OCTG from Mexico. In fact, while TAMSA did not export OCTG, Hylsa continued to export OCTG to the United States during the sunset review period. TAMSA argues that “the justification in the SAA for considering a cessation of imports to be highly probative of likely dumping - companies that dump under normal conditions and then stop exporting after the imposition of the antidumping order - has no application to the facts of this second sunset review.” *Id.* at 8.

In its rebuttal brief, IPSCO takes issue with TAMSA’s assertion that the SAA language regarding cessation of exports can be interpreted to mean that the company under investigation engages in dumping in the normal course of operations. *See* IPSCO’s rebuttal brief at 3. IPSCO argues that TAMSA has created this argument “out of whole cloth” and that the SAA does not address whether a company engages in dumping in the normal course of operations. *Id.* Instead, IPSCO argues, the SAA simply assumes that exporters who cease shipping merchandise to the United States after the imposition of an order could not sell in the United States without dumping. *Id.* IPSCO claims that the distinction is important in analyzing TAMSA’s arguments, where TAMSA indicated that it does not normally dump and that the margins found in the investigation were the result of financial expenses that were temporary and aberrational. *Id.* at 3-4.

With respect to TAMSA’s financial expenses during the investigation, IPSCO notes that the dumping determination “was fully in accord with U.S. law.” *Id.* at 4. In addition, IPSCO states that TAMSA’s financial expense ratio “cannot reasonably be extracted from the context of the investigation and applied to subsequent periods to demonstrate that dumping would not occur in such other periods, without considering all of the factors that accounted for the expense.” *Id.* IPSCO argues that interest expenses can be influenced by a number of issues. Regardless, IPSCO contends, even if the conditions that created the financial expense ratio during the investigation do not recur, other changes may affect other portions of the dumping calculation. *Id.* Because of the numerous factors, the only accurate manner of determining dumping, according to IPSCO, is to consider the prices and expenses in a given period of examination in order to establish the presumption of whether a company does or does not dump, based on the calculated margin and the volume of trade. *Id.* at 4-5.

With respect to the zero margins cited by TAMSA in previous reviews, IPSCO notes that TAMSA “fails to state that it did not ship in commercial quantities in any of these three review periods.” *Id.* at 5. Furthermore, IPSCO notes that TAMSA ceased shipments of OCTG completely during the second sunset review period. *Id.* Therefore, IPSCO asserts, “the presumption of future dumping arising from the finding of dumping in the LTFV investigation continues unrebutted to date.” *Id.* As TAMSA has not rebutted this presumption (*i.e.* by shipping in commercial quantities without dumping), IPSCO argues, there is sufficient evidence for a determination that dumping is likely to continue or recur. *Id.*

With respect to Hylsa, IPSCO states that the SAA provides specific guidance with respect to margins and a likelihood determination. Specifically, the existence of margins above de

minimis after the imposition of an order is probative of the likelihood of continuation or recurrence of dumping. Id. at 6. Given that the Department found margins above de minimis for Hylsa in two separate administrative reviews, IPSCO argues that the margins support the Department's preliminary determination in this sunset review. Id. at 7.

In its rebuttal brief regarding TAMSA, U.S. Steel argues that the Department has already examined and rejected all of TAMSA's arguments on these points in the context of the first sunset review. U.S. Steel states that while these "other factors" were temporary in nature, TAMSA failed to ship after the end of 1998 when all long-term debts and the high financial expenses extant during the investigation were eliminated. See rebuttal brief regarding TAMSA at 5-6. U.S. Steel states that TAMSA "does not even attempt to rebut or explain the fact that the company's shipments did not rebound after the resolution of its high financial expense ratio." Id. at 6. That TAMSA has not offered any explanations for the lack of shipments after the resolution of the "other factors," according to U.S. Steel, provides the Department with sufficient reason to conclude that TAMSA must dump in order to ship OCTG to the United States. Therefore, U.S. Steel argues that the Department should reject TAMSA's "other factors" as an explanation why dumping is not likely to continue or recur. Id.

