

DATE: November 20, 2006

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
Ukraine; Preliminary Results

Summary

We have analyzed the responses of the interested parties in the sunset review of the antidumping duty order covering steel concrete reinforcing bars from Ukraine. We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review:

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

History of the Order

On April 11, 2001, the Department of Commerce (“the Department”) published its final determination in the investigation of steel concrete reinforcing bars from Ukraine finding a dumping margin of 41.69 percent for the Ukraine-wide entity. See Notice of Final Determinations of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Indonesia, Poland and Ukraine, 66 FR 18752, 18753 (April 11, 2001). On September 7, 2001, the Department published an antidumping duty order on steel concrete reinforcing bars from Ukraine. See Antidumping Duty Orders: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, People’s Republic of China, Poland, Republic of Korea and Ukraine, 66 FR 46777 (September 7, 2001).

Since the issuance of this order, the Department has conducted no administrative reviews, changed circumstance reviews, or duty absorption findings. Several Harmonized Tariff Schedule categories have been added to the scope, but the scope description itself has not changed. The order remains in effect for all manufacturers, producers, and exporters of the subject merchandise from Ukraine.

On August 1, 2006, the Department initiated a sunset review of the antidumping duty order on steel concrete reinforcing bars from Ukraine 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, Open Joint Stock Company “Mittal Steel Kryviy Rih” (“Mittal Steel” 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 Mittal Steel’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 an 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 Mittal Steel accounted for more than 50 percent of exports by volume of the subject merchandise from Ukraine to the United States, dependent upon it demonstrating that it exported to the United States during the period. See Memorandum to Susan H. Kuhbach, Director, from Damian Felton entitled, “Adequacy Determination in Antidumping Duty Sunset Review of Steel Concrete Reinforcing Bars from Ukraine,” (September 20, 2006).

In its substantive response, Mittal Steel also notified the Department of a name change that occurred in November 2005. Prior to this date, the company was named “Krivorozhstal” Steel Works. In November 2005, with Mittal Steel’s purchase of the company, the name became Mittal Steel Kryviy Rih.

On September 28, 2006, the Department sent a letter to Mittal Steel requesting proof of order date, invoice date, quantity, value, shipment date, and payment date for its reported shipments. The Department also requested that Mittal Steel confirm that the merchandise was included in the scope of the order. On October 20, 2006, Mittal Steel submitted the requested documentation.

Because the Department has no evidence contradicting Mittal Steel’s claim that it is the successor to “Krivorozhstal” Steel Works, which made the 2001 shipments, we are equating Mittal and “Krivorozhstal” Steel Works solely for the purpose of determining whether the respondent interested party submitted an adequate response to our notice of initiation. Based on its response to our request for supporting documentation, the Department determines that Mittal Steel has demonstrated that it represents more than 50 percent of the total exports of subject merchandise from Ukraine to the United States during this five-year sunset review period (2001-2005). Therefore, in accordance with 19 CFR 351.218(e)(2)(i), the Department is conducting a full sunset review of this antidumping duty order.

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 be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both 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 margins of

dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties believe that revocation of this antidumping duty order would be likely to lead to a continuation or recurrence of dumping by the Ukraine manufacturers, producers, and exporters of the subject merchandise due to continued dumping.

The domestic interested parties state that the volume of imports subject to this order declined significantly after the imposition of the order and has not recovered. The antidumping duty margin in the investigation was 41.69 percent and there have been no reviews conducted for this order. Thus, domestic interested parties conclude that the substantial dumping margins and a significant decline in the volume of imports following the issuance of the antidumping duty order demonstrate that revocation of the order would lead to a continuation of dumping. See Substantive Response of domestic interested parties, at 4-6 (August 31, 2006).

Mittal Steel states that: (i) it has not sold subject merchandise to the United States since 2002; (ii) it is “engaged in balanced deliveries all over the world and has no intention to increase shipment to the US market,” and (iii) it has a policy of “diversification of deliveries,” and that it makes sales to “more than 100 countries.” See Substantive Response of Mittal Steel, at 1-3 (August 31, 2006).

In the domestic interested parties’ rebuttal comments, they reiterate that Ukrainian import levels have decreased drastically since the imposition of the order and the domestic interested parties argue that this demonstrates that Mittal Steel cannot sell at pre-order levels in the United States at a non-dumped price. Thus, dumping will likely resume if the order is revoked. See domestic interested parties’ Rebuttal Comments, at 2 (September 5, 2006).

