

THIRD REDETERMINATION ON REMAND
OIL COUNTRY TUBULAR GOODS FROM MEXICO:
SUNSET REVIEW

In the Matter of:

Oil Country Tubular Goods from Mexico; Final Results of Sunset Review of Antidumping Duty Order,

Secretariat File No. USA-Mex-2001-1904-03 (Panel Decision, July 28, 2006)

Summary

_____ In accordance with the remand instructions of the North American Free Trade Agreement Bi-National Panel (“Panel”) in the above-referenced case, the Department of Commerce (“the Department”) has again examined the methodology employed to determine whether the revocation of the antidumping duty order on oil country tubular goods (“OCTG”) from Mexico would be likely to lead to continuation or recurrence of dumping at the margin of 21.70 percent ad valorem. After addressing the question posed by the Panel, and in accordance with the statute and regulations governing sunset reviews, we continue to determine that the revocation of the antidumping duty order on OCTG from Mexico would be likely to lead to continuation or recurrence of dumping.

Background

On July 20, 1994, the Department initiated an investigation on sales at less than fair value of OCTG from Mexico in the United States. The Department reached a negative preliminary determination on February 2, 1995 (see Preliminary Determination of Sales at Not Less Than

Fair Value: Oil Country Tubular Goods From Mexico, 60 FR 6510), and a final affirmative determination on June 28, 1995 (see Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Mexico, 60 FR 33567 (“LTFV Determination”), finding a weighted-average margin of 23.79 percent. After affirmative investigations by both the Department and the International Trade Commission (“the ITC”), the Department published an antidumping duty order (“Order”) on August 11, 1995 (See Antidumping Duty Order: Oil Country Tubular Goods From Mexico, 60 FR 41056). The only company investigated in the proceeding was Tubos de Aceros de Mexico, S.A. (“TAMSA”).

Subsequent to the Order, TAMSA challenged the Department's findings and requested that a Bi-National Panel review the final determination. That Panel remanded the Department’s final determination and directed the Department to (1) substitute a weighted-average factor for the adverse factor used in the calculation of nonstandard costs for certain products and (2) provide a complete explanation of its reasoning for its use of 1994 data in calculating general and administrative (G&A) expense. See In the Matter of: Oil Country Tubular Goods from Mexico; Final Determination of Sales at Less Than Fair Value, USA-95-1904-04 (July 31, 1996).

The Department recalculated the nonstandard costs using a weighted-average factor and provided an explanation of the use of 1994 data in calculating G&A expenses. The Department submitted its remand determination on October 25, 1996. On December 2, 1996, the Panel affirmed the remand determination of the Department. 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). As a result, the margin for TAMSA decreased from 23.79 percent to 21.70 percent.

The Department terminated the review for the first administrative review period because it found that TAMSA had no shipments of subject merchandise during the period. See Oil Country Tubular Goods from Mexico; Notice of Termination of Antidumping Duty Administrative Review, 62 FR 19309 (April 21, 1997). However, TAMSA requested administrative reviews for the second, third, and fourth administrative review periods. In each case, TAMSA had a single sale of merchandise in the United States with a quantity of 100 MT, 120 MT, and 50 MT, respectively. In each administrative review, the Department found a dumping margin of zero. See, respectively, Oil Country Tubular Goods from Mexico: Final Results of Antidumping Administrative Review, 64 FR 13962 (March 23, 1999) (OCTG Second Administrative Review), Oil Country Tubular Goods from Mexico: Final Results of Antidumping Review, 65 FR 1593 (January 11, 2000) (OCTG Third Administrative Review), and Oil Country Tubular Goods From Mexico: Final Results of Antidumping Review and Determination Not To Revoke in Part, 66 FR 15832 (March 21, 2001) (OCTG Fourth Administrative Review).

The Department initiated the automatic five-year sunset review for this order on July 3, 2000. See Notice of Initiation of Five-Year (“Sunset”) Reviews, 65 FR 41053 (July 3, 2000). The Department published the final results of the review on March 9, 2001. See Oil Country Tubular Goods (“OCTG”) from Mexico; Final Results of Sunset Review of Antidumping Order, 66 FR 14131. In its determination, the Department found that the revocation of the Order would likely lead to the continuation or recurrence of dumping. Id.

Subsequent to the completion of the sunset review, TAMSA challenged the Department’s findings and requested that a Bi-National Panel review the final results. A public hearing was

held on November 17, 2004, in Washington DC, at which oral arguments were presented by the parties. The Panel issued a Decision of the Panel (“First Decision”) on February 11, 2005, remanding the review to the Department.

In response to the Panel’s directives in the First Decision, the Department issued a redetermination on remand on May 13, 2005. See Redetermination on Remand, Oil Country Tubular Goods from Mexico: Sunset Review, USA-MEX-2001-1904-03 (May 13, 2005) (“First Redetermination on Remand”). After a full, thorough and careful consideration of the facts in the case, as directed by the Panel, the Department continued to determine that the revocation of the antidumping duty order on OCTG from Mexico would be likely to lead to continuation or recurrence of dumping.

The Panel issued a Decision of the Panel (“Second Decision”) on February 3, 2006, again remanding the review to the Department. In response to the Panel’s directives in the Second Decision, the Department issued a second redetermination on remand on March 16, 2006. See Second Redetermination on Remand, Oil Country Tubular Goods from Mexico: Sunset Review, USA-MEX-2001-1904-03 (March 16, 2006) (“Second Redetermination on Remand”). After a full, thorough and careful consideration of the facts in the case, including consideration of TAMSA’s “other factors” as they relate to the financial expense ratio and the effect of changes in the financial expense ratio on the likelihood of dumping, as directed by the Panel, the Department continued to determine that the revocation of the antidumping duty order on OCTG from Mexico would be likely to lead to continuation or recurrence of dumping.

On April 11, 2006, TAMSA filed its case brief in response to the Department’s Second Redetermination on Remand. TAMSA alleged that the Department’s determination was based

on methodological flaws and was not supported by substantial evidence. The Department filed its rebuttal brief on April 27, 2006, stating that the Panel should strike TAMSA's brief as it presents new evidence not previously submitted to the Department for consideration. The Department added that, even were the Panel to consider the evidence, and had TAMSA restated all of its peso amounts to 1999 levels, the Department's analysis was valid and its determination was based on substantial evidence on the record and in accordance with the statute.

On July 28, 2006, the Panel issued a Decision of the Panel ("Third Decision"), again remanding the review to the Department.

The Panel's Remand

In its Third Decision, the Panel first ruled on the application of the exhaustion doctrine with respect to portions of TAMSA's brief of April 11, 2006. The Panel ruled that striking TAMSA's arguments and not considering them could lead to a redetermination based on a flawed methodology, and that such a redetermination would be "a miscarriage of justice." See Third Decision at page 11. Therefore, the Panel rejected the Department's arguments that TAMSA had failed to exhaust administrative remedies and denied the motion to strike. Id.