U.S. Steel also disputes TAMSA's assertion that Hylsa's shipments during the second sunset review period, as well as TAMSA's shipments during the first sunset review period, indicate that there was no cessation of exports as defined by the SAA. Citing the Department's Sunset Policy Bulletin in support of its claim, U.S. Steel states that the Department has already determined³ that a substantial decline in post-order volumes to a level below commercially meaningful participation in the market alone establishes a presumption that dumping is likely to continue or recur. Id. at 7. Furthermore, U.S. Steel argues that the Department found the zero margins obtained by TAMSA in the first sunset review period have minimal probative value and no predictive value, consistent with the Department's findings in the Fourth Redetermination. Id. at 8. U.S. Steel also notes that the Department previously found that TAMSA's shipments during the first sunset review period were not in commercial quantities, and argues that the NAFTA Panel reviewing the first sunset review upheld that conclusion. Id.

U.S. Steel further states that, regardless of the events that occurred during the first sunset review, TAMSA clearly ceased exporting OCTG to the United States completely during the second sunset review period. Id. at 9. According to U.S. Steel, TAMSA's lack of OCTG exports during the second review period "reinforces the likelihood finding arising out of the first five-year review period" and supports the Department's preliminary determination in this sunset review. Id.

Finally, with respect to exports by Hylsa during the second sunset review, U.S. Steel rejects the notion that these shipments undermine the predictive value of the overall decline in Mexican OCTG exports. U.S. Steel argues that Hylsa's shipments "are probative of nothing more than the company's likelihood to continue dumping in the future" if the order were revoked. Id.

³ U.S. Steel cites to the Department's determination in the Fourth Redetermination.

Department's Position:

The Department continues to find that the evidence on the record indicates that dumping of OCTG from Mexico is likely to continue or recur absent the discipline of the antidumping duty order. The Department finds that both the lack of shipments by TAMSA during the sunset review period and the dumping margins found for Hylsa, consistent with the language of the statute and reflective of our practice as discussed in the statute and the SAA, are highly probative that dumping is likely to continue or recur. Additionally, after thoroughly reviewing the evidence on the record, the Department does not believe that the "other factors" raised by respondents overcome the likelihood presumption based on cessation of imports and existence of margins.

A) The First Sunset Review and the Findings of the WTO and NAFTA Panels

In response to TAMSA's arguments with respect to the first sunset review, there is nothing on the record that supports TAMSA's claim that WTO and NAFTA Panels have concluded that the antidumping duty order should be revoked and this review terminated. In light of the WTO's expressed concerns, pursuant to section 129 of the URAA, the Department conducted a new analysis of the first sunset review and concluded that "revocation of the order would be likely to lead to continuation or recurrence of dumping." Memorandum from Stephen J. Claeys to David M. Spooner, re: Section 129 Determination: Final Results of Sunset Review, Oil Country Tubular Goods from Mexico, dated June 9, 2006 (available at www.trade.gov).

Furthermore, in the NAFTA litigation involving the first sunset review, the Department also concluded in the most recently filed remand redetermination that "revocation of the Order would likely lead to a continuation or recurrence of dumping." Fourth Remand Redetermination at 1. In addition, it is also important to note that those proceedings are not yet complete, as the NAFTA Panel has not yet ruled on the most recent remand redetermination, and there is always the possibility that after the Panel concludes its proceedings, an interested party may decide to appeal the result to an Extraordinary Challenge Committee. Thus, there is no final determination in that litigation, and the Department is not legally bound at this time by any of the NAFTA Panel's conclusions until the results of the litigation are final and conclusive. Accordingly, there is no support for the claim that either of these dispute bodies, the WTO Appellate Body or the NAFTA panel, have determined that the first sunset review violates the United States' international obligations or is "illegal," or that revocation or termination of this review is warranted.

B) Offsetting Dumped Sales by Nondumped Transactions and the WTO

In response to TAMSA and Hylsa's arguments relating to the offsetting of dumped sales by non-dumped sales, the Department has only determined that it will provide these effects in this manner in less than fair value investigations using average-to-average comparisons. See Notice of Determination Under Section 129 of the URAA: Antidumping Duty Measures on Certain Softwood Lumber Products from Canada, 70 Fed. Reg. 22636 (May 2, 2005); Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 Fed. Reg. 77722 (Dec. 2, 2006). Accordingly, the implementation of this change in methodology by the Department has no effect on any other proceedings, including sunset reviews.

