

DATE: September 14, 2009

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

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for Final Affirmative
Determination in the Countervailing Duty Investigation of Ni-
Resist Piston Inserts from Argentina

I. Summary

On July 6, 2009, the Department of Commerce (the Department) published the preliminary affirmative determination in this countervailing duty (CVD) investigation. See Ni-Resist Piston Inserts From Argentina: Preliminary Affirmative Countervailing Duty Determination, 74 FR 31914 (July 6, 2009) (Preliminary Determination).

The “Analysis of Programs” section below describes the subsidy programs under investigation and the methodologies used to calculate benefits from these programs. Additionally, we have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s response to the issues raised in the briefs. Based on the comments received and our verification findings,¹ we have made certain modifications to the Preliminary Determination. We recommend that you approve the positions described in this memorandum.

¹From July 23 through July 29, 2009, we conducted verification of the questionnaire responses submitted by the Government of Argentina (GOA), including the provincial government of Santa Fe, and Clorindo Appo SRL (collectively, the respondents). We issued the verification reports on August 13, 2009. Public versions of the verification reports as well as copies of all public documents in this investigation are available on the public record located in the Department’s Central Records Unit (CRU), room 1117.

Below is a complete list of the issues in this investigation for which we received case brief and rebuttal comments from interested parties:

- Comment 1: Tax Relief under the Reintegro
- Comment 2: Stamp Tax Exemption
- Comment 3: Export Duties
- Comment 4: Procedural Guarantees Provided in the WTO SCM Agreement²
- Comment 5: More Expansive Period of Investigation

II. Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to Argentina's most recently completed fiscal year. See 19 CFR 351.204(b)(2).

III. Company History

Clorindo Appo SRL (Clorindo), a privately-owned company, started operations as a car and truck motors repair shop in the mid 1950's. In 1974, the company was incorporated and later in the 1980's, the company added to its product line the Ni-resist piston insert. Clorindo is the only producer and exporter of Ni-resist piston inserts in Argentina. Currently, the only product manufactured by Clorindo is the Ni-resist piston insert.

IV. Analysis of Programs

A. Programs Determined To Be Countervailable

1. Tax Relief under the Reintegro

Pursuant to Decree 1011/91, the GOA established the Reintegro, which entitles Argentine exporters of new and unused goods manufactured in Argentina to a rebate of domestic indirect taxes that are levied during the production and distribution process of the finished exported products.³ The Reintegro provides a cumulative tax rebate paid upon export, calculated as a percentage of the FOB (free on board) value of the export less the CIF (cost, insurance, freight) value of imported raw materials. The Reintegro rate is applied only to the domestic value of the exported product and no rebates are given on imported inputs. The taxes refunded are the domestic indirect taxes (e.g., statistical tax, national fund for electricity tax, and stamp tax)

² World Trade Organization Agreement on Subsidies and Countervailing Measures.

³ The GOA established a rebate system in 1971, which was known as the Reembolso. Under the Reembolso, exporters could recover import duties and indirect taxes on items physically incorporated into the final product. In May 1991, the GOA issued Decree 1011/91, which renamed the Reembolso as the Reintegro, and modified the legal structure of the program. Under Decree 1011/91, the Reintegro rebates indirect taxes only. The Department has previously examined the Reintegro and Reembolso. See, e.g., Final Affirmative Countervailing Duty Determination: Honey From Argentina, 66 FR 50613 (October 4, 2001), and accompanying Issues and Decision Memorandum at "Argentine Internal Tax Reimbursement/Rebate Program (Reintegro)," and Final Negative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, 67 FR 62106 (October 3, 2002), and accompanying Issues and Decision Memorandum at "Reintegro."

imposed on local production.

All exporters are eligible to receive a rebate of indirect taxes under the Reintegro. There is no application process for the rebate because the provision of the rebate is automatic once the export is conducted, taxes paid, and the shipping documents completed and examined by the customs authorities. During the POI, Clorindo was entitled to a rebate of 5.25 percent on each export of subject merchandise to the United States.⁴ Exports of subject merchandise are classified under the Argentine tariff schedule subheading 7326.90.00.900J (Other Iron and Steel Manufactures) (subheading 7326).⁵

We determine that the Reintegro confers a financial contribution in the form of a direct transfer of funds from the GOA to Clorindo under section 771(5)(D)(i) of the Tariff Act of 1930, as amended (the Act) and that the Reintegro is specific under section 771(5A)(A) of the Act because it is contingent upon export performance.

To determine whether a benefit exists for a tax rebate program, the Department normally examines whether the amount remitted or rebated exceeds the amount of prior-stage cumulative indirect taxes paid on inputs consumed in the production of the exported subject merchandise, making normal allowances for waste. See 19 CFR 351.518(a)(2). If the amount rebated exceeds the amount of the prior-stage cumulative indirect taxes paid on inputs consumed in the production, the excess amount is a countervailable benefit. Id.

However, there is an exception to this rule under 19 CFR 351.518(a)(4)(i) and(ii), which states that the Department will consider the entire amount of the tax rebate or remission to confer a benefit unless: (1) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or (2) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts, and which indirect taxes are imposed on the inputs.

We preliminarily determined that the GOA did not meet the requirements for non-countervailability as set forth in 19 CFR 351.518(a)(4)(i) and (ii).⁶ As such, we preliminarily determined the entire amount of the Reintegro rebate received by Clorindo for its exports of Ni-resist piston inserts to be countervailable.

