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9th Administrative Review
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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Ninth (2007) Administrative Review of the Countervailing Duty
Order on Stainless Steel Plate in Coils from Belgium

Background

On June 4, 2009, the U.S. Department of Commerce (“the Department”) published in the Federal Register its preliminary results of the administrative review of the countervailing duty (“CVD”) order on stainless steel plate in coils from Belgium for the period January 1, 2007, through December 31, 2007. See Stainless Steel Plate in Coils from Belgium: Preliminary Results of Countervailing Duty Administrative Review, 74 FR 26844 (June 4, 2009) (“Preliminary Results”). The Department issued a post-preliminary analysis on September 16, 2009. See Memorandum to Carole A. Showers, Acting Deputy Assistant Secretary for Policy and Negotiations, from David Layton and Mary Kolberg: Post-Preliminary Findings (September 16, 2009) (“Post-Preliminary Analysis”). We have analyzed the case briefs of interested parties. We have made no changes to the preliminary results. We recommend that you approve the positions described in the “Analysis of Comments” 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: Error in the Department's Draft Liquidation Instructions

Comment 2: Authority of Department to Investigate IWT Program

Changes in Ownership

In the CVD investigation that resulted in the order, we examined a single producer/exporter of the subject merchandise, ALZ N.V. ALZ N.V. was owned by Sidmar N.V. See Final Affirmative Countervailing Duty Determination; Stainless Steel Plate in Coils from Belgium, 64 FR 15567 (March 31, 1999) (“SSPC from Belgium Investigation”); see also 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”).

In the most recent review, we recognized that Sidmar N.V. had transferred its shares in ALZ N.V. to Arcelor S.A., which was formed in the 2002 merger of Sidmar N.V.'s parent, Arbed S.A., with Aceralia and Usinor S.A., and the company formerly named ALZ N.V. had become U&A Belgium. See Stainless Steel Plate in Coils From Belgium: Preliminary Results of Countervailing Duty Administrative Review, 73 FR 32303 (June 6, 2008) (unchanged in Stainless Steel Plate in Coils from Belgium: Final Results of Countervailing Duty Administrative Review, 73 FR 75673 (December 12, 2008) (“2006 SSPC Final”)).

In the current period of review (“POR”), U&A Belgium changed its name to ArcelorMittal Stainless Belgium (“AMS Belgium”). AMS Belgium is wholly owned by ArcelorMittal S.A. as a result of the November 13, 2007, merger of Arcelor S.A. and Mittal Steel N.V.

Effective June 30, 2003, the Department adopted a new methodology for analyzing privatizations in the CVD context. See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125 (June 23, 2003). The Department's 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). See 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. See id.

As explained above, AMS Belgium's ownership changed during the AUL period as a result of various mergers. However, AMS Belgium 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 AMS Belgium's October 22, 2008, questionnaire response at page 13.

Allocation Period and Attribution

In prior reviews, the Department attributed subsidies received by Sidmar N.V. to ALZ N.V., in accordance with 19 CFR 351.525(b)(6)(iii), because ALZ N.V. was a fully consolidated subsidiary of Sidmar N.V.

In SSPC from Belgium Investigation, in accordance with a U.S. Court of International Trade (“CIT”) decision, we calculated company-specific allocation periods for non-recurring subsidies using company-specific AUL data. See British Steel plc v. United States, 929 F. Supp. 426, 439 (Ct. Int’l Trade 1996). We determined that the AUL for ALZ N.V. was 15 years, and that the AUL for Sidmar N.V. was 19 years. See SSPC from Belgium Investigation, 64 FR at 15568.

In the first administrative review, the Department adopted new CVD regulations, which were applicable to the review, and determined to use a 15-year AUL for the review including any new subsidies received by Sidmar N.V. See SSPC from Belgium First Review, and accompanying Issues and Decision Memorandum at Comment 2; 19 CFR 351.524(d)(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 N.V. 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 the 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.

In the current administrative review, AMS Belgium has not commented on the Department’s use of the 15-year AUL period or the use of a 19-year AUL for Sidmar N.V.’s non-recurring subsidies received by the company in the investigation. Therefore, we are continuing to use a 15-year AUL for AMS Belgium, in accordance with 19 CFR 351.524(d)(2). The subsidy benefits previously found to have been received by Sidmar N.V. in the investigation and allocated over the 19-year AUL have been fully allocated and, therefore, are not included in the CVD rate established in this review.

Analysis of Programs

I. Programs Determined to be Not Countervailable

A. Government of Flanders Program

1. Research and Development (“R&D”) Program Administered by the Flemish Institute of Science and Technology (“IWT”)

At the time of the Preliminary Results, the Department did not have sufficient information

regarding an R&D program administered by the IWT under the Government of Flanders (“GOF”) in which AMS Belgium was awarded a grant.¹

In the Post-Preliminary Analysis, the Department found the IWT program to be not specific, and, therefore, not countervailable.² The Department continues to find the IWT program to be not specific and not countervailable for the final results of this review.

