

September 30, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Susan H. Kuhbach
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of
Expedited Second Sunset Review of the Countervailing Duty
Order on Stainless Steel Sheet and Strip in Coils from the Republic
of South Korea

Summary:

We have analyzed the substantive responses of the interested parties in the expedited second sunset review of the countervailing duty (“CVD”) order on stainless steel sheet and strip in coils (“SSSS”) from the Republic of Korea (“Korea”).¹ 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 that the Department is addressing in this sunset review:

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

History of the Order:

On June 8, 1999, the Department of Commerce (“the Department”) published its final affirmative CVD determination in the Federal Register.² On August 6, 1999, the Department published in the Federal Register an amendment to the Final Determination and a CVD order on SSSS from Korea.³ The Department found the following net subsidy rates of: Inchon Iron and Steel Company (“Inchon”) 2.65; Dai Yang Metal Company (“DMC”) 1.58; Taihan Electric Wire

¹ The Department did not receive a substantive response from any government or respondent interested party to this proceeding; accordingly the Department is conducting an expedited sunset review.

² See Final Affirmative Countervailing Duty Determination; Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30636 (June 8, 1999) (“Final Determination”).

³ See Amended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils From France, Italy, and the Republic of Korea, 64 FR 42923 (August 6, 1999).

Company (“Taihan”) 7.00; Sammi Steel Company, Ltd. (“Sammi”) 59.30; and All Others 1.68. In addition, Pohang Iron & Steel Company, Ltd. (“POSCO”) was excluded from the CVD order because it received a de minimis net subsidy rate in the investigation. The Department applied adverse facts available for Sammi and Taihan because they did not respond to the Department’s questionnaire regarding a subsidy program examined in the investigation. See Final Determination, 64 FR at 30638-30640. A list of the countervailable subsidy programs, net subsidy rates, and Korean companies that benefitted from these programs during the investigation is listed at the end of this memorandum.

Since the imposition of the CVD order on SSSS from Korea, the Department has completed five administrative reviews as well as one changed circumstances review and one previous sunset review. The first three administrative reviews were completed prior to the issuance of the final results of the first sunset review. See Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 67 FR 1964 (January 15, 2002) and Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Amended Final Results of Countervailing Duty Administrative Review, 67 FR 8229 (February 22, 2002); Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip From the Republic of Korea, 68 FR 13267 (March 19, 2003); Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 69 FR 2113 (January 14, 2004) (Third Review) and Amended Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 69 FR 7419 (February 17, 2004); and Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Expedited Sunset Review of Countervailing Duty Order, 69 FR 75513 (December 17, 2004). In the final results of the first sunset review, the Department found that revocation of the CVD order was likely to lead to continuation or recurrence of a countervailable subsidy at rates adjusted to take into account POSCOs privatization as well as the collapsing of two companies from the original investigation (Inchon and Sammi) in the third review (known then as INI/BNG).

Subsequent to the continuation of the order, the Department has completed two additional administrative reviews as well as a changed circumstances review. In the 2004 and 2005 administrative reviews, the Department reviewed DMC – a respondent in the original investigation. In both reviews, the Department found that DMC benefitted from the Government of Korea’s Direction of Credit program that continued through 2005. See Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 72 FR 120 (January 3, 2007) and Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 73 FR 2456 (January 15, 2008). In both reviews, DMC was determined to have received a *de minimis* subsidy rate from one lending program and did not receive countervailable benefits from or did not use any of the other programs reviewed during either period of review. The Department also conducted a changed circumstances review in which it determined that Hyundai Steel Company (“Hyundai”) was the successor-in-interest to INI (formerly Inchon). See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Countervailing Duty Changed Circumstances Review, 72 FR 12767 (March 19, 2007).

Background:

On June 2, 2010, the Department initiated this second sunset review of the CVD order on SSSS from Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”).⁴ The Department received a notice of intent to participate from the following domestic interested parties: AK Steel Corporation; Allegheny Ludlum Corporation; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; United Auto Workers, Local 3303; and United Auto Workers, Local 4104 (collectively, “domestic interested parties”), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as domestic producers of stainless steel plate in coils in the United States and certified unions representing workers in the domestic industry producing SSSS in the United States.