Department’s Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (“URAA”), the Department’s determinations of likelihood will be made on an order-wide basis. In addition, the Department normally will determine that revocation of an antidumping duty order 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, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping order.

Census Bureau data provided by the domestic interested parties shows that imports of steel concrete reinforcing bars from Ukraine were 95,904 net tons in 1999, the year before the initiation of the investigation. See domestic interested parties' Substantive Response, at Exhibit 2 (August 31, 2006). In 2000, the year prior to the imposition of the order, imports were 168,054 net tons. From 2001 through 2005, the import statistics show no imports of subject merchandise from Ukraine. However, Mittal Steel's proprietary shipment data does show a small quantity of exports to the United States in 2001. See Mittal Steel's Substantive Response, at 5 (August 31, 2006). As noted above, Mittal Steel's claim of shipments is supported by documentation submitted by the company on October 20, 2006. A comparison of the pre-order data and post-order data indicates that imports of subject merchandise decreased drastically after the imposition of the order falling to only a small quantity shipped in 2001, and then to no shipments from 2002-2005. This suggests that Mittal Steel could not sell subject merchandise at non-dumped prices.

While Mittal Steel claims that it would not shift exports to the United States and that it has other markets for its products, the small quantity shipped since the issuance of the order suggests that the order has had a restraining effect on Mittal Steel's exports to the United States and the removal of the order would lead to a continuation or recurrence of dumped shipments. Therefore, the Department determines that dumping is likely to continue or recur if the order were revoked.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

The domestic interested parties request that the Department report to the ITC the margins that were determined in the investigation, noting that margins have not changed since the investigation because there have been no administrative reviews, and import levels have decreased significantly since the imposition of the order. See domestic interested parties' Substantive Response, at 6-7 (August 31, 2006). The domestic interested parties recommend that the Department report to the ITC the Ukraine-wide rate of 41.69 percent.

In contrast, Mittal Steel states that the margin should be zero. Mittal Steel also states that, "with the help of divisions of Mittal Steel in USA and Canada," it is able to monitor its exports to those markets and avoid harming domestic producers. See Mittal Steel's Substantive Response, at 3 (August 31, 2006).

In their rebuttal comments, the domestic interested parties argue that there have been no administrative reviews of the antidumping order that would provide alternative calculated rates. Therefore, the Department has no other margins on which to rely except for the investigation margins. See domestic interested parties' Rebuttal Comments, at 3 (September 5, 2006).

Department's Position

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company. For companies not investigated specifically 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. The Department’s preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC.

The Department cannot accept Mittal Steel’s assertion that the margin likely to prevail is zero. There have been no administrative reviews conducted in the life of this order. Therefore, there are no other calculated rates demonstrating that Mittal Steel or any other Ukrainian manufacturer/exporter could ship to the United States without dumping.

Moreover, as noted above, the Department has never conducted a changed circumstances review to determine whether Mittal Steel is the successor-in-interest to “Krivorozhstal” Steel Works. As a result, the rate currently applicable to Mittal Steel is the all others rate.¹ The Department finds that it is appropriate to provide the ITC with the all others rate from the investigation,² because it is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place, and the only calculated rate in the history of the order. Thus, the Department intends to report to the ITC the margins listed below.

Preliminary Results of Review

We determine that revocation of the antidumping duty order on steel concrete reinforcing bars from Ukraine would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margin:

Manufacturers/Exporters/Producers	Weighted-Average Margin (Percent)
All Others rate, including Mittal Steel Kryviy Rih and “Krivorozhstal” Steel Works	41.69

¹ See, e.g., Cut-to-Length Carbon Steel Plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom and Carbon Steel Plate from Taiwan; Second Five-Year (Sunset) Reviews of Antidumping Duty Orders and Antidumping Finding; Final Results, 71 FR 11577, 11579 (March 8, 2006) (explaining that Duferco is subject to the all others rate because the Department had not yet conducted a changed circumstances review to determine the successor-in-interest to Forges de Clabecq, S.A.).

² As of February 1, 2006, Ukraine graduated to market economy status (see Final Results of Inquiry Into Ukraine's Status as a Non-Market Economy Country, February 24, 2006 (71 FR 9520)). As a result, the Ukraine-wide rate is now the All Others rate.

Recommendation

Based on our analysis of the responses 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 _____

DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date