A-201-817
Remand
Sunset Review
EG III-8/JD

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, February 11, 2005)

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 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 questions posed by the Panel , and giving careful analysis to the statute, regulations, and Statement of Administrative Action ("SAA") governing sunset reviews, and the parties' comments, 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. 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. 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) (Final Panel Order). As a result, the margin for TAMSA was reduced 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 reviews. 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), Oil Country Tubular Goods from Mexico: Final Results of Antidumping Review, 65 FR 1593 (January 11, 2000), and Oil Country Tubular Goods From Mexico: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke in Part, 6 FR 54998 (September 12, 2000).[1]

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 determination. A public hearing

[1] The dumping margin remained unchanged in the final results of review. See Oil Country Tubular Goods from Mexico: Final Results of Antidumping Review and Determination Not To Revoke in Part, 66 FR 15832 (March 21, 2001).

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 ("Decision") on February 11, 2005, remanding the review to the Department.

In response to the Panel's directives in the Decision, the Department issued questionnaires to all interested parties on February 18, 2005. The Department asked parties to "explain how the consideration of the devaluation of the Mexican Peso and the restructuring of TAMSA's U.S. Dollar denominated-debt are relevant to the Department's analysis of whether dumping is likely to occur were the order to sunset." See February 18, 2005 questionnaire. Also, the Department asked that parties "explain why there is 'good cause' to entertain these issues" and "provide evidence to support (the) explanations." Id. The Department received briefs from petitioner, United States Steel Corporation ("U.S. Steel"), and TAMSA on February 25, 2005. The Department received rebuttal comments from U.S. Steel, TAMSA, and interested parties, Maverick Tube Corporation, IPSCO Tubulars, Inc., and Bellville Corporation (collectively "Maverick"), on March 2, 2005.

The Department released a draft of the redetermination on remand to all parties on April 15, 2005.[2] The Department received comments from TAMSA on April 20, 2005. On April 25, 2005, the Panel granted a conditional extension of the time to file the redetermination, extending the submission deadline to May 13, 2005. On April 26, 2005, the Department placed new information on the record obtained in accordance with the Panel's February 11, 2005 remand. In

[2] On April 15, 2005, the Department attempted to serve the draft remand results upon the parties by facsimile. On April 18, 2005, the Department attempted to re-transmit the draft to the parties. Due to a transmission error on April 15, 2005, TAMSA may not have received the draft until April 18, 2005.

accordance with the Panel's extension, and after consultation and agreement with parties, the Department provided additional time for parties to comment on the draft and the new information submitted on the record. In addition, parties were given the opportunity to submit rebuttal comments. All comments from parties were due on May 6, 2005. TAMSA filed additional comments on May 3, 2005. Petitioners U.S. Steel and Maverick filed rebuttal comments on May 6, 2005. All party comments are summarized and discussed below.

The Panel's Remand

In its Decision, the Panel acknowledged that pursuant to the SAA, it is reasonable to assume that exporters cannot sell without dumping if either dumping has continued or imports have ceased since the imposition of the Order. See Decision at page 9. The Panel found, however, that this was "no more than a presumption; it is not to be considered as conclusive." Id. According to the Panel, the SAA requires that the Department consider other factors when relevant. Id.

In addition, the Panel found that Congress had not specifically addressed "the extent to which the Department's consideration of such 'other factors' must involve investigation or fact-gathering that goes beyond an analysis of the specific information provided by parties." See Decision at page 10. The Panel stated that "[n]either the SAA nor the statute addresses the issue in terms of burdens of proof, or of burdens production or of persuasion." Id. at 15. Nonetheless, given the SAA's limited reference to a party's opportunity to provide information, the Panel found the Department's Sunset Policy Bulletin ("SPB")[3] provision that parties provide "information or evidence" is analogous to a "burden of production" and not a "burden of persuasion." Id. at 16. According to the Panel, a burden of persuasion would require a party to present evidence sufficient to establish a proposition; in contrast, a burden of production would require a party to present evidence sufficient to make a *prima facie* showing of the proposition, thereby shifting the burden of persuasion to the opposing party. Id. The Panel further stated that the Department's SPB, 63 Fed. Reg. 18871 (April 16, 1998), "requires only the provision of information sufficient to trigger the Department's duty to consider the referenced 'other factors.'" Id.

The Panel also found that it "is reasonable for the Department to infer from the statute's reference to 'good cause shown' that the burden of coming forward with 'information or evidence' concerning such 'other factors' and their relevance may be placed on interested parties." See Decision at page 16. The Panel reasoned that, where an interested party fails to provide information sufficient to bring a particular "other factor" to the Department's attention, the Department has no statutory obligation to consider such a factor in its "likelihood" determination. Id. In contrast, according to the Panel, when an interested party provides "information or evidence" of a potentially relevant "other factor," the party has satisfied its burden of production under the SPB. Id. The Panel concluded that when presented with information of other factors, the Department must consider two issues: 1) whether the other factors presented by a party are relevant and 2) whether, if relevant, the other factors warrant a

[3] Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998).

determination that revocation of the order would not "likely" result in continuation or recurrence of dumping. Id.

In this case, the Panel found that TAMSA had "satisfied its burden to produce 'information or evidence' of 'other factors' for consideration." See Decision at pages 17-20. The Panel noted TAMSA's argument that "its filings showed 'good cause' for the Department to consider relevant factors other than pre- and post-order import volumes," specifically the issues of the Mexican Peso devaluation and TAMSA's U.S. dollar-denominated debts at the time of the investigation. See Decision at page 17. While the Panel stated that the information submitted by TAMSA "could have been more explicit or detailed in defining the 'other factors' to be considered" and that these were only "summarily stated in TAMSA's substantive response," it found that the Department nevertheless could not "reasonably conclude that TAMSA had failed to produce 'information or evidence' to show 'good cause' for the Department to consider 'other factors' under 19 USC § 1675a(c)(2)." See Decision at pages 17 through 20.

Therefore, the Panel concluded that because TAMSA had satisfied its burden of production, the Department was required to consider 1) whether the "information or evidence" presented by TAMSA was relevant and, if so, 2) to consider whether these factors warranted a negative likelihood decision. Id. at page 20.

Addressing the issue of relevance, the Panel found the SAA to be more specific than the statute on this issue. Id. The Panel noted that the statute refers generally to "price, cost, market, or economic factors" that the Department "deems relevant," while the SAA states that such factors might include "changes in exchange rates" and "any history of sales below the cost of production." See Decision at pages 20 and 21. Although the Panel recognized that it is for the

Department to determine whether the other factors presented are relevant, it found that the Department, in this case, had failed to provide a reasoned explanation for rejecting the relevance of a factor specified in the SAA. Id. at page 21.

The Panel directed the Department to reexamine the relevance of the factors presented by TAMSA, as well as to reopen the record to allow TAMSA to provide information on this issue. Id. at pages 21 and 24. Second, finding that "[t]he record does not now contain adequate information on the effect of TAMSA's 'other factors,'" the Panel directed the Department to reopen the record to investigate this issue. Id. at page 21. The Panel further directed the Department to consider the effect of TAMSA's "other factors," if relevant, on the Department's "likelihood" determination." Id. at pages 21 and 24.[4]

Interested Party Comments

As noted above, the Department received comments from U.S. Steel, TAMSA, and Maverick. Below is a synopsis of the comments received.

In its February 25 brief, U.S. Steel argued that "good cause" does not exist to entertain the two "other factors" raised by TAMSA during the sunset review, and that those factors have no relevance to the Department's likelihood determination in the instant sunset review. After citing the statute, SAA, and SPB, U.S. Steel maintained that each provides the Department will

[4] Citing AG der Dillinger Huttenwerke v. United States, ("Dillinger") 193 F.Supp.2d 1339 (CIT 2002) and Pure Magnesium from Canada, USA-CDA-2000-1904-06 (April 28, 2003), the Panel stated the statute and SAA require a party to provide sufficient information or evidence to bring "other factors" to the Department's attention and, then, it is the Department's statutory duty to consider, where relevant, whether such "other factors" affect the Department's likelihood determination. See Decision at page 22. The Panel did not address the burden of persuasion as no party had argued the issue. See Decision at pages 15 through 17.

not revoke an order in instances where imports cease or decline significantly after its issuance. Therefore, "good cause" does not exist to consider the other factors.

