C-570-984
Sunset Review
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DATE: July 2, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: Wendy J. Frankel
Director, U.S. Customs and Border Protection Liaison Unit
Antidumping and Countervailing Duty Operations
Enforcement and Compliance

SUBJECT: Issues and Decision Memorandum for the Expedited First Sunset Review of the Countervailing Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China

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Summary

We have analyzed the substantive response of a domestic interested party in the first sunset review of the countervailing duty order covering drawn stainless steel sinks from the People's Republic of China (China).[1] We did not receive a response from the Government of China (GOC), nor from any other interested party. Accordingly, we conducted an expedited (120-day) sunset review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2). 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 in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of a countervailable subsidy

2. Net countervailable subsidy likely to prevail

3. Nature of the subsidy

[1] *See Drawn Stainless Steel Sinks from the People's Republic Of China: Countervailing Duty Order*, 78 FR 21596 (April 11,2013) (*Order*).

Background

On March 5, 2018, the Department of Commerce (Commerce) initiated the first sunset review of the countervailing duty order on drawn stainless steel sinks from China pursuant to section 751(c) of the Act.[2] On March 16, 2018, Commerce received a notice of intent to participate from Elkay Manufacturing Company (Elkay), a domestic interested party, within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] Elkay claimed interested party status under section 771(9)(C) of the Act as a producer of stainless steel sinks in the United States.

On April 2, 2018, Commerce received an adequate substantive response to the notice of initiation from Elkay within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We received no substantive responses from respondent interested parties with respect to the order covered by this sunset review.

On April 10, 2018, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the countervailing duty order on drawn stainless steel sinks from China.

History of the Order

On February 26, 2013, Commerce published its final determination that countervailable subsidies are being provided to producers and exporters of drawn stainless steel sinks from China.[6] We calculated estimated net countervailable subsidy rates of: 4.80 percent *ad valorem* for Guangdong Yingao Kitchen Utensils Co., Ltd. and Foshan Magang Kitchen Utensils Co., Ltd. (Yingao); 12.21 percent *ad valorem* for Zhongshan Superte Kitchenware Co, Ltd.; 12.26 percent *ad valorem* for Foshan Zhaoshun Trade Co., Ltd.; and 8.51 percent *ad valorem* for all other producers and exporters.

For the period of investigation (POI), we found the following programs provided countervailable subsidies:

1. Two Free, Three Half Program for Foreign Invested Enterprises (FIEs) - 0.29 *ad valorem* for Yingao;
2. Provision of Electricity for Less Than Adequate Remuneration (LTAR) - 0.58 percent *ad valorem* for Superte and 1.19 percent *ad valorem* for Yingao;

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[2] *See Initiation of Five-Year (Sunset) Reviews*, 83 FR 9279 (March 5, 2018).
[3] *See* Letter from Elkay "First Five-Year ('Sunset') Review of Countervailing Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China/Elkay Manufacturing Company's Notice of Intent to Participate," dated March 16, 2018.
[4] *See* Letter from Elkay "First Five-Year ('Sunset') Review of The Countervailing Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China/Substantive Response to the Notice of Initiation," dated April 2, 2018.
[5] *See* Letter to the ITC re: "Sunset Reviews Initiated on March 5, 2018," dated April 10, 2018.
[6] *See Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

3. Stainless Steel Coils for LTAR - 8.75 percent *ad valorem* for Superte and 0.87 percent *ad valorem* for Yingao;
4. Land for LTAR to Companies Located in Industrial or Other Special Economic Zones - 1.27 percent *ad valorem* for Superte and 1.22 percent *ad valorem* for Yingao;
5. Land-Use Rights Extension - 0.19 percent *ad valorem* for Superte;
6. Policy Lending to the SS Sinks Industry - 1.23 percent *ad valorem* for Superte, a countervailable subsidy rate of 0.05 percent *ad valorem* for Zhaoshun, and a countervailable subsidy rate of 0.99 percent *ad valorem* for Yingao;
7. Export Assistance Grants - 0.04 percent *ad valorem* Superte, 0.04 percent *ad valorem* for Yingao;
8. Special Funds of Guangdong Province for International Market Expansion - 0.04 percent *ad valorem* for Yingao;
9. "Two New" Product Special Funds of Guangdong Province - 0.07 percent *ad valorem* for Yingao;
10. Grant for Loan Interest (Zhongshan City) - 0.09 percent *ad valorem* for Superte;
11. Grant of Zhongshan City for Enterprises' Participation in Overseas Professional Exhibition - 0.05 percent *ad valorem* for Superte;
12. Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises - 0.01 percent *ad valorem* for Superte; and
13. Shunde Intensive Industrial Zone Administrative Fee Exemptions and Reductions - 0.09 percent *ad valorem* for Yingao.