At verification, we discussed with the GOA officials how the Reintegro rate for the subject merchandise was established.⁷ While there are no written procedures or guidelines for the operation of the rebate system, the GOA stated that the government has a procedure for establishing the Reintegro rates. The GOA explained that it first gathers information from industry chambers or other industry representatives on cost-structure and taxes incurred in the typical production process of the sector. The data are then reviewed by the Ministry of Economy

⁴ See Decree 509/2007 at Exhibit 1 of GOA supplemental questionnaire response (SQR) (May 28, 2009).

⁵ See GOA initial questionnaire response (IQR) at 1 (April 24, 2009).

⁶ See Preliminary Determination, at 31915-31917.

⁷ See Memorandum to Melissa G. Skinner, Director, Operations Office 3, titled Verification of the Government of Argentina and Provincial Government of Santa Fe at "Tax Relief under the Reintegro," at 2-6 (August 13, 2009) (GOA Verification Report).

and Finance and the Ministry of Production, which make their own tax incidence calculation using, when it is available, an Input-Output Matrix (IOM), which reflects the economic interactions among the 120 sectors of the Argentine economy. With this information, the GOA identifies the inputs (national or import origin) and other items required to manufacture the exported products. The GOA then determines on a percentage-wide basis the amount required of each input and establishes the average amount of each input required to manufacture the exported products. Based on an assessment of all the gathered information, the GOA stated that the Ministry of Economy and Finance and Ministry of Production issue a resolution establishing the applicable rebate rate. When establishing Reintegro rates, the GOA stated that it first considers the fiscal budget constraints and then consults the tax incidence reports provided by the industry chambers and the IOM.⁸

At verification, we learned that the 5.25 percent Reintegro rate for subheading 7326 was established in February 2002, through Resolution 56/2002 and was not established via Decree 509/2007, as initially reported in the GOA's questionnaire responses. Resolution 56/2002, an economic emergency law, reduced rebate rates by 50 percent for all tariff positions. We learned that the original rate of 10.5 percent for subheading 7326 was established through Resolution 257/2000. We asked the GOA officials to explain how the rate of 10.5 percent was determined. The officials stated that they had no knowledge of how the rate was calculated and what data sources were consulted because they do not have access to those particular records.⁹

In its questionnaire responses,¹⁰ the GOA reported that it used the indirect tax incidence study prepared in 2002, by the Asociacion de Industriales Metalurgicos de la Republica Argentina (ADIMRA) for subheading 7326 to establish the 5.25 percent Reintegro rate. We, however, verified that the report was not used by the GOA when it set the 5.25 percent rebate rate via Resolution 56/2002.¹¹ We learned that ADIMRA submitted the indirect tax incidence study, which indicates a tax incidence rate of 5.35 percent in October 2002, after the rate of 5.25 percent was set, with the intention to persuade the GOA to not further reduce the Reintegro rate for subheading 7326.¹² Only later in 2007, when the GOA had to adjust its tariff subheadings to comply with the Mercosur Common Tariff Schedule, did the government evaluate the ADIMRA report.¹³ Specifically, we learned that, in 2007, the GOA evaluated the 2002 ADIMRA report, concluded that it was still valid, and reestablished the Reintegro rate of 5.25 percent for subheading 7326 through Decree 507/2007.¹⁴ We asked the GOA officials to explain the evaluation which the GOA undertook of the ADIMRA report that lead to Decree 507/2007. The officials, however, were unable to discuss the evaluation process with us because of confidentiality restrictions.¹⁵

Also at verification, we met with an official of ADIMRA. We learned that ADIMRA sourced cost and indirect tax data to compose the October 2002 study from several sector and regional chambers that represent the large number of metallurgical products that fall under subheading 7326.¹⁶ The official explained that ADIMRA represents all the products that fall

⁸ See GOA Verification Report at 4.

⁹ *Id.* at 3.

¹⁰ See, e.g., GOA IQR at 7.

¹¹ See GOA Verification Report at 2-3.

¹² *Id.* at 2.

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ The ADIMRA official provided a list of the products that are currently most represented in subheading 7326. The

under its umbrella whether or not the producers are members of the organization. However, the official explained that ADIMRA can only request cost and tax data from its members.¹⁷ Clorindo was not a member of ADIMRA in 2002, and is not currently a member of the organization.¹⁸

As stated in the verification outline,¹⁹ we requested to meet with ADIMRA to discuss the methodology used by the organization to compute the cost structure data and indirect tax incidence percentages that are provided in a tax incidence study and that serve as the basis for calculating a sector's rate of indirect tax incidence by the GOA. The ADIMRA official present at verification however could not speak to the methodology used in the indirect tax incidence studies.²⁰

We also verified that Clorindo prepared its table of indirect taxes for the purpose of this investigation and that the company's cost of production and indirect tax incidence data were never provided to the GOA or an industry chamber.²¹ We also learned at verification that, when preparing its indirect tax report, Clorindo relied on earlier indirect tax studies that the GOA provided to the company. One of the studies provided by the GOA was an indirect tax incidence report for another company and the other study was a report prepared by ADIMRA.²² The company officials stated that when they did not have data for the calculation of a percentage in its indirect tax table, they sourced the needed information from the reports provided by the GOA.²³ As such, the data presented in Clorindo's table is not reflective of the company's actual experience.

Regarding a company's actual indirect tax experience, we also verified that the GOA does not conduct audits of companies which receive Reintegro rebates to confirm that the rebate rate assigned for a particular tariff subheading is appropriate.²⁴ Despite the fact that the ADIMRA report does not reflect the production and indirect tax cost for Ni-resist piston inserts, the GOA officials stated that the government is not concerned about over-rebates because the 2002 ADIMRA report shows a tax incidence rate of 5.35 percent,²⁵ which is higher than the 5.25 percent rebate rate.

