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MEMORANDUM

DATE: September 23, 2002

TO: Faryar Shirzad
Assistant Secretary for
Import Administration

FROM: Susan H. Kuhbach
Senior Office Director, Office 1
Import Administration

SUBJECT: **Issues and Decision Memorandum: Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From France**

BACKGROUND

On March 4, 2002, the Department of Commerce ("the Department") published the preliminary determination in this investigation. See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from France, 67 FR 9662 (March 4, 2002) ("Preliminary Determination"). The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate the benefits from these programs. We have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the briefs. We recommend that you approve the positions we have developed in this memorandum. Below is a complete list of the issues in this investigation for which we received comments and rebuttal comments from parties:

Comment 1: Post-Privatization Treatment of Pre-Privatization Benefits
Comment 2: Appropriate AUL for Usinor
Comment 3: SODI Advances
Comment 4: Funding for Electric Arc Furnace and Myosotis Projects

METHODOLOGY AND BACKGROUND INFORMATION

I. Change in Ownership

In the Preliminary Determination, we outlined our "same person" change-in-ownership methodology and analyzed each of the factors under this methodology for Usinor. 67 FR at 9663-64. As a result of this analysis, we determined that pre-privatization Usinor was the same person as respondent Usinor. Id. at 9664. Usinor commented that its pre-privatization benefits should not be attributed to post-privatization Usinor, as done in our recent redetermination pursuant to court remand in Allegheny Ludlum Corp., et al v. United States, 182 F. Supp. 2d 1357 (CIT 2002) ("Allegheny Ludlum"). For the reasons stated in Comment 1 below, we do not agree with Usinor, and, for the same reasons as stated in the Preliminary Determination, continue to attribute Usinor's pre-privatization benefits to respondent Usinor.

II. Use of Facts Available

In the Preliminary Determination, because the Government of France ("GOF") did not provide the distribution of benefits for the investment/operating subsidies, we used adverse facts available to find that these subsidies were de facto specific. 67 FR at 9664-65. At verification, the GOF was unable to provide any further information regarding the specificity of these investment/operating subsidies. See Memorandum to Judith Wey Rudman, "Government of France Verification Report," dated May 17, 2002 at 1-2 ("Government Verification Report"). Usinor commented that Article 55 benefits were previously found not countervailable and, therefore, should be excluded from the total investment/operating subsidies calculation. For the reasons stated in Comment 8 below, we agree with Usinor, and have excluded the Article 55 benefits in the final results calculation. Regarding the other investment/operating subsidies, no new information, evidence of changed circumstances, or comments from interested parties were received that warrant a reconsideration of this finding. Therefore, for the final determination, and for the same reasons as in the Preliminary Determination, we continue to find these subsidies de facto specific.

III. Subsidies Valuation Information

A. Allocation Period

In the Preliminary Determination, we used a 14-year, company-specific average useful life ("AUL") to allocate Usinor's non-recurring subsidy benefits which are already being allocated in previous cases involving these same subsidies. 67 FR at 9665. For the final determination,

Usinor commented that we should allocate all such subsidies over the 12-year, company-specific AUL it calculated for this investigation. For the reasons stated in Comment 2 below, we do not agree with Usinor. Therefore, for the final determination and for the same reasons as stated in the Preliminary Determination, we continue to allocate Usinor's benefits over a 14-year AUL.

As stated in the Preliminary Determination, for non-recurring subsidies to Usinor, we applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Id. at 9665. Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total or export, as appropriate) in that year. If the amount of subsidies is less than 0.5 percent of sales, the benefits are allocated to the year of receipt rather than allocated over the AUL.

B. Equityworthiness and Creditworthiness

In the Preliminary Determination, we found Usinor to be unequityworthy and uncreditworthy in 1988, the only year relevant to this investigation. Id. No new information or comments from interested parties were received for the final determination to warrant a reconsideration of this finding. Therefore, for the final determination, we continue to find Usinor unequityworthy and uncreditworthy in 1988.

C. Benchmarks for Loans and Discount Rates

In the Preliminary Determination, we explained our calculation of an uncreditworthy rate for 1988, the only year relevant to this investigation in which Usinor received a non-recurring, countervailable subsidy. Id. at 9665-66. No new information or comments from interested parties were received for the final determination to warrant a reconsideration of this calculation. Therefore, for the final determination, we used the same uncreditworthy rate as calculated in the Preliminary Determination.

In the Preliminary Determination, to measure the benefit from the Electric Arc Furnace program and the Myosotis Program, we relied on the average, short-term interest rate in France as reported in the *International Financial Statistics*, as published by the International Monetary Fund. Id. at 9666. However, because these reimbursable advances required payment more than one year after the receipt of the advance, for the final determination, we instead used a long-term interest rate to calculate the benefit from these advances, pursuant to 19 CFR 351.505(d). For this long-term interest rate, we relied on Usinor's company-specific borrowing rate for 1995, as stated in their financial statement.

