

# Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Final Results of Full Sunset Review: Brass Sheet and Strip From the Netherlands

[A-421-701]

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

**ACTION:** Notice of final results of full sunset review: Brass sheet and strip from the Netherlands.

**SUMMARY:** On August 26, 1999, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on brass sheet and strip from the Netherlands (64 FR 46637) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. As a result of this review, the Department finds that revocation of this 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:** Eun W. Cho 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, D.C. 20230; telephone: (202) 482-1698 or (202) 482-1560, respectively.

**EFFECTIVE DATE:** January 6, 2000.

#### Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) 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 (1999) 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

Imports covered by this order are brass sheet and strip, other than leaded and tin brass sheet and strip, from the Netherlands. The chemical composition of the products under order is currently defined in the Copper Development Association ("CDA") 200 Series or the Unified Numbering System ("UNS") C20000 series. This order does not cover products the chemical composition of which are defined by other CDA or UNS series. The physical dimensions of the products covered by this order are brass sheet and strip of solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.188 inch (4.8 millimeters) in gauge, regardless of width. Coiled, wound-on-reels (traverse-wound), and cut-to-length products are included. The merchandise subject to this order is currently classifiable under items numbers 7409.21.00 and 7409.29.20 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

#### History of the Order

The antidumping duty order on brass sheet and strip ("BSS") from the Netherlands was published in the **Federal Register** on August 12, 1988 (53 FR 30455).<sup>1</sup> In that order, the Department determined that weighted-average dumping margins for the Metallwerken Nederland B.V. and all others were 16.99 percent.<sup>2</sup>

<sup>1</sup> See Antidumping Duty Order of Sales at Less Than Fair Value: Brass Sheet and Strip From the Netherlands, 53 FR 30455 (August 12, 1988).

<sup>2</sup> In the original investigation, Outokumpu Copper Strip, B.V. ("OBV") was doing business under the name, Metallwerken Nederland B.V. (See March 4, 1999, Substantive Response of OBV at 5 (footnote

The Department has conducted several administrative reviews since that time.<sup>3</sup> The order remains in effect for all producers and exporters of BSS from the Netherlands. We note that the Department has not conducted any investigation with respect to duty absorption regarding the exports of the subject merchandise.

#### Background

On August 26, 1999, the Department published the preliminary results of the sunset review on BSS from the Netherlands.<sup>4</sup> Notwithstanding a finding of a significant decline in the import volumes of the subject merchandise after the issuance of the order, the Department preliminarily determined that revocation of the order would not be likely to lead to continuation or recurrence of dumping. The Department stated that although import volumes of the subject merchandise declined significantly after the issuance of the order, since the two most recent administrative reviews indicate that dumping of the subject merchandise has been eliminated, and since Outokumpu Copper Strip, B.V. ("OBV") presents effective other relevant information and arguments explaining why it is unlikely that OBV would resume dumping in the United States, the Department preliminarily determines that

4); see also March 3, 1999, Substantive Response of the domestic interested parties at 24.)

<sup>3</sup> See Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Reviews (Corrections), 57 FR 11352 (April 2, 1992); Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Administrative Reviews, 57 FR 9534 (March 19, 1992) (this review consolidated first and second reviews); Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Review, 61 FR 1324 (January 19, 1996); Brass Sheet and Strip From the Netherlands; Amendment to Final Results of Antidumping Duty Administrative Review, 62 FR 33395 (June 19, 1997); Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Review, 61 FR 1324 (January 19, 1996); Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Review, 62 FR 51449 (October 1, 1997); and Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Review, 63 FR 49544 (September 16, 1998). See also the final results of the latest administrative review, covering the period 1997–1998, which should be published concurrently with this publication.

<sup>4</sup> See Preliminary Results of Full Sunset Review: Brass Sheet and Strip From the Netherlands, 64 FR 46637 (August 26, 1999).

recurrence of dumping is not likely if the order were revoked.

On October 13, 1999, both the domestic and respondent interested parties submitted additional information.<sup>5</sup> Also, on October 25, 1999, we received case briefs from the domestic interested parties and OBV.<sup>6</sup> On November 1, 1999, within the deadline specified in the Department's memorandum,<sup>7</sup> both domestic and respondent parties submitted reply briefs. The Department held a public hearing on November 3, 1999. As a result of the aforementioned additional documents and comments, we have changed our determination.

### Department's Determination

Based upon arguments raised by interested parties in case and rebuttal briefs, we have re-examined the facts and statements on the record in this case and determined that revocation of the antidumping duty order on brass sheet and strip from the Netherlands pursuant to section 751(c) of the Act would be likely to lead to recurrence of sales of subject merchandise at less than fair value.

In its *Sunset Policy Bulletin*, the Department established that it will normally determine that revocation of an antidumping duty order would be likely to lead to continuation or recurrence of sales of the subject merchandise at less than fair value 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 this case, consistent with section 752(c) of the Act, the Department considered whether dumping continued at any level above *de minimis* after the issuance of the antidumping duty order; whether the imports ceased after the issuance of the order; and whether dumping was eliminated and import volumes declined significantly after the issuance of the order. We found that dumping of the subject merchandise continued after the issuance of the order, through the first, second and third administrative reviews.<sup>8</sup> We also found that OBV's imports of subject merchandise ceased after the issuance of the order for four administrative review periods,<sup>9</sup> but resumed in 1995. Further, we found that OBV did not dump subject merchandise, at a level above *de minimis*, during the periods 1995-1996 and 1996-1997 (last two administrative review periods).

