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First Sunset Review
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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for Final Results of Expedited
Sunset Reviews of the Countervailing Duty Orders on Certain Hot-
Rolled Carbon Steel Flat Products from Argentina, India,
Indonesia, South Africa, and Thailand

Summary

We have analyzed the responses of interested parties in the expedited sunset reviews of the countervailing duty (CVD) orders on certain hot-rolled carbon steel flat products (hot-rolled steel) from Argentina, India, Indonesia, South Africa, and Thailand. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues that we are addressing in this expedited sunset review:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidy

History of the Orders

ARGENTINA

On September 11, 2001, the Department of Commerce (the Department) published in the Federal Register the CVD order on hot-rolled steel from Argentina. See Notice of Countervailing Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, 66 FR 47173 (September 11, 2001) (Argentina Order). In the final determination of the investigation, covering the period January 1, 1999, through December 31, 1999, the Department found an estimated net

countervailable subsidy rate of 41.69 percent for Siderar Sociedad Anomina Industrial & Commercial (Siderar) and 41.69 percent for “all others” based on the following countervailable programs: Equity Infusions Bestowed from 1986 through 1990, Government of Argentina (GOA) Assumption of SOMISA Debt, Relief from Liquidation Costs, Additional Subsidies From Reorganization/Privatization Under Decree 1144/92, Investment Commitment, Rebate of Indirect Taxes (Reembolso), Pre- and Post-Shipment Export Financing, and Zero-Tariff Turn Key Bill. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, 66 FR 37007 (July 16, 2001) (Argentina Final Determination)

The Department initiated the first administrative review of Siderar, covering the period of review (POR) January 1, 2001, through December 31, 2001. However, that review was rescinded due to Siderar’s lack of shipments during the POR. See Notice of Intent to Rescind Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, 68 FR 55030 (September 22, 2003).

There have been no administrative reviews or changed circumstances reviews of this order, pursuant to sections 751(a) and (c) of the Tariff Act of 1930, as amended (the Act).

INDIA

On December 3, 2001, the Department published in the Federal Register the CVD order on hot-rolled steel from India. See Notice of Amended Final Determination and Notice of Countervailing Duty Orders: Certain Hot-Rolled Carbon Steel Flat Products from India and Indonesia, 66 FR 60198 (December 3, 2001) (India and Indonesia Order). In the final determination, the Department found an estimated net countervailable subsidy rate of 8.35 percent for Essar Steel Limited (Essar), 31.94 percent for Ispat Industries Limited (Ispat), 18.45 percent for Steel Authority for India Limited (SAIL), 9.26 percent for Tata Iron and Steel Company Limited (TISCO), and 16.17 for “all others.” See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India, 66 FR 49635 (September 28, 2001) (India Final Determination), as amended by India and Indonesia Order. These rates were based on the following countervailable programs: Pre-Shipment and Post-Shipment Export Financing, Duty Entitlement Passbook Scheme, Advance Licenses, Special Import Licenses (SILs), Export Promotion Capital Goods Scheme (EPCGS), Loans from the Steel Development Fund (SDF) Fund, Government of India (GOI) Forgiveness of SDF Loans Issued to SAIL, GOI Forgiveness of Other Loans Issued to SAIL, Loan Guarantees from the GOI, and Exemption of Export Credit from Interest Taxes. See India Final Determination. These rates were adjusted for cash deposit purposes to reflect the Department’s determination that two programs (SILs and Export Credit from Interest Taxes) were terminated. The adjusted rates were 8.28 percent for Essar, 31.89 percent for Ispat, 18.27 percent for SAIL, 9.17 percent for TISCO, and 16.10 percent for “all others.” See India Final Determination.

The first administrative review of the CVD order covered the POR of April 20, 2001, through December 31, 2002, and one company, Essar. In the final results of the review, the Department calculated a net subsidy rate of 1.69 percent for the period April 20, 2001, through December 31, 2001, and a rate of 16.88 percent for the period of January 1, 2002, through December 31, 2002. See Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 69 FR 26549 (May 13, 2004) (India 1st Admin Review). These rates were based on the following countervailable programs: Pre-Shipment Export Financing, EPCGS, Bombay Relief Undertaking Act (BRU), and Duty Entitlement Passbook Scheme. See id.

