

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for AD/CVD Operations

SUBJECT: Section 129 Determination: Final Results of Sunset Review, Oil
Country Tubular Goods from Mexico

Summary

Consistent with the WTO Panel (the Panel) findings,¹ we have analyzed whether 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. As discussed in detail below, we considered information and argument from domestic and respondent interested parties for the period at issue in our original sunset review, 1995-2000. Based upon the information and argument on the record, we continue to find that revocation of the order would be likely to lead to continuation or recurrence of dumping.

Background

On March 9, 2001, the Department published the final results of sunset review of the antidumping duty order on OCTG from Mexico.² Respondent Tubos de Acero de Mexico S.A. (TAMSA) argued that unique circumstances during the investigation, *i.e.*, a large devaluation in the peso when TAMSA possessed large long-term dollar-denominated debt, would not be repeated, and thus dumping would not recur. Nevertheless, the Department concluded that revocation of the order would be likely to lead to continuation or recurrence of dumping based on the significant decrease of import volumes after the imposition of the order.

The Panel found “{t}here is no indication on the face of the decision memorandum that USDOC considered any of the information or arguments presented concerning changes in TAMSA's

¹ *United States – Sunset Reviews of Anti-dumping Measures on Oil Country Tubular Goods from Mexico*, WT/DS282/R (May 23, 2005) (“Panel Report”).

² *See Oil Country Tubular Goods (“OCTG”) from Mexico; Final Results of Sunset Review of Antidumping Order*, 66 FR 14131 (March 9, 2001) and accompanying Issues and Decision Memorandum (“Final Results Memorandum”).

financial situation and overall economic conditions in Mexico,” which the Panel stated would be “relevant” to the Department’s determination that dumping would continue or recur based on declining import volumes.³ According to the Panel, the Department’s lack of consideration of TAMSA’s arguments and information regarding this issue led to the Panel’s conclusion that the Department failed to consider all relevant evidence in making its likelihood determination.

The Panel concluded that the Department’s determination is not consistent with Article 11.3 of the Antidumping Agreement because it is not supported by reasoned and adequate conclusions based on the facts before the Department. The United States did not appeal the Panel’s finding regarding the Department’s likelihood of dumping determination, although it did appeal other findings of the panel.

On November 28, 2005, the Dispute Settlement Body (DSB) adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report.⁴ On February 17, 2006, the United States and Mexico mutually agreed that, pursuant to Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, the reasonable period of time for the United States to implement the recommendations and rulings of the DSB would be six months, expiring May 28, 2006.⁵

On April 27, 2006, the Department issued a draft Section 129 Determination and invited interested parties to comment on the draft. On May 4, 2006, TAMSA and petitioner U.S. Steel Group (U.S. Steel) submitted comments to the draft, and both parties submitted rebuttal comments on May 9, 2006. In addition, both parties filed additional factual information in their initial submissions, although the Department had not requested that parties file additional factual information. Moreover, the Panel’s findings did not suggest that additional factual information was necessary to address the WTO-inconsistency of the Department’s original sunset determination. Rather, the Panel found fault with the Department’s “failure to consider potentially relevant evidence, which is not consistent with the obligation to make a reasoned analysis on the basis of relevant facts, and not on any views as to the result in this case.”⁶ Nevertheless, the Department determined to accept the additional factual information provided by both parties. In light of both TAMSA’s and U.S. Steel’s new information, the Department itself added additional factual information to the administrative record of the Section 129 proceeding and subsequently provided interested parties an additional opportunity to comment on all new factual information on the record. TAMSA submitted comments on May 30, 2006, and U.S. Steel submitted rebuttal comments on June 2, 2006.

³ *Panel Report*, paras. 7.78-7.79.

⁴ Minutes of Meeting on 28 November 2005, WT/DSB/M/200, at para. 74 (January 25, 2006); *United States – Anti-Dumping Measures On Oil Country Tubular Goods (OCTG) From Mexico*, Appellate Body Report and Panel Report WT/DS282/10 (December 2, 2005).

⁵ *United States – Anti-Dumping Measures On Oil Country Tubular Goods (OCTG) From Mexico*, Agreement under Article 21.3(b) of the DSU, WT/DS282/11 (February 17, 2006).

⁶ *Panel Report*, para. 7.78.

Our analysis of the information on the administrative record, responses to comments from interested parties, and the results of this Section 129 Determination are described below. We note that no hearing was held in this Section 129 proceeding because none was requested.

Analysis

As noted above, the Panel concluded that the Department's original determination with respect to the likelihood of continuation or recurrence of dumping did not consider all of the evidence before the Department. Specifically, the Panel found that the Department did not consider information submitted by TAMSA concerning TAMSA's financial situation and the fluctuation of the Mexican peso during the investigation and subsequent administrative reviews.⁷

With respect to the information presented by TAMSA, the Panel stated that “{i}nformation regarding changes in the financial circumstances of a company previously found to have been dumping, and changes in the overall economic situation of the exporting country, would appear to be relevant to whether the inference relied upon by {the Department} is reasonable.”⁸ According to the Panel, the Department only relied upon a decrease in imports, and did not examine the information presented by TAMSA with respect to TAMSA's financial position and the stability of the Mexican peso. Thus, the Panel concluded “{t}hat the sunset determination at issue is not consistent with Article 11.3 of the AD Agreement because {the Department's} determination that dumping is likely to continue or recur is not supported by reasoned and adequate conclusions based on the facts before it.”⁹

