

November 29, 2010

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

FROM: Susan H. Kuhbach  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

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

### Summary

On July 20, 2010, we issued the preliminary results in the full sunset review of the countervailing duty (CVD) order on hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from Brazil. In the preliminary results, we found that subsidization was likely to continue or recur and we found that the net countervailable subsidy likely to prevail was zero percent for USIMINAS/COSIPA, CSN, and all other companies. See Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Preliminary Results of Full Sunset Review, 75 FR 43931 (July 27, 2010) and accompanying Issues and Decision Memorandum (Preliminary Results). We invited parties to comment on the Preliminary Results. We have analyzed the case briefs and rebuttal comments of domestic interested parties, USIMINAS/COSIPA, and CSN for the final results of this full sunset review. We recommend you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this full sunset review which the parties raised in their case and rebuttal briefs.

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) simultaneously published the final determination and the suspension of the CVD investigation on hot-rolled steel from Brazil. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 64 FR 38741 (July 19, 1999) (Final Determination) and Suspension of Countervailing Duty Investigation: Certain 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 to Usinas Siderurgicas de Minas Gerais and Companhia Siderurgica Paulista (USIMINAS/COSIPA)<sup>1</sup> and Companhia Siderurgica Nacional (CSN);
2. Government of Brazil (GOB) Debt-to-Equity Conversions Provided to COSIPA in 1992 and 1993; and
3. GOB Debt-to-Equity Conversions Provided to CSN in 1992.

The Department calculated net countervailable subsidy rates 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.

Although the Department issued a final determination, it also simultaneously suspended the investigation in accordance with section 704(c) of the Tariff Act of 1930, as amended (the Act). In addition, the International Trade Commission (ITC) made an affirmative final injury determination in accordance with section 705(b) of the Act. See Certain Hot-Rolled Steel Products From Brazil and Russia, 64 FR 46951 (August 27, 1999). However, because the investigation was suspended, a CVD order was not put into place.

On May 3, 2004, the Department initiated the first sunset review of the suspended CVD investigation on hot-rolled steel from Brazil pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Reviews, 69 FR 24118 (May 3, 2004). The Department received substantive responses from domestic interested parties 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). The ITC found that revocation of the order would lead to a continuation or recurrence of material injury. See Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, Japan, and Russia, 70 FR 23886 (May 5, 2005). The Department published Continuation of Countervailing Duty Order; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 70 FR 30417 (May 26, 2005).

After receiving notice from the GOB of its decision to terminate the suspension agreement, the Department terminated the suspension agreement in accordance with the terms of

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

the 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).

In September 2005, an administrative review was requested for the period January 1, 2004 through December 31, 2004 by both United States Steel Corporation and CSN. This review was subsequently rescinded after both requests were withdrawn. 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 were published October 20, 2010. See Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Preliminary Results of Countervailing Duty Administrative Review, 75 FR 64700 (October 20, 2010). Final results for this administrative review are currently scheduled for February 17, 2011. There have been no scope determinations or changed circumstances reviews to date. The order remains in effect for all known producers and exporters of hot-rolled steel from Brazil at the following 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). The domestic interested parties<sup>2</sup> timely

<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., 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; International Steel Group reported that it is the successor to LTV Steel Company Inc., Weirton Steel Corporation, and Bethlehem Steel Corporation, which are no longer in existence. In 2005, International Steel Group and Ipsat Inland Steel merged with Mittal Steel Company NV. In 2006, Arcelor and Mittal Steel Company NV merged, and Mittal Steel’s U.S. hot-rolled steel operations became a part of ArcelorMittal USA. ArcelorMittal USA stated that it is a U.S. producer of hot-rolled steel and an interested party pursuant to section 771(9)(C) of the Act. See April 15, 2010 Notice of Intent to Participate letter from ArcelorMittal USA to the Department. Nucor Corporation is also a domestic producer of subject merchandise. According to the domestic interested parties, IPSCO Steel Inc. is now known as SSAB N.A.D.

filed a notice of intent to participate. The Department received substantive responses in a timely manner from the domestic interested parties, the GOB, USIMINAS/COSIPA and CSN. The domestic interested parties, USIMINAS/COSIPA, and CSN also submitted rebuttal comments on May 10, 2010.