The second administrative review conducted by the Department covered the period January 1, 2004, through December 31, 2004, and one company, Essar. In the final results of the review, the Department calculated a net subsidy rate of 4.56 percent for Essar. See Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 71 FR 28665 (May 17, 2006) (India 2nd Admin Review). This rate was based on the following countervailable programs: EPCGS, State Government of Gujarat (SGOG) Tax Incentives, the BRU Act, and the Sale of High-Grade Iron Ore for Less than Adequate Remuneration. See id.

The Department initiated the third administrative review on Essar, covering the POR of January 1, 2005, through January 31, 2005. See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 71 FR 5241 (February 1, 2006). However, that review was rescinded due to Essar's lack of shipments during the POR. See Notice of Rescission of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 71 FR 40699 (July 18, 2006).

INDONESIA

On December 3, 2001, the Department published in the Federal Register the CVD order on hot-rolled steel from Indonesia. See India and Indonesia Order. In the final determination of the investigation, covering the period January 1, 1999, through December 31, 1999, the Department found an estimated net countervailable subsidy rate of 10.21 percent for P.T. Krakatau Steel (Krakatau) and 10.21 percent for "all others" based on the following countervailable programs: Government of Indonesia (GOIA) Equity Infusions, Two Step Loan. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Indonesia, 66 FR 49637 (September 28, 2001) (Indonesia Final Determination).

There have been no administrative reviews or changed circumstances reviews this order under sections 751(a) or (b) of the Act.

SOUTH AFRICA

On December 3, 2001, the Department published in the Federal Register the CVD order on hot-rolled steel from South Africa. See Notice of Countervailing Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From South Africa, 66 FR 60201 (December 3, 2001) (South Africa Order). In the final determination of the investigation, the Department found an estimated net countervailable subsidy rate of 5.76 percent for Saldanha Steel (Pty.) Ltd. (Saldanha)/Iskor Ltd. (Iskor), and 5.76 percent for “all others” based on the following countervailable programs: Section 37E Income Tax Act 1991, Industrial Loan Financing, Loan Guarantees, and Wharfage Fees for Exports. The Department determined that the net countervailable subsidy for Highveld was de minimis (0.45 percent) and therefore, Highveld was excluded from the order. See Amended Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From South Africa, 66 FR 57706 (November 16, 2001) (South Africa Amended Final Determination).

There have been no administrative reviews or changed circumstances reviews of this order, pursuant to sections 751(a) and (c) of the Act.

THAILAND

On December 3, 2001, the Department published in the Federal Register the Notice of Countervailing Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 60197 (December 3, 2001) (Thailand Order). On October 3, 2001, the Department published in the Federal Register its final determination on hot-rolled steel from Thailand. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (Thailand Final Determination). In the final determination of the investigation, the Department found an estimated net countervailable subsidy rate of 2.38 percent for Sahaviriya Steel Industries Public Company Limited (SSI) and 2.38 percent for “all others” based on the following countervailable programs: (1) Provision of electricity for less than adequate remuneration; and (2) Incentives under the Investment Promotion Act (IPA): (a) Duty exemptions on imports of machinery under IPA Section 28, (b) Duty reductions on imports of raw and essential materials under IPA Section 30, (c) Duty exemptions on imports of raw and essential materials under IPA Section 36(1), and (d) Additional tax deductions under IPA Section 35(3).

The Department received timely requests for administrative reviews for the periods January 1, 2002, through December 31, 2002, and January 1, 2003, through December 31, 2003, and initiated these reviews. See notices on Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 69 FR 3117 (January 22, 2004) and 70 FR 4818 (January 31, 2005). However, these reviews were subsequently rescinded due to the withdrawal of requests from the parties. See Certain Hot-Rolled Carbon Steel Flat Products from

Thailand; Notice of Rescission of Countervailing Duty Administrative Review, 69 FR 20861 (April 19, 2004), and Notice of Recission of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 70 FR 31425 (June 1, 2005).

There have been no administrative reviews or changed circumstances reviews of this order, pursuant to sections 751(a) and (c) of the Act.

