RESULTS OF REDETERMINATION ON REMAND PURSUANT TO ARCELORMITTAL DOFASCO, INC. v. UNITED STATES Ct. No. 07-00135, Slip Op. 09-07 (January 22, 2009)

I. SUMMARY

In accordance with the opinion of the Court of International Trade in ArcelorMittal Dofasco, Inc. v. United States, Slip Op. 09-07, Court No. 07-00135 (January 22, 2009), the Department of Commerce ("Department") has prepared these results of redetermination on remand with respect to Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review, 72 Fed. Reg. 12,758 (Mar. 19, 2007) ("Final Results"). In its order, the Court remanded the Department's Final Determination, finding that the Department's explanation did not support its March 9, 2009, determination not to extend the date for U.S. Steel Corporation's ("U.S. Steel") and Stelco Inc.'s ("Stelco") March 7, 2009, withdrawals of their requests for reviews.

Specifically, the Court ordered the Department to "reconsider, in light of all relevant circumstances, its decision not to extend the due date for submission of the requests of U.S. Steel and Stelco, as filed on March 7, 2007, and thereby not to rescind the administrative review."

Prior to publishing the Final Results, the Department issued a letter explaining that it rejected the requests because they were submitted "five days before the due date of the final results of the review, and the Department has effectively completed its substantive and quantitative analyses, drafted extensive analysis and decision memoranda, and prepared a Federal Register notice," and "has expended significant resources in conducting this administrative review." See Letter to All Interested Parties from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration (March 9, 2007). The Court found this reasoning to be insufficient. As explained in detail below, the Department has reconsidered its decision in

light of all relevant circumstances and determines that the review should not be rescinded. As a result, the Final Results remain in effect.

II. BACKGROUND

The Final Results were issued on March 12, 2007, and published on March 19, 2007. Prior to initiating the proceeding, the Department received requests for review from U.S. Steel (for reviews of Stelco and Dofasco, Inc.), Stelco (for review of itself), and Dofasco (for review of Dofasco Inc., Do Sol Galva Ltd., Partnership, and Sorevco, Inc. (collectively, "Dofasco")). See Aug. 31, 2005 Requests for Review. The Department published the initiation of its review of the August 1, 2004 through July 31, 2005 period on September 28, 2005. Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 70 Fed. Reg. 56,631, 56,632 (Sept. 28, 2005).

Dofasco withdrew its request for review on December 20, 2005. See Dec. 20, 2005 Withdrawal Letter from Dofasco. U.S. Steel, however, did not at that time withdraw its request for a review of Dofasco, and the review continued. On February 14, 2007, the Department revoked the underlying antidumping duty order, effective with respect to entries made on or after December 15, 2005. Revocation Pursuant to Second Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products from Australia, Canada, Japan, and France, 72 Fed. Reg. 7010 (Feb. 14, 2007) ("Revocation").

On March 7, 2007, long after the Department had issued the preliminary results of this review, received case briefs, extended the deadline for issuing its final results, and completed its substantive and quantitative analysis in the administrative review – a total of 525 days after

initiating the administrative review – U.S. Steel and Stelco withdrew their requests for review and asked the Department to rescind the review. See Letters from Stelco and U.S. Steel Withdrawing Requests for Review (Mar. 7, 2007). In their letters, U.S. Steel and Stelco sought rescission, explaining that all parties that requested reviews had then withdrawn their requests; no interested party objected to rescission; the underlying order had been revoked pursuant to a sunset review; and, rescission would "avoid the likelihood of an appeal to the Court of International Trade, the World Trade Organization, and/or a NAFTA panel." Id. Two days later, the Department issued a letter in which it acknowledged its discretion to extend the deadline for withdrawing a request for review, but declined to exercise that discretion in this case because the request was made very late in the proceeding and the Department had expended significant resources. See Letter to All Interested Parties from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration (Mar. 9, 2007).

Only Dofasco appealed this decision to the Court of International Trade,[1] along with an appeal of the Department's application of the major input rule. See Complaint, ArcelorMittal Dofasco, Slip Op. 09-07. U.S. Steel intervened on behalf of Dofasco on the rescission issue, and on behalf of the U.S. Government on the major input rule issue. See May 29, 2007 Orders, ArcelorMittal Dofasco, Slip Op. 09-07 (granting intervenor status). Stelco did not challenge the Department's decision. In ArcelorMittal Dofasco, the Court determined that the Department's reasoning was not adequate to support the decision not to extend the deadline or to rescind the review.

[1]Another party's challenge was dismissed for lack of standing. See Nucor Corp. v. United States, 516 F. Supp. 2d 1348 (Ct. Int'l Trade 2007).

III. REMAND ANALYSIS

In ruling on the Final Results, the Court ordered that the Department "reconsider, in light of all relevant circumstances," its decision not to extend the deadline for withdrawals or to rescind the review. ArcelorMittal Dofasco, Slip Op. 09-07 at 12. Based upon a reconsideration in light of all relevant circumstances, the Department is not changing its determination to not extend the deadline for withdrawing a request for review. Specifically, the Department determines that its interest in the efficient allocation of its resources and the orderly application of the Tariff Act of 1930, as amended, 19 U.S.C. § 1671 et seq. (the "Tariff Act"), supports its decision not to extend the due date or to rescind the review. Further, the Department does not consider revocation of the order pursuant to the sunset review to be an extraordinary event with respect to the ongoing administrative review, and determines that the implications for private party and government resources after publication of the final results are not relevant to decision-making prior to the final results.

The Department's interest in the efficient allocation of its resources supports its determination not to rescind the review. Every year the Department administers more than 250 antidumping and countervailing duty orders and, consequently, concurrently conducts administrative reviews of hundreds of foreign producers and exporters in response to requests for review from those parties, domestic interested parties, and others. Although the Department is statutorily required to review every party for which a request is received, the Department's limited resources force the Department to select a subset of these parties as mandatory respondents, based upon its assessment of available resources. 19 U.S.C. §§ 1675(a)(1); 1677f-1(c)(1)-(2). Accordingly, the Department allocates available resources to investigations and

administrative reviews in the manner that it determines to be the most efficient at the time the review is initiated. To accept a request for rescission and to rescind a review just days before the due date of the final results not only undermines the Department's efforts to allocate resources at the beginning of reviews to ensure the maximum possible coverage for companies requesting reviews, but also wastes taxpayer money. In view of its interest in promoting the efficient allocation of its resources, the Department was sufficiently justified in rejecting U.S. Steel's request based upon the lateness of the request and having effectively completed the review. See The Department's March 9 Letter.

The Department's interest in the orderly application of the Tariff Act also supports its decision not to extend the date for withdrawing a request for review. Congress gave the Department a statutory mandate to investigate unfair trade practices and to make an independent administrative determination regarding accurate dumping margins that effectively remedy injury to the relevant domestic industry. Rescinding this review on the basis of extraordinarily late requests to withdraw would establish an administrative precedent for similarly-timed requests, with parties arguing justification based upon the Department's new practice. The Department's efforts to calculate timely and accurate dumping margins could thus be held at the mercy of private parties who, after analyzing the preliminary results (or the effect of other events such as sunset revocation), could decide among themselves what dumping margin should be applied to entries covered by the review. That decision, however, is squarely within the domain of the Department's statutory mandate, and relinquishing that mandate would frustrate the purposes of the Tariff Act. Thus, the Department's determination in this instant case lays down a marker that there is a point in any review beyond which it is not reasonable for the Department to rescind a

review. Without defining what that point is, the withdrawals filed in this case were submitted long after any reasonable or appropriate point in the proceeding had passed.

Other interests prevent the Department from interpreting as dispositive the fact that no interested party voices objection to rescission. Instead, Congress has recognized other interests in the administrative proceeding, beyond parties to the proceedings, that the Department represents and that may not be served by capitulating to the requests of parties to the proceeding. See 19 U.S.C. §1677f(h) (identifying consumers and industrial groups as parties with an interest). The Department determines that all interests are best served, generally, by calculating and assessing accurate dumping margins in cases where interest in the review has been expressed by parties through participation after the first 90 days after initiation of the review, and specifically in this case where the requests for withdrawal and rescission were not filed until five days before the scheduled final results of the review by the fully extended statutory deadline.

The Department's statutory mandate does not include a provision that the Department must, or even should, act in the manner most convenient to the parties to the proceeding. A proceeding existed previously under the 1916 Act, Law of Sept. 8, 1916, ch 463, Title VIII, § 801, 39 Stat. 798, 15 U.S.C. § 72 (2004) (repealed 2004), by which private parties could litigate to establish antidumping duty margins, and then settle among themselves the appropriate compensation for injury from unfair trade practices. When Congress repealed the 1916 Act, P.L. 108-429, Title II, Subtitle A, § 2006(a), 118 Stat. 2597 (Dec. 3, 2004) (repealing the 1916 Act), it ended these private adversarial proceedings, leaving the Department with the sole responsibility to determine accurate dumping margins in order to remedy the adverse effect on

the domestic industry caused by unfair trade. Thus, private parties can no longer settle on the appropriate remedy by effectively picking a dumping margin and ending the private action.

The Department recognizes that there may be unique circumstances where no party, including the Department, has expended significant resources through late stages in a review. See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review, and Intent to Rescind, in Part, 69 Fed. Reg. 32,979, 32,890 (June 14, 2004); Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Rescission of Review, in Part, 69 Fed. Reg. 61,636 (Oct. 20, 2004). Accordingly, the Department retains discretion to extend the deadline for withdrawing a request, even at late stages in a proceeding, for truly unique circumstances.

Contrary to the assertions raised previously in this proceeding, the sunset revocation of the underlying order in this case is not an extraordinary event with respect to the ongoing administrative review, and thus does not affect the Department's decision not to rescind the review. When an order is revoked pursuant to sunset review, the Department's practice is to continue any pending administrative reviews of the order. See, e.g., Stainless Steel Bar From France: Final Results of Antidumping Duty Administrative Review, 73 Fed. Reg. 32,289 (June 6, 2008) (concluding the administrative review covering the review period March 1, 2006 through February 28, 2007, despite revocation of the order four months earlier in Revocation of Antidumping Duty Orders on Stainless Steel Bar From France, Germany, Italy, South Korea, and the United Kingdom and the Countervailing Duty Order on Stainless Steel Bar From Italy, 73 Fed. Reg. 7258 (Feb. 7, 2008) (revoking the antidumping duty order effective March 7, 2007 and

the countervailing duty order effective March 8, 2007)). The Department followed its practice here, explicitly stating in the revocation notice that it would continue pending reviews: "The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review." Revocation, 72 Fed. Reg. at 7,011.

Further, consideration of private party resources does not affect the Department's decision. In its opinion, the Court specifically referred to "resource implications for private parties" as a relevant consideration not addressed by The Department's March 9 Letter. ArcelorMittal Dofasco, Slip Op. 09-07 at 10. In this case, all parties had already fully participated and expended all, if not nearly all the resources that they could and would expend during the administrative proceeding, and the Department had completed all its substantive work in the review. See The Department's March 9 Letter. Thus, there were no adverse implications for private party or government resources in the administrative review by completing the review. Further, the Department views potential future private party resource expenditures to challenge its determinations as insufficient to cause the Department to rescind any review because the existence and/or scope of future litigation is entirely speculative. There is no basis for contemplating potential post-final results expenditures prior to the final results. Moreover, a policy to accommodate threats of litigation would disrupt the Department's compliance with its statutory obligation to calculate dumping margins as accurately as possible.

Thus, the Department's policy interest in the efficient allocation of its resources, the orderly application of the Tariff Act in this and future reviews, and its assessment of other

interests, support the Department's determination not to extend the deadline for withdrawing a request for review in this case.

IV. COMMENTS ON DRAFT REMAND RESULTS

The Department issued the draft results of redetermination on remand ("Remand Results") pursuant to ArcelorMittal Dofasco, Slip Op. 09-07, for public comment on July 31, 2009. Dofasco and U.S. Steel (collectively, "parties") submitted their comments on the Remand Results on August 6, 2009. The parties' comments are summarized and the Department's responses follow in three comments.

Comment 1: Whether the Department's Remand Results Cure the Defect Discussed in the Court's Opinion

Dofasco and U.S. Steel argue that the Department failed to comply with the Court's decision and remand order. Specifically, the parties contend that the Department did not reconsider its decision not to rescind the administrative review in light of the circumstances that the Court identified as significant; rather, it dismissed the significance of those circumstances. For instance, despite the Court's determination that the revocation of the underlying antidumping duty order was a "significant fact," the Department contends, in the Remand Results, that "the sunset revocation . . . is not an extraordinary event" that does not affect the Department's decision not to rescind the review. Dofasco and U.S. Steel contend that the revocation was an "order-ending event" that changed the landscape of the case. In particular, no future administrative reviews and cash deposit rates were needed for future entries, and therefore, the administrative review at issue would have no future impact.

As another example, Dofasco argues that although the Department may consider the allocation of its resources in its decision-making, it is unreasonable for the Department to place

that consideration above the interests of all the interested parties. Dofasco and U.S. Steel both allege that, in completing the Remand Results, the Department focused solely on the resources expended by the parties prior to the requests for rescission and completely overlooked the future costs to the parties and the Department of the litigation that would ensue after the results.

Department Position:

We disagree with Dofasco's and U.S. Steel's overall contention that the Department did not comply with the Court's remand decision. Notwithstanding their comments opposing the result, the Department has followed the Court's remand because it addressed all of the issues raised by the Court and explained its reasons, based on all relevant circumstances, for its decision to not extend the deadline or rescind the review in this case.

The Court instructed the Department to "reconsider, in light of all relevant circumstances, its decision not to extend the due date for submission . . . and thereby not to rescind the administrative review." ArcelorMittal Dofasco, Slip Op. 09-07 at 12. Further, the Court ordered the Department to "set forth its decision on the question of whether the administrative review should be rescinded and ... support that decision with adequate reasoning based on all relevant circumstances." Id. Accordingly, in the first part of the Remand Results, the Department found that its interest in the efficient allocation of its resources and the orderly application of the Tariff Act justify its decision not to extend the due date or rescind the review. We further articulated additional factors and circumstances that supported this decision. The last few paragraphs of the Remand Results addressed the relevance, in the Department's view, of certain circumstances raised by the Court, including the sunset revocation and resource implications.

Based on this entire explanation, the Department fully justified its reasonable decision

not to grant an extension to accept the "eleventh hour" request to rescind an administrative review that was effectively complete and less than a week away from being issued in final form. Nevertheless, we respond next to the parties' comments regarding the circumstances highlighted by the Court, namely sunset revocation and resource implications.

A. Sunset Revocation Is Not An Extraordinary Event Justifying Rescission

As explained in the Remand Results, the Department finds that the sunset revocation of an order is not an extraordinary circumstance with respect to a pending administrative review because the focus of the pending review is on past entries and the calculation of an accurate antidumping duty margin to apply to those entries. Although the parties focus on the lack of future cash deposit requirements for subsequent entries, they ignore completely that the purpose of an administrative review is twofold. First, the Department must calculate and assess accurate duties on the prior entries under review. Second, the Department establishes the cash deposit rate going forward. In administering the Tariff Act covering any particular antidumping duty order, the Department does not give priority to one purpose over the other. They are equally important. However, the elimination of the second purpose (with revocation), does not abolish, invalidate or otherwise mitigate the importance of the first purpose.

The sunset revocation is therefore not an extraordinary circumstance in terms of evaluating whether to continue an administrative review, a proceeding which is intended to calculate an accurate assessment rate retrospectively for past entries of merchandise subject to an antidumping duty order. Nor does the sunset revocation discontinue the Department's statutory obligation to calculate an accurate margin for purposes of assessing duties on entries made prior to the effective date of the revocation. For these reasons, the Department maintains that the

sunset revocation of the underlying order is not an extraordinary event, nor sufficient to justify a rescission of this review.