Next, the Panel addressed the Department's likelihood determination in the Second Redetermination on Remand. The Panel acknowledged that the Department provided evidence to demonstrate that the peso continued to decline after the imposition of the Order, that TAMSA had considerable long-term and total debt during the review period, and that nothing on the record indicates that these circumstances will not recur in the future. Id. at 13. However, the Panel found that the Department's "consideration of a fictitious financial expense ratio in place

of its consideration of the actual uncontested financial expense ratio on the record” was misplaced and “failed to support its likelihood of continuation or recurrence of dumping determination in light of the ‘other factors’ presented.” *Id.* at 16. Therefore, the Panel concluded that the Department “has unreasonably attempted to explain away” the drop in the financial expense ratio from the investigation to the administrative review periods by using an “unreasonable methodology.” *Id.* The Panel stated that the Department’s likelihood determination is a reflection of the use of this unreasonable methodology and that the determination itself is, therefore, unreasonable and not in accordance with the law. *Id.* at 16-17.

The Panel directed the Department “to reconsider its likelihood determination and either issue a determination of no likelihood or give a reasoned analysis to support a conclusion that TAMSA’s dumping is likely to continue or recur. In particular, the Department is directed to explain why TAMSA’s high financial expense ratio is likely to recur considering the decrease in TAMSA’s foreign currency denominated debt during the sunset review period as evidenced by the actual financial expense ratio established in the record of this proceeding.” *Id.* at 17.

Analysis and Redetermination

After re-examining the record and reviewing the arguments and information previously submitted by parties, the Department does not find that TAMSA’s financial expense ratios, either the hypothetical expenses calculated by the Department in the previous remand or the actual expenses from the investigation and administrative reviews, alter the Department’s “likelihood”

determination. As explained below, the Department finds that TAMSA's financial expense ratio, regardless of its level or even existence, is not predictive of whether dumping will continue or recur. The Department also finds that TAMSA's other arguments regarding the reasons for the decrease in export volumes are without merit. Finally, the Department finds that the export volumes and administrative review finding for Hylsa are highly probative that dumping would likely continue or recur. Therefore, the Department continues to find that dumping is likely to continue or recur absent the Order on OCTG from Mexico.

In reviewing all of the evidence on the record, as well as the previous remands and redeterminations, the Department believes that a thorough review of the evidence on the record is necessary. The Department believes that an examination of the totality of the evidence is once again necessary in order to support the Department's likelihood determination on whether dumping will continue or recur. The Department believes that while consideration of the financial expense ratio is relevant, it is not the sole factor under consideration nor the most critical.

Statute and Record Information not Related to "Other Factors"

The relevant portion of the statute governing the Department's likelihood determination states the following:

(1) In general

In a review conducted under section 1675(c) of this title, the administering authority shall determine whether revocation of an antidumping duty order or termination of a

suspended investigation under section 1673c of this title would be likely to lead to continuation or recurrence of sales of the subject merchandise at less than fair value. The administering authority shall consider -

(A) the weighted average dumping margins determined in the investigation and subsequent reviews, and

(B) 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.

(2) Consideration of other factors

If good cause is shown, the administering authority shall also consider such other price, cost, market, or economic factors as it deems relevant.

19 USC § 1675a(c).

In addition to 19 USC § 1675a(c), the U.S. Congress further addressed this issue in the SAA that accompanied the changes in the then-existing U.S. trade legislation stemming from the adoption of the Uruguay Round Agreements Act. See H.R. Doc. No. 103-316, vol. 1, 1994. The SAA gives specific guidance on how the Department should interpret the factors it must consider when conducting a sunset review. Under 19 USC § 3512(d), the SAA is regarded “as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application.” With respect to sunset reviews, the SAA states:

The administration believes that the existence of dumping margins after the order or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping.

New section 752(c)(2) {19 USC § 1675a(c)(2)} provides that, for good cause shown, Commerce also will consider other information regarding price, cost, market or economic factors it deems relevant. Such factors might include the market share of foreign producers subject to the antidumping proceedings; changes in exchange rates, inventory levels, production capacity, and capacity utilization; any history of sales below cost of production; changes in manufacturing technology in the industry; and prevailing prices in relevant markets. In practice this will permit interested parties to provide information indicating that the observed patterns regarding dumping margins and import volumes are necessarily indicative of the likelihood of dumping. The list of factors is illustrative, and the Administration intends that Commerce will analyze such information on a case-by-case basis.

Id. at 890. Thus, in accordance with the statute, the Department considers that the continued existence of dumping margins after an order, or the cessation of imports, to be highly probative of the likelihood of the continuation or recurrence of dumping. However, where good cause is shown, the Department will consider other factors that may indicate that observed patterns regarding dumping margins and import volumes are not necessarily indicative of the likelihood of dumping. Finally, the determination of likelihood of continuation or recurrence of dumping is on an order-wide basis, not a company-specific basis. In other words, the Department must base its analysis on the exporting and pricing behavior of all producers and exporters subject to an order, not just one company. See SAA at 879.

During the investigation, the Department investigated only those sales made by TAMSA. See LTFV Determination, 60 FR 33567. In making a determination of sales at less than fair value, the Department used TAMSA's own sales and cost data, which were used in calculating

the financial expense ratio used in the calculation of Cost of Production (“COP”). See LTFV Determination, 60 FR 33568.

In subsequent administrative reviews, the Department examined sales made by both TAMSA and Hylsa S.A. de CV (“Hylsa”).¹ Information on the record of the sunset review indicates that imports of OCTG from Mexico fell from a level of 43,695 net tons for the period August 1993 to July 1994, to a level of 1,297 net tons for the period August 1998 to July 1999. See Letter from Skadden, Arps, Slate, Meagher & Flom LLP to the Secretary of Commerce, August 2, 2000 (Pub. R. 1081, Fiche 03, Frame 01), at page 11. On an annual basis, imports of OCTG from Mexico to the United States for consumption fell from 36,275 MT in 1994 to 1,448 MT in 1998 and 5,160 MT in 1999. See Letter from White & Case to the Secretary of Commerce, August 2, 2000 (“TAMSA’s Substantive Response”) (Pub. R. 1090, Fiche 03, Frame 49) at Exhibit 4. The antidumping duty order on OCTG from Mexico was published on August 11, 1995. (See Antidumping Duty Order: Oil Country Tubular Goods From Mexico, 60 FR 41056. Therefore, on an order-wide basis, import levels decreased substantially from their pre-order levels to the last year of the sunset review period.

As to the individual companies, TAMSA shipped approximately 10,000 MT of OCTG to the United States for the first six months in 1994, or 20,000 MT on an annualized basis. See TAMSA’s Substantive Response at Exhibit 2. By contrast, as stated on page 3 of this

¹ See, respectively, OCTG Second Administrative Review, OCTG Third Administrative Review, and OCTG Fourth Administrative Review.

redetermination, TAMSA shipped approximately 100 MT of subject merchandise during the 1996/1997 administrative review period, 120 MT during the 1997/1998 administrative review period, and 50 MT during the 1998/1999 administrative review period. At most, TAMSA shipped 0.6 percent of its pre-order shipment levels. For Hylsa, shipments in 1996 decreased to approximately 1.1 percent of the shipment levels in 1995. In 1997, Hylsa had no shipments, and in 1998, Hylsa's shipments were approximately 2.4 percent of 1995 shipments. In 1999, shipment levels increased to approximately 72 percent of 1995 levels. See Letter from Shearman & Sterling, August 2, 2000 (Prop. R. 1086, Fiche 06, Frame 01), at page 6. However, the vast majority of the increase in 1999 came after the completion of the fourth administrative review.² Thus, import levels decreased dramatically for Hylsa before recovering to a figure that is still below pre-order levels.