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, Director, AD/ CVD Operations, Office 6 re: Adequacy Determination in Countervailing Duty Sunset Review Of Hot-Rolled Carbon, Steel Flat Products from Brazil – Second Countervailing Duty Review (2005 through 2009).

On July 27, 2010, the Department published the preliminary results of the full sunset review of the instant case. See Preliminary Results. In the Preliminary Results, we found that revocation of the order would likely lead to continuation or recurrence of a countervailable subsidy on the subject merchandise in Brazil. We also determined that the rate of subsidization likely to prevail if the order were revoked was zero percent ad valorem.

Interested parties were invited to comment on our Preliminary Results. On September 15, 2010, the Department received case briefs from domestic interested parties, and from USIMINAS/COSIPA and CSN (respondents). On September 20, 2010, the Department received rebuttal briefs from the same parties.

### 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 likely 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 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

Respondents argue the Department's preliminary determination that subsidies are likely to continue or recur does not match the evidence on the record. In the Preliminary Results, the Department stated it "has not been presented with any evidence to support a finding that all programs have been terminated."<sup>3</sup> Respondents claim the record does not support a determination of likelihood because they state that the programs at issue were terminated by the privatizations of the companies and there are no residual benefits or replacement programs. Further, respondents note that the Preliminary Results state "there is no evidence to suggest that additional disbursements have been made since the original investigation under those programs."<sup>4</sup> Additionally, respondents state that a finding that subsidization will continue or recur is contradictory to a zero percent net countervailable rate likely to prevail. Thus, the Department should change its determination to a negative likelihood of continuation or recurrence of subsidization.

CSN contends the Department "applied a rebuttable presumption that subsidies will continue or recur, placing the burden on respondents to rebut that presumption."<sup>5</sup> CSN cites to AG der Dillinger Huttenwerke v. United States, 193 F. Supp. 2d (Ct. Int'l Trade Feb. 28, 2002) (Dillinger I) in which the Court of International Trade ("CIT") ruled that no interested party has the ultimate burden of persuasion, and rather than place a burden of proof on either the foreign or the domestic interested parties, the statute provides that parties may submit information in their response to Commerce's notice of initiation of review. See Section 751(c)(2) of the Act (notice of initiation requests interested parties to express their willingness to participate in the review, state the likely effects of revocation, and provide any "other information or industry data" as the agency may specify). The CIT found that the Department "failed to consider adequately the evidence on the record."<sup>6</sup> According to CSN, the record contains substantial evidence that the programs in question were one-time events and have long since terminated. Thus if there is any burden to be met, it is up to the domestic interested parties to demonstrate that the programs still exist.

Further, CSN argues that the Department is only indicating the possibility of programs, not probability as required by CIT's holding in the appeal of Dillinger I. See AG der Dillinger Huttenwerke v. United States, 26 C.I.T 1091, 1100 (September 5, 2002) (Dillinger II). In Dillinger II the court stated: "{i}t is not sufficient for Commerce to merely indicate the possibility that benefits could still be given under {a particular program}. Rather, Commerce must make factual findings that would indicate whether they would continue for any significant time period beyond the end of the sunset review."<sup>7</sup> CSN argues that non-recurring programs

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<sup>3</sup> Preliminary Results at 6-7.

<sup>4</sup> USIMINAS Case Brief of September 15, 2010 at 3.

<sup>5</sup> CSN Case Brief of September 15, 2010 at 2.

<sup>6</sup> Dillinger I, 193 F. Supp. at 1348.

<sup>7</sup> CSN Case Brief of September 15, 2010 at 4.

should not be taken into consideration since it is not probable for there to be additional subsidization.

