

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 Final Results of Expedited
Sunset Review of the Countervailing Duty Order on Heavy Iron
Construction Castings from Brazil

Summary

We have analyzed the substantive responses of the interested parties in the sunset review of the countervailing duty (“CVD”) order covering heavy iron construction castings (“heavy iron castings”) from Brazil.¹ We recommend that you approve the positions we have developed in the “Discussion of Issues” section of this memorandum. Below is the complete list of the issues that the Department is addressing.

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 March 19, 1986, the Department published in the Federal Register its final determination that imports of heavy iron castings from Brazil were being subsidized. See Final Affirmative Countervailing Duty Determination; Certain Heavy Iron Construction Castings From Brazil, 51 FR 9491 (March 19, 1986) (“Heavy Iron Castings Investigation”). In the final determination, the Department found an estimated net subsidy of 5.77 percent ad valorem during the period of investigation based on three programs: 2.85 percent under the Preferential Working-Capital Financing for Exports program; 1.86 percent under the Income Tax Exemption for Export Earnings program; and 1.06 percent under the Export Financing by the Fundo de

¹ The Department did not receive a substantive response from any government or respondent interested party to this proceeding.

Financiamento a Exportacao (“FINEX”) program. However, the cash deposit rate was adjusted to take into account program-wide changes in the Preferential Working Capital Financing for Exports program, which reduced the program-specific subsidy rate from 2.85 percent to 0.48 percent. On May 15, 1986, the Department published the countervailing duty order on heavy iron castings from Brazil and imposed a cash deposit rate of 3.40 percent ad valorem on all entries of heavy iron castings from Brazil as was determined in the final determination. See Countervailing Duty Order; Certain Heavy Iron Construction Casting From Brazil, 51 FR 17786 (May 15, 1986).

On January 21, 1992, the Department published its final results of the only administrative review of the order since its issuance. See Certain Heavy Iron Construction Castings From Brazil; Final Results of Countervailing Duty Administrative Review and Determination Not To Revoke the Countervailing Duty Order, 57 FR 2252 (January 21, 1992) (“Heavy Iron Castings Review”). The review covered the period January 1, 1990 through December 31, 1990, three companies, and six programs: (1) Income Tax Reduction for Export Earnings; (2) Carteria do Comercio Exterior (Foreign Trade Department or “CACEX”) Preferential Working Capital Financing for Exports; (3) Preferential Export Financing Under CIC-OPCRE of the Banco do Brasil; (4) Financing for the Storage of Merchandise Destined for Export; (5) Exemption of IPI and Customs Duties on Imported Equipment; (6) Preferential Financing under Resolution 68 and 509 through FINEX. In the final results of that review, the Department determined a net subsidy for all firms to be 0.33 percent ad valorem based on usage of the Income Tax Reduction for Export Earnings program. The Department found that Decree Law 8034 of April 12, 1990, eliminated this tax reduction and, therefore, for the purposes of cash deposits of estimated CVDs, the Department determined the benefit from this program to be zero. The Department further found that the remaining programs had either been terminated or were not used during the period of review. See Certain Heavy Iron Construction Castings From Brazil; Preliminary Results of Countervailing Duty Administrative Review, 56 FR 58879 (November 22, 1991) (unchanged in Heavy Iron Castings Review).

On November 2, 1998, the Department initiated its first five-year sunset review of the CVD order on heavy iron castings from Brazil pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Notice of Initiation of Five-Year (“Sunset”) Reviews, 63 FR 58709 (November 2, 1998). The Department published the final results of its first sunset review on June 7, 1999. See Final Results of Expedited Sunset Review: Heavy Iron Construction Castings From Brazil, 64 FR 30313 (June 7, 1999) (“First Sunset Review”). In the final results of the first sunset review, the Department determined that revocation of the CVD order on heavy iron castings would be likely to lead to continuation or recurrence of countervailing subsidies. On October 29, 1999, the International Trade Commission (the “ITC”) determined that revocation of the CVD order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. See Iron Metal Castings From India; Heavy Iron Construction Castings From Brazil; and Iron Construction Castings From Brazil, Canada, and China, 64 FR 58442 (October 29, 1999). As a result, the Department continued the CVD order. See Continuation of Countervailing Duty Order: Heavy Iron Construction Castings From Brazil, 64 FR 61591 (November 12, 1999).

On October 1, 2004, the Department initiated the second sunset review of the CVD order on heavy iron castings from Brazil pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Reviews, 69 FR 58890 (October 1, 2004). The Department published the final results of its second sunset review on May 10, 2005, and again determined that revocation would be likely to lead to continuation or recurrence of countervailable subsidies. See Certain Iron Construction Castings from Brazil; Five-year (“Sunset”) Review of Countervailing Duty Order; Final Results, 70 FR 24529 (May 10, 2005) (“Second Sunset Review”). On June 14, 2005, the ITC determined that revocation of the CVD order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. See Certain Iron Construction Castings From Brazil, Canada, and China, 70 FR 34505 (June 14, 2005). As a result, the Department continued the CVD order. See Continuation of Antidumping Duty Orders on Certain Iron Construction Castings from Brazil, Canada, and the People’s Republic of China, and the Countervailing Duty Order on Heavy Iron Construction Castings from Brazil, 70 FR 37326 (June 29, 2005).

There have been no proceedings of the order since the completion of the second sunset review.

Background

On May 3, 2010, the Department initiated this third sunset review of the CVD order on heavy iron castings from Brazil pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Review, 75 FR 23240 (May 3, 2010). The Department received a notice of intent to participate from the following domestic interested parties: East Jordan Iron Works, Inc., Neenah Foundry Company, and U.S. Foundry & Manufacturing Co. (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 section 771(9)(C) of the Act, as domestic producers engaged in the production of subject merchandise in the United States.