U.S. Steel contended that, even if the "other factors" cited by TAMSA are considered, the record of the review indicates that TAMSA still could not ship to the United States without dumping. Relying upon the investigation and the subsequent review periods, U.S. Steel maintained that shipments by TAMSA went from an annualized figure of approximately 20,000 MT in 1994 to less than 200 MT in subsequent review periods, and there were no shipments between August 1, 1999, and July 31, 2004. Therefore, according to U.S. Steel, the drop in shipments is a clear and compelling indication that TAMSA is unable to ship subject merchandise at pre-order levels without dumping. U.S. Steel further argues that, even if the two "other factors" raised by TAMSA during the sunset review are one-time events, as TAMSA maintained, TAMSA has not explained why the company's imports of subject merchandise were substantially below the pre-order volume in the four years after the order went into effect, or why there have been no shipments since then.

U.S. Steel argues that it is appropriate to examine the absence of exports to the United States for the fifth through ninth administrative reviews, as the Panel expressly instructed the Department to reopen the record and obtain evidence on the relevance of the "other factors." Additionally, U.S. Steel cites Luoyang Bearing Corp. (Group) v. United States ("Luoyang") Slip Op. 2005-3, 2005 (CIT Jan. 21, 2005), in support of its contention that the Department should consider this information. In Luoyang, the CIT addressed whether, in the context of determining whether dumping is likely to continue or recur, the Department could examine evidence of subsequent events. The respondent had received *de minimis* margins for two consecutive reviews, but the Department found a margin above *de minimis* in the third year. The CIT remanded, and the Department, upon remand, recalculated the margin and found no dumping, i.e., a zero margin. However, in the intervening time, the Department found a dumping margin in a subsequent review. The Department "[d]ecided not to revoke the order, based on the forward-looking nature of the revocation analysis." See U.S. Steel's February 25 brief at page 13, footnote 29. The CIT upheld the Department, stating that "Commerce may not ignore the evidence of continued dumping by [the respondent], even if such evidence is uncovered in a subsequent administrative review." Id.

In its February 25 brief, TAMSA argues that the Department's questionnaire of February 18, 2005, is not consistent with the Panel's instructions. TAMSA claims that the Panel already recognized that it had satisfied the burden to produce "information or evidence" of "other factors" for consideration, and that the information was not deficient. Instead, according to TAMSA, it was the Department's failure to consider the information, or develop the record further, that caused the Panel to find that the Department acted contrary to the statute, SAA, and regulations. TAMSA argues that it does not have to show "good cause" because it has already satisfied the "burden of production" standard annunciated by the Panel. According to TAMSA, the Department cannot transfer the task of explaining how the factors are relevant to the likelihood determination to the respondent. TAMSA argues that it is the Department's responsibility to analyze the information and determine its relevancy.

Additionally, TAMSA refers back to its sunset assertions that the Mexican Peso devaluation and the possession of U.S. dollar-denominated debts had an adverse effect on the financial expense component of the cost of production, forcing sales below cost to be disregarded for purposes of comparison sales in the investigation. During the sunset review, TAMSA provided an excerpt from its financial statements at the time of the sunset review as evidence that it was no longer exposed to foreign currency fluctuations. It proffered no evidence with regard to the devaluation. TAMSA argues that without the distortion caused by the devaluation and foreign-debt load, the margin at the LTFV Determination would have been zero, as it was in the preliminary determination when the Department used other financial information. Thus, TAMSA maintains the zero margins calculated during the subsequent administrative reviews, where the devaluation and dollar-denominated debts did not play a factor, indicate that home market prices were above the cost of production, and net sales prices in the United States were above those of the home market. Quoting Pure Magnesium from Canada, TAMSA reasons that "given the importance of 'other factors' in determining the significance of zero margins, it seems clear that an allegation of a consistent history of zero dumping margins is sufficient good cause as a matter of law." See TAMSA's February 25 brief at pages 9 and 10 (quoting Pure Magnesium from Canada, USA-CDA-00-1904-06, Second NAFTA Panel Decision, October 15, 2002, at 6). These facts, according to TAMSA, are more probative of the prospective behavior of TAMSA than the margins calculated in the investigation.

In addition to the two factors cited by the Panel, TAMSA asserts three other factors for consideration. These are: that (1) the three consecutive zero margins obtained by TAMSA in the administrative reviews are more probative of TAMSA's likely behavior should the Order be revoked, (2) the United States has not been a high-volume market for TAMSA since the imposition of the Order, and (3) the volume reductions for shipments to the United States are related to business decisions based on the risks inherent in the U.S. antidumping duty law and the possibility of retroactive duty increases. TAMSA argues the issues it has raised involve "other price, cost, market or economic factors" or "changes in exchange rates . . .[and] any history of sales below cost of production," which are specifically mentioned in the statute and SAA as relevant to the Department's likelihood determination. See TAMSA's February 25 brief at page 5. According to TAMSA, its "other factors" are therefore relevant and constitute "good cause."

In its March 2 rebuttal brief, U.S. Steel urges the Department to reject TAMSA's arguments. U.S. Steel notes that TAMSA's comments address additional factors and information not cited by the Panel in its remand to the Department. U.S. Steel contends that it is inappropriate for TAMSA to raise these issues and that they do not relate in any way to the two "other factors" cited by the Panel. U.S. Steel states that the Panel heard oral arguments regarding these factors but did not address them in its remand.

In terms of the two "other factors" identified by the Panel, U.S. Steel again asserts that TAMSA has not shown "good cause" for the Department to consider them. U.S. Steel further argues that

> any respondent can point to certain factors and claim that those factors caused it to receive a dumping margin in an antidumping duty investigation. However, even if those factors are corrected or resolved, that does not mean that other factors do not exist or will not develop that will cause it to dump the subject merchandise in the future. Thus, TAMSA's contention that its two "other factors" caused it to have a dumping margin in the investigation and that those factors are no longer present is meaningless and certainly does not show that dumping is not likely to continue or recur upon revocation of the order

See U.S. Steel's rebuttal brief at page 7. Furthermore, according to U.S. Steel, the "other factors" do not counter the fact that there was a margin of 21.70 percent from the investigation that was affirmed by a Panel, and that shipments from TAMSA to the United States fell dramatically after the Order went into effect.

As to TAMSA's arguments concerning its commercial decisions, U.S. Steel responds that this factor falls outside of the scope of the remand. However, assuming, *arguendo*, that the factor is properly before the Department, it is not relevant. U.S. Steel alleges that the zero-rate dumping margins obtained by TAMSA in the administrative reviews were the result of token shipments, and that the Department determined in a separate proceeding that the shipments were not at normal commercial quantities. Thus, U.S. Steel maintains that TAMSA was unable to obtain zero margins with sales in normal commercial quantities.

U.S. Steel also notes that the importer of merchandise exported by TAMSA is an affiliated party. U.S. Steel asserts that if TAMSA were able to ship without dumping, its affiliated importer would not be concerned about importing and selling in the United States. Instead, despite the fact that the importer of TAMSA's merchandise would not be required to pay any cash deposits following completion of the administrative review, exports to the United States ceased altogether. Finally, U.S. Steel argues that uncertainty over the dumping law is inherent in every case. Were the Department to accept this as a basis for revoking the Order, then declining import volumes and even the complete cessation of imports after an Order is issued could never serve as the basis for a likelihood determination. Such an outcome would be contrary to the statute and the SAA, according to U.S. Steel.

As to the decision in Pure Magnesium from Canada, U.S. Steel argues that the evidence in that case demonstrated why imports of the merchandise into the United States had declined and why imports were unlikely to resume after the order was revoked. TAMSA, according to

U.S. Steel, provided no such evidence.

