

December 3, 2008

**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 the Final Results of the  
Eighth (2006) Administrative Review of the Countervailing Duty  
Order on Stainless Steel Plate in Coils from Belgium

---

**Background**

On June 6, 2008, the U.S. Department of Commerce (“the Department”) published in the Federal Register its preliminary results of the administrative review of the countervailing duty order on stainless steel plate in coils from Belgium for the period January 1, 2006, through December 31, 2006. See Stainless Steel Plate in Coils from Belgium: Preliminary Results of Countervailing Duty Administrative Review, 73 FR 32303 (June 6, 2008) (“Preliminary Results”). The Department issued a post-preliminary analysis on November 6, 2008. See Memorandum to David M. Spooner from David Neubacher and Alicia Winston: Post Preliminary Findings (November 6, 2008) (“Post-Preliminary Analysis”). The “Analysis of Programs” and “Subsidies Valuation Information” sections, below, describe the subsidy programs and the methodologies used to calculate the net countervailable subsidy. We have analyzed the case briefs of interested parties. As a result of our analysis, we have made changes to the preliminary results. We recommend that you approve the positions described in the “Discussion of Issues” section of this memorandum. Below is a complete list of the issues in this review for which we received comments from interested parties:

## List of Comments and Issues in the Decision Memorandum

- Comment 1: **Threshold Requirements**
- Comment 2: **Use of Facts Otherwise Available**
- Comment 3: **SidInvest Benefit Calculation**
- Comment 4: **Ongoing Scope Inquiry**

### **Changes in Ownership**

Effective June 30, 2003, the Department adopted a new methodology for analyzing privatizations in the countervailing duty context. See Notice of Final Modification of Agency Practice under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125 (June 23, 2003) (“Modification Notice”). This methodology is based on a rebuttable “baseline” presumption that non-recurring, allocable subsidies continue to benefit the subsidy recipient throughout the allocation period (which normally corresponds to the average useful life (“AUL”) of the recipient’s assets). *Id.*, at 37127. However, an interested party may rebut this baseline presumption by demonstrating that, during the allocation period, a change in ownership occurred in which the former owner sold all or substantially all of a company or its assets, retaining no control of the company or its assets, and that the sale was an arm’s-length transaction for fair market value. *Id.*

The ownership of Ugine & ALZ Belgium (“U&A”) changed during the AUL period as a result of mergers and ownership changes. However, during the current administrative review, U&A has not attempted to rebut the Department’s baseline presumption that the non-recurring, allocable subsidies received prior to any changes in ownership continue to benefit the company throughout the allocation period. See U&A’s September 24, 2007, questionnaire response at pages 12 – 13.

### **Subsidies Valuation Information**

#### *Responding Producers*

In earlier segments of this proceeding, we found that ALZ N.V.’s (“ALZ’s”) parent company, Sidmar N.V. (“Sidmar”), owned either directly or indirectly 100 percent of ALZ’s voting shares and was the overall majority shareholder of U&A. See Final Affirmative Countervailing Duty Determination; Stainless Steel Plate in Coils from Belgium, 64 FR 15567 (March 31, 1999) (“SSPC from Belgium Investigation”); Stainless Steel Plate in Coils from Belgium: Final Results of Countervailing Duty Administrative Review, 66 FR 45007 (August 27, 2001), and accompanying Issues and Decision Memorandum (“SSPC from Belgium First Review”). Therefore, in accordance with 19 CFR §351.525(a)(6)(iii) of the Department’s regulations, because ALZ was a fully consolidated subsidiary of Sidmar, any untied subsidies provided to Sidmar are attributable to ALZ.

In the current review, U&A provided evidence showing that it is wholly owned by Arcelor and that Sidmar transferred shares to Arcelor pursuant to the 2002 merger of Sidmar’s parent, Arbed,

with Aceralia and Usinor. Certain details of this transfer are proprietary and are discussed in U&A's Preliminary Calculation Memo. See Memorandum to Susan Kuhbach, Director, regarding "Calculations for the Preliminary Results for U&A Belgium" (May 30, 2008) U&A's Preliminary Calculation Memo ("U&A's Preliminary Calculation Memo"). Based on the information provided, we are continuing to attribute any non-recurring subsidy benefits provided to Sidmar that are still outstanding during the period of review ("POR") to U&A's sales.

#### *Allocation Period*

In the SSPC from Belgium Investigation, we calculated company-specific allocation periods for non-recurring subsidies using company-specific AUL data in accordance with British Steel plc v. United States, 929 F. Supp. 426, 439 (CIT 1996). We determined that the AUL for ALZ was 15 years, and that the AUL for Sidmar was 19 years. See SSPC from Belgium, 64 FR at 15568.