Consistent with the Panel's decision, the Department initially limited its analysis to re-examination of the evidence on the record of the original sunset determination.¹⁰ However, in light of the fact that parties submitted new information not previously on the record of the sunset review, the Department considered it necessary to supplement the record with additional relevant information. Consistent with the Panel's findings, and taking into account all the information on the record of the Section 129 proceeding, the Department examined TAMSA's information and arguments with respect to TAMSA's financial position both during and after the antidumping duty investigation, and the instability of the Mexican peso during that time. In making our likelihood determination on the basis of the original sunset review period, we also relied on our previous finding regarding the volume of imports of subject merchandise for the periods before and after the issuance of the antidumping duty order, as well as other facts from the various administrative reviews for this order. For the reasons set forth below, the Department continues to determine that sunset of the antidumping duty order on OCTG from Mexico would be likely to lead to continuation or recurrence of dumping.

⁷ *Id.* at paras. 7.77 and 7.78.

⁸ *Id.* at para. 7.79.

⁹ *Id.* at para. 7.80.

¹⁰ See Draft Section 129 Determination: Final Results of Sunset Review, Oil Country Tubular Goods from Mexico, issued on April 27, 2006.

Record Information Not Related to “Other Factors”

The Department considers that the continued evidence of dumping after the imposition of an order, or the cessation of imports, is highly probative of the likelihood of the continuation or recurrence of dumping. 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, and not a company-specific basis. In other words, the Department will base its analysis on the exporting and pricing behavior of all producers and exporters subject to an order, not just one company.

During the original antidumping duty investigation, the Department investigated only sales made by TAMSA.¹¹ In making a determination of sales at less than fair value, the Department used TAMSA’s own sales and cost data, and used TAMSA’s own data in calculating the financial expense ratio used in the calculation of cost of production.¹² In subsequent administrative reviews, the Department examined sales made by both TAMSA and Hylsa S.A. de CV (“Hylsa”).¹³

Information on the record of the sunset review indicates that imports of OCTG from Mexico fell from 43,695 net tons for the period August 1993 to July 1994, to 1,297 net tons for the period August 1998 to July 1999.¹⁴ 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 1999.¹⁵ The antidumping duty order on OCTG from Mexico was published on August 11, 1995.¹⁶ Therefore, on an order-wide basis, import levels decreased substantially from their pre-order levels, *i.e.*, in 1994, to the last year of the sunset review period, *i.e.*, 1999.

As to the individual companies, TAMSA shipped approximately 10,000 MT of OCTG to the United States in the first six months in 1994, or 20,000 MT on an annualized basis.¹⁷ By

¹¹ See *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Mexico*, 60 FR 33567 (June 28, 1995) (“*LTFV Determination*”).

¹² See Letter from Letter from Skadden, Arps, Slate, Meagher & Flom LLP to the Secretary of Commerce, June 2, 2006, at pages 8-10.

¹³ 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).

¹⁴ See Letter from Skadden, Arps, Slate, Meagher & Flom LLP to the Secretary of Commerce, August 2, 2000, at page 11.

¹⁵ See Letter from White & Case to the Secretary of Commerce, August 2, 2000 (“TAMSA’s Substantive Response”) at Exhibit 4.

¹⁶ See *Antidumping Duty Order: Oil Country Tubular Goods from Mexico*, 60 FR 41056, (August 11, 1995).

¹⁷ See Letter from Skadden, Arps, Slate, Meagher & Flom LLP to the Secretary of Commerce, February 25, 2005, at 7.

contrast, 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.¹⁸ 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.¹⁹ Thus, import levels decreased dramatically for Hylsa before recovering to a figure that is still below pre-Order levels.

As to evidence of continued dumping, the Department preliminarily found that Hylsa was dumping in the fourth administrative review at a rate of 1.47 percent.²⁰ The final results of the fourth administrative review, with respect to Hylsa, is currently subject to litigation.²¹

In sum, exports to the United States have decreased dramatically both for Mexico as a whole and for both TAMSA and Hylsa individually. TAMSA had no exports to the United States despite the imposition of a zero cash deposit rate with four months remaining in the fourth administrative review period.²² Additionally, the Department has found dumping in the fourth administrative review for sales made by Hylsa. The existence of dumping margins or the cessation of imports is highly probative of the likelihood of continuation or recurrence of dumping.

In addition, 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. Contemporaneous with the decrease in export volumes 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 price). Some sales to the United States were further manufactured after importation but prior to sale to unaffiliated customers.²³ However, for each of the three administrative reviews in which TAMSA

¹⁸ *Id.* at 8.

¹⁹ See Letter from Shearman & Sterling, August 2, 2000, at page 6.

²⁰ The period of the fourth administrative review on OCTG from Mexico fell within the sunset review period. At the preliminary determination, 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 its final results for review in the Fourth Administrative Review, 66 FR 15832, issued shortly after the sunset review was completed, the Department confirmed dumping by Hylsa at a rate of 0.79 percent.

²¹ 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).

²² 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, 64 FR 13962.