The Department received an adequate substantive response collectively from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any government or respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department determined that it would conduct an expedited review of the CVD order.

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 duty order would likely 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 program which gave rise to the net countervailable subsidy has occurred and is 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 (“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 (“ASCM”).

Below we address the substantive responses of the interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy:

Interested Parties’ Comments

The domestic interested parties assert that revocation of the CVD order on SSSS from Korea would likely lead to continuation or recurrence of countervailable subsidies to Korean producers

⁴ See Initiation of Five-Year (“Sunset”) Reviews, 75 FR 33777 (June 2, 2010).

and exporters of SSSS. See Response of domestic interested parties, July 2, 2010 (“Domestic Response”), at 13 – 18. The domestic interested parties maintain that in each of the administrative reviews conducted by the Department since the issuance of the CVD order, the Department has found the continued existence of countervailable subsidy programs. The domestic interested parties cite to the most recently completed administrative review, in which the Department determined that the Government of Korea’s direction of credit continued through 2005, and argue that many of the subsidized long-term loans could provide benefits well beyond 2010. In addition, the domestic interested parties note that according to the Department’s subsidies enforcement website, 28 countervailable subsidy programs, including those that were “not used” in the original investigation, continue in existence today. Therefore, subsidies continue to be provided, and available, to Korean producers and exporters of SSSS. In addition, the domestic interested parties allege that available import data indicate that the CVD order, and the companion antidumping duty order, have had a direct effect on imports as demonstrated by the fact that imports of SSSS from Korea declined significantly immediately after the imposition of the orders and, although they increased somewhat during the 2004-2008 period, they remain well below the pre-order levels.

In sum, the domestic interested parties assert that the record of this case supports the conclusion that subsidization of SSSS from Korea would be likely to continue or recur if the order were to be revoked.

Department’s Position:

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. See Statement of Administrative Action (“SAA”) accompanying the URAA, H.R. Doc. No. 103-316, Vol. 1 (1994) at 879 and House Report, H.R. Rep. No. 103-826 (1994) at 56. As discussed above, in the original investigation the Department found that countervailable subsidies were being provided to SSSS producers under eleven separate programs that provided tax benefits, electricity discounts, preferential lending, as well as the government provision of goods at preferential prices. The Department also identified several programs that were available to, but not used during the period of investigation, by SSSS producers. The Department has completed five administrative reviews and one previous sunset review of this order. In the most recently completed administrative review, the Department found countervailable benefits, albeit de minimis, were being provided to the one respondent under the Government’s Direction of Credit program, twenty additional programs continued to exist but were not used by the respondent, and three programs were not countervailable.

The presence of programs that have not been used, but that also have not been terminated, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy. See, e.g., Final Results of Expedited Sunset Review: Sulfanilic Acid From India, 65 FR 6171, 6173 (February 8, 2000). Therefore, based on the Department’s findings during the sunset period that subsidy programs continue to exist, we find that countervailable subsidies continue to be

provided to producers and exporters of SSSS from Korea. Thus, subsidization will likely continue or recur if the order is revoked.

2. Net Countervailable Subsidy:

Interested Parties' Comments

The domestic interested parties suggest that consistent with the first sunset review and the application of the principles set forth in the SAA and the agency's Sunset Policy Bulletin⁵ to the facts of this review, the Department should rely on the net margins of subsidization determined in the first sunset review. See Domestic Response at 19 - 20.

Department's Position:

The Department normally will select a 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. See SAA at 890 and House Report, H.R. Doc. No. 103-106, vol. 1 (1994) at 64. Pursuant to the Department's practice, this rate may not be the most appropriate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent review. See Sunset Policy Bulletin, 63 FR at 18876. In addition, the Department may make adjustments to the net countervailable subsidy calculated in the original investigation to take into account subsidy programs that were found in subsequent reviews to be eliminated.

