

DATE: December 15, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Preliminary Results of
the Full Sunset Review: Countervailing Duty Order on Stainless
Steel Plate in Coils from Belgium

Summary:

We have analyzed the substantive responses and rebuttal comments of the interested parties for the preliminary results of this full sunset review of the countervailing duty (“CVD”) order on stainless steel plate in coils (“SSPC”) from Belgium. We recommend you approve the positions we have developed in the “Discussion of the Issues” section of the memorandum. Below is the complete list of the issues in this full sunset review for which we received substantive responses from the parties.

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 Order:

On March 31, 1999, the Department of Commerce (“the Department”) published its final determination in the CVD investigation of SSPC from Belgium.¹ The Department found that the Government of Belgium (“GOB”) conferred countervailable benefits on ALZ N.V. (“ALZ”),² the sole producer that exported the subject SSPC to the United States during the period of investigation (“POI”). The Department further determined that various subsidies provided to

¹ See Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Belgium, 64 FR 15567 (March 31, 1999) (“Final Determination”).

² Subsequently known as Ugine and ALZ Belgium (“U&A Belgium”) and currently known as ArcelorMittal Stainless Belgium N.V. (“AMS”).

ALZ's parent company, Sidmar N.V. ("Sidmar"), were also attributable to ALZ.³ The CVD deposit rate calculated in the investigation was 1.82 percent for ALZ and for all manufacturers, producers, or exporters of SSPC from Belgium.⁴ On April 5, 1999, Petitioners⁵ filed a submission alleging ministerial errors pertaining to the margin calculations in the Department's Final Determination. As a result, the Department issued an amended final determination revising the cash deposit rate for ALZ and for "all others" from 1.82 percent to 2.00 percent.⁶ Following the Department's affirmative finding of subsidization and the affirmative finding of the International Trade Commission ("ITC") that unfairly traded imports had materially injured the U.S. industry,⁷ the Department published a CVD order ("CVD Order") on SSPC from Belgium on May 11, 1999.⁸

Petitioners subsequently filed a complaint with the U.S. Court of International Trade ("CIT") challenging certain findings in the Department's final affirmative CVD determination. On June 7, 2000, the CIT remanded to the Department the final CVD determination on SSPC from Belgium.⁹ On September 5, 2000, the Department issued its final results of redetermination¹⁰ The Department's remand determination was sustained by the CIT on July 18, 2001.¹¹

On March 11, 2003, as a result of litigation involving the ITC determination, the Department published an amended CVD order on SSPC from Belgium.¹²

In the investigation, the following programs were found to confer countervailable subsidies resulting in a net subsidy rate of 2.00 percent for both ALZ and the "all others."¹³

1. Regional Subsidies under the Economic Expansion Law of 1970
 - a) Investment and Interest Subsidies¹⁴

³ See Final Determination, 64 FR at 15572.

⁴ Id. at 15584.

⁵ Allegheny Ludlum Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("Petitioners").

⁶ See Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Notice of Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy and South Africa, 64 FR 25288 (May 11, 1999) ("Amended Final Determination and Order").

⁷ See Investigations Nos. 701-TA-376, 377, and 379 (Final) and Investigations Nos. 731-TA-788-793 (Final); Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan, 64 FR 25515 (May 12, 1999) (material injury with respect to hot-rolled SSPC only); Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan, Investigations Nos. 701-TA-376, 377, and 379 (Final) and 731-TA-788-793 (Final) (Remand), USITC Pub. 3541 (September 2002) (material injury with respect to cold-rolled plate on remand).

⁸ See Amended Final Determination and Order, 64 FR at 25289.

⁹ See Allegheny Ludlum Corp. v. United States, 24 CIT 452, 112 F. Supp. 2d 1141 (2000).

¹⁰ See Final Results of Redetermination Pursuant to Court Remand: Allegheny Ludlum Corp., et al. v. United States, Ct. No. 99-06-00362 (September 5, 2000).

¹¹ See Allegheny Ludlum Corp. v. United States, 25 CIT 816 (2001).

¹² See Notice of Amended Countervailing Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Italy, and South Africa, 68 FR 11524 (March 11, 2003).

¹³ See Final Determination, 64 FR at 15568-15573; Amended Final Determination and Order, 64 FR at 25288-89.

¹⁴ This program was found to be used in the investigation, but the allocation period for the grant received

- b) Accelerated Depreciation
 - c) Expansion Real Estate Tax Exemption
- 2. 1985 ALZ Share Subscriptions and Subsequent Transactions
- 3. Société Nationale de Crédit à l'Industrie ("SNCI") Loans
- 4. Belgian Industrial Finance Company ("Belfin") Loans
- 5. Industrial Reconversion Zone Program
 - a) Capital Contribution to Alfin (an ALZ subsidiary)
 - b) Exemptions from Taxes on Capital Registration and Dividend Payments to Albufin (an ALZ Subsidiary)
- 6. Subsidies Provided to Sidmar that Are Attributable to ALZ
 - a) Assumption of Sidmar's Debt
 - b) SidInvest

The Department has completed three administrative reviews of the CVD Order on SSPC from Belgium. The first administrative review was requested by Petitioners for the period September 4, 1998 through December 31, 1999.¹⁵ On August 27, 2001, the Department published the final results, finding a net subsidy rate for ALZ of 3.25 percent for 1998 and 1.78 percent for 1999 for the following countervailable programs:¹⁶

- 1. Regional Subsidies under the Economic Expansion Law of 1970
 - a) Accelerated Depreciation
 - b) Expansion Real Estate Tax Exemption
- 2. 1985 ALZ Share Subscriptions
- 3. 1987 ALZ Common Share Transaction between GOB and Sidmar
- 4. SNCI Loans
- 5. Belfin Loans
- 6. Industrial Reconversion Zones
 - a) Capital Contribution to Alfin (an ALZ subsidiary)
 - b) Exemptions from Taxes on Capital Registration and Dividend Payments to Albufin (an ALZ Subsidiary)
- 7. Conversion of Sidmar's Debt to Equity OCPC-to-PB
- 8. SidInvest
- 9. 1984 Purchase of Sidmar's Common and Preference Shares

ALZ challenged the Department's final results and, on July 11, 2003, the CIT remanded the case back to the Department.¹⁷ On December 10, 2003, the Department issued its final results of redetermination.¹⁸ As a result of this redetermination, the Department recalculated the net

under this program ended in 1997. Thus, the program was found not to be used in the initial administrative review. See Final Determination: Stainless Steel Plate in Coils From Belgium: Final Results of Countervailing Duty Administrative Review, 66 FR 45007 (August 27, 2001) ("First Review Final Results of SSPC Belgium").

¹⁵ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part, 65 FR 41942 (July 7, 2000), corrected at 65 FR 58733 (October 2, 2000) and at 65 FR 64662 (October 30, 2000).

¹⁶ See First Review Final Results of SSPC Belgium.

¹⁷ See ALZ N.V. v. United States, 283 F. Supp. 2d 1302 (CIT 2003).

¹⁸ See Final Results of Redetermination Pursuant to Court Remand : ALZ N.V. v. United States, Ct. No. 01-00834

subsidy rate for ALZ as 1.36 percent ad valorem for the period September 4, 1998, through December 31, 1998, and as 0.97 percent ad valorem for January 1, 1999, and for the period May 11, 1999, through December 31, 1999.¹⁹ On April 22, 2004, the CIT sustained the Department's remand determination in the first administrative review.²⁰ Although the Department appealed the CIT's decision to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"), the Department did not pursue the appeal and the Federal Circuit dismissed the case on October 28, 2004. On April 11, 2005, pursuant to the remand, Department published its amended final results of the first review.²¹

On April 1, 2004, the Department initiated its first sunset review of the CVD Order.²² Although the Department received substantive responses from the GOB and the Delegation of the European Commission, it did not receive a response from a subject producer.²³ Therefore, the Department found the respondent responses inadequate and conducted an expedited review. On November 4, 2004, the Department published notice of the final results and determined that revocation of the CVD Order on SSPC from Belgium would be likely to lead to continuation or recurrence of countervailable subsidies at the ad valorem net subsidy rates of 1.13 percent for U&A Belgium (formerly ALZ, and now AMS) and 1.13 percent for the "all others."²⁴ On July 5, 2005, the ITC determined that revocation of the CVD order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.²⁵ On July 18, 2005, the Department published notice of the continuation of the CVD order on SSPC from Belgium.²⁶

On June 29, 2007, the Department initiated an administrative review upon a request by U&A Belgium for the period January 1, 2006, through December 31, 2006.²⁷ On December 12, 2008, the Department published its final results and calculated a de minimis subsidy rate of 0.20 percent ad valorem for U&A Belgium.²⁸ Notably, the Department determined that the SidInvest program (a subsidy provided to Sidmar that was attributable to ALZ) that was found to

(December 10, 2003).

¹⁹ Id. at 26. Based on the Department's practice of calculating subsidy rates on an annual basis, we calculated separate net subsidy rates for ALZ during the calendar years 1998 and 1999.

²⁰ See ALZ N.V. v. United States, 28 CIT 541 (2004).

²¹ See Stainless Steel Plate in Coils from Belgium: Notice of Amended Final Results of Countervailing Duty Administrative Review, 70 FR 18374 (April 11, 2005).

²² See Initiation of Five-Year ("Sunset") Reviews, 69 FR 17129 (April 1, 2004).

²³ See Stainless Steel Plate in Coils From Belgium: Final Results of the Expedited Sunset Review of the Countervailing Duty Order, 69 FR 64277 (November 4, 2004) ("First Sunset Review of SSPC Belgium").

²⁴ Id. at 64278.

²⁵ See Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan, 70 FR 38710 (July 5, 2005).

²⁶ See Continuation of Antidumping Duty Orders on Certain Stainless Steel Plate in Coils From Belgium, Italy, South Korea, South Africa, and Taiwan, and the Countervailing Duty Orders on Certain Stainless Steel Plate in Coils From Belgium, Italy, and South Africa, 70 FR 41202 (July 18, 2005).

²⁷ See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review, 72 FR 35690 (June 29, 2007).

²⁸ See Stainless Steel Plate in Coils from Belgium: Final Results of Countervailing Duty Administrative Review, 73 FR 75673, 75674-75 (December 12, 2008) ("2006 Review Final Results of SSPC Belgium").

confer subsidies in the investigation and the first administrative review was continuing to provide benefits to U&A Belgium during the 2006 period of review.²⁹

On July 1, 2008, the Department initiated an administrative review for the period January 1, 2007, through December 31, 2007, upon a request by U&A Belgium.³⁰ Following a merger of its parent company, Arcelor S.A., with Mittal Steel N.V., U&A Belgium subsequently changed its name to AMS. On November 9, 2009, the Department published the final results of this administrative review.³¹ The Department determined that AMS had no countervailable subsidies during the period of review and, thus, assigned AMS a net subsidy rate of 0.00 percent ad valorem.³²

On June 24, 2009, the Department initiated an administrative review for the period January 1, 2008, through December 31, 2008, upon a request by AMS.³³ AMS later withdrew its request and, therefore, the Department rescinded the review.³⁴ On June 30, 2010, the Department initiated an administrative review for the period January 1, 2009, through December 31, 2009, upon a request by AMS.³⁵

Background:

On June 2, 2010, the Department initiated the second sunset review of the CVD Order on SSPC from Belgium in accordance with section 751(c) of the Tariff Act of 1930, as amended (“the Act”).³⁶

Within the deadline specified in 19 CFR 351.218(d)(1)(i), the Department received notice of intent to participate on behalf of the domestic interested parties by Petitioners, who claimed interested party status under sections 771(9)(C) and (D) of the Act, as a manufacturer of a domestic like product and as a certified union representing workers in the domestic industry producing certain SSPC, respectively.

The Department received substantive responses from Petitioners within the deadline specified in 19 CFR 351.218(d)(3)(i). The Department also received substantive responses in a timely manner from the following respondent interested parties: the GOB and AMS. In accordance with 19 CFR 351.218(d)(4), Petitioners submitted timely rebuttal comments to the substantive

²⁹ Id., and accompanying Issues and Decision Memorandum at Comment 3.

³⁰ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 73 FR 37409 (July 1, 2008).

³¹ See Stainless Steel Plate in Coils From Belgium: Final Results of Countervailing Duty Administrative Review, 74 FR 57627 (November 9, 2009) (“2007 Review Final Results of SSPC Belgium”).

³² Id. at 57628.

³³ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 74 FR 30052 (June 24, 2009).

³⁴ See Stainless Steel Plate in Coils from Belgium: Rescission of Countervailing Duty Administrative Review, 74 FR 53707 (October 20, 2009).

³⁵ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 75 FR 37759, 37761 (June 30, 2010).

³⁶ See Initiation of Five-Year (“Sunset”) Review, 75 FR 30777, 30778 (June 2, 2010).

responses filed by the GOB and AMS, and the GOB and AMS submitted timely rebuttal comments to the substantive responses filed by Petitioners.

On July 22, 2010, after analyzing the submissions and rebuttals from interested parties, and finding the substantive responses adequate, the Department determined to conduct a full sunset review. See Memorandum from Yasmin Nair, International Trade Compliance Analyst, to Susan H. Kuhbach, Director, AD/CVD Operations, Office 1, entitled “Adequacy Determination in Countervailing Duty Sunset Review of Certain Stainless Steel Plate in Coils from Belgium (July 22, 2010).

On September 20, 2010, the Department published in the Federal Register an extension of the time limit for the completion of the preliminary results of this sunset review until no later than December 20, 2010, as permitted by section 751(c)(5)(B) of the Act. See Stainless Steel Plate in Coils from Belgium: Extension of Time Limits for Preliminary and Final Results of Full Five-year (“Sunset”) Review of Countervailing Duty Order, 75 FR 58351 (September 24, 2010).

On November 19, 2010, the Department requested information from the GOB that was cited, but not provided, in its substantive response. See Memorandum from David Neubacher, International Trade Compliance Analyst, Office 1, AD/CVD Operations, to the File, “Conversations with Government of Belgium,” dated November 19, 2010. On November 23, 2010, the GOB submitted the requested information to the Department. See GOB’s November 23, 2010, submission at Attachment 1.

Discussion of the Issues:

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the CVD Order 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 1) the net countervailable subsidy 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, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order was 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 the subsidy described is in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures.

Below we address the substantive responses and rebuttals of the interested parties. Because of the number of comments, we address the interested parties’ comments by category in the following order:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Comment 1: Termination of Countervailable Programs

Comment 2: Investment and Interest Subsidies and Real Estate Tax Exemption under the Economic Expansion Law of 1970

Comment 3: Accelerated Depreciation under the Economic Expansion Law of 1970

Comment 4: 1985 ALZ Share Subscriptions and 1984 Purchase of Sidmar's Common Preference Shares

Comment 5: 1987 ALZ Common Share Transaction between GOB and Sidmar

Comment 6: Belfin Loans

Comment 7: SNCI Loans

Comment 8: Industrial Reconversion Zones – Subsidy (Alfin)

Comment 9: Industrial Reconversion Zones – Tax Credit (Albufin)

Comment 10: 1985 Conversion of Sidmar's Debt to Equity and SidInvest

2. Net Countervailable Subsidy Likely to Prevail

Comment 11: Use of the Rate from the Investigation

Comment 1: Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Petitioners argue that revocation of the CVD Order on SSPC from Belgium would likely lead to renewed and increased occurrence of countervailable subsidies to the Belgian SSPC industry. Petitioners assert that the effectiveness of the CVD Order is demonstrated by the fact that recent administrative reviews have found most subsidy programs are currently “not used” by the Respondents. Pointing to declining imports following the imposition of the CVD Order, Petitioners contend that Belgian SSPC producers cannot ship their product to the United States without receiving countervailing subsidies.

Year	Total Import Volume (Short Tons)
1995	5,923
1996	8,257
1997	14,011
1998	11,543
1999 (CVD Order imposed May 11, 1999)	22,691
2000	22,518
2001	4,999
2002	7,822
2003	6,499
2004	7,434
2005	6,135
2006	8,482
2007	8,392

2008	2,239
2009	688
Jan-Mar 2009	95
Jan-Mar 2010	552

Source: U.S. Department of Commerce

AMS notes that exports were virtually unchanged in the year following imposition of the CVD Order. AMS asserts that subsequent export volume changes occurred because of a business decision to allocate more steel products, which were already being produced at full capacity, to European markets. AMS states that its exports to the United States remained steady until 2007, at which point a devalued dollar led to weakened demand and economic downturn. AMS notes that Europe is its principal market, and it is unlikely to shift sales from Europe to the United States because of the higher associated freight and transportation costs.

Petitioners further assert that the Department has not found that any of the previously countervailed subsidies to SSPC producers and exporters have been terminated, and that these programs could therefore be easily reinstated. Petitioners argue that the Department's Policy Bulletin clarifies that "continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies."³⁷

AMS and the GOB contend that all of the programs previously found countervailable have been abolished and are no longer used. Moreover, AMS claims that all of the benefits from the investigation have been fully allocated or have expired. The GOB notes it submitted a certification that all programs were terminated. AMS and the GOB argue that a 1996 European Commission ("EC") law, EC Decision 2496/96, prohibits the GOB from providing any aid to the steel sector and, therefore, there is no possibility that the GOB will re-instate or replace abolished programs.

The GOB also provides the following program details: the "1987 ALZ Common Share Transaction Between GOB and Sidmar" and the "Belfin Loan" programs have ended; "Sidmar's Debt to Equity Conversion" and "SidInvest" were one-time events; the "1985 ALZ Share Subscriptions" and the "1984 Purchase of Sidmar's Common and Preference Shares" were ruled non-countervailable by the CIT; the bank associated with "SNCI Loans" was privatized; the "Industrial Reconversion Zones – Subsidy (Alfin)" was temporally restricted; the "Industrial Reconversion Zones – Tax Credits (Albufin)" have expired; and the "Accelerated Depreciation" and "Real Estate Tax Exemption" associated with the Regional Subsidies Under the Economic Expansion Law of 1970 have been revoked.

Petitioners assert that the GOB did not provide evidence of program termination for three recurring subsidy programs: "Regional Subsidies Under the Economic Expansion Law of 1970;" "Industrial Reconversion Zones – Subsidy (Alfin);" and "Industrial Reconversion Zones – Tax Credits (Albufin)." Petitioners argue that the EC Decision 2496/96 appears to be no longer in effect because it only applied until July 22, 2002. In addition, while the EC Decision 2496/96

³⁷ Referencing Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18874 (April 16, 1998) ("Policy Bulletin").

seeks to constrain state aid to the steel industry, it does not appear to outright prohibit subsidies. Petitioners also state that the EC Decision 2496/96 was provided to the Department in the sunset review of Stainless Steel Bar from Italy³⁸ as evidence of the prohibition against aid to the European steel industry, and the Department concluded there that EC Decision 2496/96 was not sufficient evidence that programs had been terminated. Therefore, Petitioners argue that the Department should reject Respondents' claim here and find that the EC Decision 2496/96 does not prohibit future subsidization.

Petitioners argue that the Department has identified potential new subsidies. While Petitioners concede that this newly investigated program was found to be non-specific, they assert that it was the presence of the CVD Order that established governmental discipline.³⁹ AMS points out that this newly investigated program was found to be non-countervailable and dismisses Petitioners' claim that this program is relevant to the instant proceeding.

Department's Position:

In accordance with section 752(b)(1) of the Act, in determining whether revocation of a CVD Order would be likely to lead to continuation or recurrence of a countervailable subsidy, the Department will consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy determined in the investigation and subsequent reviews has occurred that is likely to affect that net countervailable subsidy.

In the instant case, there have been three completed administrative reviews of the order. As discussed above in the "History of the Order" section of this memorandum, the Department found the ten programs countervailable in the investigation and two additional programs, the "1987 ALZ Common Share Transaction between GOB and Sidmar" and the "1984 Purchase of Sidmar's Common and Preference Shares," countervailable in the first administrative review. While the respondent parties claim that each of these programs has been terminated or that the benefits have been fully allocated and, therefore, none of these programs are likely to provide countervailable subsidies in the future, we disagree.

Two conditions must be met in order 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.⁴⁰ As noted below, although a number of programs no longer provided benefits by the end of the sunset period, the evidence provided by the GOB does not establish that these programs were terminated.

³⁸ See Stainless Steel Bar From Italy: Final Results of Expedited Five-Year ("Sunset") Review of the Countervailing Duty Order, 72 FR 31288 (June 6, 2007) ("Stainless Steel Bar From Italy"), and accompanying Issues and Decision Memorandum at Comments 5-7.

³⁹ Referencing a research and technology grant program, which was not countervailed because it was not found to be specific to either the respondent or the SSPC industry. See 2007 Review Final Results of SSPC Belgium, and accompanying Issues and Decision Memorandum at 3-4.

⁴⁰ See Corrosion-Resistant Carbon Steel Flat Products From France: Final Results of Full Sunset Review, 71 FR 58584 (October 4, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

In determining whether a program has been terminated, the Department will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program. Programs eliminated through administrative action, for example, may be more likely to be reinstated than those eliminated through legislative action. This is fully consistent with other areas of our CVD practice (e.g., program-wide changes) where we normally expect a program to be terminated by means of the same legal mechanism in which it is instituted.⁴¹

Although the respondent parties maintain all programs have been terminated or the benefit stream has been fully allocated, the Department has not been provided with sufficient evidence to support a finding that all programs have been terminated, without residual benefits or replacement programs. Specifically, as discussed further below, the GOB and AMS have not provided supporting documentation such as “the enactment of a statute, regulation, or decree,” which demonstrates termination for several of the programs described below.⁴² Instead, the GOB and AMS relied on general statements without supporting documentation in arguing that several programs were terminated, were one-time events, or EC rules generally prohibit state aid without any documentation showing that the GOB had implemented these prohibitions. In remaining consistent with our decision in Stainless Steel Bar from Italy, we find that EC Decision 2496/96 to be insufficient evidence of program termination. For these reasons and those explained below, we find that there is a likelihood of continuation or recurrence of a countervailable subsidy were the order to be revoked for these remaining programs.

Comment 2: Investment and Interest Subsidies and Real Estate Tax Exemption under the Economic Expansion Law of 1970

The GOB and AMS state that this program was revoked in 2005 and provided the 2005 “Decree Regarding Provisions to Accompany the 2006 Budget” from the Department of the Flemish Community.⁴³

Department’s Position:

In the Final Determination, the Department found that the GOB provided investment and interest subsidies under the 1970 law as a non-recurring grant in 1983.⁴⁴ The allocation period for that non-recurring grant ended in 1997.⁴⁵ The real estate tax benefit for Albufin/ALZ expired in

⁴¹ See 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 (where program is initiated by a Government Policy Handbook, termination can occur through the same method).

⁴² See 19 CFR 351.526(b) and (d).

⁴³ See GOB’s July 9, 2010, Substantive Response Rebuttal (“GOB’s Rebuttal”) at Appendix 1 and Appendix 6; AMS’ July 9, 2010, Substantive Response Rebuttal (“AMS’ Rebuttal”) at Appendix 1.

⁴⁴ See Final Determination, 64 FR at 15569.

⁴⁵ Id.

1998.⁴⁶ Therefore, in the First Sunset Review of SSPC Belgium the Department determined that there were no longer any countervailable subsidies under this program.⁴⁷

In this sunset review, the GOB and AMS provided the 2005 “Decree Regarding Provision to Accompany the 2006 Budget” from the Department of the Flemish Community, which states in Article 8 that “The following regulations shall be abolished, to the degree that they related to the Flemish region: The Act of December 30, 1970 on economic expansion, amended mostly by the decree of December 21, 2001.”⁴⁸ Thus, the GOB has provided supporting documentation regarding the termination of this program and we preliminarily determine that this program has been terminated.

Comment 3: Accelerated Depreciation under the Economic Expansion Law of 1970

The GOB and AMS state that this program was revoked in 2005 and provided the 2005 “Decree Regarding Provisions to Accompany the 2006 Budget” from the Department of the Flemish Community.⁴⁹

Department’s Position:

The Department found that “Accelerated Depreciation under the Economic Expansion Law 1970” was a recurring tax benefit in the Final Determination.⁵⁰ In the first sunset review, the Department found that U&A Belgium benefitted from the program in 1998 but did not use this program in 1999, because the company was in a tax loss position.⁵¹ The GOB stated that the Flemish Government implemented a 2001 EU decision that terminated this program in December 2003. However, the GOB provided no supporting documentation regarding this implementation in the first sunset review, nor any information indicating whether benefits received earlier under this program had or had not been carried forward beyond December 2003. Therefore, in First Sunset Review of SSPC Belgium, the Department determined that there were continuing countervailable subsidies from this program.⁵²

In this sunset review, the GOB and AMS provided the 2005 “Decree Regarding Provision to Accompany the 2006 Budget” from the Department of the Flemish Community, which states in Article 8 that “The following regulations shall be abolished, to the degree that they related to the Flemish region: The Act of December 30, 1970 on economic expansion, amended mostly by the decree of December 21, 2001.”⁵³ Thus, the GOB has provided supporting documentation

⁴⁶ See First Review Final Results of SSPC Belgium, and accompanying Issues and Decision Memorandum (analysis of “Program D”).

⁴⁷ See First Sunset Review of SSPC Belgium, and accompanying Issues and Decision Memorandum at Comment 2.

⁴⁸ See GOB’s Rebuttal at Appendix 1 and Appendix 6; AMS’ Rebuttal at Appendix 1.

⁴⁹ Id.

⁵⁰ See Final Determination, 64 FR at 15569.

⁵¹ See First Sunset Review of SSPC Belgium, and accompanying Issues and Decision Memorandum at Comment 3.

⁵² Id.

⁵³ See GOB’s Rebuttal at Appendix 6; AMS’ Rebuttal at Appendix 6.

regarding the termination of this program and we preliminarily determine that this program has been terminated.

Comment 4: 1985 ALZ Share Subscriptions and 1984 Purchase of Sidmar's Common Preference Shares

The GOB and AMS state that the CIT determined that these programs were not a countervailable subsidy in litigation related to the First Review Final Results of SSPC Belgium.⁵⁴

Department's Position:

The Department found in the Final Determination that the 19-year allocation period for the "1985 ALZ Share Subscriptions" program ended in 2003. Therefore, in the First Sunset Review of SSPC Belgium, the Department determined that there was no longer a countervailable subsidy under this program. In addition, the Department found in the Final Determination that the 15-year allocation period for the "1984 Purchase of Sidmar's Common Preference Shares" ended in 1998.⁵⁵ Therefore, the Department determined that there was no longer a countervailable subsidy under this program.

We preliminarily determine that subsidization is not likely to continue or recur from these programs if the order were revoked because the CIT has found that neither program was a countervailable subsidy in litigation related to the First Review Final Results of SSPC Belgium.⁵⁶

Comment 5: 1987 ALZ Common Share Transaction between GOB and Sidmar

The GOB and AMS state the program ended on December 31, 1985, and provided Royal Decree 245 from December 31, 1983, as evidence of the program's termination.⁵⁷

Department's Position:

We found in the First Review Final Results of SSPC Belgium that this program conferred a countervailable subsidy on the subject merchandise during the period of review ("POR").⁵⁸ The 19-year allocation period for this program ended in 2005. In the First Sunset Review of SSPC Belgium, we determined that, because the 19-year allocation period extended beyond the end of the sunset review, there were continuing countervailable subsidies under this program.⁵⁹ However, in the two most recent administrative reviews of SSPC from Belgium, the "1987 ALZ Common Share Transaction" between GOB and Sidmar program was found to be not used or not

⁵⁴ See GOB's Rebuttal at Appendix 1; AMS' Rebuttal at Appendix 1.