²³ See *Preliminary Determination of Sales at Not Less Than Fair Value: Oil Country Tubular Goods from Mexico*, 60 FR 6510, 6511 (February 2, 1995).

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.²⁴ Relative to the characteristics of the pre-order sales, the fact that TAMSA made a single sale of merchandise during each review period, of a single type of merchandise, through an affiliated party in the United States, provided the opportunity for TAMSA to control carefully all of the terms of sale and obtain a zero dumping margin. Regardless, TAMSA's post-order sales simply are not characteristic of the commercial quantity sales pattern that existed prior to the imposition of the order.

Thus, not only did Hylsa continue to dump, and not only have imports decreased for Hylsa and ceased for TAMSA, but TAMSA's pattern of sales to the United States has changed since the imposition of the antidumping duty order. It is within this context that the Panel directed the Department to consider "other factors" raised by TAMSA. We do so in the following section.

TAMSA's Information Regarding "Other Factors"

TAMSA, in its substantive response to the Department in the original sunset review, stated that dumping would not recur were the order on OCTG from Mexico to sunset.²⁵ TAMSA's reasoning is as follows:

In the original investigation, the Department preliminarily determined that TAMSA was not dumping (60 Fed. Reg. 6510 (Feb. 2, 1995)). In the final determination, the Department applied a BIA {best information available} rate to TAMSA, concluding that TAMSA withheld certain information regarding the effect of the Mexican peso devaluation (60 Fed. Reg. 33567, 33572 (June 28, 1995)). As BIA, the Department considered TAMSA's foreign currency translation losses related to its then-significant U.S. dollar-denominated debt as a financial expense in the period. The effect was to increase dramatically TAMSA's COP {cost of production}. The large impact on TAMSA's COP reflected both TAMSA's unusually large dollar-denominated debt at the time, and the significance of the peso devaluation.

In this sunset review, the Department must consider the objective facts that demonstrate the inapplicability of the rate calculated using 1994 financial data: 1) TAMSA has much less debt (in fact, it had no long-term debt as of December 31, 1999), and therefore cannot experience the type of foreign exchange losses the Department used to calculate the BIA rate (see TAMSA's 1999 financial

²⁴ See OCTG Second Administrative Review, 64 FR 13962, 13963, at Comment 1, OCTG Third Administrative Review, 65 FR 1593 at Comment 1, and OCTG Fourth Administrative Review, 66 FR 15832, Issues and Decision Memorandum at Comment 2.

²⁵ See TAMSA's Substantive Response at 5.

statement attached as Exhibit 1); and 2) the Mexican peso has stabilized, and sudden devaluations of the type experienced in 1994 are unlikely.

In addition, the Department must recognize TAMSA's demonstrated ability to export to the United States without dumping. As stated above, the Department confirmed in both the second and third review periods that TAMSA is not dumping in the United States, and the review of the fourth period is underway. This is the best evidence of what would occur if the dumping order were revoked.²⁶

In summary, TAMSA asserts that the reason for the original finding of dumping in the investigation was a combination of instability in the peso at the time and TAMSA's long-term dollar-denominated debts. As a result, TAMSA contends, it incurred large currency translation losses, which increased its cost of production. TAMSA argues that the higher cost of production 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 CV {constructed value} consisting of an inflated financial expense component, and it would not lead to dumping."²⁷

Initially, the Department reviewed only the record evidence available to it during the original sunset review. During the original sunset review, TAMSA provided a copy of its consolidated financial statements from 1999 to indicate that it no longer had any long-term dollar-denominated debts.²⁸ The financial statements show that TAMSA had U.S. dollar-denominated debts of just over \$50,000 in 1998, originating from various bank loans and notes. These debts no longer existed at the end of 1999, with the final medium-term note maturing in December of 1999. The evidence also shows that TAMSA possessed some short-term debt denominated in U.S. dollars in 1999.²⁹

However, TAMSA did not provide any comparison figures on its long-term debt for the years 1994 through 1999, other than the long-term debt figure of 554,012 pesos in 1998. Note 4 of Exhibit 1 of TAMSA's Substantive Response indicates that the long-term dollar-denominated loans originated in 1992, but does not provide the yearly levels of outstanding debt. Additionally, TAMSA provided no evidence indicating the level of the Mexican peso devaluation in 1994 and subsequent movements in the value of the Mexican peso in succeeding years. Finally, without any evidence to the contrary, it is reasonable to assume that TAMSA

²⁶ *Id.*

²⁷ See Letter from White & Case to the Secretary of Commerce, February 25, 2005, at 7-8.

²⁸ See TAMSA's Substantive Response at Exhibit 1.

²⁹ *Id.*

would borrow in the future, which might result in it incurring long-term dollar debts at a similar level to those of the investigation period. Indeed, TAMSA continued to borrow in dollars in 1999, but incurred loans with short-term maturities. It is thus not possible for the Department to determine, based solely on record evidence from the sunset review, whether similar currency exchange rate losses occurred after 1994 during the administrative review periods. Therefore, it is not possible to determine, based on the evidence available during the sunset review, whether changes in TAMSA's financial position produced non-dumped sales during the review periods, and whether such changes would be indicative of future behavior.