Also, according to CSN, the legal standard requires a negative likelihood determination when either: “1) the program has been terminated; or 2) benefits under the program will not continue beyond the review.”<sup>8</sup> CSN relies on Grain-Oriented Electrical Steel from Italy; Final Results of Full Sunset Review of Countervailing Duty Order, 65 FR 65295 (November 1, 2000) and accompanying Issues and Decision Memorandum (GOES from Italy) and Stainless Steel Wire Rod from Italy; Preliminary Results of Full Sunset Review of Countervailing Duty Order, 69 FR 10205 (March 4, 2004) (SS Wire Rod from Italy) as precedents. CSN contends that in this case both conditions are met since the programs were non-recurring and the benefits are fully allocated. Thus, CSN argues that there is no likelihood that subsidization should continue or recur and therefore, the CVD order should be revoked.

The domestic interested parties claim that the information on the record supports the Department’s determination of likelihood. The domestic interested parties argue that the original investigation identified a 15-year allocation period for non-recurring subsidies, yet respondents have not provided proof of termination, without residual benefits or replacement programs, for the programs found countervailable in the original investigation.

According to the domestic interested parties, respondents have failed to demonstrate that the program under which the debt-to-equity conversions and equity infusions were made has been terminated. As such, the domestic parties contend that CSN’s claim that the Department’s practice is to exclude non-recurring subsidy programs from the likelihood analysis is incorrect. Domestic interested parties state that the Department clearly articulated in Corrosion-Resistant Carbon Steel Flat Products From France; Final Results of Full Sunset Review, 71 FR 58584 (October 4, 2006) and accompanying Issues and Decision Memorandum (CORE from France) that in order to revoke an order, the following criteria must be met; “1) the program be terminated and 2) any benefit stream be fully allocated.”<sup>9</sup> According to the domestic parties, in CORE from France the “government and the company subject to review have failed to bring to the Department’s attention evidence sufficient” to indicate termination of programs.<sup>10</sup> Domestic interested parties maintain that the current situation of this proceeding is identical to CORE from France and the Department correctly reached an affirmative likelihood determination in that case and should do the same in this case.

The domestic interested parties contend that CSN’s reliance on Dillinger II to conclude that a countervailable subsidy is not likely to continue if the order is revoked is baseless. Domestic interested parties emphasize that the CIT’s findings were limited to a particular factual situation that is simply not at issue in this review. They also highlight that the Department

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<sup>8</sup> CSN Case Brief of September 15, 2010 at 5.

<sup>9</sup> Domestic Interested Parties Rebuttal Brief at 6.

<sup>10</sup> Id. at 7.

explained in its recent sunset review of Honey from Argentina,<sup>11</sup> in response to similar arguments, that the rationale in {Dillinger II} rested on changes in U.S., European, and German laws subsequent to the imposition of the order, which the CIT found that the Department had failed to properly consider.

### 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.

As stated in the Preliminary Results, there have not been any completed administrative reviews of the order. In the original investigation, three non-recurring subsidies were found to be countervailable: equity infusions, debt-to-equity conversions for COSIPA, and debt-to-equity conversions for CSN. The allocation period for non-recurring subsidies, which was determined in the investigation, is 15 years in accordance with 19 CFR 351.524(d)(2)(i). 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 respondents maintain that all programs have been terminated, 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. In CORE from France the Department explained that in determining whether a program has been terminated, the Department will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program. See CORE from France at Comment 1. This is fully consistent with other areas of the Department's CVD practice (e.g., program-wide changes) where we normally expect a program to be terminated by means of the same legal mechanism by which it was instituted.<sup>12</sup>

The Department found in CORE 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.” Id. Further, the Department found that the Government of France did not provide supporting documentation in accordance with 19 CFR 351.526(b) and (d), such as “the enactment of a statute, regulation, or decree,” which demonstrates a program-wide change and termination of these programs. Instead the Government of France relied on general statements without supporting documentation in arguing that programs were terminated and that benefits under the programs were fully allocated.

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<sup>11</sup> Preliminary Results of Full Sunset Review: Countervailing Duty Order on Honey from Argentina, 72 FR 8970 (February 28, 2007) and accompanying Issues and Decision Memorandum at 11, unchanged in Honey from Argentina: Final Results of Full Sunset Review of the Countervailing Duty Order, 72 FR 32078

<sup>12</sup> Id.