ANALYSIS OF PROGRAMS

I. Programs Determined To Be Countervailable

A. FIS Bonds

In the Preliminary Determination, we determined that Usinor received a countervailable subsidy from the conversion of the 1988 FIS bonds from debt to equity. Id. Usinor argues that the Department should use a 12-year AUL for the final determination and, therefore, not countervail these benefits because they would be outside this allocation period. Because we are using the same AUL in the final determination as in the Preliminary Determination, we have continued to countervail the benefits from the FIS bond conversions (for a further discussion of why we did not use the AUL that Usinor requested, see Comment 2 below).

At verification, we found that Usinor did not deduct marine insurance or the proper transportation amount in calculating its FOB value for total sales. See Memorandum to Judith Wey Rudman, "Usinor Verification Report ," dated May 17, 2002 at 3 ("Usinor Verification Report"). Therefore, as stated in Comment 6 below, we adjusted Usinor's total FOB sales value to account for marine insurance and the proper transportation expense. However, because the new sales amount did not significantly differ from the original sales amount, the net subsidy rate for this program did not change from the Preliminary Determination and is 1.13 percent ad valorem for Usinor.

B. Investment/Operating Subsidies

In the Preliminary Determination, we found countervailable the variety of small investment and operating subsidies which Usinor received during the period of investigation ("POI") from various GOF agencies and from the European Coal and Steel Community ("ECSC"). Id. Usinor argued that the Department, in the Preliminary Determination, did not exclude an amount for a certain professional training grant, which was previously found not countervailable. For the reasons stated in Comment 8 below, we agree with Usinor on this issue and excluded the amount of the professional training grants from the subsidy calculation for this program. Usinor also commented that ECSC Article 55 benefits should not be countervailable. For the reasons stated in Comment 8 below, we agree with Usinor on this issue and are not countervailing these benefits. In addition, as stated above (under FIS Bonds), we adjusted Usinor's total FOB sales value to account for marine insurance and the proper transportation expense (see also Comment 6 below).

Because of the deduction of the professional training grant, the exclusion of Article 55 benefits, and the use of a new sales value, the net subsidy rate for this program changed from the Preliminary Determination and is now 0.14 percent ad valorem for Usinor.

II. Programs Determined To Be Not Countervailable

A. Shareholder Advances After 1986

In the Preliminary Determination, we found these shareholder advances to be not countervailable because the advances were actually funds provided by the GOF under the Societes de Developpement Industriel ("SODI") program, which were found not countervailable. Id. at

9667. At verification, we verified that these advances were indeed SODI funds. See Government Verification Report at p. 4. Because we continue to find SODI funds to be not countervailable (see discussion below), these advances are likewise not countervailable.

B. GOF Advances for SODIs

In the Preliminary Determination, we found that the post-1991 SODI advances were not countervailable because 1) Usinor loaned out all funds it received from the GOF and 2) the notification of a program to the WTO is not, in an of itself, a sufficient basis to find a program countervailable. 67 FR at 9667. As stated in Comment 3 below, based upon record evidence, we find that Usinor acted as a conduit for these funds, as it did with SODI funds received prior to 1991. Therefore, like our previous finding for the pre-1991 SODI advances in Final Affirmative Countervailing Duty Determination: Certain Steel Products from France, 58 FR 37304, 37310-11 (July 9, 1993) ("French Certain Steel"), we find that the post-1991 advances are not countervailable.

C. Funding for Electric Arc Furnaces

In the Preliminary Determination, we found the electric arc furnace program to provide a financial contribution and to be specific. 67 FR at 9667. However, regardless of how we treated any benefits (as grants or as contingent-liability loans), the benefit amount would be so small that it would be expensed prior to the POI. Therefore, because Usinor could not have benefitted during the POI or afterwards from the amounts received, we determined that this program was not countervailable. At verification, we verified that the amounts reported by Usinor were the amounts actually received. Usinor Verification Report at 5-6. In addition, no new information, evidence of changed circumstances, or comments from interested parties were received on this issue to warrant a reconsideration of finding in the Preliminary Determination. Therefore, for the same reasons as in the Preliminary Determination, we continue to find this program not countervailable.

This finding of non-countervailability is based upon the amounts received by Usinor to date under this program and because Usinor has already received all funding authorized. Should additional funds be authorized under this program in the future, we will re-examine the program's countervailability at that time.

