

July 20, 2010

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

FROM: Edward C. Yang  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Preliminary Results of  
the Full Sunset Review: Countervailing Duty Order on Hot-Rolled  
Flat-Rolled Carbon-Quality Steel Products from Brazil

### Summary

We have analyzed the substantive responses and rebuttal comments of interested parties for the preliminary results of the full sunset review of the countervailing duty (“CVD”) order on hot-rolled flat-rolled carbon-quality steel products (“hot-rolled steel”) from Brazil. We recommend you approve the positions we have developed in the “Discussion of the Issues” section of the 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 July 19, 1999, the Department of Commerce (“Department”) published the final determination and suspended the CVD investigation on hot-rolled steel from Brazil. See Final Affirmative Countervailing Duty Determination: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 64 FR 38742 (“Final Determination”) and Suspension of Countervailing Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 64 FR 38797 (July 19, 1999). In the affirmative Final Determination, the following programs were found to confer countervailable subsidies:

1. Pre-1992 Equity Infusions of Usinas Siderurgicas de Minas Gerais and Companhia Siderurgica Paulista (“USIMINAS/COSIPA”)<sup>1</sup> and Companhia Siderurgica Nacional (“CSN”)

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<sup>1</sup> The Department found that USIMINAS owned 49.79 percent of COSIPA during the period of investigation. See

2. Government of Brazil (“GOB”) Debt-to-Equity Conversions Provided to COSIPA in 1992 and 1993.
3. GOB Debt-to-Equity Conversions Provided to CSN in 1992

The Department determined a net countervailable subsidy rate of 9.67 percent ad valorem for USIMINAS/COSIPA; and 6.35 percent ad valorem for CSN. The Department determined the all others rate at 7.81 percent ad valorem. See Final Determination, 64 FR at 38755.

On May 3, 2004, the Department initiated a sunset review of the suspended CVD investigation on hot-rolled steel from Brazil pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Initiation of Five-Year (“Sunset”) Reviews, 69 FR 24118 (May 3, 2004). The Department received substantive responses from Ispat Inland, Inc. and its division Ispat Inland Flat Products (collectively “Ispat”); International Steel Group, Inc.; Gallatin Steel Co.; IPSCO Steel, Inc.; Nucor Corp.; Steel Dynamics, Inc.; and United States Steel Corp. within the applicable deadlines specified in 19 CFR 351.218(d). No responses were received from the respondent interested parties. Pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the order and issued the final results on December 7, 2004. See Hot-Rolled Flat-Rolled Carbon-Quality Steel From Brazil; Final Results of the Expedited Sunset Review of the Countervailing Duty Order, 69 FR 70655 (December 7, 2004) (“Expedited Sunset Final”).

After receiving notice from the GOB of its decision to terminate the suspension agreement, in accordance with the terms of the agreement the Department terminated the suspension agreement and issued a CVD order, effective September 26, 2004. The CVD order implemented the rates found in the Final Determination. See Agreement Suspending the Countervailing Duty Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel From Brazil; Termination of Suspension Agreement and Notice of Countervailing Duty Order, 69 FR 56040 (September 17, 2004) and Agreement Suspending the Countervailing Duty Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel From Brazil; Correction to the Notice of Termination of Suspension Agreement and Notice of Countervailing Duty Order, 69 FR 60614 (October 12, 2004).

An administrative review was requested for the period of review of January 1, 2004 through December 31, 2004 in September 2005 by both domestic interested parties and CSN. On January 23, 2006, domestic interested parties and CSN both withdrew their requests for an administrative review. See Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Flat Products from Brazil: Notice of Rescission of Countervailing Duty Administrative Review, 71 FR 8278 (February 16, 2006).

The Department is currently conducting an administrative review for the period January 1, 2008 through December 31, 2008 for USIMINAS/COSIPA. Preliminary results are due October 7, 2010. There have been no scope determinations or changed circumstances

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Final Determination, 64 FR at 38744. Accordingly, the Department treated these two producers as a single company for purposes of the investigation in accordance with section 771(33)(E) of the Act.

reviews to date. The order remains in effect for all known producers and exporters of hot-rolled steel from Brazil at the rates found in the investigation:

<b>Producer/Exporter for Brazil</b>	<b>Countervailing Duty Rate</b>
USIMINAS/COSIPA	9.67%
CSN	6.35%
All Others	7.81%

### Background

On April 1, 2010, the Department initiated the second sunset review of the CVD order on hot-rolled steel from Brazil in accordance with section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Review, 75 FR 16437 (April 1, 2010).