As to dumping margins, the Department found a dumping margin for Hylsa in the fourth administrative review of 0.79 percent. See OCTG Fourth Administrative Review, 66 FR 15832. The dumping finding is currently subject to litigation.³ At this time the Department has

² See Redetermination on Remand, Oil Country Tubular Goods from Mexico: Fourth Administrative Review, USA-MEX-2001-1904-05 (April 27, 2006) at page 25, footnote 8.

³ See In the Matter of Oil Country Tubular Goods from Mexico: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke, USA-MEX-01-1904-05 (August 11, 2006). The period of the fourth administrative review on OCTG from Mexico fell within the sunset review period. At the preliminary results, the Department preliminarily found that Hylsa was dumping sales during the period of review. See Oil Country Tubular Goods From Mexico: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke in Part, 65 FR 54998 (September 12, 2000). The preliminary margin for Hylsa was 1.47 percent. In OCTG Fourth Administrative Review, issued immediately after the sunset review was completed, the Department confirmed dumping by

calculated a dumping margin above de minimis for Hylsa in an administrative review on Mexican OCTG.

Therefore, exports to the United States have decreased dramatically for Mexico as a whole and for both TAMSA and Hylsa. TAMSA's exports to the United States appear to have ceased despite the imposition of a zero cash deposit rate with four months remaining in the fourth administrative review period.⁴ Additionally, the Department has found dumping margins in an administrative review which fell within the sunset period for sales made by Hylsa. As the SAA states, the existence of dumping margins or the cessation of imports is highly probative of the likelihood of continuation or recurrence of dumping.

Moreover, TAMSA's export behavior after the imposition of the antidumping duty order is not consistent with its behavior prior to the imposition of the order. In addition to the significant decrease in export volumes, which we discussed above, TAMSA's pattern of exports changed dramatically. In the investigation, the Department examined multiple sales to the United States which were both Export Price (EP, or, using the terminology of the time, Purchase Price) and Constructed Export Price (CEP, or, using the terminology of the time, Export Sales

Hylsa at a slightly lower rate of 0.79 percent. While this information is outside of the sunset review period, the Panel has cited to this margin previously. See First Decision at page 3, footnote 5, and Second Decision at page 7.

⁴ The fourth antidumping duty administrative review covered the period August 1, 1998, to July 31, 1999. A cash deposit rate of zero was established for both TAMSA and Hylsa after the conclusion of the second antidumping duty administrative review, the results of which were published on March 23, 1999. See OCTG Second Administrative Review.

Price). Some sales to the United States were further manufactured after importation but prior to sale to unaffiliated customers. See Preliminary Determination of Sales at Not Less Than Fair Value: Oil Country Tubular Goods from Mexico, 60 FR 6510, 6511 (February 2, 1995).

However, for each of the three administrative reviews in which TAMSA participated during the sunset review period, TAMSA made only a single CEP sale of subject merchandise to the United States. None of these sales were further manufactured. See OCTG Second Administrative Review at Comment 1, OCTG Third Administrative Review at Comment 1, and OCTG Fourth Administrative Review, Issues and Decision Memorandum at Comment 2. Relative to the characteristics of the pre-order sales, TAMSA's post-order sales are not characteristic of the commercial quantity sales pattern that existed prior to the imposition of the order and thus do not reflect the commercial activity likely to prevail if the antidumping duty order were revoked.

Importantly, while the Department compared sales in the United States to third-country sales in the investigation, during the administrative reviews the Department compared sales in the United States to sales in the home market (i.e., Mexico). Id. The pattern of sales in both the United States and comparison markets during the administrative reviews is, therefore, different than the pattern of sales during the investigation.

Thus, not only does a dumping margin exist for Hylsa, and not only have imports decreased for Hylsa and virtually ceased for TAMSA, but TAMSA's pattern of sales to the United States has changed since the imposition of the antidumping duty order. Additionally, the pattern of sales in the comparison market has changed since the imposition of the antidumping

duty order. The zero margins obtained by TAMSA, therefore, are not predictors of likelihood. It is within this context that the Panel directed the Department to consider “other factors” raised by TAMSA, as defined in the statute and SAA. As previously mentioned, the SAA states that the presentation by parties of “other factors” to the Department “will permit interested parties to provide information indicating that the observed patterns regarding dumping margins and import volumes are necessarily indicative of the likelihood of dumping.” Our analysis considers the information provided by TAMSA that addresses these issues.

TAMSA’s Information Regarding ‘Other Factors’

TAMSA, in its substantive response to the Department pursuant to 19 CFR 351.218(d)(3), stated that dumping would not recur were the order on OCTG from Mexico to sunset. See TAMSA’s Substantive Response at 5. To summarize, TAMSA stated that the reason for the original finding of dumping was a combination of a peso devaluation at a time when TAMSA possessed large long-term dollar-denominated debts. As a result, according to TAMSA, it incurred large currency translation losses, which increased its COP. TAMSA argues that the higher COP resulted in dumping margins, which did not exist at the time of the preliminary determination. TAMSA contends that it no longer has any long-term dollar-denominated debt, and that the Mexican peso has stabilized. As TAMSA stated, “even if a dramatic devaluation were to occur again (which was not likely), it could not significantly increase the financial expense component of TAMSA’s COP, it would not cause sales below

cost, it would not cause a comparison with a CV⁵ consisting of an inflated financial expense component, and it would not lead to dumping.” See Letter from White & Case to the Secretary of Commerce, February 25, 2005, at 7-8.

Subsequent to the initiation of this NAFTA Panel review, TAMSA made additional arguments regarding “other factors” besides its level of debt and the devaluation of the peso. See, e.g., Id. at 5. Thus, TAMSA’s information and argument on the record can be divided into two categories. The first category attempts to explain why TAMSA’s export levels to the United States decreased after the imposition of the antidumping duty order. The second attempts to explain why the “other factors” raised by TAMSA, concerning the peso devaluation and dollar-denominated debt, indicate that there will not be a continuation or recurrence of dumping were the order to sunset. As to the latter, we will address those points after examining the arguments concerning a decrease in exports.

TAMSA’s Post-order Decrease in Exports

With respect to the decrease in TAMSA’s exports of OCTG to the United States subsequent to the imposition of the antidumping duty order, TAMSA makes a series of claims to explain the decrease. First, TAMSA states that the volume reductions for shipments to the United States were related to business decisions based on the risks inherent in the U.S.

⁵ Constructed Value.

antidumping duty law and the possibility of retroactive duty increases. Id. at 5, 10. Second, TAMSA claims that the United States has not been a high-volume market for TAMSA since the imposition of the Order. Id. at 5. Third, TAMSA has discussed the issue of the market for OCTG products in the United States being depressed subsequent to the imposition of the order. See Letter from White & Case to the Secretary of Commerce, March 2, 2005, at 4-5. We will address each of TAMSA's assertions below.

As petitioners previously stated, the importer of record in the administrative reviews in which TAMSA participated was an affiliated party. See Letter from Skadden, Arps, Slate, Meagher & Flom to the Secretary of Commerce, March 2, 2005 at 13, and Letter from Schagrin Associates to the Secretary of Commerce, March 2, 2005, at 6. Specifically, the affiliated party, Siderca Corp., is the exclusive selling agent for TAMSA's products in the United States. See Letter from Schagrin Associates to the Secretary of Commerce, March 2, 2005, at 6. The Department has agreed with the petitioner that TAMSA's affiliated importer "would not be reluctant to import given TAMSA's firm belief that the presence of 'other factors' described in the Sunset Review here eliminated any possible dumping margins." Id. As the Department has stated before, given that TAMSA's corporate related party is bearing the risk for antidumping duties, and TAMSA's assertions that it was confident that the "other factors" present in the investigation were gone and that there would no longer be any dumping, TAMSA's statements regarding its 'business decision' appear to have no basis in fact. If TAMSA were confident that it would not dump, its own affiliate would be willing to import subject merchandise. See First

Redetermination on Remand at 24. The Panel has upheld the Department's findings with respect to the supposed "business decision" by TAMSA not to ship. See Second Decision at 8.

Next, TAMSA claimed that the United States was not a "high volume" market for sales of OCTG products after the imposition of the antidumping duty order. However, as the Department has made clear previously, information on the record rebuts this assertion. See Memorandum to the File, April 26, 2005, with respect to the American Iron and Steel Institute Annual Statistical Report, 2000. Given the size of the U.S. OCTG market, and its proximity to Mexico, it is highly unlikely that TAMSA, a major world producer of OCTG, would consider such a market not to be "high volume."

Finally, with respect to OCTG prices, evidence on the record indicates that the average monthly prices for OCTG were rising during the year 1999 and were comparable to prices in 1995, and significant portions of 1996 and 1998. See Letter from Shearman & Sterling to the Secretary of Commerce, December 11, 2000, (Prop. R. 1181, Fiche 06, Frame 45), at Attachment 1. Based on our analysis, evidence on the record suggests that prices for OCTG in the last four months of the fourth administrative review were comparable to prices after the imposition of the order and rising. The United States was still a large market for imports of OCTG during the year.

We do not find TAMSA's arguments regarding post-Order export levels to be convincing in explaining the nearly complete absence of shipments of OCTG to the United States in 1999 after the imposition of zero cash deposit rates. Given the conditions in existence in 1999, particularly for the last four months of the fourth administrative review, it is reasonable to

assume that shipments of OCTG from Mexico, especially those manufactured by TAMSA, would increase from nearly non-existent levels beginning in April of 1999, if the assumptions underlying TAMSA's arguments were correct.⁶ However, they did not. We are left with the consideration of the peso devaluation and debt levels, their relation to TAMSA's financial expense ratio in the investigation and administrative reviews, and their effects on the Department's likelihood determination.

TAMSA's "Other Factors" Peso Devaluation and Debt

The Effect of "Other Factors" in Administrative Reviews

TAMSA has consistently argued that it no longer has any long-term dollar-denominated debt, and that the Mexican peso has stabilized. Therefore, TAMSA argues that it could not incur large foreign exchange losses, and thus would not incur a large increase in its COP. As a result, TAMSA asserts, it would not be dumping were the order to sunset. In support of its contention, TAMSA points to the Department's determinations in the administrative reviews that TAMSA sold merchandise into the United States without dumping. Specifically, TAMSA states:

⁶ In contrast, as might be expected, shipments from Hylsa rose in 1999 after the cash deposit rate was set to zero. Prior to the end of the fourth administrative review in July of 1999, shipments were not substantial. See Redetermination on Remand, Oil Country Tubular Goods from Mexico: Fourth Administrative Review, USA-MEX-2001-1904-05 (April 27, 2006) at page 25, footnote 8. Subsequently, exports increased ten-fold. See Memorandum to the File: Sunset Review of Oil Country Tubular Goods from Mexico ("OCTG")[A-201-805]; Calculation of the Market Share of Respondent Interested Parties for Adequacy Determination, (Prop. R. 1107, Fiche 06, Frame 44), August 22, 2000.

TAMSA also identified the company's ability to export to the U.S. market without dumping, as evidenced by TAMSA's ability to obtain zero margins in consecutive administrative reviews following imposition of the order. Information related to these zero margins is relevant to the Department's likelihood determination for a few obvious reasons: 1) the statute mandates that the Department consider dumping margins "in the investigation and subsequent reviews"; and 2) combined with the information related to the devaluation and the company's reduced exposure to foreign currency fluctuations of the type that caused the margin in the original investigation, the zero margins in the reviews were more probative than the original margin of TAMSA's likely behavior in the event of revocation.

Also, consecutive zeroes obtained by TAMSA supported TAMSA's view that, absent dramatic devaluations and high levels of foreign currency indebtedness, TAMSA's sales in the home market were above COP, and that its net sales prices to the U.S. were above its home market prices. In other words, they showed that TAMSA's pricing decisions in a period not marked by significant devaluation and foreign currency losses led to the conclusion that TAMSA was selling above cost and was not dumping its OCTG in the United States.

See Letter from White & Case to the Secretary of Commerce, February 25, 2005, at 8-9.

Although the Panel subsequently stated that "the lowered financial expense ratio in the annual reviews enabled the Department to determine normal value based upon profitable home market sales, with the result that TAMSA was found not to have dumped during the sunset review period," the Department concluded that the zero margins obtained by TAMSA in the administrative reviews are not probative of TAMSA's behavior absent the discipline of the antidumping duty order. Nor is there a direct correlation between the zero margins and the decrease in the financial expense ratio due to the decrease in debt and absence of a currency devaluation. We believe that TAMSA's assertions regarding this correlation are flawed and not supported by the facts on the record, as discussed below.

TAMSA has stated repeatedly that the reason that the Department found dumping by TAMSA in the investigation was due to the peso devaluation and level of long-term debt. The combination of factors, according to TAMSA, which resulted after a preliminary determination where the Department did not find dumping, raised TAMSA's COP, resulting in sales below cost and a margin in the investigation. However, TAMSA's arguments mis-state the issue at hand. The Department's findings in the investigation, specifically the use of the financial expense ratio and its effect on the dumping margin, have been upheld by a previous NAFTA panel. See In the Matter of Oil Country Tubular Goods from Mexico: Final Determination of Sales at Less Than Fair Value, USA-MEX-95-1904-04 (July 31, 1996). The U.S. Supreme Court has repeatedly reiterated that a "final judgment on the merits of an action precludes" relitigation of decided issues. Federated Dep. Stores, Inc. v. Moitie, 452 U.S. 394 (1981) (citations omitted). Thus, the Department and the Panel cannot consider the likelihood of dumping continuing or recurring by speculating on the results of the investigation using a different fact pattern.

