

71 FR 41424, July 21, 2006

C-423-806
2nd Sunset Review
Public Document
Office 6: TP/MD/GC

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 Preliminary Results of Full
Sunset Review of the Countervailing Duty Order on Cut-to-length
Carbon Steel Plate from Belgium

Summary

We have analyzed the substantive responses and rebuttal comments of interested parties in the full sunset review of the countervailing duty (CVD) order on cut-to-length carbon steel plate (CTL plate) from Belgium. We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this full sunset review for which we received substantive responses by domestic and respondent interested parties.

1. Likelihood of continuation or recurrence of countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

History of the Order

On July 9, 1993, the Department of Commerce (the Department) published in the Federal Register the final affirmative countervailing duty determination on cut-to-length carbon steel plate from Belgium (“Investigation”). See Final Affirmative Countervailing Duty Determinations; Certain Steel Products From Belgium, 58 FR 37273 (July 9, 1993) (Final) and Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determinations; Certain Steel Products From Belgium, 58 FR 43749 (August 17, 1993) (Order).

The Department investigated three companies: Forges de Clabecq S.A. (Forges de Clabecq or Clabecq), Fabrique de Fer de Charleroi (Fafer)¹ and Cockerill Sambre (Cockerill). The Department found 20 programs to be countervailable. Of these programs, three had several

¹In other proceedings under this order, Fafer has at times been referred to as “Fabfer.”

sub-programs for which a separate countervailability decision was made and rate calculated, thus bringing the total number of countervailable programs to 29.

1. Cash Grants and Interest Subsidies under the Economic Expansion Law of 1970
2. Government Funding of Early Retirement Pensions
3. Ecological Incentives
4. Assumption of Debt
 - a. Assumption of Debt Related to Closing of Valfil Plant
 - b. Assumption of Financing Costs
 - c. Forgiveness of Societe Nationale de Credite a l'Industrie (SNCI) Loans
5. Debt Conversions
 - a. Conversion of Clabecq Debt into Ordinary and non-Voting Shares
 - b. Conversion of Clabecq Debt into Parts and Beneficiaries
 - c. Conversion of Cockerill Sambre Debt to Equity under the Claes Plan
 - d. Conversion of Cockerill Sambre Debt Held by the Fund pour la Restructuration des Secteurs Nationaux en Region Walloon (FSNW) into Equity
 - e. Conversion of Cockerill Debt to Equity under the Gandois Plan
6. Equity Infusions
 - a. Equity Infusions for Hainaut-Sambre
 - b. The Societe Nationale pour des Reconstruction des Secteurs Nationaux (SNSN) Capital for Cockerill Sambre's Liege Cold-Rolling Mill
 - c. 1981 Equity Infusion into Cockerill Sambre
 - d. Clabecq Infusion from SOCOCLABECQ
7. SNCI Loans
8. Belgian Industrial Finance Company (Belfin) Loans
9. Clabecq lease (Invests)
10. SNSN Loans
11. FSNW Loans
12. Government Guaranteed Loans
13. Exemption of Corporate Taxes for Grants Received under the 1970 law
14. Accelerated Depreciation
15. Exemption from Real Estate Taxes
16. Exemption from the Capital Registration Tax
17. European Coal and Steel Community (ECSC) Article 54 Loans and Loan Guarantees
18. ECSC Redeployment Aid
19. European Social Fund
20. Other Loans - Clabecq

As a result of litigation concerning the investigation, and a 1996 Court of International Trade (CIT) decision, the Department recalculated the rates for the final determination. See Geneva Steel et al v. United States, 937 F. Supp 946 (CIT 1996) and Amended Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products from Belgium, 62 FR 37880 (July 15, 1997) (Amended Final). The adjusted rates were 23.15 percent ad valorem for

Cockerill, 1.05 percent ad valorem for Fafer (unchanged from the Order), and 5.92 percent ad valorem for all other companies (including Clabecq).

The Department has conducted only one administrative review of this order since its issuance. Fafer was the only company subject to that review. See Cut-to-Length Carbon Steel Plate from Belgium; Final Results of Countervailing Duty Administrative Review, 64 FR 12982 (March 16 1999) and Cut-to-Length Carbon Steel Plate from Belgium; Amended Final Results of Countervailing Duty Administrative Review, 64 FR 18001 (April 13, 1999) (Administrative Review Amended Final). In that review, the Department found a rate of 0.69 percent ad valorem for Fafer, resulting from Fafer's use of "Cash Grants and Interest Subsidies under the Economic Expansion Law of 1970," and two new programs: "Promotion Brochure" and "Audio-Visual Calling Card."

