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Sunset Review
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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results

Summary

We have analyzed the substantive responses of the interested parties in the sunset review of the countervailing duty order covering certain cut-to-length carbon-quality steel plate from Indonesia. We recommend that 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 sunset review for which we received a substantive response:

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

The Department of Commerce ("the Department") published its final affirmative countervailing duty determination on certain cut-to-length carbon-quality steel plate ("CTL Plate") from Indonesia in the Federal Register on December 29, 1999 (64 FR 73155). See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia, December 29, 1999 (64 FR 73155) ("Final Determination"). In the final determination the Department found an estimated net subsidy, for all manufacturers/producers/ exporters of CTL Plate from Indonesia, of 15.90 percent ad valorem. In the investigation, the Department found that manufacturers/producers/exporters of CTL Plate from Indonesia benefitted from equity infusions which the Department determined was allocated for 15 years. Furthermore, the Department made other facts available findings on alleged subsidy programs because the Government of Indonesia did not provide sufficient responses. Also, the Department has not conducted an administrative review with respect to this order.

Discussion of Issues

In accordance with section 751(c)(1) of the Traffic Act of 1930, as amended ("the Act"), the Department is conducting this review to determine whether revocation of the countervailing duty 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 programs 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 International Trade Commission ("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 it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("SCM").

Below we address the substantive responses of the interested parties.

1. Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

In their substantive response, domestic interested parties argue that revocation of the countervailing duty order on CTL Plate from Indonesia would result in the continuation or recurrence of a countervailable subsidy. Citing the Statement of Administrative Action, Uruguay Round Agreements Act ("URAA"), H. Doc. 316, Vol. 1, 103d Cong. (1994) ("SAA"), at 890, domestic interested parties assert that continuation, or temporary or partial termination, of a subsidy program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary (*see* February 1, 2005, Substantive Response of domestic interested parties regarding CTL Plate from Indonesia at 6). They further state that revocation of the countervailable duty order would likely lead to continuation or recurrence of subsidies of subject merchandise. In addition, domestic interested parties argue that the imposition of provisional countervailing measures directly impacted the level of imports from Indonesia. Attachment 1 of domestic interested parties' substantive response provides import statistics that show the decline of imports after the imposition of the countervailing duties.

Department's Position

There have been no administrative reviews and no evidence submitted to the Department that any programs found to be countervailable in the investigation have been terminated. Also, in the instant review, the Department did not receive a response from the foreign government or from any other respondent interested party. Absent argument or evidence to the contrary, we find that countervailable programs continue to exist and be used. Further, the Department finds it reasonable to assume that the continued use of a program is highly probative of the likelihood of continuation or recurrence of a countervailable subsidy if the order were revoked. Additionally, the import statistics which domestic interested parties provided in Attachment 1 of their substantive response demonstrate how the level of imports dropped with the imposition of the countervailing duties. This information is probative of the likelihood of continuation or recurrence of a countervailable subsidy. Therefore, because countervailable programs continue to exist and be used, and the foreign government and other respondent interested parties did not participate in this review before the Department, the Department concludes that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties Comments

The domestic interested parties, citing the SAA, note that the Administration intends that the Department normally will select the rate from the investigation as the net countervailable subsidy likely to prevail if the order were revoked, 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* February 1, 2005, Substantive Response of domestic interested parties regarding CTL Plate from Indonesia at 6). Therefore, domestic interested parties argue that the Department should determine that the net countervailable subsidy likely to prevail is 15.90 percent, the rate set forth in the original investigation.

Department's Position

As noted above, the Department has not conducted an administrative review of this order. Thus, we have not found that substantive changes have been made to any of the Indonesian subsidy programs. Therefore, the Department determines that the net countervailable subsidy that would be likely to prevail in the event of revocation of the order would be 47.72 percent for P.T. Krakatau Steel ("Krakatau") and 15.90 percent for "all others," that is for producers and exporters that did not participate in the investigation.

3. Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department states that, 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 as described in Article 3 or Article 6.1 of the SCM. The rediscount loan program is a subsidy as described in Article 3 of the SCM. The following is a description of the rediscount loan program.

____*Rediscount Loan Program*: The Ministry of Industry and Trade, the Ministry of Finance, and the Bank of Indonesia (BI) provide support for certain exporters with the goal of achieving diversification of the Indonesian export base. Companies sell their letters of credit and export drafts at a discount to the BI through participating foreign exchange banks, which are commercial banks that have obtained a license to conduct activities in foreign currencies. The sale of the letters of credit and export drafts provides companies with working capital at lower interest rates than they would otherwise pay on short-term commercial loans. This program constitutes an export subsidy.

We note that Article 6.1 of the SCM expired effective January 1, 2000. The following programs, although not falling within the definition of an export subsidy under Article 3.1(a) of the SCM, could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM. The Department, however, has no information with which to make such a calculation, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Rather, we are providing the ITC with the following program description.

____*Equity Infusions*: Equity infusions given to Krakatua, from the Government of Indonesia ("GOI") was inconsistent with the usual investment practices of private investors. The company could not attract investment capital from a reasonable investor in the year of the infusion, based on available information. The benefit of the equity infusions was calculated using the grant methodology. These equity infusions continue to be countervailable for the remainder of the allocation period of 15 years.

____*Two Step Loan Program*: The GOI provided loans to Krakatau from "credit facilities"' (i.e., lines of credit) in the billing currencies of its equipment suppliers, who, in turn, receive payment from banks appointed by lenders. The loans, which were converted into rupiah based on the exchange rate on the drawing date, are repayable in the currency in which they were borrowed. Furthermore, Krakatau received a credit facility from the GOI for "optimization projects for the slab steel plant and billet steel plant."

Final Results of Review

We determine that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Manufacturer/Exporter	Margin (percent)
P.T. Krakatau Steel	47.72
All Others	15.90

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish in the final results of review in the Federal Register.

AGREE: _____ DISAGREE: _____

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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(Date)