

70 FR 45691, August 8, 2005

C-533-818
Sunset Review
Public Document
O3/MGS

August 1, 2005

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

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

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

Summary

We have analyzed the substantive responses of the interested parties in the sunset review of the countervailing duty order covering cut-to-length carbon-quality steel plate from India. 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 subsidies
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

History of the Order

On December 29, 1999, the Department of Commerce (“the Department”) issued a final determination in the countervailing duty (“CVD”) investigation, as amended on February 10, 2000.¹ The following programs were found to confer countervailable subsidies on the Steel

¹ See Final Results of Investigation, 64 FR 73131 (December 29, 1999), as amended, 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).

Authority of India (“SAIL”) and all other Indian producers/exporters of subject merchandise: (1) Duty Entitlement Pass Book Program (“DEBP”); (2) Advance Licencing Program; (3) Special Import Licenses (“SILs”); (4) Export Promotion Capital Goods Program (“EPCGP”); (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 any reviews of this order.

Discussion of Issues

In accordance with section 751(c)(1) of 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 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 (“Subsidies Agreement”).

Below we address the substantive responses and rebuttal comments of the interested parties.

1. Continuation or Recurrence of a Countervailable Subsidy

Interested Parties’ Comments

In their substantive response, the domestic interested parties² state that, in the final determination, the Department found countervailable subsidies were being provided to Indian producers of subject merchandise under six programs and that the appropriate allocation period for these subsidies was 15 years. In the absence of any administrative or changed circumstances review, the domestic interested parties claim there is no basis upon which to determine that these subsidy programs have been affected or extinguished.

In its substantive response, the Government of India (“GOI”) provided information regarding what it claims is the current position of the programs in support of its request for revocation of the CVD order on the exports of SAIL. The GOI claimed that: (1) the rates on the

² A substantive response was filed on behalf of International Steel Group Inc. (“ISG”), IPSCO Steel Inc. (“IPSCO”), and Nucor Corporation (“Nucor”), collectively “domestic interested parties.”

DEPS have been reduced, (2) SAIL is not using the Advance Licensing Scheme for cut-to-length plate, (3) SAIL used the EPCGP from 1992 to 1997, the details of which can be obtained only from the company, (4) SAIL is not using the pre-shipment credit in foreign currency or export packing credit, nor is it doing sale or bills discounting under credit sale, and the GOI provided the status of outstanding loan guarantees from the GOI. The Department did not receive any substantive response from Indian producers and/or exporters of subject merchandise during this segment of the proceeding.

The domestic interested parties respond in rebuttal that the GOI itself, in its substantive response, confirms that revocation would be likely to lead to a continuation or recurrence of countervailable subsidies. The domestic interested parties assert that the GOI merely claims that the DEPB rates have been reduced; not that the program had been eliminated. Additionally, the domestic interested parties claim that in the absence of a review of this order, the Department should presume that the net subsidy rate from the advance licensing program and the pre-shipment and post-shipment export financing programs would continue if the order were revoked. They point to the fact that in its substantive response the GOI indicated that it continues to guarantee large loans to SAIL. Finally, the domestic interested parties claim that under the EPCGP, SAIL was found to have received benefits that the Department allocated over a 15-year period that extends past the period of this sunset review.

Department's Position

In the instant review, the Department agrees with the domestic interested parties that the benefit stream from the EPCGP will continue beyond the period of this sunset review. As discussed in the final affirmative determination, the benefit was received during the period of investigation (April 1, 1997 - March 31, 1998) and was allocated over 15 years. See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plated From India, 64 FR 73131 (December 29, 1999). Although the GOI claimed that SAIL did not use various of the other programs found to confer countervailable benefits during the investigation, we note that 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. Therefore, because the GOI acknowledged that countervailable programs continue to exist and the Indian producers and/or exporters are not participating in this review, the Department concludes that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The domestic interested parties 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 should be the country-wide rate of 12.82 percent, the rate set forth in the original investigation. The GOI did not comment on this.

Department's Position

As noted above, there have been no administrative reviews of the order. Absent administrative review, the Department has never found that substantive changes have been made to the programs found to be countervailable. Therefore, since there is no evidence that changes have been made to any of the Indian subsidy programs, the Department determines that a net countervailable subsidy of 12.82 percent would be likely to prevail if the order were revoked. This rate is the rate for SAIL and for all producers and exporters of subject merchandise from India.

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department will provide 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 Subsidies Agreement. The following programs fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement.

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.

Passbook/Duty Entitlement Scheme ("DEPS"): The Duty Entitlement Passbook Scheme (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.

Special Import Licenses (SILs): SILs are Quality for 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.

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

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.

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. These programs constitute a financial contribution pursuant to section 771(5)(D)(i) at the Act. Therefore, we found this program to be countervailable.

Final Results of Review

As a result of this review, we find that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (%)</u>
SAIL	12.82
All Others	12.82

Recommendation

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

AGREE: _____

DISAGREE: _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

(Date)