TAMSA has also stated that the conditions involving the peso devaluation and level of debt no longer existed after the period of the LTFV investigation, that all of its home-market sales were above cost, and therefore there was no finding of dumping during the administrative review periods. However, the Department did find sales below cost during the administrative reviews, and disregarded sales below cost when calculating normal value ("NV"). See First Redetermination on Remand at page 35.

An examination of the pattern of TAMSA's export behavior subsequent to the order provides a more likely explanation for the zero margins, rather than existence or absence of sales below COP. As previously noted, TAMSA's export behavior after the imposition of the antidumping duty order is not consistent with its behavior prior to the imposition of the order. Specifically, for each of the three administrative reviews in question, TAMSA made only a single CEP sale of subject merchandise to the United States. By contrast, during the investigation period TAMSA made multiple sales on both an EP and CEP basis. The Department determined that TAMSA did not ship subject merchandise to the United States in commercial quantities during the administrative review periods, when considering revocation under 19 USC 1675(d)(1). See OCTG Fourth Administrative Review, Issues and Decision Memorandum at Comment 1. A separate NAFTA panel has upheld the Department's determination. See In the Matter of Oil Country Tubular Goods from Mexico: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke, USA-MEX-01-1904-05 (January 27, 2006), at page 11. Therefore, given that TAMSA did not ship in commercial quantities during the administrative review periods and deviated from the export behavior during the period of investigation by making single sales in each review, the zero margins obtained in the administrative reviews are not singularly due to the decrease in TAMSA's financial expense ratio and are not indicative of TAMSA's behavior absent the discipline of the Order.

“Other Factors” and the Financial Expense Ratio

Given that the elimination of the devaluation of the peso and TAMSA's debt and the lower financial expense cannot be linked definitively as the cause of the zero margins obtained in TAMSA's administrative reviews, because of the lack of sales by TAMSA in commercial quantities during the reviews, we are left with a general discussion of these "other factors" and their effect on the financial expense ratio. While the peso devaluation, TAMSA's debt levels, and changes in TAMSA's financial expense ratio have no effect on the likelihood determination, as discussed later in this redetermination, the Panel has consistently requested that the Department examine these items and has directed the Department again to examine specifically TAMSA's financial expense ratio. See Third Decision at 17. Below is a summary of our findings to date with respect to TAMSA's "other factors" involving the peso devaluation and debt levels and their effects on the financial expense ratio.

TAMSA initially maintained that the "other factors," consisting of a combination of the peso devaluation and the possession of long-term dollar-denominated debt during the investigation, was a unique occurrence that would not recur. See TAMSA's Substantive Response at 5. The Panel directed the Department to reopen the record, collect evidence, and "to consider both the relevance and the effect of TAMSA's 'other factors'" in the Department's likelihood determination. See First Decision at 21. In collecting the evidence and examining the effect of the "other factors," the Department first attempted to determine if the general combination of a peso devaluation at the time that TAMSA possessed long-term debts was indeed unique to the investigation period, or if a similar situation recurred subsequent to the

investigation. While every year in a company's business experience is "unique" in the sense that sales, debt, and other business factors change, the Department attempted to determine if the "other factors" presented by TAMSA were a unique and extraordinary event that did not substantially recur in subsequent years. The evidence reveals that devaluations of the peso at similar levels occurred throughout the sunset review period. See First Redetermination on Remand at page 27. The Department also found that TAMSA continued to have long-term dollar-denominated debts until 1999, but did not specify the actual debt levels during the sunset review period. Id. The Panel noted both the findings of further peso devaluations and the lack of a specific analysis of the decline in debt. See Second Decision at 5. Therefore, the Department undertook a comprehensive examination of TAMSA's debts during the sunset review period, finding that TAMSA possessed significant long-term debts throughout the sunset review period. See Second Redetermination on Remand at Attachment 1. Thus, information on the record indicates clearly that, contrary to TAMSA's assertions, a combination of long-term debts and peso devaluations continued to recur until 1999, when TAMSA no longer possessed long-term debt. The Panel noted these findings without further comment. See Third Decision at 13.

However, TAMSA, subsequent to the Department's First Redetermination on Remand, pointed to the effects of these "other factors" on the financial expense ratio. TAMSA stated

it is well known that the Department in the original investigation recalculated the interest expense component of TAMSA's cost of production to account for the devaluation of the peso and the foreign currency exposure that TAMSA had at that time. The effect was to increase TAMSA's financial expense ratio from 2.9 percent to 39.5 percent. In other words, as a result of the devaluation in the first

half of 1994 and TAMSA's foreign currency exposure at that time, the Department increased TAMSA's cost of production by more than 35 percent. In the three reviews, when no similar combination of foreign currency exposure and devaluation was ever present, TAMSA's interest expense ratio was 1.96 percent, 1.96 percent, and 0 percent, respectively.

See Letter from White and Case to the Secretary of Commerce, May 3, 2005, at page 7. As the Department has already demonstrated, since TAMSA did not make sales in the United States in commercial quantities during the periods of review, it is impossible to conclude that the decrease in the financial expense ratio is the reason for the finding of zero margins in the administrative reviews.

Nevertheless, there is the question of the effect of these "other factors" on the financial expense ratio during the investigation. The Panel stated that "it is clear from the record in the present proceeding that in the initial investigation, the Department's finding of TAMSA's dumping resulted from the combination of two factors: Mexico's peso devaluation and TAMSA's considerable hard-currency (US-dollar denominated) debt." See Second Decision at 4. The Panel thus determined that the changes in the financial expense ratio were the direct result of changes in TAMSA's foreign currency levels and the devaluations of the peso, stating in part that the Department's previous findings "do not take into account the magnitude of the decrease in TAMSA's dollar-denominated debt and the resulting dramatically lower financial expense ratio." Id. at 5. The Panel also ordered the Department to determine whether the decrease in the magnitude of TAMSA's foreign currency denominated debt, as purportedly

reflected in the decrease in the financial expense, outweighed the likelihood presumption from the decrease in TAMSA's post-order exports. Id. at 11. If not, the Department was directed to explain why it determined that the decrease in the debt levels did not outweigh the likelihood presumption from the decrease in TAMSA's post-order exports. Id.

A quick overview of the relationship between the financial expense ratio and the calculation of the COP is in order. The Department calculates the COP by first taking the cost of manufacture for a particular product, and then adding a figure for both selling, general and administrative expenses, as well as a financial expense calculated as a ratio. The financial expense ratio is intended to capture the cost of a company's capital requirements. Changes in company borrowing, exchange gains or losses, or total sales, can have an impact on the ratio.

