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Sunset Review
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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 Expedited Sunset Review of
the Countervailing Duty Order on Corrosion-Resistant Carbon Steel
Flat Products from Korea; Final Results

Summary

We have analyzed the substantive response of the interested parties in the sunset review of the countervailing duty ("CVD") order covering corrosion-resistant carbon steel flat products from the Republic of Korea ("Korea").¹ We recommend that you approve the positions we have developed in the Discussion of 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

On July 9, 1993, the Department of Commerce ("the Department") issued its final affirmative CVD determination on corrosion-resistant carbon steel flat products from Korea. The Department determined that benefits that constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the "Act"), were being provided by the Government of

¹ On December 1, 2005, a substantive response was submitted on behalf of United States Steel Corporation ("U.S. Steel"), Nucor Corporation ("Nucor"), Mittal Steel USA ISG Inc. ("Mittal Steel USA") and Ispat-Inland ("Ispat") (collectively, "domestic interested parties").

Korea ("GOK") to Korean manufacturers, producers, and exporters. Specifically, the Department investigated three producers, Pohang Iron and Steel Company ("POSCO"), Union Steel Manufacturing Co. ("Union Steel"), and Dongbu Steel Ltd. ("Dongbu"). The Department found a countrywide net subsidy rate of 2.34 percent ad valorem.

The following programs were found to confer countervailable subsidies to Korean producers/exporters of subject merchandise:

1. Government Equity Infusions in POSCO
2. Loans Inconsistent With Commercial Considerations/Preferential Access to Foreign Loans
3. Government Infrastructure Assistance for POSCO's Integrated Steel Mill at Kwangyang Bay
4. Dockyard Fees
5. Reserve for Export Loss
6. Reserve for Overseas Market Development
7. Unlimited Deduction of Overseas Entertainment Expenses
8. Reserve for Investment
9. Duty Drawback
10. Preferential Utility Rates
11. Short-term Export Financing

See Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea, 58 FR 37338 (July 9, 1993) ("Final Determination"). On August 17, 1993, the Department published the order in the Federal Register, 58 FR 43752 (August 17, 1993). See Countervailing Duty Orders and Amendments to Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea, 58 FR 43752 (August 17, 1993).

In the first sunset review of this order, the Department and the International Trade Commission ("ITC"), pursuant to sections 751(c) and 752 of the Act, determined that revocation of the CVD order on certain corrosion-resistant carbon steel flat products from Korea would be likely to lead to continuation or recurrence of subsidization, and material injury to an industry in the United States within a reasonably foreseeable time, respectively.² Thus, on December 15, 2000, the Department ordered the continuation of the order.³

² See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Expedited Sunset Reviews, 65 FR 18973 (April 10, 2000).

³ Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, 65 FR 78469 (December 15, 2000).

On March 27, 2001, following proceedings before the Court of International Trade (“CIT”) and the Court of Appeals for the Federal Circuit, the Department published an amendment to the final affirmative CVD determination of the subject merchandise. The Department found that Korea had provided a countervailable net subsidy of 1.15 percent ad valorem for POSCO, Dongbu, and for “All Other” Korean producers/exporters of subject merchandise, with the exception of Union Steel. The Department found a de minimis net countervailable subsidy for Union Steel and, therefore, excluded Union Steel from the order. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Amended Final Affirmative Countervailing Duty Determinations in Accordance with Decision Upon Remand, 66 FR 16656 (March 27, 2001).

On September 28, 2005, the Department initiated its first administrative review of the order, covering the period January 1, 2004, through December 31, 2004. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 70 FR 56631 (September 28, 2005). The preliminary results are currently due on August 31, 2006.

On November 1, 2005, the Department initiated this second sunset review. On February 28, 2006, the Department extended the time limit for the completion of the final results of this expedited sunset review until no later than May 30, 2006, 90 days from the original scheduled date, in accordance with section 751(c)(5)(B) of the Act. See Certain Corrosion-Resistant Carbon Steel Flat Products from Australia, Canada, France, Germany, Japan, and South Korea: Extension of Time Limits for Final Results of Expedited Sunset Reviews, 71 FR 10006 (February 28, 2006).

Discussion of Issues

In accordance with section 751(c)(1) of 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 that gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6), 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 (“Subsidies Agreement”).

Below we address the substantive response of the domestic interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

In their substantive response, the domestic interested parties state that, in the final affirmative CVD determination, the Department found that countervailable subsidies were being provided to Korean producers of subject merchandise. They also state that there have been no administrative reviews of the order and that the Department has found no changes to the subsidy programs previously determined to be countervailable in the investigation. Therefore, they claim that the Department should find that revocation of the order is likely to lead to continuation or recurrence of countervailable subsidies.

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.

There was no participation in this review by any of the respondent interested parties. Further, except as noted below, the facts available to the Department indicate that the subsidy programs previously found countervailable continue to exist and benefits from allocable, countervailable subsidies continue past the end of the review. Consequently, the Department finds that a countervailable subsidy is likely to continue or recur in the event that this countervailing duty order is revoked.