With respect to import volumes of the subject merchandise, the data reported by both OBV and the domestic interested parties in this case indicate that, since the imposition of the order, import volumes of subject merchandise have declined significantly. In addition, data in the United States Customs Census Bureau IM-146s and import data from the U.S. International Trade Commission indicate that imports of subject merchandise have declined over the life of the order. No party in this case disputes that import volumes of subject merchandise declined significantly since the issuance of the order. Rather, the parties have argued over the significance of the acquisition of the U.S. producer, American Brass, by OBV's parent company, and the corporate decision to have American Brass play the primary role in supplying subject merchandise to the U.S. market.

In the preliminary results, we agreed with OBV that the acquisition of American Brass makes OBV's position in the U.S. market rather unique because it appeared that OBV no longer had to dump subject merchandise in order to supply the U.S. market, and because American Brass had more than adequate capacity to meet the demand in the U.S. market for BSS. Given these apparent facts, we preliminarily found persuasive OBV's argument that it would not make sense for OBV to jeopardize the economic well being of American Brass by undercutting the prices of its U.S.-produced BSS by resumption of dumping. Because we

preliminarily found that American Brass was to bear the primary responsibility of satisfying U.S. customers' needs for BSS, we preliminarily determined that, despite the significant decline in import volumes of subject merchandise after the issuance of the order, the two most recent reviews were probative of the behavior of the company absent the discipline of the order.

As noted in the SAA, at 883, the determination called for in this type of review is inherently predictive and speculative. Therefore, we have established a policy of relying on past behavior as a predictor of future behavior. In light of OBV's announced resumption of import volumes at pre-order levels, we now find that the company's behavior during the most recent administrative reviews can no longer be considered probative of OBV's behavior absent the discipline of the order.<sup>10</sup> In the two most recent administrative reviews, OBV's import volumes were abnormally small by any measure.<sup>11</sup> If the transfer of production and sales of subject radiator strip to American Brass were permanent, then these small import volumes could be considered normal for the company and the margins for the two recent reviews could be reflective of the company's future behavior. By contrast, where, as here, a company will resume imports of the subject merchandise at levels expected to exceed nearly 65 times the import volumes in the two most recent reviews, the Department is compelled to conclude that the company's pricing behavior during these previous periods in which import volumes were small has little or no probative value. Due to the transfer of production and sales of subject radiator strip back to OBV, the company will import subject merchandise in volumes that equal or exceed the volume of imports during the pre-order period. Accordingly, we determine that, consistent with established policy, the margin likely to prevail must be measured based on the company's behavior at the time of the original investigation. Therefore, we determine that revocation of the antidumping duty order on brass sheet and strip from the Netherlands under section 751(c) would be likely to lead to recurrence of sales of subject merchandise at less than fair value. We have addressed the comments received below.

<sup>5</sup> Following the Department's publication of its preliminary results of the instant sunset review, on October 5, 1999, counsel to the domestic interested parties, submitted a letter requesting the Department to allow the domestic interested parties to augment the existing record with additional information. The Department allowed both domestic and respondent interested parties to submit relevant information until October 13, 1999. (See the Department's memorandum to Mr. Jeffrey S. Beckington.) The domestic interested parties submitted Mr. Baker's affidavit and three different portions of the Department's Sales Verification Report ("Verification Report") which was completed in the concurrent administrative review of the order. Also, OVB submitted two portions of the Verification Report. Consequently, Mr. Baker's affidavit and the portions of the Verification Report submitted by interested parties are now on the record in this review.

<sup>6</sup> On September 27, 1999, while requesting a public hearing, the domestic interested parties requested extensions of the deadlines for the case and rebuttal briefs and a postponement of the hearing. The Department extended the deadlines for case brief and rebuttal brief until and not later than October 25, 1999, and November 1, 1999, respectively. Also, at the same time, the Department postponed the hearing to November 3, 1999.

<sup>7</sup> See footnote 6, *supra*.

<sup>8</sup> See footnote 3.

<sup>9</sup> *Id.*

<sup>10</sup> See Sales Verification Report at 39.

<sup>11</sup> See Comment 1 below.

*Likelihood of Continuation or Recurrence of Dumping*

*Comment 1:* The domestic interested parties contend that the factual premises underlying the Department's preliminary results are in error; namely, OBV was dumping during the most recent administrative review. The domestic interested parties claim that had the Department not allowed OBV the start-up adjustment and quarterly (instead of yearly) calculation of its cost, OBV would have been found to be dumping during 1997–1998 review period. Assuming, *arguendo*, OBV was not dumping, the domestic interested parties further argue that because such a finding was based on a small, unrepresentative volume of sales when compared to: (1) OBV's pre-order exports of the subject merchandise; (2) the current size of the U.S. market for the subject merchandise; (3) OBV's shipments of non-subject merchandise; (4) OBV's shipments in its home market; (5) OBV's shipments to other countries; or (6) OBV's projected volume of shipments to the United States, those few sales should not serve as the basis for a finding that dumping is not likely to occur in the future. (See the domestic interested parties' brief at 2 and 8–27, and the hearing transcript at 10–49 and 97–108.)