II. Programs Determined Not to Have Been Used or Not to Have Provided Benefits

We examined the following programs and determine that AMS Belgium did not apply for or receive benefits under these programs during the POR:

A. Government of Belgium Programs

1. Subsidies Provided to Sidmar that are Potentially Attributable to ALZ N.V.:
 - 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. Alfin
 - b. Albufin
8. Belgian Industrial Finance Company (“Belfin”) Loans

¹ See AMS Belgium March 4, 2009, supplemental questionnaire response (“AMS Belgium March 4 SQR”) at 12-13.

² See Post-Preliminary Analysis at 4.

9. Societe Nationale de Credite a l'Industrie ("SNCI") Loans
10. Conversion of Sidmar's Debt to Equity (OCPC-to-PB) in 1985
11. SidInvest Conditional Refundable Advances

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

Analysis of Comments

Comment 1: Error in the Department's Draft Liquidation Instructions

AMS Belgium states that the Department made an error in the draft liquidation instructions it issued on May 29, 2009. AMS Belgium says that paragraph three of the Department's draft liquidation instructions states: "There are no injunctions applicable to the entries covered by this instruction." AMS Belgium argues that this is incorrect because a preliminary injunction was ordered by the CIT on January 16, 2009, in CIT Case No. 08-00434 on all stainless steel plate in coils from Belgium subject to the Department's December 3, 2008, scope ruling on the subject

merchandise.³ The preliminary injunction includes the merchandise covered by the CVD orders on certain SSPC.⁴ AMS Belgium says the Department cannot issue liquidation instructions without violating the preliminary injunction because all entries covered by these instructions are subject to this preliminary injunction until its expiration. AMS Belgium asserts that if the Department fails to adhere to the preliminary injunction this could result in the Department being held in contempt of court by the CIT.⁵

Department's Position:

The Department will issue appropriate instructions directly to U.S. Customs and Border Protection 15 days after publication of these final results of this review. However, these instructions will indicate that pursuant to an injunction issued in ArcelorMittal Stainless Belgium N.V. v. United States, CIT Case No. 08-00434, on January 16, 2009, the Department must continue to suspend liquidation of entries made by AMS Belgium pending a conclusive court decision in that action.

Comment 2: Authority of Department to Investigate IWT Program

Although AMS Belgium agrees with the Department's Post-Preliminary Analysis that the IWT program was not specific and, therefore, not countervailable, AMS Belgium objects to the fact that the Department investigated the program. Specifically, AMS Belgium argues that the Department never articulated a basis for why it thought that there was an appearance of a countervailable subsidy as required by Section 775 of the Tariff Act of 1930, as amended ("the Act") and never provided parties notice that it had initiated an investigation of the IWT program.

The Government of Belgium ("GOB") also agrees with the Department's Post-Preliminary Analysis regarding the IWT program, but the GOB states that in analyzing the IWT program, the Department did not follow any of the WTO's three rules regarding the investigation of a program.⁶ The GOB disagrees that the Department's statement in the Post-Preliminary Analysis that it "began to investigate this program in the previous review" and could, therefore, continue its investigation during this review, addresses the GOB's concerns, because the Department never had the authority to initiate an investigation of the IWT program, nor did it lawfully initiate an investigation of this program. Post-Preliminary Analysis at 2. The GOB also states that it is concerned the Department is moving toward a policy where (1) no showing of countervailability must be made before imposing upon foreign governments and respondents the considerable expense of defending against subsidy allegations and (2) no notice is provided to parties when the Department is investigating a program.

³ See Memorandum from Melissa G. Skinner to Stephen J. Claeys titled "Stainless Steel Plate in Coils from Belgium: Final Scope Ruling," dated December 3, 2008.

⁴ See Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Notice of Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy and South Africa, 64 FR 25288 (May 11, 1999).

⁵ See, e.g., Yancheng Baolong Biochemical Prods. Co. v. United States, 406 F.3d 1377, 1381-82 (Fed. Cir. 2005).

⁶ The GOB states that these are: 1) have prima facie evidence that a program confers a "countervailable subsidy;" 2) consult with the government that provided the allegedly countervailable subsidy; and 3) formally initiate an investigation of the program. GOB Case Brief, dated September 29, 2009, at 2.

Department's Position:

The Department's examination and analysis of the IWT program is proper. Section 775 of the Act provides that if the Department, during the course of a proceeding, discovers a practice that "appears to be a countervailable subsidy," it shall include that practice in the proceeding. In the Issues and Decision Memorandum for the 8th review of SSPC from Belgium, we announced that we were deferring examination of the IWT program until a future review. See Stainless Steel Plate in Coils from Belgium: Final Results of Countervailing Duty Administrative Review, 73 FR 75673 (December 12, 2008), and accompanying Issues and Decision Memorandum at 7. Hence, parties had notice that we had found a practice that appeared to be a countervailable subsidy and had the opportunity to comment.

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, we have not found the program in question to be countervailable. Therefore, AMS Belgium's and the GOB's arguments have no bearing on the results of this administrative review. Accordingly, we find that this issue is moot.

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

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date