B. The Department Reasonably Considered Resource Implications

Regarding resource implications, Dofasco and US Steel concentrate their arguments on theirs and the Department's future potential resource expenditures after the final results of the review, citing the potential for subsequent litigation. But the Department must consider its decision at the time it was originally made, which was five days before the final results were to be issued. At that time, the Department had to consider whether it was reasonable to rescind the review given how far along the review was and the time and resources already expended by both the parties and the Department to conduct the review so far. In the instant case, the Department, as well as the participating private parties, had expended considerable time and resources to participate in the nearly finished review. Parties provided extensive questionnaire and supplemental questionnaire responses and completed briefing, and the Department finalized its decisions that were explained in memoranda. Only issuing the final results remained. Further, as found in the Remand Results, completing the administrative review posed no adverse implications on private party or government resources. The Department finds that the resources already expended, as well as the lack of adverse implications to finish the review outweigh any potential litigation expense, which at that point was entirely speculative. Therefore, the Department's interest in the efficient allocation of its and the participating parties' resources already invested in the review substantiate the Department's determination that it was unreasonable in this case to rescind the essentially completed review.

In past proceedings, the Department has acceded to requests for the rescission of an administrative review after the 90-day deadline, when the review had not progressed beyond a point where it would be unreasonable to rescind because the Department and participating parties had not committed substantial time and resources. But in other proceedings, the Department has determined it is unreasonable to rescind after substantial resources and time were expended. Indeed, even certain parties to this case (*e.g.*, U.S. Steel) have argued for the Department to uphold this practice in other cases because it is consistent with its regulations. See Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 Fed. Reg. 12,651 (Mar. 15, 2005) at Dec. Mem. at Cmt. 15 (agreeing with U.S. Steel that it was unreasonable to rescind this review when "nothing more needs to be done in this proceeding other than issuing the final results."). Furthermore, whenever an order is revoked pursuant to sunset review, it is the Department's practice to continue any pending administrative review. Therefore, as explained in the Remand Results, the Department's interest in the efficient allocation of its resources and an orderly application of the Tariff Act both justify its decision, which is within its statutory discretion and consistent with its regulations, to neither extend its deadline nor revoke the review.

Comment 2: Whether A Review Must Be Rescinded Whenever the Parties Request

Dofasco and U.S. Steel note that there has never been a case in which the Department refused to rescind an administrative review when there were no interested parties opposed to rescission. Dofasco contends that the rescission request was intended to end a proceeding that was initiated for the parties' benefit, not, as the Remand Results implied, as an occasion for the parties to select a favorable dumping margin. According to Dofasco, neither rescinding the

review nor applying a rate calculated from the Final Results, could be interpreted as the parties choosing a dumping margin, and the Department was simply wrong to suggest this is a "margin-shopping exercise." Dofasco argues that the record shows no evidence of such bad faith; the parties were simply responding to an intervening event, the revocation of the order. Dofasco further compares this situation to the changed circumstances provision (19 U.S.C. § 1675(b)), under which the Department may revoke an order, provided that producers constituting substantially all of the domestic industry agree to revocation. Dofasco maintains that the Department has granted requests to revoke antidumping duty orders, even retroactively, when requested by domestic industries, without raising concerns about the expenditure of its resources or the orderly administration of the trade laws.

Department's Position.

We agree with Dofasco and U.S. Steel that this is a case of first impression. It is unprecedented that all interested parties, who initially requested and fully participated in a 525-day administrative review, request to rescind that review five days before the final results are issued, without explanation other than the order was revoked under sunset. On the other hand, the Department has previously continued and completed reviews because substantial resources were expended and the review was nearly complete. See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 71 Fed. Reg. 65,458, 65,460-61 (Nov. 8, 2006); Certain Cut-to-Length Carbon Steel Plate from Romania, 70 Fed. Reg. 12,651 (Mar. 15, 2005) at Dec. Mem. at Cmt. 15. Further, the Department's practice is to continue pending administrative reviews after sunset revocation. Regardless of case precedent, this procedural decision is well within the Department's statutory purview.

