

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 Preliminary Results of Full
Sunset Review of the Countervailing Duty Order on Cut-to-Length
Carbon Steel Plate from Sweden

Summary

We have analyzed the substantive responses and rebuttal comments of interested parties in the full sunset review of the countervailing duty (CVD) order on cut-to-length carbon steel plate (CTL plate) from Sweden. 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 full sunset review for which we received substantive responses by parties.

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 August 17, 1993, the Department of Commerce (the Department) published in the Federal Register the final affirmative countervailing duty determinations and CVD order on certain steel products from Sweden. See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Sweden, 58 FR 37385 (July 9, 1993), and Countervailing Duty Order: Certain Steel Products from Sweden, 58 FR 43758 (August 17, 1993). The Department found the following ten programs countervailable:

1. Equity infusions;
2. NJA Grant;
3. TGOJ Railway Grant;
4. Structural Loans;
5. Reconstruction Loans;
6. Outstanding Research and Development Loans;

7. Special Employment Subsidies for the Steel Industry;
8. Grants for Temporary Employment for Public Works;
9. Regional Development Grants;
10. Mining Exploration Grants.

The net countervailable subsidy determined was 4.27 percent ad valorem for all producers/exporters of CTL plate from Sweden.

Since the investigation, the Department has completed two administrative reviews of this order. See Certain Cut-to-Length Carbon Steel Plate From Sweden; Final Results of Countervailing Duty Administrative Review (1992-1993 Administrative Review), 61 FR 5381 (February 12, 1996) and Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review (1994 Administrative Review), 62 FR 16651 (April 7, 1997). The Department also completed a Section 129 Proceeding on the 1994 Administrative Review, in which the Department determined that there was a partial extinguishment of pre-privatization non-recurring benefits as a result of the privatization of SSAB Svenskt Stål AB (SSAB). See Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Measures Concerning Certain Steel Products From the European Communities (Section 129 Proceeding), 68 FR 64858 (November 17, 2003).

In addition, the Department has completed one sunset review of the CVD order pursuant to Section 751(c) of the Tariff Act of 1930 as amended (the Act). See Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Expedited Sunset Review of Countervailing Duty Order, 65 FR 18305 (April 7, 2000) (First Sunset Review). As a result of that review, the Department determined that revocation of the CVD order would be likely to lead to continuation or recurrence of a net countervailable subsidy of 4.27 percent ad valorem. In accordance with 19 CFR 351.218(e)(4), the Department published a notice of continuation of the order based on the affirmative findings by both the Department and the International Trade Commission (ITC). See Continuation of Antidumping Duty Orders 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).

Background

On November 1, 2005, the Department initiated a sunset review of the CVD order on CTL plate from Sweden pursuant to Section 751(c) of the Act. See Initiation of Five-Year (Sunset) Reviews, 70 FR 65884 (November 1, 2005). The Department received a notice of intent to participate from the following domestic interested parties: IPSCO Steel Inc., Mittal Steel USA ISG Inc., Nucor Corporation, Oregon Steel Mills and the United Steel, Paper, Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO-

CLC (USW) (hereinafter, 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 CTL plate in the United States and as a certified union which is a representative of an industry engaged in the manufacture, production, or wholesale of CTL plate in the United States.

The Department received substantive responses from the domestic interested parties, as well as from the following respondent interested parties: the Government of Sweden (GOS), the European Union/Delegation to the European Commission (EC), and SSAB. On December 21, 2005, after analyzing the substantive and rebuttal responses of interested parties, the Department determined to conduct a full review. See Memorandum to Steven J. Claeys, Deputy Assistant Secretary, Import Administration: Adequacy Determination: Sunset Review of Countervailing Duty Order on Cut-to-Length Carbon Steel Plate from Sweden, dated December 21, 2005 (Adequacy Determination) on file in CRU.

On February 10, 2006, the Department extended the time limit for the preliminary and final results of the sunset review of the CVD order on CTL plate from Sweden to no later than July 14, 2006 and September 27, 2006, respectively. See Cut-to-Length Carbon Steel Plate from Belgium, Sweden, and the United Kingdom; Extension of Time Limits for Preliminary and Final Results of Full Five-Year (Sunset) Reviews of Countervailing Duty Orders, 71 FR 7017 (February 10, 2006).

