

September 30, 2010

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of  
Expedited Second Sunset Review of the Countervailing Duty  
Order on Stainless Steel Plate in Coils from South Africa

Summary:

We have analyzed the substantive responses of the interested parties participating in the second sunset review of the countervailing duty order (“CVD”) on stainless steel plate in coils (“SSPC”) from South Africa. 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 (“the Department”) is addressing 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 March 31, 1999, the Department published in the Federal Register its final determination in the CVD investigation on SSPC from South Africa.<sup>1</sup> In the investigation, the Department found that two programs conferred countervailable subsidies: Section 37E of the Income Tax Act and IDC/ImportFinance (“IDC/Impofin”) Loan Guarantees.<sup>2</sup> In addition, the Department found four programs were not used; one program was not countervailable; and two programs were terminated. The total net countervailable subsidy applied to CJV under these two programs was

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<sup>1</sup> See Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from South Africa, 64 FR 15553 (March 31, 1999)(“Investigation”).

<sup>2</sup> Effective January 1, 1993, the Industrial Corporation of South Africa (“IDC”) became a one-third and equal partner in the Columbus Joint Venture (“CJV”).

3.93 percent.<sup>3</sup> The net subsidy rate under Section 37E of the Income Tax Act was 3.84 percent, and the rate under the IDC/Impofin Loan Guarantees program was 0.09 percent.

On May 11, 1999, the Department amended the final determination by increasing the net countervailable subsidy with respect to CJV. The correction was the result of the estimated net countervailable subsidy rate attributable to the Section 37E program increasing from 3.84 percent to 3.86 percent.<sup>4</sup> Thus, the total net subsidy rate was 3.95 percent for Columbus Stainless and for “All Others.” In addition, in this notice of amended final determination and CVD order, the Department amended the scope of the order to reflect the International Trade Commission’s (“Commission”) distinction between cold-rolled and all other SSPC.<sup>5</sup>

On March 11, 2003, the Department published in the Federal Register an amendment to the CVD order with respect to the scope of the order. The Department removed the original language which excluded cold-rolled SSPC from the scope of the order, in accordance with a Court of International Trade final decision.<sup>6</sup> On April 24, 2003, the Department published in the Federal Register a notice of correction to the amended CVD determination,<sup>7</sup> noting that it inadvertently failed to convert certain old numbers under the Harmonized Tariff System (“HTS”) to their new HTS numbers in the scope section of the orders.

As a result of determinations in the first sunset review by the Department that revocation of the order would be likely to lead to continuation or recurrence of countervailable subsidies and by the Commission 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, on July 18, 2005, the Department continued the CVD order.<sup>8</sup>

There have been no other administrative reviews of this CVD order since the issuance of this order and, therefore, the net countervailable subsidy rates have remained unchanged since the May 11, 1999, issuance of the order.

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<sup>3</sup> Columbus Stainless Steel Company is the operating division of CJV.

<sup>4</sup> See Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Notice of Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy and South Africa, 64 FR 25288 (May 11, 1999)(“Amended Final Determination and Countervailing Duty Orders”).

<sup>5</sup> See Amended Final Determination and Countervailing Duty Orders, 64 FR at 25289.

<sup>6</sup> See Notice of Amended Countervailing Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Italy, and South Africa, 68 FR 11524 (March 11, 2003).

<sup>7</sup> See Certain Stainless Steel Plate in Coils From Belgium, Italy and South Africa; Notice of Correction to the Amended Countervailing Duty Orders, 68 FR 20115 (April 24, 2003).

<sup>8</sup> See Stainless Steel Plate in Coils From South Africa; Final Result of Expedited Sunset Review, 69 FR 47418 (August 5, 2004) and accompanying Issues and Decision Memorandum (“First Sunset Review”); Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan, 70 FR 38710 (July 5, 2005), and USITC Publication 3784, Investigation Nos. 701-TA-376, 377, & 379 and 731-TA-788-793 (Review), and Continuation of Antidumping Duty Orders on Certain Stainless Steel Plate in Coils From Belgium, Italy, South Korea, South Africa, and Taiwan, and the Countervailing Duty Orders on Certain Stainless Steel Plate in Coils From Belgium, Italy, and South Africa, 70 FR 41202 (July 18, 2005).

## Background:

On June 2, 2010, the Department initiated this second sunset review of the CVD order on SSPC from South Africa pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”).<sup>9</sup> The Department received a notice of intent to participate from the following domestic interested parties: Allegheny Ludlum Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (collectively, “domestic interested parties”), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as a domestic producer of SSPC in the United States and a certified union representing workers in the domestic industry producing SSPC in the United States.

The Department received an adequate substantive response collectively from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any government or respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of the CVD 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 CVD duty order would likely lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred and is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the Commission the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the Commission 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 (“ASCM”).