Although the parties' legal argument, in summary, is that the Department is required to grant their request, the Tariff Act provides the Department the authority to administer and implement the statute, including the decision to rescind pending reviews. The Tariff Act is intended to remedy the unfair trade practices adversely affecting the domestic industry. Chaparral Steel Co. v. United States, 901 F.2d 1097, 1103-04 (Fed. Cir. 1990); Badger-Powhatan, Inc. v. United States, 9 C.I.T. 213, 216-17, 608 F. Supp. 653, 656 (1985). The intent of the Tariff Act is not for the Department to be subject to or directed by parties' desires or wishes to settle. The comparison of the Tariff Act to the 1916 Act in the Remand Results is intended to demonstrate this contrast. Moreover, the Department is an agency of the Executive Branch, which is charged with the implementation and application of the Tariff Act -- not to resolve cases or controversies between private parties. The Department is not bound by the wishes of the parties, despite the fact that it may take into account interested party requests and arguments in exercising its authority.

Parties' comparison to a changed circumstances review is equally misplaced. To begin, Dofasco is not part of the domestic industry needed to request the revocation of an order under the changed circumstances provision. See 19 U.S.C. § 1677m(h)(2) and 19 C.F.R. § 351.222(g). Changed circumstances reviews may result in revocation, but only after a review is conducted and parties demonstrate their lack of interest in the order. Id. No such review was requested here. In this case, instead, parties are attempting to circumvent that procedure by having the Department stop short of completing the administrative review, initiated pursuant to the statute, because they filed a late revocation request, based on a rationale that has not previously been a sufficient basis to end an essentially completed review.

Further, despite the parties' claims that this is not a situation in which the private parties are attempting to manipulate the system, another circumstance we considered on remand is why the Department was confronting a *volte face* by the parties so late in the proceeding. It is clear from Nucor Corporation's Amended Motion to Intervene as a Matter of Right that Dofasco, U.S. Steel, and other interested parties somehow "settled" their differences regarding the administrative review. See Nucor's Amended Motion to Intervene at 2 (Aug. 15, 2008). This "settlement" is exactly the type of manipulation contemplated by the Preamble. See Preamble, 62 Fed. Reg. at 27,317 (a "party withdraws its requests once it ascertains that the results of the review are not likely to be in its favor."). In order to avoid wasting resources or preventing manipulation of the process, the Department's position has long been that it must retain discretion on whether to permit a party to withdraw its request for an administrative review beyond 90 days of a review's initiation.[2]

Comment 3: Whether the Department's Decision to Complete the Review is Justified By Relying on Additional Relevant Circumstances

Dofacso and U.S. Steel argue that the Department's reliance on additional factors not mentioned by the Court, including the need for "orderly application of the trade law" and "interests of parties other than the parties to the case" is unavailing. Specifically, Dofasco

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2 See Preamble, 62 Fed. Reg. at 27,317 states:

> We believe that the Department must have the final say concerning rescissions of reviews requested after 90 days in order to prevent abuse of the procedures for requesting and withdrawing a review. For example, we are concerned with the situation in which a party requests a review, the Department devotes considerable time and resources to the review, and then the party withdraws its requests once it ascertains that the results of the review are not likely to be in its favor. To discourage this behavior, the Department must have the ability to deny withdrawals of requests for review, even in situations where no party objects.
>
> Therefore, in *§ 351.213(d)(1)*, we have retained the 90-day requirement. In addition we have added a new sentence, taken from 19 CFR §§ 353.22(a)(5) and 355.22(a)(3), that essentially provides that if a request for rescission is made after the expiration of the 90-day deadline, the decision to rescind a review will be at the Secretary's discretion.

asserts that it is not seeking an unconditional right to late rescission under all circumstances, but only when certain conditions are present. According to U.S. Steel, the revocation of this order late in the course of the administrative review, and the parties seeking rescission of the review distinguish this case from virtually any other case the Department will encounter. Regarding interests of other parties, U.S. Steel criticizes this consideration as misplaced, and Dofasco calls disingenuous the Department's identification of consumers and industrial groups as other interests to the proceeding best served by not rescinding the review. Both argue that the statutory revision in 1984 that requires Department to conduct administrative reviews only at the request of an interested party is evidence of Congress's intent that the Department cannot conduct administrative reviews when there is no interest in doing so.

Department's Position.

Consistent with the Court's order, the Department considered all relevant circumstances and justified its decision not to extend the deadline and not to rescind the review. We find the parties conditions for the Department's late rescission are convenient to the parties' interests in this case alone, and ignore Department past practice and statutory and regulatory discretion. The Department is concerned that a circumstance, normally having no bearing on pending administrative reviews (e.g., sunset revocation of an order), could be used as an excuse to rescind such reviews. Although the statute requires interested parties to request initiation of an administrative review, the statute does not specify the terms of rescission. Rescission is squarely within the Department's statutory discretion to administer administrative reviews. Indeed, the Department codified its practice in a regulation, under which it has the discretion to weigh the factual circumstances and explain its reasonable decision.

Notwithstanding the parties' comments, other interests, beyond the parties, existed in this case. For example, the Nucor Corporation, a domestic producer who attempted to intervene in this appeal before the Court, represents the other interests present in this case that the Department recognized in its decision. See Remand Opinion at 7 n.1. Another example is Stelco Inc., the Canadian Steel producer that originally requested a review and untimely withdrew its request, but is not party to this appeal. Further, the statute requires the Department to consider interests, including consumer and industrial groups as parties with an interest, beyond parties to the proceedings. *See* 19 U.S.C. § 1677f(h). Indeed, the prior legislative history, cited by Dofasco's comments, indicates that the Department was once required to consider the public interest before initiating. The change in law, requiring a request from interested parties to initiate the review, does not mean that the Department is precluded from considering the public-interest when assessing the reasonableness of a last minute rescission request. Thus, the Department considered other interests in its decision.

As discussed herein, we have considered and relied on the relevant circumstances in determining whether to extend the deadline and rescind the review in this case. We find that all of these factors taken together indicate that it is not reasonable to extend the deadline to accept the late request for rescission and rescind the review in this case. After considering the comments submitted by parties on the Remand Results, we confirm our decision that in light of all relevant circumstances no extension for rescission should be granted and administrative review should not be rescinded. As a result, the Final Results remain in effect.

FINAL RESULTS OF REDETERMINATION

If the Court approves these final results, the Department will not rescind the administrative review, and will continue to participate in any further proceedings on judicial review of the Final Results. We are issuing these final results of redetermination pursuant to the remand order of the Court in ArcelorMittal Dofasco, Inc. v. United States, Slip Op. 09-07, Court No. 07-00135 (January 22, 2009).

Carole Showers
Acting Deputy Assistant Secretary
for Policy and Negotiations

August 20, 2009
(Date)

UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
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August 20, 2009

Honorable Tina Potuto Kimble
Clerk of the Court
United States Court of International Trade
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New York, New York 10278-0001

Re: Results of Redetermination Pursuant to Court Remand Order in ArcelorMittal Dofasco, Inc. v. United States, Slip Op. 09-07, Court No. 07-00135 (January 22, 2009)

Dear Ms. Kimble:

Pursuant to the Court's order of January 22, 2009, as extended most recently by the Court's order of July 7, 2009, enclosed please find the U.S. Department of Commerce's (the Department's) Results of Redetermination in the above-referenced case. The case concerns the following proceeding: Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review, 72 Fed. Reg. 12,758 (Mar. 19, 2007). In its order, the Court instructed the Department to reconsider its decision to not extend its deadline for rescission and rescind an administrative review subject to a late request by the parties. The Department's Redetermination is a public document.

A certificate of service is also attached. Please note the administrative record accompanying this Redetermination will be filed separately. Should you have any questions concerning this matter, please contact me at (202)482-3414.

Respectfully Submitted,

Christine J. Sohar Henter

Christine J. Sohar Henter
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Enclosure: Redetermination and Certificate of Service

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