Subsequent to the conclusion of the sunset review, TAMSA requested a review of the Department's decision under the NAFTA.³⁰ At the Department's request, parties supplemented the record of that proceeding. The Department also conducted fact-finding and placed additional information on the record of the NAFTA segment of the proceeding. The Department has supplemented the record of this Section 129 proceeding with information obtained during the fact-finding portion of the NAFTA segment of the proceeding.³¹ In addition, TAMSA also supplemented the record of this Section 129 proceeding by placing documents from the NAFTA segment of the proceeding on the record.³² Petitioners and TAMSA have both submitted comments with respect to the Department's draft determination and the information placed on the record.³³ Thus, the Department has developed the record with substantial factual information not provided at the time of the original sunset review, but relevant and applicable to the original sunset review period.

TAMSA's information and argument on the record of this Section 129 proceeding 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, TAMSA contends that the findings during the administrative reviews are indicative of TAMSA's behavior were the antidumping duty order to sunset. We note that none of the information submitted by TAMSA addresses either the import experience or the fact of dumping by Hylsa, or why the Department should ignore Hylsa's

³⁰ See *In the Matter of Oil Country Tubular Goods from Mexico, Final Results of Sunset Review of Antidumping Duty Order*, USA-MEX-2001-1904-03, July 31, 1996.

³¹ See Memorandum to the File, Transfer of Information to Record, May 11, 2006, Memorandum to the File, Transfer of Information to Record, May 12, 2006, Memorandum to the File, Additional Transfer of Information to Record, May 16, 2006, and Memorandum to the File, TAMSA Debt and Equity Figures and Financial Expense Ratio, May 16, 2006.

³² See Letter from White & Case to the Secretary of Commerce, Antidumping Order on Oil Country Tubular Goods from Mexico: TAMSA's Comments on Draft Section 129 Determination, May 4, 2006 ("TAMSA's 129 response").

³³ See TAMSA's 129 response, Letter from Skadden, Arps, Slate, Meagher & Flom LLP to the Secretary of Commerce, May 4, 2006, Letter from White & Case to the Secretary of Commerce, May 9, 2006, Letter from Skadden, Arps, Slate, Meagher & Flom LLP to the Secretary of Commerce, May 9, 2006, Letter from White & Case to the Secretary of Commerce, May 30, 2006, and Letter from Skadden, Arps, Slate, Meagher & Flom LLP to the Secretary of Commerce, June 2, 2006.

experiences since the imposition of the antidumping duty order. Nevertheless, we will examine each category of information supplied by TAMSA.

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. antidumping duty law and the possibility of retroactive duty increases.³⁴ Second, TAMSA claims that the United States has not been a high-volume market for TAMSA since the imposition of the order.³⁵ Third, TAMSA argues that the market for OCTG products in the United States was depressed subsequent to the imposition of the order, particularly in 1999.³⁶ We will address each of TAMSA's assertions below.

The importer of record in the administrative reviews in which TAMSA participated was an affiliated party.³⁷ Specifically, the affiliated party, Siderca Corp., was the exclusive selling agent for TAMSA's products in the United States.³⁸ Given that TAMSA's affiliated importer 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,³⁹ TAMSA's statements regarding its "business decision" are unpersuasive. If TAMSA was confident that it would not dump, its own affiliated importer would not be unwilling to import subject merchandise.

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, information on the record rebuts this assertion. The information on the record indicates that the U.S. market for OCTG is one of the largest in the world, with annual consumption in the range of 1.4 to 2.5 million tons, and imports in the range of 170,170 to 720,252 tons, during the years 1996 to 2000.⁴⁰ 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."

³⁴ See Letter from White & Case to the Secretary of Commerce, February 25, 2005, at 5, 10.

³⁵ *Id.* at 5.

³⁶ See TAMSA's 129 response at 13.

³⁷ 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.

³⁸ See Letter from Schagrin Associates to the Secretary of Commerce, March 2, 2005, at 6.

³⁹ See Letter from White & Case to the Secretary of Commerce, February 25, 2005, at 7-8.

⁴⁰ See Memorandum to the File, New Information obtained by the Department, April 26, 2005, attachment of American Iron and Steel Institute's Annual Statistical Report, 2000.

Finally, TAMSA states that it was reasonable not to expect it to export OCTG to the United States in 1999, especially during the final four months of the fourth administrative review period, because oil prices were low at that time.⁴¹ Attachment 5 of TAMSA's Section 129 response of May 2, 2006, contains a copy of a submission from the fourth administrative review, where TAMSA provides an analysis of the fluctuations in the per-barrel price of oil from 1994 until 2000. Accompanying the written explanations are charts showing the change in the per-barrel price of oil and the corresponding changes in prices for OCTG, both using six-month intervals.⁴² TAMSA also provides a chart of prices of various types of OCTG from January of 1990 until January of 2000, as well as testimony before the United States International Trade Commission.⁴³

We have examined this assertion and information, as well as other information on the record of this Section 129 proceeding. Evidence on the record indicates that imports of OCTG into the United States from all sources were lower in 1999 than in any year between 1994 and 2000, with imports of 170,170 tons for the year.⁴⁴ However, the prices in July of 1999 for two of the three types of OCTG listed by TAMSA, when TAMSA had no shipments of OCTG to the United States, were higher than the prices in July of 1994, which is within the six-month period used in the antidumping investigation and when TAMSA had annualized shipments of more than 20,000 tons to the United States.⁴⁵ Furthermore, the average monthly prices for OCTG were rising during the year and were comparable to prices in 1995, and significant portions of 1996 and 1998.⁴⁶ Based on our analysis, evidence on the record suggests that prices for OCTG in the last four months of the fourth administrative review were generally higher than prices found during the period of investigation, comparable to prices after the imposition of the order, and rising throughout the year. The United States was still a large market for imports of OCTG during that year. Therefore, TAMSA's reliance on 1999 prices is misplaced. TAMSA's arguments and evidence do not explain the complete absence of shipments of OCTG to the United States in 1999 after the imposition of zero cash deposit rates.