D. Funding for Myosotis Project

As with the electric arc furnace funding, in the Preliminary Determination, we found the Myosotis program to provide a financial contribution and to be specific. 67 FR at 9667-68. However, regardless of how we treated any benefits (as grants or as contingent-liability loans), the benefit amount would be so small that it would be expensed prior to the POI. Therefore, because there can be no benefit to Usinor during the POI or afterwards from the amounts received, we determined that this program was not countervailable. At verification, we verified

that the amounts reported by Usinor were the amounts actually received. Usinor Verification Report at 6. In addition, no new information, evidence of changed circumstances, or comments from interested parties were received on this issue to warrant a reconsideration of finding in the Preliminary Determination. Therefore, for the same reasons as in the Preliminary Determination, we continue to find this program not countervailable.

This finding of non-countervailability is based upon the amounts received by Usinor to date under this program and because Usinor has already received all funding authorized. Should additional funds be authorized under this program in the future, we will re-examine the program's countervailability at that time.

E. ECSC Article 56 Funding

In the Preliminary Determination, we found that, because Usinor was acting only as a conduit for Article 56(2)(a) funds for the benefit of third-party companies, Usinor receives no benefit under this program and, hence, no countervailable subsidy. 67 FR at 9668. The petitioners commented that Article 56(2)(a) funding was previously found countervailable and, thus, should again be found countervailable in this investigation. For the reasons stated in Comment 5 below, we do not agree with the petitioners. Therefore, for the same reasons as in the Preliminary Determination, for the final determination, we continue to find Usinor's Article 56(2)(a) funding not countervailable.

F. 1995 Capital Increase

In the Preliminary Determination, we found that this capital increase was not countervailable because 1) revenue was not forgone by the GOF and 2) the purchase of an overwhelming number of Usinor shares previously owned by the GOF by private individuals necessarily means that investment in Usinor was consistent with the practice of private investors. Id. at 9668-99. No new information has been presented to warrant a reconsideration of this finding. Accordingly, we continue to find that this capital increase is not countervailable.

III. Programs Determined To Be Not Used

As stated in the Preliminary Determination (id. at 9669), and based on information from the Usinor and GOF verification (see Government Verification Report at 3-5 and Usinor Verification Report at 6-7), for the final determination, we determine that neither Usinor nor its affiliated companies that produce subject merchandise received benefits under the following programs during the POI:

A. Repayable Grant to Sollac for "Pre-Coating" Technology
B. Tax Subsidies Under Article 39
C. ESF Grants
D. ECSC Article 54 Loans

E. ERDF Funding
F. Funding Under Resider and Resider II

ANALYSIS OF COMMENTS

Comment 1: Post-Privatization Treatment of Usinor's Pre-Privatization Benefits

Respondent's Argument: Usinor contends that in the Preliminary Determination, the Department used a "same person" change-in-ownership methodology that was rejected by the CIT in Allegheny Ludlum. Usinor claims the draft redetermination in that case makes clear that the Department has no legal or factual basis for maintaining its preliminary determination that the 1988 FIS bond conversion continued to benefit Usinor in 2000, after its arm's-length, fair-market-value privatization in 1995. According to Usinor, the CIT in Allegheny Ludlum held that the Department's use of the "same person" analysis violated the Act and directed the Department to look at the facts and circumstances of the transaction to determine if the purchaser received a subsidy directly or indirectly for which it did not pay adequate compensation.

In its draft redetermination in Allegheny Ludlum, Usinor argues, the Department followed the CIT's instructions and found that the non-recurring benefits received prior to the privatization were fully extinguished by the company's full, fair-market-value privatization. Usinor urges the Department to reach the same result here because the record evidence is essentially the same as in Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip from France, 64 FR 30774 (June 8, 1999) ("French Stainless") (the case remanded in Allegheny Ludlum).

Usinor counters the petitioners' arguments (stated below) by asserting that they ignore the Department's finding in the draft redetermination in Allegheny Ludlum. According to Usinor, the facts in French Stainless are the same as in this investigation and, therefore, the Department should find a zero benefit in this investigation, as it did in the draft redetermination. Finally, treating the privatization as irrelevant to the countervailability of the FIS bonds, Usinor argues, would be inconsistent with the Act as interpreted in Delverde Srl v. United States, 202 F.3d 1360, 1365 (Fed. Cir. 2000), reh'g granted in part (June 20, 2000) ("Delverde III").

Petitioners' Argument: The petitioners argue that the Department should continue to countervail in the final determination the benefits received from the 1988 FIS bond conversions. The petitioners claim that the Department has repeatedly found that, since Usinor was the same person before and after privatization, the statute's financial contribution and benefit requirements are fully satisfied. Such findings, according to the petitioners, are not reviewable in the absence of compelling new information. The petitioners contend that, regarding Usinor's reference to Allegheny Ludlum, the possible impact of ongoing court litigation on the Department's change-in-ownership methodology is far from clear at this point. Instead, the petitioners contend that the information Usinor provided in this investigation confirms that nothing changed in the 1995 privatization apart from the arrival of new private owners.