TAMSA, in its March 2 rebuttal brief, argues that the "other factors" identified by U.S. Steel are not relevant to the decline in volumes of shipments. TAMSA notes that the Panel stated that a decrease in the volume of shipments is "no more than a presumption; it is not to be considered as conclusive." TAMSA argues that U.S. Steel is urging the Department to rely solely on low volumes of shipments, which is inconsistent with the Panel's instruction. TAMSA further argues that U.S. Steel's discussion of administrative reviews subsequent to the sunset review cannot be relevant, as the Department should not consider such later developments. TAMSA reiterates its arguments concerning its business decisions in this case. Further, in response to U.S. Steel's assertions as to why shipments might have declined, TAMSA argues that the Department should have developed the record further during the sunset review.

Maverick did not file a case brief, but did file a rebuttal brief on March 2. In this rebuttal brief, Maverick argues that the Panel's findings regarding "burden of production" versus "burden of persuasion" are incorrect. Specifically, Maverick maintains that "the Department should not view the Panel's interpretation of the statute as directory because the Panel grossly violated its mandate by allocating a burden of production or persuasion in this case." See Maverick's rebuttal brief at page 2. Maverick further claims that "unlike the [CIT], Panels are not empowered to make pronouncements concerning U.S. law and certainly may not construe the interaction between the SAA and the Department's [SPB]." Id. Maverick contends that a panel can only ask the Department to provide an interpretation, and then approve the interpretation or remand the matter. Adopting the Panel's construction of the statute would, according to Maverick, shift the "burden of persuasion" to the "opposing party." As the data contradicting the respondent's assertion is generally within the respondent's exclusive possession, a domestic party would be unable to satisfy the "burden of persuasion," and, thus, the Panel incorrectly placed the "burden of persuasion" on domestic interested parties.

Maverick further asserts that TAMSA's arguments "essentially read the 'good cause' requirement out of the statute." Maverick provides examples of how TAMSA might have established "good cause" prior to the sunset review, such as a request for a changed circumstances review or the shipment of commercial quantities during at least one review period. In asking the Department simply to accept the assertions that the two "other factors" form a basis for revoking the Order, TAMSA is, according to Maverick, improperly circumventing these administrative processes. Maverick argues that acceptance of TAMSA's position would "require a comprehensive cost of production investigation during the sunset review . . . whenever a respondent asserts a change in their cost structure. The statute does not anticipate a review of this type, which would go well beyond what is required of the Department in a normal administrative review." See Maverick's March 2 rebuttal brief at page 2.

Maverick also notes that TAMSA shipped small quantities during three administrative reviews and argues such low volumes are not probative of a producer's pricing behavior. Maverick notes that the Department did not revoke the Order even after the calculation of three consecutive zero rates because TAMSA had not shipped in "commercial quantities." In addressing the "commercial decisions" cited by TAMSA, Maverick maintains that Congress was well aware of "market uncertainty" when drafting the statute and the SAA, and this cannot be the basis for revoking the Order. Furthermore, Maverick notes that the importer is affiliated with TAMSA, which would reduce "market uncertainty."

Maverick also states that, in the LTFV Determination, the Department did not use the full-year 1994 financial statements. Maverick quotes the Department's explanation, which stated that "the sudden and severe devaluation in December 1994 – a drop of over 50 percent in the value of the Mexico Peso – makes TAMSA's annual financial results unrepresentative of the POI." See Maverick's March 2 rebuttal brief at page 4, note 4. Accordingly, the Department did not use the financial statements for the last six months of 1994, as urged by petitioners, which according to Maverick, "greatly limited the impact of the Peso devaluation." Id. Maverick further argues that "there is nothing in the original decision which indicates that TAMSA's dollar-denominated debt was a significant factor in the cost calculations." See Maverick's March 2 rebuttal brief at page 4.

Finally, with regard to Pure Magnesium from Canada, Maverick makes three comments. See Maverick rebuttal brief at pages 6 and 7. First, Maverick maintains the decisions of other Panels are not precedent which can be relied on by the Panel. Id. Second, the Panel's decision regarding the history of zero margins in the referenced magnesium case cannot be extended to TAMSA's situation, where zero margins were based on shipments the Department found were not in commercial quantities. Id. In contrast, Maverick contends the record in the Pure Magnesium from Canada case indicates that the Canadian magnesium producer shifted production to a different product, and would be unable to shift production back to pure magnesium rapidly. Id. Third, according to Maverick, the Panel's remand in that case exceeded the Panel's mandate to approve or remand statutory interpretations. Id.

Party comments on the draft redetermination are summarized following the analysis.

Analysis and Redetermination

After re-examing the record and reviewing the arguments and information submitted by parties, including comments on the Department's draft redetermination, the Department does not find the "other factors" raised by TAMSA sufficient to alter the Department's initial 'likelihood' determination. Therefore, the Department continues to find dumping is likely to continue or recur absent the Order.

The Sufficiency of Information Presented by TAMSA

As a preliminary matter, we are concerned with the minimal effort exerted by TAMSA to substantiate the "other factors" it claims should be considered by the agency. The SAA states that, to assess whether good cause has been shown, the Department

> 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.

See the SAA at 890. Obviously, TAMSA's assertions regarding the currency devaluation during the investigation, its business decision not to ship to the United States due to uncertainty over the antidumping duty margins, and the initial purported absence of lack of sales below cost during the administrative reviews, superficially raise issues listed in the SAA. However, the SAA makes clear that "other factors" *might* include the factors listed (emphasis added). As the Panel understood, the word "might" does not mean that the inclusion of a factor in the SAA list means that it is automatically a factor that is relevant to the Department's determination. See Decision at page 9. Rather, there must be sufficient information and evidence on the record for the Department to determine, on a case-by-case basis, whether a factor has a bearing on the Department's likelihood determination. Mere assertion that a factor has a bearing on the likelihood determination is not sufficient. Parties raising "other factors" before the Department have a responsibility in their initial submission to the Department in a sunset review to provide sufficient information and evidence for the Department to perform an analysis.

The Panel understood this when it directed the Department to reopen the record "for the limited purpose of investigating and fact-finding concerning the relevance and bearing of TAMSA's 'other factors' on the Department's determination." See Decision at page 24. The Department requested that parties "explain how the consideration of the devaluation of the Mexican Peso and the restructuring of TAMSA's U.S. dollar denominated-debt are relevant to the Department's analysis of whether dumping is likely to occur were the order to sunset." See the Department's questionnaire of February 18, 2005. Rather than provide evidence or an explanation, however, TAMSA initially chose simply to reiterate its prior arguments.

In its brief of February 25, 2005, TAMSA describes the effects it believes the Mexican Peso devaluation and dollar-denominated debt had on the calculation of the dumping rate in the original investigation. TAMSA also contends that the finding of zero margins for administrative reviews completed before the sunset review is relevant. Otherwise, TAMSA merely refers back to its submission in the sunset review, maintaining the information presented in its submission limits “the probative value of the historic dumping margins.” See TAMSA’s February 25 brief at page 8. As the Panel recognized, TAMSA’s sunset review submission “could have been more explicit or detailed in defining the ‘other factors’ to be considered. These factors were only summarily stated in TAMSA’s substantive response to the notice of initiation of sunset review.” See Decision at page 20.

Specifically, in that submission, TAMSA likewise argued the Mexican Peso devaluation and TAMSA’s U.S. dollar-denominated debts, coupled with the Department’s use of best information available, resulted in the margin found in the investigation. See TAMSA’s Substantive Response to the Sunset Review of Oil Country Tubular Goods from Mexico, August 2, 2000, at page 5. TAMSA asserted that it had no further long-term debt as of December 31, 1999, and provided a copy of its 1999 financial statements in Exhibit 1 of the submission as proof. Id. TAMSA also alleged that the “Mexican Peso has stabilized and sudden devaluations of the type experienced in 1994 are unlikely.” Id. at 5. TAMSA also provided, in part in Exhibit 2, the quantity and value of sales by TAMSA of OCTG worldwide, by country, for January to June of 1994. TAMSA argues that “if the statute requires dumping margins to be considered, then information showing that the original dumping margin has no probative weight must be considered sufficient good cause to consider other factors, and the zero margins must be ‘relevant’ to the Department’s likelihood determination.” See TAMSA’s February 25 brief at page 10.

TAMSA maintained that, absent the currency devaluation and debt, its sales in the home market were above the cost of production (“COP”) and its net sales prices to the United States were above home market prices. However, TAMSA provided no information to support these statements. (Further, as demonstrated below, the record does not support this assertion.) Likewise, TAMSA initially provided no explanation as to how the purported reduction or elimination of its long-term debt relates to the issue of likelihood of dumping, other than its assertion that the COP in the investigation was distortive. As discussed below, TAMSA's contentions with respect to the effect of this debt after the imposition of the Order is not consistent with the record and the Department's determinations in the administrative reviews.

Rather than substantiate its assertions, in each of its submissions TAMSA attempted to shift its own burden to present information to the Department. In its February 25 brief, TAMSA claims that the Department could have used the information on the records of the administrative reviews to find support for TAMSA's arguments. In its March 2 rebuttal brief, TAMSA maintains that "the Petitioner's reference to oil and OCTG prices serves only to highlight the types of information that the Department could have developed, but did not." See TAMSA's March 2 rebuttal brief at page 5. In fact, the Panel's instructions and the Department's questionnaire provided TAMSA with just such an opportunity to expand on the relevancy of this and other arguments. It did not do so, even though information regarding its debt and decisions to reduce shipments, for example, is information exclusively within TAMSA's possession.

As the Panel acknowledged, the SAA specifies that the Department "will analyze [other relevant factor] information '*provided by interested parties*' on a case-by-case basis." See Decision at 10 (citing the SAA) (emphasis added) As the Panel stated, "where an interested party fails to provide information sufficient to bring a particular 'other factor' to the Department's attention, the Department has no statutory obligation to consider such a factor in its 'likelihood' determination." See Decision at page 16.

Parties must provide some evidence in support of the relevance of the factors presented. The SPB provides

> declining margins alone normally would not qualify because the legislative history makes clear that continued margins at any level would lead to a finding of likelihood. See section II.A.3 above. In analyzing whether import volumes remained steady or increased, the Department normally will consider companies' relative market share. *Such information should be provided to the Department by the parties*.

See SPB, 63 Fed. Reg. 18872 (emphasis added). Similarly, as to "other factors," the SPB states that the "burden is on an interested party to provide information or evidence that would warrant consideration of the other factors in question." Id. at 18874. Thus, it is clear that parties must present some information in support of their claim that the factor at issue is relevant. It is then the Department's responsibility to analyze the information provided, request more information if necessary, and determine if the information and/or evidence affects the Department's likelihood determination.

Analysis of Effect of "Other Factors" On Likelihood

Despite the Department's concerns regarding TAMSA's submission of information, the Department has considered the other factors raised by TAMSA to be relevant for purposes of this redetermination. Having considered the "other factors" alleged by TAMSA as well as all of the information currently on the record, we continue to find that dumping would likely recur or continue if the Order were to sunset.

The SAA at 879 states that the Department will make its likelihood determination on an order-wide basis. Because likelihood determinations in sunset reviews are on an order-wide basis, the Department must not only determine the relevancy of these "other factors" with respect to TAMSA, but also to other Mexican OCTG producers such as Hylsa S.A. de CV ("Hylsa"), which have not challenged the Department's decision before this Panel. We have considered that shipments from all producers "declined significantly" from the second half of 1994 and1995 to 1999. It is also beyond dispute that TAMSA's shipments to the United States decreased significantly after imposition of the Order from pre-order levels. Also, as the Panel noted, in the fourth administrative review, Hylsa received a dumping margin of 0.79 percent (based on sales that occurred during the sunset review period).[5]

Thus, the evidence on the record demonstrates that there has been a significant decline in imports after the imposition of the Order, not just from TAMSA but from Mexico as a whole. After four administrative reviews, and notably after the imposition of zero cash deposit margins,[6] shipments from TAMSA declined significantly.[7] Furthermore, as noted by the Panel,

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[5]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 Oil Country Tubular Goods from Mexico: Final Results of Antidumping Review and Determination Not To Revoke in Part, 66 FR 15832 (March 21, 2001), issued shortly after the sunset review was completed, the Department confirmed dumping by Hylsa at a slightly lower rate of 0.79 percent.

[6]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 Oil Country Tubular Goods From Mexico: Final Results of Antidumping Duty Administrative Review, 64 FR 13962 (March 23, 1999).

[7] U.S. Steel points out that, after the fourth administrative review, TAMSA ceased altogether shipments of merchandise. In the Luoyang case cited by U.S. Steel, the CIT affirmed the Department's recognition of dumping subsequent to the administrative review period subject

Hylsa was dumping subsequent to the imposition of the Order. The SAA states that either an "existence of dumping margins" or a "cessation of imports" after an Order are "highly probative" of the likelihood of continuation or recurrence of dumping. Therefore, relevant "other factors" presented by parties must overcome these "highly probative" conditions. In this case, TAMSA's "other factors" are not sufficient to overcome the presumption that dumping is likely to recur or continue.

Throughout its submissions, TAMSA has insisted that, but for the precise devaluation and exact degree of foreign debt that existed when the investigation was performed, there would be no sales below cost and consequently no dumping margin. TAMSA's allegations that its sales in the home market would have been above COP absent the devaluation is, however, contradicted by the Department's findings during the administrative reviews. See, e.g. Analysis for Tubos de Acero de Mexico S.A. ("TAMSA") for the final results of the second administrative review of oil country tubular goods from Mexico for the period August 1, 1996, through July 31, 1997 (March 8, 1999). The Department found sales below the COP. Id. Indeed, the Department found sales below the COP in all of the administrative reviews that it conducted prior to the sunset review. See Analysis for Tubos de Acero de Mexico S.A. ("TAMSA") and Siderca Corp. for the final results of the third administrative review of oil country tubular goods from Mexico

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to the appeal. In that case, the issue of whether the order should be revoked was raised for the first time during the remand proceeding when the margin was recalculated and reduced to zero. Therefore, the evidence of dumping that had occurred subsequent to the results of review was relevant. In this case, the Panel has directed the Department to reopen the record "to obtain the additional information needed to determine whether the 'other factors' raised in TAMSA's substantive response are relevant, and if so, how those factors would affect the Department's 'likelihood' determination." See Decision at page 24. The Department considers the information provided regarding events occurring after the Department's sunset determination to be outside the scope of the Panel's remand instructions.

for the period August 1, 1997 through July 31, 1998 (January 5, 2000), and Analysis for Tubos de Acero de Mexico S.A. ("TAMSA") for the preliminary results of the fourth administrative review of oil country tubular goods from Mexico for the period August 1, 1998 through July 31, 1999 (August 30, 2000). The Department placed the public versions of these analysis memoranda on the record of this proceeding on April 26, 2005. Thus, not only did TAMSA not provide information and/or evidence to support its assertions, information on the record clearly contradict one of TAMSA's statements.

Further, the record also establishes that, even though TAMSA's long-term debts declined over time and were eliminated by the end of 1999, long-term debt existed in 1998. See TAMSA's May 3, 2005 brief at Attachment 3. TAMSA continued to have U.S. dollar-denominated debts until sometime in 1999. During the administrative review periods, TAMSA experienced currency devaluations of similar or greater intensity to those of the first half of 1994. See Appendix I. As previously noted by Maverick in their March 2 rebuttal brief, the Department used only the first half of TAMSA's 1994 financial statements in calculating the antidumping duty rate in the LTFV Determination. Although the value of the Mexican Peso declined in the first six months of 1994, it declined even more dramatically in December 1994 and the first half of 1995. Id. Indeed, an examination of the average six-month exchange rates for the periods following January to June 1994, show there have been numerous periods with larger decreases in the value of the Mexican Peso than the six-month period emphasized by TAMSA: July to December 1994; January to June 1995; July to December 1995; January to

June 1996; January to June 1998; July to December 1998.[8] Id. Thus, to the extent that the decline in the value of the Mexican Peso in the January to June 1994 period impacted the margin calculation in the investigation, such declines are not unusual.

In its comments on May 3, 2005, TAMSA acknowledges that there were sales below COP during the administrative reviews. TAMSA argues that the sales below COP were small percentages of home market sales, and thus were aberrational and had no effect on the margin calculation. Irrespective of TAMSA's latest characterization of the sales, it had maintained that absent the currency devaluation and the level of its dollar-denominated debt present during the POI, there would be no sales below cost. This assertion is inconsistent with the record. As evidenced by the Department's analysis of TAMSA's sales, the elimination of the dollar-denominated debt and the end of its currency devaluation has not resulted in the elimination of sales below cost in the home market.

Although many of the subsequent declines occurred while TAMSA still possessed dollar-denominated debts, the Department calculated zero margins for the reviews. If these debts and currency devaluations were a major source of the margin found in the investigation, it would be reasonable to assume that they would also result in margins in the administrative reviews. That U.S. dollar-denominated debts and further currency devaluations existed, and the Department, nevertheless, calculated zero margins in subsequent administrative reviews indicates either that the debts were not a significant reason for margin in the LTFV Determination, or that the sales in

[8] An examination of the end of period exchange rates over the same time period yields similar results. Larger decreases in exchange rates have occurred five times since the six-month time period involved in the investigation: July to December 1994; January to June 1995; July to December 1995; January to June 1998; and July to December 1998. See Appendix I.

the reviews were not representative of TAMSA's normal commercial activity.

Further, if these were indeed one-time events and they no longer exist, as TAMSA asserts, it would be reasonable to assume that shipments of merchandise to the United States would have increased. Instead, despite the existence of zero cash deposits and an affiliated importer, and after these supposedly one-time events ran their course, TAMSA's shipments were consistently found not to be in commercial quantities. TAMSA, despite many opportunities, has not provided any other information to show how these two factors directly affect its ability to ship in commercial quantities without dumping. At any rate, it is entirely speculative to claim that the Mexican Peso will not be devalued again, that TAMSA will not again occur debt denominated in foreign currencies, or that similar circumstances will not arise. Additionally, the elimination of TAMSA's U.S. dollar-denominated debt has limited relevancy to the likely actions of Hylsa, the other Mexican producer identified in the Department's sunset review.

TAMSA makes three additional arguments in its February 25 brief: 1) it received zero margins in consecutive administrative reviews; 2) the United States is not a high-volume market for TAMSA; and 3) it made a business decision to reduce the volume of imports due to uncertainty and risk with the antidumping duty law. While U.S. Steel has argued that these issues fall outside of the scope of the remand, we consider these to be additional arguments regarding "other factors" and their effect on the Department's likelihood determination, as raised by TAMSA in its Substantive Response. Thus, given that the Panel has directed the Department to consider the 'other factors' in its likelihood determination for this proceeding, we consider these arguments to be within the scope of the Panel's remand.

First, as the Panel noted, section 751(c)(4)(A) of the Tariff Act of 1930 as Amended ("the

Act") (19 USC §1675(c)(4)(A)) states that a dumping margin that is zero shall not, by itself, require the Department to determine that revocation of an order would not be likely to lead to a continuance or recurrence of dumping. See Decision at 7. Contrary to TAMSA's claim, therefore, its three consecutive zero margins do not require the Department to make a negative likelihood determination. The Department noted in the sunset review that the SAA and the SBP, as well as the House Report (H.E. Rep. No. 103-826, pt. 1 (1994)) all state that it is reasonable to infer that dumping would resume were an order revoked if the volume of imports declined significantly after an order is issued. The Department also noted that imports declined significantly and TAMSA was able to sell small amounts of OCTG without dumping. See Oil Country Tubular Goods from Mexico; Final Results of Sunset Review of Antidumping Duty Order, 66 FR 14131 (March 9, 2001). The zero margins obtained by TAMSA came only after single shipments of low quantities in each review. The Department has already determined that TAMSA did not ship at commercial levels during any of the relevant periods 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 Department continued to find that TAMSA did not ship at commercial levels in the final results. See Oil Country Tubular Goods from Mexico: Final Results of Antidumping Review and Determination Not To Revoke in Part, 66 FR 15832 (March 21, 2001), Decision Memorandum at Comment 1.[9] See also Maverick's rebuttal brief at pages 4 and 5.

TAMSA's reliance upon Pure Magnesium from Canada is also misplaced. In Pure

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[9] The Department published the final results for the fourth administrative review shortly after the completion of the sunset review. However, the Panel has cited to the final results in the context of the dumping margin for Hylsa. See Decision at page 3, footnote 5.

Magnesium from Canada, the panel found that declining shipments and zero margins were the result of the respondent's irreversible migration from production of pure magnesium to alloy magnesium, evidenced, in part, by long-term contractual commitments. TAMSA has provided no evidence of an analogous situation in this case. Therefore, given the paucity of shipments, the calculation of three zero margins during administrative reviews is not sufficient to make a negative likelihood determination.

TAMSA also asserts that it made a business decision not to ship in greater quantities based on the risks inherent in the antidumping duty law and possible retroactive duty increases. As Maverick and U.S. Steel stated in their rebuttal briefs, the importer of record in the administrative reviews in which TAMSA participated was an affiliated party. Specifically, according to Maverick, the affiliated party, Siderca Corp., is the exclusive selling agent for TAMSA's products in the United States. We agree with Maverick 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." See Maverick's March 2 rebuttal brief at page 6. In fact, TAMSA's and Siderca's business decision not to ship subject merchandise to the United States once the cash deposit rate went to zero because of fears over the possibility of future margins only highlights the company's own belief that it could not re-enter the market without resorting to dumping. Thus, we find that TAMSA's business decision argument is not only without merit with respect to a finding of no likelihood of dumping, but actually supports the Department's likelihood determination.

Finally, the assertion that the United States was not a "high volume" market after the imposition of the Order is also without merit. As demonstrated above, the evidence submitted by

TAMSA does not substantiate its claim. Indeed, the United States 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 in the years 1996 to 2000. *See* American Iron and Steel Institute Annual Statistical Report, 2000, and Appendix III. It is difficult to believe that TAMSA, a major world producer of seamless OCTG, would consider such a market not to be "high volume" for any reason other than it could not ship to the United States without dumping.

Post-Draft Comments

The Department issued a draft of its redetermination on remand to parties on April 15, 2005. TAMSA submitted initial comments on the Department's draft redetermination on April 20, 2005. Thereafter, the Panel allowed for a conditional extension of time to submit the remand. The Department placed the information cited in the draft on the record, and consistent with the Panel's order and with the agreement of the parties, the Department extended the deadline for submitting comments and allowed for rebuttals. TAMSA filed further comments on May 3, 2005. U.S. Steel and Maverick, petitioners, filed rebuttal comments on May 6, 2005. Below is a summary of the parties' comments and the Department's position.

In its initial comments of April 20, 2005, TAMSA divided its comments into three sections. In section I, TAMSA disagrees with what it calls a "central premise" of the Department's draft. Specifically, TAMSA believes that the Panel's remand concluded that TAMSA had "satisfied its burden to produce 'information or evidence' of 'other factors' for consideration by the Department" and that the Panel found that TAMSA had "put the Department on notice of 'other factors' that TAMSA claimed were both relevant and would affect the Department's 'likelihood' determination." See TAMSA's April 20 Comments on Draft Redetermination at pages 2 and 3. TAMSA alleges the Panel only opened the record for additional fact-finding because "the Department claimed that the relationship between devaluation, foreign currency-denominated debt, and the likelihood of dumping was not clear to the Department." See TAMSA's April 20 Comments on Draft Redetermination at page 3. According to TAMSA, the Panel did not instruct the Department to open the record to "other arguments" and the Department did not solicit other arguments from TAMSA. Id. Accordingly, TAMSA notes its disagreement with the Department's reading of the nature and scope of the remand. Id. TAMSA asserts that, if the Department had specific questions about the information TAMSA provided (which, according to TAMSA, the Panel found sufficient) or if the Department wanted TAMSA to provide "other arguments," the Department should have identified specific concerns or indicated expressly that it was seeking other information or arguments. Id.

In section II, TAMSA discusses the relevance of the factors that it presented, specifically COP, foreign currency debt, and the United States as a "low volume" market. Concerning the COP, TAMSA suggests that the Department "release disclosure documents" regarding the "alleged sales below cost" identified in administrative reviews preceding the sunset review. Id. TAMSA contends that sales below cost in the home market on some products does not mean that a company is dumping in the United States. Whether sales below cost of production are evidence of a likelihood of continuation or recurrence of dumping will depend on the facts of the case, according to TAMSA. TAMSA argues the Department should present the facts underlying the alleged sales below cost and explain how those sales "undermine the relevance of TAMSA's information or "otherwise support the Department's determination that dumping would be likely to recur." See TAMSA's April 20 Comments on Draft Redetermination at page 5.