TAMSA's "Other Factors"

As previously mentioned, TAMSA contends 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 cost of production. As a result, TAMSA asserts, it would not be dumping were the order to

⁴¹ See TAMSA's 129 response at 13.

⁴² *Id.* at Attachment 5.

⁴³ *Id.*

⁴⁴ See Memorandum to the File, New Information obtained by the Department, April 26, 2005, attachment of American Iron and Steel Institute's Annual Statistical Report, 2000.

⁴⁵ July 1999 prices for carbon casing, at \$603 per ton, and carbon drill pipe, at \$1,750 per ton, are higher than the prices for the same products (\$591 and \$1,641, respectively) in July of 1994. See TAMSA's 129 response at Attachment 5.

⁴⁶ See Letter from Shearman & Sterling to the Secretary of Commerce, December 11, 2000, at Attachment 1.

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:

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.⁴⁷

Based on the Department's analysis, as detailed below, we do not believe that the zero margins obtained by TAMSA in the administrative reviews are dispositive of TAMSA's behavior absent the discipline of the antidumping duty order. We believe that TAMSA's assertions are flawed, 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 long term debt. The combination of factors, according to TAMSA, raised TAMSA's cost of production, resulting in sales below cost, and the Department's finding of dumping. TAMSA also has stated that the conditions involving the peso devaluation and debt no longer existed after the period of the antidumping 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, evidence on the record indicates that the Department did find sales below cost during the administrative reviews, and disregarded sales below cost when calculating normal value.⁴⁸ TAMSA claims that the majority of its sales were above cost of production during the review periods, but the evidence on the record does not include the proprietary figures necessary to verify that claim. However, assuming that the claim is true, the fact that the Department found some sales below cost in the administrative reviews

⁴⁷ See Letter from White & Case to the Secretary of Commerce, February 25, 2005, at 8-9.

⁴⁸ See TAMSA's 129 response at Attachment 2.

indicates that the correlation of sales below cost leading to dumping is not absolute, as TAMSA has maintained.

We believe that an examination of the pattern of TAMSA's export behavior subsequent to the order provides an explanation for the zero margins. 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 fact that TAMSA made a single sale of subject merchandise during each review period, of a single type of merchandise, through an affiliated party in the United States, provided the opportunity for TAMSA to control the terms of sale and obtain a zero dumping margin. The Panel itself has presented a similar hypothetical example in its analysis.⁴⁹ Also, as the Panel noted, albeit in the context of the revocation issue, TAMSA did not ship merchandise to the United States in commercial quantities during the administrative review periods.⁵⁰ 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, we do not believe that the zero margins determined during the reviews are probative of TAMSA's likely behavior absent the discipline of the order.

Finally, we are left with TAMSA's arguments concerning the peso devaluation and long-term debt and their effect on the Department's likelihood determination. TAMSA's arguments have evolved over time as new information was progressively placed on the record of the various segments of the proceeding. It is worthwhile at this time to review the chronology of information and argument appearing on the record of the various proceedings on TAMSA's "other factors" as they relate to the Department's likelihood determination. As we noted above, page 5 of TAMSA's substantive response of August 2, 2000, presents TAMSA's initial argument. TAMSA further refined its argument in its February 25, 2005, submission at pages 8-9. As a result of a request by the NAFTA panel examining this issue, the Department solicited new information to be placed on the record. The February 25, 2005, submissions from both TAMSA and petitioners did not contain sufficient information for the Department to make a determination. Therefore, the Department placed new information on the record of the NAFTA segment of the proceeding on April 26, 2005. The Department transferred this information to this segment of the proceeding on May 11, 2006.⁵¹ In response to the Department's actions in the NAFTA determination, TAMSA further supplemented the record of the NAFTA segment of the proceeding on May 3, 2005. The public version of that response is incorporated in TAMSA's brief to this Section 129 proceeding as Attachment 2 of TAMSA's May 4, 2006, brief.

⁴⁹ *Panel Report*, para. 7.173. While the Panel's discussion in this paragraph concerns a separate provision of the statute, concerning revocation, the Panel's analysis is instructive.

⁵⁰ *Panel Report*, para. 7.163.

⁵¹ See Memorandum to the File, Transfer of Information to Record, May 11, 2006 (Business Proprietary Version), Memorandum to the File, Transfer of Information to Record, May 12, 2006 (Public Version).