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. Therefore, the domestic interested parties posit that the Department should determine that the net countervailable subsidy likely to prevail is the rate calculated in the amended final CVD determination of 1.15 percent ad valorem for POSCO, Dongbu, and for all other producers/exporters.

Department's Position

The Department normally will provide the ITC the net countervailable subsidy that was determined in the investigation, as the subsidy rate likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. See SAA at 890, and House Report at 64.

In the amended final determination to the investigation, we found that the GOK provided countervailable subsidies to producers of the subject merchandise. Since that time, in the absence of administrative reviews, the net countervailable subsidy rate has remained unchanged. As noted above, we did not receive a response from any of the respondent interested parties in this sunset review. Therefore, because there is no evidence that changes have been made to any of the Korean subsidy programs, and absent any argument and evidence to the contrary, the Department determines that the net countervailable subsidy that would be likely to prevail in the event of revocation of the order is 1.15 percent ad valorem for all Korean producers, other than Union Steel, which is the rate from the amended final determination. Consistent with section 752(b)(3) of the Act, the Department will provide the ITC the net countervailable subsidy rate below in the section entitled "Final Results of Review."

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC information 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 Agreement on Subsidies and Countervailing Measures (ASCM). We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The following are export subsidies as described in Article 3 of the ASCM.

Reserve for Export Loss:

Under Article 22 of the Tax Exemption and Reduction Control Act (TERCL), a corporation engaged in export activities can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. This program confers a benefit that constitutes an export subsidy because it provides a deferment, contingent upon export performance, of direct taxes. In the period of investigation, the Department determined that Dongbu, POSCO, and Union Steel received benefits under this program.

Reserve for Overseas Market Development:

A domestic person engaged in a foreign trade business can establish a reserve fund equal to one percent of its foreign trade business exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning from the reserve, to the income account, an amount equivalent to the expense. Any part of the fund that is

not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. This program constitutes an export subsidy because the use of the program is contingent upon export performance.

Short-Term Export Financing:

A bank provides production financing when a company needs funds for the production of export merchandise or the production of raw materials used in the production of exported merchandise. We found this program to be countervailable because the interest rates charged on the loans were less than what a firm would have had to pay on a comparable short-term commercial loan.

Unlimited Deduction of Overseas Entertainment Expenses:

Under Article 18-2 of the Corporation Tax Act and supporting legislation, entertainment expenses for domestic clients and foreign clients are eligible to be deducted from taxable income. The amount that can be deducted for domestic entertainment expenses is subject to a ceiling according to an established formula and depending on the amount of any overseas entertainment expenses claimed. There is no cap on overseas entertainment expenses. Because entertainment expense deductions are unlimited only for overseas clients, this program confers benefits that constitute export subsidies, to the extent that the overseas expenses claimed are greater than those which would have been allowed using the domestic cap formula.

Duty Drawback:

The GOK establishes an authorized loss rate for raw materials used in the manufacture of exported goods. Duty drawback includes the amount of duty remitted on the loss or wastage for the raw materials. The GOK reduces the amount of duty drawback received on the exported product to account for the sale produced from the excess raw materials used in the production of the exported goods. Duty drawback for loss or wastage only becomes countervailable when the allowance for this loss or wastage is unreasonable or excessive. Here, we found the duty drawback was not excessive and, therefore, was not countervailable with regard to POSCO. However, Union Steel was found to benefit from this program.

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.

Government Equity Infusions Into POSCO:

In 1978 and 1980, the GOK provided equity to POSCO on terms inconsistent with commercial considerations.

Loans Inconsistent with Commercial Considerations/Preferential Access to Foreign Loans:

This benefit is conferred through a disproportionately high volume of loans to the steel industry at rates that are substantially below Korea's generally available commercial interest rates.

GOK Infrastructure Assistance for POSCO's Integrated Steel Mill at Kwangyang Bay:

The GOK provided infrastructure development at Kwangyang Bay over the period 1983-1991. The Department determined in the investigation that the infrastructure investments constituted a specific and countervailable subsidy to POSCO because POSCO was found to be the predominant user.

Dockyard Fees:

We determined that the free use of 15 berths by POSCO in the Kwangyang Bay Industrial Estate constituted a countervailable benefit.

Reserve for Investment:

Industries that engage in manufacturing and mining using production facilities outside of metropolitan Seoul are allowed to establish a reserve amounting to ten percent of the value of their assets used in these activities. The reserve operates in the same manner as the reserves for export loss and overseas market development, *i.e.*, any amounts in the reserve must be returned to income over a three-year period. Because this program provides benefits only to those industries that use certain production facilities outside of metropolitan Seoul, this program is a regional subsidy.

Preferential Utility Rates:

In the investigation, the Department determined that countervailable benefits were provided to the steel industry only with respect to certain discounts applied to electricity charges for certain firms.

Final Results of Review

As a result of this review, we find that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (%)</u>
Country-Wide Rate (other than Union Steel)	1.15

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 in the final results of review in the Federal Register.

AGREE: _____

DISAGREE: _____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)