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 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 any subsequent reviews, and whether any change in the program which 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) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether the subsidy 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 and rebuttal comments of interested parties.

1. Likelihood of Continuation or Recurrence of Countervailable Subsidy

Interested Parties' Comments

Domestic interested parties argue that revocation of the CVD order would likely result in the continuation of countervailable subsidization of CTL plate from Sweden. In their substantive response, domestic interested parties argue that the petition that led to the CVD order was filed in response to the increased volume of subsidized imports of subject merchandise. Domestic interested parties maintain that following the order, the imports of subject merchandise decreased dramatically – from 91,269 short tons in 1990 to 1,181 short tons in 1993 and 7,950 short tons in 1994. Domestic interested parties maintain that the imposition of the CVD order affected the level of imports from Sweden.

Domestic interested parties cite the First Sunset Review, in which the Department determined that revocation of the CVD order on CTL plate from Sweden would result in the likely continuation or recurrence of countervailable subsidies. Further, the Department determined that the rate likely to prevail was identical to that found in the original investigation. Domestic interested parties note that imports of the subject merchandise have remained at relatively low levels since the conclusion of the initial sunset review. See Adequacy Determination. Therefore, the domestic interested parties claim that the countervailing duties assessed on CTL plate from Sweden continue to protect the U.S. industry from subsidized imports and revocation of the CVD order on CTL plate from Sweden would likely lead to the continuation of subsidies at the same levels established in the original investigation.

In contrast, the EC argues that there will be no negative impact from revocation of the order under review. The EC argues that previous investigations have demonstrated that the Swedish steel sector in general and the producers of CTL plate in particular are no longer benefitting from any subsidy and that there is no likelihood whatsoever that the situation will change in the foreseeable future.

Additionally, the EC claims that the Department already knows from other investigations that these sectors have undergone a full restructuring in the past years under the monitoring of the EC. The EC states that the steel producers in Sweden are fully privately owned and compete on commercial terms in international markets. The EC argues that the termination of the order would not impact the EC's policy on aid to the steel sector, which it claims is one of the strictest among WTO Members. The EC cites Commission Decision No. 2496/96 of 18 December 1996 which prohibits the granting of aid to the steel industry and further explains that aid is only allowed after EC notification and approval for the closing of facilities, for environmental reasons, and for research and development. The EC also states that by virtue of the past participation of many Swedish steel companies, the Department is in possession of information showing that the Swedish steel industry has not received any substantial assistance since 1988.

The EC argues that the programs countervailed in the original investigation have been terminated or involved one-time governmental actions which are not likely to be repeated. The EC states that Swedish producers of carbon steel plate do not benefit from aid granted in the past nor from any other kind of financial assistance which may be considered a “subsidy” within the meaning of the ASCM.

The GOS also argues that there will be no negative impact from the revocation of the order. The GOS argues that the Swedish steel industry is no longer benefitting from any subsidy and there is no likelihood that the situation will change in the foreseeable future.

Specifically, the GOS claims that the European Community State Aid Rules prohibit aid to the steel sector. The GOS claims that a major reason for the unlikelihood of continuation of subsidization is the Commission Decision 2496/96 of 18 December 1996, which was updated as the “Multisectoral Framework” following the expiry of the European Coal and Steel Community (ECSC) Treaty, which prohibits the granting of aid to the steel sector, with certain defined exceptions. The GOS states that the EC monitors and enforces the rules, and that there are repercussions for breaking the rules.

The GOS also claims that almost all of the programs countervailed in the original investigation were granted to SSAB more than fifteen years ago under different economic and political conditions. The GOS further claims that most of these programs have been terminated or involved one-time governmental actions, which are not likely to be repeated. According to the GOS, this is why SSAB no longer benefits from aid granted in the past nor from any other kind of financial assistance that may be considered a subsidy within the meaning of the ASCM.

The GOS further claims that since its privatization, SSAB has been operating on private, non-subsidized capital and competes in the market on the basis of commercial criteria. The GOS claims that this privatization expunged the benefit of any subsidy that existed at that time. The GOS cites the Section 129 Proceeding, in which the Department found that the results of the first administrative review are no longer applicable and the CVD rate for SSAB resulting from this review is less than 0.5 percent ad valorem, i.e., de minimis.