Commerce published the countervailing duty order on drawn stainless steel sinks from China on April 11, 2013, and applied cash deposits at the rates established in the *Final Determination*.[7]

Since the issuance of the order, Commerce has completed one administrative review covering Guangdong Dongyuan Kitcheware Industrial Co., Ltd. (Dongyuan) and the period August 6, 2012 through December 31, 2013.[8] We found the following programs provided countervailable subsidies:

1. Provision of Electricity for LTAR – 1.28 percent *ad valorem* for 2012 and 0.87 percent *ad valorem* for 2013;
2. Stainless Steel Coils for LTAR - 2.42 percent *ad valorem* for 2012 and 8.81percent *ad valorem* for 2013;
3. Policy Lending to the Stainless Steel Sinks Industry - 0.20 percent *ad valorem* for 2012 and 0.15 percent *ad valorem* for 2013; and
4. Technology Award from Xingtan Bureau of Economy - 0.1 percent *ad valorem* for 2012

[7] *See Order*.
[8] *See Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission in Part; 2012–2013*, 80 FR 69368(November 10, 2015) finding subsidy rates of 3.91 for 2012 and 9.83 for 2013 for the sole respondent.

In addition, Commerce has rescinded three administrative reviews, covering 2014, 2015, and 2016, based on the timely withdrawal of the requests for review.[9] Finally, Commerce has issued two scope rulings.[10]

Scope of the Order

The merchandise covered by the order includes drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this order if they are included within the sales price of the drawn stainless steel sinks.[11] For purposes of this scope definition, the term "drawn" refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the order. Drawn stainless steel sinks are covered by the scope of the order whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the order are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as "zero radius" or "near zero radius" sinks. The products covered by this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under statistical reporting number 7324.10.0000 and 7324.10.0010. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

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[9] *See Drawn Stainless Steel Sinks from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 20*14, 80 FR 48809 (August 14, 2015); *Drawn Stainless Steel Sinks from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2016* {sic}, 81 FR 5626 (September 23, 2016); *Drawn Stainless Steel Sinks from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review, 2016*, 82 FR 36734 (August 7, 2017).

[10] *See Notice of Scope Rulings*, 81 FR 14421 (March 17, 2016) announcing our finding in response to Component Hardware Group Inc. that Industrial Handwashing Sinks are within the scope of the order because they possess all the physical characteristics of subject drawn stainless steel sinks; July 2, 2015. *See also Notice of Scope Rulings*, 79 FR 73552 (December 11, 2014) announcing our finding in response to Speakman Company's request that Speakman's industrial bowls (that are used in Speakman's Safety Products such as Speakman eyewashes, Speakman eye/face washes, and Speakman's combination units or decontamination stations that include a shower and eyewash) are outside the scope of the orders because Speakman's industrial bowls have different ultimate purchasers, a different ultimate use, different channels of trade, and different manners in which the products are advertised or displayed than subject merchandise; July 24, 2014.

[11] Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of this order if they are not included within the sales price of the drawn stainless steel sinks, regardless of whether they are shipped with or entered with drawn stainless steel sinks.

Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the order would likely lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, Commerce shall consider: (1) the net countervailable subsidy, as determined in the investigation and any subsequent reviews, and (2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, Commerce shall provide the ITC with the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, Commerce shall provide the ITC with 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 Agreement on Subsidies and Countervailing Measures (SCM Agreement).

Discussion of the Issues

Below we address the comments of the interested party.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Party Comments[12]

Elkay notes that Commerce determined substantial countervailable subsidies in the original investigation, which continued in the ensuing administrative reviews. Therefore, Elkay argues that application of the factors delineated in the statute and *Sunset Policy Bulletin*[13] dictates a determination that revocation of the countervailing duty order would be likely to lead to a continuation or recurrence of countervailable subsidies.

