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Sunset Review
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March 1, 2011

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

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Reviews of
the Countervailing Duty Orders on Certain Cut-To-Length Carbon-
Quality Steel Plate from India, Indonesia, Italy, and the Republic of
Korea: Final Results

Summary

We have analyzed the substantive responses of the interested parties in the sunset reviews of the countervailing duty (“CVD”) orders covering certain cut-to-length carbon-quality steel plate from India, Indonesia, Italy, and the Republic of Korea (“Korea”). 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 that the Department of Commerce (“Department”) is addressing in these sunset reviews.

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 Orders

The Department published its final affirmative CVD determinations on certain cut-to-length carbon-quality steel plate (“CTL Plate”) from India, Indonesia, Italy, and Korea in the Federal Register on December 29, 1999, and issued amended final determinations and CVD orders on February 10, 2000. See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India, 64 FR 73131 (December 29, 1999), Final

Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia, 64 FR 73155 (December 29, 1999), Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From Italy, 64 FR 73244 (December 29, 1999), Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea, 64 FR 73176 (December 29, 1999), and Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea, 65 FR 6587 (February 10, 2000) (“CVD Amended Finals and Orders”).

India:

In the CVD Amended Finals and Orders, the following programs were found to confer countervailable subsidies on the Steel Authority of India (“SAIL”) and all other Indian producers/exporters of subject merchandise: (1) Duty Entitlement Passbook Scheme (“DEPS”); (2) Advance Licensing Program; (3) Special Import Licenses (“SILs”); (4) Export Promotion Capital Goods Scheme (“EPCGS”); (5) Pre-shipment and Post-shipment Export Financing Programs; and (6) Loan Guarantees from the Government of India. The Department found a net subsidy of 12.82 percent ad valorem for SAIL and for all other Indian producers/exporters of subject merchandise.

The Department has not conducted an administrative review of this order since its issuance. In the previous sunset review of this order, the Department determined that revocation of the order would be likely to result in a continuation or recurrence of a countervailable subsidy at the rates determined in the underlying investigation. See Final Results of Expedited Sunset Review of the Countervailing Duty Order: Certain Cut-To-Length Carbon-Quality Steel Plate From India, 70 FR 45691 (August 8, 2005). As a result of the previous sunset review of this order, this order was continued effective December 6, 2005. See Continuation of Antidumping and Countervailing Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate from India, Indonesia, Italy, Japan, and Korea, 70 FR 72607 (December 6, 2005)(“Continuation of Orders”).

Indonesia:

In the final determination the Department found the following programs to be countervailable: (1) 1995 Equity Infusion into Krakatau; (2) Pre-1993 Equity Infusions to Krakatau; (3) 1989 Equity Infusion to Cold Rolling Mill of Indonesia (“CRMI”) (4) Three-Step Equity Infusion to CRMI; (5) Two-Step Loan Program; and (6) Rediscount Loan Program. The Department found an estimated net subsidy of 47.71 percent ad valorem for P.T. Krakatau Steel¹ and 15.90 percent ad valorem for all other manufacturers/producers/exporters of CTL Plate from Indonesia. The Indonesian steel producers P.T. Gunawan Steel and P.T. Jaya Pari were excluded from the order because they received a de minimis net subsidy.

¹ The net subsidy rate for P.T. Krakatau as determined in the final determination was actually 47.72 percent ad valorem, which is the sum of the individual program rates.

The Department has not conducted an administrative review with respect to this order since its issuance. In the previous sunset review of this order, the Department determined that revocation of the order would be likely to result in a continuation or recurrence of a countervailable subsidy at the rates determined in the underlying investigation. See Certain Cut-To-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005). As a result of the previous sunset review of this order, this order was continued effective December 6, 2005. See Continuation of Orders.

Italy:

In the final determination the Department found an estimated net subsidy for ILVA S.p.A. (“ILVA”) of 26.12 percent ad valorem, a de minimis rate for Palini & Bertoli, thus excluding it from the order, and an estimated net subsidy of 26.12 percent ad valorem for all other manufacturers/producers/exporters (“All Others”).