Based on information collected at verification, for this final determination, we continue to determine that the GOA did not meet the requirements for non-countervailability as set forth in 19 CFR 351.518(a)(4)(i) and (ii). The GOA officials could not explain how the rate of 10.5 percent for subheading 7326 was determined under Resolution 257/2000. We, therefore, could not verify that a system or procedure was in place that allowed the GOA to confirm which inputs were consumed in the production of the exported product and in what amounts, and to confirm

list includes structures to group container cylinders, stairs used to access concentrated natural gas facilities, ventilation heads for boilers, and iron pressures. See GOA Verification Exhibits Submission at Exhibit 9 (August 4, 2009) (GOA Verification Exhibits).

¹⁷ See GOA Verification Report at 6.

¹⁸ See GOA Verification Report at 6, and Memorandum to Melissa G. Skinner, Director, Operations Office 3, titled Verification of Clorindo Appo SRL at 6 (August 13, 2009) (Clorindo Verification Report).

¹⁹ See Letter to Roberto Salafia, Minister, Economic and Commercial Section, Embassy of Argentina from Melissa G. Skinner, Director, Operations Office 3, regarding Verification Outline for the Government of Argentina and Provincial Government of Santa Fe (July 6, 2009).

²⁰ See GOA Verification Report at 6.

²¹ See Clorindo Verification Report at "Tax Relief under the Reintegro," at 5-7.

²² Id. at 5.

²³ Id.

²⁴ See GOA Verification Report at 3.

²⁵ Id.

which indirect taxes were imposed on those inputs, and the system or procedure was reasonable, effective for the purposes intended, or that the GOA carried out an examination of the actual imports involved. There is no evidence on the record to demonstrate that the GOA followed standard, reasonable procedures to confirm which inputs were consumed in the production of the exported subject merchandise and in what amounts when it set the Reintegro rebate rate at 10.5 percent.

Later, in 2007, when the GOA reevaluated and reestablished the 5.25 percent rate for subheading 7326, the GOA relied upon the 2002 ADIMRA report. The ADIMRA report, however, is neither representative of the cost structure for the subject merchandise nor reflective of the indirect taxes incurred in the production of the subject merchandise. The GOA's methodology for establishing a Reintegro rate by first identifying, based on industry chamber studies, all the inputs and other items required to manufacture the exported product, next calculating percentages and average amounts of each of those inputs, and then computing an approximate effective indirect tax incidence, failed to incorporate data for Ni-resist piston inserts. The identification of inputs and indirect tax incidence reported in the ADIMRA study are not reflective of and were not tested against Clorindo's actual information or experience. The 5.25 percent Reintegro rate set by the GOA for the reimbursement of domestic indirect taxes for exported products under subheading 7326 has no relationship to the actual production process and indirect taxes paid by Clorindo. The costs and indirect taxes for the production of Ni-resist piston inserts is not reflected in the typical production process represented in the 2002 ADIMRA report, which the GOA relied upon to set the 5.25 percent Reintegro rate.

We find that the absence of cost of production and indirect tax incidence data for Ni-resist piston inserts in the government's Reintegro methodology demonstrates that the GOA lacks a system and procedure for the establishment of the appropriate level of Reintegro rebate applicable to exports of the subject merchandise.

We, therefore, determine that the GOA has not met the requirements for non-countervailability as set forth in 19 CFR 351.518(a)(4)(i) and (ii). As such, we determine that the entire amount of the Reintegro rebate received by Clorindo for its exports of Ni-resist piston inserts to be countervailable. Because we find the entire amount of the Reintegro for Ni-resist piston inserts to be countervailable, we need not address the Reintegro's countervailability under 19 CFR 351.518(a)(2).

Because the Reintegro is calculated as a percentage of the FOB value of the exports, the percentage rebated serves as the subsidy rate. Thus, we determine that the Reintegro program provided a countervailable subsidy of 5.25 percent ad valorem to Clorindo during the POI.

We received comments on this program. See Comment 1 and 3.

2. Article 183.29 Provincial Stamp Tax Exemption

During the POI, Clorindo received stamp tax exemptions under Articles 183.29 and 183.38 of the Santa Fe Fiscal Code. A stamp tax is applied to documented legal transactions, such as contracts, credit instruments, and property rights, and is administered by the provincial tax authority, which can also establish a stamp tax exemption.²⁶ In the Preliminary Determination, we determined that the stamp tax exemptions provided under Article 183.29 are specific under section 771(5A)(A) of the Act because the exemptions are contingent upon export performance.

²⁶ See GOA SQR at 12 (May 28, 2009).

We verified that (1) Article 183.29 provides a full stamp tax exemption on credits/loans to finance import and export transactions and currency exchange transactions, and (2) Article 183.38 provides a full tax stamp exemption on all active financial and related transactions, as well as insurance transactions, with financial and insurance entities, when related to mining, industrial, construction, and farming sectors.²⁷ We also verified that the stamp tax rate in Santa Fe, during the POI, was 10 percent (ten per thousand) on the transaction value and is divided between the parties to the transaction. We further verified that to qualify for the tax exemptions a company simply needs to be legally established in the province of Santa Fe. Though there is no application process or special procedure to benefit from the stamp tax exemptions, a company must be registered and submit to its financial institution an affidavit certifying that it operates in one of the four sectors (*i.e.*, mining, industrial, construction, and farming) to receive the exemption under Article 183.38. We also verified Article 10 of Law 11,257 of June 1995,²⁸ and confirmed that all contracts/transactions not entitled to a full exemption under Article 183.29 and Article 183.38 receive a 50 percent reduction of the stamp tax on the transaction value.