OBV argues that the start-up cost adjustment is a relatively new concept and, as a result, there have not been many applications of the adjustment. However, OBV contends that the rarity alone should not be considered as a determining factor in finding whether the adjustment is warranted. OBV further argues that a potential distortive effect of metal prices on margin calculation was recognized by the Department from the beginning (in the original investigation) and, therefore, allowing a cost calculation based on quarterly data is not unusual at all. (See OBV's reply brief at 24–26, and brief transcript at 56–97.)

OBV contends that its export volumes of the subject merchandise were low during the last three administrative review periods due to the acquisition of American Brass. OBV asserts that it never stated that the order was even a reason for stopping shipments. In other words, OBV claims that it could have sold a substantial amount of subject merchandise with the discipline of the order in place had OYJ not purchased American Brass. OBV further argues that, at any rate, the Department determined, in its most recent preliminary results of administrative review, that the import volumes in the recent administrative reviews constitute

commercial quantities. In addition, OBV asserts that the comparison between pre-order and post-order volumes is meaningless because OBV will never return to pre-order levels on account of American Brass's presence in the U.S. market. OBV basically dismisses the domestic interested parties' various comparisons of OBV's post-order export volumes of the subject merchandise as meaningless by resorting to the fact that the much larger American Brass's production replaced OBV's exports of the subject merchandise to the United States. Furthermore, OBV argues that its recent shipment levels are not aberrational or abnormally small in the first place, and to the extent they are deemed small, they are due to OYJ's purchase of American Brass. (See OBV's reply brief at 2 and 24–40.)

*Department's Position:* With respect to arguments raised regarding the results of the administrative review, we refer interested parties to the final results of the administrative review.<sup>12</sup>

Further, in light of the arguments raised in this sunset review, we do not agree with OBV that the comparison between OBV's pre-and post-order import volumes of the subject merchandise to the United States is meaningless. The Act, the SAA, the House Report, the Senate Report, the *Department's Regulations*, and the *Sunset Policy Bulletin* provide that, in making its determinations of likelihood of continuation or recurrence of dumping, the Department compare the import volumes of the subject merchandise for the period before and the period after the issuance of the order. In our preliminary results we compared the import volumes for the period before and the period after the issuance of the order and found, on the basis of uncontroverted evidence, that there was a significant decline in the volume of imports of the subject merchandise after the issuance of the order. However, as noted above, on the basis of additional information and argument provided by OBV, we preliminarily determined that the elimination of dumping in recent administrative reviews was, nonetheless, probative of the behavior of OBV without the discipline of the order. For the purposes of these final results we have reconsidered the weight to be accorded the more recently calculated margins and have determined, in light of OBV's stated intent to begin importing subject merchandise into the United States at pre-order levels once the order is revoked, that the more recently calculated margins are not

probative of the behavior of OBV were the order revoked.

*Comment 2:* The domestic interested parties insist that OYJ's ownership of American Brass is by no means unique; rather, such acquisition is a standard practice for foreign respondents to avoid the dumping laws. Essentially, the domestic interested parties claim that OYJ's acquisition of American Brass does not mean that OBV is not likely to dump. The domestic interested parties further note that the purchase of American Brass never demonstrated that OBV stopped dumping. (See the domestic interested parties brief at 3 and 29–30, and the hearing transcript at 10–49 and 97–108.)

OBV contends that the domestic interested parties misunderstood the rationale with respect to OBV's uniqueness argument. Specifically, OBV contends that its unique position is derived from the fact that: (1) OBV is the sole producer of the subject merchandise in the Netherlands; (2) the ownership of American Brass by OBV's parent company; (3) the size of American Brass *vis-a-vis* OBV; and (4) the relative roles of OBV and American Brass in the OYJ Group. In any case, OBV argues that the cases cited by the domestic interested parties were based on sparse, limited facts available and that the Department never addressed a uniqueness issue in these cases. (See OBV's reply brief at 3 and 40–50, and the hearing transcript at 56–97.)

*Department's Position:* The Department's preliminary results that the recently calculated margins were, despite the significant decrease between pre- and post-order import volumes, nonetheless probative of OBV's behavior without the discipline of the order was based on OBV's representation that the acquisition of American Brass enabled American Brass to meet the U.S. demand for BSS, thereby replacing OBV's exports of the subject merchandise to the United States. In part on this basis, we stated in our preliminary results that the cessation of imports from OBV after the purchase "buttresses the notion that American Brass basically took over OBV's exports of the subject merchandise."<sup>13</sup>

Once it became evident that OBV will take over the entire production of radiator strip from American Brass and export that subject merchandise to the United States from the Netherlands, OBV undermined its uniqueness contention. With the proposed production shift from American Brass to OBV, OBV's contention that the purchase of American Brass and

<sup>12</sup> See footnote 3, *supra*.

<sup>13</sup> See footnote 4, 64 FR at 46641, *supra*.

subsequent presence of American Brass in the U.S. market eliminated any likelihood of future dumping is diminished (*i.e.*, the existence of American Brass no longer has any bearing on whether the more recently calculated margins are probative of the behavior of OBV without the discipline of the order OBV and whether OBV would be likely to resume dumping subject merchandise, in general,<sup>14</sup> and radiator strip, in particular).