The petitioners claim that the draft redetermination correctly noted that the facts of Usinor's stock sale privatization differed from those in Delverde III. The petitioners contend that the Department stated in its draft redetermination that whether a benefit is bestowed on a purchaser in a privatization transaction is not relevant to the benefits previously bestowed upon the pre-privatization company. According to the petitioners, a finding that Usinor in Fall of 1995 suddenly became incapable of continuing to benefit from debt relief subsidies that had been given to it several years earlier simply because the firm's outstanding stock shares changed hands at (or near) fair market value is economically absurd and impossible to reconcile with the record. The petitioners argue that, to the extent that Allegheny Ludlum directed the Department to treat the absence of a benefit to the purchasers as the absence of a benefit to the company purchased, this error will have to be corrected on further appeal by the Court of Appeals for the Federal Circuit ("CAFC"). In the meantime, the petitioners argue, the Department's change-in-ownership methodology remains the same as before Allegheny Ludlum.

Department's Position: We disagree with Usinor that the Department's "same person" change-in-ownership methodology is not in accordance with law or in conformance with the CAFC's decision in Delverde III. In several recent cases, various judges of the CIT have ruled on the Department's "same person" test. Some decisions held that this methodology was not in accordance with law and those cases were remanded to the Department for further proceedings: see Allegheny Ludlum; GTS Industries S.A. v. United States, 182 F. Supp. 2d 1369 (CIT 2002); Acciai Speciali Terni S.p.A., Slip Op. 2002-10 (CIT 2002); ILVA Lamiere E Tubi S.R.L. v. United States, 196 F. Supp. 2d 1347 (CIT 2002). In another case, Acciai Speciali Terni S.p.A. v. United States, 206 F. Supp. 2d 1344 (CIT 2002), affd., Slip Op. 2002-82 (CIT 2002), the judge affirmed the Department's "same person" methodology.

All of these cases, however, once final, are subject to further appeal. Therefore, notwithstanding Usinor's arguments regarding the inappropriateness of our "same person" methodology, until there is a final and conclusive decision regarding the legality of the Department's change-in-ownership methodology in these cases, we will continue to apply that methodology (as we did in the Preliminary Determination) for purposes of the final results.

Comment 2: Appropriate AUL for Usinor

Respondent's Argument: Usinor argues that its 12-year, company-specific AUL is the appropriate AUL for the 1988 FIS Bonds because this AUL was calculated in accordance with the Department's instructions and based upon record evidence, differs by more than one year from the AUL in the IRS Tables, and was verified. Usinor contends that the Department must adhere to its regulations and rely upon this record AUL evidence, rather than on the outdated 14-year AUL found in French Certain Steel.

Usinor argues that the Department's rationale for ignoring its regulations is that it has already assigned a 14-year allocation period to the conversion of FIS bonds that was based on information more contemporaneous with the bestowal of the subsidy. This rationale, according

to Usinor, is empty because, in addition to reflecting an unsustainable disregard of its regulations, the Department's use of a 14-year AUL in this case is inconsistent with court rulings mandating the use of a company-specific allocation period based upon record evidence (citing to British Steel plc. v. United States, 879 F. Supp. 1254, 1396 n.51 (CIT 1995)) ("British Steel"). Usinor contends that, while the regulations mention certain exceptional situations in which the Department can use another allocation period, no exception is made for a previously allocated non-recurring subsidy.

In addition, Usinor argues that lack of a defensible rationale for the Department's stated practice of not altering a previously allocated subsidy in subsequent investigations is shown by its willingness to change the benefit stream in other respects (i.e., the reliance upon 19 CFR 351.524 to use a different discount rate than the one used in French Certain Steel and French Stainless, and thereby change the benefit stream across proceedings). Usinor claims that the Department cannot pick and choose which regulations it will apply and which it will ignore.

Usinor also argues that treating an allocation period as an immutable determination that cannot be revisited in a subsequent investigation involving a different time period and a product not currently subject to a countervailing duty order undermines the integrity of the later investigation by failing to allocate all non-recurring subsidies found in accordance with the record evidence.

Finally, Usinor states that the Department's practice of calculating the company-specific AUL based on data from the POI and the nine previous years is reasonable, since the objective is to determine the benefit during the POI. Thus, according to Usinor, selecting data from years preceding and including the POI is a reasonable means of determining the temporal scope of the investigation and the duration of the benefits from any non-recurring subsidies found to have been received during that period. Consequently, Usinor argues, the Department's assertion that the 14-year AUL calculated in French Certain Steel is somehow better because it was based on data contemporaneous with the receipt of subsidies is baseless.

Petitioners' Argument: The petitioners contend that Usinor wants to amortize benefits from the 1988 FIS bonds conversion over a period other than the 14-year company-specific AUL used in the Preliminary Determination on the grounds that its AUL by the late 1990s had declined from where it had been at the time of bestowal. Granting this request, the petitioners claim, would be unlawful in light of the statutory requirement to offset the "net countervailable subsidy." The petitioners claim that suddenly curtailing the benefit stream before 14 years have elapsed would mean that a portion of the net countervailable subsidy would never be subject to offset. This is, according to the petitioners, the primary reason why the Department has had an unambiguous policy against re-amortizing subsidies, thereby recognizing the critical distinction between the allocation period for a company (which can change over time) and the allocation period for a particular subsidy (which cannot).

Citing to various prior proceedings, the petitioners contend that the Department has repeatedly confirmed that the AUL regulation does not apply, and was never meant to apply, to previously-

allocated subsidies. According to the petitioners, the Department's policy against re-amortizing subsidies is based on the need to achieve consistency within and across proceedings, and has traditionally applied irrespective of the source of the previously-established allocation period.

The petitioners claim that the Department's questionnaire requests information regarding the allocation period because it is relevant in determining how far back the agency would look for new non-recurring subsidies. According to the petitioners, the Department made clear in the questionnaire that it had no intention of using this information to re-amortize previously allocated subsidies.

Finally, regarding Usinor's argument that the 14-year AUL is not based on record evidence, the petitioners claim that Usinor really requests that the Department rely on post-bestowal evidence. Use of such evidence, according to the petitioners, would violate the cardinal countervailing duty principle that subsequent events cannot determine the existence or amount of a subsidy. The petitioners claim that the Department has stated that the statute not only does not require, but also does not permit the amount of a subsidy, including the allocated benefit stream, to be re-evaluated based on post-bestowal events (citing to e.g., General Issues Appendix to Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37225, 37263 (July 9, 1993)). Instead, the petitioners argue, the allocation of a subsidy is dependent on the likely effects of the subsidy, not its actual effects, and is immutably fixed at the moment of bestowal. Allowing a post-bestowal event to influence the allocation of a subsidy would require, the petitioners contend, tracing, and countervailing, the subsidy's competitive effects rather than the subsidy itself. The petitioners state that Congress has unequivocally said that countervailing duty determinations are not to be based on the effects of a subsidy.

Department's Position: We disagree with Usinor that we should use a 12-year AUL calculated for this investigation.

Prior to 1995, the Department allocated non-recurring subsidies over the AUL from the IRS Tables as an irrebuttable presumption. In 1995, in British Steel, the CIT found that the Department's use of an AUL from the IRS Tables conflicted with Congress' intent because it did not reflect the actual commercial and competitive benefit of the subsidies to the recipient of the subsidy. In the redetermination pursuant to the remand in British Steel, the Department abandoned the use of an AUL from the IRS Tables altogether in favor of allowing companies to calculate company-specific AULs. See British Steel plc v. United States, 929 F. Supp. 426, 433-35 (CIT 1996) ("British Steel II"). This company-specific allocation methodology was affirmed by the CIT. Id. at 439.

In applying this new methodology in cases following British Steel II, the Department found that a company-specific AUL allocation methodology, by itself, was more burdensome than envisioned in some cases. See Countervailing Duties; Final Rule, 63 FR 65348, 65396 (November 25, 1998) ("1998 CVD Regulations"). As a result, in the 1998 CVD Regulations, we again incorporated the IRS Tables into our allocation methodology because of its consistency,

predictability, and simplicity. Id. Our regulations require that we presumptively use the AUL listed in the IRS Tables, unless a party claims and establishes that (1) the IRS Tables do not reasonably reflect the recipient company's AUL or the country-wide AUL for the industry under investigation and (2) the difference between the two AULs is significant (i.e., different by one year or more). 19 CFR 351.524(d)(2)(i) and (ii). Where the presumption is rebutted, we will use the company's own AUL or the country-wide AUL as the allocation period. Id.

Parallel with the adoption of this regulation, we developed a practice of relying on previously calculated AULs, i.e., once a subsidy had been allocated over a particular AUL, we used the same AUL for that subsidy in later segments of the same proceeding and in other proceedings involving the same company (absent evidence of changed circumstances regarding the initial AUL calculation). See, e.g., Certain Carbon Steel Products from Sweden: Final Results of Countervailing Duty Administrative Review, 62 FR 16549, 16549-50 (April 7, 1997) ("Swedish Certain Steel") (used the same AUL in later segments of the same proceeding); French Stainless, 64 FR at 30778 (used the same AUL across proceedings involving the same subsidy and company).

In Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany, 67 FR 55808 and accompanying Issues and Decision Memorandum at Comment 1 (August 30, 2002), we stated our refined practice of relying on previously calculated AULs in light of several considerations. *First*, our regulation is clear in requiring that the Department give parties in each investigation the opportunity to rebut the presumption in favor of the IRS Tables. This is true even if parties previously have not attempted to rebut, were unsuccessful in rebutting, or never had the opportunity to rebut the presumption. *Second*, once the presumption to use the AUL from the IRS Tables has been rebutted and a particular subsidy has been allocated using a company-specific or country-wide AUL, we need not revisit the AUL determination even in subsequent proceedings (unless there is evidence that we miscalculated the initial AUL). This is because the previously-calculated, company-specific AUL would be based on data more contemporaneous with the bestowal of the subsidy and, hence, would provide a more accurate measure of the benefit than newer data. See Certain Cut-to-Length Carbon-Quality Plate from France, 64 FR 73277, 73293 (December 29, 1999).

Third, we do not believe we can change the AUL used for allocating a particular subsidy in different segments of the same proceeding. This is because the Department amortizes a subsidy equally to each year of the allocation period using the AUL set in the investigation. If we were to decrease the AUL in a later segment of the same proceeding, we would find that not enough had been countervailed in preceding years (under-countervailing). Similarly, if we increased the AUL in a later segment of the same proceeding, we would find that too much was countervailed in preceding years (over-countervailing). Either outcome would violate our statutory obligation to impose countervailing duties in the amount of the net subsidy. Also, the Department has stated that it would be unreasonable and impractical to re-amortize subsidies in different segments of the same proceeding. See, e.g., Industrial Phosphoric Acid from Israel: Final

Results of Countervailing Duty Administrative Review, 63 FR 13626, 13627 (March 20, 1998).

The reasons for not changing an AUL within a proceeding do not, however, apply across proceedings, i.e., when the Department is investigating the same subsidy to the same company, but in a different proceeding. In these situations, because our regulation requires that we allow the presumption in favor of the IRS Tables to be rebutted in each investigation, and because a different AUL in a different proceeding does not lead to over- or under-countervailing, we will not rely on the previously-calculated AUL, unless that AUL was a company-specific or country-wide AUL which differed significantly from the AUL in the IRS Tables and was calculated closer in time to the bestowal of the subsidy.

In light of the above considerations, we refined our AUL selection methodology to follow these steps:

(1) Establish the AUL from the IRS Tables for the industry under investigation in each investigation;
(2) If the presumption to use the AUL from the IRS Tables has not previously been rebutted for a subsidy, with a *significantly-different, company-specific or country-wide AUL*, we will evaluate in each investigation any evidence that a company-specific AUL varies significantly from the AUL in the IRS Tables. This is true even if parties previously have not attempted to rebut, were unsuccessful in rebutting, or never had the opportunity to rebut. If the difference is significant (i.e., different by one year or more), we will allocate the subsidy over the company-specific or country-wide AUL. If not, we will allocate the subsidy over the presumed AUL from the IRS Tables.
(3) Once the presumption to use the AUL from the IRS Tables has been rebutted, and an untied subsidy is allocated over a *significantly-different, company-specific or country-wide AUL*, we will continue to allocate that subsidy over the same AUL in future proceedings for the same respondent (unless there is evidence that we miscalculated the initial AUL).
(4) In later segments of the same proceeding, *regardless of how that previous AUL was determined*, we will continue our longstanding practice of allocating the subsidy over the previous AUL.

In the remand redetermination pursuant to court remand in British Steel, we calculated a company-specific AUL for Usinor of 14 years (an AUL that is significantly different from the AUL in the IRS Tables). See British Steel II, 929 F. Supp at 434. Therefore, the presumption to use the AUL from the IRS Tables has been previously rebutted. Consistent with the AUL selection methodology outlined above, because we are already allocating certain of Usinor's non-recurring subsidies over a 14-year, significantly-different, company-specific AUL, we will continue to allocate those same subsidies over the same 14-year AUL in this investigation.

Regarding Usinor's argument that we should rely on record evidence in making the AUL determination, we find that we already made a company-specific AUL determination in a prior proceeding.

Usinor also argues that our willingness to use a different discount rate to allocate subsidies (and thereby change the benefit stream) means that we should also be willing to use a different AUL, even if it means the benefit stream would change. As noted above, we are willing to use a different AUL in different proceedings involving the same respondent. However, once an AUL has been established for a respondent and for certain subsidies, that AUL is more contemporaneous with the bestowal of the subsidy. Therefore, in those situations (as in this case), we will continue to use that same AUL in other proceedings.

Regarding Usinor's argument that the Department's reasoning for using the 14-year AUL from French Certain Steel (because it was based on data contemporaneous with the receipt of the subsidy) is baseless, we find this an incorrect statement of the Department's position. We agree with Usinor that an AUL determines the temporal scope of the investigation and the duration of benefits from non-recurring subsidies found to have been received during that period. It is precisely because of this, however, that we use in current proceedings the AUL determined in a previous proceeding. In other words, the previously determined AUL will always be closer in time to the bestowal of the subsidy than any new AUL based on more recent data and, therefore, better reflect the duration of the benefits from those subsidies.