Similarly, in the current sunset review, no program-wide change has been reported by the GOB. In considering whether there have been program wide changes, termination or otherwise, the Department examined the legal mechanism by which the program was instituted. See 19 CFR 351.526(b) and (d). The Department found that the countervailable subsidies provided in the form of equity infusions and debt-to-equity conversions were provided under the framework of Brazil's National Privatization Program ("NPP"). This program was implemented by Law 8031 of April 12, 1990. See Final Determination at 38747. Respondents have not demonstrated that the equity infusions or debt-to-equity conversions were a single occurrence or that the program pursuant to which the debt-to-equity conversions were made, the NPP, was terminated without residual benefits or replacement programs. Respondents have not provided any evidence that the programs have been terminated in a manner similar to the way in which they were promulgated. The NPP was enacted by legislative action and the Department would look for similar legislative action and documentation thereof to substantiate a claim that the NPP was terminated and that, therefore, there was no likelihood that subsidization would continue or recur.

Similar to CORE from France, in this review, respondents claim that the programs at issue terminated when the companies were privatized, and contend that their comments suffice as evidence for the Department to find that there is no likelihood of continuation if the order were revoked. However, they have not provided documentation or other evidence of government action to substantiate their statement that the NPP was terminated; no public law, statute or regulation legally declared any changes in the law. In fact, USIMINAS concedes that there have been no "program-wide changes".<sup>13</sup> Our review of Law 8031, implementing the NPP, shows that the NPP does not automatically terminate. Also, there is no evidence that these programs cannot be extended. Following the Department's practice, as articulated in CORE from France and GOES from Italy, we continue to find, for these final results, that there is a likelihood of continuation or recurrence of countervailable subsidies if the order were to be revoked. See CORE from France and GOES from Italy.

CSN's reliance on GOES from Italy and SS Wire Rod from Italy is misplaced. In those cases, the Department found that when non-recurring subsidies have been allocated over time and the fully allocated benefit stream continues after the end of the sunset review, the continued benefit supports a finding that revocation of the order would be likely to lead to continuation of the subsidy, regardless of whether the program continues to exist. See Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H.R. Doc 103-316, Vol. 1, at 889 (1994). Contrary to CSN's claim, the legal standard for a negative likelihood determination requires the Department to find both that the program has been terminated and that benefits under the program will not continue beyond the review. As illustrated in GOES from Italy, the Department cannot reach a negative likelihood determination based on the satisfaction of only one of these criteria. As the Department explained, both criteria must be satisfied before the Department can reach a negative likelihood determination.

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<sup>13</sup> USIMINAS Rebuttal Brief of September 20, 2010 at 2.

In addition, as stated in our preliminary results, without an administrative review, the Department cannot determine that the programs through which the subsidies were conferred in the original investigation have been terminated. Therefore, without evidence that the programs have been terminated, or that the benefits from programs for which benefits are allocated over time will not continue beyond this sunset review, we determine that revocation of the countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy.

See GOES from Italy at 6.

In that case, the Department used the word “or” to explain that neither of the two required criteria was present for the Department to determine that revocation of the order would not lead to continuation or recurrence of a countervailable subsidy. CSN misinterprets the Department’s application of the legal standard as a modification of the requirement that the Department must find that the programs have been terminated and that benefits are fully allocated to reach a negative likelihood determination.

CSN incorrectly claims that the Department shifted the burden of proof, violating the holding of Dillinger I. The Department has not made any presumptions nor shifted any burden, but actually relied on the evidence presented on the record. In addition, CSN’s reliance on Dillinger II for the proposition that the Department must make a factual finding that would indicate whether such benefits would be probable, actually supports the Department’s determination. In Dillinger II, the CIT found that the Department failed to consider evidence that was reasonably brought to the Department’s attention. By contrast, in this sunset review, the issue is that the GOB has failed to bring to the Department’s attention evidence sufficient under the Department’s regulatory criteria to indicate that the programs in question have been terminated. This is similar to the facts in the sunset review of Honey from Argentina and Cut-to-Length Carbon Steel Plate from Belgium: Final Results of Full Sunset Review, 71 FR 58585 (October 4, 2006). Just as in this sunset review, in both of those sunset reviews the parties did not demonstrate that the programs should not be considered in the Department’s likelihood determination. There were no reported or documented changes in Argentine and Belgian law, and the Department found that the Governments of Belgium and Argentina did not bring to the Department’s attention evidence sufficient under the Department’s regulatory criteria to indicate that the programs in question have been terminated. Similarly, in the instant review there have been no reported or documented changes in the Brazilian laws and subsidy programs at issue.