Background

On August 1, 2006, the Department published in the Federal Register the notice of initiation of the first five-year sunset reviews of the CVD orders on certain hot-rolled carbon steel flat products (hot-rolled steel) from Argentina, India, Indonesia, South Africa, and Thailand, pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Reviews, 71 FR 43443 (August 1, 2006) (Initiation of First Sunset Reviews). With respect to each of these orders, the Department received notices of intent to participate from United States Steel Corporation (U.S. Steel), Mittal Steel USA Inc. (Mittal USA), Nucor Corporation (Nucor), Gallatin Steel Co., IPSCO Steel Inc. (IPSCO), Steel Dynamics, Inc. (collectively, domestic interested parties)¹, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (USW), within the deadline specified in 19 CFR 351.218(d)(1)(i). Domestic interested parties and USW claimed interested party status under sections 771(9)(C) and (D) of the Act, as U.S. producers and a certified union engaged in the manufacture, production, or wholesale of hot-rolled steel in the United States.

On August 31, 2006, the Department received complete substantive responses from the domestic interested parties within deadline specified in 19 CFR 351.218(d)(3)(i). We did not receive responses from respondent interested parties (government or company) in the reviews of the orders on Argentina, India, Indonesia, South Africa, and Thailand. In accordance with 19 CFR 351.218(e)(1)(ii)(C)(1), the Department notified the International Trade Commission (ITC) that respondent interested parties provided inadequate responses to the Initiation of First Sunset Reviews. See Letter from Susan Kuhbach, Director, Office I, AD/CVD Operations, Import Administration to Robert Carpenter, Director, Office of Investigations, International Trade Commission, dated September 20, 2006. The Department, therefore, has conducted expedited sunset reviews of these CVD orders, pursuant to 19 CFR 351.218(e)(1)(ii)(B) and 351.218(e)(1)(ii)(C)(2).

¹ Domestic interested parties note U.S. Steel, Nucor, Gallatin and Steel Dynamics and IPSCO were petitioners in the original investigation. In addition, domestic interested parties note that Mittal is the successor to Weirton Steel Corporation, Bethlehem Steel Corporation and LTV Steel Company Inc., who were petitioners in the original investigation.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department has conducted these sunset reviews to determine whether revocation of the CVD orders would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigations and subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy has occurred and is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM). Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Domestic interested parties argue that revocation of the CVD orders on hot-rolled steel from Argentina, India, Indonesia, South Africa, and Thailand, would likely lead to the continuation or recurrence of countervailable subsidies. Domestic interested parties state that no administrative reviews have been conducted of the relevant orders, with the exception of India. Thus, domestic interested parties argue that the net countervailable subsidies determined in the final affirmative CVD determinations have not changed. For India, domestic interested parties argue further that during administrative reviews of the order, the Department found that Essar benefitted from three additional subsidy programs.

Further, with respect to Thailand, domestic interested parties cite the ongoing litigation and point out that the Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit have upheld the Department's determination and calculation of the subsidy rates in the investigation in all but one respect that the CIT has remanded to the Department. That remand pertains to whether the subsidy rates calculated for import duty exemptions received by SSI under the Investment Promotion Act, Section 36(1) were understated.

Department's Position:

In their substantive responses, domestic interested parties do not discuss specific programs that provided countervailable subsidies, with the exception of India.

The Department makes its likelihood determination (*i.e.*, of whether revocation of the orders is likely to lead to continuation or recurrence of countervailable subsidies) on an order-wide (country-wide) basis, although company-specific rates are reported to the ITC.

There was no participation in these reviews by any of the respondent interested parties. Further, the facts available to the Department indicate that the subsidy programs found countervailable

during the investigations continue to exist. As noted above, in the India investigation, the Department verified that two programs were terminated subsequent to the period of investigation (POI). Therefore, the Department adjusted the cash deposit rates to reflect the termination of the Exemption of Export Credit from Interest Taxes and the SIL programs. Although there were several administrative reviews of the CVD order on hot-rolled steel from India, the Department did not find that any countervailable programs terminated after the publication of the India Final Determination. Additionally, with respect to all orders, benefits from allocable countervailable subsidies continue past the end of the period of these sunset reviews. Consequently, the Department finds that countervailable subsidies would be likely to continue or recur in the event that these CVD orders were revoked.

