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C-423-806
2nd Sunset Review
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MEMORANDUM TO: James C. Leonard III
Acting Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for Final Results of Full Sunset Review of the Countervailing Duty Order on Cut-to-length Carbon Steel Plate from Belgium

Summary

We have analyzed the case briefs 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 we are addressing in these final results of full sunset review.

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Privatization of Cockerill
4. 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 Amendment to Final Affirmative Countervailing Duty Determination; Certain Steel Products From Belgium, 58 FR 43749 (August 17, 1993) (Order).

The Department investigated three companies: Forges de Clabecq S.A. (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 sub-programs for which

[1] In other proceedings under this order, Fafer has at times been referred to as "Fabfer."

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 (ERP)
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. <u>See Geneva Steel et al v. United States</u>, 937 F. Supp 946 (CIT 1996) and <u>Amended Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products from Belgium</u>, 62 FR 37880 (July 15, 1997) (<u>Amended Final</u>). The adjusted rates were 23.15 percent <u>ad valorem</u> 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 (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.

History of the Sunset Review

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). 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, and on file in in the Central Records Unit, Room B-099 of the Department of Commerce building (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). On July 21, 2006, the Department published the preliminary results of the full sunset review of the instant order. See Preliminary Results of Full Sunset Review: Cut-to-Length Carbon Steel Plate from Belgium, 71 FR 41424 (Preliminary Results). In our Preliminary Results, we found that revocation of the order would likely lead to continuation or recurrence of countervailable subsidies on the subject merchandise.

Interested parties were invited to comment on our Preliminary Results. On August 4, 2006, we received a timely case brief from the Government of Belgium (GOB). On August 7, 2006, we received timely case briefs from Duferco Clabecq S.A. (Duferco), which purchased Forges de Clabecq S.A.(Clabecq), and Arcelor S.A. (Arcelor), claiming to be the successor-in-interest to both Fabrique de Fer de Charleroi (Fafer) and Cockerill Sambre (Cockerill).[2] We received no comments from domestic interested parties.

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 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 comments provided by respondent interested parties.

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[2]Although Duferco reported that it purchased Forges de Clabecq S.A., and Arcelor claims to be 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 July 14, 2006, (CIO Memo), incorporated in the Preliminary Results and on file in the CRU.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

____The GOB, Duferco, Cockerill, and Fafer state that the programs the Department relied on the Preliminary Results to find likelihood have been terminated or are expired and that benefits will not continue beyond the sunset period. Duferco specifically argues that the Department has not demonstrated that there were residual benefits from the terminated programs, and notes that the Department based its determination on benefits found countervailable in the original investigation and the subsequent administrative review.

Duferco contends that the Department did not meet the standards to support its determination of likelihood in its Preliminary Results. To support its argument, Duferco cites AG der Dillinger v. U.S. and the subsequent remand determination. See AG der Dillinger Huttenwerke et al v. United States, 193 F.Supp.2d 1339 (February 28, 2002) (Dillinger) and AG der Dillinger Huttenwerke et al v. United States, 26 CIT 1091 (September 5, 2002) (Dillinger). Duferco states that if the Department found its evidence of termination lacking, the Department is obligated to seek the necessary information in accordance with Dillinger. Furthermore, Duferco states that, in accordance with Dillinger, the Department must make a factual finding that it is probable that the benefits will continue beyond the sunset review period, and that it is not enough for the Department to indicate the possibility that benefits could still be given under the program. Duferco claims that, contrary to the Department's statement that insufficient evidence was provided to demonstrate termination, all information on the record demonstrates that all relevant programs have been eliminated. In conclusion, Duferco argues that because the Department has not cited any evidence on the record to support its preliminary affirmative determination, the Department must make a negative likelihood determination for the final results and revoke the order.

Department's Position

The Department continues to find that revocation of the order would likely lead to continuation or recurrence of a countervailable subsidy to the subject merchandise. In accordance with section 752(b)(1) of the Act, in determining whether revocation of a CVD order would likely 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 program 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.

The Department makes its likelihood determination (i.e., of whether revocation of the order is likely to lead to continuation or recurrence of a countervailable subsidy) on an order-wide (country-wide) basis, although company-specific rates are reported to the ITC. Based on the information in the original investigation, the Administrative Review Amended Final, and the

First Sunset Review, as well as the substantive responses from the interested parties, the record evidence does not establish that all of the programs found countervailable in the investigation and subsequent administrative review have been terminated with no residual benefits or replacement programs. Our analysis of this information leads us to conclude that only the following four programs previously found countervailable were terminated by the end of the sunset period such that, for these programs, there is no likelihood that subsidization will continue or recur were the order to be revoked: Ecological Incentives, Other Loans-Clabecq, Clabecq Infusion from SOCOCLABECQ, and SNSN Loans.

In the investigation, we noted that Ecological Incentives were terminated in 1981 because of budget shortfalls, and that those grants were received prior to the period of investigation and expensed in the year of receipt. Likewise, Other Loans-Clabecq were also treated as grants and expensed in the year of receipt before the period of investigation. These loans constituted a one-time, company-specific subsidy to cover a specific event that was not part of a broader government program under which subsidies would continue to be available. In addition, we find that the fully allocated Clabecq Infusion from SOCOCLABECQ similarly constituted a one-time, company-specific subsidy that was limited to the government directing a single private shareholder of Clabecq to provide subsidies to preserve its ownership interest. Finally, information from the investigation shows that the SNSN loans were provided as temporary measures which were later "rolled" into other aid packages that were countervailed separately. Therefore, for these four programs, as we stated in the preliminary results of review, it is not likely that subsidization will continue or recur were the order to be revoked.

As explained below, with respect to the remaining programs, the evidence does not establish that these programs have been terminated with no residual benefits or replacement programs, or that these were one-time, company-specific subsidies that were not part of a government program, and that have been fully allocated or that otherwise no longer provide any benefits. As such, there is no basis for eliminating these programs from consideration for purposes of our likelihood determination.

While a number of programs no longer provided benefits by the end of the sunset period, the evidence provided by the GOB did not establish the conditions necessary to find that these programs should not be taken into account in our likelihood determination. Specifically, the GOB has not provided supporting documentation such as the enactment of a statute, regulation, or decree. Cf. 19 CFR 351.526(b) and (d). Instead, the GOB relied on general statements without supporting documentation in arguing that many programs have been terminated; that benefits under many of the programs are fully allocated; or that EC rules generally prohibit state aid without any documentation showing that the GOB had implemented these prohibitions. Therefore, 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.

Finally, in Dillinger, the CIT found that the Department failed to consider evidence that was reasonably brought to the Department's attention. By contrast, in this sunset review, the issue is that the GOB has failed to bring to the Department's attention evidence sufficient under the Department's regulatory criteria to indicate that the programs in question have been terminated. Consequently, the GOB has failed to demonstrate that these remaining programs should not be considered in the Department's likelihood determination.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

Cockerill and Fafer argue that the Department should recalculate the net countervailable subsidy rate likely to prevail since the Department incorrectly used a program rate from the ERP program, which is terminated. The ERP consists of two parts: the first component was a waiver given to the steel industry so that they would not have to replace retiring workers; the second component involved a GOB program that assisted companies to help pay workers who took early retirement. Cockerill and Fafer contend that the Department should subtract 0.50 percent from the net subsidy likely to prevail since the Department determined in the investigation that the first component of the ERP was terminated during the period of investigation (POI), and that the countervailable subsidy provided by this program was de minimis. See Final at 58 FR 37273, 37276.

Cockerill and Fafer note that in the only administrative review, the Department found that Fafer was no longer benefitting from the ERP program. Cockerill and Fafer argue that the Department's determination in the first administrative review is evidence that the program no longer confers any benefit. In addition, Cockerill and Fafer state that, according to the GOB's substantive response dated December 1, 2005, the second component of the ERP program was phased out by the GOB in the early 1990s. Accordingly, Cockerill and Fafer conclude that the Department must recalculate each company's net countervailable subsidy rates minus the ERP program to account for the Department's administrative review finding. Finally, Cockerill and Fafer argue that if, after recalculating, the resulting rate is de minimis, then the Department must revoke the order in accordance with Dillinger.

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. Accordingly, we are using the rates calculated in the Order and in the Administrative Review Amended Final which included two new programs, as the basis for determining the rate likely to prevail. As noted in the Order, the ERP program rate associated with payment to workers who took early retirement was not calculated in the final determination because the Department erroneously found that the benefit amount was included in other program calculations.

Accordingly, the Department calculated a rate in the Order for recurring early retirement grants received under this program by Fafer and Cockerill in 1991. See Order at 43750. The Department has assigned these rates to the ERP program in the instant sunset review.

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 at Comment 6 (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 subsidy rate that is likely to prevail if the order is revoked. 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 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 was discussed in detail 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, issued concurrently with the Preliminary Results on July 21, 2006 (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). As discussed above, none of the arguments raised by the parties have persuaded the Department to modify these rates.

3. Privatization of Cockerill

Interested Parties' Comments

Cockerill contends that the Department should reconsider its determination that the sale of Cockerill by the Societe Wallone pour la Siderugie (SWS) to Usinor did not result in transfer of effective control and in the extinguishment of all subsidies. Cockerill argues that the Department is incorrect in determining that the 75 percent purchase does not represent the sale of a company and the right to effective control by the purchaser. Respondent states that under the sales agreement, Usinor bought 75 percent of Cockerill shares at full market value and subsequently acquired the remaining 25 percent shares from SOGEPA (SWS' successor) within a five-year period. Cockerill argues that the 75 percent purchase by Usinor gave Usinor effective control of the company under the sales agreement. Respondent notes that after the sale, Usinor integrated Cockerill into its corporate structure and that SWS became a minority shareholder with limited rights. Cockerill further states that it is currently 100 percent owned by Arcelor, a fully privatized company. Respondent concludes that if the Department determines that a sale that transfers control over a set period of time is less valid than a sale with a single transfer, then it must explain its reasoning.

Cockerill argues further that the Department is erroneous in concluding that the remaining 25 percent of Cockerill shares held by SWS constituted a substantial minority. Respondent states that, in analyzing SWS's remaining rights to block a limited number of transactions, the Department did not determine whether these restrictions affected the ability of Usinor to exercise effective control of Cockerill. Respondent contends that the Department overlooked the fact that SWS's rights as a minority shareholder only applied if they held a minimum percentage of shares in the company as noted in the "Strategic Partnership Agreement" between Usinor and SWS. See Government of Belgium's Change in Ownership Questionnaire Response, (March 15, 2006), Exhibit C at Attachment 1.

Cockerill maintains that under the Department's policy, a sale of a company or its assets rebuts the presumption of continuation of a benefit from allocated subsidies. See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125 at 37127 (June 23, 2003) (Modification Notice). Respondent argues that based on this statement, the Department must determine that all non-recurring subsidies have been extinguished. Respondent contends that since Cockerill was a publicly-traded company at the time of sale, it was not necessary for Usinor to purchase 100 percent of Cockerill's shares in order to have effective control. Respondent notes that under the Modification Notice, Usinor's 75 percent acquisition of Cockerill constituted the sale of all or substantially all of the company or its assets. See Modification Notice, at 37127. Respondent further argues that the purpose of conducting a privatization analysis is to determine if the sale extinguished benefits conferred by the prior subsidies. See Allegheny Ludlum Corp. v. United States, 367 F.3d 1339 (May 13, 2004).

Respondent concludes that the Department cannot rely on its preliminary determination that 75 percent ownership of a publicly-traded company does not constitute a controlling stake. Instead, Respondent suggests that the Department must evaluate Cockerill's privatization based on the fact that Usinor purchased 100 percent of Cockerill shares and that the company has been fully privatized.

Department's Position

On December 28, 2005, the Department issued its standard change-in-ownership questionnaire to Cockerill, as well as to Clabecq and Fafer. In the cover letter of that questionnaire, we asked respondents to provide information regarding "the nature and circumstances of any changes in the ownership of the respondent company or its assets during the average useful life (AUL) of its reviewable physical assets." We did not identify any particular transactions of interest, and certainly did not limit by any means which transactions the respondents could address.

Nevertheless, Cockerill provided a complete response concerning only the initial Usinor-SWS transaction, after which SWS retained 25 percent of Cockerill shares. In fact, the subsequent Usinor-SWS transaction, in which Usinor purchased the remaining 25 percent of Cockerill held by SWS, was not addressed in Cockerill's substantive response.[3] Having not provided the information required by the Department to conduct a change-in-ownership analysis of this later transaction, Cockerill nonetheless argues that the Department should reach the conclusion that this transaction was at arm's length and for fair market value. The Department simply cannot reach such a conclusion, with the possible associated result of extinguishing the benefit received by Cockerill under every non-recurring subsidy program,[4] on the basis of Cockerill's statement regarding this second Usinor-SWS transaction.[5]

As indicated in the Modification Notice, our privatization analysis, whether done in the context of a sunset or an administrative review, specifically indicates that the burden is on respondent to rebut the presumption that subsidies survived a change in ownership. We note that the Department granted significant extensions to all respondents to submit their responses to the questionnaire, and we issued supplemental questionnaires. At no point did respondents provide the necessary details about the second transaction.

Thus our analysis has to focus and our conclusion has to rest on the initial Usinor-SWS transaction, for which Cockerill completed the questionnaire. Regarding our analysis of that transaction, Cockerill misstates our policy. It states, several times, that our policy in examining a privatization requires us to determine whether the government has sold "a substantial share of a company" (see, e.g., page 4 of Cockerill's case brief), before examining the arm's length nature and fair market value of the sale. It then goes on to argue that SWS's sale to Usinor was the sale of a "substantial share," because it resulted in Usinor owning 75 percent of Cockerill and having

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[3] As the Department noted in our Preliminary Results of this sunset review, we were able to infer from the financial statements of Arcelor (Usinor's successor) that SWS was probably no longer an owner of Cockerill. However, there was nothing on the record that discussed SWS's apparent exit, or that it had taken place via a purchase by Usinor. See CIO Memo at 8.

[4] We emphasize here that our determination regarding Cockerill's change in ownership only affects non-recurring subsidies, whereas the majority of the programs the Department has determined not to be terminated, and which affected our calculation of the rate likely to prevail, are recurring subsidy programs. Thus, even if we were to conclude that Cockerill's sale was a privatization at arm's length and for fair market value, the only likely effect might be to decrease the calculated rate likely to prevail.

[5] The Department determined that it was not necessary to reject this argument concerning the second Usinor-SWS transaction since we recognized in the Preliminary Results that SWS was probably no longer an owner of Cockerill. See CIO Memo at 8.

effective control. However, as stated in our Preliminary Results, where we quoted the Modification Notice, 68 FR 37127, our policy does not involve a determination of whether a "substantial share" was sold, but whether the government sold "substantially all" of a company or its assets, retaining no control. Thus, in this case, the sale to Usinor of 50 percent of Cockerill, bringing Usinor's total ownership to 75 percent, may have been a sale of a "substantial share" by the government to Usinor; however, SWS still owned 25 percent of Cockerill and could not, therefore, be said to have sold "substantially all" of Cockerill. Moreover, the Modification Notice states unequivocally that the sale should result in the government "retaining no control of the company or its assets," which was clearly not the outcome of this transaction, as explained in our Preliminary Results.

Cockerill insists through various arguments that the Department's concern should be with whether control "shifted," how the relative positions of SWS and Usinor in Cockerill essentially flip flopped, and the nature of Usinor's ownership after the transaction. At one point, Cockerill states that "{i}n the Preliminary Results the Department claimed that SWS controlled a substantial share of the remaining shares {after the sale}. It should be noted that this is not the test the Department has laid out. The question is whether 75 percent {Usinor's post-sale ownership} represents a substantial percentage of the company."[6] The Department's statement in the Preliminary Results is consistent with the Department's privatization practice, and is in accordance with the plain meaning of the Modification Notice. Cockerill does not provide any support for its alternative reading of this language.

Finally, Cockerill argues that the Department failed: 1) to examine the significance of the rights held by SWS as a minority shareholder after the sale was completed and how these rights "affected the ability of Usinor to exercise effective control of the company," and, 2) how these rights changed over time, in accordance with the terms of the sales agreement. However, as we noted above, our conclusion does not rest on the dominance of Usinor vis-a-vis SWS, but on the fact that SWS did not sell substantially all of its ownership in Cockerill. Even if SWS's rights as a minority shareholder did decline over time, and even if this decline was in accordance with the terms of the original sales agreement, the fact remains that it owned 25 percent of Cockerill's shares after the sale was completed, and any subsequent changes in its ownership were the result of a later transaction, about which Cockerill did not complete a questionnaire response. While the Department did discuss the rights SWS retained as a minority shareholder in our Preliminary Results, we clearly rested our conclusion on the fact that SWS had not sold substantially all of its ownership in Cockerill, and not on these other indicia of the control SWS retained after the sale. Finally, in so far as Cockerill's argument that we have to examine the significance of SWS's control over Cockerill, our concern is with what powers SWS had at the point of sale, not with how those powers declined over time. Thus, we cannot ignore the fact that SWS had significant powers of control over Cockerill at the time of sale and for five years thereafter, including, as we

[6] In certain instances, it appears that Cockerill's argument is that if Usinor had operational control of Cockerill after the sale, then SWS cannot also have control. While Usinor may have been the dominant post-sale partner, its control of Cockerill and SWS's control of Cockerill are not mutually exclusive.

noted in our Preliminary Results, seats on Cockerill's board of directors and a special veto power exercised by these SWS-nominated board members.

4. 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 Final Affirmative Countervailing Duty Determinations: Certain Carbon Steel Products from Belgium, 47 FR 39304 (September 7, 1982), 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 the 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. <u>SNCI Loans</u>

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 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 that this program constitutes an export subsidy; therefore, it meets the definition established in Article 3.1(a) of the ASCM.

Final Results of Review

As a result of this sunset review, the Department 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 examination of the record and analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

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James C. Leonard III
Acting Assistant Secretary
for Import Administration

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Date