



C-351-504
Sunset Review
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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Fourth Sunset Review of the Countervailing Duty Order on Heavy Iron Construction Castings from Brazil

SUMMARY

We have analyzed the responses of interested parties in the expedited sunset review of the countervailing duty (CVD) order on heavy iron construction castings (heavy iron castings) from Brazil. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues that we address in this expedited sunset review:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidy

Background

On March 19, 1986, the Department of Commerce (Department) published the CVD order on heavy iron castings from Brazil.¹ On October 1, 2015, the Department initiated the fourth sunset review of the *Castings Order* pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(c).² The Department received a notice of intent to participate in the review on behalf of D&L Foundry, EJ USA, Inc. (previously known as East Jordan Iron Works, Inc.), Neenah Foundry Company, and U.S. Foundry & Manufacturing Corp. (collectively, the domestic industry) within the deadline specified in 19 CFR 351.218(d)(1)(i).³

¹ See *Countervailing Duty Order; Certain Heavy Iron Construction Casting From Brazil*, 51 FR 17786 (May 15, 1986) (*Castings Order*).

² See *Initiation of Five-Year (Sunset) Review*, 80 FR 190 (October 1, 2015).

³ See Letter to Secretary of Commerce, "Sunset Reviews of Antidumping Duty Orders on Certain Iron Construction Castings From Brazil, Canada, and China; and Countervailing Duty Order on Heavy Iron Construction Castings From Brazil," (October 16, 2015).



Each of these companies claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of the domestic like product. On November 2, 2015, the Department received a substantive response from the domestic industry, in accordance with 19 CFR 351.218(d)(3)(i).⁴ The Department did not receive a response from the Government of Brazil or any Brazilian producers or exporters.

In accordance with 19 CFR 351.218(e)(1)(ii)(C)(2), when there are inadequate responses from respondent interested parties, we “{n}ormally will conduct an expedited sunset review and, not later than 120 days after the date of publication in the *Federal Register* of the notice of initiation, issue final results of review based on the facts available in accordance with 19 CFR 351.308(f) (*see* section 751(c)(3)(B) of the Act and 19 CFR 351.221(c)(5)(ii)).” Consistent with the Department’s regulations and practice, we determine that in the absence of responses from the Government of Brazil and other respondent interested parties (*i.e.*, producers and exporters), the Department is conducting an expedited (120-day) sunset review of the *Castings Order*.

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.⁵ 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: (1) 2.85 percent under the Preferential Working-Capital Financing for Exports program; (2) 1.86 percent under the Income Tax Exemption for Export Earnings program; and (3) 1.06 percent under the Export Financing by the Fundo de 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.

On January 21, 1992, the Department published its final results of the only administrative review of the order since its issuance.⁶ 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.⁷ In the final results of that review, the Department

⁴ See Letter to Secretary of Commerce, “Iron Construction Castings From Brazil; Five-Year (“Sunset”) Review of Countervailing Duty Order Response,” (November 2, 2015) (Substantive Response).

⁵ See *Final Affirmative Countervailing Duty Determination; Certain Heavy Iron Construction Castings From Brazil*, 51 FR 9491 (March 19, 1986) (*Heavy Iron Castings Investigation*).

⁶ 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*).

⁷ The Department examined the Income Tax Reduction for Export Earnings and CACEX Preferential Working

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.⁸

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 Act.⁹ The Department published the final results of its first sunset review on June 7, 1999.¹⁰ 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 based on subsidies provided under the FINEX export financing program.¹¹ 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.¹² As a result, the Department continued the CVD order.¹³

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.¹⁴ 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 based on subsidies provided under the FINEX export financing program.¹⁵ 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.¹⁶ As a result, the Department continued the CVD order.¹⁷

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.¹⁸ The Department published the final results of its third sunset review on September 8, 2010, and again determined

Capital Financing for Exports programs in the underlying investigation.

⁸ 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*).

⁹ See *Notice of Initiation of Five-Year ("Sunset") Reviews*, 63 FR 58709 (November 2, 1998).

¹⁰ See *Final Results of Expedited Sunset Review: Heavy Iron Construction Castings From Brazil*, 64 FR 30313 (June 7, 1999) (*First Sunset Review*).

¹¹ *Id.* At 30315

¹² 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).

¹³ See *Continuation of Countervailing Duty Order: Heavy Iron Construction Castings From Brazil*, 64 FR 61591 (November 12, 1999).

¹⁴ See *Initiation of Five-Year ("Sunset") Reviews*, 69 FR 58890 (October 1, 2004).

¹⁵ 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*).

¹⁶ See *Certain Iron Construction Castings From Brazil, Canada, and China*, 70 FR 34505 (June 14, 2005).

¹⁷ 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).

¹⁸ See *Initiation of Five-Year ("Sunset") Review*, 75 FR 23240 (May 3, 2010).

that revocation would be likely to lead to continuation or recurrence of countervailable subsidies based on subsidies provided under the FINEX export financing program.¹⁹ On November 2, 2010, 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.²⁰ As a result, the Department continued the CVD order.²¹

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

Scope of the Order

The products covered by this investigation are certain heavy iron construction castings, which are defined for purposes of this proceeding as manhole covers, rings and frames; catch basin grates and frames; and cleanout covers and frames. Such castings are used for drainage or access purposes for public utility, water and sanitary systems. These articles must be of cast iron, not alloyed, and not malleable. The merchandise is currently classified under Harmonized Tariff Schedule (HTS) item number 7325.10.00. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the *Castings 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 ITC the net countervailable subsidy likely to prevail if the *Castings 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 it is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM).