SSAB argues that revocation of the CVD order on CTL plate from Sweden is not likely to result in the recurrence or continuation of countervailable subsidies. SSAB states that every one of the programs has been terminated, with no residual benefits, or is otherwise no longer conferring, and will not confer, any benefit on SSAB in the future.

Department’s Position

The Department preliminarily finds that revocation of the order would likely lead to the continuation or recurrence of a countervailable subsidy to the subject merchandise. In accordance with section 752(b)(1) of the Act, in determining whether revocation of a CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy, the

Department will 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 determined in the investigation and subsequent reviews has occurred that is likely to affect that net countervailable subsidy.

In the instant case, there have not been any administrative reviews of this CVD order since the First Sunset Review. The Department determined in the Section 129 Proceeding that a portion of SSAB's non-recurring, allocable benefits were extinguished as a result of its privatization. Consistent with that determination the Department finds that the privatization of SSAB extinguished a portion of SSAB's non-recurring, allocable benefits. However, even if the privatization resulted in the total extinguishment of non-recurring allocable benefits, such a privatization cannot serve as a basis for the Department to determine whether subsidy programs continue to exist and are likely to provide benefits in the future. We have conducted our analysis of whether subsidization is likely to continue or recur with a focus on whether the programs under which SSAB received subsidies continue to exist, and without regard to the specific effects of SSAB's privatization on the benefits it received.

The respondents argue that all of the countervailable programs have either been terminated or the benefit stream has been fully allocated. With respect to three of the programs found countervailable under this order, we agree with respondents. For both the NJA grant and TGOJ railway grant programs, we find that it is not likely that countervailable subsidies will continue or recur, because these programs provided one-time, company-specific subsidies and the benefits were fully allocated before the end of the sunset period. See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Sweden, 58 FR 37385 (July 9, 1993). In addition, we also previously found the mining exploration grants to be terminated effective June 1993 in the 1994 Administrative Review.

Based on the information in the original investigation, the 1992-1993 Administrative Review, the 1994 Administrative Review, and the Section 129 Proceeding, as well as the substantive responses from the interested parties, we find no record evidence that the following programs have been terminated with no residual benefits or replacement programs, or that these were one-time, company-specific subsidies that no longer provide any benefits: government equity infusions, reconstruction loans, outstanding R&D loans, special employment subsidies for the steel industry, grants for temporary employment for public works, regional development grants, and structural loans. Therefore, we preliminarily find that revocation of the order is likely to lead to the continuation or recurrence of a countervailable subsidy.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The domestic interested parties argue that the termination of the CVD order would lead to the continuation or recurrence of a countervailable subsidy for subject merchandise entering the

U.S. market, at rates equal to or greater than those found in the initial sunset review. The domestic interested parties, citing the Department's Sunset Policy Bulletin, note that normally, the Department "provide{s} the Commission the net countervailable subsidy that was determined in the final determination of the original investigation." See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 and 18874 (April 16, 1998) (Sunset Policy Bulletin). The domestic interested parties argue that since the countervailable subsidy rates found in the original investigation were left unchanged in the initial sunset review, the Department should find that the net countervailable subsidy rates likely to prevail are identical to the rates determined to exist in the original investigation as amended, and affirmed in the First Sunset Review.

SSAB argues that the programs found to be countervailable at the time of the investigation have been terminated and are not likely to be reinstated in the future. SSAB, therefore, recommends that the rate likely to prevail should be zero percent.

Department's Position

The Department normally will provide to the ITC the net countervailable subsidy that was determined in the original 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. However, in certain cases, another rate may be more appropriate. See Section 752(b)(3) of the Act and Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc 103-316, Vol. 1, at 890.

As noted above, since the issuance of the order, the Department has conducted a Section 129 review, in which we were able to examine these ten countervailable programs in light of the privatization of SSAB. In the Section 129 Proceeding, the Department found that the privatization of SSAB did not extinguish all of the benefits from the pre-privatization subsidies, and thus a portion of those benefits passed through to the newly privatized company. We also found that the rate arising from the benefits which passed through was de minimis.