2. Net Countervailable Subsidy Likely to Prevail

For each of these orders other than India, the domestic interested parties argue that the magnitude of the net countervailable subsidy rates likely to prevail is equal to the rates in the investigations. See Argentina Final Determination, India and Indonesia Order, South Africa Amended Final Determination, Thailand Final Determination. With respect to India, the domestic interested parties argue that the rates from the investigation are the rates likely to prevail for all companies other than Essar. The domestic interested parties argue that Essar's investigation rate should be adjusted to reflect the three additional subsidy programs discovered during administrative reviews. Therefore, domestic parties argue that the rates provided to the ITC as the net countervailable subsidies likely to prevail if the CVD orders were revoked should be equal to those established in the final determinations for all companies other than Essar, whose rate should be adjusted for the new Indian programs.

Department's Position:

The Department normally will provide the ITC the net countervailable subsidy that was determined in the investigation, as the subsidy rate likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. However, this rate may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review. See Grain-Oriented Electrical Steel from Italy: Final Results of Full Sunset Review of Countervailing Duty Order, 65 FR 65295 (November 1, 2000), and accompanying Issues and Decision Memorandum at Comment 3. For companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide the "Country-wide" rate determined in the investigation as the rate likely to prevail.

In the final and amended final determinations in the investigations, we found that the Governments of Argentina (GOA), India (GOI), Indonesia (GOIA), South Africa (GOSA), and Thailand (RTG) provided countervailable subsidies to producers of the subject merchandise. Since that time, in the absence of administrative reviews, with the exception of administrative

reviews of the CVD order on hot-rolled steel from India, the net countervailable subsidy rates have remained unchanged. As noted above, we did not receive responses from any of the respondent interested parties in these sunset reviews. Therefore, because there is no evidence that changes have been made to any of the Argentine, Indonesian, South African, or Thai subsidy programs, and absent any argument and evidence to the contrary, the Department determines that the net countervailable subsidies likely to prevail in the event of revocation of these orders would be 41.69 percent ad valorem for Siderar, and 41.69 percent ad valorem for “all others,” for Argentina; 10.21 percent ad valorem for P.T. Krakatau Steel, and 10.21 percent ad valorem for “all others,” for Indonesia; 5.76 percent ad valorem for Saldanha Steel/Isacor, and 5.76 percent ad valorem for “all others,” for South Africa; and 2.38 ad valorem for SSI, and 2.38 percent ad valorem for “all others,” for Thailand.

For India, the Department determines that three new additional subsidy programs were found countervailable during the administrative reviews of Essar. See India 1st Admin Review and India 2nd Admin Review. As a result, we have adjusted the rates for each of the companies and the “all others” to reflect the programs that were subsequently found countervailable. As a result, the net countervailable subsidies that would be likely to prevail in the event of revocation of the Indian order would be 12.90 percent ad valorem for Essar Steel Ltd., 36.51 percent ad valorem for Ispat Industries Ltd., 22.89 percent ad valorem for Steel Authority of India Ltd., 13.79 percent ad valorem for Tata Iron and Steel Company Ltd., and 20.72 percent ad valorem for “all others.” See Memorandum To File concerning Calculation of Net Countervailable Subsidy Likely to Prevail. Consistent with section 752(b)(3) of the Act, the Department will provide the ITC the net countervailable subsidy rates below in the section entitled “Final Results of Review.”

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidies, and whether the subsidies are subsidies as described in Article 3 or Article 6.1 of the WTO ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

ARGENTINA

The following programs fall within the definition of an export subsidy under Article 3.1 of the ASCM, as receipt of benefits under these programs are contingent upon export activity.

1. Rebate of Indirect Taxes (Reembolso): Under the Reembolso program, the GOA provided a cumulative tax rebate paid upon export. The rebate is calculated as a percentage of the f.o.b. invoice of the exported merchandise.

2. Pre- and Post-Shipment Export Financing: On September 24, 1982, the Central Bank of Argentina established a post-export financing program for exports under Circular OPRAC 1-9. OPRAC 1-9 loans are granted for up to 30 percent of the peso equivalent of the foreign currency in which the export transaction was paid.