The final results have been subject to challenge in both the World Trade Organization (“WTO”) and United States Court of International Trade (“CIT”). The Department’s privatization methodology was at issue in both challenges. Responding to an adverse decision by the WTO Dispute Settlement Body, the Department conducted a Section 129 proceeding in which it applied a new privatization methodology that resulted in a recalculated rate of 3.44 percent ad valorem for ILVA and “All Others.” See Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Measure Concerning Certain Steel Products From the European Communities, 68 FR 64858 (November 17, 2003) (“Section 129”).

During the challenge before the CIT, the Department completed several remand determinations pursuant to the court’s instructions. In the Department’s second redetermination pursuant to the court’s instruction, the Department found that the privatization sale extinguished all nonrecurring benefits paid to ILVA prior to the privatization sale. Results of Redetermination Pursuant to Court Remand: ILVA Lamiere e Tubi S.r.L. and ILVA S.p.A. v. United States, Court No. 00-03-00127, Remand Order (CIT, March 29, 2002). The Department then removed all nonrecurring subsidies found in the initial investigation that conferred benefits on ILVA prior to the privatization, resulting in a recalculated rate of 3.44 percent.

The CIT then issued another remand instructing the Department to remove early retirement benefits paid under Law 451/94 to employees retiring prior to the sale of ILVA. ILVA Lamiere e Tubi S.r.L. v. United States, 283 F. Supp. 2d 1320 (CIT 2003). On August 28, 2003, the Department issued its third redetermination, where it complied with the court’s instruction, and found that payments made to employees under Law 451/94 that retired prior to the privatization of pre-sale ILVA are not countervailable subsidies. See Results of Redetermination Pursuant to Court Remand: ILVA Lamiere e Tubi S.r.L. and ILVA S.p.A., Court No. 00-03-00127, Remand Order (CIT, July 29, 2003) (August 28, 2003). In complying with the CIT’s instructions, the Department removed from ILVA’s benefit calculation retirement payments to employees that retired prior to April 28, 1995, under Law 451/94. As a result, the Department determined the rate of countervailable subsidy for early retirement benefits under Law 451/94 for payments made after April 28, 1995, to be 1.07 percent. Thus, the Department calculated a cash deposit

rate of 2.45 percent ad valorem for ILVA and “All Others.” On March 26, 2004, the CIT affirmed the Department’s remand redeterminations. ILVA Lamiere E Tubi S.r.L. v. United States, 28 C.I.T. 439 (2004). On February 10, 2005, the Court of Appeals for the Federal Circuit (“CAFC”) affirmed the CIT’s decision. ILVA Lamiere E Tubi S.r.L. v. United States, 122 Fed. Appx. 500 (2005). For further discussion on this program, see below at “*Early Retirement Benefits Law 451/94*.”

As established in the investigation and not reviewed in either of the court challenges or in the Section 129 proceeding, the following programs conferred benefits to manufacturers/producers/exporters of CTL Plate from Italy: exchange rate guarantees, retirement benefits under Law 451/94 and European Coal and Steel Community (“ECSC”)Article 54 loans.

The Department has not conducted an administrative review of this order since its issuance. During the previous sunset review, the Department adjusted the rate from the investigation to reflect the results of the Section 129 proceeding, the remands, and a finding during the sunset review based on information provided by the Government of Italy that Law 796/76: Exchange Rate Guarantee was terminated prior to the sunset review and will not be reinstated. Therefore, we determined that for ILVA and all other Italian producers, the new net CVD subsidy that would prevail if the order were revoked was 2.38 percent. See Certain Cut-To-Length Carbon-Quality Steel Plate from Italy: Final Results of Expedited Sunset Review, 70 FR 45694 (August 8, 2005). As a result of the previous sunset review of this order, this order was continued effective December 6, 2005. See Continuation of Orders.

Korea:

The Department found a net subsidy of 3.26 percent ad valorem for Dongkuk Steel Mill, Ltd. (“DSM”) and “all other” Korean producers/exporters of subject merchandise, with the exception of Pohang Iron & Steel Co., Ltd. (“POSCO”). The Department found a de minimis estimated net countervailable subsidy of 0.82 percent for POSCO and, therefore, excluded POSCO from the order.

The following programs were found to confer countervailable subsidies to Korean producers/exporters of subject merchandise:

- (1) the Government of Korea’s (“GOK”) Direction of Credit Policies (through 1991, and from 1992 through 1998);
- (2) GOK Infrastructure Investment at Kwangyang Bay;
- (3) Short-Term Export Financing;
- (4) Reserve for Export Loss;
- (5) Reserve for Overseas Market Development;
- (6) Technical Development Reserve Funds Under Article 8 of Tax Reduction and Exemption Control Act (“TERCL”)
- (7) Investment Tax Credits;
- (8) Electricity Discounts Under the Requested Load Adjustment Program;
- (9) Asset Revaluation Pursuant to TERCL Article 56(2);

- (10) Exemption of Bond Requirement for Port Use at Asan Bay;
- (11) Price Discount for DSM Land Purchase at Asan Bay;
- (12) POSCO's Dual-Pricing Scheme;
- (13) Special Cases of Tax for Balanced Development Among Areas (TERCL Article 43); and
- (14) Research and Development ("R&D").

In the previous sunset review, the Department adjusted the rate from the original investigation to remove the subsidy attributable to POSCO's dual pricing scheme which was determined no longer countervailable. As a result, the Department determined that for all producers and exporters of subject merchandise from Korea, other than POSCO, a net countervailable subsidy of 2.36 percent would be likely to prevail if the order were revoked. See Final Results of Expedited Sunset Review of the Countervailing Duty Order: Certain Cut-To-Length Carbon-Quality Steel Plate From Korea, 70 FR 45689 (August 8, 2005). As a result of the previous sunset review of this order, this order was continued effective December 6, 2005. See Continuation of Orders.

Since the continuation of the order, the Department has completed three administrative reviews of DSM covering calendar years 2004, 2005, and 2006. See Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 38861 (July 10, 2006); Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 72 FR 38565 (July 13, 2007); and Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Notice of Final Results and Partial Rescission of Countervailing Duty Administrative Review, 73 FR 14770 (March 19, 2008). In each of the reviews, the Department found that DSM continued to benefit from the GOK's direction of credit policies, asset revaluation pursuant to TERCL Article 56(2); and R&D grants. In addition, during the reviews of 2005 and 2006, the Department found a new countervailable subsidy being provided to DSM through infrastructure at North Incheon Harbor. The net countervailable subsidy rate for DSM in 2004, 2005, and 2006 was 0.05 percent, 0.10 percent, and 0.29 percent, respectively.

Discussion of the Issues

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended ("the Act"), the Department is conducting these reviews to determine whether revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b)(1) 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").

1. Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

Domestic interested parties argue that revocation of the CVD orders on CTL Plate from India, Indonesia, Italy, and Korea would likely lead to the continuation or recurrence of a countervailable subsidy.² They further state that as no administrative reviews or changed circumstances reviews of the CVD orders on India and Indonesia have been completed by the Department, there is no basis upon which to determine that the subsidy programs found during the original investigation have been affected or extinguished.³

Domestic interested parties argue with respect to Italy that, in the first sunset review, the Department found that the Early Retirement Benefits Under Law 451/94, ECSC Loans Under Article 54, and Exemption from Taxes for certain projects in less developed regions in Italy continued to provide countervailable benefits.⁴ In light of the fact that there have been no administrative reviews since that finding, domestic interested parties argue that there is no basis on which to reach a different conclusion in this sunset review.

Domestic interested parties argue with respect to Korea that, in the first sunset review, the Department found only one of the original subsidy programs had terminated but found that subsidization or recurrence likely to continue or recur because benefit streams from at least several other programs would continue. In addition, domestic interested parties note that in subsequent administrative reviews, DSM has continued to benefit from subsidy programs, albeit at a de minimis level, that programs continue to exist but were not used by DSM, and that some were new programs through which benefits were awarded well after the investigation had concluded.⁵

In addition, domestic interested parties state that official import statistics demonstrate that the CVD orders had an immediate and dramatic effect on imports of CTL plate from India, Indonesia, Italy, and Korea. Specifically, import volumes from India, Indonesia, and Italy decreased drastically as a result of the issuance of the preliminary determination, continued to fall steadily after the issuance of the order, and although fluctuating since the 2005 continuation of the order, have remained well below pre-order levels.⁶ Domestic interested parties argue that the Korean order has had an important impact on curtailing imports of subject merchandise from Korea, noting that the largest annual volume of imports over the past five years is significantly less than the volume of imports prior to the issuance of the order.⁷ In conclusion, domestic

² See December 1, 2010, Substantive Response of domestic interested parties regarding CTL Plate from India (“SR-India”) at 9-11, from Indonesia (“SR-Indonesia”) at 10-12, from Italy (“SR-Italy”) at 10-15, and from Korea (“SR-Korea”) at 5-9.

³ See SR-India at 9-10, SR-Indonesia at 10.

⁴ See SR-Italy at 11-12.

⁵ See SR-Korea at 7-8.

⁶ See SR-India at 10-11, SR-Indonesia at 11, and SR-Italy at 15.

⁷ See SR-Korea at 8-9.

interested parties argue that were the orders to be revoked, it is highly likely that Indian, Indonesian, Italian, and Korean exporters would resume shipments of subsidized imports to the United States at levels observed before the original investigation.

Department's Position

There have been no administrative reviews of the orders on India, Indonesia, or Italy. Further, no evidence has been submitted to the Department demonstrating that any programs found to be countervailable in the investigations of India or Indonesia has been terminated. During the first sunset reviews of Italy and Korea, the Department determined that one program for each country had been terminated and the benefits had been eliminated. In addition, the Department has since concluded three administrative reviews of the order on Korea in which it identified an additional countervailable subsidy being provided. In the instant sunset reviews, the Department did not receive a response from a foreign government or from any other respondent interested party. Absent submitted evidence, we find that countervailable programs found during the underlying investigations on India, Indonesia, Italy, and Korea continue to exist and be used. In addition, with respect to Korea, the Department found an additional countervailable subsidy during the administrative reviews conducted.

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 their substantive responses 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 in each of the countries, and the foreign governments and other respondent interested parties did not participate in these sunset reviews before the Department, the Department concludes that revocation of the orders would be likely to lead to continuation or recurrence of a countervailable subsidy for each of the orders.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The domestic interested parties, citing to the SAA,⁸ assert 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.⁹ Additionally, the domestic interested parties note that the rate determined in the investigation need not have been based on the company's own information. Id. Therefore, domestic interested parties argue with respect to India and Indonesia that, as it did in the final results of the first sunset reviews, the Department should determine that the net countervailable subsidy rates that are likely to prevail are identical

⁸ Statement of Administrative Action, H.R. Rep. No. 103-316, vol. 1, 890 (1994) ("SAA").

⁹ See SR-India at 11-13, SR-Indonesia at 12-13, SR-Italy at 15-17, and SR-Korea at 9-10.

to the rates determined in the original investigations, as amended -- 12.82 percent for SAIL and for all other Indian producers; and 47.72 percent ad valorem for P.T. Krakatau Steel and 15.90 percent ad valorem for all other Indonesian producers. Id.

With respect to Italy, domestic interested parties note that in the first sunset review, the Department found that Law 796/76: Exchange Rate Guarantee had terminated effective July 10, 1992 and that it would not be reinstated and, therefore, adjusted the original investigation rate to reflect the termination of this program. However, the Department found the remaining three subsidy programs had not been terminated and continued to provide countervailable benefits. In the absence of an administrative review to demonstrate that these programs have ceased to exist, domestic interested parties argue that, consistent with the principles set forth in the SAA, the Department should again find the rate likely to prevail is 2.38 percent for ILVA and all other Italian producers.¹⁰