¹⁹ See *Final Results of Expedited Sunset Review: Heavy Iron Construction Castings from Brazil*, 75 FR 54596 (September 8, 2010) (*Third Sunset Review*).

²⁰ See *Iron Construction Castings From Brazil, Canada, and China; Determinations*, 75 FR 67395 (November 2, 2010).

²¹ See *Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders*, 75 FR 70900 (November 19, 2010).

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Domestic 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.²² 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: Section 752(b)(1) of the Act directs the Department in determining the likelihood of continuation or recurrence of a countervailable subsidy to consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether there has been any change in a program found to be countervailable that is likely to affect that net countervailable subsidy. According to the SAA, the Department will consider the net countervailable subsidies in effect after the issuance of the order and whether the relevant subsidy programs have been continued, modified, or eliminated.²³ The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.²⁴ Additionally, the presence of programs that have not been used, but also have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.²⁵ Where a subsidy program is found to exist, the Department will normally determine that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.²⁶

As the Department has stated in other sunset determinations, two conditions must be met in order for a subsidy program not to be included in determining the likelihood of

²² See Domestic Industry's Substantive Response at 11 and 12.

²³ See SAA, H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

²⁴ *Id.*

²⁵ See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010) and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

²⁶ *Id.*

continued or recurring subsidization: (1) the program must be terminated; and (2) any benefit stream must be fully allocated.²⁷ The Department has further stated that, in order to determine 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.²⁸ The Department normally expects a program to be terminated by means of the same legal mechanism used to institute it.²⁹ Where a subsidy is not bestowed pursuant to a statute, regulation or decree, the Department may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence that was not part of a broader government program.³⁰

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*.³¹ 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 terminated.³² The Department acknowledged the elimination of these programs in the results of both the first and second sunset reviews of this order.³³

However, as in the first, second, and third sunset reviews, the record in this proceeding indicates that at least one of the subsidy programs found countervailable in the investigation (*i.e.*, FINEX export financing program) continues to exist while several other programs, on which the Department initiated an investigation, remain available.³⁴ 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.

²⁷ See, e.g., *Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006) and accompanying IDM at 5-7, unchanged in *Corrosion-Resistant Carbon Steel Flat Products From France: Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006).

²⁸ See, e.g., *Fresh and Chilled Atlantic Salmon From Norway: Final Results of Full Third Sunset Review of Countervailing Duty Order*, 76 FR 70411 (November 14, 2011) and accompanying IDM at Comment 1.

²⁹ See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001) and accompanying IDM at Comment 7.

³⁰ See, e.g., *Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order*, 76 FR 25666 (May 5, 2011) and accompanying IDM at Comment 1.

³¹ See *Heavy Iron Castings Investigation*.

³² See *Heavy Iron Castings Review*.

³³ See *First Sunset Review*, 64 FR at 30315, and *Second Sunset Review*, 70 FR 24529.

³⁴ See *Heavy Iron Castings Review*.

As indicated above, the Department has completed one administrative review of the order since it went into effect during which it identified additional countervailable subsidy programs providing benefits to Brazilian producers of heavy iron castings. Additionally, no party submitted evidence to demonstrate that all countervailable programs have expired or been terminated. Thus, based on the facts on the record, the Department determines that there is a likelihood of recurrence of countervailable subsidies because the record in this proceeding indicates that the subsidy programs found countervailable during the investigation continue to exist and be used.

2. Net Countervailable Subsidy Likely to Prevail

Domestic 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: Consistent with the SAA and legislative history, the Department normally will provide the ITC with the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked, because it is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.³⁵ Section 752(b)(1)(B) of the Act provides, however, that the Department will consider whether any change in the program which gave rise to the net countervailable affect the net countervailable subsidy.

Therefore, although the SAA and House Report provide that the Department normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, the rate was derived (in whole or part) 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.³⁶

Adjustments were made in the first sunset review as the result of the elimination of two countervailable programs.³⁷ In the second sunset review, the Department continued to make these adjustments because no change had occurred between the first and second sunset reviews.³⁸ In the third sunset review, the Department continued to make these adjustments because no change occurred between the second and third sunset reviews.³⁹ 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

³⁵ See SAA at 890, and H.R. Rep. No. 103-826 (1994) (House Report) at 64.

³⁶ See, e.g., *Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 6210 1 (October 7, 2010) and accompanying IDM at Comment 2.

³⁷ See *First Sunset Review*.

³⁸ See *Second Sunset Review*.

³⁹ See *Third Sunset Review*.

export earnings and the CACEX preferential working capital financing programs were found to be terminated in the sole administrative review of this proceeding,⁴⁰ 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 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 ASCM. We note that Article 6.1 of the SCM expired effective January 1, 2000.

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. Because receipt of benefits provided under the FINEX export financing program are contingent upon exports, this program falls within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement.⁴¹

FINAL RESULTS OF REVIEW

The Department finds that revocation of the *Castings Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the rate listed below:

Manufacturers/Producers/Exporters	Net Countervailable Subsidy (percent)
Country-wide rate	1.06

⁴⁰ See *Heavy Iron Castings Review*.

⁴¹ See, e.g., *First Sunset Review*, 64 FR at 30316.

