



C-475-833  
Sunset Review  
**Public Document**  
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September 22, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
Expedited First Sunset Review of the Countervailing Duty Order  
on Certain Corrosion-Resistant Steel Products from Italy

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## I. SUMMARY

We analyzed the substantive response of the domestic interested parties<sup>1</sup> in the expedited first sunset review of the countervailing duty (CVD) order on certain corrosion-resistant steel products (corrosion-resistant steel) from Italy. We did not receive a substantive response from the Government of Italy (GOI) or from any other interested party. As a result, pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department of Commerce (Commerce) conducted an expedited (120-day) sunset review of the *Order*.<sup>2</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Rate Likely to Prevail
3. Nature of the Subsidies

## II. BACKGROUND

On July 25, 2016, Commerce published the *Order*.<sup>3</sup> On June 1, 2021, Commerce initiated the first sunset review of the *Order*, pursuant to section 751(c) of the Act.<sup>4</sup> On June 14, 2021, and

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<sup>1</sup> The domestic interested parties are Cleveland-Cliffs Inc., Nucor Corporation, Steel Dynamics Inc., California Steel Industries, and U.S. Steel Corporation.

<sup>2</sup> See *Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order*, 81 FR 48387 (July 25, 2016) (*Order*).

<sup>3</sup> *Id.*

<sup>4</sup> See *Initiation of Five-Year (Sunset) Reviews*, 86 FR 29239 (June 1, 2021) (*Initiation Notice*).



June 16, 2021, Commerce received timely-filed notices of intent to participate from the domestic interested parties within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>5</sup> The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers of the domestic like product.

On July 1, 2021, Commerce received an adequate substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>6</sup> Commerce received no responses from the GOI or from any other interested party. In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C), because Commerce did not receive a substantive response from the GOI, pursuant to 19 CFR 351.218(e)(1)(ii)(B), or from a respondent party, pursuant to 19 CFR 351.218(e)(1)(ii)(C), we determine that the respondent interested parties did not provide an adequate response.

On July 22, 2021, Commerce notified the U.S. International Trade Commission (ITC) that we did not receive an adequate substantive response from respondent interested parties.<sup>7</sup> Therefore, consistent with 19 CFR 351.218 (e)(1)(ii)(B)(2) and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*.

### **III. SCOPE OF THE *ORDER***

The products covered by this order are certain corrosion-resistant steel products. For a complete description of the scope of the *Order*, see Appendix I in the accompanying *Federal Register* notice.

### **IV. HISTORY OF THE *ORDER***

On June 2, 2016, Commerce published its *Final Determination*<sup>8</sup> and determined the following net countervailable subsidy rates:

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<sup>5</sup> See Domestic Interested Parties' Letter, "Five Year ('Sunset') Review of the Countervailing Duty Order on Corrosion-Resistant Steel Products from Italy: Notice of Intent to Participate in Sunset Review," dated June 14, 2021; see also Domestic Interested Parties' Letter, "Five Year ('Sunset') Review of the Countervailing Duty Order on Corrosion-Resistant Steel Products from Italy: Notice of Intent to Participate," dated June 16, 2021; Domestic Interested Parties' Letter, "Notice of Intent to Participate in the First Five-Year Review of the Countervailing Duty Order on Corrosion-Resistant Steel Products from Italy," dated June 16, 2021; and Domestic Interested Parties' Letter, "Certain Corrosion-Resistant Steel Products from Italy: Notice of Intent to Participate in Sunset Review," dated June 16, 2021.

<sup>6</sup> See Domestic Interested Parties' Letter, "Five Year ('Sunset') Review of the Countervailing Duty Order on Corrosion-Resistant Steel Products from Italy: Domestic Industry Substantive Response," dated July 1, 2021 (Substantive Response).

<sup>7</sup> See Commerce's Letter, "Sunset Reviews Initiated on June 1, 2021," dated July 22, 2021.

<sup>8</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy: Final Affirmative Determination and Final Affirmative Critical Circumstances, In Part*, 81 FR 35326 (June 2, 2016) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

**Table 1.**

<b>Exporter/Producer</b>	<b>Net Subsidy Rate (percent)</b>
Acciaieria Arvedi S.p.A., Finarvedi S.p.A., Arvedi Tubi Acciaio S.p.A., Euro-Trade S.p.A., and Siderurgica Triestina Srl., (collectively, the Arvedi Group) <sup>9</sup>	0.48
Marcegaglia S.p.A. and Marfin S.p.A., (collectively, the Marcegaglia Group) <sup>10</sup>	0.07
Ilva S.p.A.*	38.51
All Others	13.02

\*Non-cooperative company to which an adverse facts available rate was applied.