Finally, Usinor did not receive any new non-recurring benefits that are not already being allocated in a prior proceeding. Therefore, because there is nothing new to allocate in this investigation, we do not need to address whether Usinor appropriately calculated its AUL for this investigation.

Comment 3: SODI Advances

Petitioners' Argument: The petitioners contend that the Department verified that Usinor recorded its SODI advances as incoming subsidies, and never repaid them. These verification findings, according to the petitioners, should decisively resolve any debate over countervailability. The petitioners argue that Usinor has never provided evidence to substantiate its claim that it was merely a conduit for aid, and that it has never shown that the benefit from the SODI advances is tied to non-subject merchandise. Instead, the petitioners claim these SODI advances were grants to Usinor which were loaned to Usinor subsidiaries. Further, the petitioners argue that the Department would be justified in resorting to facts available in light of Usinor's refusal to answer the Department's questions in the original questionnaire.

Respondent's Argument: Usinor argues that the petitioners have overlooked the Department's previous decision that the SODI advances prior to 1991 were not countervailable because Usinor was merely a conduit for funds received from the GOF (citing to French Certain Steel, 58 FR at 37310-11). According to Usinor, the record of this investigation demonstrates that the same is

true of the post-1991 advances. Usinor argues that the petitioners did not appeal that determination, so their attempt to reargue the point should be rejected.

Department's Position: We agree with Usinor and find that the post-1991 SODIs, like the pre-1991 SODIs, are not countervailable because Usinor merely acts as a conduit for these funds. At verification, we found that SODI funding was provided to Usinor to be loaned out by SODIs to third parties. See Usinor Verification Report at 5 and GOF Verification Report at 2-3. Moreover, while Usinor did record these SODI advances in its shareholder advances account, the mere fact that these advances were recorded in this way does not mean Usinor benefitted from them. As found in the Preliminary Determination, record evidence indicates that all funds received by Usinor were loaned out. Accordingly, we find there to be no difference between the operation of this program prior to 1991 and after 1991 and, thus, the post-1991 advances, like the pre-1991 advances, are not countervailable.

Comment 4: Funding for Electric Arc Furnace and Myosotis Projects

Petitioners' Argument: The petitioners argue that the electric arc furnace advances have not been repaid, and that the Myosotis advances were only partially repaid, with the remaining amount converted to a grant. Because the GOF has not demonstrated the non-specificity of these programs, the petitioners request that the Department treat these advances as countervailable and calculate benefits by treating the advances as short-term, zero-interest loans.

Respondent's Argument: The respondents did not comment on this issue.

Department's Position: While we agree with the petitioners' factual statements about these programs, as stated above in the section on "Programs Determined to be Not Countervailable: Funding for Electric Arc Furnaces and Funding for Myosotis Project," the benefits under these programs are so small that they would be expensed prior to the POI, regardless of how we treated those benefits (i.e., as grants or contingent liability loans). Therefore, we find that we do not need to determine the exact form of these benefits in order to find them not countervailable.

Comment 5: ECSC Article 56 Funding

Petitioners' Argument: The petitioners claim that Article 56 funding has previously been found to provide countervailable benefits to Usinor (citing to Final Affirmative Countervailing Duty Determinations; Certain Steel Products from France, 47 FR 39332, (September 7, 1982) ("1982 French Certain Steel")). The only issue now, according to the petitioners, is whether Usinor used the program during the POI. Citing to the Usinor Verification Report, the petitioners note that funds were made available to Usinor during the POI.

Respondent's Argument: Usinor replies that this Article 56(a) funding, which like the SODI advances, was merely passed on by Usinor to an unrelated beneficiary via SODI. Accordingly, Usinor argues that this funding is not countervailable.

Department's Position: We agree with Usinor. At verification, we found that Usinor was merely a conduit for benefits from the ECSC to unrelated third parties and that the Article 56(a) funding is disbursed through the SODIs. See Usinor Verification Report at 6. The European Commission ("EC") reported the same fact. See EC December 17, 2001, Questionnaire Response, at "Program Specific Questions: ECSC Article 56 Funding." As stated in that report, a credit line was made available to Usinor under this program. Id. However, this credit line was established to provide funding to the SODIs, which then loan the funds to third-parties. Id. Repayment of these loan funds is made by the third parties to the SODI, which then repays Usinor. Id. Usinor uses these funds to repay the drawdown of its credit line. Id. There is no evidence that Usinor keeps any funds from this program. Thus, we find that Usinor is not the beneficiary of these loans, but merely a conduit for loan funds.