3. Zero-Tariff Turn Key Bill: The GOA, through the state-owned Investment and Foreign Trade Bank (BICE), provides duty exemptions/reductions that are contingent upon export performance. In 1997, the GOA approved under the turn key bill \$207 million in tariff exemptions for 114 investment projects, including investment projects undertaken by Siderar.

The following programs do not fall within the meaning of Article 3.1 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions:

1. Equity Infusions Bestowed From 1986 Through 1990: The predecessors of Siderar received equity infusions from the GOA during the years 1986 through 1990, a period in which we found that Siderar's predecessor was unequityworthy. Specifically, we found that the equity infusions provided to SOMISA, a predecessor of Siderar, from 1986 to 1987 and additional infusions provided to SOMISA from 1988 through 1990, were countervailable. In accordance with 19 CFR §351.507(c), we treated the equity infusions as non-recurring subsidies.

2. GOA Assumption of SOMISA Debt: The GOA restructured SOMISA in 1992 by transferring SOMISA's productive assets to a company named APSA. As a part of this restructuring, the GOA directly assumed 1,237 million pesos of SOMISA's debt for which APSA should have been liable. Therefore, APSA (a predecessor of Siderar) received countervailable subsidies that benefitted subject merchandise during the period of investigation (POI). In accordance with 19 CFR §351.508(c), we treated the GOA's 1992 assumption of SOMISA's debt as a non-recurring grant.

3. Relief from Liquidation Costs: Upon transferring SOMISA's productive assets to APSA, the GOA undertook liquidation costs that should have been attributed to APSA. These costs include closing down and dismantling redundant facilities and environmental liabilities. We treated the GOA's 1992 assumption of liquidation costs as a non-recurring grant.

4. Additional Subsidies From Reorganization/Privatization Under Decree 1144/92: Pursuant to Decree 1144/92, the GOA cancelled all of the debt that SOMISA had incurred from

April 1, 1991 through January 1, 1992, exempted SOMISA from the stamp tax and from other taxes which were imposed on the transfer of assets and land, and assumed the early retirement benefit liabilities that SOMISA had incurred prior to its privatization. We treated these subsidies as non-recurring grants received in 1992.

5. Investment Commitment: At the time of the company's privatization in 1992, the GOA required all bidders to infuse \$100 million into the company within two years of the sale. This investment commitment constitutes an indirect subsidy induced by GOA action in which the GOA "directed or entrusted" the purchasers of the producer of the subject merchandise to make a \$100 million infusion into the company. We treated the investment commitment as a non-recurring grant.

INDIA

The following programs fall within the definition of an export subsidy under Article 3.1 of the ASCM, as receipt of benefits under these programs are contingent upon export activity.

1. Advance Licenses: Under India's Duty Exemption Scheme, exporters may import inputs duty-free through the use of import licenses. Using advance licenses, companies are able to import inputs "required for the manufacture of goods" without paying India's basic customs duty. Advance intermediate licenses and special imprest licenses are also used to import inputs duty-free. The GOI reported that advance intermediate licenses and special imprest licenses are not related to exports. Under 19 CFR §351.524(c), this program provides a recurring benefit because advance licenses provide import duty exemptions.

2. Duty Entitlement Passbook Scheme: India's DEPS was enacted on April 1, 1997 and enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. Exporting companies may obtain DEPS credits on a pre-export basis or on a post-export basis. Eligibility for pre-export DEPS credits is limited to manufacturers/exporters that have exported for a three-year period prior to applying for the program. All exporters are eligible to earn DEPS credits on a post-export basis, provided that the exported product is listed in the GOI's Standard Input and Output Norms (SIONs). Post-export DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. Under 19 CFR §351.524(c), we found this program provides a recurring benefit because DEPS credits provide exemption from import duties.

3. Export Promotion Of Capital Goods Scheme (EPCGS): The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to four to five times the value of the capital goods within a period of eight years. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest. The Department determines that it is appropriate to treat the

waiver of duties received by a company as a non-recurring benefit. When a company has an outstanding liability and the repayment of that liability is contingent upon subsequent events, our practice is to treat any balance on that unpaid liability as an interest-free loan.

4. Pre-Shipment and Post-Shipment Export Financing: The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or "packing credits," to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes, *i.e.*, for the purchase of raw materials, warehousing, packing, and transporting of export merchandise.