⁵⁵ See First Review Final Results of SSPC Belgium, and accompanying Issues and Decision Memorandum (analysis of "Program G").

⁵⁶ See ALZ N.V. v. United States, 283 F. Supp. 2d at 1309-1318.

⁵⁷ See GOB's Rebuttal at Appendix 1 and 2; AMS' Rebuttal at Appendix 1 and 2.

⁵⁸ See First Review Final Results of SSPC Belgium, and accompanying Issues and Decision Memorandum (analysis of "Program B").

⁵⁹ See First Sunset Review of SSPC Belgium, and accompanying Issues and Decision Memorandum at Comment 5.

to have provided benefits during the 2006 and 2007 PORs.⁶⁰

Royal Decree 245 from December 31, 1983, states, “Under the terms of the restructuring plan of the Government for steel industry and under the conditions stipulated in this decree, limited companies in the sector of steel industry, may till December 31, 1985, issue stock that represent that registered capital yet has no right to vote attributed (hereinafter called “preferred stock carrying no right to vote”).”⁶¹ Thus, the GOB has provided sufficient documentation to demonstrate the termination of this program and we preliminarily determine that this program has been terminated.

Comment 6: Belfin Loans

The GOB and AMS stated that this program ended on June 30, 1991, and provided the Annex to the Moniteur Belge from May 3, 2001, as evidence that Belfin had been liquidated and, therefore, the program was terminated.⁶²

Department’s Position:

We found in the First Sunset Review of SSPC Belgium that the “Belfin Loans” were repaid in 1998 and the program was not used in 1999. Therefore, we determined that there were no longer any countervailable subsidies from this program.⁶³ Furthermore, the Annex to the Moniteur Belge from May 3, 2001, provided by the GOB and AMS, shows that Belfin was liquidated in 2001.⁶⁴ Therefore, because Belfin no longer exists, all loans were repaid in 1998, and the program ended on June 30, 1991, we preliminary determine that this program has been terminated.

Comment 7: SNCI Loans

The GOB and AMS stated that the SNCI was privatized in 1999. As support they provided a company history of Fortis, the Belgian financial institution that bought SNCI. AMS also notes that its “SNCI Loans” were repaid in 2001. The GOB and AMS also cited to the Final Determination, which notes that Belgium owned 50% of SNCI until 1997.⁶⁵

Department’s Position:

The GOB and AMS submitted the company history of Fortis, the Belgian financial institution that bought SNCI. Fortis’ history notes that in 1995 “Fortis takes over the Belgian bank, Societe

⁶⁰ See 2006 Review Final Results of SSPC Belgium, and accompanying Issues and Decision Memorandum at 5; 2007 Review Final Results of SSPC Belgium, and accompanying Issues and Decision Memorandum at 4.

⁶¹ See GOB’s Rebuttal at Appendix 1 and 2; AMS’ Rebuttal at Appendix 1 and 2.

⁶² See GOB’s Rebuttal at Appendix 3; AMS’ Rebuttal at Appendix 3.

⁶³ See First Sunset Review of SSPC Belgium, and accompanying Issues and Decision Memorandum at Comment 6.

⁶⁴ See GOB’s Rebuttal at Appendix 3; AMS’ Rebuttal at Appendix 3.

⁶⁵ See GOB’s Rebuttal at Appendix 1 and 4; AMS’ Rebuttal at Appendix 1 and 4; see also Final Determination, 64 FR at 15570-71.

Nationale de Credite a l'Industrie/Nationale Maatschappij vor Kredit aan de Nijverheid, (“SNCI-NMKN”) through Algemene Spaar-en Lijfrentekas/Caisse Generale d'Espargne et de Retraite (“ASLK-CGER”). SNCI-NMKN merges fully with ASLK-CGER in 1997. In addition, company history of Fortis also reports that in 1999 “Fortis acquires the remaining 25% of the shares of ASLK-CGER.”⁶⁶

Notwithstanding AMS’ and the GOB’s information on SNCI, we note that they have not submitted any information demonstrating there are no longer any outstanding loans issued by SNCI to any other companies prior to its privatization in 1999. As such, we lack evidence establishing the termination of this program and preliminarily determine that there is a likelihood of continuation or recurrence of a countervailable subsidy.

Comment 8: Industrial Reconversion Zones – Capital Contribution (Alfin)

The GOB and AMS stated that this “law was temporally restricted,” and provided the Economic Recovery Law, as amended from July 31, 1984, as evidence that this program has been terminated.⁶⁷

Department’s Position:

In the First Sunset Review of SSPC Belgium, we found that the 15-year allocation period for Industrial Reconversion Zone subsidies provided to the subsidiary company, AL-FIN N.V. (“Alfin”), ended in 1998.⁶⁸

In this sunset review, the GOB and AMS provided the Economic Recovery Law of July 31, 1984, as amended. Article 50 (2), limits eligibility for these capital contributions to companies “set up on December 31, 1990 at the latest based on a contract introduced before December 6, 1990,...and that have their head office and their main operations office in a reconversion area.”⁶⁹

Article 50 (2) of the Economic Recovery Law of 1984 establishes temporal eligibility criteria based on when a company was established. Therefore, the last opportunity for any company in Belgium to apply for or receive benefits was December 31, 1990. As such, the program expired as of December 31, 1990, and any potential benefits would have fully allocated by 2005. Thus, we preliminarily determine that this program has been terminated.

Comment 9: Industrial Reconversion Zones – Tax Credit (Albufin)

The GOB and AMS stated that the “Capital Registration Tax Exemption expired on December 31, 1999, and the Dividend Payments Tax Exemption expired December 31, 2001,” for

⁶⁶ See GOB’s Rebuttal at Appendix 1 and 4; AMS’ Rebuttal at Appendix 1 and 4.

⁶⁷ See GOB’s Rebuttal at Appendix 1 and 5; AMS’ Rebuttal at Appendix 1 and 5.

⁶⁸ See First Sunset Review of SSPC Belgium, and accompanying Issues and Decision Memorandum at Comment 7.

⁶⁹ See GOB’s Rebuttal at Appendix 1 and 5; AMS’ Rebuttal at Appendix 1 and 5.

ALBUFIN N.V. (“Albufin”), an ALZ subsidiary. They provided the Economic Recovery Law, as amended from July 31, 1984, as evidence that this program has been terminated.⁷⁰

Department’s Position:

In the First Sunset Review of SSPC Belgium, we noted that tax benefits under the Industrial Reconversion Zone Program continued for Albufin.⁷¹ (We found continuing tax benefits during the 1998-1999 POR.) In the most recently completed administrative reviews of the CVD Order, we found that U&A Belgium did not receive benefits under the Industrial Reconversion Zone Program.⁷²

Articles 59 and 60 of the Economic Recovery Law of 1984 establish that no company could be exempted from the Capital Registration Tax under the Industrial Reconversion Zone Program after December 31, 1999, or from the Dividend Payments Tax after December 31, 2001. As such, these programs expired as of 1999 and 2001, and we preliminarily determine that this program has been terminated.

Comment 10: 1985 Conversion of Sidmar’s Debt to Equity and SidInvest

The GOB and AMS assert the “1985 Conversion of Sidmar’s Debt to Equity” and “SidInvest” programs were one-time events between AMS and the GOB for which benefits have been fully allocated and, therefore, these programs have terminated. As support, Respondents provided AMS’ verification report from the investigation.⁷³

Department’s Position:

For the “1985 Conversion of Sidmar’s Debt to Equity” program, the Department found in the First Sunset Review of SSPC Belgium and the two most recent administrative reviews of the CVD Order that the benefit under this program was fully allocated in 2003, and no additional subsidies had been reported or discovered.⁷⁴ Similarly, the benefit found under the “SidInvest” program was fully allocated in 2006, and no additional subsidies had been reported or discovered in those reviews.⁷⁵

However, the verification report states the “{1985 Conversion of Sidmar’s Debt to Equity} was instituted per two Council of Minister Decisions (dated November 23, 1978 and February 2,

⁷⁰ Id.

⁷¹ See First Sunset Review of SSPC Belgium, and accompanying Issues and Decision Memorandum at Comment 7.

⁷² See 2006 Review Final Results of SSPC Belgium, and accompanying Issues and Decision Memorandum at 5; 2007 Review Final Results of SSPC Belgium, and accompanying Issues and Decision Memorandum at 4.

⁷³ See GOB’s Rebuttal at Appendix 1; AMS’ Rebuttal at Appendix 1.

⁷⁴ See First Sunset Review of SSPC Belgium, and accompanying Issues and Decision Memorandum at Comment 8; 2006 Review Final Results of SSPC Belgium, and accompanying Issues and Decision Memorandum at 6; 2007 Review Final Results of SSPC Belgium, and accompanying Issues and Decision Memorandum at 5.

⁷⁵ See First Sunset Review of SSPC Belgium, and accompanying Issues and Decision Memorandum at Comment 10; 2006 Review Final Results of SSPC Belgium, and accompanying Issues and Decision Memorandum at 5; 2007 Review Final Results of SSPC Belgium, and accompanying Issues and Decision Memorandum at 4.

1979) as part of the Claes Plan.”⁷⁶ Additionally, the SidInvest program was established through a 1982 “Invests” law.⁷⁷ As noted above, the Department usually requires “the enactment of a statute, regulation, or a decree” to demonstrate a termination of a program. In this instance, both programs were enacted through decisions, laws or decrees and the support cited by AMS and the GOB does not include similar documentation that would demonstrate the programs have been terminated. Moreover, Respondents have not demonstrated that these programs were a single occurrence. Following the precedent of Certain Corrosion-Resistant Carbon Steel Flat Products from France, we preliminarily find that there is a likelihood of continuation or recurrence of countervailable subsidies if the order were to be revoked for both programs. See Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products From France, 71 FR 30875 (May 31, 2006), and accompanying Issues and Decision Memorandum (unchanged in Corrosion-Resistant Carbon Steel Flat Products From France; Final Results of Full Sunset Review, 71 FR 58584 (October 4, 2006)).

2. Net Countervailable Subsidy Likely to Prevail

Comment 12: Use of the Rate from the Investigation

Petitioners assert that, in determining the magnitude of rates likely to prevail upon revocation of an order, the SAA⁷⁸ and the Policy Bulletin instruct the Department to select a rate from the original investigation. Petitioners assert that the Department erred when it failed to apply this policy during the previous sunset review.⁷⁹ Petitioners argue that Respondents did not demonstrate program termination and, therefore, the Department should not have adjusted net countervailable subsidy rates from the original investigation. Accordingly, because Respondents have not demonstrated program termination for the instant sunset review, Petitioners urge the Department to rely upon the 2.00% subsidy rate from the investigation.