Within the deadline specified in 19 CFR 351.218(d)(1)(i), the Department received notices of intent to participate on behalf of United States Steel Corporation, Nucor Corporation, Gallatin Steel, SSAB N.A.D., Steel Dynamics, Inc., ArcelorMittal USA Inc. (collectively “domestic interested parties”).<sup>2</sup> The domestic interested parties claimed interested-party status as producers of subject merchandise in the United States as defined by section 771(9)(C) of the Act. The Department received substantive responses from the domestic interested parties within the deadline specified in 19 CFR 351.218(d)(3)(i).

The Department received substantive responses in a timely manner from the following respondent interested parties: the GOB<sup>3</sup>, USIMINAS/COSIPA and CSN. The domestic interested parties, USIMINAS/COSIPA, and CSN also submitted rebuttal comments on May 10, 2010. On May 12, 2010, CSN responded to the domestic interested parties’ rebuttal comments. On May 20, 2010, the Department rejected CSN’s May 12, 2010 submission and removed it from the record. As the Department stated in its May 20, 2010 letter rejecting CSN’s May 12, 2010 submission, CSN’s May 12, 2010 submission was rejected because there is no opportunity provided for parties to respond to rebuttal comments. See 19 CFR 351.218(d)(4).

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<sup>2</sup> Bethlehem Steel Corporation, US Steel Group, a unit of USX Corporation, Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel Inc., IPSCO Steel Inc. (“IPSCO Steel”), Steel Dynamics, Weirton Steel Corporation, Independent Steelworkers Union, and United Steelworkers of America were petitioners in the original investigation. In 2002, International Steel Group was formed and it states it is now the successor company to petitioners LTV Steel Company Inc., Weirton Steel Corporation, and Bethlehem Steel Corporation and a part of ArcelorMittal USA. Nucor Corporation is also a domestic interested producer of subject merchandise. IPSCO Steel is now known as SSAB N.A.D. according to the domestic interested parties.

<sup>3</sup> The domestic interested parties have argued that the Department should be conducting this sunset review on an expedited basis because the GOB’s substantive response was filed one day after the deadline established for the submission of substantive responses in sunset reviews. However, the Department has determined to accept this submission under the discretionary authority to extend any time limit for good cause, pursuant to 19 CFR 351.302(b).

On May 21, 2010, after analyzing the submissions and the rebuttal comments from interested parties, and determining the substantive responses to be adequate, the Department determined to conduct a full sunset review. See Memorandum from Jacqueline Arrowsmith, Trade Compliance Analyst, to Barbara Tillman, Office 6 Director re: Adequacy Determination in Countervailing Duty Sunset Review Of Hot-Rolled Carbon, Steel Flat Products from Brazil – Second Countervailing Duty Review (2005 through 2009), (May 21, 2010).

### 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 1) the net countervailable subsidy determined in the investigation and any subsequent reviews, and 2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (“ITC”) the net countervailable subsidy likely to prevail if the order 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 described is in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures. Below we address the substantive responses and rebuttal comments of interested parties.

#### 1. Likelihood of Continuation or Recurrence of Countervailable Subsidies

##### Interested Parties’ Comments

The domestic interested parties argue revocation of the countervailing duty order would likely lead to continuation or recurrence of countervailable subsidies to Brazilian hot-rolled flat-rolled carbon-quality steel products producers and exporters. They refer to the final results of the first sunset review where the Department determined that the pre-1992 equity infusions and the GOB debt to equity conversions given to COSIPA (1992 and 1993) and CSN (1992) were countervailable subsidies that would continue or recur if the order was revoked, because the benefits from these three non-recurring subsidies would continue beyond the sunset review. See Expedited Sunset Final, 69 FR at 70657. The domestic interested parties state that USIMINAS/COSIPA and CSN have not presented any evidence demonstrating that these benefits have been terminated.

The domestic interested parties state that the fact the Department is currently conducting an administrative review for the period of review of calendar year 2008 is also a reason to continue the CVD order. According to the domestic interested parties, the Department is re-investigating the equity infusions and debt-to-equity conversions provided to USIMINAS/COSIPA by the GOB, in addition to investigating three countervailable programs

discovered in a subsequent investigation of cold-rolled carbon steel flat products and found to benefit USIMINAS/COSIPA and CSN: 1) tax credits under Program of Social Integration and The Social Contributions of Billings of Inputs Used in Exports; 2) National Bank for Economic Development loan programs; and 3) PRO-INDUSTRIA, a regional tax deferral program. See Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From Brazil, 67 FR 62128 (October 3, 2002) and accompanying Issues and Decision Memorandum (“Cold-Rolled Steel Final”). Further, they argue that the Department has good cause, under section 752(b)(2) of the Act, to consider these additional subsidies in this sunset review.

Finally the domestic interested parties provide evidence that imports of hot-rolled steel from Brazil during the second sunset review period were a fraction of the import volumes reported during the period prior to the Department’s imposition of the order in 1999:

Year	Subject Merchandise Imported (Net Tons)
1997	436,689
1998	451,466

Year	Subject Merchandise Imported (Net Tons)
2005	0
2006	2,237
2007	50
2008	46
2009	148

In their rebuttal comments CSN and USIMINAS/COSIPA point out the pre-privatization equity infusions were determined to have a 15-year allocation period in the original investigation; this allocation period ended in 2007, and therefore all benefits of the pre-privatization program have now ended. Consequently, there is no basis for the CVD order to continue since all subsidy programs have been terminated and no longer confer benefits.

The Department’s Position

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 this specific case, there have not been any completed administrative reviews of the order. In the original investigation two non-recurring subsidies were found to be countervailable: equity infusions and debt-to-equity conversions. The allocation period for non-recurring subsidies, which was determined in the investigation, is 15years in accordance with the U.S. Internal Revenue Service depreciation tables. Thus, the last year to which benefits from the

equity infusions and debt-to-equity conversions were allocated would have been 2006 and 2007 respectively.

Although the respondent parties maintain all programs have been terminated or the benefit stream has been fully allocated, the Department has not been provided with any evidence to support a finding that all programs have been terminated, without residual benefits or replacement programs. The Department found in certain corrosion-resistant carbon steel flat products from France that information on the record of that proceeding “{did} not show that these subsidy programs were one-time, company-specific subsidies to cover a specific event that was not part of a broader government program under which subsidies continue to be available.” Respondents have not demonstrated that the equity infusions were a single occurrence or that the program pursuant to which the debt-to-equity conversions were made was terminated. Following the precedent of Certain Corrosion-Resistant Carbon Steel Flat Products from France, we preliminarily find that there is a likelihood of continuation or recurrence of countervailable subsidies if the order were to be revoked. See Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France, 71 FR 30875 (May 31, 2006) and accompanying Issues and Decision Memorandum (unchanged in Corrosion-Resistant Carbon Steel Flat Products From France; Final Results of Full Sunset Review, 71 FR 58584 (October 4, 2006)).

With regard to the programs from Cold-Rolled Steel Final that the domestic interested parties argue should be considered in this sunset review, section 752(b)(2)(A) of the Act provides that the Department will take new programs into consideration if good cause is shown. However the Department will only consider such programs to the extent that they i) can potentially be used by the exporters or producers subject to the sunset review, and ii) did not exist at the time that the CVD order was issued or the suspension agreement accepted. Evidence indicates these programs were in existence prior to CVD investigation. See Memorandum from The Team, through Barbara E. Tillman, Director, AD/CVD Operations Office 6, to the File re: Additional Subsidy Programs to be Included in the Questionnaire for the Countervailing Duty Administrative Review of the Certain Hot-Rolled Carbon Steel Flat Products from Brazil (December 19, 2005). Further, the domestic interested parties have not provided information to demonstrate that the programs did not exist at the time the CVD order was issued or the suspension agreement accepted. Therefore, the Department preliminarily determines not to include programs from Cold-Rolled Steel Final in its likelihood analysis. See Section 752(b)(2)(A) of the Act.