At verification, Clorindo provided a worksheet that reported the company's import/export financing and operating loans for the POI, and the calculated amount of stamp tax exemptions received under Article 183.29 and Article 183.38 for those transactions.²⁹

We determine that stamp tax exemptions provided under Article 183.38 are not specific, in law, within the meaning of section 771(5A)(D) of the Act, because the exemptions are not expressly limited to an enterprise or industry, but are provided to all firms in the mining, industrial, construction, and farming sectors. We, however, determine that the stamp tax exemptions provided under Article 183.29 for export loans are specific. Because Article 183.29 provides exemptions for export financing, we find that the stamp tax exemptions provided against export loans to be contingent on export performance under 771(5A)(A) of the Act. We find that stamp tax exemptions received against import financing are not specific because the law does not demonstrate that credits for import transactions are contingent upon export performance.

We further determine, for Article 183.29, that a financial contribution is provided under section 771(5)(D)(ii) of the Act in the form of revenue foregone. A benefit is conferred in the form of an exemption from paying a tax within the meaning of section 771(5)(E) of the Act.

To calculate the benefit, we summed Clorindo's loan amounts for export financing received during the POI. We then multiplied that amount by a stamp tax rate of 0.25 percent, which is the tax rate that Clorindo should have paid on its loans under Law 11,257 during the POI.³⁰ The resulting value is the amount of stamp tax that Clorindo should have paid against its export credits during the POI. We then divided that amount by Clorindo's total export sales value for 2008. On this basis, we determine the net countervailable subsidy under this program to be 0.06 percent ad valorem.

We received comments on this program. See Comment 2 and 3.

²⁷ See GOA Verification Report at 6-8.

²⁸ In the Preliminary Determination, the date of this law was stated as June 2005. At verification, we learned that the GOA incorrectly reported the year in its questionnaire responses. The law was established in June 1995. See GOA Verification Report at 8 and Exhibit 12.

²⁹ See Clorindo Verification Report at 8-10 and Exhibit 6.

³⁰ Under Law 11,257, the stamp tax rate is reduced by 50 percent and, thus, becomes 0.5 percent (*i.e.*, half of 1.0 percent). Clorindo should have paid half of the 0.5 percent rate, which is 0.25 percent.

3. Article 127 Provincial Turnover Tax Exemption

We preliminarily determined that the turnover tax exemption provided under paragraph ñ of Article 160 of the Santa Fe Fiscal Code is not specific and, hence, does not provide a countervailable benefit. At verification, we confirmed that all industrial and primary production activities of production companies legally located in Santa Fe are exempt from paying the 1.5 percent turnover tax, with the exception of profit generated by the sale of products of their own production sold directly to an end-user.³¹ The tax exemption applies to a company's sales activity in Santa Fe and not in other provinces where a company may also have sales.³² As such, we continue to find the turnover tax exemption under Article 160 to be not countervailable in this final determination because we verified that this exemption applies to domestic transactions of all producers in the province of Santa Fe. The exemption under Article 160, therefore, is not specific under section 771(5A) of the Act.

However, at verification, we also learned that Article 127 of the Santa Fe Fiscal Code exempts export revenue from the province's turnover tax.³³ Unlike the exemption provided on the turnover tax under Article 160, revenue earned on all export transactions, including sales to end-users, is exempt under Article 127. We also verified that Clorindo received an exemption of the turnover tax on its export revenue under Article 127.³⁴ We determine that the exemption provided under Article 127 constitutes a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue foregone. A benefit is conferred under this program in the form of an exemption from paying a tax within the meaning of section 771(5)(E) of the Act. Finally, because the tax exemption under Article 127 applies to export revenue the program is contingent upon export performance and is an export subsidy under the definition of 771(5A)(B) of the Act; therefore, the program is deemed specific under section 771(5A)(A) of the Act.

The amount of the countervailable benefit is equal to the amount of the exemption which is 1.5 percent. Therefore, we determine the net countervailable subsidy under this program to be 1.5 percent ad valorem.

B. Programs Determined To Be Not Used

We determine that Clorindo did not apply for or receive benefits during the POI under the programs listed below:

1. Subsidiary Fund for Regional Tariff Compensation to Final Users
2. Banco de Inversion y Comercio Exterior S.A. (BICE) Pre-Export Financing
3. BICE Post-Export Financing
4. Banco de la Nacion Argentina (BNA) Pre-Export Financing to Small and Medium Size Enterprises (SMEs)
5. BNA Pre-Export Financing under "Pre-Export Argentinas"
6. BNA Export Financing to SMEs
7. BNA Export Financing (for all exporters)
8. BNA Investment Financing for SMEs under the Credit Lines to Assist SMEs

³¹ See GOA Verification Report at 9.

³² Id.

³³ Id.

³⁴ See Clorindo Verification Report at 10.

9. BNA Working Capital Credit under “Finance Companies to Exporters”
10. BNA Working Capital Credit to SMEs under Credit Lines to Assist SMEs
11. BNA Financing of Imports to SMEs under Credit Lines to Assist SMEs
12. BNA Import Financing under “Finance Companies to Exporters”
13. Repro (Production Recovery Plan)
14. Fund for Argentine Technology (FONTAR) Non-Repayable Contributions
15. FONTAR Tax Credit Program
16. FONTAR Regional Credits
17. FONTAR Credits to Enterprises for Technological Development
18. Fund for Scientific and Technological Research (FONCyT) Research-Oriented Science and Technology (PICT)
19. FONCyT Research and Development Projects (PID)

V. Analysis of Comments

Comment 1: Tax Relief under the Reintegro

The GOA argues that the sums received by Clorindo under the Reintegro program do not constitute a countervailable subsidy because there is no bestowal of a benefit. The GOA states that in the Preliminary Determination, the Department relied on 19 CFR 351.518(a)(4)(i), which requires the Department to consider the entire amount of the tax rebate to confer a benefit unless: (a) the government applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts, and the system or procedure is reasonable, effective and based on generally accepted commercial practices in the country of export, or (b) the government has carried out an examination of actual inputs involved, the amounts in which they were used, and the indirect taxes imposed on them.