Subsequent to the NAFTA panel's second remand to the Department, the Department placed new information on the record of that segment of the proceeding on February 28, 2006. The February 28, 2006, document is also placed on the record of this Section 129 proceeding (*see* the May 12, 2006, memorandum to the file). Finally, TAMSA submitted for the record of the Section 129 proceeding its post-redetermination briefs to the NAFTA panel, as well as new information not previously submitted with respect to the sunset review and subsequent litigation.⁵²

Prior to analyzing TAMSA's arguments with respect to the peso devaluation and long-term debt, it is useful to discuss briefly the role of determining whether sales were made in the comparison market below the cost of production when determining whether dumping exists. The Department compares sales made in the United States to sales in a comparison market that are sold for consumption in an exporting country or third country market, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as those sold in the United States. Sales of the foreign like product made at prices below the cost of production may be disregarded for determining normal value. Where less than 20 percent of a respondent's home market sales for a given product are at prices less than the cost of production, we do not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the period of review were at prices less than the cost of production, we determine such sales to have been made in substantial quantities, and disregard those sales. The practical effect of the Department's cost analysis is to calculate normal value on profitable comparison market sales.

In calculating cost of production (COP), the Department takes the cost of manufacture for each product or group of products sold in the home market, and adds a figure for general and administrative (G&A) expenses, and interest expense. Both expense figures are calculated as percentages of the cost of manufacture. While the cost of manufacture varies by product, the G&A and interest expense percentages do not change. The COP is later used to calculate a total cost of production, using commissions, selling expenses, and packing. Sales in the home market are compared to the total COP to determine if sales were made below cost.

TAMSA's arguments concerning the peso devaluation and its long-term debt position during the investigation concern the interest (or financial) expense portion of the COP calculation. The financial expense ratio is intended to capture the cost of a company's capital requirements. This would incorporate cash requirements for current production as well as for the cost of fixed asset acquisitions. The ratio is calculated by dividing company-wide net financial expenses by the cost of goods sold from the company's consolidated financial statements. Thus, changes in levels of sales, or debt, or foreign exchange gains and losses, can have an impact on the financial expense ratio, which in turn has an impact on the calculation of COP.

⁵² *See* TAMSA's 129 response at Attachments 3, 4, and 5.

In reviewing TAMSA's arguments, we first attempted to determine if the supposed "unique" combination of peso devaluation and long-term debt was indeed unique, or had occurred at other times during the sunset review period. While every year in a company's business experience is "unique" in the sense that sales, debt, and other business factors change, we attempted to find unique and extraordinary events that did not substantially recur in subsequent years. As a result of our examination of the facts, the Department found that Mexico experienced currency devaluations of similar or greater intensity to those of the first half of 1994 at various times between the period of investigation in early 1994 and 1999.⁵³ We also determined that TAMSA continued to have substantial long-term debts until the end of 1998, based on the peso figures contained in TAMSA's financial statements.⁵⁴ Thus, based on the Department's analysis, TAMSA was not uniquely exposed to foreign exchange rate movements in the original investigation. Rather, TAMSA was similarly exposed to large foreign exchange rate movements, while it possessed long-term debt, at various times subsequent to the imposition of the antidumping duty order. Thus, the experience of large peso devaluations at the time when TAMSA had long-term debt was hardly "unique" to the period of investigation.

However, TAMSA points to what it contends are changes in the actual financial expense ratios determined in the investigation and administrative reviews as support for its position. Using the 1993 financial statements, according to TAMSA, the Department calculated a financial expense ratio of 2.9 percent for the preliminary results of the antidumping investigation. That figure jumped to 39.5 percent in the final determination. For the three administrative reviews, by comparison, the Department calculated financial expense ratios of 1.96 percent, 1.96 percent, and 0 percent, respectively.⁵⁵ TAMSA attributes the large change to the effects of the peso devaluation at the time of the investigation, coupled with the long-term debt held by TAMSA at the time. Where no similar combination that existed in the investigation of foreign currency exposure and debt was present, according to TAMSA, the financial expense ratios in the administrative reviews returned to levels similar to those in existence prior to the investigation.⁵⁶ With the smaller ratios, TAMSA was not found to be dumping subject merchandise in the United States.

In order to test this hypothesis that the changes in the financial ratio are due to the peso devaluation in 1994, the Department calculated hypothetical financial expense ratios that eliminated exchange rate gains and losses during the period of investigation (*i.e.*, the first half of 1994) and the three years covering the three periods of review (*i.e.*, 1997, 1998, and 1999). The Department used TAMSA's financial reports on the record, using the year-end peso figures from each financial report. By recalculating the financial expense ratios in this hypothetical manner,

⁵³ See Memorandum to the File, New Information obtained by the Department, April 26, 2005, attachment of exchange rate spreadsheets.

⁵⁴ See TAMSA's Substantive Response at Exhibit 1, TAMSA's 129 response at Attachment 2, and Memorandum to the File, New Information obtained by the Department, February 28, 2006, at Attachment C.

⁵⁵ See TAMSA's 129 response at Attachment 2, page 7.

⁵⁶ *Id.*

the Department was able to eliminate the changes in the expense ratio attributable to foreign exchange exposure. The recalculated hypothetical expenses resulted in ratios of 19.37 percent, 3.47 percent, 5.89 percent, and 3.32 percent respectively.⁵⁷ Thus, the changes in the financial expense ratio are not due solely to foreign exchange exposure. Instead, our analysis, using year-end peso figures, indicates that the major difference in the change of the financial expense ratio between the comparison years is not due to the devaluation of the peso, but due to the change in the cost of goods sold, which is a reflection of total sales in a given year.