Therefore, for purposes of these final results, we agree<sup>15</sup> with the domestic interested parties that OYJ's purchase of American Brass after the imposition of the order, no longer provides sufficient reason and/or evidence to negate the presumption expressed in the *Sunset Policy Bulletin* and the SAA that the elimination of dumping coupled with a significant decrease in the volume of imports may be probative of the fact that producers/exporters may need to dump in order to maintain market share in the United States. Therefore, for the final results of this sunset review we have considered OBV's past histories pertaining to import volumes and weighted-average dumping margins.

With respect to import volumes of the subject merchandise, the data supplied by both OBV and the domestic interested parties indicate that, since the imposition of the order, import volumes of the subject merchandise have declined significantly. Moreover, data in United States Census Bureau IM146s and import data from the United States Commission clearly indicate that imports of the subject merchandise have declined over the life of the order. In 1986 (a year prior to the initiation of the original investigation), import volumes

of brass sheet and strip exceeded 15 million pounds; whereas, in 1998 import volumes have been well under 1 million pounds. In addition, OBV does not negate the statistics which show that OBV's import volumes of the subject merchandise decreased significantly after the issuance of the order. Consequently, we determine that the import volumes of the subject merchandise declined substantially after the issuance of the order.

In conclusion, although the three most recent reviews indicate that dumping of the subject merchandise has been eliminated,<sup>16</sup> since import volumes of the subject merchandise declined significantly, we determine that recurrence of dumping of subject merchandise from the Netherlands is likely if the order were revoked.

*Comment 3:* The domestic interested parties assert that the Department's preliminary results reflect a marked departure from the standards established in the statute, the SAA, and the *Sunset Policy Bulletin*, based on which the Department determines whether continuation or recurrence of dumping is likely should the order be revoked. Specifically, the domestic interested parties contend that, in its preliminary results, the Department ignored the facts that dumping continued at levels above *de minimis* after the issuance of the order and that the import volumes of the subject merchandise ceased and declined substantially when dumping was eliminated. The domestic interested parties further argue that the Department should rely upon what OBV did in conjunction with the order and not upon what OBV says it will do in the future if the order were revoked. (See October 26, 1999, the domestic interested parties' case brief at 1 and 4-7, and the hearing transcript at 10-49 and 97-108.)

OBV claims that the Department's preliminary decision is fully consistent with and supported by a plain reading of the statute, the *Department's Regulations*, and the *Sunset Policy Bulletin*. OBV contends that the Department's ultimate mandate in a sunset review is to determine whether revocation of an order is likely to lead to a continuation or recurrence of dumping, and as such, the Department is free to consider all record evidence in carrying out its ultimate mandate in a sunset review. OBV claims that the Department stated that it makes no sense to conclude that Outokumpu is going to permit OBV to dump the subject merchandise in the United

States. (See November 1, 1999, OBV's reply brief at 1 and 4-17, and the hearing transcript at 56-97.)

*Department's Position:* We do not agree with the domestic interested parties' characterization that the Department ignored the facts that dumping continued at levels above *de minimis* and that the import volumes of the subject merchandise declined substantially after the issuance of the order. In the preliminary results, the Department noted that dumping continued for a period after the issuance of the order and further, that the import volumes of the subject merchandise decreased significantly after the issuance of the order.

As noted by OBV, in a sunset review, consistent with our regulations, interested parties are invited to submit any other relevant information or arguments that the party would like the Department to consider. (See section 351.218(d)(3)(iv)(B) of the *Sunset Regulation*.) In this review, OBV submitted additional information and argument to support its assertion that the significant decrease in the post-order volume of imports was not dispositive of the likelihood issue. We agree with OBV that the Department has the discretion to consider these arguments in the course of determining whether to deviate from the general policy. Specifically, our *Sunset Policy Bulletin* enunciates that, with a given set of facts, the Department normally will determine whether revocation of the order is likely to lead to continuation. (See section II.A.3 of the *Sunset Policy Bulletin*.) Nowhere do we state that the Department will always find that dumping is likely to continue or recur when dumping has been eliminated and there has been a significant decline in the volume of imports.

*Comment 4:* The domestic interested parties state that the Department erred in basing its preliminary results, without invoking good cause, on OBV's unsolicited, unilateral, uninvestigated, and self-serving representations regarding matters which would more properly fall within the purview of the sunset analysis of the International Trade Commission ("Commission"). The domestic interested parties argue that OBV's claims pertaining to the role it will play in the U.S. market (in terms of volumes and nature of the products it will supply, and the price it will charge) and pertaining to the competitive conditions of the U.S. market of the subject merchandise, were unsolicited, not subject to follow-up questioning, and not subject to verification by the Department. Since the Department did not have an

<sup>14</sup> As it proposed to do with radiator strip, OYJ can shift production of any other type of BSS from American Brass to OBV and start dumping that subject merchandise without necessarily competing with American Brass.