The GOA asserts that it has in place a reasonable procedure to confirm which inputs are consumed in the production of exported products, in what amounts, and the taxes that are imposed on those inputs. The GOA explains that, as verified by the Department, it first gathers information from industry chambers or other industry representatives on cost-structure and taxes incurred in the typical production process of the sector. These data are then revised by the Ministry of Economy and Finance and the Ministry of Production, which make their own tax incidence calculation (which may coincide or not with that presented by the industry chambers). If necessary, government officials meet with industry representatives to discuss the tax incidence. The GOA stated that, based on this information, it identifies the inputs (domestic and foreign origin) and other items required to manufacture the product. Then, the GOA determines, on a percentage-wide basis, the amount of each of the identified input which are consumed in the production process and the tax content of each component. Finally, based on an assessment of all the gathered information, the Ministry of Economy and Finance and Ministry of Production adopt a joint resolution establishing the applicable rebate rate. The GOA added that the analysis is generally made on a sector basis because it would not be feasible for the government to conduct an analysis for each of the 9,500 tariff positions in the Mercosur Common Nomenclature.

The GOA asserts that when setting the 5.25 percent rate for subheading 7326, it followed the standard procedures to confirm which inputs are consumed in the production of the exported product and in what amounts. Specifically, the GOA explains that the Reintegro rate for

subheading 7326 was established by Resolution 257/2000 at 10.5 percent. Subsequently, in February 2002, due to an economic crisis, a state of public emergency was declared which caused a 50 percent reduction for all tariff headings and, thus, reduced the rate for subheading 7326 to 5.25 percent. The GOA states that within this context ADIMRA submitted a letter to the Office of Exports Promotion dated October 23, 2002, requesting the GOA to not further reduce the rebate rate for subheading 7326, because the 5.25 percent did not compensate the indirect tax paid in the manufacture of the products that were exported under this tariff position. The GOA adds that later in 2007, when adapting its tariff subheadings to comply with the new Mercosur Common Tariff Schedule, the Ministry of Economy analyzed the issue and concluded that the Reintegro rate of 5.25 percent was still valid for subheading 7326 and issued Decree 509/2007, which reestablished the Reintegro rate.

The GOA further argues that the procedure used to set the 5.25 percent rate is reasonable because subheading 7326 is a basket tariff category with many products and exporters. The GOA asserts that the only feasible way to determine the appropriate rebate rate was to consider average estimates of cost of production and tax incidence provided by representative chambers. The GOA adds that ADIMRA represents all the products that fall under subheading 7326, whether or not the producers are members of the organization.

Clorindo argues that 19 CFR 351.518(a) of the Department's regulations and the WTO SCM Agreement provide that indirect tax rebate schemes constitute an export subsidy only to the extent that they result in an exemption, remission, or deferral of indirect taxes in excess of the amount of such taxes actually levied on inputs consumed in the production of the exported product. Clorindo adds that the WTO does not rule on how each country determines their rebates. Clorindo contends that: (i) the Department verified that the GOA has a procedure to decide the amount of the rebates; (ii) the procedure is WTO consistent; and (iii) the company did not receive Reintegro rebates in excess of indirect taxes actually levied on its inputs consumed in the production of the exported product.

Department's Position:

As earlier discussed, we determine that the GOA has not met the requirements for non-countervailability as set forth in 19 CFR 351.518(a)(4)(i) and (ii) for the tax rebates provided under the Reintegro for the subject merchandise and, therefore, find the entire rebate amount to be countervailable. The GOA officials could not explain how the rate of 10.5 percent for subheading 7326 was determined under Resolution 257/2000.³⁵ We, therefore, could not verify that a system or procedure was in place that allowed the GOA to confirm which inputs were consumed in the production of the exported product and in what amounts, and to confirm which indirect taxes were imposed on those inputs, and the system or procedure was reasonable, effective for the purposes intended, or that the GOA carried out an examination of the actual imports involved. There is no evidence on the record to demonstrate that the GOA followed a system or procedure to confirm which inputs were consumed in the production of the exported subject merchandise and in what amounts, when it set the Reintegro rate at 10.5 percent.

Later, in 2007, when the GOA reevaluated and reestablished the 5.25 percent rate for subheading 7326, the GOA relied upon the 2002 ADIMRA report.³⁶ The ADIMRA report, however, is neither representative of the cost structure for the subject merchandise nor reflective

³⁵ See GOA Verification Report at 3.

³⁶ *Id.* at 2-3.

of the indirect taxes incurred in the production of the subject merchandise. The GOA's methodology for establishing a Reintegro rate by first identifying, based on industry chamber studies, all the inputs and other items required to manufacture the exported product, next calculating percentages and average amounts of each of those inputs, and then computing an approximate effective indirect tax incidence, failed to incorporate data for Ni-resist piston inserts. As such, the 5.25 percent Reintegro rate set by the GOA for the reimbursement of domestic indirect taxes for exported products under tariff subheading 7326 has no relationship to the actual production process and indirect taxes paid by Clorindo. The costs and indirect taxes for the production of Ni-resist piston inserts is not reflected in the typical production process represented in the 2002 ADIMRA report, which the GOA relied upon to set the 5.25 percent Reintegro rate. The absence of cost of production and indirect tax incidence data for Ni-resist piston inserts in the government's Reintegro methodology demonstrates that the GOA lacks a system and procedure for the establishment of the appropriate level of Reintegro rebate applicable to exports of the subject merchandise.

We acknowledge that subheading 7326 is a basket tariff category with many products and exporters. However, the fact remains that no cost of production and indirect tax data for Ni-resist piston inserts was considered when establishing the Reintegro rate for subheading 7326.

Comment 2: Stamp Tax Exemption

The GOA contends that the Department, in the Preliminary Determination, omitted an explanation as to why it deems the Stamp Tax Exemption under Article 183.29 of the Santa Fe Fiscal Code to be contingent upon export performance. The GOA discusses that under 19 CFR 351.514(a), a subsidy is considered an export subsidy if it is determined to be tied to actual or anticipated exportation or export earnings. The GOA states that, although Clorindo chose to rely on Article 183.29 to benefit from the exemption, the company could have obtained the same exemption under Article 183.38, which makes no reference to actual or anticipated exportation or export earnings. The GOA discusses that Article 183.38 grants a full stamp tax exemption to "all active financial and related transactions, as well as insurance transactions, with financial and insurance entities, when related to mining, industrial, construction, and farming sectors." The GOA adds that, as the Department verified, to the extent that Clorindo is an industrial company legally established in Santa Fe, any credit requested by Clorindo is automatically eligible for the exemption. The GOA further adds that under Article 183.38, Clorindo is legally entitled to benefit from the stamp tax exemption irrespective of whether the production output is to be exported or sold for local consumption.

The GOA also argues that, in the Preliminary Determination, the Department failed to identify the legal basis for finding a benefit. The GOA states that the Department preliminarily determined that "a benefit is conferred in the form of a tax exemption," but made no reference to a provision in the Act or regulations. As such, the GOA asserts that the Department's analysis and in particular, the benefit calculation, was not clear. The GOA states that the basis for the calculation of a tax benefit is typically a comparison between the amount of taxes paid with respect to the goods destined for export and the taxes that would have been paid if the goods were destined for domestic consumption. If the former is lower than the latter, a benefit exists and the difference between the two numbers is considered to be the amount of the benefit conferred (referencing 19 CFR 351.517(a)). However, the GOA maintains that as Article 183.29 provides a tax exemption to credits to finance export transactions, no such comparison is feasible

since, by definition, credits that are granted to finance export transactions cannot be awarded if the goods are destined for local consumption. Therefore, the GOA asserts that the Department must conclude that the stamp tax exemption under the Santa Fe Fiscal Code does not confer a benefit.

However, should the Department continue to find stamp tax exemptions under Article 183.29 to be an export subsidy that confers a benefit, then the GOA asserts that the Department needs to take into account Article 10 of Provincial Law No. 11,257 of June 1995, which states that “all active transactions or money credits and related transactions of any nature granted by financial institutions are benefitted by a 50 percent decrease on the stamp tax.” As such, the GOA contends that any benefit received by credits granted to Clorindo amounts to only 50 percent of the applicable stamp tax rate.

Department’s Position:

For this final determination, and consistent with the Preliminary Determination, we find that stamp tax exemptions provided to a company for export financing under Article 183.29 to be an export subsidy under section 771(5A)(A) of the Act. Because the tax exemptions are provided against loans for export transactions, the exemptions are contingent upon exportation. An export loan is tied to export performance and the stamp tax exemption is provided for export loans. The benefit conferred to Clorindo is the exemption from paying the stamp tax against the export loans within the meaning of section 771(5)(E) of the Act. We calculated the benefit by determining the amount of stamp tax that Clorindo should have paid on those export loans. In determining the amount of stamp tax that Clorindo should have paid, we agree with the GOA that, because Article 10 of Law 11,257³⁷ provides for a 50 percent reduction of the stamp tax for all active transactions (which do not qualify for a full stamp tax exemption under either Article 183.29 or 183.38), the benefit received by Clorindo amounts to only 50 percent of the applicable stamp tax rate. See “Article 183.29 Provincial Stamp Tax Exemption,” section above.

Contrary to the GOA’s statement that Clorindo could have obtained the exemptions under Article 183.38, we verified that a company can only obtain stamp tax exemptions for export loans under Article 183.29. Specifically, at verification, the provincial tax officials explained that loans for imports and exports fall under only Article 183.29 and, as such, loans for import/export transactions cannot receive a stamp tax exemption under Article 183.38, which is only for operating loans.³⁸

Comment 3: Export Duties

Assuming for the final determination, the Department finds that Clorindo received a countervailable subsidy under the Reintegro and Stamp Tax Exemption programs, the GOA argues that the Department should factor in the incidence of export duties levied on exports of subject goods in its determination of the net countervailable subsidy. The GOA notes that section 771(6)(C) of the Act provides that “for the purpose of determining the net countervailable subsidy, the administering authority may subtract from the gross countervailable subsidy the amount of . . . export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy

³⁷ Id. at 8.