TAMSA has objected to this analysis for a number of reasons. First, TAMSA states that the Department did not adjust the peso values to account for inflation from 1994 until 1999.⁵⁸ Second, TAMSA provided the actual dollar amounts of debt for the periods 1993 to 1999, to show the actual changes based on dollars.⁵⁹ Third, TAMSA disputes the apparent large change in the cost of goods sold using unadjusted pesos.⁶⁰ TAMSA is correct that a restatement of the peso values to account for inflation will reduce the unadjusted peso change in the cost of goods sold. However, correctly adjusting the peso values of both the numerator and denominator in calculating the financial expense ratio will not result in a new ratio number for the financial expense. Whether the underlying peso values are expressed in the year in which they were incurred, or restated to a benchmark year, the ratios themselves will not change. Clearly, the large change in the expense ratio from 1993 to 1994, and from 1994 to subsequent years, consists of more than simply dramatic foreign exchange rate changes.

TAMSA's dollar debt levels show a generally steady decrease from 1993 until 1999, with an increase in 1998 from 1997 figures.⁶¹ In addition, TAMSA had larger sales, and thus larger costs of goods sold and a larger denominator for the financial expense ratio, in later years.⁶² As a result, it is clear that changes in factors other than exchange rate gains and losses contributed to changes in the financial expense ratio. A principle cause of the change is the increase in sales and the cost of goods sold.

To summarize, while TAMSA was affected by the peso devaluation and its debt position in 1994, it is clear that the increase in the financial expense ratio from 1993 to 1994 is not due solely to the peso devaluation and TAMSA's long-term debt. Rather, changes in the cost of goods sold, reflecting changes in total sales, are a substantial factor in the change in the financial expense ratio. This is true not only of the change from 1993 to 1994, but from 1994 to subsequent years. Indeed, the fact that there were continued devaluations of the peso after 1994 at percentages similar to those of 1994, while TAMSA still retained significant long-term debt,

⁵⁷ See Memorandum to the File, TAMSA Debt and Equity Figures and Financial Expense Ratio, May 16, 2006 at Attachment 2.

⁵⁸ See TAMSA's 129 response at Attachment 4, at page 7.

⁵⁹ *Id.* at page 17.

⁶⁰ *Id.* at page 8.

⁶¹ *Id.* at page 17.

⁶² *Id.* at page 8.

without concurrent jumps in the financial expense ratio, indicates that other factors such as the cost of goods sold played a critical part in the size of the financial expense ratio.

Additionally, we note that the changes in TAMSA's debt levels are not necessarily a permanent condition. Companies acquire and pay off debts regularly, are exposed to foreign currency exchange rate risks when a foreign currency is not fixed to the dollar (as the peso is not), and have rising and falling costs of goods sold as sales rise and fall year to year. Nothing on the record indicates otherwise, and thus the circumstances in existence during the investigation and review periods may recur.

TAMSA's claims that a reduction of debt and elimination of peso devaluations would result in a finding of no sales below cost are without merit. The Department did find sales below cost by TAMSA in each of the administrative reviews it conducted. Thus, there is no direct link between the level of the financial expense ratio and existence of sales below cost. Obviously, as the total cost of production consists of many factors, with the financial expense ratio being only one component, a change in the financial expense will not necessarily be the overriding factor in calculating the cost of production. The financial expense ratio is simply not the only factor, nor necessarily the most important factor, in determining whether a company has made sales below COP.

In discussing the Mexican Peso devaluation and the dollar-denominated debt, TAMSA argued that "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 CV consisting of an inflated financial expense, and it would not lead to dumping."⁶³ However, TAMSA's logic is flawed. Even if the Department finds that a company makes sales below the cost of production, and disregards such sales, disregarding sales below COP affects the calculation of normal value. However, it does not necessarily result in a finding of dumping. Nor, conversely, is it necessary to have sales below COP in order to have dumping.

The Department has conducted administrative reviews where it disregarded sales below COP and did not find dumping.⁶⁴ Also, the Department has found dumping when comparing sales in the United States to sales in a comparison market without investigating whether there were sales

⁶³ See Letter from White & Case to the Secretary of Commerce, February 25, 2005, at 7-8.

⁶⁴ See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 68336 (December 8, 2003), and *Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 19388 (April 13, 2004).

made below COP in such a comparison market.⁶⁵ Finally, the comparison of sales in the United States to CV does not necessarily result in a finding of dumping.⁶⁶

It is instructive to compare the experience of TAMSA with the experience of Sahaviriya Steel Industries Public Company Limited (SSI), a respondent company subject to the antidumping duty order on Certain Hot-Rolled Carbon Steel Flat Products From Thailand. As previously mentioned, TAMSA had single sales of merchandise for three consecutive review periods, in which the Department found zero margins and the Department disregarded sales below COP. However, the Department found that TAMSA did not export subject merchandise to the United States in commercial quantities. By contrast, the Department determined that SSI sold subject merchandise to the United States in commercial quantities for three consecutive review periods, with multiple sales over the periods of review.⁶⁷ As previously mentioned, the Department disregarded sales below COP. Despite the finding of sales below COP, SSI did not dump and was subsequently revoked from the order.⁶⁸ Thus, companies can sell merchandise covered by an antidumping duty order into the United States, in commercial quantities, with sales below cost disregarded in determining normal value, and not be found to be dumping.