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to their lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of export proceeds from the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize export proceeds within 180 days from the date of shipment, which is monitored by the RBI. Post-shipment financing is, therefore, a working capital program used to finance export receivables. Therefore, we find that pre- and post-shipment export financing constitute countervailable export subsidies.

The following programs do not fall within the meaning of Article 3.1 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions:

1. Loans from the Steel Development Fund (SDF) Fund: The SDF was established in 1978 during a time when the steel sector in India was subject to price and distribution controls. From 1978 through 1994, India's integrated steel producers, SAIL, TISCO, Rashtriya Ispat Nigam Limited (RINL), and India Iron & Steel Company Limited (IISCO), were mandated by the GOI to increase the prices for the products they sold. The proceeds from the price increases were remitted to the SDF. Under the SDF program, companies that contributed to the fund are eligible to take out long-term loans at advantageous rates. The Department found that the loans from the SDF conferred countervailable subsidies on subject merchandise because of the GOI's substantial control over the operation of the Fund.

2. The GOI's Forgiveness of SDF Loans Issued to SAIL: In October of 1998, SAIL, which was facing financial problems, proposed a turnaround plan to the GOI, through the SDF Managing Committee, in which it outlined its financial and business restructuring. The goals of the restructuring plan were to restore the profitability and competitiveness of the company. In order to achieve these goals, SAIL included in its proposal to the GOI provisions for the forgiveness of portions of its outstanding SDF debt. As SAIL's principal shareholder, the GOI reviewed and

approved SAIL's overall restructuring plan. However, the approval for the actual forgiveness of SAIL's SDF loans lay with the SDF Managing Committee. The SDF Managing Committee issued a resolution during the POI in which it waived Rs. 50.73 billion of SAIL's SDF debt. In addition, SAIL indicated that it received from the GOI three other waivers on its SDF loans in the years immediately preceding the POI. The Department found that the GOI's forgiveness of SDF loans issued to SAIL conferred countervailable subsidies on subject merchandise. The Department treated the amount of debt forgiveness SAIL received in each year under this program as a non-recurring grant.

3. GOI Forgiveness of Other Loans Issued to SAIL: In the 1970s, IISCO, a subsidiary of SAIL, was an ailing private sector company, the management of which was assumed by SAIL in the early 1970s at the direction of the GOI. According to the GOI, pursuant to a 1978 Act of Parliament, IISCO was made a wholly-owned subsidiary of SAIL. However, IISCO continued to incur losses, and, in order to meet its capital expenditures and to finance its debts, the GOI issued loans to the company in the late 1980s and early 1990s. The GOI eventually forgave these loans as part of SAIL's financial restructuring package. The Department found that the GOI's forgiveness of additional loans issued to SAIL conferred countervailable subsidies on subject merchandise. The Department treated the amount of debt forgiveness SAIL received as a non-recurring grant.

4. Loan Guarantees from the GOI: The GOI has stated that it normally extends loan guarantees to "Public Sector Companies" in particular industrial sectors. SAIL was the only producer/exporter of subject merchandise that reported loans outstanding during the POI on which it had received GOI loan guarantees. These long-term loans were denominated in several foreign currencies. The Department found that GOI guarantees on loans provided to SAIL from commercial banks conferred countervailable benefits.

5. State Government of Gujarat (SGOG) Tax Incentives: Pursuant to a 1995 Industrial Policy of Gujarat and an Incentive Policy of 1995-2000, the SGOG offered incentives, such as sales tax exemptions and deferrals, to companies that locate or invest in certain disadvantaged or rural areas in the State of Gujarat. A company could be eligible to claim exemptions or deferrals valued up to 90 percent of the total eligible capital investment. These policies exempt companies from paying sales tax on the purchases of raw materials, consumable stores, packing materials and processing materials. There are two schemes available under this policy: Pioneer and Prestigious. To be eligible for the incentives, companies must make a fixed capital investment of over 5 crores (Pioneer scheme) or 300 crores (Prestigious scheme) in a qualified under-developed area in the state of Gujarat. The amount of this eligible capital investment is linked to the amount of the incentives received over a period of eight to fourteen years, depending on the category of participation.