³⁸ Id. at 7.

received.” The GOA states that, as reflected on the record, the subheading 7326 is subject to an export duty of 5.0 percent.³⁹ As such, the GOA contends that the Department must conclude that the net countervailable subsidy amounts to only the difference between the aggregate of the rebate under the Reintegro and Stamp Tax Exemption. According to the GOA, if the Department continues to calculate countervailable benefits for the Reintegro and Stamp Tax Exemption programs in the manner described in the Preliminary Determination but incorporates the effect of the 5.0 percent export tax, the result would be:

5.25 percent (Reintegro) + 0.17 percent (Stamp Tax Exemption) – 5.0 percent (Export Duty) = 0.42 percent ad valorem net countervailable subsidy rate

The GOA notes that a net countervailable subsidy rate of 0.42 percent ad valorem is de minimis under section 703(b)(4)(A) of the Act.

Department’s Position:

Section 771(6)(C) of the Act gives the Department the authority to take into account an export tax imposed by a government that is specifically intended to offset countervailable subsidies. The record of this investigation however contains no evidence that the GOA imposed the 5.0 percent export tax with the specific intent to offset the subsidies received under either the Reintegro or Stamp Tax Exemption program.

We therefore determine that the export tax does not meet the criteria set forth in section 771(6)(C) of the Act and, thus, is not a permissible offset. The export tax that was put into place by the GOA was not “specifically intended to offset the countervailable subsidy received” by producers/exporters of the subject merchandise as required under section 771(6)(C) of the Act.⁴⁰ As such, we have not offset the subsidies received by Clorindo under the Reintegro and Stamp Tax Exemption programs for the final determination.

Comment 4: Procedural Guarantees Provided in the WTO SCM Agreement

The GOA argues that the Department committed procedural flaws during this investigation that are inconsistent with the standards guaranteed under the WTO SCM Agreement, and that these flaws undermined the GOA’s ability to properly defend its positions in the case. First, the GOA asserts that it did not have sufficient time to prepare before consultations were held. The GOA states that in a letter dated January 26, 2009, the Department invited the GOA for consultations. In that letter, the Department stated that it usually decides to initiate an investigation no later than 20 days from the filing of the petition. The GOA discusses that the Department initiated the investigation on February 17, 2009, which was only 15 working days after it reported the petition to the GOA. The GOA argues that the 21-day term used by the Department to determine whether to initiate an investigation is insufficient for a developing country, like Argentina, to gather and submit all the information necessary to defend its positions. The GOA adds that the evaluation term is particularly insufficient with respect to new subsidy allegations.

³⁹ Id. at 4.

⁴⁰ See Certain Cotton Yarn Products From Brazil; Final Results of Countervailing Duty Administrative Review, 55 FR 3442, 3444 (February 1, 1990).

Second, the GOA argues that the evidence submitted by the petitioner did not provide sufficient basis to initiate a CVD investigation. The GOA contends that the petition and new subsidy allegations contained assertions that were not supported by sufficient evidence of the existence of a subsidy or benefit as required by Article 11.2 of the WTO SCM Agreement. The GOA asserts that by initiating the investigation the Department shifted the burden of proof from the petitioner to the GOA, putting the GOA in the position of demonstrating that the programs did not provide a countervailable subsidy to Clorindo.

Third, the GOA argues that the Department failed to comply with the 30-day minimum term for the reply of a questionnaire as required under Article 12.1.1 of the WTO SCM Agreement. The GOA states that 30-day minimum was respected only with regard to the initial questionnaire dated March 4, 2009, and not with the new subsidy allegations questionnaires which were issued on March 20, 2009 and April 6, 2009. The GOA contends that it was unreasonable for the Department to not apply a 30-day minimum reply term for the subsequent questionnaires, which were more burdensome for the GOA than the initial questionnaire.

Finally, the GOA argues that the Department did not release an essential facts report to the interested parties in this investigation as required by Article 12.8 of the WTO SCM Agreement. The GOA discusses that Article 12.8 states that before a final determination is made, the authority shall inform the parties of the essential facts under consideration which form the basis for the decision whether to apply definite measures and that disclosure of these facts should take place in sufficient time for the parties to defend their interests. As such, the GOA asserts the lack of an essential facts report has undermined its ability to defend its interests in this investigation.

Department's Position:

The U.S. law is fully consistent with our obligations under the WTO. In this case, we followed U.S. law, inviting the GOA for consultations prior to initiation. On January 26, 2009, the day on which the petition was filed, we notified the Embassy of Argentina about the petition, a copy of which was available for the GOA, and extended an invitation to the GOA for consultations to discuss the petition.⁴¹ Consultations were later held on February 13, 2009 at the Department. In the January 26, 2009 letter, we notified the GOA that, pursuant to the statute, the Department would make its decision regarding whether to initiate a CVD investigation no later than the 20th day following the filing of the petition. See Section 702(c)(1)(A) of the Act. Therefore, in accordance with the Act, the Department made its determination to initiate an investigation on February 17, 2009.

With regard to the GOA's argument relating to the new subsidy allegations, we note that the GOA had sufficient time to submit comments and information on the March 5, 2009 and March 27, 2009 new subsidy allegations. The GOA, in fact, submitted its comments on March 16, 2009. If the GOA needed additional time to submit comments, then the GOA could have requested an extension of time to file comments on the allegations. Indeed, the Department did not make a decision regarding the new subsidy allegations until after the GOA submitted its comments on these new allegations.

Also, contrary to the GOA's comments, the Department properly initiated this investigation under U.S. law, which is fully consistent with our obligations under the WTO.

⁴¹ See Letter to Roberto Salafia, Minister, Economic and Commercial Section, Embassy of Argentina from Melissa G. Skinner, Director, Operations Office 3, regarding Invitation for Consultations (January 26, 2009).