With respect to Korea, domestic interested parties argue that the Department has found the termination of only one program since the investigation. Domestic interested parties further argue that although the Department has found that DSM received only de minimis subsidies during the periods of review, the programs from the investigation remain in place. Therefore, domestic interested parties argue that the appropriate rate remains the rate the Department found in the previous sunset review, 2.36 percent.¹¹

Department's Position

As noted above, for India and Indonesia, the Department has not conducted an administrative review of the orders. Additionally, there is no respondent participation in these sunset reviews. Absent administrative reviews, the Department has never found that substantive changes have been made to the programs found to be countervailable in either of these two cases. Therefore, since there is no evidence that changes have been made to any of the Indian or Indonesian subsidy programs, the Department determines that a net countervailable subsidy likely to prevail if the orders were revoked are the rates from the final determinations, as amended.

With respect to Italy, as with India and Indonesia, the Department has not conducted an administrative review of this order. However, as noted above, in the first sunset review the Department found that Law 796/76: Exchange Rate Guarantee had terminated effective July 10, 1992 and that it would not be reinstated. Regarding the other programs at issue, the Department found in that sunset review that the remaining three subsidy programs had not been terminated and continued to provide countervailable benefits. In the absence of evidence to demonstrate that these programs have ceased to exist, the Department determines that the rate likely to prevail is 2.38 percent for ILVA and all other Italian producers based on the rate from the first sunset review.

¹⁰ See SR-Italy at 17.

¹¹ See SR-Korea at 10.

With respect to Korea, as noted by domestic interested parties, in the first sunset review, the Department adjusted the underlying investigation rate to remove from the original CVD rate the subsidy of 0.90 percent attributable to POSCO's dual pricing scheme, which is a program the Department had previously determined is no longer countervailable. As a result, the Department determined that a net countervailable subsidy of 2.36 percent would be likely to prevail if the order were revoked for all producers and exporters of subject merchandise from Korea, other than POSCO. Upon review of the calculation from the first sunset review, we recognize that we inadvertently reduced the amended net subsidy rate by the pre-amended rate attributable to POSCO's dual pricing scheme. Therefore, for the final results of this sunset review, we are correcting the calculation to reflect the amended rate (1.97 percent) for POSCO's dual pricing scheme. In addition, in an administrative review conducted since the completion of the first sunset review, the Department found an additional subsidy program.¹² As a result, we have adjusted the rates for DSM and all others to reflect the program that was subsequently found countervailable. We determine the rate likely to prevail for DSM and all other Korean producers in the event of revocation of the Korean order is 1.38 percent. See Memorandum to The File concerning Calculation of Net Countervailable Subsidy Likely to Prevail: Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, dated concurrently with this decision memorandum.

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 subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the SCM. We note that Article 6.1 of the SCM expired effective January 1, 2000 (see Article 31 of the SCM).

The following programs are prohibited subsidies as described in Article 3 of the SCM.

India:

Duty Entitlement Passbook Scheme ("DEPS"): The DEPS was introduced on April 1, 1997, to replace the Passbook Scheme. Receipt of DEPS credits is contingent upon export performance. The pre-export DEPS program was abolished effective April 1, 2000. The DEPS provides credits to passbook holders on a post-export basis. All merchant and manufacturing export units are eligible for DEPS credits. Because this program can only be used by exporters, we determined it to be a countervailable export subsidy.

Advance Licensing Program: Under the Advance License Program, exporters may import, duty free, specified quantities of materials required to produce products that are subsequently exported. Companies, however, remain contingently liable for the unpaid duties until they have exported the finished products. The quantities of imported materials and exported finished

¹² See Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 72 FR 38565; and Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Notice of Final Results of Countervailing Duty Administrative Review, 73 FR 14770.

products are linked through standard input-output norms established by the Government of India (“GOI”). We found that the GOI has no system in place to confirm that the inputs are consumed in the production of the exported product. In addition, the GOI does not carry out, nor has it carried out, examinations of actual inputs involved. Consequently, we found the entire amount of import duty exemption earned by SAIL during the period of investigation constitutes a benefit. Because only exporters can receive advance licenses, this program constitutes an export subsidy.

Special Import Licenses (“SILs”): SILs are licenses granted to exporters which meet internationally-accepted quality standards for their products. SILs for Star Trading Houses are licenses granted to exporters that meet certain export targets. Both types of SILs permit the holder to import products listed on a "Restricted List of Imports" in amounts up to the face value of the SIL but do not relieve the importer of import duties. We determined that the sale of SILs constitutes an export subsidy because companies receive these licenses based on their status as exporters.

Export Promotion Capital Goods Scheme (“EPCGS”): Under this program, producers may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to four to five times the value of the capital goods within a period of five years. Failing to meet the export obligation, a company is subject to payment of all or part of the duty reduction. Because this program is contingent on exports, we determined it to be a countervailable export subsidy.

Pre- and Post-Shipment Export Financing: The Reserve Bank of India, through commercial banks, provides pre-shipment export financing, or "packing credits" to exporters. Commercial banks extending export credit to Indian companies must charge interest on this credit at rates determined by the Reserve Bank of India. The post-shipment financing provide under this program consists of loans in the form of trade bills discounting or advances by commercial banks. The credit covers the period from the date of shipment of goods to the date of realization of export proceeds from the overseas customer. Because receipt of export financing under these programs was contingent upon export performance we determined that they constitute a countervailable export subsidy.

Indonesia:

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.

Korea:

Reserve for Export Loss--Article 16 of the TERCL: Under Article 16 of the TERCL, a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. This program constitutes an export subsidy because the use of the program is contingent upon export performance.

Reserve for Overseas Market Development - Article 17 of the TERCL: A domestic person engaged in a foreign trade business can establish a reserve fund equal to one percent of its foreign trade business exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning from the reserve, to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. This program constitutes an export subsidy because the use of the program is contingent upon export performance.

Short-Term Export Financing: There are two types of trade financing: production financing and raw material financing. A bank provides production financing when a company needs funds for the production of export merchandise or the production of raw materials used in the production of exported merchandise. We found this program to constitute an export subsidy because receipt of financing is contingent upon export performance.

Investment Tax Credits: Under the TERCL, companies in Korea are allowed to claim tax credits for various kinds of investments. If the tax credits cannot all be used at the time they are claimed, the company is authorized to carry them forward for use in later tax years. Because Korean companies receive a higher tax credit for investments made in domestically produced facilities, investment tax credits received under Articles 10, 18, 25, 26, 27 and 71 constitute import substitution subsidies. As noted below, the TERCL program was replaced by the Restriction of Special Taxation Act (“RSTA”) on December 28, 1998.

The following programs do not fall within the meaning of Article 3 of the SCM. However, they could be a subsidy described in Article 6.1 of the SCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM. They also could fall within the meaning of Article 6.1 if they constitutes debt forgiveness or are a subsidy to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of these reviews in order for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions.

India:

Government of India Loan Guarantees: The GOI, through the Ministry of Finance, extends loan guarantees to selected Indian companies on an ad hoc basis, normally to public sector companies in particular industries. Because this program is directed towards particular industries, we determined it to be countervailable.

Indonesia:

Equity Infusions: Equity infusions given to Krakatau and its subsidiary, Cold Rolling Mill of Indonesia, from the Government of Indonesia (“GOInd”) were 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 infusions, based on available information.

Two Step Loan Program: The GOInd 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 GOInd for “optimization projects for the slab steel plant and billet steel plant.”

Italy:

Early Retirement Benefits Law 451/94: This 1994 law enabled the Italian steel industry to implement workforce reductions by allowing steel workers to retire early during the 1994 – 1996 period, and into January 1997. Benefits under this program are provided until the employee reaches his/her natural retirement age, up to a maximum of ten years.

ECSC Article 54 Loans: The Department found that Article 54 of the 1951 ECSC Treaty provided industrial investment loans directly to iron and steel industries to finance modernization and purchase of new equipment.

Exemption from taxes: The Department found that pursuant to Presidential Decree 218/1978, firms were exempted from paying both ILOR and IRPEG profit taxes. Companies are eligible for full exemption of tax on profits arising from eligible projects in the Mezzogiorno and less developed regions of center-north of Italy.

Korea:

Direction of Credit Loans Inconsistent with Commercial Considerations: The GOK controls the practices of lending institutions in Korea and the steel sector receives a disproportionate share of low-cost, long-term credit, resulting in the conferral of countervailable benefits.

Kwangyang Bay: The GOK’s infrastructure development at Kwangyang Bay constituted a

specific and countervailable subsidy to POSCO because POSCO was found to be the predominant user of the infrastructure.

Technical Development Reserve Funds Under Article 8 of TERCL: Article 8 of the TERCL allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover the expenses needed for development or innovation of technology. Article 8 specifies that capital good and capital intensive companies can establish a reserve of five percent, while companies in all other industries are only allowed to establish a three-percent reserve. Because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers, we determined that the program is countervailable. We note that the Department determined that the TERCL was replaced by the RSTA on December 28, 1998 (Article 8 of the TERCL was replaced by RSTA Article 9).

Electricity Discounts Under the Requested Load Adjustment Program: The GOK introduced the Requested Loan Adjustment (“RLA”) in 1990 to address emergencies in Korea Electric Power Corporation’s (“KEPCO”) ability to supply electricity. Under this program, customers with a contract demand of 5,000 KW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 KW or more, are eligible to enter into an RLA contract with KEPCO. Under this contract, a basic discount of 440 won per KW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. Because the electricity discounts were only provided to a small number of customers, this program provides a countervailable benefit.

Selective Depreciation Due to Revaluation of Assets: TERCL Article 56-2 (Special Treatment for Revaluation of Assets at the Time of Going Public) allows a company that is making an initial public offering to revalue its assets without meeting the requirement in the Asset Revaluation Act of a 25-percent change in the wholesale price index since the company's last revaluation.

Exemption of Bond Requirement for Port Use at Asan Bay: The GOK waived the bond requirement for exclusive use of a port facility for POSCO. This program meets the specificity requirements under section 771(5A)(D) of the Act, and is therefore countervailable. In addition, we determined that the GOK's waiver of the bond purchase requirement for the exclusive use of port berth #1 by POSCO confers a financial contribution under section 771(5)(D)(ii) of the Act, because the GOK foregoes collecting revenue that it normally would collect. We also determine that because the GOK had to repay the bonds at the end of the lease term, the bond purchase waiver is equivalent to an interest free loan for three years, the duration of the lease. For all these reasons, we determined that this program conferred a countervailable benefit.

Price Discount Land Purchase at Asan Bay: The Asan Bay Industrial Site is a GOK constructed industrial estate. We determined that steel companies received price discounts on purchases at Asan Bay. In addition, the GOK provided additional savings to the steel companies by exempting them from the registration tax, education tax, and the acquisition tax which would normally be paid on purchases of land. We determined, therefore, that this program was

countervailable.

Research and Development Grants: The GOK provides research and development grants to support numerous projects pursuant to the Industrial Development Act, including technology for core materials, components, and engineering systems, and resource technology. We determined that the benefits received under this program were steel specific and therefore countervailable.

Final Results of Reviews

As a result of these reviews, we find that revocation of the CVD orders would likely lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (%)</u>
<i>India:</i>	
SAIL	12.82
All Others	12.82
<i>Indonesia:</i>	
P.T. Krakatau Steel	47.72
All Others ¹³	15.90
<i>Italy:</i>	
ILVA S.p.A.	2.38
All Others ¹⁴	2.38
<i>Korea:</i>	
Dongkuk Steel Mill, Ltd.	1.38
All others ¹⁵	1.38

¹³ P.T. Gunawan Steel and P.T. Jaya Pari were excluded from the order on the basis of a de minimis net subsidy. See CVD Amended Finals and Orders.

¹⁴ Palini & Bertol were excluded from the order on the basis of a de minimis net subsidy. See CVD Amended Finals and Orders.

¹⁵ POSCO was excluded from the order on the basis of a de minimis net subsidy. See CVD Amended Finals and Orders.

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of reviews in the Federal Register and notify the ITC of our determination.

AGREE: _____

DISAGREE: _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

(Date)