For all but one of the programs included in our likelihood determination, we find that the benefits were fully allocated prior to the initiation of this sunset review. These programs include government equity infusions, reconstruction loans, R&D loans, regional development grants, temporary employment for public works, and special employment subsidies for the steel industry. Therefore, these programs do not inform our analysis of the net countervailable subsidy likely to prevail.

The sole remaining program is the structural loan program. In the investigation the Department found that SSAB received three 25-year structural loans, which were disbursed in installments in 1978 and 1983. See Final Affirmative Countervailing Duty Determinations: Certain Steel Flat Products from Sweden 58 FR 37385 (July 9, 1993). Therefore, for purposes of this sunset review we preliminarily determine that benefits under this program continue to exist.

Because benefits are still outstanding under this program, it does inform our analysis of the net countervailable subsidy likely to prevail. However, since SSAB's privatization reduced the overall subsidy rate to de minimis, for purposes of this sunset review, we preliminarily find that the net countervailable subsidy likely to prevail is de minimis.

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 as described in Article 3 or Article 6.1 of the ACSM. We note that Article 6.1 of the ACSM expired effective January 1, 2000.

The following programs do not fall within the meaning of Article 3.1 of the ACSM. However, they could be subsidies described in Article 6.1 of the ACSM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ACSM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover the 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 are, however, providing the ITC with the following program descriptions.

1. Equity infusions

In 1978, the GOS provided equity infusions of 1,400 MSEK. In 1981, the GOS provided equity infusions of 1,125 MSEK plus the GOS provided Granges AB (one of the companies from which SSAB was formed) with the understanding that the GOS would purchase all of its shares of SSAB in 1991. We concluded that the 375 MSEK paid by Granges was also an equity infusion.

2. Structural Loans

SSAB received three 25-year structural loans from the GOS for investment in plant and equipment. Loans were disbursed in installments from 1978 through 1983. In 1981, some of the loans were converted into equity; these loans were included with the equity infusions. All loans were interest free for three years.

3. Reconstruction Loans

The GOS provided reconstruction loans to SSAB between 1979 and 1985. These loans were interest free for three years after which the interest rate was fixed. SSAB wrote off large portions of the principal and accrued interest on loans between 1980 and 1990. These loans were treated as countervailable grants. SSAB received several long-term reconstruction loans from the GOS for investment purposes; two of these loans were still outstanding during the period of investigation. A loan of 115 MSEK was disbursed in four installments between 1981 and 1984.

A loan of 200 MSEK was disbursed in 10 installments between 1984 and 1987. Both of these loans were provided at below benchmark interest rates. Repayment was linked to dividends; these loans were treated as contingent liabilities.

4. Research and Development Loans

The Swedish National Board for Industrial and Technical Development (NUTEK) provided loans to Swedish industries for research and development. One group that benefitted was large consumers of energy. If the company does not claim proprietary treatment for results, NUTEK will forgive the loan and results become publicly available.

5. Special Employment Subsidies for the Steel Industry

These grants also known as “employment promotion grants” were available only to the steel industry from July 1978 through June 1979. The grant of 32.3 MSEK, received in 1978, was allocated over the average useful life (AUL) of SSAB’s assets; the grant of 17.3 MSEK, received in 1979, was allocated to the year of receipt.

6. Grants for Temporary Employment for Public Works

These grants were provided by the GOS to companies that temporarily hire unemployed workers. SSAB received these grants in each year from 1979 through 1988. Only the 1979 grants were large enough to be allocated over the AUL of SSAB’s assets. For the grants received from 1980 through 1988, the grants were too small to warrant allocating over time. Thus, the grants were allocated to the year of receipt.

7. Regional Development Grants

Between 1979 and 1987, SSAB received regional development grants under the Norrbotten Scheme as well as location-of-industry grants, another regional program. Location-of-industry grants are provided to companies in certain regions of Sweden, which undertake job creation. The GOS provided these grants to SSAB between 1979 and 1987. In each year in which such grants were received, the amounts of the grants were too small to warrant allocating them over time. Thus, each grant was allocated to the year of receipt.

Preliminary Results of Review

As a result of this sunset review, the Department preliminarily finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy for the reasons set forth above. Further, we find the net countervailable subsidy likely to prevail if the order were revoked is de minimis.

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 preliminary results of review in the Federal Register.

David M. Spooner
Assistant Secretary
for Import Administration

Date