Under section 702(b)(1) of the Act, “a countervailing duty proceeding shall be initiated whenever an interested party . . . files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for imposition of {countervailing duties}.” The petition must be “accompanied by information reasonably available to the petitioner supporting those allegations.” See Section 702(b)(1) of the Act. Under section 701(a) of the Act, the petitioner must allege that there is a countervailable subsidy. Section 771(5)(A) of the Act defines a countervailable subsidy as a subsidy that is specific under section 771(5A) of the Act. A subsidy occurs when a government or public entity of a country provides a financial contribution or entrusts or directs a private entity to make such a financial contribution, and this financial contribution confers a benefit. See Section 771(5)(B) and (E) of the Act. We found that the petitioner addressed all of these elements in the petition. See Ni-Resist Piston Inserts From Argentina and the Republic of Korea: Initiation of Countervailing Duty Investigations, 74 FR 8054 (February 23, 2009), and accompanying Argentina Initiation Checklist.⁴² We also found that the petitioner properly and timely alleged new subsidy allegations.⁴³

As is common practice in an investigation, we issued several questionnaires to the GOA, including two new subsidy questionnaires. We granted extensions of time to respond to the questionnaires on each occasion the GOA requested additional time.⁴⁴ When setting the response due dates for the new subsidy questionnaires and granting extension requests, we had to be mindful of the statutory deadlines for this investigation (i.e., the preliminary determination due no later than 130 days after the date of initiation).⁴⁵ As such, we provided to the GOA as much time to respond to questionnaires as was feasible in this investigation. Moreover, we granted all of the GOA’s request for additional time to respond to our questionnaires.

Finally, concerning “essential facts,” the Department issued its Preliminary Determination, notifying all interested parties to the investigation of the facts examined that form the basis of the decision whether to apply countervailing measures in this case. The Preliminary Determination was released to all parties on June 30, 2009. Subsequent to the Preliminary Determination, the Department conducted verification meetings with the GOA and Clorindo and issued verification reports on August 13, 2009, which further notified the parties of the facts under examination for the final determination. The GOA and other interested parties to this investigation then had the opportunity to submit case and rebuttal briefs to argue their positions on the facts of this case prior to the Department’s final determination. The GOA and other interested parties also had the opportunity to request a hearing in this investigation; however, no party requested a hearing.

⁴² A public version of the Initiation Checklist is available in the CRU.

⁴³ See Memorandum to Melissa G. Skinner titled New Subsidy Allegations (March 20, 2009) and Memorandum to Melissa G. Skinner titled Additional New Subsidy Allegations (April 6, 2009).

⁴⁴ See Letters from the Department to the GOA regarding additional time to respond to questionnaires dated March 20, 2009, April 21, 2009, May 7, 2009, and June 1, 2009.

⁴⁵ On March 20, 2009, under section 703(c) of the Act, the Department postponed the deadline for the preliminary determination by 65 days to no later than June 29, 2009. See Ni-Resist Piston Inserts From Argentina and the Republic of Korea: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigations, 74 FR 11910 (March 20, 2009).

Comment 5: More Expansive POI

The petitioner argues that by limiting the POI to calendar year 2008, the Department is not capturing the full-scope of the subsidies which Clorindo receives from the GOA. In support of its argument, the petitioner discusses that Clorindo began to receive benefits under the Repro in 2009. The Repro, a production recovery plan, provides 600 pesos per employee to assist companies during the economic recession. The petitioner also argues that a tax credit awarded to Clorindo in 2008 by the National Agency for the Promotion of Science and Technology (NAPST), under the FONTAR program, was received in 2009.

As such, the petitioner urges the Department to exercise its authority pursuant to 19 CFR 351.204(b), under which the “Secretary may rely on information for any additional or alternate period that the Secretary concludes is appropriate.” Specifically, the petitioner suggests the Department to consider adding 2007 and the first two quarters of 2009 to the POI.

In its rebuttal brief, the GOA does not dispute the Department’s prerogative, under 19 CFR 351.204(2), to depart from examining information pertaining to the most recently completed fiscal year for the government and exporters or producers under investigation. The GOA however argues that the decision regarding the time period under investigation should be made only at the early stages of the proceeding. The GOA asserts that to change the POI at this stage in the investigation would result in the necessity to discard evidence on the record and result in the initiation of a new investigation. Nevertheless, the GOA argues that, were the Department to expand the POI, neither the Repro nor FONTAR program provided countervailable subsidies to Clorindo.

Department’s Position:

As stated in 19 CFR 351.204(b)(2), the Department, in a CVD investigation, will normally rely on information pertaining to the most recently completed fiscal year for the government and exporters/producers under investigation. In keeping with this practice, we have appropriately measured subsidies for the period January 1, 2008, through December 31, 2008, which corresponds to the GOA’s and Clorindo’s most recently completed fiscal year. Further, we agree with the GOA that it would not be appropriate at this late stage of the proceeding to extend the period for which we are examining subsidies.

Our investigation of Clorindo included an examination of any non-recurring subsidies the company received in 2007.⁴⁶ We found that Clorindo did not receive any non-recurring subsidies prior to 2008, which would have an allocated benefit to the POI. If a CVD order is issued in this investigation and a subsequent administrative review is requested for Clorindo, the Department, at that time, will examine subsidies, such as Repro payments, received by Clorindo post 2008.

With regard to the tax credit, we verified that Clorindo declined the tax credit offered by NAPST and that no benefits were provided to the company under the FONTAR program.⁴⁷

⁴⁶ See Initial Questionnaire at Section III, General Questions where the Department requested Clorindo’s financial statements for the last two calendar years (March 4, 2009).

⁴⁷ See Clorindo Verification Report at 11.

VI. Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final determination of the investigation in the Federal Register.

_____ Agree

_____ Disagree

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date