6. Bombay Relief Undertaking (BRU) Act: Enacted in 1958 and later amended in 1974, the BRU is a provincial law enacted by the SGOG that is intended to safeguard employment. Under the BRU, companies designated as "relief undertakings" have all litigation against them stayed for a

period of one year. In disputes between companies and their creditors, the effect is that principal and interest payments are also put on hold, as a creditor is unable to sue for collection. During the time in which litigation is stayed, the company has the opportunity to become current on its financial debts. The Department treated interest and principal payments a company would have otherwise been required to make had it not been under the protection of the BRU as interest-free short-term loans.

7. *Sale of High-Grade Iron Ore for Less than Adequate Remuneration*: The Department found that Essar's purchases of high-grade iron ore from the National Mineral Development Corporation (NMDC), a government-owned entity, were made at less than adequate remuneration. The Department determined that the government provided a financial contribution where NMDC provided a provision of a good (i.e., sales of high-grade iron ore) for less than adequate remuneration. Moreover, the Department sought to measure the adequacy of remuneration by comparing the government price to a world market price.

INDONESIA

In the case of Indonesia, there were no programs that fall within the meaning of Article 3.1 of the ASCM. The following programs do not fall within the meaning of Article 3.1 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions:

1. *GOIA Equity Infusions*: The GOIA provided various equity infusions into Krakatau and its subsidiary, Cold-Rolling Mill of Indonesia (CRMI). In 1995, the GOIA converted approximately 1.298 trillion rupiah of debt into equity. In addition, the GOIA provided Krakatau with equity infusions totaling 1.6 trillion rupiah in the five years prior to December 31, 1992.

2. *Two-Step Loan*: Pursuant to Government Regulation number 12/1969, the Ministry of Finance through Bank Indonesia, Indonesia's Central Bank, can borrow money denominated in foreign currencies to lend to Indonesian companies. Two-step loans are drawn from credit facilities (i.e., lines of credit) in the billing currencies of foreign equipment suppliers. These loans are converted into rupiah based on the exchange rate on the drawing date and carry an interest rate inconsistent with the rate a company would have received on a comparable commercial loan. Krakatau had an outstanding loan which was provided by an Austrian bank and was guaranteed by the GOI.

SOUTH AFRICA

The following program falls within the definition of an export subsidy under Article 3.1 of the ASCM, as receipt of benefits under these programs are contingent upon export activity.

Wharfage Fees for Exports: In this program, the GOSA charges lower wharfage fees for exports than for imports through all ports in South Africa, which constitutes a financial contribution because of the revenue foregone by the GOSA in the form of lower fees than would otherwise be collected. Both Highveld and Saldanha/Iscor received benefits under this program.

The following programs do not fall within the meaning of Article 3.1 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions:

1. Section 37E Tax Allowances: The GOSA enacted Section 37E of the Income Tax Act in 1991. The program was limited to investments approved between September 1991 and September 1993. In 1993 it was re-written, in that it created the negotiable tax credit certificates (NTCC), allowing taxpayers in loss positions to receive NTCCs in the amount of the cash value of the Section 37E tax depreciation (i.e., the claimed depreciation multiplied by the tax rate), and eliminated export requirements. Although construction at Saldanha Steel did not commence until early 1996, the project was submitted and approved within the deadline.

2. Industrial Loan Financing Provided by the IDC and Findevco Ltd.: The IDC and its wholly-owned subsidiary, Findevco, Ltd., provide industrial loan financing geared towards the establishment of new industrial facilities, or the expansion or modernization of existing facilities since 1940. Saldanha/Iscor obtained two such loans, one from Findevco Ltd. and the other from IDC. In this program, the two loans provided were on terms inconsistent with commercial considerations because Saldanha Steel was uncreditworthy.

3. Loan Guarantees Provided by the Industrial Development Corporation (IDC): The IDC facilitates and guarantees foreign credits for the importation of capital goods into South Africa. This program was established in 1989 and was designed to facilitate foreign lending to South African firms. IDC establishes blanket credit lines with specific foreign banks. Based on those, IDC can either act as an intermediary lending authority, borrowing funds through the credit lines from foreign banks and lending them to the S.A. firm, or the S.A. firm may negotiate its own contract loan with the foreign lender which is then guaranteed by the IDC. Any company seeking financing for the purchase of foreign capital equipment may apply to the IDC to use the program. Saldanha Steel began receiving IDC loan guarantees under this program in 1995 to finance the purchase of foreign capital equipment. Although the Department did not determine Saldanha Steel to be uncreditworthy during any of the years in which the guarantees were provided, the

information on the record illustrated that it was not a “high-quality” borrower, and therefore, applied comparable commercial guarantee facilities to calculate the benefit.