TAMSA then discusses its foreign currency debt. Again, TAMSA maintains that the Department should provide further information and analysis on the record. Specifically, TAMSA argues it is the Department's responsibility to include details related to the relationship between TAMSA's financial expenses and devaluation and the sales below cost identified in the various administrative reviews. See TAMSA's April 20 Comments on Draft Redetermination at page 6. Further, TAMSA maintains it is the Department's responsibility to explain how those issues relate to the likelihood of dumping recurring or continuing.

Next, TAMSA responds to the Department's assessment of TAMSA's assertion that the United States is a "low-volume market." According to TAMSA, its submission documenting relative sales volume during the POI does not contradict its assertion that the United States became a low-volume market after the imposition of the Order. In concluding its section II comments, TAMSA maintains that the three factual findings by the Department, concerning COP, foreign currency debt, and sales volumes, are insufficient. TAMSA urges the Department to disclose "the facts" underlying the Department's findings and explain how they are related to the Department's likelihood determination.

In section III, TAMSA responds to the Department's finding of likelihood. Specifically, TAMSA questions the reference to Hylsa in the redetermination; the significance of TAMSA's affiliated importer; the assertion that the United States is a low-volume market; and the impact of currency losses and devaluations. Concerning the Department's findings with respect to Hylsa, TAMSA argues that the Department has changed the basis for its likelihood determination to include facts related to Hylsa. TAMSA maintains the Department should provide an explanation and disclosure of the details related to Hylsa's dumping.

On the issue of its affiliated importer, TAMSA reiterates its assertion that it was adverse to the risks associated with the U.S. antidumping duty system. TAMSA also objects to what it believes is the Department's dismissal of the certified assertions of its officials. As to the low volume nature of the U.S. market, TAMSA again questions what it considers to be the Department's dismissal of its certified explanations. TAMSA argues that, "if the Department wanted to develop information on this issue, it could have asked TAMSA specific questions related to the company's certification, or it could have developed information related to TAMSA's performance without high-volume shipments to the U.S. market." See TAMSA's April 20 Comments on Draft Redetermination at page 9. TAMSA claims that it is a healthy company that has thrived since the imposition of the Order, despite the lack of shipments to the United States. Finally, TAMSA challenges the Department's finding concerning continued devaluations and dollar-denominated debts, i.e., that "the debts were not a significant reason for [the] margin in the LTFV Determination, or that the sales in the reviews were not representative of TAMSA's normal commercial activity." See TAMSA's April 20 Comments on Draft Redetermination at page 10. TAMSA argues a logical alternative explanation is that the *combination* of the *level* of foreign currency debt and the *magnitude* of the peso devaluation that resulted in the original dumping margin. TAMSA claims there is no information on the record demonstrating those exact circumstances are likely to recur.

In its submission of May 3, 2005, TAMSA places new information on the record of this proceeding in order to rebut and/or clarify the information that the Department placed on the record on April 26, 2005. Specifically, TAMSA placed on the record the proprietary versions of the analysis memoranda to clarify the public versions the Department placed on the record. In addition, TAMSA placed on the record partial printouts of the SAS programs used to calculate margins during the second, third, and fourth administrative reviews. The portions of the programs placed on the record consist of the output section with respect to the models sold in the home market and the results of the cost test. Finally, TAMSA placed on the record copies of the consolidated financial balance sheets from 1996 and 1998, showing TAMSA's financial position from the years 1994 to 1998.

In the commentary section of the submission, TAMSA makes the following arguments. First, TAMSA argues that the Department's submission to the record of public information regarding the administrative reviews was distortive. Only the submission and consideration of proprietary information regarding the number and range of sales made below cost, according to TAMSA, provides a full explanation of the nature and scope of the sales below cost. Specifically, TAMSA argues that the number of sales below cost in each review were small, isolated, and aberrational, and did not affect the calculation of the margins in any review. The information, according to TAMSA, disproves the purported suggestion by the Department that "the products used for the dumping calculation in the three reviews were unrepresentative because most other products are sold at prices below the cost of production." See TAMSA's May 3, 2005, comments at page 5.

Second, concerning the issue of the exchange rate and the dollar denominated debt, TAMSA maintains that it has consistently argued that it is the *combination* of foreign currency exposure and the devaluation of the peso in 1994 that caused the finding of dumping in the investigation. That combination of factors did not exist after the investigation, TAMSA argues. TAMSA argues that the attached consolidated balance sheets show a decline over time of foreign currency debts, and maintains that the decline and the "reduced volatility" of the Mexican Peso exchange rate supports its position that the combination of factors that occurred in 1994 were unlikely to recur. TAMSA then compares the financial expense ratios in the investigation and reviews to show that the ratios during the reviews were lower. TAMSA attributes the difference to the above-mentioned combination of factors.

Finally, TAMSA again argues that the Department should place on the record information related to Hylsa's dumping margin so that it can be reviewed by the Panel.

In its May 6, 2005 rebuttal comments, petitioner Maverick first reiterates its belief that the Panel has "grossly violated its mandate by allocating a burden of production or persuasion in this case." See Maverick's rebuttal brief of May 6, 2005 ("Maverick May 6 brief") at page 2. Maverick argues that the burden to produce information to develop the record rests with the respondent, and not upon either the Department or domestic interested parties, and supports the Department's statements in the draft redetermination placing the burden to develop the record on TAMSA.

Next, Maverick argues that accepting TAMSA's assertions regarding the relevancy of the Mexican Peso devaluation and exposure to foreign debt would require a comprehensive cost of production investigation as part of a sunset review. In fact, such an investigation in a sunset review would be necessary whenever a respondent asserts a change in the cost structure, according to Maverick. Such an investigation, argues Maverick, is well beyond what the statute anticipates in a sunset review. Maverick again argues that a more appropriate place to conduct such an investigation is in the context of a "changed circumstances" review.

Maverick further argues that "if TAMSA had demonstrated the impact of the 'other factors' by shipping, during even one period of review, a commercially significant quantity of subject OCTG for which it received a zero margin, this could be 'good cause' to consider these same factors in a sunset review. In asking the Department to simply accept its assertion that changes represented by the two 'other factors' preclude a finding of dumping, TAMSA is circumventing the process by which TAMSA's assertions could be tested. Because TAMSA has not availed itself of the options provided by the statute, the Department does not have 'good cause' to consider these factors in its Sunset Review." See Maverick's May 6 rebuttal brief at pages 4 and 5. Maverick further argues that despite its belief that the submission of confidential data from the prior reviews is inappropriate and a serious procedural irregularity, the data is irrelevant because the small volume of shipments during the review periods by TAMSA are unrepresentative and the price comparisons in the reviews "were inherently not probative of TAMSA's pricing behavior." Id.

Maverick further argues that TAMSA's contention that it did not ship to the United States in order to avoid the risk of antidumping duties is undermined by the fact that liability for duties ultimately falls on TAMSA (through it's U.S. affiliate) and that TAMSA "is the party which controls the facts as to whether any antidumping duty will be due." Id. at 6. Since TAMSA stated its certainty regarding the lack of dumping after the investigation, Maverick argues that "it is incongruous to claim that it was fear of Department mendacity year after year that precluded shipments in commercial quantities to the United States." Id. at page 6. Finally, Maverick notes that the Department rejected a prior request for revocation of the order because the Department found that TAMSA had not shipped commercial quantities during the review periods. Id. Citing to the finding in Oil Country Tubular Goods From Mexico: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 15832 (March 21, 2001), Maverick quotes the Department's finding with respect to the volume of shipments during the review periods, which stated "because TAMSA did not meaningfully participate in the market, its sales during these periods do not provide a reasonable basis for determining that it is unlikely that TAMSA will dump in the future." Id. at page 7. Maverick concludes by asserting that the zero margins obtained by TAMSA in each of the administrative reviews do not support TAMSA's assertion that it is unlikely to dump in the future, as TAMSA obtained the margins on a single sale in each review period involving very small shipment volumes. Maverick argues that this is true regardless of the volume of sales made by TAMSA below COP in the home market.