<sup>15</sup> As noted in the previous paragraphs, however, we agree with the domestic interested parties for different reasons. The domestic interested parties cite five cases in their case brief (at 21-29). In *Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 61 FR 49727 (September 23, 1996), the Department rejected Wieland's attempt to make a relevant issue out of its purchase of a U.S. production facility because the U.S. facility used imports of the subject merchandise as a feed product. The Department determined that had the order not been in place, Wieland would have used its dumped subject merchandise rather than U.S. produced domestic like product as its raw material; hence, Wieland's purchase of a U.S. production facility can be distinguished from the instant case. In the other four cited cases, also, the ownership of U.S. production facilities by foreign respondent interested parties was never an issue. In other words, the domestic interested parties reliance on the above-referenced cases to discredit OBV's uniqueness argument is misplaced.

<sup>16</sup> See footnote 3, *supra*.

affirmative showing of good cause, as required by the statute, the domestic interested parties conclude that the Department should exclude the aforementioned other factors and make its final determination based solely on the three-pronged test set forth in its *Sunset Policy Bulletin*. (See the domestic interested parties brief at 1 and 8–12, and the hearing transcript at 10–49 and 97–108.)

OBV notes that since OBV filed its substantive response on March 3, 1999, the domestic interested parties have had an ample opportunity to request follow-up questions, but did not do so. OBV claims that its substantive response is basically a questionnaire response; that there is nothing improper about the Department revoking an order prior to the Commission's decision; and that the factors considered are identical to the factors typically considered by the Commission in making its injury determination. (See OBV's reply brief at 13–17 and the hearing transcript at 56–97.)

*Department's Position:* We disagree with the domestic interested parties' argument that the Department erred in basing our preliminary results on unsolicited, unilateral, un-investigated, and self-serving representations made by OBV pertaining to the competitive conditions of the U.S. market. Consistent with the *Sunset Regulations* (section 351.218(d)(3)(iv)(B)), a party may submit in its substantive response other information or argument the party would like the Secretary to consider. Other parties (that filed substantive responses) may then rebut those arguments and information. Nothing precludes the Department from considering the type of information OBV submitted in its substantive response and the Department properly considered this information and the domestic interested parties' rebuttals thereto in its preliminary results.

*Comment 5:* The domestic interested parties note that the Department's finding that American Brass would bear the primary responsibility of satisfying the U.S. customers of radiator strip is contrary to OBV's acknowledgment that OBV will eventually assume the primary responsibility of satisfying its U.S.-based customers by exporting more than 15.8 million pounds of subject radiator strip in the future. Specifically, the domestic interested parties point out inconsistent claims by OBV: on one hand, OBV states that it never will return to pre-order export level while, on the other hand, OBV stipulates that it will eventually take over American Brass' entire production of radiator strip, which will result in OBV

exporting the subject merchandise to the United States at levels greater than pre-order export volumes of the subject merchandise to the United States.

The domestic interested parties assert that since OBV readily changed its position (production shift from OBV to American Brass and then back to OBV), nothing precludes the parent company of OBV, OYJ, from changing its mind again in the near future. Namely, the domestic interested parties claim that it is possible for OBV to start shipping other subject merchandise to the United States—and this production shift can rather easily be accomplished with only minor adjustment in OBV's current production process. According to the domestic interested parties, this possibility is looming especially large in light of shrinking radiator strip market. Domestic interested parties point out that OBV may start shipping electrostrip products, and that OBV can do this without competing with American Brass by utilizing a creative product mix. Inasmuch as the instant review covers all subject merchandise (not just radiator strip), the domestic interested parties further contend that should the order be revoked, OYJ can easily have OBV export other subject merchandise, besides radiator strip, to the United States. (See the domestic interested parties brief at 2 and 27–30, and the hearing transcript at 10–49 and 97–108.)

OBV argues that it informed the Department of OBV's plans to gradually increase shipments of subject radiator strip in its March 3, 1999, response to the notice of initiation in the instant review. OBV claims that the Department clearly contemplated that OBV will continue to ship the subject radiator strip and that the fact that the tonnage is not mentioned is by no means evidence that the Department was unaware of, or did not consider, this fact in reaching its preliminary results. OBV notes that the proposed shift of production of the radiator strip is only a minor portion of American Brass' 1998 production capacity and of American Brass' 1998 shipments within the United States. (See OBV's reply brief at 3, 45–50, and 52, and the hearing transcript at 96–97.)

*Department's Position:* We agree with the domestic interested parties that there is conflicting information on the record regarding OBV's intent to export subject merchandise to the United States. Although OBV states that American Brass permanently replaced OBV's exports of BSS to the United States, OBV also expresses its intention of resuming significant exports to the United States when and if the order were revoked (see OBV's substantive

response, Exhibit 1 (LECG Report at 41–42). Therefore, for the purposes of the final results of this review, as noted above, we consider the planned resumption of imports at pre-order volumes to be probative of the behavior of OBV without the discipline of the order.

