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Sunset Review
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September 27, 2005

MEMORANDUM TO: Holly A. Kuga
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of
Expedited Sunset Review of the Countervailing Duty Order on
Top-of-the-Stove Stainless Steel Cookware from Korea

Summary

We have analyzed the substantive responses of the interested parties in the sunset review of the countervailing duty (“CVD”) order covering top-of-the stove stainless steel cookware from Korea. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

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

History of the Order

The Department of Commerce (“the Department”) published its final affirmative countervailing duty determination on top-of-the-stove cooking ware from Korea in the Federal Register on November 26, 1986. See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Cooking Ware from the Republic of Korea, November 26, 1986 (51 FR 42867) (“Final Cookware from Korea”). In the final determination the Department found an estimated net subsidy of 0.78 percent ad valorem for all manufacturers/producers/exporters of top-of-the-stove cooking ware from Korea other than Woo Sung Company Ltd. and Dae Sung Industrial Company Ltd., which were excluded from the order based on receipt of de minimis subsidies. In the investigation, the Department concluded that the Government of Korea

(“GOK”) was providing countervailable subsidies to exporters of the subject merchandise through six programs: (1) short-term export financing; (2) export tax reserve; (3) unlimited deduction of overseas entertainment expenses under article 18-2 of the corporate tax law; (4) loans to promising small and medium enterprises; (5) exemption from the acquisition tax under the law for the promotion of income sources in rural areas; and (6) duty drawback on non-physically incorporated items and excessive loss rates under the duty drawback system.

_____ There have been no administrative reviews of this order. On September 3, 1999, the Department published the final results of its first five-year sunset review, and determined that revocation of the CVD duty order would be likely to lead to continuation or recurrence of a net countervailable subsidy of 0.77 percent *ad valorem*. See Top-of-the-Stove Stainless Steel Cookware from South Korea, September 3, 1999 (64 FR 48,374) (“First Sunset Cookware from Korea”).

Discussion of Issues

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended (“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) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change 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 International Trade Commission (“the ITC”) the net countervailable subsidy likely to prevail if the order is 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 it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (“SCM”).

Below we address the substantive responses of the interested parties.

1. Continuation or Recurrence of a Countervailable Subsidy

Interested Parties’ Comments

In their substantive response, the domestic interested parties note that an administrative review of this CVD order has never been conducted. However, the domestic interested parties cite to the results of numerous other cases¹ involving Korean merchandise. The domestic

¹ Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15534 (March 31, 1999) (“Plate in Coils”), Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 64 FR 73176 (December 29, 1999) (“CTL Plate”), Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea, 67 FR 62102 (October 3, 2002) (“Cold-Rolled”), Dynamic Random Access Memory Semiconductors from the Republic of Korea,

interested parties note that the Department has found that all of the programs, with the exception of one (the unlimited entertainment expense deduction), continue to be available and used. Moreover, the domestic interested parties cite to the Statement of Administrative Action (“SAA”), which provides that

continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies. Temporary suspension or partial termination of a subsidy program also will be probative of a continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary.²

Department’s Position

There have been no administrative reviews of this order and evidence of only one program being terminated. See First Sunset Cookware from Korea. Also, the Department did not receive a response from the GOK and/or any respondent interested party. Under these circumstances, it is reasonable to assume that the countervailable programs identified in the investigation continue to exist and be used, with the exception of one program. Because countervailable programs continue to exist and be used, the Department concludes that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties’ Comments

The domestic interested parties assert that the Department normally will select the rate from the 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. The domestic interested parties acknowledge the termination, without replacement, of the unlimited entertainment expense program. Thus, domestic interested parties recommend that the Department should remove 0.01³ percent ad valorem from the original investigation rate. The domestic interested parties assert that the net countervailable subsidy likely to prevail is the subsidy rate conferred by the still existing programs, 0.77 percent ad valorem.

68 FR 37122 (June 23, 2003) (“DRAMs”), and Steel Sheet and Strip in Coils from the Republic of Korea, 69 FR 2113 (January 14, 2004) (“Sheet and Strip”).

² See SAA, F.R. Doc. No. 103-316, Vol. 1, at 888 (1994).

³ The rate attributed to this program as calculated during the investigation. See Final Cookware from Korea, 51 FR 42867.

Department's Position

As noted above, there have been no administrative reviews of this order, and we did not receive a response from the GOK or any respondent interest party. The Department has reviewed many of these programs in other proceedings. During these recent proceedings, the Department found that five of the six programs continue to exist.⁴ Because, as acknowledged by domestic interested parties, the unlimited entertainment expense program has been terminated, we find that using the net countervailable subsidy rate as determined in the investigation is no longer appropriate. Consistent with our findings in First Sunset Cookware from Korea, we have adjusted the net countervailing duty subsidy rate from the investigation by subtracting the rate from the unlimited entertainment expense deduction which was found to be terminated. See 64 FR 48377. The Department determines that the net countervailable subsidy that would be likely to prevail in the event of revocation of the order is 0.77 percent ad valorem.

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the SCM. We note that Article 6.1 of the SCM expired effective January 1, 2000.

Consistent with our findings in the final determination of top-of-the-stove stainless steel cookware from Korea and because the receipt of benefits provided by the GOK under three of the programs are contingent on exports, these programs fall within the definition of an export subsidy under Article 3 of the SCM:

- (1) Short-term export financing: This program provides preferential short-term export financing to exporters. Eligibility for this program is based on export performance.
- (2) Export tax reserve: These tax reserves provide for deductions from taxable income covering export losses, overseas market development and price fluctuation losses. These export tax reserves are contingent upon export.
- (3) Duty drawback on non-physically incorporated items and excessive loss rates under the duty drawback system: Cookware manufacturers are allowed to claim duty drawback on non-physically incorporated items. We determined that the duty drawback received is contingent on exports.

The following programs are not subsidies described in Article 3 of the SCM. However, they could be subsidies described in Article 6.1 of the SCM if the amount of the subsidy exceeds

⁴ See Plate in Coil, CTL Plate, Cold-Rolled, DRAMs, and Sheet and Strip.

five percent, as measured in accordance with Annex IV of the SCM. They could also 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 for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions.

- (4) Loans to promising small and medium enterprises: The Bank of Korea directs banks to provide loans to “promising” small- and medium- sized companies.
- (5) Exemption from the acquisition tax: Companies which establish factories in rural areas may be exempted from paying the acquisition tax on purchases of land, buildings, and capital equipment.

Final Results of Review

We determine that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (%)</u>
All Manufacturers/Producers/Exporters	0.77

Recommendation

Based on our analysis of the substantive response 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.

AGREE: _____

DISAGREE: _____

Holly A. Kuga
Acting Assistant Secretary
for Import Administration

(Date)