U.S. Steel's rebuttal brief of May 6, 2005 ("U.S. Steel May 6 brief") begins by arguing that the burden under U.S. law to create an adequate record in a proceeding is well settled and lies with the relevant interested parties, and not the Department. The Department, following the Panel's instructions, re-opened the record and gave until February 25, 2005, to provide the information. U.S. Steel argues that TAMSA failed to provide any new evidence in the time allotted, and that its May 3, 2005 submission of information is untimely and prejudicial to petitioners and should be rejected. U.S. Steel argues that TAMSA's submission "consists of selective portions of business proprietary information from the . . administrative reviews" that "only adds to the already substantial prejudice to Petitioner from TAMSA's submission of its new information" because petitioners were required to destroy this information after the reviews pursuant to the Department's regulations. The same regulations, according to U.S. Steel, preclude it from using that proprietary information in this proceeding even if they have it.

However, assuming, *arguendo*, that the Department accepts the information, U.S. Steel argues that the information submitted by TAMSA does not provide "good cause" sufficient to change the Department's likelihood determination. U.S. Steel notes that the Department, in its draft redetermination, found that TAMSA had U.S. dollar-denominated debts until 1999 and that there were devaluations in the peso during that time as well. Therefore, the combination of the "other factors" raised by TAMSA were not unusual. In addition, U.S. Steel notes that TAMSA provided no evidence to indicate that TAMSA would not in the future increase foreign currency denominated debts, nor any evidence that the "unique" combination of factors cited by TAMSA could recur again in the future.

More significantly, U.S. Steel argues that the "other factors" cited by TAMSA do not provide any explanation as to why shipment volumes to the United States of OCTG declined so dramatically from the investigation to the review periods. U.S. Steel maintains that TAMSA's shipments during this time failed to exceed 0.60 percent of TAMSA's pre-order volume. See U.S. Steel's second rebuttal brief at page 12. U.S. Steel notes that, even after the "other factors" were purportedly resolved, and despite a cash deposit rate of zero and an affiliated importer, TAMSA still did not ship in commercial quantities. U.S. Steel argues that TAMSA's discussion of the financial expense ratios is incorrect, as the ratio used in the investigation arose after TAMSA did not cooperate by providing the 1994 audited financial statements to the Department. Despite TAMSA's lack of cooperation, U.S. Steel notes that the Department did not use full-year 1994 financial statements that would have resulted in an even higher financial expense ratio.

Regarding TAMSA's claim that it stopped shipping due to the "risk and uncertainty" associated with the antidumping duty law, U.S. Steel argues that every respondent in all cases could make such a claim. Were the Department to accept that claim, argues U.S. Steel, it would be impossible to find likelihood based on declining import volumes. Such a finding is contrary to the statute and the SAA, according to U.S. Steel, and should be rejected. As to the issue of whether or not the United States OCTG market was substantial, U.S. Steel cites the information placed on the record by the Department, as well as the findings by the International Trade Commission in its sunset determination, that the United States was the single largest market in the world for OCTG, and that imports into the United States during the sunset review period ranged from 170,000 net tons to 720,000 net tons. Id. at page 17. Thus, argues U.S. Steel, the United States was obviously a substantial market during the sunset review period, clearly contradicting TAMSA's statements that the United States was not a high-volume market. In neither instance does the evidence on the record demonstrate why shipments by TAMSA dropped so steeply after the imposition of the Order, according to U.S. Steel.

Finally, U.S. Steel argues that TAMSA has not addressed the fact that a sunset review covers all companies covered within the Order, and that TAMSA has ignored the fact that Hylsa was found to have a dumping margin in the fourth administrative review. U.S. Steel notes that the existence of dumping after the issuance of an order is 'highly probative' that dumping is likely to continue or recur. TAMSA's arguments that the Department should place more information on the record regarding Hylsa's dumping margin are incorrect, argues U.S. Steel, as Hylsa is not a party to this action and that the calculated margin has not been raised as an issue before the Panel.

Department's Position:

The Department has fully complied with the Panel's instructions upon remand. The Panel directed the Department to assess the impact of the "other factors" raised by TAMSA if it found those factors to be relevant. Upon remand, assuming for purposes of the remand that the "other factors" were relevant, and despite the paucity of the information submitted by TAMSA, the Department specifically analyzed the effect of the "other factors" upon the Department's likelihood determination.

TAMSA's initial comments upon the draft remand determination relate, almost entirely, to the evidence, or lack thereof, substantiating the "other factors" asserted by TAMSA. Petitioners counter that it was TAMSA's burden, not their burden or the burden of the Department, to substantiate the 'other factors' that TAMSA claimed. We agree with petitioners. As we have previously stated, the Department cannot rely on general statements or unsubstantiated factual assertions. There must be a minimum substantive basis for a party's claim that any named "other factors" show "good cause" for consideration. Respondents, generally, bear the burden of establishing the record. Cf. Fujitsu General Ltd. v. United States, 88 F.3d 1034 (Fed. Cir. 1996); Corus Eng. Steels Ltd. v. United States, Slip Op. 03-110 (CIT 2003); NSK Ltd. v. United States, Slip op. 04-105 at 15 (CIT Aug. 20, 2004); Chia Far Industrial Factory Co. Ltd. v. United States, 343 F.Supp.2d 1344 (CIT 2004). Indeed, the Panel acknowledged that the parties must provide "information sufficient to trigger the Department's duty to consider the referenced 'other factors.'" See the Decision at 16.

Throughout TAMSA's April 20 comments on the Draft Redetermination, TAMSA argues that the Department should provide certain evidence or should have asked TAMSA for specific pieces of information. TAMSA misunderstands the nature of the Department's remand proceeding and the Panel's Decision. It is not incumbent upon the Department to substantiate a party's claims. Rather, the Department, in accordance with the Panel's instructions, assesses the relevancy of the evidence proffered by a party. While, in assessing relevancy, the Department may, and did, perform additional fact finding, a party may not simply assert relevancy without providing some analysis or demonstration of the bearing an alleged "other factor" has upon the Department's likelihood determination. Despite the second opportunity presented by the re-opening of the record, TAMSA did not provide any such information or analysis.

In accordance with the Panel's instruction, the Department afforded TAMSA an additional opportunity to substantiate its claimed "other factors." Consistent with the Panel's direction, the Department analyzed those "other factors," including independently developing the record to assess relevancy. We addressed the issues on the record raised by TAMSA, as well as those raised by petitioners U.S. Steel and Maverick. As ordered by the Panel, we reopened the record, allowing the parties to submit additional evidence until February 18, 2005. In order to examine TAMSA's claims, as directed by the Panel, we developed the record and referenced new data in the draft redetermination. We placed this new, public information on the record on April 26, 2005. In light of the Department's placement of new evidence on the record, and consistent with the Panel's April 25, 2005 order, we allowed for comments from all parties. We accepted information presented by parties after April 26, 2005 only to rebut or clarify the new information that we placed upon the record. As for TAMSA's placement of proprietary information, submitted and released under APO in earlier administrative reviews of this Order on the record, we note that the restrictions for subsequent placement of proprietary data on the record apply to recipients, as authorized applicants under an APO, but not the original owner of the data. See 19 CFR 351.306(b); 351.102(b) (definition of "applicant" and "authorized applicant"). Interested parties may submit their own business proprietary information in later segments, as TAMSA has done.

TAMSA argued that, absent devaluation and foreign debt load, there would have been no margin in the LTFV determination and that there would be no sales below COP and no margin during the administrative reviews. To test that assertion, the Department examined currency devaluations for the five years after the imposition of the Order, TAMSA's foreign currency debts after the imposition of the Order, and the COP results of the administrative reviews. The Department found TAMSA's assertion to be without support.

In its February 25, 2005 brief, TAMSA argues that the statutory framework for the Department's likelihood determination includes "other factors" [which] "might also include 'changes in exchange rates . . . [and] any history of sales below cost of production." See TAMSA's February 25 brief at 5, quoting the Panel's Decision at 7-8, 20-21. In discussing the Mexican Peso devaluation and the dollar-denominated debt, TAMSA argues 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." Id at pages 7 and 8. Finally, TAMSA alleges that "the 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 . . . 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." Id at page 9. In summary, TAMSA argued that (1) a history of sales below COP was relevant to the Department's likelihood determination, (2) the devaluation of the peso and TAMSA's dollar-denominated debts resulted in sales below COP during the investigation, (3) absent such devaluations and foreign currency debts, TAMSA did not have sales below COP during the reviews, (4) this combination of factors was the reason for the finding of zero margins during the administrative reviews, and (5) therefore, there was no likelihood of a continuation or recurrence of dumping.

However, contrary to TAMSA's assertions, the Department found that (1) there were currency devaluations during the review periods at levels similar to those seen during the investigation, (2) TAMSA had dollar-denominated debts through at least two of the administrative reviews, and (3) TAMSA had sales below cost during the administrative reviews. The analysis memoranda from the reviews preceding the sunset review demonstrate that, contrary to TAMSA's original contention, there were sales below COP during the administrative reviews.[10] 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 issue of the Order. The most significant difference in the fact pattern since the investigation is in the volume of

[10] The Department notes that to undertake consecutive cost investigations during administrative reviews, there must be sales below cost and sales that were disregarded during the previous proceeding. 19 U.S.C. 1677b(b). TAMSA's information, placed on the record on May 3, 2005, allegedly to show the number of below cost sales, does not contradict this fact.

sales: there was a dramatic drop in the sales volume subsequent to the imposition of the Order.

While TAMSA argues that the exact levels of dollar-denominated debts and Mexican Peso devaluations were not present following the investigation, the Department has shown that a similar combination did exist. The existence of similar circumstances following the Order, combined with the significant drop in import levels, supports the Department's finding that dumping is likely to continue or recur. As the Panel acknowledged, the SAA provides that "the cessation of imports after the order is highly probative of the likelihood of continuation or recurrence of dumping." <u>See</u> SAA at 890 and Decision at pages 8 and 9.

TAMSA's additional comments on the information placed on the record by the Department do not change this basic analysis. TAMSA acknowledges for the first time that there were sales below COP during the administrative reviews. TAMSA argues, however, that, because the number of sales below COP were insignificant and aberrational, they did not affect the final calculation of the margin and are not important to the Department's analysis. We disagree. TAMSA has maintained that without the purportedly "one-time" events found during the POI, there would be no sales below cost. We have investigated the contention that there would be no sales below cost and found the evidence does not substantiate TAMSA's contention.

Likewise, TAMSA argued it made a business decision to decrease imports based upon the risk of "retroactive duty increases." To assess this assertion, the Department considered that TAMSA, through its U.S. affiliate, is the importer of record and that a zero cash deposit rate existed during a portion of the five-year sunset review period. Notwithstanding these facts, shipments decreased significantly from the investigation. If, as TAMSA has insisted, the factors which drove the margin in the LTFV investigation no longer exist and it can sell without dumping, there would be no risk in selling to the United States. Rather, the fact that it chose not to sell to the United States because of its concern over future dumping margins may be indicative of the company's own belief that it cannot participate in the U.S. market without dumping.

TAMSA dismisses the Department's analysis of its assertion that the United States is a "low volume" market. The Department, however, analyzed the only information that TAMSA placed upon the record regarding that assertion. That information showed the United States was not a "low volume" market for TAMSA prior to the imposition of the Order and was not a "low volume" market in general after the imposition of the order. See TAMSA's Substantive Response at Exhibit 2, and the Department's Memorandum to the File, New Information obtained by the Department, April 26, 2005. In fact, the United States was the largest market for OCTG products in the world. Thus, the Department could reasonably infer that, but for the discipline of the Order, the United States would be a "high volume" market for TAMSA. TAMSA proffered no other explanation for the change in import volumes. While TAMSA is critical of the Department's assessment, information regarding TAMSA's business decisions is information that is exclusively in the possession of TAMSA. It was therefore incumbent upon TAMSA to provide evidence substantiating its assertion.

TAMSA, not the Department, possesses the information that may substantiate this or any of its other claims. TAMSA's criticism that the Department did not ask particular questions of TAMSA is, thus, unfounded. It also ignores the opportunity provided by the Department, consistent with the Panel's Decision, for TAMSA to submit additional evidence. TAMSA is in a position to ascertain what documents, if any, it possesses that would be relevant to the Department's analysis.

Contrary to TAMSA's insinuation, the Department did not discount the "certified" statements that accompanied its submissions. To the contrary, the Department specifically analyzed those statements, but has found that after examining the totality of the evidence, these general statements made regarding TAMSA's business decisions do not overcome the Department's conclusions regarding the low import volumes.

As for the information concerning Hylsa, the SAA, the SPB, and the Department's sunset determination all expressly state that a sunset determination is to be made on an order-wide basis. The Panel cited to the Department's dumping margin calculated for Hylsa in the final results of the fourth administrative review. See Decision at page 3, footnote 5. As we stated in the sunset review, revocation is order-wide. See Oil Country Tubular Goods ("OCTG") from Mexico; Final Results of Sunset Review of Antidumping Order, 66 FR 14131 (March 9, 2001), Decision Memorandum at Comment 1. None of the factors asserted by TAMSA directly affect Hylsa.

Petitioners agreed with the Department's findings in the draft redetermination, while emphasizing the responsibility of respondent TAMSA to develop the record. We agree with U.S. Steel and Maverick that it is incumbent on the respondent, in this case TAMSA, to present evidence on the record sufficient for the Department to analyze whether "other factors" impact the Department's likelihood determination. In this proceeding, the Department has followed the Panel's direction in re-opening the record, soliciting new information, and developing the record beyond what was presented in the initial sunset review submissions. We have analyzed all of the information, again consistent with procedures outlined by the Panel, in making our likelihood determination.

As declining import levels and continued dumping are present, the question before the agency is whether the "other factors" cited by TAMSA overcome the "highly probative" nature of the import volumes. In accordance with the Panel's remand instructions, the Department considered the evidence upon the record, both presented by the parties and obtained independently, the statute, the SAA, and the regulations. During the POI, the United States was a large and significant market for TAMSA. The United States remained a large and significant market for OCTG during the subsequent five-year sunset review period. A TAMSA affiliate is the sole importer of TAMSA-produced merchandise, and a zero cash deposit margin existed for part of the five-year sunset review period. According to TAMSA, the effects of the currency devaluation and dollar-denominated debt that occurred during the investigation were no longer in effect during the administrative reviews. Also, TAMSA alleges that it had few sales below COP in the home market during the examined review periods. Despite *all* of these facts, TAMSA's shipments to the United States fell to near zero. Thus, there is an apparent correlation between the imposition of the Order and TAMSA's inability to ship in commercial quantities. Even accepting, *arguendo*, TAMSA's inaccurate assertions that the "other factors" of dollar-denominated debts and currency devaluations were one-time events, there is no other credible explanation for the large drop in shipments. It is therefore reasonable to conclude that, absent the discipline of the Order, dumping is likely to continue or recur.

To the extent that TAMSA suggests the Panel is entitled to re-weigh the evidence, it fundamentally misunderstands the scope of the Panel's review. The Panel may not reweigh the record evidence, substituting its judgment for that of the investigating authority. Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 734 (CIT 1989); Certain Cut-To-Length Carbon Steel Plate From Canada, USA-93-1904-04 (Oct. 31, 1994). Nor is it appropriate to reopen otherwise concluded administrative proceedings, as TAMSA attempts to do, when it suggests the Panel revisit the findings of sales below cost and of continued dumping by Hylsa in the already concluded administrative reviews.

Conclusion

In conclusion, even if the Department finds that TAMSA has presented "good cause" and that its "other factors" are relevant to the Department's analysis, TAMSA has not demonstrated that these "other factors" should change the Department's likelihood determination. Therefore, the Department, based on all of the evidence on the record, finds that the revocation of this Order would be likely to lead to a continuation or recurrence of dumping.

If the Panel affirms this redetermination, we will publish a notice in the Federal Register.

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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(Date)