AMS and the GOB assert that the most recently completed administrative reviews have resulted in a de minimis or 0.00% subsidy rate. AMS and the GOB claim that this pattern should be considered highly probative when the Department considers the likelihood of continued subsidization following revocation of the CVD Order. AMS and the GOB dismiss Petitioners’ assertion that the Department should rely upon the margins established in the original order as the rate of renewed subsidization absent the order because a number of programs from the investigation have ended.

Department’s Position:

We agree with Petitioners that the Department normally will provide to the ITC the net countervailable subsidy that was determined in the original investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the

⁷⁶ See Sidmar’s Verification Report at 6 and Appendix IV.

⁷⁷ Id. at 6-7.

⁷⁸ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc 103-316, Vol. 1, at 890 (1994) (“SAA”).

⁷⁹ See First Sunset Review of SSPC Belgium, and accompanying Issues and Decision Memorandum at Comment 11.

discipline of an order in place. See section 752(b)(3) of the Act. This rate, however, 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.⁸⁰

In this case, all programs were established prior to the investigation and all subsidies were based on residual benefits resulting from either a 15-year or 19-year allocation period or continued tax benefits. Therefore, all of these benefits were terminated prior to or fully allocated in 2006 before to the initiation of this sunset review. In addition, there is no evidence to suggest that additional disbursements have been made since the original investigation under these programs. Consequently, the Department is adjusting the rate from the investigation by removing the countervailable subsidy rates associated with programs that have been terminated for which the benefits have been fully allocated. We preliminarily determine the net countervailable subsidy rate likely to prevail if the order was revoked to be zero percent for AMS and all other companies.

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 Agreement on Subsidies and Countervailing Measures (“ASCM”). None of the parties addressed this issue. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

A.) SNCI Loans

SNCI was a public credit institution, which, through medium- and long-term financing, encouraged the development and growth of industrial and commercial enterprises in Belgium. SNCI was organized as a limited liability company and, until 1997, was 50 percent owned by the Belgian government. ALZ received investment loans from SNCI which were outstanding during the POI. Because the GOB failed to provide information regarding recipients of SNCI Loans, the Department found the program to be specific within the meaning of section 771(5A)(D)(iii) of the Act. In the Final Determination, we found that this program conferred a countervailable subsidy on the subject merchandise during the POR, within the meaning of 771(5) of the Act.

B.) 1985 Conversion of Sidmar’s Debt to Equity

Between 1979 and 1983, the GOB assumed the interest costs associated with medium- and long-term loans for certain steel producers, including Sidmar. In exchange for the GOB’s assumption of financing costs, Sidmar agreed to the conditional issuance of convertible profit sharing bonds (“OCPCs”) to the GOB. In 1985, Sidmar and the GOB agreed to substitute *parts beneficiaires* (“PBs”) for the OCPCs.

⁸⁰ See SAA at 890.

Consistent with Certain Steel⁸¹ and the attendant litigation, we determined that the GOB's initial assumption of interest costs was specific under section 771(5A) of the Act. Furthermore, we determined that the OCPCs were properly classified as debt and that the conversion of OCPCs to PBs constituted a debt to equity conversion. Comparing the price paid for the PBs to an adjusted market value of Sidmar's common stock, we determined that the debt to equity conversion provided a benefit to Sidmar as the share transactions were on terms inconsistent with the usual practice of a private investor.⁸²

In the Final Determination, we determined that this program constituted a countervailable subsidy within the meaning of section 771(5) of the Act. This program provided a financial contribution, as described in section 771(5)(D)(i) of the Act. As discussed above, benefits under this program were available only to certain steel producers. On this basis, we determined that the program was specific under section 771(5A)(D)(i) of the Act.

C.) SidInvest

SidInvest was incorporated on August 31, 1982, as a holding company jointly owned by Sidmar and Societe Nationale d'Investissement, S.A. ("SNI"), a government financing company. SidInvest was given drawing rights on SNI to finance specific projects. The drawing rights took the form of conditional refundable advances ("CRAs"), which were interest free, but repayable to SNI based on the company's profitability. SidInvest made periodic repayments of the CRAs it had drawn from SNI. However, in 1987, the GOB moved to accelerate the repayment of the CRAs. Later, in July 1988, an agreement was reached for Nationale Maatschappij voor de Herstructurering van de Nationale Sectoren ("NMNS"), another government agency, to become a shareholder in SidInvest by contributing the CRAs owed to the government by SidInvest in exchange for SidInvest stock. The Sidmar Group then repurchased the SidInvest shares obtained by NMNS.

In the Final Determination, we determined that this debt cancellation provided a countervailable subsidy within the meaning of section 771(5) of the Act. It is a financial contribution within the meaning of section 771(5)(D)(i) of the Act. Moreover, because the right to establish "Invests" (and, consequently, any forgiveness of loans given to the Invests) was limited to the five national sectors, we viewed this debt cancellation as being limited to a specific group of industries. On this basis, we determined that the benefit was specific under section 771(5A)(D) of the Act.

Preliminary Results of Review:

As a result of this sunset review, the Department preliminarily finds that revocation of the CVD Order would likely to lead to continuation or recurrence of a countervailable subsidy for the reasons set forth in these preliminary results of review. Further, we preliminarily find the net countervailable subsidy likely to prevail is zero percent for AMS and all other companies.

⁸¹ See Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium, 58 FR 37273 (July 9, 1993) ("Certain Steel")

⁸² See Amended Final Affirmative Countervailing Duty Determinations: Certain Carbon Steel Products From Belgium, 62 FR 37880 (July 15, 1997).

Recommendation:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the preliminary results of this full sunset review in the Federal Register.

Agree

Disagree

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date