*Comment 6:* The domestic interested parties further note that when OBV was selling substantial volumes of the subject merchandise to the United States, the Department found margins at levels above *de minimis*. In other words, the domestic interested parties claim, according to facts of record, that OBV always dumped when shipping commercial quantities of the subject merchandise to the United States. Knowing that OBV has been an aggressive and a significant supplier of connector products in the European market and that the U.S. radiator-strip market is highly competitive, the domestic interested parties assert that OBV's self-imposed moratorium of not exporting other subject merchandise to the United States will not continue in the future. While arguing that OBV is likely to dump in the United States where it imports a large volume and a wide range of products to the United States if the order were revoked, the domestic interested parties try to illustrate its contention with the fact that OBV did not provide to the Department American Brass's price data regarding the domestic like product. The domestic interested parties also claim that in certain instances, the prices of some non-subject merchandise, which are more costly to produce than subject merchandise, were lower than the prices of the subject merchandise. The domestic interested parties also suggest that the Department postpone revocation until a later administrative review because revocation would result in serious prejudice to the domestic industry; whereas, the postponement would not prejudice OBV because its current cash deposit rate is zero, and if such is the finding in the instant review, OBV will not only be absolved from any duty liability, but will remain eligible for revocation; *i.e.*, OBV's ability to obtain revocation would in no way be prejudiced by delaying revocation. (See the domestic interested parties case brief at 3 and 30–36 and, the hearing transcript at 10–49 and 97–108.)

OBV indicates that in the last three administrative reviews, the Department found that OBV has shipped in commercial quantities without dumping. OBV claims that its sponsored LECG Report indicated that OBV would not resume dumping if the order were revoked. OBV contends that its future

exports of the subject merchandise will be limited to brass radiator strip. OBV claims that, as a matter of law, the Department cannot delay revocation in this sunset review just to determine whether OBV would dump in the next five years. OBV states that the Department did not request OBV to provide American Brass pricing data in this review, and thus it cannot be accused of not supplying something when not asked to do so. Further, OBV argues that unlike a small, "stand alone" company, OBV is not forced into dumping the subject merchandise for its own survival. OBV indicates that, even with antidumping duty orders in effect on the subject merchandise from numerous countries, the domestic interested parties, so far, do not find it profitable to manufacture radiator strip. Stated differently, based on the fact that OBV will not have any domestic competition in the radiator strip market, OBV forecasts that there will be no downward pricing pressure exerted on OBV by the domestic industries. Thus, OBV concludes that it is unlikely to resume dumping in the near future. (See OBV's reply brief at 4, 50–61, and 64–83, and the hearing transcript at 56–97.)

*Department's Comment:* We agree with the domestic interested parties that OBV has never attained a zero or *de minimis* margin when ever it exported more than a small amount of subject merchandise to the United States.<sup>17</sup> However, we disagree with the domestic interested parties' contention that a postponement of revocation, where revocation is appropriate, would not prejudice OBV. We agree with OBV that the Department is required to revoke the order if, based on the record of the proceeding, the Department determines that dumping is not likely to recur.

As to the pricing data from American Brass, because we have determined that revocation of the order would be likely to result in the continuation or recurrence of dumping, this issue is moot. Further, because the scope of the order includes merchandise other than radiator strip and our determination is

based on OBV's historical behavior at a time when it exported significant volumes of subject merchandise to the United States, OBV's assertions with respect to the lack of domestic competition and downward pricing pressure are also moot.

Finally, with respect to OBV's contention that in three administrative reviews, the Department has found that OBV has shipped in commercial quantities without dumping, we refer interested parties to the notice of final results of the most recent administrative review, issued concurrently with this notice, in which the Department determined that OBV did not sell in commercial quantities for any of the three consecutive reviews that formed the basis of OBV's revocation request in that proceeding.

*Comment 7:* The domestic interested parties urge the Department not to revoke the order without first performing a verification because the Department made its preliminary findings based on other relevant information and arguments OBV has submitted. They further argue that a verification is mandated by statute and the Department's Regulation; thus, the phrase, "only where needed," in the Sunset Policy Bulletin is questionable since it is contrary to statute and regulations (782(i) of the Act and section 351.307(b) of the Department's Regulations). The domestic interested parties insist that the Department cannot rely on the verification report that was issued in the concurrent administrative review of the order because the verification report did not involve the relevant facts upon which the agency is relying in this case. The domestic interested parties list factors, based on which the Department purportedly made its preliminary determination yet to which the verification did not address: the historical nature of OBV's and American Brass's sales of the subject merchandise in the United States and the reasons therefor; the prices at which OBV is likely to sell radiator strip as compared to the prices charged by American Brass; the capacity of American Brass; the size of and competition in the U.S. radiator strip market; and the corporate relationship between OBV and American Brass and the effects thereof upon their future business and sales operations. The domestic interested parties further claim that OBV itself discredited the findings of the verification report in the concurrent administrative review. In conclusion, the domestic interested parties argue that the Department should not rely on the voluntary and self-serving

representations made by the OBV. Instead, domestic interested parties insist, the Department should issue a questionnaire and a supplemental questionnaire to elicit relevant information, and verify the information thereof so long as the Department continues to rely upon any of the factual representations proffered by OBV. (See the domestic interested parties brief at 3 and 12–18, and the hearing transcript at 10–49 and 97–108.)

OBV asserts that a verification is unnecessary in the instant review. OBV claims that, first, the Department based its preliminary results upon, *inter alia*, the dumping margins in the most recently completed administrative reviews. OBV argues that, second, where the Department recently verified OBV's data, which included information supporting revocation of the dumping order and which was placed on the record of this review, the current situation would fall under the "other situations" in which the Department need not conduct a verification (see Sunset Regulations, 63 FR at 13519) because standards for two reviews are basically the same. OBV claims that many items which the domestic interested parties request the Department verify were either verified by the Department during the 1997–1998 administrative review or were not relied upon by the Department in making its preliminary results in this sunset review. OBV denies that it alleged the verification report issued in the administrative review is meaningless or challenged the accuracy of the numbers. OBV indicates, nonetheless, that it opposes unjustified extrapolation of numbers or leaps of logic based upon those numbers. Given the vast amounts of verified information already on the record in this review, an additional verification would be unnecessary and of little value to the Department in this review. (See OBV's reply brief at 17–24, the hearing transcript at 69–97.)

*Department's Position:* Because we have determined that dumping is likely to continue or recur were the order revoked, the issue of verification is moot.

#### *Magnitude of the Margin*

Because the magnitude of likely-to-prevail margin was not discussed in the preliminary results of this review, we incorporate interested parties' arguments in our determination as follows.

*Comment 1:* The domestic interested parties, in their substantive response and in the hearing transcript, simply state that the Department should select

<sup>17</sup> The lowest weighted-average dumping margin associated with a significant import volume (2,284 metric tons) was 2.03 percent for August 1990–July 1991. When OBV was assessed with zero (0) percent or *de minimis* dumping margin for the last three administrative reviews, its imports of subject merchandise were significantly lower. Thus, we agree with the domestic interested parties that when OBV was exporting substantial volumes of the subject merchandise to the United States, it was dumping. This is especially true in light of the final results of the most recent administrative review, in which the Department found that the import volumes of the subject merchandise associated with OBV's zero or *de minimis* weighted-average dumping margins did not constitute commercial quantities. (See footnote 4, *supra*.)

a margin from the investigation according to the principle set forth in the SAA at 890 and the Sunset Policy Bulletin, 63 FR at 18873. (See the domestic interested parties' March 3, 1999 substantive response at 45–46, March 12, 1999, rebuttal response at 25–26, and the hearing transcript at 10.) The domestic interested parties note that the margin from the original investigation is the only calculated rate that reflects the behavior of OBV without the discipline of the order. Therefore, the domestic interested parties argue that the Department should abide by its stated policy and provide to the Commission the rate set forth in the original investigation, which is 16.99 percent. *Id.*

Citing the same policy, but with a different emphasis, OBV argues that the Department can, and should, exercise its discretion, as allowed by the SAA.<sup>18</sup> (See OBV's substantive response at 39.) OBV urges that the Department determine the margin likely to prevail if the order were revoked to be zero percent, which is the margin determined for sales by OBV in the last two administrative reviews, or, in the alternative, 2.03 percent, which is the margin from the third administrative review that is associated with a sales volume that is larger than the sales volume examined by the Department during the original investigation.

OBV further states that it came forth with data which support the selection of a margin other than the margin in the original investigation. OBV argues that the weighted-average dumping margin assigned to OBV in the original investigation is the least probative of the magnitude of the dumping margin likely to prevail were the order revoked. OBV bases its argument on the assertions that the margin from the original investigation is inherently unreliable and does not reflect the current circumstances surrounding the order. Specifically, the margin from the original investigation as well as those from the first two administrative reviews are skewed in OBV's view because the Department employed an old, and since-discarded, method in deriving such margins.<sup>19</sup> OBV argues that the Exporter's Sales Price (now

called Constructed Export Price, CEP) used in the original investigation was deflated because some sales of the subject merchandise were made to an OBV affiliated U.S. company at a lower price. *Id.* at 41–45.<sup>20</sup> Therefore, OBV contends, the Department should reject the margins from original investigation and from the final results of the first two reviews because weighted-average margins therefrom are unreliable indicators of the magnitude of the margin that would be likely to prevail if the order were revoked. Instead, OBV argues that the Department should report to the Commission a zero or, at the most, a 2.03 percent as the likely-to-prevail margin were the order revoked.

In its rebuttal, OBV reiterates its arguments that there is no justification for the Department to use the margin from the original investigation because that margin is the least probative and inherently unreliable. Also, OBV states that it no longer has the capacity to and, in any case, will not further process the subject merchandise in the United States, thereby eliminating the adjustment for further-manufacturing, which OBV perceives resulted in an upward distortion of dumping margin.<sup>21</sup>

**Department's Position:** In the Sunset Policy Bulletin, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation because that is the only margin that reflects the behavior of producers/exporters without the discipline of the order in place. 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.)

<sup>20</sup> During the original investigation, OBV had an affiliated U.S. company, Outokumpu Metallverken ("MINC"), which bought the subject merchandise at a bargain price and further processed it according to U.S. customers' specification. OBV implies that, in the process of calculating dumping margins, the cost associated with the process done by MINC was inflated, consequently further lowering OBV's export price to MINC.

<sup>21</sup> OBV is indicating that it no longer has an affiliated U.S. company which further processes the subject merchandise on behalf of OBV, see footnote 30, *supra*. Also, due to the OYJ's purchase of American Brass, OBV feels that further processing of the subject merchandise in the United States is no long necessary. (See OBV's reply brief at 55–59.)

We note that, to date, the Department has not issued any duty absorption findings in this case.

The SAA at 890–891 and House Report at 63, provide that declining (or no) dumping margins accompanied by steady or increasing import volumes of the subject merchandise may be indicative of a situation in which respondent interested parties do not have to dump in order to maintain market share in the United States and that dumping is less likely to recur. To appropriately reflect such situation, the Department may, in response to argument from an interested party, provide to the Commission a more recently calculated margin in cases where: (1) The dumping margin was reduced or eliminated after the issuance of the order and (2) import volumes remained steady or increased. (See section II.B.2 of Sunset Policy Bulletin.)

However, in the instant review, as discussed above, immediately after the imposition of the order, import volumes of the subject merchandise fell substantially and ceased altogether for a period. Furthermore, for the last five years (1994–1998), the import volumes of the subject merchandise have remained at levels that can be characterized as negligible vis a vis pre-order volumes. These facts coupled with OBV's statement that it plans to resume exports from the Netherlands at pre-order volumes<sup>22</sup> leads us to determine that the use of a more recently calculated margin is inappropriate. Therefore, we disagree with OBV's argument that we should report to the Commission a more recently calculated margin. Instead, because it is the only rate which reflects the behavior of producers/exporters without the discipline of the order, the Department determines that the margin from the original investigation is probative of the behavior of OBV without the discipline of the order and will provide to the Commission the weighted-average margin from the original investigation.

### Final Results of Review

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

Manufacturer/exporter	Margin (percent)
OBV .....	16.99
All Others .....	16.99

<sup>22</sup> See OBV Substantive Response at Exhibits 1 (at 41–42), 8, and 15.

<sup>18</sup> OBV infers this discretion from the word "normally." (See Substantive Response of OBV at 39.)

<sup>19</sup> The original investigation was based on the U.S. sale price compared to a weighted-average foreign market value. In investigations, the Department now employs an average-to-average method—a comparison of the weighted-average of the normal values with the weighted-average of the export prices (and constructed export prices) for comparable merchandise. (See 19 CFR 351.414(b) and (c).)



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 28, 1999.

**Holy Kuga,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00-285 Filed 1-5-00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-421-701)

#### Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands

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

**SUMMARY:** On September 8, 1999, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from the Netherlands and its notice of intent to revoke the antidumping duty order. We gave interested parties an opportunity to comment on the preliminary results. We have analyzed the comments received and have made certain changes for the final results.

This review covers shipments by one respondent during the period August 1, 1997, through July 31, 1998. For our final results, we have found that sales of the subject merchandise have not been made below normal value. We will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by this company. Furthermore, we are not revoking the antidumping duty order given that shipments of subject merchandise to the United States by Outokumpu Copper Strip B.V. (OBV), the sole producer and exporter of subject merchandise from the

Netherlands, have not been made in commercial quantities for each of the three consecutive review periods that formed the basis of the revocation request. See *Determination Not To Revoke Order* section of this notice.

**EFFECTIVE DATE:** January 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann or Jarrod Goldfeder, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4126 or (202) 482-2305, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (1999).

##### Case History

This review covers OBV, the sole manufacturer/exporter of merchandise subject to the antidumping duty order on brass sheet and strip from the Netherlands.

On September 8, 1999, the Department published the preliminary results of this review. See *Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order: Brass Sheet and Strip from the Netherlands*, 64 FR 48760 (*Preliminary Results*). On October 20, 1999, we received case briefs from OBV and the petitioners. We received rebuttal briefs from OBV and the petitioners on October 29, 1999. A public hearing was held on November 2, 1999.

##### Scope of Review

Imports covered by this review are brass sheet and strip, other than leaded and tin brass sheet and strip, from the Netherlands. The chemical composition of the products under review is currently defined in the Copper Development Association (CDA) 200 Series or the Unified Numbering System (UNS) C2000 series. This review does not cover products the chemical compositions of which are defined by other CDA or UNS series. The physical dimensions of the products covered by this review are brass sheet and strip of

solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.188 inch (4.8 millimeters) in gauge, regardless of width. Included in the scope are coiled, wound-on-reels (traverse wound), and cut-to-length products. The merchandise under investigation is currently classifiable under item 7409.21.00 and 7409.29.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

##### Determination Not To Revoke Order

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (NV) in the current review period and that the company will not sell at less than NV in the future; and (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities. See 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department may revoke an order if it concludes that each exporter and producer covered at the time of revocation: (1) sold subject merchandise at not less than NV for a period of at least three consecutive years; and (2) is not likely in the future to sell the subject merchandise at less than NV; see 19 CFR 351.222(b)(1); 19 CFR 351.222(b)(2); see, e.g., *Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part: Pure Magnesium from Canada (Pure Magnesium from Canada)*, 64 FR 12977, 12982 (March 16, 1999).

In our *Preliminary Results*, we preliminarily determined that OBV sold in commercial quantities during the period of review (POR) and that it is not likely that OBV will sell at less than NV in the future (see *Preliminary Results*, 64 FR at 48765-48766). However, upon review of the criteria outlined at section 351.222(b) of the Department's regulations, the comments of the parties, and the evidence on the record, we have determined that the Department's requirements for revocation have not