The Department is not required under U.S. law to offset dumped sales by non-dumped sales, and indeed, the Court of Appeals for the Federal Circuit has affirmed the Department's

interpretation of the statute on this point. See Corus Staal v. United States, 387 F. Supp. 2d 1291, 1299-1300 (CIT 2005) (Corus Staal). Furthermore, the Federal Circuit found that WTO reports have no direct effect on U.S. law. Id. Thus, there is no basis for TAMSA's and HYLSA's arguments that the Department is required by law to offset for non-dumped sales in sunset reviews.

With respect to the Appellate Body's decision on sunset reviews in Japan-Zeroing, the United States has not yet completed the statutorily mandated process of implementation. Accordingly, consistent with its practice and the findings of the Federal Circuit in Corus Staal, the Department will not offset its comparisons of dumped transactions by non-dumped sales in these Final Results.

C) TAMSA's Arguments With Respect to the Cessation of Exports

19 U.S.C. § 1675a(c)(1)(B) states that the Department, when making a determination of the likelihood of continuation or recurrence of dumping, shall consider "the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order or acceptance of the suspension agreement." The SAA provides further guidance on this point. Specifically, the SAA states that the cessation of imports after the order is highly probative of the likelihood of continuation or recurrence of dumping. SAA at 890 (noting that if imports cease after an order is issued, Congress believed it reasonable to assume that exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping). TAMSA argues that even though it stopped exporting OCTG from Mexico to the United States during the second sunset review period, Hylsa did not, and therefore there was not a "cessation of exports" as envisioned by Congress in the SAA. In other words, TAMSA argues that no matter the number of exporters covered by a particular antidumping duty order, so long as one exporter continues to sell merchandise to the United States, the Department cannot conclude that there was a "cessation of exports."

The Department disagrees with this interpretation of the language of the statute and the SAA, and the importance of an analysis of a cessation of exports by particular parties to the United States. As a practical matter, this interpretation of the exercise of reviewing import volumes, specifically the post-order cessation of exports, makes little sense when reviewed within the context of the overall antidumping law. Section 735 of the Act provides that the Department will conduct a less than fair value investigation which, if affirmative, will result in the issuance of an antidumping duty order which applies to all exports of the defined subject merchandise. See section 735(c)(2) of the Act. In making this decision, however, the Department is required to review individual companies and calculate antidumping duty margins for those individual exporters. Thus, the investigation is company specific, but the effect is industry-wide and on a country-wide basis.

This analysis continues through individual administrative reviews, which are, again, company specific. See Section 751(a) of the Act. However, if companies are not reviewed in an administrative review, but they exported subject merchandise during the period of review, entries of their merchandise will be assessed at the rate specifically applicable to each company (from an earlier review or the investigation), or if never reviewed or investigated, at the "all others" rate derived from the investigation. See section 735(c)(5) of the Act.

Thus, although an antidumping duty order applies to all exports of subject merchandise to

the United States, the Department is required by law to review the commercial behavior of individual respondents in a sunset review to determine if there is a likelihood of the continuance or recurrence of dumping. See section 751(c) of the Act.

If a company that was found to have sold at less than fair value in the investigation and/or (an) administrative review(s) ceases shipments to the United States as a result of the application of the antidumping duty order to their merchandise, then such cessation would reveal that the company could not export to the United States without selling its merchandise at less than fair value. On the other hand, if another company continued to ship its merchandise to the United States even after the application of the antidumping duty order to its merchandise, it is unclear how the second company's continued shipments would "excuse" the first company's cessation of exports. In other words, TAMSA's argument on this point is circular - Congress could not have intended for one company's continued shipments to evidence no threat of future dumping by other companies that ceased to ship subject merchandise to the United States following the implementation of the antidumping duty order.

TAMSA's interpretation of the SAA language is also flawed because it is possible that even if a respondent did export subject merchandise during the sunset review period, that respondent might later be excluded from the order pursuant to a changed circumstance review or as the result of a finding by the Department of three years of no dumping with shipments of commercial quantities. See section 751(b) of the Act and 19 C.F.R. § 351.222. Thus, the mere fact that one company exported during the sunset review period would not be indicative of the potential for other respondents to continue or resume dumping should the order be revoked.

The antidumping duty order was issued in order to afford the domestic industry protection from sales of OCTG from Mexico made at less than fair value. Were the Department to review the "cessation of exports" overall (*i.e.* allowing the shipments of some companies to "mask" the cessation of shipments by other companies), such an analysis would essentially be meaningless and inconsistent with both the context and the structure of the Act.