Commerce's Position:

As stated above, in determining the likelihood of continuation or recurrence of a countervailable subsidy, section 752(b)(1) of the Act directs Commerce to consider the net countervailable subsidy determined in the investigation and subsequent reviews and whether there has been any change in a program found to be countervailable that is likely to affect that net countervailable subsidy. According to the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (*SAA*), Commerce will consider the net countervailable subsidies in effect after the issuance of an order and whether the relevant subsidy programs have been continued, modified, or eliminated.[14] The *SAA* further states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.[15] The presence of programs that have not been used, but have not been terminated without residual

[12] *See* Elkay Substantive Response at 5-7.
[13] *See Policies Regarding Conduct of Five Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin).*
[14] *See SAA*, H.R. Doc. 103-316, vol. 1 (1994), at 888.
[15] *Id*.

benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.[16] Where a subsidy program is found to exist, Commerce will normally determine that revocation of the relevant order would likely to lead to continuation or recurrence of a countervailable subsidy, regardless of the level of subsidization.[17]

Consistent with prior determinations, two conditions must be met for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: (1) the program must be terminated, and (2) any benefit stream must be fully allocated.[18] Commerce has also stated that, in order to determine whether a program has been terminated, we will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program.[19] Commerce normally expects a program to be terminated by means of the same legal mechanism used to institute it.[20] Where a subsidy is not bestowed pursuant to a statute, regulation or decree, Commerce may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence that was not part of a broader government program.[21]

In the investigation, Commerce found that countervailable subsidies were being provided to Chinese exporters and producers of drawn stainless steel sinks under the 13 programs listed above. In the only administrative review completed since the implementation of the order, Commerce found that respondents continued to receive countervailable subsidies under three of these 13 programs, as well as an additional program. No party submitted evidence to demonstrate that these countervailable programs have expired or been terminated, and there is no information on the record of this proceeding indicating any changes to the programs found countervailable during the investigation and administrative review. Absent argument or evidence to the contrary, we find that these countervailable programs continue to exist and be used. Therefore, Commerce determines that there is a likelihood of continuation or recurrence of countervailable subsidies.

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[16] *See, e.g., Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

[17] *Id*.

[18] *See, e.g., Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006), and accompanying Preliminary Decision Memorandum at 5-7, unchanged in *Corrosion-Resistant Carbon Steel Flat Products from France; Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006).

[19] *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Full Third Sunset Review of Countervailing Duty Order*, 76 FR 70411 (November 14, 2011), and accompanying Issues and Decision Memorandum at Comment 1.

[20] *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001), and accompanying Issues and Decision Memorandum at Comment 7.

[21] *See, e.g., Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order*, 76 FR 25666 (May 5, 2011), and accompanying Issues and Decision Memorandum at Comment 1.

2. Net Countervailable Subsidy Likely to Prevail

Interested Party Comments[22]

Elkay asserts that, consistent with the *SAA*, Commerce will normally select the rate determined in the original investigation, as that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. Accordingly, Elkay argues that pursuant to the principles set forth in the *SAA* and the *Sunset Policy Bulletin*[23], Commerce should report the following countervailing duty rates to the ITC: (1) 4.80 percent for Yingao and Foshan Magang Kitchen Utensils, Ltd.; (2) 12.21 percent for Zhongshan Superte Kitchenware Co., Ltd.; (3) 12.26 percent of Foshan Zhaoshun Trade Co., Ltd.; and (4) 8.51 percent for all other respondents.

Commerce's Position:

Consistent with the *SAA* and legislative history, Commerce will normally provide the ITC with the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked because, as noted by the petitioner, it is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.[24] Section 752(b)(l)(B) of the Act, however, provides that Commerce will consider whether any change in the programs which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy. Therefore, a rate calculated in the investigation may not be the most appropriate if, for example, the rate was derived, in whole or part, from subsidy programs subsequently found 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.[25]

In this sunset review, Commerce determined the company-specific countervailable subsidy rates likely to prevail based on the rates assigned in the investigation, adjusted to reflect the program that Commerce found to be countervailable in the subsequent administrative review. Therefore, consistent with Commerce's established practice for adjusting the company-specific rates in sunset reviews when warranted by findings in the intervening administrative reviews,[26] we added the appropriate rate from the one additional subsidy program countervailed in the administrative review to the net countervailable subsidy rates determined in the investigation.[27] The adjusted countervailable subsidy rates, which Commerce determines are likely to prevail upon revocation of the order, are provided in the "Final Results of Review" section of this memorandum.

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[22] *See* Elkay Substantive Response at 8.
[23]*See Sunset Policy Bulletin*.
[24] *See SAA* at 890; *see also* and H.R. Rep. No. 103-826 (1994) at 64.
[25] *See, e.g., Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62101 (October 7, 2010), and accompanying Issues and Decision Memorandum at Comment 2.
[26] *See, e.g., Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, and Thailand: Final Results of Expedited Five-Year (Sunset) Reviews of the Countervailing Duty Orders*, 71 FR 70960 (December 7, 2006) and accompanying IDM at "Net Countervailable Subsidy Likely to Prevail."
[27] *See* Memorandum to the File, "First Sunset Review Calculations," dated concurrently with this IDM.