THAILAND

The following program falls within the definition of an export subsidy under Article 3.1 of the ASCM, as receipt of benefits under these programs are contingent upon export activity.

IPA Section 36(1): This is an export subsidy under which SSI receives duty exemptions on imports of raw and essential materials that are incorporated into goods for export. SSI benefits from a one percent import duty exemption on imports of steel slab.

The following programs do not fall within the meaning of Article 3.1 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions:

1. IPA Section 28: This program allowed exemptions from import duties on the importation of machinery. The exemption provided a financial contribution in the form of foregone revenue that was otherwise due to the RTG. SSI received duty exemptions from the RTG in the years 1992 through 1997.
2. IPA Section 30: This subsidy program provides duty reductions on imports of raw and essential materials that are consumed in production. The exemption provides a financial contribution in the form of foregone revenue to the RTG. SSI benefits from paying a reduced duty rate on imports of steel slab. The benefit to SSI is in the amount of import duties they would otherwise have to pay on these imports.
3. IPA Section 35(3): Under this program, promoted firms were allowed various income tax deductions and exemptions. The promoted firms were allowed to deduct on their tax returns double the cost of transportation, electricity and water for ten years after the company first derived income. These income tax deductions provide a financial contribution in the form of foregone revenue that is otherwise due to the RTG. The benefit is the amount of the revenue foregone by the RTG. SSI first benefited from this program in its tax return for 1998, filed during the POI.
4. Electricity: Provision of electricity for less than adequate remuneration. The RTG provides electricity through the Electricity Generating Authority of Thailand (EGAT), as the major generator of electricity, and then through the two major distributors Metropolitan Electricity Authority (MEA) and Provincial Electricity Authority (PEA). MEA serves Bangkok and the

surrounding areas while PEA serves the remainder of the country. The RTG maintains a uniform national tariff policy which provides that consumers in the same customer category pay the same rate regardless of whether they are in MEA's or PEA's distribution area. Even though PEA's costs of delivery are higher than MEA's, the RTG requires that there can be no difference in tariffs charged by PEA and MEA regardless of cost differences. In order to implement the uniform tariff policy, a discount was provided to PEA and a surcharge was charged to MEA on their electricity purchases from EGAT. This bulk supply tariff afforded an internal subsidy to PEA. SSI purchased electricity during the POI only from PEA. SSI, therefore, benefitted from this internal subsidy to PEA. The amount of benefit was determined to be equal to the internal subsidy.

Final Results of Review

The Department finds that revocation of the CVD orders would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:

ARGENTINA

Manufacturers/Exporters	Subsidy rate
Siderar	41.69 % <u>ad valorem</u>
All Others	41.69 % <u>ad valorem</u>

INDIA

Manufacturers/Exporters	Subsidy rate
Essar Steel Limited (Essar)	12.90 % <u>ad valorem</u>
Ispat Industries Limited (Ispat)	36.51 % <u>ad valorem</u>
Steel Authority of India Limited (SAIL)	22.89 % <u>ad valorem</u>
Tata Iron and Steel Company Limited (TISCO)	13.79 % <u>ad valorem</u>
All Others	20.72 % <u>ad valorem</u>

INDONESIA

Manufacturers/Exporters	Subsidy rate
P.T. Krakatau Steel	10.21 % <u>ad valorem</u>
All Others	10.21 % <u>ad valorem</u>

SOUTH AFRICA

Manufacturers/Exporters	Subsidy rate
Saldanha Steel/Iskor	5.76 % <u>ad valorem</u>
All Others	5.76 % <u>ad valorem</u>

THAILAND

Manufacturers/Exporters	Subsidy rate
SSI	2.38 % <u>ad valorem</u>
All Others	2.38 % <u>ad valorem</u>

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

AGREE _____ DISAGREE _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date