D) TAMSA's Arguments With Respect to "Other Factors"

TAMSA did not ship subject merchandise during the sunset review period as the Department explained in the Preliminary Results, and TAMSA does not challenge this fact in its brief. In fact, with the exception of the "cessation of shipment" argument above, TAMSA does not challenge any facts surrounding this sunset review. Instead, TAMSA argues that in the less than fair value investigation the Department concluded TAMSA dumped subject merchandise as a result of "other factors" (*i.e.* the peso devaluation and the existence of long-term dollar-denominated debt), and that the "normal operations of the company" would not include sales of OCTG at less than fair value in the United States. Furthermore, TAMSA argues that the "proof" of this is the fact that during the first sunset review period it undertook three administrative reviews, and in each "the Department has concluded that TAMSA was not dumping." TAMSA therefore argues that cessation of its exports during the sunset review period was in no way "probative that dumping (would) occur upon revocation."

The Department concluded in the investigation that TAMSA sold subject merchandise for less than fair value in the United States, and this determination continues to be valid. Accordingly, the Department will not revisit its conclusions from the Final Determination. See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Mexico,

60 FR 33567 (June 28, 1995)(“Final Determination”). With minor revisions, the Department’s findings in the Final Determination were upheld by (another) NAFTA panel. See Oil Country Tubular Goods From Mexico: Notice of Panel Decision, Amended Order and Final Determination of Antidumping Duty Investigation in Accordance With Decision Upon Remand, 62 FR 5612 (February 6, 1997).

With regard to TAMSA’s shipments and reviews during the first sunset review period, TAMSA seems to be challenging the Department’s analysis and conclusions in the Fourth Remand Redetermination. Just as the Department will not revisit its factual and legal conclusions from the Final Determination in this second sunset review, it also will not revisit its factual and legal conclusions from the first sunset review final results, as modified by the Fourth Remand Redetermination.

We will note, however, that the Department observed in the Fourth Redetermination that TAMSA failed to export OCTG to the United States even after the alleged “other factors” were no longer affecting the company’s financial expense ratio. See Fourth Redetermination at 15-16. If, indeed, TAMSA’s repeated assertions are correct that its “other factors” were “temporary in nature” and “unlikely to recur,” then logically one could also argue that the same factors no longer constrain the company’s behavior. *Id.* While we cannot presume that these “other factors” constrained TAMSA’s ability to export subject merchandise to the United States without dumping prior to their expiration, we also cannot presume that absent both these factors and the existence of the antidumping duty order, TAMSA might not resume commercially meaningful exports of OCTG to the United States at dumped prices. In other words, TAMSA’s arguments on this point prove nothing, and absent shipments in commercial quantities over the last five years at non-dumped prices, there is nothing on the record to substantiate TAMSA’s claims.

In sum, there have been no administrative reviews of TAMSA in the second sunset review period because TAMSA has not sold any subject merchandise in the United States. The complete absence of sales and shipments by TAMSA of subject merchandise during this sunset review period reinforces the presumption that TAMSA’s zero margins during the first sunset period have no predictive value. With TAMSA’s “other factors” long expired, and a cash deposit rate of zero,⁴ the Department therefore determines that it is reasonable to conclude that TAMSA would have exported subject merchandise to the United States at dumped prices in commercial quantities had the antidumping duty order not been in place during the sunset period of review. The absence of any shipments in the second sunset review period makes it reasonable to conclude that there is no link between TAMSA’s future behavior and the elimination of the “other factors.”

2. Magnitude of the Margin Likely to Prevail: Interested Party Comments

No parties commented on the Department’s Preliminary Determination with respect to the margin likely to prevail for either company.

⁴ See Fourth Redetermination at 14.

Department's Position:

For TAMSA, the Department will report to the ITC, as the magnitude of the margin likely to prevail if the order were revoked, the original margin from the final determination as adjusted in the amended order. However, for Hylsa, the Department will report to the ITC the margin from the most recently completed administrative review as the magnitude of the margin likely to prevail if the order were revoked.

Final Results of Review:

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

<u>Manufacturers/exporters</u>	<u>Margin (percent)</u>
TAMSA	21.70
Hylsa	0.62
All Others	21.70

Recommendation:

Based on our analysis of the comments 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