Regarding respondents’ contention that the benefits have been fully allocated, we agree. We have appropriately recognized the full allocation of benefits in our consideration of the rate likely to prevail. We do not agree that the full allocation of benefits is relevant to our consideration of whether there have been program-wide changes that would render subsidization unlikely to continue or recur.

## 2. Net Countervailable Subsidy Likely to Prevail

### Interested Parties' Comments

Domestic interested parties argue that, while the Department was correct in its determination that subsidization is likely to continue or recur, the determination of a subsidy rate of zero is misplaced. Rather, the domestic interested parties contend, the Department should determine the rates from the original investigation are the most appropriate, because there have been no completed administrative reviews, no evidence of program-wide changes, and no evidence of termination of programs. The domestic interested parties maintain that a rate of zero is inconsistent with the determination there is a likelihood of continuation or recurrence of subsidization. Consequently, the domestic interested parties urge the Department to report the rates found in the original investigation.

Respondents contend that domestic interested parties are incorrect in their claim the Department can only revise rates if there is an administrative review, evidence of program-wide changes, or evidence of termination of programs. To support its claim CSN cites to the SAA and the Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18875 (April 16, 1998). According to respondents, the Department has used its discretion to revise rates downward when particular subsidy programs have been fully allocated. See CORE from France and Final Results of Full Sunset Review: Brass Sheet and Strip from France, 71 FR 10651 (March 2, 2006). In addition, USIMINAS/COSIPA argues that the programs were terminated before the investigation began, making changed circumstances not possible: "based on {the original investigation's} calculation, the full amount of the subsidies would have to have been amortized by 1998, the last year of the 15-year period."<sup>14</sup> Further, according to USIMINAS/COSIPA, the original investigation found that all countervailable programs ceased prior to investigation and all subsidy effects would "terminate no later than 1998."<sup>15</sup> Therefore, USIMINAS/COSIPA argues, the Department should continue to report a likely subsidy rate of zero.

### 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 SAA at 890.

In this specific case, the benefits from the pre-1992 equity infusions and GOB debt-to-equity conversions provided in 1992 and 1993 were fully allocated prior to initiation of this

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<sup>14</sup> USIMINAS Rebuttal Brief of September 20, 2010 at 3.

<sup>15</sup> Id.

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 under any of the programs would have been 2007. 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. The Department's discretion to revise rates extends to recognizing the full allocation of benefits over a time period that reflects the average useful life of physical assets. See 19 CFR 351.524(b) and CORE from France.

Respondents' claims that a rate of zero is inconsistent with the determination that there is a likelihood of continuation or recurrence of subsidization contradicts the SAA. In fact, the Department is not required to revoke a CVD order if the net countervailable subsidy likely to continue or recur is zero or de minimis. The SAA states that “{u}nder new section 752(b)(4), the existence of a zero or de minimis countervailable subsidy at any time while the order was in effect shall not in itself require Commerce to determine that continuation or recurrence of countervailable subsidies is not likely.” SAA at 889.

For these final results, we 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 Agreement on Subsidies and Countervailing Measures. 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 conferred a benefit in the amount of each infusion. These equity infusions were 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 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 in the year the infusion was received since no market benchmark existed. Further, the Department 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 USIMINAS, COSIPA, and CSN in its National Privatization Program. On the recommendation of a consultant, the GOB made two debt-to-equity conversions in 1992 and 1993, in COSIPA, and one in 1992, in CSN, in preparation for privatization.

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

Final Results of Review

As a result of this sunset review, we 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 final results of review. We 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 final results of this full sunset review in the Federal Register and notify the ITC of our determination.

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

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

\_\_\_\_\_  
Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

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Date