## 2. Net Countervailable Subsidy Likely to Prevail

### Interested Parties' Comments

The domestic interested parties argue that revocation of the CVD order would lead to continuation or recurrence of subsidization at rates equal to or greater than those found in the investigation. The domestic interested parties urge the Department to use the rates from the original investigation since there have been no final results issued in subsequent administrative reviews: 9.67 percent for USIMINAS/COSIPA, 6.35 percent for CSN, and 7.81 percent for “All-

Others.” Since the respondents were found to have received countervailable subsidies in the Cold-Rolled Steel Final, the domestic interested parties argue that the Department should disregard the respondents’ claim that the subsidization rate is zero.

CSN and USIMINAS/COSIPA argue that all known countervailable benefits have ended, most notably because the allocation period for the pre-privatization benefits found in the original investigation has expired. Thus there is no reason to continue the CVD order since the rates from the original investigation are not the most “likely” rate of subsidization to recur. Rather, they argue, the most “likely” rate is zero.

### The Department’s Position

We agree with the domestic interested parties that 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. See Section 752(b)(3) of the Act. This rate, however, may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review. See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc 103-316, Vol. 1, at 890 (1994).

In this specific case, the benefits from the pre-1992 equity infusions and GOB debt-to-equity conversions provided in 1992 and 1993 have been fully allocated prior to initiation of this sunset review. The allocation period for non-recurring subsidies, which was determined in the investigation, is 15 years. Thus, the last year to which benefits were allocated would have been 2006 and 2007 respectively for each program. In addition, there is no evidence to suggest that additional disbursements have been made since the original investigation under these programs. Consequently, the Department is adjusting the rate from the investigation by removing the countervailable subsidy rates associated with programs for which the benefits have been fully allocated. We preliminarily determine the net countervailable subsidy rate likely to prevail if the order were revoked to be zero percent for USIMINAS/COSIPA, CSN and all other companies.

### 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 subsidies, and whether the subsidies are subsidies as described in Article 3 or Article 6.1 of the WTO ASCM. None of the parties addressed this issue. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

#### A) Pre 1992 Equity Infusions

The GOB through SIDERBRAS, the GOB steel holding company, provided equity infusions to USIMINAS (1983 through 1988), COSIPA (1983 through 1989 and 1991), and CSN (1983 through 1991) that were investigated in Final Affirmative Countervailing Duty

Determinations: Certain Steel Products From Brazil, 58 FR 37295, 37298 (July 9, 1993). The Department determined under section 771(5)(E)(i) of the Act, the equity infusions were not consistent with usual investment practices of private investors and confer a benefit in the amount of each infusion. These equity infusions are specific within the meaning of section 771 (5A)(D) of the Act because they were limited to each of the companies. Accordingly, the Department found that the pre-1992 equity infusions to be countervailable subsidies within the meaning of section 771(5) of the Act. The equity infusions were treated as grants given the year the infusion was received since no market benchmark exists. Further, the Department has determined these infusions to be non-recurring subsidies because each required separate authorization from SIDERBRAS, the shareholder.

#### B) GOB Debt-to-Equity Conversions Provided in 1992 and 1993

In 1990 the GOB decided to liquidate SIDERBRAS and to privatize the SIDERBRAS operating companies, including the respondents in its National Privatization Program. On the recommendation of a consultant, the GOB made two debt-to-equity conversions in 1992 and 1993 COSIPA and one in 1992 for CSN in preparation for privatization.

The Department determined that pursuant to section 771(5)(E)(i) of the Act, this debt-to-equity conversion was not consistent with standard investment practices of private investors and confers a benefit in the amount of the conversion. The conversion is specific within the meaning of section 771(5A)(D) of the Act because it was limited to COSIPA and CSN respectively. Accordingly the Department finds that GOB debt-to-equity conversion is a countervailable subsidy within meaning of section 771(5) of the Act.

#### Preliminary Results of the Review

As a result of this sunset review, we preliminarily find that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy for the reasons set forth in these preliminary results of review. We preliminarily find the net countervailable subsidy likely to prevail is zero percent for USIMINAS/COSIPA, CSN and all other companies.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the preliminary results of this full sunset review in the Federal Register.

AGREE: \_\_\_\_\_

DISAGREE: \_\_\_\_\_

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Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

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(Date)