3. Nature of the Subsidies

In accordance with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of these subsidy programs and whether these programs constitute subsidies that fall within Article 3 or Article 6.1 of the SCM Agreement. We note that Article 6.1 of the SCM Agreement expired, effective January 1, 2000.

Commerce received no comments from the government of China or other interested parties regarding the nature of the subsidy programs determined to be countervailable in the investigation or administrative review. Therefore, consistent with Commerce's findings in the *Final Determination* and the *Final Results*, we find that the following programs are prohibited subsidies within the meaning of Article 3.1 of the SCM Agreement.

Export Assistance Grants – Eligibility for receipt of grants under this program are based on actual export performance or export marketing activities of an applicant or recipient.

Special Funds of Guangdong Province for International Market Expansion - This grant program supports small- and medium-sized enterprises in Guangdong Province to expand international markets and therefore, is contingent upon export.

Grant of Zhongshan City for Enterprises' Participation in Overseas Professional Exhibition - Superte reported that it received a grant under this export-contingent program, the purpose of which, the government to China stated, is to encourage enterprises in Zhongshan City to explore international markets.

Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises - Yingao received a grant under this export-contingent program, which the government of China said supports adoption of e-commerce by foreign trade enterprises in Guangdong Province.

The programs listed below do not fall within the meaning of Article 3.1 of the SCM Agreement, but they could be subsidies described in Article 6.1 of the SCM Agreement, if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM Agreement. The subsidies could also fall within the meaning of Article 6.1 if they constitute debt forgiveness, grants to cover debt repayment, or subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review for Commerce to make such a determination. Nevertheless, we are providing the ITC with the following program descriptions.

Two Free, Three Half Program for FIEs - Under Article 8 of the FIE Tax Law, an FIE that is "productive" and scheduled to operate more than ten years is exempt from income tax in the first two years of profitability and pays income taxes at half the standard rate for the next three to five years.

Provision of Electricity for LTAR – The government of China provides electricity for LTAR.

Stainless Steel Coils for LTAR – Government of China authorities provide stainless steel coils to producers of stainless steel sinks for LTAR.

Land for LTAR to Companies Located in Industrial or Other Special Economic Zones - Record evidence showed distinctions in the government's provision of land-use rights within certain regions. Yingao purchased land-use rights with the Shunde Science and Technology Industrial Zone C. Superte acquired land-use rights with the Huangpu Food Industry Park (Huangpu Town is part of Zhongshan City).

Land-Use Rights Extension - The government of China issued Superte's land-use certificates in 2010, which effectively extended Superte's land use rights by additional years without additional consideration.

Policy Lending to the Stainless Steel Sinks Industry - A program of preferential policy lending specific to stainless steel sinks producers in the Pearl River Delta region.

Shunde Intensive Industrial Zone Administrative Fee Exemptions and Reductions - Yingao reported that it received a reduction in its land transfer fee when it purchased land use rights; a reduction that the government of China reported that only companies with industrial-use land and ancillary residential facilities-use land within an intensive industrial zone are eligible for.

Technology Award from Xingtan Bureau of Economy - The government of China stated that this program was established in 2003 to encourage enterprises and technical staffs to carry out technology innovation, so as to further promote the progress of science and technology of the town. The government of China further stated that a company designated as a "Privately-owned Science and Technology enterprise" by the provincial government and based in Xingtan Town is provided an award. Dongyuan reported that it was approved for, and received, a grant from the Technology Award from the Xingtan Bureau of Economy Program in 2012.

"Two New" Product Special Funds of Guangdong Province - Yingao reported that it received a grant under this program; however, the government of China did not respond to Commerce's original questionnaire.

Grant for Loan Interest (Zhongshan City) - Superte reported that it received a grant under this program; however, the government of China did not respond to any of the questions from Commerce's original questionnaire.

Final Results of Review

Commerce determines that revocation of the countervailing duty order on drawn stainless steel sinks from China would be likely to lead to the continuation or recurrence of countervailable subsidies at the rates listed below:

Producer/Exporter	*Ad Valorem* Subsidy Rate
Guangdong Yingao Kitchen Utensils Co., Ltd. and Foshan Magang Kitchen Utensils Co., Ltd. (Yingao)	4.90 percent
Zhongshan Superte Kitchenware Co, Ltd.	12.31 percent
Foshan Zhaoshun Trade Co., Ltd.	12.36 percent
All Others	8.61 percent

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 these final results of this expedited sunset review in the *Federal Register*.

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Agree Disagree

7/2/2018

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Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance