Dated: December 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33665 Filed 12–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–804]

Final Results of Expedited Sunset Review: New Steel Rail from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: New Steel Rail from Canada.

SUMMARY: On June 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on new steel rail from Canada (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 29, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*'') and 19 CFR part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

The merchandise subject to this antidumping order is new steel rail, whether of carbon, high carbon, alloy or other quality steel from Canada. Subject merchandise includes, but is not limited to, standard rails, all main line sections (at least 30 kilograms per meter or 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rails (or ''third rail'') and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines, and in industrial applications.

Specifically excluded from the order are light rails (less than 30 kilograms per meter or 60 pounds per yard). Also excluded from the order are relay rails, which are used rails taken up from primary railroad track and relaid in a railroad yard or on a secondary track. As a result of a changed circumstances review in 1996, the antidumping duty order on new steel rail was partially revoked with regard to 100ARA–A new steel rail, except light rail, from Canada.[1] Also, nominal 60 pounds per yard steel rail is outside the scope of this order.[2]

This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) items 7302.10.1010, 7302.10.1015, 7302.1035, 7302.10.1045, 7302.10.5020, 8548.90.0000.[3] The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

History of the Order

The Department issued its final determination of sales at less than fair value (''LTFV'') with respect to imports of new steel rail from Canada on August 3, 1989 (54 FR 31984). In this determination, the Department published one company-specific dumping margin as well as an ''all others'' rate. On September 15, 1989, the Department issued the antidumping duty order on new steel rail from Canada, again publishing one company-specific dumping margin as well as an ''all others'' rate (54 FR 38263).

Since the imposition of the order, the Department has conducted one changed circumstances administrative review.[4] There have been no administrative reviews of the order.

We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise from Canada.

Background

On June 1, 1999, the Department initiated a sunset review of the antidumping order on new steel rail from Canada (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Pennsylvania Steel Technologies, Inc. (''PST''), a subsidiary of Bethlehem Steel Corporation, and Rocky Mountain Steel Mills (''RMSM'') (collectively, the ''domestic interested parties'') on June 16, 1999, within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from the domestic interested parties on July 1, 1999, within the 30-day deadline specified in the *Sunset Regulations* under § 351.218(d)(3)(i). Both PST and RMSM claimed interested party status under 19 USC 1677(9)(C) as U.S. manufacturers of the subject merchandise. In addition, PST stated that it is subsidiary of Bethlehem Steel Corporation, a petitioner in the original investigation. We did not receive a substantive response from any respondent interested party in this case. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of the order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.,* an order in effect on January 1, 1995). On October 12, 1999, the Department determined that the sunset review of the antidumping duty order on new steel rail from Canada is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than

[1] *See New Rail, Except Light Rail, From Canada; Final Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews, and Revocation in Part of Antidumping and Countervailing Duty Orders,* 61 FR 11607 (March 21, 1996).

[2] *See New Steel Rail, Except Light Rail, From Canada, Notice of Termination of Changed Circumstances Administrative Reviews and Clarification of Scope Language,* 63 FR 43137 (August 12, 1998).

[3] Per conversation with April Avalone at U.S. Customs on September 7, 1999.

[4] *See* footnote 1.

December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[5]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumpung order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In this instant review, the Department did not receive a substantive response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations,* this constitutes a waiver of participation.

In their substantive response, the domestic interested parties argue that revocation of the order on new steel rail from Canada would be likely to lead to continuation or recurrence of dumping. They maintain that were the order revoked, imports of new steel rail from Canada would likely reenter the U.S. market at less than fair value. They point out that although Algoma Steel Corporation, Limited, has ceased producing new steel rail, another Canadian producer, the Sydney Steel Corporation (''Sysco''), does produce the subject merchandise. The domestic interested parties argue that new steel rail currently accounts for approximately 40 percent of Sysco's total steel production (*see* July 1, 1999, substantive response of the domestic interested parties at 9–10 and Exhibit 2). Moreover, they argue that Sysco's five year business plan calls for an increase in rail production and an increase in exports to account for some of the production increase. The domestic interested parties assert that several factors indicate that, if the antidumping duty order were revoked, the primary target of Sysco's increased production of new steel rail would be the United States market. Specifically, the domestic parties argue that, because Sysco maintains a location in Eastern Canada, its most economical and logical export market would be the United States. Additionally, the domestic interested parties stress that statements made by Sysco executives indicate a willingness to regain market share in the U.S. (*see id.* at 10 and Exhibits 3 and 5).

The domestic interested parties also base their likelihood argument on the decline in import volumes following the imposition of the order. The domestic interested parties, citing U.S. Census Bureau statistics, state that subject imports dropped off significantly in 1990, the year following the imposition of the order. They argue that prior to the issuance of the order, sales of Canadian new steel rail had increased by 162 percent between the time period 1986 to 1988. The domestic interested parties further assert that subsequent to the antidumping order, sales volumes dropped by over 99.9 percent in 1990, as compared to 1988 figures. Moreover, in 1998, imports were 99.7 percent lower than in 1988. They conclude that Canadian imports, while not zero, are currently insignificant in the U.S. market (*see id.* at 8–9). Therefore, the domestic interested parties argue that were the order revoked, dumping would be likely to recur since the evidence indicates that Canadian exporters of the subject merchandise need to dump in order to sell at pre-order levels.

In conclusion, the domestic interested parties argue that the Department should determine that there is a likelihood that dumping would continue or recur were the order revoked because the imposition of the order resulted in the near termination of imports of new steel rail from Canada.

As discussed in section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, if companies continue to dump with the discipline of the order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. As discussed above, no administrative reviews have been conducted since the original investigation, and therefore dumping margins above *de minimis* continue to exist for all shipments of the subject merchandise from Canada. While the domestic interested parties note that Algoma no longer produces the subject merchandise, other Canadian producers/exporters, such as Sysco, continue to produce and export the subject merchandise.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after the issuance of the order. As stated above, the domestic interested parties argue that a significant decline in the volume of imports of the subject merchandise from Canada since the imposition of the order provides further evidence that dumping would continue if the order were revoked. In their substantive responses, the domestic interested parties provide statistics demonstrating the decline in import volumes of new steel rail since the imposition of the order (*see* July 1, 1999, Substantive Response of the domestic interested parties at 8 and Exhibit 1). Utilizing the Department's statistics, including IM146 reports, on imports of the subject merchandise from Canada, we agree with the domestic interested parties' assertions that imports of the subject merchandise declined sharply following the imposition of the order and have not regained pre-order volumes. However, it

[5] *See Extension of Time Limit for Final Results of Five-Year Reviews,* 64 FR 55233 (October 12, 1999).

is not possible to determine whether this decline is due to the fact that Algoma has ceased producing new steel rail or to the response of Sysco and other producers/exporters to the order. Therefore, the decline in imports in this case is not probative of the likelihood of continuation or recurrence of dumping.

As noted above, in conducting its sunset reviews, the Department considers the weighted-average dumping margins and volume of imports when determining whether revocation of an antidumping duty order would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins above *de minimis* is highly probative of the likelihood of continuation or recurrence of dumping. Therefore, given that dumping has continued over the life of the order, respondent parties waived participation in this review, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin,* the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin.*) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*)

In their substantive response, the domestic interested parties recommend that the Department adhere to its general practice of selecting dumping margins from the original investigation. Regarding companies not reviewed in the original investigation, the domestic interested parties suggest that the Department report to the Commission the all others rate published in the original investigation. Since the Algoma Steel Corporation, the company that received a company-specific rate in the original investigation, has, according to the domestic interested parties, ceased production of new steel rail, the domestic parties maintain that providing a rate for Algoma is not necessary. However, because at least one other producer/exporter remains, the domestic interested parties recommend that the Department provide to the Commission the all others rate determined in the original investigation.

The Department agrees with the domestic interested parties that the margins calculated in the original investigation are the only rates that reflect the behavior of exporters without the discipline of the order. Absent argument and evidence to the contrary, the Department finds the margins calculated in the original investigation are probative of the behavior of Canadian producers/exporters of new steel rail if the order were revoked. As such, the Department will report to the Commission the ''all others'' rates from the original investigation as contained in the *Final Results of Review* section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margin listed below:

Manufacturer/exporter	Margin (percent)
Algoma	38.79
All Others	38.79

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final remand determination made by the U.S. International Trade Administration, in the matter of Brass Sheet and Strip from Canada, Secretariat File No. USA/CAN–98–1904–03.

SUMMARY: Pursuant to the Order of the Binational Panel dated November 5, 1999, affirming the final remand determination described above was completed on December 16, 1999.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On November 5, 1999, the Binational Panel issued an order which affirmed the final remand determination of the United States International Trade Administration (''ITA'') concerning Brass Sheet and Strip from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the Article 1904 Panel Rules, the Panel Review was completed and the panelists discharged from their duties effective December 17, 1999.

Dated: December 22, 1999.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 99–33785 Filed 12–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United