Given the assumption, which the Panel endorsed, that the changes in the financial expense are directly and solely tied to changes in TAMSA's debt levels and currency devaluations and the Panel's instructions, the Department engaged in new fact-finding to determine if the link between the changes in the financial expense ratio were indeed due solely to changes in TAMSA's debt levels and peso devaluations. Based on the evidence on the record and the Department's analysis, the Department determined that changes in the cost of goods sold, reflecting TAMSA's level of sales, also played a significant part in the changes in the financial expense ratio. The Department made this determination by calculating a hypothetical expense ratio that isolated the exchange rate gains and losses from the actual financial expense ratio, in order to determine whether they were the sole or controlling factor in the change in the ratio over

time. See Second Redetermination on Remand at Attachment 2. The Department's analysis shows that the changes in the cost of goods sold are not the sole reason for the changes in the financial expense ratio. Clearly, the decrease over time in TAMSA's debt levels affected the ratio in a positive manner. However, the decline in the financial expense ratio from the investigation to the review periods is not based exclusively on TAMSA's declining debt levels or the devaluation of the peso, as TAMSA has consistently maintained and the Panel has endorsed. That contention is clearly in error.

TAMSA stated that the Department's methodology for calculating the hypothetical financial expenses was flawed, as the Department did not adjust the figures for inflation. The unadjusted figures, therefore, provided a distorted picture of the magnitude of the changes and effects of the ratio, according to TAMSA. See Letter from White and Case to the NAFTA Secretariat, April 11, 2006, at 4-25. To address these concerns, the Department has recalculated the figures used in calculating the financial expense ratios, using constant 1999 peso values. See Attachments 1 and 2. While the actual ratios do not change with a recalculation to account for inflation, the recalculations allow for another method of examining changes in TAMSA's financial position in relative, rather than absolute, terms. In addition, the Department has also included the calculation for the financial expense ratio for 1993.

The results show that the decrease in the financial expense ratio from 1994 to subsequent years during the administrative review periods is based in part on changes in the cost of goods sold. From 1993 to 1994, a significant factor in the change is due to changes in interest income.

See Attachments 1 and 2. This is despite a small reduction in TAMSA's debt, in pesos, from 1993 to 1994, which, all other things being equal, would lower the financial expense ratio. Specifically, the peso devaluation appears to account for approximately half of the increase from 1993 to 1994.

The Department's methodology in calculating the hypothetical financial expense ratio is reasonable and not unprecedented. In fact, the change in the financial expense ratio and the causes of this change during the investigation have been examined previously by the Department using a similar methodology. For the final results of the investigation, the Department considered various financial expense ratios based on TAMSA's 1994 financial statements to be used in the dumping calculations. One of these ratios is net of extraordinary exchange rate losses; i.e., it takes into account the changes due to the peso devaluation. These ratio calculations were reviewed by a separate NAFTA panel as part of the original investigation of OCTG from Mexico. See In the Matter of Oil Country Tubular Goods from Mexico: Final Determination of Sales at Less Than Fair Value, USA-MEX-95-1904-04 (July 31, 1996) at page 33. Option number 2 is a financial expense ratio stripped of extraordinary exchange rate movements, similar to the Department's calculations on remand. Ultimately, that NAFTA panel upheld the Department's use of the full financial expense ratio for the six months of the period of investigation. Id. at 55.⁷

⁷ Attachment 2 of this Redetermination contains a brief explanation of the Department's normal practice in calculating a financial expense ratio. The Department notes that the financial

Given this information, the facts are clear that the change in the actual financial expense ratio during the investigation, from just under three percent using 1993 figures to just under 40 percent using 1994 figures, is not due solely to the decrease in debt levels or the peso devaluation. While these facts may be inconvenient to TAMSA's arguments, they are nevertheless factual and rooted in the evidence on the record. Similarly, the Department's analysis clearly shows that the subsequent decrease in the financial expense ratio after the investigation is not due solely to exchange rate losses or the decrease in TAMSA's debt levels. While the decrease and eventual elimination of debt was clearly a significant factor in the lowering of the financial expense ratio, the increase in the cost of goods sold is likewise a significant factor.

ratio used in the investigation was not calculated in the same manner as the financial expense ratios calculated in the administrative reviews. In the investigation, the financial expense ratio was not calculated using the Department's standard methodology. Instead, the Department used the financial expense ratio as submitted to Mexican authorities. *Id.* at 33. It is thus highly unlikely that this ratio was calculated using the same methodology employed by the Department.

In addition, the Department notes that the financial expense ratios used in the second and third administrative reviews are identical. It appears that TAMSA reported the 1997 financial expense ratio, which it used in the second administrative review, for the third administrative review as well. *See* Letter from White and Case to the Secretary of Commerce, May 3, 2005, at footnote 9. ("No document is provided for the third review because the Department accepted the interest expense ratio reported by TAMSA, which was the same as the previous review."). Therefore, the financial expense ratio used in the third review does not accurately reflect changes in TAMSA's financial position year-to-year.

Finally, the financial expense calculation submitted in TAMSA's brief to the Panel also uses a different methodology than the one used in the administrative reviews. *See* Letter from White and Case to the NAFTA Secretariat, April 11, 2006, at Annex 2.

A related question is why the cost of goods sold changed so strongly during the investigation and subsequent administrative reviews. It would appear that the reason lies in TAMSA's level of sales in the home market. During the investigation, the Department determined that TAMSA did not have a viable home market, and compared U.S. sales to third-country sales to Saudi Arabia. See LTFV Determination. In contrast, during each of the three subsequent reviews, the Department used the Mexican home market as the comparison market. See, respectively, OCTG Second Administrative Review, OCTG Third Administrative Review, and OCTG Fourth Administrative Review.⁸

Regardless, the Department has demonstrated that TAMSA's arguments with respect to the "other factors" of the peso devaluation and debt levels are not supported by the record. The record shows that TAMSA's failure to sell in the United States in commercial quantities during the administrative review periods, and not the decrease in TAMSA's financial expense ratio from the investigation to the administrative reviews, is the primary, if not sole, reason for the finding of zero margins during the reviews. The record also shows that, far from being a unique occurrence during the investigation, TAMSA continued to have significant debts and

⁸ The Department also compared U.S. prices to Mexican home market sales in an earlier investigation of OCTG from Mexico. See Oil Country Tubular Goods from Mexico; Preliminary Determination of Sales at Less Than Fair Value, 50 FR 2313 (January 16, 1985). The Department terminated the investigation after Mexico became a signatory to the Voluntary Restraint Agreements under the Steel Import Stabilization Act (19 USC § 2253 note) (See Presidential Documents, Volume 20, September 18, 1984 at page 1307). See Termination of Antidumping Duty Investigation; Oil Country Tubular Goods from Mexico, 50 FR 24276, 24277 (June 10, 1985)

experienced peso devaluations until 1999. Finally, the Department has shown that the changes in TAMSA's financial expense ratio are not due only to the changes in TAMSA's debt levels or the peso devaluation, but also to changes in TAMSA's cost of goods sold.

It is impossible to state with any certainty whether TAMSA will incur debts, experience currency devaluations, or experience large fluctuations in the level of sales and costs of goods sold, in the future. It is possible, however, that these events could occur in the future.

Fluctuations in debt, currency and sales levels are normal factors of any business, and large or unusual changes can and do occur frequently. TAMSA has provided no evidence to demonstrate otherwise. It is clear, however, that TAMSA's single sales – resulting in zero margins – are not representative of normal commercial activity.