The Department has completed one sunset review of this order pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See Certain Cut-to-Length Carbon Steel Plate from Belgium; Final Results of Expedited Sunset Review, 65 FR 18066 (April 6, 2000) (First Sunset Review). As a result of that review, the Department determined that revocation of the CVD order would be likely to lead to continuation or recurrence of a net countervailable subsidy and reported to the International Trade Commission (ITC) the rates determined in the Amended Final as the rates likely to prevail if the order were revoked.

In accordance with 19 CFR 351.218(f)(4), the Department published a notice of continuation of the CVD order based on affirmative findings by both the Department and the ITC. See Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, 65 FR 78469 (December 15, 2000).

Since the conclusion of the first five-year sunset review, no other reviews of this CVD order have been conducted.

Background

On November 1, 2005, the Department initiated a sunset review of the CVD order on CTL steel plate from Belgium, pursuant to section 751(c) of the Act. See Initiation of Five-year ("Sunset") Reviews, 70 FR 65884 (November 1, 2005). The Department received notices of intent to participate on behalf of IPSCO Steel Inc., Mittal Steel USA Inc., Oregon Steel Mill, Inc., United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (USW), and Nucor Corporation (hereinafter, collectively domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) and (D) of the Act, as domestic producers of CTL plate in the United States

and as a certified union which is representative of an industry engaged in the manufacture, production, or wholesale of CTL plate in the United States.

The Department received substantive responses from the domestic interested parties, and from the following respondent interested parties: Government of Belgium (GOB), the European Union Delegation of the European Commission (EC), Duferco Clabecq S.A. (Duferco), which purchased Clabecq, and Arcelor S.A., claiming to be the successor-in-interest to Fafer and Cockerill² (collectively, respondents), within the deadline as specified under 19 CFR 351.218(d)(4). On December 21, 2005, the Department determined that the participation of the respondents was adequate, and that it was appropriate to conduct a full sunset review. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, Import Administration, Re: Adequacy Determination; Sunset Review of the Countervailing Duty Order on Cut-to-Length Carbon Steel Plate from Belgium, dated December 21, 2005, on file in CRU.

On February 10, 2006, the Department extended the time limit for the preliminary and final results of the sunset review of the CVD order on CTL plate from Belgium to no later than July 14 and September 27, 2006, respectively. See Cut-to-Length Carbon Steel Plate from Belgium, Sweden, and the United Kingdom; Extension of Time Limits for Preliminary and Final Results of Full Five-Year ("Sunset") Reviews of Countervailing Duty Orders, 71 FR 7017 (February 10, 2006).

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)(1) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and any subsequent reviews, and whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are 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

² Although Duferco reported that it purchased Clabecq, and Arcelor claims to be the successor-in-interest to the other two original respondent companies, the Department has not made a determination in the past that Duferco and Arcelor are the successors-in-interest to the respective respondent companies and is not making such a determination in this sunset review. However, we have considered in this sunset review the historical information provided with respect to Duferco and Arcelor for purposes of our privatization and change-in-ownership analyses. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, Import Administration, Re: Sunset Review of Countervailing Duty Order on Cut-to-Length Carbon Steel Plate from Belgium; Analysis of Changes in Ownership, dated concurrently with this notice and on file in the Central Records Unit, Room B-099 of the Department of Commerce building (CRU).

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 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 substantive responses and rebuttal comments of interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

Domestic interested parties argue that revocation of the CVD order on CTL plate from Belgium would likely lead to continuation or recurrence of a countervailing subsidy. Domestic interested parties support their argument based on the dramatic decrease of shipments of Belgian CTL steel plate to the United States following the imposition of the CVD order. They note that since the Department's conclusion of the first sunset review, imports of Belgian CTL steel plate have remained at relatively low levels. Domestic interested parties believe that Belgian producers of CTL steel plate cannot maintain pre-order volumes with the imposition of the order, and go on to state that net subsidy rates assessed in the investigation, and affirmed in the first sunset review, continue to protect the U.S. steel industry.

The GOB argues that there will be no negative impact from revocation of the order under review. The GOB argues that the Belgian industry is no longer benefitting from any subsidies and there is no likelihood that this situation will change in the foreseeable future. The GOB specifically notes that in the late 1980's, the Belgian steel sector underwent a full restructuring where Belgian steel producers were either privatized or sold and are all now fully privately-owned and compete on commercial terms in the international market. In support of its argument that Belgian steel companies no longer benefit from subsidization, the GOB submitted the Community Decision No. 2496/96/ECSC of December 18, 1996, which prohibits the granting of aid to the steel industry.

The EC also argues that there will be no negative impact from revocation of the CVD order. It argues that previous investigations demonstrate that the Belgian steel sector no longer benefits from subsidies, and it is not likely that the situation may change in the foreseeable future. The EC argues that Belgian steel companies have not received any substantial assistance since 1988, and cite to Community Decision No. 2496/96/ECSC to support their argument that subsidization is not likely to recur.

Arcelor argues that the Belgian and European programs found in the investigation to be countervailable are terminated with no residual benefits, or no longer confer benefits to Arcelor, and will not do so in the future.

Dufero Clabecq argues that there is no likelihood of continuation or recurrence of subsidization for the reasons stated in GOB's substantive submission. Duferco Clabecq contends

that all of the programs have been terminated and are not likely to be reinstated and that any subsidies to the predecessor entity, Forges de Clabecq, were eliminated when Forges de Clabecq was sold at arm's length to Duferco for fair market value. Duferco notes that the current entity, Duferco Clabecq, did not participate in any prior segments of this case and that Forges de Clabecq SA did participate in the investigation and is subject to the country-wide rate of 5.85 percent ad valorem.

Respondents have provided many program-specific arguments regarding the 29 programs (including sub-programs) found countervailable in the investigation. In general, their arguments are that many programs have been terminated, that benefits under many of the programs are fully allocated, or that EC rules prohibit aid. These arguments are summarized in the Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, Re: Sunset Review of Countervailing Duty Order on Cut-to-length Carbon Steel Plate from Belgium; Likelihood of Continuation or Recurrence of Subsidization and Net Countervailable Subsidy Likely to Prevail, dated concurrently with this memorandum and on file in CRU (Likelihood Memorandum). The Department's analyses and conclusions on each program are also presented in the Likelihood Memorandum.

In their rebuttal comments, domestic interested parties argue that the Department should disregard respondents' arguments as the GOB submission does not provide evidence of termination of countervailable programs. Domestic interested parties note that, in the first sunset review of this order, the Department found that no programs from the investigation or first administrative review were terminated; domestic interested parties further argue that no evidence has been provided in this sunset review indicating that the programs have been terminated. Domestic interested parties point out that in a more recent sunset review of another countervailing duty order on Belgian products the Department found a likelihood that subsidization would continue or recur under certain subsidy programs found to benefit producers. 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). Domestic interested parties note that Duferco and Arcelor did not provide information to support their claims that certain subsidies were extinguished as a result of Forges de Clabecq's and Cockerill's privatizations. Domestic interested parties argue that the Forges de Clabecq and Arcelor privatizations have not been reviewed under the Department's new privatization methodology, as established in Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125 (June 23, 2003) (Modification Notice), and respondents have not requested such review.

Department's Position

The Department preliminarily finds that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy on the subject merchandise. 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 shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect that net countervailable subsidy.

In the investigation, the Department found that 29 programs, including sub-programs, conferred countervailable subsidies. In the only administrative review of this order, the Department found that Fafer benefitted from subsidization under the “Cash Grants and Interest Subsidies under the Economic Expansion Law of 1970,” a program found to benefit Fafer during the period of investigation. In addition, two new programs were found to confer countervailable subsidies in the administrative review. In the first sunset review, the Department determined that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy.

In this sunset review, the Department preliminarily determines that the following four programs previously found countervailable have been terminated with no residual benefits or replacement programs: Ecological Incentives, Clabecq Infusion from SOCOCLABECQ, Other Clabecq Loans, and SNSN Loans. The Department’s analysis supporting this conclusion is presented in the Likelihood Memorandum.

However, we agree with domestic interested parties that respondents did not provide sufficient evidence to demonstrate that all other programs have been terminated in accordance with 19 CFR 351.526(d)(1) and (2), including the two programs first found countervailable in the only administrative review of this order. The Department’s detailed analysis of whether subsidization is likely to continue or recur, on a program-by-program basis, is contained in the Likelihood Memorandum.

