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Sunset Review
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September 27, 2005

MEMORANDUM TO: Holly A. Kuga
Acting Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of
Expedited Sunset Review of the Countervailing Duty Order on
Top-of-the-Stove Stainless Steel Cookware from Taiwan

Summary

We have analyzed the substantive responses of the interested parties in the sunset review of the countervailing duty (“CVD”) order covering top-of-the stove stainless steel cookware from Taiwan. 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 top-of-the-stove cooking ware from Taiwan in the Federal Register on November 26, 1986. See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Cooking Ware from Taiwan, November 26, 1986 (51 FR 42891). In the final determination the Department found an estimated net subsidy of 2.14 percent ad valorem for all manufacturers/producers/exporters of top-of-the-stove cooking ware from Taiwan. In the investigation, the Department concluded that the Government of Taiwan (“GOT”) was providing countervailable subsidies to exporters of the subject merchandise through four programs: (1) export loss reserve; (2) 25 percent income tax ceiling for big trading companies; (3) over-

rebate of duty drawback on imported materials physically incorporated in export merchandise; and (4) rebate of import duties and indirect taxes on imported materials not physically incorporated in export merchandise.

_____ There have been no administrative reviews of this order. On September 3, 1999, the Department published the final results of its first five-year sunset review, and determined that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a net countervailable subsidy of 2.14 percent ad valorem. See Top-of-the-Stove Stainless Steel Cookware from Taiwan, September 3, 1999 (64 FR 48372).

Discussion of Issues

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended (“the Act”) the Department is conducting this review to determine whether revocation of the CVD 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 have occurred that are 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 is 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, the domestic interested parties note that, as an administrative review has never been conducted, the Department has not determined whether any of the programs found countervailable in the original investigation have either been terminated or are no longer countervailable. Moreover, the domestic interested parties cite to the Statement of Administrative Action (“SAA”), which provides that

continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies. Temporary suspension or partial termination of a subsidy program also will be probative of a continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary.¹

¹ See SAA, F.R. Doc. No. 103-316, Vol. 1, at 888 (1994).

Department's Position

There have been no administrative reviews of this order and no evidence has been submitted to the Department demonstrating the termination of the countervailable programs. Moreover, the Department did not receive a response from the GOT and/or any respondent interested party. Under these circumstances, it is reasonable to assume that the countervailable programs identified in the investigation continue to exist and be used. Because countervailable programs continue to exist and be used, the Department concludes that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The domestic interested parties assert that the Department normally will select the 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 in place. Therefore, the domestic interested parties argue that the Department should determine that the net countervailable subsidy likely to prevail is the country-wide rate of 2.14 percent ad valorem, the rate set forth in the original investigation.

Department's Position

As noted above, there have been no administrative reviews of this order, and we did not receive a response from the GOT or any respondent interested party. For these reasons, we find that there have not been substantive changes made to the programs found to be countervailable since the investigation. Because the programs are unchanged, and absent any argument and evidence to the contrary, the Department determines that the net countervailable subsidy that would be likely to prevail in the event of revocation of the order is the country-wide rate from the investigation, i.e., 2.14 percent, for all producers and exporters of subject merchandise from Taiwan.

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 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.

Consistent with our findings in the final determination of top-of-the-stove stainless steel cookware from Taiwan and because the receipt of benefits provided by the GOT under all four of the programs are contingent on exports, these programs fall within the definition of an export subsidy under Article 3 of the SCM.

1. Export Loss Reserve: Exporters are allowed to establish an export loss reserve of up to one percent of the previous year's export exchange settlement to be used exclusively for compensating export losses. Companies treated the export loss reserve as a business expense and deducted it from taxable income in one year, then balanced the account and carry the reserve funds forward as taxable income for the next year. We determined that the export loss reserve was contingent on export sales.
2. 25 percent income tax ceiling for big trading companies: Productive enterprises and big trading companies were allowed to pay no more than 25 percent corporate income tax on income exceeding a certain amount, rather than the 35 percent required by Taiwan's graduated corporate income tax law. In addition, one of the criterion for this program was that the companies could only operate as an export-import business. We found that this program was based on export performance.
3. Over rebate of duty drawback on imported materials physically incorporated in export merchandise: The Department found that Taiwan's duty drawback allowed for unreasonable or excessive rebate of customs duties on recoverable scrap. We found that this program was contingent on exports.
4. Rebate of import duties and indirect taxes on imported materials not physically incorporated in export merchandise: The Department determined that a company received duty drawback on liquid polish used to polish stainless steel metal in the subject merchandise. The Department determined that the liquid metal polishes were not physically incorporated in the exported product. Therefore, this program provided countervailable benefits to manufacturers and producers of the subject merchandise. This program was contingent on exports.

Final Results of Review

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

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (%)</u>
All Manufacturers/Producers/Exporters	2.14

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 the final results of review in the Federal Register.

AGREE: _____

DISAGREE: _____

Holly A. Kuga
Acting Assistant Secretary
for Import Administration

(Date)