TAMSA's 'Other Factors' and the Department's Likelihood Determination

Given the Panel's instructions in its most recent decision, the Department must examine the financial expense ratio in the context of whether dumping is likely to continue or recur. The Panel has specifically instructed the Department "to reconsider its likelihood determination and either issue a determination of no likelihood or give a reasoned analysis to support a conclusion that TAMSA's dumping is likely to continue or recur. In particular, the Department is directed to explain why TAMSA's high financial expense ratio is likely to recur considering the decrease in TAMSA's foreign currency denominated debt during the sunset review period as evidenced by the actual financial expense ratio established in the record of this proceeding." See Third

Decision at 17. In making its likelihood determination, however, the Department finds that there is no correlation between TAMSA's financial expense ratio and the likelihood that dumping will continue or recur. Thus, the likelihood of dumping continuing or recurring is not dependent upon the level or even the existence of a financial expense ratio. Whether TAMSA experiences a high financial expense ratio in the future or not is thus unimportant.

TAMSA's implied link of its financial expense position to sales made below the COP is not absolute. Moreover, the assumption that a finding of sales below cost, or comparison to CV, generally results in a finding of dumping, is simply not supported by the facts. Therefore, it is incorrect to conclude that TAMSA could be found to be dumping, assuming that TAMSA made sales into the United States in commercial quantities, only if the Department were to find sales below cost or use CV in future administrative reviews. Similarly, it is not logical to assume that TAMSA would not be dumping were the Department to use only a price-to-price comparison without considering cost.

The Department has conducted administrative reviews where it disregarded sales below COP, and the respondent shipped in commercial quantities, and did not find dumping. See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 28659 (May 17, 2006).⁹

⁹ The Department revoked Sahaviriya Steel Industries Public Company Limited (SSI), the company subject to the administrative review in the cited proceeding, from the order. Unlike

Therefore, a finding of sales below COP does not necessarily result in the finding of a dumping margin.

Similarly, there are numerous instances of the Department comparing sales in the United States to CV that does not result in a finding of dumping.¹⁰ Thus, the use of CV to calculate NV for comparison to U.S. price in an antidumping duty proceeding does not automatically result in a finding of dumping.

Critically, it is not necessary for the Department to conduct a sales below COP investigation in order to find dumping. The Department has found dumping when making price-to-price comparisons of sales in the United States to sales in the comparison market without investigating whether there were sales made below COP in the comparison market. See, e.g., Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative

with TAMSA and Hylsa, the Department found that SSI was selling in commercial quantities. As mentioned previously, the Department's finding that TAMSA did not sell in commercial quantities for three consecutive review periods has been upheld by both a separate NAFTA panel proceeding and the World Trade Organization. See In the Matter of: Oil Country Tubular Goods from Mexico: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke, USA-MEX-01-1904-05 (January 27, 2006) and United States – Anti-dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico, WT/DS282/R.

¹⁰ See, e.g., Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta from Italy 70 FR 30083 (May 25, 2005), Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833 (August 19, 1996) (the Department compared U.S. price to CV for all companies), Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative and New Shipper Reviews, 65 FR 50179 (August 17, 2000) (the Department used CV for normal value for respondent Cablesa), and Notice of Final Determination of Sales at Not Less Than Fair Value: Collated Roofing Nails From Korea, 62 FR 51420 (October 1, 1997) (the Department compared U.S. price to CV for respondent Kabool in the investigation).

Review and Determination Not to Revoke in Part, 71 FR 26333 (May 4, 2006)¹¹ for respondent Asociacion de Cooperativas Argentinas (ACA).

The fact pattern for respondent ACA for the antidumping duty order on honey from Argentina is particularly comparable to the facts for TAMSA and OCTG from Mexico. As TAMSA was a respondent in the investigation on OCTG from Mexico, ACA was a respondent in the original investigation on honey from Argentina. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From Argentina, 66 FR 24108 (May 11, 2001). As with Mexican OCTG, the Department initiated a sales-below-cost investigation for honey from Argentina. Id. In order to calculate COP, the Department resorted to an unusual methodology and unusual cost data which were unlikely to recur,¹² as TAMSA has alleged for Mexican

¹¹ See also Carbon Steel Wire Rod From Argentina: Final Results of Antidumping Duty Administrative Review, 65 FR 4803 (February 1, 2000), and Carbon Steel Wire Rod From Argentina: Preliminary Results of Antidumping Duty Administrative Review, 64 FR 63283 (November 19, 1999); Brass Sheet and Strip From Sweden: Final Results of Antidumping Administrative Review, 60 FR 3617 (January 18, 1995), and Brass Sheet and Strip From Sweden: Preliminary Results of Antidumping Administrative Review, 59 FR 13698 (March 23, 1994); Certain Steel Concrete Reinforcing Bars From Turkey: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 64 FR 49150 (September 10, 1999) (the Department made price-to-price comparisons for respondent ICDAS); and Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta From Italy, 67 FR 300 (January 3, 2002) (the Department found margins for respondents Ferrara and Riscossa using price-to-price comparisons. We also note that the Department initiated cost investigations for respondents Pagani, Puglisi, and Rummo, and found zero or de minimis margins, and compared U.S. price to CV for respondent Corex, without finding a margin);

¹² The Department solicited cost information from twelve unrelated beekeepers in Argentina in order to construct and average, country-wide COP. The selected beekeepers failed to respond to the Department's request for information. Therefore, the Department resorted to calculating COP using cost data obtained from Argentine honey producer bi-monthly trade journal articles submitted in the petition. See Notice of Preliminary Determination of Sales at

OCTG. ACA did not have a viable home market. Therefore, as with OCTG from Mexico, the Department compared U.S. sales to third country sales, and calculated NV for those third-country sales. Id. As with OCTG from Mexico, all of the third-country sales fell below the COP, necessitating the use of CV for NV. Id. After making adjustments from the preliminary determination, the Department found a dumping margin of 38.71 percent for ACA. See Notice of Final Determination of Sales at Less Than Fair Value; Honey From Argentina, 66 FR 50611 (October 4, 2001).

Subsequently in an administrative review, the Department reviewed ACA and initiated a sales-below-cost investigation. However, the Department used cost information provided by ACA and its supplier beekeepers, rather than the unusual cost information used in the investigation. See Honey From Argentina: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 77195 (December 27, 2004). As a result, the Department did not find any sales below the COP and did not initiate a cost investigation in the subsequent administrative review. See Honey from Argentina: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part, 70 FR 76766, 76769 (December 28, 2005). Therefore, the Department made price-to-price comparisons of U.S. sales to third-country sales when calculating the dumping margin. Id. As a result, the Department calculated a margin of 2.95 percent for ACA.

Less Than Fair Value: Honey From Argentina, 66 FR 24108, 24112 (May 11, 2001).

The parallels between Argentine honey and Mexican OCTG are clear and relevant to the Department's analysis in this redetermination. As with Mexican OCTG, the Department found all third country sales of Argentine honey to be below the COP and compared U.S. price to CV. As with Mexican OCTG, the Department found a dumping margin for the responding company in the Argentine honey investigation. In a subsequent review of Argentine honey, after the unique COP methodology was no longer used, the Department found no sales below cost, as TAMSA contended would happen in Mexican OCTG.¹³ Thus, in the subsequent administrative review of Argentine honey, the Department made price-to-price comparisons of U.S. sales to third-country sales and did not initiate a cost investigation. Nevertheless, the Department found a dumping margin for ACA.

Thus, changes in the COP from an investigation to a review, such as the changes in TAMSA's financial expense ratio, are not necessarily indicative of the likelihood of continuance or recurrence of dumping. Even if the Department were to conduct an administrative review of TAMSA's sales of OCTG from Mexico and not conduct a cost investigation, the use of price-to-price comparisons between U.S. and comparison market sales does not guarantee that there will be no dumping. TAMSA's attempt to link changes in its financial expense ratio to sales below COP, the use of CV, or to a finding of dumping, is simply not accurate. The Department has

¹³ However, as previously noted and unlike ACA in Argentine honey, the Department did find and disregard sales below the COP in the administrative review of TAMSA in OCTG from Mexico despite the decrease in the financial expense ratio.

conducted numerous antidumping duty investigations and administrative reviews, as evidenced above, where such a linkage simply does not exist. Changes in TAMSA's financial expense ratio thus have no bearing on the Department's likelihood determination in this sunset review.

Conclusion

TAMSA has not demonstrated that the "other factors" should change the Department's likelihood determination. TAMSA's line of reasoning that a reduction in the financial expense ratio from the levels found at the investigation will result in no finding of dumping has been proven false. On the contrary, as established in the First Redetermination on Remand and above, there is no exclusive correlation between TAMSA's "other factors," the level of the financial expense ratio, and continued dumping. However, it is clear that both TAMSA's and Hylsa's exports of OCTG to the United States declined significantly after the imposition of the order. The statute and the SAA clearly state that a cessation of imports after the imposition of an order is highly probative of the likelihood of continuation or recurrence of dumping. Therefore, the Department, based on all of the evidence on the record, finds that the revocation of this Order would likely lead to a continuation or recurrence of dumping.

If the Panel affirms this redetermination, we will publish a notice in the Federal Register in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. §1675(a)(1)).

David M. Spooner
Assistant Secretary
for Import Administration

(Date)

**NAFTA Remand
Sunset Review**

Attachment 1

TAMSA Debt and Equity

In Thousands of Mexican Pesos

As of:	31-Dec-93	30-Jun-94	31-Dec-95	31-Dec-96	31-Dec-97	31-Dec-98	31-Dec-99
Inflation Index	26.721	28.605	43.471	55.514	64.24	76.195	85.581
Short-term Debt	839,476	815,654	1,346,817	887,824	378,080	1,121,495	1,113,173
Long-term Debt	690,392	583,506	2,120,717	986,988	1,057,096	493,250	-
TOTAL DEBT	1,529,868	1,399,160	3,467,534	1,874,812	1,435,176	1,614,745	1,113,173
Indexed for Inflation	4,899,803	4,186,034	5,345,589	2,890,231	1,611,967	1,813,656	1,113,173
Capital Stock	2,806,492	4,749,469	5,830,487	5,830,487	8,166,844	8,151,835	8,894,085
APIC	1,789,027	2,453,425	3,716,509	3,716,509	5,113,108	5,130,082	5,816,281
TOTAL EQUITY	4,595,519	7,202,894	9,546,996	9,546,996	13,279,952	13,281,917	14,710,366
Indexed for Inflation	14,718,353	21,549,760	14,717,755	14,717,755	14,915,829	14,918,036	14,710,366
TOTAL DEBT and EQUITY	19,618,156	25,735,794	20,063,344	17,607,986	16,527,795	16,731,691	15,823,539

References:

1993 figures from exhibit D-8 of the 2/1/1995 section D submission from the Investigation.

1994 figures are at June 30 since TAMSA failed to provide their 1994 annual audited financial statements.

The figures are from exhibit 37 of the 3/3/1995 section D response.

1995 to 1999 figures from TAMSA's 5/3/2005 response to NAFTA for the 2000 sunset review.

We note that the pre-indexed 1995 and 1996 figures are at 12/31/96 purchasing power; the 1997 and 1998 figures are at 12/31/98 purchasing power; and the 1999 figures are at 12/31/99 purchasing power.

Analysis of Financial Expense Rates

In Thousands of Mexican Pesos

NOTE: At the request of the NAFTA panel, we have provided the following calculations and comparisons in an attempt to assess the impact of the "other factors" on the financial expense rate. As such, we have calculated the financial expense rates exclusive of TAMSA's "other factors" where possible. Thus, we have excluded the foreign exchange gains and losses, the extraordinary gains and losses related to the peso devaluation, and the gains and losses on monetary position, and instead calculated a financial rate that reflects simply the company's interest expense and interest income. We then compared these net interest expense rates to the net financial expense or income that includes all of the "other factors".

	Formula	1993	1994	1997	1998	1999
Inflation Index		26.721	28.605	64.24	76.195	85.581
Net Interest Expense*		113,248	129,356	155,713	237,395	99,531
Indexed for Inflation (1999 purch power)	a	338,818	387,010	155,713	237,395	99,531
COGS		686,109	783,626	4,490,178	4,029,211	2,994,677
Indexed for Inflation (1999 purch power)	b	2,052,714	2,344,468	4,490,178	4,029,211	2,994,677
Net Interest Expense Rate (exclusive of Monetary Gains and Losses, Exchange Gains and Losses, and Extraordinary Income and Expense)	a/b	16.51%	16.51%	3.47%	5.89%	3.32%
Net Financing Cost**		2.88%	94.48%	-0.28%	10.11%	4.06%

References:

1993 and 1994 figures obtained from petitioner's 9/14/1995 submission. Both years are in 1994 purchasing power.

Thus, the indexed number was calculated by multiplying the expense or COGS by the 1999 Inflation Index over the 1994 Inflation Index.

1997 to 1999 figures obtained from cost verification exhibit 4 in the 4th administrative review (98-99 review).

The, 1997 to 1999 figures are in 1999 purchasing power.

* We note that the Department's normal practice is to allow only short-term interest income (i.e., interest earned on working capital) as an offset to financial expenses. However, we were unable to breakout short term and long term interest income for all years presented. Therefore, for comparability purposes, these figures are conservatively presented net of all interest income.

** Net Financing Cost and Inflation Index from Respondent's April 11, 2006 "Submission of TAMSA In Support of its Rule 73(2) Challenge to the Department of Commerce's Second Remand Determination pursuant to Article 1904 of the North American Free Trade Agreement and Rule 68(1)(b) of the NAFTA Article 1904 Panel Rules," Annex 1 and 2. We note that the respondent's Annex 2 net financing cost percentages contained several errors. Based on the explanations provided at Annex 2, respondent attempts to divide the net financing cost from Note 1 of the financial statements by the COGS. However, for 1993, 1998, and 1999, the schedule reflects net financing income (and percentage); however, Note 1 of the relative financial statements shows net financing costs. Thus, we have appropriately revised the percentages to reflect net financing costs (percentages) for these years.