The GOB and the respondent companies have also argued that since the investigation, all three respondent companies underwent changes in ownership. The GOB claims that these changes in ownership were at arm’s length and for fair market value and, as such, extinguished non-recurring allocable subsidy benefits provided prior to the changes in ownership. The Department has considered the GOB’s and the respondent companies’ arguments and evidence that the changes in ownership extinguished all non-recurring allocable subsidy benefits provided prior to the changes in ownership.³ See Change in Ownership Memo. However, a change in

³On January 8, 2003, the Dispute Settlement Body (DSB) of the WTO adopted the report of the WTO Appellate Body in United States - Countervailing Measures Concerning Certain Products from the European Communities, WT/DS212/AB/R (December 9, 2002) (Certain Products) concluding that the Department’s prior privatization methodology was inconsistent with the WTO Agreement. The Appellate Body report also concluded that “in sunset reviews, the investigating authority, before deciding to continue to countervail pre-privatization, non-recurring subsidies, is obliged to ‘examine the conditions of such privatizations and to determine whether the privatized producers received any benefit from the prior subsidization to the state-owned producers.’” Id. at para. 149 (quoting the report of the WTO panel). Starting with Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Seventh Countervailing Duty Administrative Review, 69 FR 45676 (July 30, 2004), the Department has applied our revised privatization methodology, with some qualifications, to private-to-private sales of a company (or its assets) in addition to government-to-private sales. Consequently, the Department has

ownership cannot serve as a basis for determining that a subsidy program has been terminated. Thus, a change in ownership cannot affect our analysis of whether programs previously found to be countervailable continue to exist and warrant an affirmative likelihood determination.

For the reasons provided above, based on the continued existence of programs found to confer countervailable subsidies, and insufficient documentation to support a determination of termination of all programs, we determine that revocation of the CVD order would be likely to lead to the continuation or recurrence of a countervailable subsidy.

2. Net Countervailable Subsidy Likely to Prevail

Interested Party Comments

Domestic interested parties argue that the net countervailing duty rates found in the original investigation, as amended, and affirmed in the first sunset review, are the appropriate rates to report to the ITC. Domestic interested parties note that no other administrative reviews have been conducted since that time to warrant a different outcome.

The GOB argues that subsidization is currently nil as programs have been terminated or no longer provide benefits. Arcelor and Duferco argue that for the reasons set forward in the substantive submission of the GOB, the net countervailable subsidy likely to prevail is zero based on the GOB's response in this proceeding. The EC argues that most of the programs countervailed in the investigation operated under different economic and political conditions fifteen years ago. The EC argues that most of these programs have been terminated or involve one-time governmental actions and are not likely to be repeated.

Department's Position

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 discipline of an order in place. However, this rate may not always be the most appropriate rate. For the purposes of a sunset review, the Department may make adjustments to the net countervailable subsidy rate. See, e.g., Stainless Steel Sheet and Strip in Coils From Italy: Final Results of the Full Sunset Review of the Countervailing Duty Order, 70 FR 23094, 23096 (May 4, 2005) (SSPC from Italy Sunset Review). The purpose of the net countervailable subsidy in the context of sunset reviews is to provide the ITC with a rate which represents the countervailable rate that is likely to prevail if the order is revoked.

determined to evaluate respondents' change-in-ownership claims in the context of this sunset review. See Change in Ownership Memorandum.

In the instant case, the respondent interested parties argued that their changes in ownership were at arm's length and for fair market value, resulting in the extinguishment of all countervailable subsidies. We have now fully analyzed these changes in ownership. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, Import Administration, Re: Sunset Review of Countervailing Duty Order on Cut-to-Length Carbon Steel Plate from Belgium; Analysis of Changes in Ownership (Change in Ownership Memorandum). We have concluded that the privatizations of Forges de Clabecq and Cockerill did not result in the extinguishment of non-recurring, allocable subsidy benefits, and that the private sale of Fafer was at arm's length and resulted in the full extinguishment of non-recurring, allocable subsidy benefits. Id.

As noted above, we have preliminarily determined that all programs found countervailable in the investigation, with the exception of the four programs for which we find that subsidization is not likely to continue or recur, remain in place. In addition, the two programs which were first found countervailable in the only administrative review remain in place. In accordance with the SSPC from Italy Sunset Review, we are including the rates from those programs in our calculation of the net countervailable subsidy likely to prevail. In calculating the net countervailable subsidy likely to prevail, we recognize that, for many of these programs, the benefits have been fully allocated prior to the end of the sunset review period; for such programs, the net countervailable subsidy likely to prevail is effectively zero. For the remaining programs, we have relied on prior segments of this proceeding, as appropriate. Our determination of the net countervailable subsidy likely to prevail for each program is discussed in detail in the Likelihood Memorandum. As discussed in the Likelihood Memorandum, the overall rates likely to prevail are 2.82 percent ad valorem for Cockerill, 0.56 percent ad valorem for Fafer, and 0.50 percent ad valorem for "All Others" (including Clabecq).

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 subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

With the exception of the "Promotion Brochure" and "Audio Visual Calling Card" programs, 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 for the Department to make such a determination. We are, however, providing the ITC with the following program descriptions.

1. Cash Grants and Interest Subsidies under the Economic Expansion Law of 1970

The Economic Expansion Law of December 30, 1970 (the 1970 law), offers incentives to promote the establishment of new enterprises or the expansion of existing ones which contribute directly to the creation of new activities and new employment within designated development zones.

2. Government Funding of Early Retirement Pensions

The early retirement system was established as a result of the lengthy economic recession triggered by the first oil crisis. To alleviate the social hardships stemming from the recession, Collective Labor Convention (CLC) Number 17 of the National Labor Council provided for additional allowances over and above unemployment benefits for certain laid-off workers over 60 years of age for all industries.

3. Assumption of Debt

a. Assumption of Debt Related to Closing of Valfil Plant

In 1984, pursuant to the Gandois Plan, the Societe Nationale de Credite a l'Industrie (SNCI) provided BF1,616 million in credits to Cockerill to finance the closing of the company's Valfil plant. The Gandois Plan was a plan commissioned and adopted by the GOB in 1983 specifically to assist the Belgian steel industry.

b. Assumption of Financing Costs

The GOB assumed the interest costs of Cockerill and Clabecq for the five-year period from 1979 through 1983.

c. Forgiveness of SNCI Loans to Cockerill Sambre

Loans granted by the SNCI in the amount of BF14,947 million were contributed to Cockerill's capital in 1981. Because shares were apparently not issued to SNCI or any government entity for its contribution, this transaction represents debt forgiveness.

4. Debt Conversions

a. Conversion of Clabecq Debt into Ordinary and Non-Voting Shares

Pursuant to the approval of the Belgian Council of Ministers on December 30, 1983, the SNSN and Clabecq agreed to convert Clabecq debt held by SNSN to ordinary and non-voting preference shares.

b. Conversion of Clabecq's Debt into Parts Beneficiaries

The Department treated these conversions of debt to parts beneficiaries as debt to equity conversions which are limited to a specific enterprise or industry or group of enterprises or industries.

c. Conversion of Cockerill Sambre Debt to Equity Under the Claes Plan

In June 1979, pursuant to the Claes Plan, the GOB converted BF2.051 billion in outstanding SNCI claims against Cockerill into 1,578,150 shares, for approximately BF1,300 per share. The debt conversions made to acquire the equity were on terms inconsistent with commercial considerations and were found to be countervailable.

d. Conversion of Cockerill Sambre Debt Held by FSNW into Equity

Under the Claes plan, which is limited to the steel industry, the GOB converted outstanding SNCI claims against Cockerill into shares.

e. Conversion of Cockerill Debt to Equity under the Gandois Plan

In 1983 the GOB forgave BF15.785 billion of SNCI debt in exchange for common shares in the company priced at BF160 per share, the average market price of Cockerill's shares traded between July and November 1983. The Department found that the GOB paid a premium for these shares and treated the premium as a non-recurring grant.

5. Equity Infusions

a. Equity Infusions for Hainaut-Sambre

Hainaut-Sambre merged with Cockerill. In Belgian Steel, this equity infusion was determined to be countervailable because the GOB paid more per share than the market price of the stock at that time and, hence, its investment was inconsistent with commercial considerations. We found this equity infusion countervailable in Final.

b. SNSN Capital for Cockerill Sambre's Liege Cold-Rolling Mill

Pursuant to the Gandois Plan, SNSN purchased 26,666,666 common shares of Cockerill's stock in 1985 for BF6 billion in order to finance an investment in Cockerill's cold-rolling facilities at Liege. SNSN purchased Cockerill's common shares at a price of BF225 per share. The market price of the stock at that time was BF197 per share.

c. 1981 Equity Infusion into Cockerill Sambre

In 1981, the GOB decided to increase the capital of Cockerill by infusing BF11 billion in cash in exchange for equity.

6. SNCI Loans

The SNCI is a public credit institution which, through medium- and long-term financing, encourages the development and growth of industrial and commercial enterprises in Belgium, including the national industries.

7. Belgian Industrial Finance Company (Belfin) Loans

Belfin borrows money in Belgium and on international markets, with the benefit of government guarantees, to obtain the funds needed to make loans to Belgian companies. The government's guarantee makes it possible for Belfin to borrow at favorable interest rates and to pass the savings along when it lends the funds to Belgian companies.

8. Clabecqlease (Invests)

Pursuant to the Belgian government's 20-point plan adopted in 1981 to restructure the steel industry, the GOB created holding companies (INVESTS) that were financed jointly by Societe Nationale d'Investissement (SNI) and private companies. Invests were found to be countervailable because they were industry specific.

9. FSNW Loans

In 1989, according to petitioners, after the conversion of large amounts of FSNW loans to equity, FSNW made a new loan to Cockerill in the amount of BF158 million to finance investments in accordance with the Gandois Plan.

10. Government-Guaranteed Loans

Government loan guarantees issued pursuant to the Economic Expansion Laws of either 1959 or 1970 were received by Fafer and Clabecq on SNCI loans and, in the case of Clabecq, also on Belfin loans which were outstanding during the POI.

11. Exemption of Corporate Income Tax for Grants Received under the 1970 Law

Under the 1970 Law, companies located in development zones are exempt from income tax on cash grants in the year in which the grant is received. Because this program is limited to specific zones, we have found the exemption to be countervailable.

12. Accelerated Depreciation

Under Article 15 of the 1970 Law, companies located in development zones may take twice the normal straight-line depreciation on assets acquired in part by grants received under this law. Because this benefit is limited to companies located in development zones, it is countervailable.

13. Exemption from Real Estate Taxes

Assets acquired through investments financed in part under the 1970 Law may be exempted from real estate tax for up to five years, depending on the extent to which objectives of the 1970 Law are achieved. The exemption is provided for under Article 16 of the 1970 Law and is restricted to firms located in development zones. The Department found this program to be countervailable because it was regionally specific.

14. Exemption from the Capital Registration Tax

A capital registration tax is assessed at the time capital is formally registered with a company. Under the 1970 Law, companies located in development zones may be exempted from the one percent capital registration tax. The Department found this program to be countervailable because it was regionally specific.

15. European Coal and Steel Community (ECSC) Article 54 Loans and Loan Guarantees

Article 54 industrial investment loans are provided for the purpose of purchasing new equipment or financing modernization. These loans are only available to the steel and coal industries and are, therefore, limited. Thus, these loans are countervailable to the extent that they are provided on terms inconsistent with commercial considerations.

16. ECSC Redeployment Aid

Under Article 56 (2)(b) of the ECSC Treaty, individuals employed in the coal and steel industry who lose their jobs may receive assistance for social adjustment. This assistance is provided for

workers affected by restructuring measures, particularly as workers withdraw from the labor market into early retirement or are forced into unemployment.

17. European Social Fund (ESF)

The ESF program is funded from the EC General Budget, the revenues for which are derived from customs duties, agricultural levies, Member State contributions, etc. The ESF is one part of the EC's Structural Funds. It is primarily responsible for two out of the five objectives of the Structural Funds. These two objectives relate to combating long-term unemployment and facilitating the occupational integration of young people.

18. Promotion Brochure

Under this export subsidy program, loans are extended for a five-year period with a fixed annual interest rate. However, the company is not required to make interest payments on the loan until the five-year period has ended. At the end of the period, if the company has not met certain targeted sales and profit goals generated from exports, the loan must be repaid. The Department determined in Administrative Review Amended Final that this program constitutes an export subsidy; therefore, it meets the definition established in Article 3.1(a) of the ASCM.

19. Audio-Visual Calling Card

Under this export subsidy program, a company may receive a fixed-rate long-term loan to produce an audio-visual calling card to present to foreign businessmen. Under the terms of the loan, if a company has not met targeted sales and profit goals generated from exports, it must repay the loan. In addition, companies are not obligated to pay interest during the five-year term of the loan. The Department determined in Administrative Review Amended Final that this program constitutes an export subsidy; therefore, it meets the definition established in Article 3.1(a) of the ASCM.

Preliminary Results of Review

As a result of this sunset review, the Department preliminarily finds that revocation of the countervailing duty order on CTL plate from Belgium would be likely to lead to continuation or recurrence of a countervailable subsidy for the reasons set forth in this memorandum. Further, we find the net countervailable subsidy likely to prevail if the order were revoked to be 2.82 percent ad valorem for Cockerill, 0.56 percent ad valorem for Fafer, and 0.50 percent ad valorem for "All Others" (including Clabecq).

Recommendation

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

David M. Spooner
Assistant Secretary
for Import Administration

Date