As explained in the *Final Determination*,<sup>11</sup> we found the following programs provide countervailable benefits to the Arvedi Group and/or the Marcegaglia Group:

1. Technological Innovation Grants Under Law 46/82
2. Technological Innovation Loans Under Law 46/82
3. Certain Social Security Reductions and Exemptions (“Sgravi” Benefits)
4. Income Tax Deferral Under Article 42 of Law 78/2010
5. Equalization Fund

In addition, Commerce relied on adverse facts available and found the above programs, as well as the following additional programs,<sup>12</sup> to provide countervailable subsidies to the non-cooperative company:

1. Industrial Development Grants Under Law 488/92
2. *Patti Territoriali* Grants Under Law 662/92
3. Tax Credits Under Article 1 of Law 296/06
4. Tax Credits Under Article 62 of Law 289/02
5. Export Credit Subsidies
6. Industrial Area Revival Grants Under Law 181/89
7. Industrial Area Revival Loans Under Law 181/89
8. Preferential Financing Under Law 266/97

<sup>9</sup> Because the net subsidy rate was *de minimis* for Acciaieria Arvedi S.p.A., Finarvedi S.p.A., Arvedi Tubi Acciaio S.p.A., Euro-Trade S.p.A., and Siderurgica Triestina Srl., merchandise both produced and exported by Acciaieria Arvedi S.p.A., Finarvedi S.p.A., Arvedi Tubi Acciaio S.p.A., Euro-Trade S.p.A., and Siderurgica Triestina Srl. is excluded from the *Order*.

<sup>10</sup> Because the net subsidy rate was *de minimis* for Marcegaglia S.p.A. and Marfin S.p.A., merchandise both produced and exported by Marcegaglia S.p.A. and Marfin S.p.A. is excluded from the *Order*.

<sup>11</sup> See *Final Determination* IDM at 18-22.

<sup>12</sup> *Id.* at 16

Since the issuance of the *Order*, no administrative reviews, changed circumstances reviews, or new shipper reviews have been requested or completed. Commerce has conducted one scope inquiry related to the *Order*.<sup>13</sup>

## **V. LEGAL FRAMEWORK**

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would be likely to lead to a continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, Commerce shall consider: (1) the net countervailable subsidy determined in the investigation and any subsequent reviews, and (2) whether any changes in the program which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, Commerce shall provide the ITC with the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, Commerce shall provide the ITC with information concerning the nature of the subsidies and whether they are subsidies described in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (ASCM).

## **VI. DISCUSSION OF THE ISSUES**

### **1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy**

#### *Domestic Interested Parties' Comments*<sup>14</sup>

The domestic interested parties argue that revocation of the *Order* would lead to a continuation or recurrence of subsidization of corrosion-resistant steel from Italy because the subsidies to the industry show no indication of termination. They assert that the producers of corrosion-resistant steel from Italy continue to benefit from the wide variety of subsidy programs available to the industry and there have been no subsequent administrative reviews of the *Order* to determine otherwise. Their assertion is that, since Commerce's practice is to reach affirmative determinations in sunset reviews where no administrative reviews have taken place and there is no evidence that the programs have been terminated, Commerce should find that subsidization is likely to continue or recur if the *Order* were revoked.

#### **Commerce's Position:**

In determining the likelihood of continuation or recurrence of a countervailable subsidy, section 752(b)(1) of the Act directs Commerce to consider the net countervailable subsidy determined in

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<sup>13</sup> See Memorandum, "Corrosion-Resistant Steel Products from Italy and the People's Republic of China: Final Scope Ruling for Finished Pool Kits and Pool Walls Imported by Trendium Pool Products, Inc.," dated May 10, 2018. We note that this ruling was reversed in litigation. See *Corrosion-Resistant Steel Products from Italy and the People's Republic of China: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision*, 85 FR 37828 (March 29, 2020).

<sup>14</sup> See Substantive Response at 7-10.

the investigation and subsequent reviews and whether there have been any changes in a program found to be countervailable that are likely to affect that net countervailable subsidy. According to the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), Commerce will consider the net countervailable subsidies in effect after the issuance of an order and whether the relevant subsidy programs have been continued, modified, or eliminated.<sup>15</sup> The SAA further states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.<sup>16</sup> The continued existence of programs that have not been used, and have not been terminated without residual benefits or replaced, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.<sup>17</sup> Where a subsidy program is found to exist, Commerce normally will determine that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.<sup>18</sup>

Consistent with prior determinations, two conditions must be met in order for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: (1) the program must be terminated; and (2) any benefit stream must be fully allocated.<sup>19</sup> In order to determine whether a program has been terminated, we will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program.<sup>20</sup> Commerce normally expects a program to be terminated by means of the same legal mechanism used to institute it.<sup>21</sup> Where a subsidy is not bestowed pursuant to a statute, regulation, or decree, Commerce may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence and was not granted as part of a broader, government program.<sup>22</sup>

Based on the facts on the record, and because no party has submitted evidence to demonstrate that the above-referenced countervailable programs have expired or been terminated without any residual benefits, Commerce determines that the subsidy programs found countervailable during the investigation continue to exist.

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<sup>15</sup> See SAA, H.R. Doc 103-316, vol. 1 (1994) at 888.

<sup>16</sup> *Id.*

<sup>17</sup> See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010), and accompanying IDM at Comment 1.