The petitioners, citing to 1982 French Certain Steel, state that Article 56 funding is countervailable. In that determination, however, we found that ECSC industrial investment loans and guarantees, in general, are countervailable to the extent the loan was made at preferential interest rates, or if the guarantee enabled the loan recipient to obtain a preferential interest rate. 1982 French Certain Steel, 47 FR at 39334. However, because we find that Usinor was not the beneficiary of the Article 56(a) loans, we find that Usinor did not benefit from any preferential interest rates. Because loan funds only pass through Usinor, if a benefit did exist, it would reside in the ultimate loan recipient (i.e., the party that received the loan from the SODI).

Comment 6: Appropriate Sales Value

Petitioners' Argument: The petitioners claim that at verification Usinor admitted that the sales data it presented as "FOB" values in its questionnaire response actually had some amount of marine insurance costs included (resulting in a value that is not an FOB value). The petitioners request that we correct the reported FOB value for marine insurance.

Respondent's Argument: The respondents did not comment on this issue.

Department's Position: We agree with the petitioners. The Department's original questionnaire requested that Usinor provide its sales values on an FOB basis. See Original Questionnaire, dated November 2, 2001, at III-4. At verification, we found that Usinor did not deduct from its reported sales values an amount for marine insurance. See Usinor Verification Report at 3. Because an FOB value would not include marine insurance, we deducted from Usinor's total reported sales value an amount for this insurance, as stated in the Usinor Verification Report. In addition, we found at verification that Usinor did not deduct the correct amount of transportation expense to arrive at an FOB value. See Usinor Verification Report at 3. For the final determination, we used the corrected FOB value in calculating subsidy rates.

Comment 7: 1995 Capital Increase

Petitioners' Argument: The petitioners renew for the final determination their Preliminary Determination request to countervail the 1995 FF 5 billion capital increase.

Respondent's Argument: The respondents did not comment on this issue.

Department's Position: The petitioners have provided no new information on this issue which would warrant a reconsideration of our finding in the Preliminary Determination that this capital increase is not countervailable. See 67 FR at 9668-69. Therefore, for the same reasons as in the Preliminary Determination, we continue to find that this capital increase did not provide a countervailable subsidy to Usinor.

Comment 8: ECSC Article 55 Benefits and Professional Training Grant

Respondent's Argument: Usinor claims that the Department previously determined that ECSC Article 55 research grants were not countervailable (citing to French Certain Steel, 58 FR at 37312). Accordingly, Usinor requests that the Department exclude the amount of the ECSC Article 55 research grants from the total countervailable amount of the investment/operating subsidy.

Usinor also claims that the Department failed to exclude a professional qualification grant in calculating the total countervailable amount from investment/operating subsidies. This professional qualification grant, according to Usinor, is a non-countervailable worker training grant, and was recently not included in the subsidy calculation in Stainless Steel Sheet and Strip in Coils from France: Preliminary Results of Countervailing Duty Administrative Review, 67 FR 31774 (May 10, 2002).

Petitioners' Argument: The petitioners did not comment on this issue.

Department's Position: We agree with Usinor. The finding in French Certain Steel that Article 55 benefits are not countervailable was because 1) the results of the research and development funded by the program were made public and 2) this program, since 1986, has been funded solely through levies on steel producing companies. 58 FR at 37312.

The "publicly available test" was described in 19 CFR 355.44(l) of the Department's 1989 Proposed Regulations. Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989). However, as we state in the 1998 CVD Regulations, we did not retain this publicly available test in the current regulations because we found it to be inconsistent with the concept of benefit which underlies the Act. See 63 FR 65348, 65388 (November 25, 1998). Accordingly, the first reason for finding the program countervailable in French Certain Steel (i.e., the fact that the results were made publicly available) is no longer a valid basis for finding this program not countervailable.

However, the second reason for finding this program not countervailable (i.e., that this program is solely funded by steel companies) remains valid. Because funding for the program comes solely from coal and steel companies, as found in French Certain Steel, we find no benefit to the recipient. No new information or evidence of changed circumstances has been received to warrant a reconsideration of our finding in French Certain Steel. Therefore, because steel companies do not receive a benefit, this program not countervailable. Accordingly, we have deducted the amount of Article 55 benefits from the total amount of investment/operating subsidies in calculating the subsidy rate.

We also agree with Usinor regarding the exclusion of the professional training grant from the total amount of investment/operating subsidies. Worker training grants were previously found not countervailable in French Stainless. No new information or evidence of changed circumstances has been received to warrant a reconsideration of our previous finding. Therefore, because the professional qualification grant is a worker training grant, it is not countervailable.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related subsidy calculations accordingly. If these recommendations are accepted, we will publish the final determination in the Federal Register.

AGREE _____ DISAGREE _____

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Faryar Shirzad
Assistant Secretary for
Import Administration

_____

Date