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

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the 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 (“SCM”).

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties’ Comments

Domestic interested parties argue that the Department should continue to find that revocation of the order is likely to result in continuation or recurrence of countervailable subsidies, as it found in the prior sunset reviews of the order. Domestic interested parties contend that although the Department found, in the only administrative review of the order, de minimis countervailable subsidies, a zero or de minimis margin does not, in itself, support a finding that countervailable subsidies are not likely to continue or recur. See letter from Domestic interested parties to the Department, “Heavy Iron Construction Castings from Brazil: Five-Year (“Sunset”) Review of Countervailing Duty Order” (“Substantive Response”), dated June 2, 2010, at 10. Domestic interested parties explain that in considering the likelihood of countervailable subsidies, the Department must consider whether countervailable subsidy programs have been continued, modified, or eliminated. Domestic interested parties also explain that in instances where a foreign government allegedly has eliminated a subsidy program, the Department must consider the method by which a foreign government eliminated the program, *i.e.*, either through an administrative action or a legal measure. Domestic interested parties note that the Statement of Administrative Action (“SAA”) to the Uruguay Round Agreements Act explains that a countervailable program terminated through the process of an administrative action may be more likely to be reinstated than those eliminated through a legal method. Domestic interested parties assert that this is the case with respect to the Preferential Working Capital Financing for Exports – Resolution 674 and 950, a program found in the original investigation to provide countervailable benefits.

Department’s Position

In the original investigation, the Department found that certain benefits which constitute subsidies within the meaning of the CVD law were being provided to manufacturers, producers, and exporters of Brazilian heavy iron castings. Based on the final results of the investigation, the Department established a cash deposit rate of 3.40 percent ad valorem. See Heavy Iron Castings Investigation. In the only administrative review of the order, the Department determined that the Income Tax Exemption for Export Earnings program and the Preferential Working Capital Financing for Export program, the two programs found to confer countervailable subsidies in the original investigation, were eliminated. See Heavy Iron Castings Review. The Department acknowledged the elimination of these programs in the results of

both the first and second sunset reviews of this order. See First Sunset Review, 64 FR at 30315, and Second Sunset Review, 70 FR 24529.

However, as in the first and second sunset reviews, the record in this proceeding indicates that at least one of the subsidy programs found countervailable in the investigation (*i.e.*, FINEX) continues to exist while several other programs remain available. See Heavy Iron Castings Review. Neither the Government of Brazil nor any other Brazilian producer or exporter of subject merchandise has provided the Department information to support finding any change in these subsidy programs in this case.

The Department normally will find that revocation of the order is likely to lead to the continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated. Therefore, based on the lack of evidence in this proceeding that all of these subsidy programs have been terminated, we continue to find that it is likely that if the countervailing duty order on Brazilian heavy iron casting were to be revoked, countervailable subsidies would continue or recur.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

Domestic interested parties state that the Department should adjust the net subsidy rate determined in the original investigation to take into account only those programs that were terminated. Specifically, domestic interested parties suggest that the Department should rely on the 1.06 percent net subsidy rate determined in the original investigation under the FINEX export financing program.

Department's Position

The Department normally will select a rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order. See SAA at 890 and House Report, H.R. Doc. No. 103-106, vol. 1 (1994) at 64. Pursuant to the Department's practice, this rate may not be the most appropriate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent review. See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18876 (April 16, 1998). In addition, the Department may make adjustments to the net countervailable subsidy calculated in the original investigation to take into account subsidy programs that were found in subsequent reviews to be eliminated. Adjustments were made in the first sunset review as the result of the elimination of two countervailable programs. See First Sunset Review. In the second sunset review, the Department continued to make these adjustments because no change had occurred between the first and second sunset reviews. See

Second Sunset Review. There is no new evidence on the record of the instant review that would lead us to reconsider this finding. As such, we continue to take the termination of these programs into account. Because the income tax reduction for export earnings and the CACEX preferential working capital financing programs were found to be terminated in the sole administrative review of this proceeding, see Heavy Iron Castings Review, we have adjusted the original CVD rate to reflect these terminations. Further, Brazilian exporters/producers of heavy iron castings have not been found to have benefitted from any additional countervailable programs. Therefore, the Department determines that the net countervailable subsidy likely to prevail if the order were revoked is the rate attributed to the FINEX export financing program as determined in the original investigation. Accordingly, we will report to the ITC a country-wide net countervailable subsidy rate of 1.06 percent as noted in the “Final Results of Review” section of this memorandum.

3. Nature of the Subsidy

Domestic interested parties did not comment on this issue.

Consistent with section 752(a)(6) of the Act, the Department will 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 SCM. Because the receipt of benefits provided under the FINEX program are contingent upon exports, this program falls within the definition of an export subsidy under Article 3.1(A) of the SCM. We further note that as of January 1, 2000, Article 6.1 has ceased to apply (see Article 31 of the SCM). The following is the program description:

FINEX Export Financing program -- Resolution 509 of the Conselho Nacional de Comercio Exterior (CONCEX) provides that CACEX, may draw upon the resources of the FINEX Export Financing program to subsidize short-and-long term loans to foreign importers of Brazilian goods.

Final Results of Review

As a result of this sunset review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

Manufacturers/Producers/Exporters Net Countervailable Subsidy (percent)

Country-wide rate 1.06

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby

requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This five-year (“sunset”) review and notice are in accordance with sections 751(c), 752, and (777)(i)(1) of the Act.

AGREE: _____

DISAGREE: _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

(Date)