<sup>18</sup> *Id.*

<sup>19</sup> See *Certain Pasta from Italy: Final Results of the Expedited Fourth Sunset Review of the Countervailing Duty Order*, 83 FR 62839 (December 6, 2019), and accompanying IDM at 11; see also *Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006), and accompanying Preliminary Decision Memorandum (PDM) at 5-7, unchanged in *Corrosion-Resistant Carbon Steel Flat Products from France: Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006).

<sup>20</sup> See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Full Third Sunset Review of Countervailing Duty Order*, 76 FR 70411 (November 14, 2011), and accompanying IDM at Comment 1.

<sup>21</sup> See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001), and accompanying IDM at Comment 7.

<sup>22</sup> See, e.g., *Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order*, 76 FR 25666 (May 5, 2011), and accompanying IDM at Comment 1.

Because the continuation of programs is highly probative of the likelihood of the continuation or recurrence of countervailable subsidies, we determine that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies.

## **2. Net Countervailable Subsidy Rate Likely to Prevail**

### *Domestic Interested Parties' Comments*

The domestic interested parties cite to the SAA and the *Sunset Policy Bulletin*<sup>23</sup> and note that Commerce normally will select the rate from the original investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of the order or a suspension agreement in place. They argue that, consistent with the SAA and the *Sunset Policy Bulletin*, Commerce should rely upon the net rates of subsidization from the original investigation. The domestic interested parties also state that, as there have been no administrative reviews since the original investigation, Commerce should rely on the rates set out in the *Order*.

### **Commerce's Position:**

Consistent with the SAA and legislative history, Commerce normally will provide the ITC with the net countervailable subsidy rates that were determined in the investigation. These are the rates likely to prevail if a CVD order is revoked because these are the only calculated rates that reflect the behavior of exporters and foreign governments without the discipline of the order in place.<sup>24</sup> Section 752(b)(1)(B) of the Act provides, however, that Commerce also shall consider “whether any change in the program which gave rise to the net countervailable subsidy” determination in the investigation has occurred that is likely to affect the net countervailable subsidy rate. Therefore, although the SAA provides that Commerce normally will select a rate from the investigation, this rate may not be the most appropriate if the rate was derived (in whole or in part) from countervailable subsidy programs found in subsequent reviews to have been terminated, there has been a program-wide change, or the rate does not include a program or programs found to be countervailable in subsequent reviews.<sup>25</sup>

Because we have not uncovered additional countervailable subsidy programs in subsequent reviews, and no party has submitted information indicating that any program from the investigation has been terminated, Commerce is providing the ITC with the rates found in the original investigation. Consistent with section 752(b)(3) of the Act, Commerce will provide to the ITC the net countervailable subsidy rates shown in the section entitled “Final Results of Review.”

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<sup>23</sup> See *Policies Regarding the Conduct of Five Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin*).

<sup>24</sup> See SAA at 890; see also Uruguay Round Implementation Bill, H.R. Rep. No. 103-826 (1994) at 64.

<sup>25</sup> See, e.g., *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62101 (October 7, 2010), and accompanying IDM at Comment 2.

### **3. Nature of the Subsidies**

Consistent with section 752(a)(6) of the Act, Commerce 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.

#### ***Article 3***

The following programs fall within the definition of an export subsidy under Article 3.1 of the ASCM, which states that the following subsidies shall be prohibited: (a) subsidies contingent, in law or in fact whether solely or as one of several other conditions, upon export performance; and (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

##### **1. Export Credit Subsidies**

#### ***Article 6.1***

The following subsidy programs do not fall within the meaning of Article 3 of the ASCM. However, they could be subsidies as 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. The subsidies may also fall within the meaning of Article 6.1 if they constitute debt forgiveness, are grants to cover debt repayment, or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record to make such a determination. We are, in any case, providing the ITC with the following list of programs:

2. Technological Innovation Grants Under Law 46/82
3. Technological Innovation Loans Under Law 46/82
4. Certain Social Security Reductions and Exemptions (“Sgravi” Benefits)
5. Income Tax Deferral Under Article 42 of Law 78/2010
6. Equalization Fund
7. Industrial Development Grants Under Law 488/92
8. *Patti Territoriali* Grants Under Law 662/96
9. Tax Credits Under Article 1 of Law 296/06
10. Tax Credits Under Article 62 of Law 289/02
11. Industrial Area Revival Grants Under Law 181/89
12. Industrial Area Revival Loans Under Law 181/89
13. Preferential Financing Under Law 266/97

### **VII. FINAL RESULTS OF REVIEW**

As a result of this sunset review, Commerce finds that revocation of the *Order* would be likely to lead to a continuation or recurrence of countervailable subsidies at the rates listed in Table 1, above.

## VIII. RECOMMENDATION

Based on our analysis of the substantive response, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this expedited sunset review in the *Federal Register* and notify the ITC of our determination.

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Agree

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\_\_\_\_\_  
Disagree

9/22/2021

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Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance