



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-549-818
Sunset Review
Public Document
O6: HES

March 5, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

RE: Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order on Certain Hot-Rolled Carbon Steel Flat Products from Thailand

SUMMARY

We have analyzed the responses of interested parties in the expedited sunset review of the countervailing duty (“CVD”) order on certain hot-rolled carbon steel flat products (“hot-rolled steel”) from Thailand. 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

History of the Order

On October 3, 2001, the Department published in the Federal Register its final determination on hot-rolled steel from Thailand. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (“Final Determination”) and the accompanying memorandum “Issues and Decision Memorandum in the Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand” (September 19, 2001) (“Decision Memorandum”). In the final determination of the investigation, the Department found an estimated net countervailable subsidy rate of 2.38 percent for Sahaviriya Steel Industries Public Company Limited (“SSI”) and 2.38 percent for “all others” based on the following countervailable programs:

- (1) Provision of electricity for less than adequate remuneration; and



- (2) Incentives under the Investment Promotion Act (“IPA”):
- (a) Duty exemptions on imports of machinery under IPA Section 28;
 - (b) Duty reductions on imports of raw and essential materials under IPA Section 30;
 - (c) Duty exemptions on imports of raw and essential materials under IPA Section 36(1); and
 - (d) Additional tax deductions under IPA Section 35(3).

Id. The Department also determined that these countervailable programs conferred recurring benefits, with the exception of the duty exemptions on imports of machinery under IPA Section 28, which provided non-recurring benefits. Id. On December 3, 2001, the Department published in the Federal Register the Notice of Countervailing Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 60197 (December 3, 2001) (“Order”). Further, the Court of International Trade (“CIT”) and the Court of Appeals for the Federal Circuit upheld the Department’s determination and calculation of the subsidy rates.

In the first sunset review on imports of hot-rolled steel from Thailand, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“Act”), the Department found that revocation of the Order would be likely to lead to continuation or recurrence of subsidization at the same rates as found in the original investigation. See Final Results of Expedited Sunset Reviews of the Countervailing Duty Orders on Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, and Thailand, 71 FR 70960 (December 7, 2006) and accompanying Issues and Decision Memorandum. On December 27, 2007, the Department published the notice of continuation of the Order. See Certain Hot-Rolled Carbon Steel Flat Products from India, Indonesia, the People’s Republic of China, Taiwan, Thailand, and Ukraine: Continuation of Antidumping and Countervailing Duty Orders, 72 FR 73316 (December 27, 2007).

There have been no administrative reviews, scope determinations, or changed circumstances reviews of the Order, pursuant to sections 751(a) and (c) of the Act.

Background

On November 5, 2012, the Department initiated the second sunset review of the Order pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c). See Initiation of Five-Year (“Sunset”) Reviews, 77 FR 66439 (November 5, 2012). Nucor Corporation, US Steel, Gallatin, Steel Dynamics, and SSAB Americas, and ArcelorMittal (collectively, “domestic interested parties”) filed timely notices of intent to participate on November 7, 9, 13, and 20, 2012, respectively, in accordance with 19 CFR 351.218(d)(1). On December 5, 2012, the Department received substantive responses from the Royal Thai Government (“RTG”) and domestic interested parties in accordance with 19 CFR 351.218(d)(3)(i). See Letter to the Department, “Hot-Rolled Carbon Steel Flat Products from Thailand: Response Notice of the Five-Year Review” (December 5, 2012) (“Domestic Response”), and Letter to the Department, “Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Substantive Response to Notice of Institution of Sunset Review” (December 5, 2012) (“RTG Response”). However, the Department did not receive a response from any Thai producers or exporters. On December 17, 2012, the Department received rebuttal comments from the domestic interested parties. See Letter to the Department, “Certain Hot-

Rolled Carbon Steel Flat Products from Thailand: Rebuttal to Royal Thai Government's Substantive Response" (December 17, 2012) ("Rebuttal").

It is the Department's practice that a government's response alone is not sufficient to conduct a full sunset review. See, e.g., Certain Pasta From Turkey: Final Results of Expedited Five-Year ("Sunset") Review of the Countervailing Duty Order, 72 FR 5269, 5270 (February 5, 2007), and Certain Carbon Steel Products From Sweden; Final Results of Expedited Sunset Review of Countervailing Duty Order, 65 FR 18304 (April 7, 2000), and accompanying Issues and Decision Memorandum at "Background" section. Also, in accordance with 19 CFR 351.218(e)(1)(ii)(C)(2), when there are inadequate responses from respondent interested parties, we "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))." Consequently, consistent with Department regulations and practice, we determine that the RTG Response, in the absence of responses from other respondent interested parties (i.e., producers and exporters), is inadequate for purposes of conducting a full review. Therefore, we are conducting an expedited (120-day) sunset review of the Order.

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the 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 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 World Trade Organization Agreement on Subsidies and Countervailing Measures ("ASCM").

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

Domestic interested parties argue that subsidization of hot-rolled steel from Thailand would likely continue or recur if the Department revoked the order because "(1) subsidization continues and (2) the Department has found no change in any countervailable program since the investigation." See Domestic Response at 4. Domestic interested parties state that no administrative reviews have been conducted for the Department to find any changes to the countervailable programs identified during the investigation. *Id.* at 6. Thus, domestic

interested parties argue that the net countervailable subsidy determined in the final affirmative CVD determination has not changed. Id. at 6.

The RTG states that the effects of a revocation of the Order would create fair competition between Thai exporters and manufacturers and the U.S. industry. See RTG Response at 3. Further, the government’s incentives have expired with regard to SSI, the major Thai exporter of hot-rolled steel. See RTG Response at 3. The RTG argues that the benefits were granted to SSI under Investment Promotion certificates that have expired. These certificates specified under which sections of the IPA SSI could claim benefits, and the time period during which SSI could do so. The RTG provided the information shown in the table below and identified, for each certificate, the duration of eligibility for each benefit under the following four programs:

- (1) Duty exemptions on imports of machinery under IPA Section 28,
- (2) Duty reductions on imports of raw and essential materials under IPA Section 30,
- (3) Duty exemptions on imports of raw and essential materials under IPA Section 36(1), and
- (4) Additional tax deductions under IPA Section 35(3).

Subsidy Program	Certificate 1140/1990	Certificate 1438(2)/2004
IPA Section 28	Expired on 2/2/97	Started on 8/25/03 Expired on 12/8/09
IPA Section 30	Expired on 2/17/99	No benefit to SSI
IPA Section 35	Expired on 4/22/04	Expired in 2011
IPA Section 36(1)	Expired on 11/22/04	Enjoyed benefit 8/25/08 to 12/21/10

Id. at 4-5.

In addition, the RTG states that it was informed by SSI that the import duty rate of raw material (slab) has already decreased to zero. Id. Therefore, there is no incentive for Thai producers or exporters to use the IPA Section 36(1) program which provides import duty exemptions. Id.

Regarding the provision of electricity for less than adequate remuneration, the RTG argues that the administration of electricity rates has changed since the original CVD investigation. Id. The determination of the electricity tariff structure is now applied uniformly across the country for each customer category. Id. The RTG explains that the current electricity tariff structure targets small, residential customers with low usage and in rural areas and provides electricity to these users free of charge. Id. This structure was implemented in 2011, and the ceiling of usage eligible for free electricity was decreased in 2012. Id. Because the electricity tariff structure is aimed at facilitating electricity use by residential customers with very low usage, the RTG argues that industrial customers, like SSI, must undertake a burden rather than receive a benefit. Id.

Further, the RTG states that SSI has not exported hot-rolled steel to the United States since 2006 and that “it appears G Steel and GJ Steel” exported in 2007/2008 and recently ceased production. Id. at 5.

Regarding the value and volume of exports of hot-rolled steel, the RTG argues that the information is collected at the harmonized tariff six-digit level which results in the export data being overstated. Id. The RTG contends that actual exports of hot-rolled steel are likely “non-existent or minuscule after 2008.” Id.

In their rebuttal comments, domestic interested parties state that the RTG failed to provide any documentation to support its argument that SSI has stopped receiving benefits under the countervailable subsidy programs. See Rebuttal at 5. The domestic interested parties further note that the RTG did not provide evidence that any other Thai producer is not benefitting, or is unable to benefit, from these countervailable subsidy programs. Id. According to the domestic interested parties, because there have been no administrative reviews, the Department has not determined that the countervailable benefits provided to SSI and other Thai producers have expired. Id. Finally, the domestic interested parties mention that the RTG did not submit any evidence (1) that these programs have been terminated and (2) that Thai producers and exporters could not receive future benefits under these programs if the order were revoked. Id. at 6. Absent any evidence showing that the countervailable programs have terminated, the domestic interested parties argue that the Department should reject the RTG’s arguments and find that revocation of the Order would likely lead to a continuation or recurrence of a countervailable subsidy for Thai producers and exporters. Id.

Department’s Position

According to the Statement of Administrative Action (“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. See SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888. The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies. Id. 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. 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) (“Hot-Rolled Brazil”) and accompanying Issues and Decision Memorandum at Comment 1. 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. See id.

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 continued or recurring subsidization: (1) the program must be terminated; and (2) any benefit stream must be fully allocated. 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 Issues and Decision Memorandum 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). 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. 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 Issues and Decision Memorandum at Comment 1. The Department normally expects a program to be terminated by means of the same legal mechanism used to institute it. 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 Issues and Decision Memorandum at Comment 7. 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. 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 Issues and Decision Memorandum at Comment 1.

In this sunset review, the RTG has not provided evidence supporting its claims that the following five programs have been terminated or have expired:

- (1) Provision of electricity for less than adequate remuneration,
- (2) Duty exemptions on imports of machinery under IPA Section 28,
- (3) Duty reductions on imports of raw and essential materials under IPA Section 30,
- (4) Duty exemptions on imports of raw and essential materials under IPA Section 36(1), and
- (5) Additional tax deductions under IPA Section 35(3).

As explained above, the Department normally expects a program enacted by statute or regulation to be repealed by statute or regulation. In this case, however, the RTG relied on general statements without supporting documentation in arguing that programs were terminated and that benefits under the programs were fully allocated. The RTG argued that the expiration of the IPA certificates under which all IPA benefits were granted to SSI eliminates the likelihood that subsidization will continue or recur. However, the expiration of SSI's certificates is a company-specific event that does not terminate the program. Therefore, it does not constitute a program-wide change under 19 CFR 351.526(b). As such, it cannot form the basis for a negative likelihood determination. See, e.g., Hot-Rolled Brazil, and accompanying Issues and Decision Memorandum at Comment 1.

Further, without any documentation, the facts on the record available to the Department indicate that the subsidy programs found countervailable during the investigation continue to exist. The RTG has provided no information or evidence regarding changes to the operation of the IPA itself or that the import duty rate on raw material (slab) decreased to zero. Consequently, the Department disagrees that these programs should be treated as terminated for purposes of this sunset analysis and finds that countervailable subsidies would be likely to continue or recur in the event that the Order was revoked.

The Department has also analyzed the RTG's claim that the provision of electricity is no longer countervailable because the electricity tariff rate structure has been changed in a manner that eliminates the regional specificity that the Department found in the CVD investigation; according to the RTG, the current tariff rate structure aims to facilitate electricity usage by providing electricity at no charge to low-usage residential customers in rural areas. However, in the absence of administrative reviews of the Order, the Department has not examined the provision of electricity under this new alleged tariff rate structure. In addition, the RTG has not provided any supporting documentation to substantiate its claims.

In conclusion, based on the facts on the record, the Department determines that there is a likelihood of recurrence of countervailable subsidies because the Department has not conducted any administrative reviews of the Order since it went into effect, and no party has submitted evidence to demonstrate that the countervailable programs have expired or been terminated. Thus, the Department concludes that Thai producers and exporters can continue to benefit from these countervailable subsidy programs.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

Domestic interested parties cite to the section 775a(b)(3) of the Act to show that the Department will report to the ITC the magnitude of the net countervailable subsidy rate that is likely to prevail if an order is revoked. See Domestic Response at 7. Domestic interested parties argue that section 752(b)(1) of the Act allows for the Department to consider net countervailable subsidies determined in the investigation and subsequent reviews, as well as program-wide changes which affect the net countervailable subsidies. Id. The domestic interested parties state that because there have been no administrative reviews, the Department should provide to the ITC the rates established in the final determination for all companies, 2.38 percent ad valorem, as the net countervailable subsidy likely to prevail if the Order were revoked. Id.

On the contrary, the RTG argues that past circumstances no longer exist for the alleged subsidies to continue; therefore, there is no justification to continue any measures if the Order were revoked. See RTG Response at 3. Further, the RTG reports that the IPA certificates under which SSI received benefits have expired, and therefore, SSI can no longer receive benefits.

In their rebuttal comments, the domestic interested parties state that the RTG did not provide a rate that the Department should report to the ITC. See Rebuttal at 7. In addition, the domestic interested parties reiterate that there have been no administrative reviews. See Rebuttal at 8. Because the only subsidy rates available are those determined in the investigation, the domestic interested parties request that the Department report to the ITC the countervailable subsidy programs would likely continue or recur at 2.38 percent ad valorem, if the Order were revoked. Id.

Department's Position

The Department normally will provide the ITC the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is 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 SAA at 890, and House Report, H.R. Rep. No. 103-826 (1994) ("House Report") at 64. 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 subsidy determination in the investigation or subsequent reviews has occurred that is likely to 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. See, e.g., Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Second Sunset Review, 75 FR 62101 (October 7, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

Consistent with the SAA and the Department's Policy Bulletin 98.1, found at Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998), the Department has started with the rates found in the original investigation for the following programs in order to determine company-specific, net countervailable subsidy rates likely to prevail:

- (1) Provision of electricity for less than adequate remuneration,
- (2) Duty exemptions on imports of machinery under IPA Section 28,
- (3) Duty reductions on imports of raw and essential materials under IPA Section 30,
- (4) Duty exemptions on imports of raw and essential materials under IPA Section 36(1), and
- (5) Additional tax deductions under IPA Section 35(3).

Where the Department has found that a program was terminated with no residual benefits and no likelihood of reinstatement or replacement, the Department normally will adjust the net countervailable subsidy rate determined in the original investigation to reflect the change. For non-recurring benefits, if the Department can determine from information in the records of the investigation or subsequent administrative reviews that the benefits have been fully allocated prior to the end of the sunset review period, the Department has recognized that the assistance no longer benefits the company and has removed the program-specific rate from the net countervailable subsidy rate likely to prevail. With regard to the Section 28 benefits that the Department found countervailable in the investigation, the record indicates that such benefits have been fully allocated. However, the RTG indicated that, subsequent to the CVD investigation, SSI received another IPA certificate, under which it was granted additional Section 28 benefits. This is evidence that SSI remains eligible for and has received additional benefits under IPA Section 28. Therefore, the Department will not remove the countervailable subsidy rate arising from Section 28 from the net countervailable subsidy rate likely to prevail.

In this instance, the Department has conducted no administrative reviews and no evidence has been provided that would warrant making a change to the net countervailable subsidy rate found for Thai producers and exporters in the investigation. Therefore, the Department determines that the net countervailable subsidy rate found in the investigation, 2.38 percent ad valorem, is the net countervailable subsidy rate likely to prevail under this second sunset review.

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 ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The following program falls within the definition of an export subsidy under Article 3.1 of the ASCM, as receipt of benefits under these programs are contingent upon export activity.

IPA Section 36(1): This is a recurring export subsidy under which SSI receives duty exemptions on imports of raw and essential materials that are incorporated into goods for export. SSI benefits from a one percent import duty exemption on imports of steel slab.

The following programs do not fall within the meaning of Article 3.1 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. The Department, however, is providing the ITC with the following program descriptions:

1. IPA Section 28: This non-recurring subsidy program allowed exemptions from import duties on the importation of machinery. The exemption provided a financial contribution in the form of foregone revenue that was otherwise due to the RTG. In the CVD investigation, the Department found that SSI received duty exemptions from the RTG in the years 1992 through 1997.
2. IPA Section 30: This recurring subsidy program provides duty reductions on imports of raw and essential materials that are consumed in production. The exemption provides a financial contribution in the form of foregone revenue that is otherwise due to the RTG. SSI benefits from paying a reduced duty rate on imports of steel slab. The benefit to SSI is in the amount of import duties they would otherwise have to pay on these imports.
3. IPA Section 35(3): Under this recurring subsidy program, promoted firms were allowed various income tax deductions and exemptions. The promoted firms were allowed to deduct on their tax returns double the cost of transportation, electricity and water for ten years after the company first derived income. These income tax deductions provide a financial

contribution in the form of foregone revenue that is otherwise due to the RTG. The benefit is the amount of the tax savings to SSI. SSI first benefited from this program in its tax return for 1998.

4. Provision of electricity for less than adequate remuneration: The RTG provides electricity through the Electricity Generating Authority of Thailand (EGAT), as the major generator of electricity, and then through the two major distributors Metropolitan Electricity Authority (MEA) and Provincial Electricity Authority (PEA). MEA serves Bangkok and the surrounding areas while PEA serves the remainder of the country. The RTG maintains a uniform national tariff policy which provides that consumers in the same customer category pay the same rate regardless of whether they are in MEA's or PEA's distribution area. Even though PEA's costs of delivery are higher than MEA's, the RTG requires that there can be no difference in tariffs charged by PEA and MEA regardless of cost differences. In order to implement the uniform tariff policy, a discount was provided to PEA and a surcharge was charged to MEA on their electricity purchases from EGAT. This bulk supply tariff afforded an internal subsidy to PEA. SSI purchased electricity during the POI only from PEA. SSI, therefore, benefitted from this internal subsidy to PEA. The amount of benefit was determined to be equal to the internal subsidy.

FINAL RESULTS OF REVIEW

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

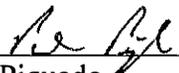
Manufacturers/Exporters	Subsidy rates
SSI	2.38 % <u>ad valorem</u>
All Others	2.38 % <u>ad valorem</u>

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 this review in the Federal Register, and notify the ITC of our findings.

AGREE

DISAGREE


 Paul Piquado
 Assistant Secretary
 for Import Administration

5 MAR 2013
 Date