Below we address the substantive responses of the interested parties.

### 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

#### Interested Parties’ Comments

The domestic interested parties assert that revocation of the CVD order on SSPC from South Africa would likely lead to continuation or recurrence of countervailable subsidies to South African producers and exporters of SSPC. See Response of domestic interested parties

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<sup>9</sup> See Initiation of Five-Year (“Sunset”) Review, 75 FR 30777 (June 2, 2010).

(“Domestic Response”), July 2, 2010, at 9 – 12. The domestic interested parties maintain that neither the Government of South Africa nor any South African producer has requested an administrative review of the CVD order nor attempted to demonstrate the termination of any of the subsidy programs identified in the original investigation. Therefore, subsidies continue to be provided to, and available to, South African producers and exporters of SSPC. In addition, the domestic interested parties allege that available import data indicate that the order has had a direct effect on imports as demonstrated by the fact that imports of SSPC from South Africa declined significantly immediately after the imposition of the CVD order and, although they increased somewhat during the 2006-2008 period, they remain well below the pre-order levels.

In sum, the domestic interested parties assert that the record of this case supports the conclusion that subsidization of SSPC from South Africa would be likely to continue or recur if the order were to be revoked.

#### Department’s Position:

In the original investigation the Department found that countervailable subsidies were being provided to SSPC producers under the Section 37E Tax Allowances and IDC/Impofin Loan Guarantees programs. The Department also identified several programs that were available to, but not used during the period of investigation, by SSPC producers. Neither the Government of South Africa nor any South African producer or exporter of subject merchandise has provided the Department information to support finding any change in the existence or availability of these subsidy programs in this review.

The continued use of a program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies if the order were revoked. Additionally, the presence of programs that have not been used, but that also have not been terminated, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy. Therefore, based on the findings made in the original investigation and the lack of evidence in this proceeding that all of these subsidy programs have been terminated, we find that these two programs continue to provide countervailable subsidies to producers and exporters of SSPC from South Africa and that if the CVD order on SSPC from South Africa were to be revoked, subsidization will continue.

#### 2. Net Countervailable Subsidy:

##### Interested Parties’ Comments

The domestic interested parties suggest that, as it did in the first sunset review, the Department select the original subsidy rate of 3.95 percent as the net countervailable subsidy rate likely to prevail if the order is revoked. See Domestic Response at 13-14.

### Department's Position:

The Department normally will select a rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order. See Statement of Administrative Action ("SAA") H.R. Doc. No.103-316, Vol. 1 (1994) at 890 and House Report, H. Rep. No. 103-826, pt. 1 (1994) at 64. Pursuant to the Department's practice, this rate may not be the most appropriate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent review. See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18876 (April 16, 1998) ("Sunset Policy Bulletin"). In addition, the Department may make adjustments to the net countervailable subsidy calculated in the original investigation to take into account subsidy programs that were found in subsequent reviews to be eliminated.

There have been no administrative reviews of this order and no respondent interested party has provided information to show that countervailable programs have been terminated. Absent evidence or argument that there have been any changes to the programs, and consistent with the Sunset Policy Bulletin and the final results of the first sunset review of this order, the Department shall report to the Commission the net countervailable subsidy rates as contained in the "Final Results of Review" section of this decision memorandum, i.e., the rates from the investigation.

### 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 Commission concerning the nature of the subsidy, and whether the subsidy is a subsidy 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 programs were found not to be used by the respondent in the investigation, but may be export subsidies as described under Article 3 of the SCM.<sup>10</sup>

*Low Interest Rate Finance for the Promotion of Exports (which is the same program as the Low Interest Rate Scheme for the Promotion of Exports)*

*Export Assistance Under the Export Marketing Assistance and the Export Marketing and Investment Assistance Programs*

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

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<sup>10</sup> See Investigation, 64 FR at 15555; First Sunset Review, 69 FR 47418 at Comment 3.

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. Nevertheless, we are providing the Commission with the following program descriptions. A complete description of each of these programs is available on the Department's subsidies enforcement website available at: <http://ia.ita.doc.gov/esel/eselframes.html>.

*Benefits Under Section 37E of the Income Tax Act (Section 37E Tax Allowance)*

*Import Financing Through Impofin, Ltd., and the IDC (Loan Guarantees Provided by the IDC)*

*Competitiveness Fund*

*Regional Industrial Development Program (RIDP)*

Final Results of Review

As a result of this review, the Department finds that revocation of the CVD order would likely lead to continuation or recurrence of subsidization at the rates listed below.

Manufacturers/Producers/Exporters	Weighted-average Rate (percent)
Columbus Stainless Steel Company (the operating unit of the Columbus Joint Venture)	3.95
All Others	3.95

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 review in the Federal Register.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_

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Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

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(Date)