In summary, it appears that the basic conditions that existed during the antidumping investigation, concerning peso devaluations and the existence of long-term debt, occurred after the investigation. Therefore, the record does not substantiate TAMSA's assertions. Rather, it demonstrates that the fact pattern of the investigation (*i.e.*, peso devaluations and dollar-denominated debts) was not unusual and existed in the years following the issuance of the order. Nevertheless, these conditions are not the sole reason for changes in the financial expense ratio from the investigation to the review periods. Additionally, the reduction in the financial expense ratio did not eliminate a finding of sales below cost. Regardless, there is no absolute link between an increase in TAMSA's financial expense ratio and dumping. Therefore, a decrease in TAMSA's financial expense ratio from the level found in the investigation is not predictive of an absence or recurrence of dumping.

However, assuming, *arguendo*, that changes in TAMSA's "other factors" are predictive of future dumping, then the Department should expect an increase in sales of subject merchandise to the United States absent these "other factors." However, the facts of the case do not support this theory. We note that a zero cash deposit rate was in effect for the final four months of the fourth

⁶⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from the Netherlands*, 70 FR 28275 (May 17, 2005) and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From the Netherlands*, 69 FR 77205 (December 27, 2004).

⁶⁶ See, e.g., *Oil Country Tubular Goods From Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 13962 (March 23, 1999) and *Oil Country Tubular Goods From Mexico: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 48699 (September 11, 1998), with respect to Hylsa S.A. de CV.

⁶⁷ See *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) Issues and Decision Memorandum at Comment 1.

⁶⁸ *Id.*

administrative review period. With a zero cash deposit rate, an affiliated party as the importer, price levels above those that existed during the investigation, the size and importance of the U.S. OCTG market, and the supposed change in TAMSA's financial expense position that TAMSA maintains is indicative of whether or not it would dump, it would be reasonable to expect sales to the United States to increase. However, there was no increase in either the number or volume of sales during this time period. In fact, sales of OCTG by TAMSA to the United States ceased after a single sale in 1999, despite a rising market for OCTG in 1999 and 2000.⁶⁹ Given the dramatic change in TAMSA's selling pattern after the imposition of the order, and the lack of an increase in sales even when conditions were supposedly the most favorable to a resumption of sales and shipments to the United States, we find that TAMSA's post-order behavior indicates a likelihood that TAMSA would resume dumping absent the discipline of the order.

In assessing likelihood, we also rely on our original finding regarding the volume of imports of subject merchandise for the period before and the period after the issuance of the antidumping duty order. In the original sunset review, we found that after imposition of the order, import volumes significantly decreased from pre-order levels⁷⁰ and eventually ceased altogether. Declining import volumes after, and apparently resulting from, imposition of an antidumping duty order indicate that exporters would need to dump to sell at pre-order levels.

Finally, as we stated before, none of the information supplied by TAMSA addresses the decrease in exports, or the finding of dumping margins, for Hylsa subsequent to the imposition of the order.

Conclusion

In sum, the antidumping investigation used TAMSA's own information in the calculation of a margin. Subsequent to the imposition of the antidumping duty order, the Department has found dumping by Hylsa in one administrative review.

TAMSA's imports into the United States of subject merchandise fell to 0.6 percent of pre-order levels, and then ceased completely after 1999. Hylsa's imports of subject merchandise also fell dramatically before recovering to a level still below pre-order levels. We have examined TAMSA's explanations for its dramatic decrease in imports, after the imposition of the order, and have found that the evidence does not support TAMSA's explanations or assertions. Both the continuation of dumping, and the cessation of imports, are highly probative of the likelihood of continuation or recurrence of dumping.

The zero margins found in the administrative reviews of TAMSA's sales to the United States are not probative of TAMSA's future behavior as the sales were not made in commercial quantities.

⁶⁹ See TAMSA's 129 response at Attachment 5.

⁷⁰ See *Final Results Memorandum*, Section on Likelihood of Continuation or Recurrence of Dumping, Department's Position.

TAMSA's "other factors" concerning the peso devaluation and long-term debt are not indicative of the presence or absence of dumping in the future. The Department's analysis indicates that the combination of large peso devaluations and long-term debt occurred subsequent to the order. The Department also found that, despite the change in the financial expense ratio, the Department still found sales below COP and disregarded such sales during the administrative reviews. Also, the Department found that the large change in the financial expense ratio was due to a number of factors, including large changes in the cost of goods sold. Nothing that TAMSA has presented indicates that these "other factors" would not recur in the future. Finally, the Department has shown that there is not a direct link between the "other factors," sales below COP, and a finding of dumping. Given the evidence on the record, the "other factors" presented by TAMSA are not probative of TAMSA's, or any other Mexican producer's, likely behavior absent the discipline of the antidumping duty order.

For the above reasons, taking into account, *inter alia*, changes in TAMSA's financial situation and overall economic conditions in Mexico, and based on the totality of the evidence on the record of the Section 129 proceeding, we find that there is likelihood of continuation or recurrence of dumping had the antidumping duty order on OCTG from Mexico been revoked in 2000, *i.e.*, at the end of the original sunset review period.

Agree

Disagree

David M. Spooner
Assistant Secretary
for Import Administration

Date