In 1998, the Department adopted new CVD regulations that were effective in this proceeding beginning with the first administrative review (see 19 CFR §351.702(a)). Under those regulations, the Department determined to use a 15-year AUL for any "new" subsidies received by Sidmar, *i.e.*, subsidies not included in the investigation. See SSPC from Belgium First Review, and accompanying Issues and Decision Memorandum at Comment 2. However, with respect to non-recurring subsidies received prior to the first administrative review which had already been countervailed and allocated based on an allocation period established in SSPC from Belgium Investigation, we continued to allocate those non-recurring subsidies over 19 years for Sidmar. As we noted at the time, this methodology was consistent with our approach in Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review, 62 FR 16549 (April 7, 1997) and Certain Pasta from Italy: Final Results of Third Countervailing Duty Administrative Review, 66 FR 11269 (February 23, 2001) and accompanying Issues and Decision Memorandum at "Allocation Period." See SSPC from Belgium First Review, and accompanying Issues and Decision Memorandum at Comment 2.

During the current administrative review, U&A has not commented on the AUL period. Therefore, we are continuing to use the 15-year AUL for U&A and the 19-year AUL for non-recurring subsidies to Sidmar that were included in the investigation.

#### *Benchmarks for Discount Rate*

Because Sidmar did not obtain long-term commercial loans in the year in which the grant was received, we used a national average rate for long-term, fixed-rate debt as the discount rate. See 19 CFR §351.505(a)(2)(iii) and 19 CFR §351.505(a)(3)(ii).

## Analysis of Programs

### I. *Programs Previously Determined to Confer Subsidies*

We examined the following program determined to confer subsidies in the investigation and the first administrative review, and find that U&A continued to receive benefits under this program during the POR.

#### SidInvest

SidInvest was incorporated on August 31, 1982, as a holding company jointly owned by Sidmar and the Societe Nationale d'Investissement, S.A. ("SNI") (a government financing agency). 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 a company's profitability. See SSPC from Belgium Investigation, 64 FR at 15572.

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 the government agency Nationale Maatschappij voor de Herstructurering van de Nationale Sectoren ("NMNS") 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. Id.

We determined that this program conferred a countervailable subsidy within the meaning of section 771(5) of the Tariff Act of 1930, as amended ("the Act"). Id. This program provided a financial contribution as described in section 771(5)(D)(i) of the Act. Id. 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 determined that the program was specific under section 771(5A)(D)(i) of the Act. Id. In this administrative review, no new information has been placed on the record which would warrant reconsideration of this determination.

To measure the benefit arising from the events of July 29, 1988, we have deducted from SidInvest's outstanding indebtedness the cash received by the GOB. We have treated the remainder as a grant and allocated the benefit over Sidmar's 19-year AUL. We divided the total benefit attributable to 2006 by U&A Belgium's revised total sales during 2006 (revised total sales as recalculated in the Post-Preliminary Analysis). On this basis, we determine the countervailable subsidy for 2006 to be 0.20 percent *ad valorem*.

## II. *Programs Determined to be Not Countervailable*

### A. Non-Countervailable Programs Identified in the Post-Preliminary Analysis.

We identified two programs in the Post-Preliminary Analysis which we determine to be not countervailable. We list these programs in a separate memorandum because the identity of these programs is considered to be business proprietary information. See Memorandum from David Layton to File: Business Proprietary Information for the Final Results of the Eighth Administrative Review (December 3, 2008) (“BPI Memo”)

## III. *Programs Found Not To Have Been Used or Not to Have Provided Benefits*

We examined the following programs and determine that U&A did not apply for or receive benefits, or received no measurable benefits, under these programs during the POR:

### A. Government of Belgium Programs

1. Subsidies Provided to Sidmar that are Potentially Attributable to ALZ:
  - a. Water Purification Grants
2. Societe Nationale pour la Reconstruction des Secteurs Nationaux
3. Regional subsidies under the 1970 Law Investment and Interest Subsidies
4. Regional Subsidies under the Economic Expansion Law of 1970
  - a. Expansion Real Estate Tax Exemption
  - b. Accelerated Depreciation
5. Reduced Social Security Contributions Pursuant to the Maribel Scheme (Article 35 of the Law of June 29, 1981)
6. 1987 ALZ Common Share Transaction Between the GOB and Sidmar (also identified as 1985 ALZ Share Subscriptions and Subsequent Transactions in the CVD Order)
7. Industrial Reconversion Zones:
  - a. Albufin
8. Belgian Industrial Finance Company (“Belfin”) Loans

9. Societe Nationale de Credite a l'Industrie ("SNCI") Loans
10. Conversion of Sidmar's Debt to Equity (OCPC-to-PB) in 1985
11. Industrial Reconversion Zones: Alfin

In the Preliminary Results, based on the use of facts otherwise available we preliminarily found U&A to have benefitted from the Industrial Reconversion Zones: Alfin program during the POR. See Preliminary Results, 73 FR at 32306. Now, based on information submitted by U&A, we determine this program to be not used by U&A during the POR.<sup>1</sup>

12. Reimbursement of Worker Training Costs<sup>2</sup>
13. Recycling Rebates<sup>3</sup>
14. Conservation Program<sup>4</sup>

B. Government of Flanders Programs

1. Regional subsidies under the 1970 Law
  - a. Corporate Income Tax Exemption
  - b. Capital Registration Tax Exemption
  - c. Government Loan Guarantees
  - d. 1993 Expansion Grant
2. Special Depreciation Allowance
3. Preferential Short-Term Export Credit
4. Interest Rate Rebates

C. Programs of the European Commission

1. ECSC Article 54 Loans and Interest Rebates
2. ECSC Article 56 Conversion Loans, Interest Rebates and Redeployment Aid

---

<sup>1</sup> See U&A's September 5, 2008 supplemental questionnaire response (September 5, 2008 SQR) at 2-3.

<sup>2</sup> See Post-Preliminary Analysis at 5-6.

<sup>3</sup> See id. at 6.

<sup>4</sup> See id. at 6.

3. European Social Fund Grants
4. European Regional Development Fund Grants
5. Resider II Program

D. Other Programs

In addition to the programs listed above, we identified two programs in the Post-Preliminary Analysis which we determine to be not used because they were expensed in the year received prior to the POR. We list these programs in a separate memorandum because the identity of these programs is considered to be business proprietary information. See BPI Memo.

IV. *Programs for Which the Department is Deferring Consideration*

We identified one program in the Post-Preliminary Analysis for which we are deferring our examination until a future administrative review. This program was discovered in the course of the review, but we are deferring our consideration because we did not have adequate time to obtain sufficient evidence to make a finding in the current review.<sup>5</sup> We list this program in a separate memorandum because the identity of this program is considered to be business proprietary information. See BPI Memo.

**Analysis of Comments**

**Threshold Requirements**

**Comment 1:** U&A argues that the Department's analysis of certain amounts in U&A's 2005 and 2006 financial statements is flawed because, by law, the Department must 1) determine that there is a financial contribution that has an appearance of a countervailable subsidy based on record evidence;<sup>6</sup> 2) notify the parties that the new program will be included in the ongoing investigation;<sup>7</sup> and, 3) make a determination that a financial contribution exists that is both specific and confers a benefit.<sup>8</sup> U&A argues that because none of these steps was performed in the Post-Preliminary Analysis, the Department should clarify in its Final Results that further investigation of these amounts is not warranted.

The GOB argues that the SCM Agreement requires the Department to formally provide notification prior to the initiation of an investigation of any subsidy. Additionally, it argues that before making a determination that a program is countervailable, the Department is required to demonstrate that all of the legal thresholds have been met. The GOB argues that the Department did not provide formal notification and did not demonstrate that all of the legal thresholds have been met in the Post-Preliminary Analysis. Therefore, the Department may not find that the programs reviewed are countervailable subsidies.

---

<sup>5</sup> See 19 CFR § 351.311(c)(2).

<sup>6</sup> See section 775 of the Tariff of Act of 1930, as amended (the Act).

<sup>7</sup> See 19 CFR §351.311(d).

<sup>8</sup> See section 771(5)(B) of the Act.

There were no rebuttals.

### Department's Position

Contrary to U&A's and the GOB's arguments, the Department afforded the GOB and U&A notice and an opportunity to comment on its decision to analyze certain amounts in the 2005 and 2006 financial statements. Specifically, when the Preliminary Results were published, the parties received notice of our intent to investigate certain amounts that appear in U&A financial statements. We stated there<sup>9</sup> that we did not have sufficient information regarding certain items appearing in U&A's 2005 and 2006 financial statements at that time and that we intended to seek further information on these amounts. We requested that U&A provide information on these items in the April 3, May 1, and June 12, 2008, supplemental questionnaires to U&A.<sup>10</sup> Therefore, the Department did notify the parties to the proceeding that these amounts would be examined in a post-preliminary analysis and we afforded them the opportunity to comment before the final results.

Our purpose in conducting an administrative review is to determine the actual net countervailable subsidy received during the review period in order to assess countervailing duties and to set a deposit rate for future entries. See section 751(a) of the Act. In this case, all of the items in question resulted in no benefit, no measurable benefit or insufficient information on the record to make a determination during the POR. See Post- Preliminary Analysis. Because we have not found countervailable any of the programs under which these amounts were given, we are not addressing U&A's arguments regarding specificity or financial contribution.

### Use of Facts Otherwise Available

**Comment 2:** The Department did not receive a response to a supplemental questionnaire from the GOB in a timely manner and used facts otherwise available ("FA") in its Preliminary Results to determine the countervailable subsidy conferred by the GOB under the Industrial Reconversion Zone program and two programs under the Economic Expansion Law of 1970.<sup>11</sup> U&A argues that the Department received subsequent responses from the Governments of Belgium, Flanders, and Wallonia in August and September confirming non-use for these programs during the AUL period.<sup>12</sup> Therefore, in U&A's view, the use of FA in this review is not permitted because record evidence confirms and documents that U&A did not receive benefits under any of the examined programs for the period of review.<sup>13</sup>

---

<sup>9</sup> See Preliminary Results, 73 FR 32303.

<sup>10</sup> See First, "Second"(actually Third) and Fifth Supplemental Questionnaires to U&A (April 3, 2008, May 1, 2008 and June 12, 2008, respectively).

<sup>11</sup> See Preliminary Results, 73 FR at 32304, 32305.

<sup>12</sup> See August 22, 2008 SQR and September 5, 2008 SQR at 2-3.

<sup>13</sup> The following *recurring* subsidy programs were at issue:

- Industrial Reconversion Zones: Albufin
- Regional Subsidies under the Economic Expansion Law of 1970 administered by the GOB: Real Estate Tax Exemption; Accelerated Depreciation
- Regional Subsidies under the Economic Expansion Law of 1970 administered by the Government of Flanders: Corporate Income Tax Exemption Program; Capital Registration Tax Exemption Program

The following *non-recurring* subsidy programs were at issue:

- Industrial Reconversion Zones: Alfin



The GOB argues that no benefits were conferred on U&A under the Industrial Reconversion Zone program or the Economic Law of 1970 during the AUL period as confirmed by the Governments of Belgium, Flanders, and Wallonia. Therefore, the GOB argues that the Department may not countervail these programs.

There were no rebuttals.

#### Department's Position

U&A provided information confirming that neither U&A nor any of its affiliates applied for, used, or benefited from subsidies granted under the Industrial Reconversion Zones or the Economic Expansion Law of 1970 programs during the POR.<sup>14</sup> Since there is sufficient information on the record indicating that the respondent did not use the programs, there is no need for the Department to continue to use FA. Instead, the Department finds these programs to be not used in the current POR.

#### SidInvest Benefit Calculation

**Comment 3:** The SidInvest grant was allocated over Sidmar's 19-year AUL period, which expired in 2006.<sup>15</sup> In the Preliminary Results the Department divided the total benefit attributable to 2006 under the SidInvest program by U&A's total sales during 2006 and determined the countervailable subsidy for 2006 to be 0.31 percent ad valorem.<sup>16</sup> U&A argues that the total sales value used by the Department was incorrect because it was not a consolidated sales total for all of U&A's facilities, as reported by U&A in its May 22, 2008 submission. U&A notes that the Department used this revised value its Post-Preliminary Analysis, and should do so for the Final Results.

There were no rebuttals.

#### Department's Position

U&A originally reported a 2006 FOB sales total which only included sales for one of its facilities. Just prior to the Preliminary Results, U&A provided a revised 2006 FOB consolidated sales total that included all facilities. We stated in our Preliminary Results that we did not have sufficient information at that time to make a finding on the revised sales data and that we would seek further information.<sup>17</sup> In our Post-Preliminary Analysis, we determined that the revised total sales value tied to U&A's financial statements and found no discrepancies in the derivation of the 2006 FOB value. Thus, in these Final Results, the Department has used the revised 2006 FOB sales total to determine the countervailable subsidy attributable under the SidInvest program for 2006.

- 
- Regional Subsidies under the Economic Expansion Law of 1970 administered by the Government of Flanders: Government Loan guarantees Program; 1993 Loan Grant Program

<sup>14</sup> See September 5, 2008 SQR at 2-3.

<sup>15</sup> See September 5, 2008 SQR.

<sup>16</sup> See Preliminary Results, 73 FR at 32306.

<sup>17</sup> See id., 73 FR at 32307.

### **Ongoing Scope Inquiry**

**Comment 4:** On July 23, 2007, the Department initiated a scope inquiry to determine whether material of a nominal thickness 4.75mm or greater but an actual thickness of less than 4.75mm is properly within the scope of the order. U&A requests that when the scope ruling is announced, the Department should ensure that the Final Results and accompanying liquidation and cash deposit instructions in this review reflect the results of the scope inquiry.

There were no rebuttals.

### **Department's Position**

The results of the scope inquiry were announced on December 3, 2008, and are reflected in the Final Results and accompanying customs instructions.

## 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 final results of review and the final net subsidy rates for the reviewed producers/exporters of the subject merchandise in the Federal Register.

---

Agree

---

Disagree

---

David M. Spooner  
Assistant Secretary  
for Import Administration

---

Date