We continue to find, as we did in the first sunset review, that it is appropriate to depart from the investigation rates based on two facts. First, as a result of POSCO's privatization, there has been a program-wide change with respect to purchases of stainless steel inputs from POSCO under its two-tiered pricing system. See Third Review, Issues and Decision Memorandum at 12 and 26-28. Second, in the third administrative review, the Department determined that cross-ownership existed between INI (formerly Incheon) and BNG (formerly Sammi) and calculated a single net countervailable subsidy rate for the two companies. As a result, neither the investigation rate for Incheon or Sammi, INI's and BNG's respective predecessors, is appropriate to report to the ITC for INI/BNG (currently known as Hyundai Steel Company). The only rate that reflects these changes is the 0.54 percent rate for INI/BNG calculated in the third administrative review. With respect to the other companies subject to this sunset review, as we did in the previous sunset review we have continued to adjust the investigation rate, as appropriate, to reflect the program-wide change to the two-tiered pricing system resulting from POSCO's privatization.

3. Nature of the Subsidy

Domestic interested parties did not comment on this issue.

⁵ 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").

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 WTO ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The following programs are export subsidies as described under Article 3 of the ASCM. A complete description of each of these programs is available on the Department's subsidies enforcement website available at: <http://ia.ita.doc.gov/esel/eselframes.html>.

Export Industry Facility Loans ("EIFL"): EIFLs are contingent upon export, and are therefore export subsidies to the extent that they are provided at preferential rates.

Short-Term Export Financing: Short-term export financing program is contingent upon export, and are therefore export subsidies to the extent that they are provided at preferential rates.

Reserve for Export Loss – Article 16 of TERCL: This program constitutes an export subsidy because the use of the program is contingent upon export performance.

Reserve for Overseas Market Development – Article 17 of the TERCL: Article 17 of the TERCL operates similar to Article 16 of the TERCL and constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance.

Export Insurance Rates Provided by the Korean Export Insurance Corporation: Constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance.

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 in order for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions.

- *Electricity Discounts Under the Requested Load Adjustment Program*
- *Export Industry Facility Loans (EIFLs)*
- *Loans from the National Agricultural Cooperation Federation*
- *Reserve for Investment*
- *Loans from the Energy Savings Fund*
- *Tax Programs Under RSTA (TERCL)*
- *Reserve for Investment Under Article 43-5 of TERCL*
- *Reserve for Overseas Market Development - Article 17 of the TERCL*
- *RSTA Article 9 Reserve for Research and Human Resources Development (formerly Technical Development Fund)*
- *Selective Depreciation Due to Revaluation of Assets*

- *Tax Exemptions for Land Acquisition*
- *Emergency Load Reduction Program (ELR)*
- *Energy Saving Facility Loan*
- *Excessive Duty Drawback*
- *Special Depreciation of Assets on Foreign Exchange Earnings*
- *Special Depreciation Under Article 11 of the "Act Concerning the Regulation of the Tax Reduction and Exemption"*
- *Equipment Investment to Promote Worker's Welfare Under Article 88 of TERCL*
- *Reduction of Tax Regarding the Movement of a Factory That Has Been Operated for More Than Five Years (Article 71 of RSTA)*
- *Tax Credit in Equipment to Develop Technology and Manpower Under Article 10 of the TERCL*
- *Tax Credits for Investments in Specific Facilities Under Article 26 of the TERCL*
- *Tax Credits for Specific Investments Under Article 71 of the TERCL*
- *Tax Credits for Vocational Training Under Article 18 of the TERCL*
- *Tax Incentives for Highly-Advanced Technology Businesses Under the Foreign Investment and Foreign Investment and Foreign Capital Inducement Act*
- *Infrastructure Investments at Harbor Facilities*
- *Research and Development Grants*

Final Results of Review

As a result of this review, the Department finds that revocation of the CVD order would likely lead to continuation or recurrence of subsidization at the rates listed below.

Manufacturers/Producers/Exporters	Weighted-average Rate (percent)
INI/BNG	0.54
Dai Yang Metal	0.67
Taihan Electric Wire Company	4.64
All Others	0.63

Recommendation

Based on our analysis of the substantive responses 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 _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

(Date)