




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

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Sunset Review  
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May 2, 2012

MEMORANDUM TO: Ronald K. Lorentzen  
Acting 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  
Review of the Countervailing Duty Order on Corrosion-Resistant  
Carbon Steel Flat Products from Korea: Final Results

Summary

We have analyzed the substantive response of the interested parties in the expedited third sunset review of the countervailing duty ("CVD") order covering corrosion-resistant carbon steel flat products from the Republic of Korea ("Korea").<sup>1</sup> We recommend that you approve the positions we have developed in the Discussion of 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

On July 9, 1993, the Department of Commerce ("the Department") issued its final affirmative CVD determination on corrosion-resistant carbon steel flat products from Korea. The Department determined that benefits that constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the "Act"), were being provided by the Government of Korea ("GOK") to Korean manufacturers, producers, and exporters. Specifically, the Department investigated three producers, Pohang Iron and Steel Company ("POSCO"), Union Steel Manufacturing Co. ("Union Steel"), and Dongbu Steel Ltd. ("Dongbu"). The Department found a countrywide net subsidy rate of 2.34 percent ad valorem.

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<sup>1</sup> On February 3, 2012, a substantive response was submitted on behalf of United States Steel Corporation, Nucor Corporation, Mittal Steel USA ISG Inc., and Ispat-Inland (collectively, "domestic interested parties").



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

1. Government Equity Infusions in POSCO
2. Loans Inconsistent With Commercial Considerations/Preferential Access to Foreign Loans
3. Government Infrastructure Assistance for POSCO's Integrated Steel Mill at Kwangyang Bay
4. Dockyard Fees
5. Reserve for Export Loss
6. Reserve for Overseas Market Development
7. Unlimited Deduction of Overseas Entertainment Expenses
8. Reserve for Investment
9. Duty Drawback
10. Preferential Utility Rates
11. Short-term Export Financing<sup>2</sup>

On August 17, 1993, the Department published an amendment to the final affirmative determination and the order in the Federal Register.<sup>3</sup> The amendment corrected the calculations for loans inconsistent with commercial considerations/preferential access to foreign loans and resulted in a change to the countrywide net subsidy rate from 2.34 percent to 2.69 percent ad valorem.<sup>4</sup>

In the first sunset review of this order, the Department and the International Trade Commission ("ITC"), pursuant to sections 751(c) and 752 of the Act, determined that revocation of the CVD order on certain corrosion-resistant carbon steel flat products from Korea would be likely to lead to continuation or recurrence of subsidization and material injury to an industry in the United States within a reasonably foreseeable time, respectively.<sup>5</sup> Thus, on December 15, 2000, the Department ordered the continuation of the order.<sup>6</sup>

On March 27, 2001, following proceedings before the Court of International Trade ("CIT") and

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<sup>2</sup> See Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea, 58 FR 37338 (July 9, 1993).

<sup>3</sup> See Countervailing Duty Orders and Amendments to Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea, 58 FR 43752 (August 17, 1993).

<sup>4</sup> Id.

<sup>5</sup> See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Expedited Sunset Reviews, 65 FR 18973 (April 10, 2000).

<sup>6</sup> Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, 65 FR 78469 (December 15, 2000).

the Court of Appeals for the Federal Circuit, the Department published an amendment to the final affirmative CVD determination of the subject merchandise. The Department found that the GOK had provided a countervailable net subsidy of 1.15 percent *ad valorem* for POSCO, Dongbu, and for “All Other” Korean producers/exporters of subject merchandise, with the exception of Union Steel. The Department found a *de minimis* net countervailable subsidy for Union Steel and, therefore, excluded Union Steel from the order.<sup>7</sup>

In the second sunset review of the order, the Department and the ITC, pursuant to sections 751(c) and 752 of the Act, determined that revocation of the CVD order on corrosion-resistant carbon steel flat products from Korea would be likely to lead to continuation or recurrence of subsidization and material injury to an industry in the United States within a reasonably foreseeable time, respectively.<sup>8</sup> Thus, on February 14, 2007, the Department ordered the continuation of the order.<sup>9</sup>

Since the Department issued the final results of the second sunset review, the Department has completed administrative reviews of the order covering 2004, 2005, 2006, 2007, 2008, and 2009, and is currently conducting a review of 2010.<sup>10</sup> In the reviews, the Department found that the GOK was providing countervailable subsidies to the respondents pursuant to the following additional programs:

1. Exemption of Value Added Tax on Imports of Anthracite Coal (2004 Final)
2. Asset Revaluation under Article 56(2) of TERCEL (2004 Final)
3. Provision of Land at Asan Bay (2004 Final)
4. Exemptions from Port Fees at Asan Bay under the Harbor Act (2004 Final)
5. R&D Grants under the Industrial Development Act (2004 Final)

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<sup>7</sup> See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Amended Final Affirmative Countervailing Duty Determinations in Accordance with Decision Upon Remand, 66 FR 16656 (March 27, 2001).

<sup>8</sup> See Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Expedited Five-Year (“Sunset”) Review of Countervailing Duty Order, 71 FR 32519 (June 6, 2006).

<sup>9</sup> Continuation Pursuant to Second Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany and Korea, 72 FR 7009 (February 14, 2007).

<sup>10</sup> See Final Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 72 FR 119 (January 3, 2007)(“2004 Final”); Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 73 FR 2444 (January 15, 2008); Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009); Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 55192 (October 27, 2009)(“2007 Final”); Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 76 FR 3613 (January 20, 2011)(“2008 Final”); Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 77 FR 13093 (March 5, 2012)(“2009 Final”); and Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part, 76 FR 61076 (October 3, 2011).

6. R&D Grants under the Promotion of Industrial Technology Innovation Act (2007 Final)
7. Reduction in Taxes for Operation in Regional and National Industrial Complexes (2007 Final)
8. Act on Special Measures for the Promotion of Specialized Enterprises for Parts and Materials (2008 Final)
9. RSTA Article 26 (2009 Final).

#### 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)(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 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 (“ASCM”).

Below we address the substantive response of the domestic interested parties.

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

##### Interested Parties’ Comments

In their substantive response, the domestic interested parties state that, in the final affirmative CVD determination, the Department found that countervailable subsidies were being provided to Korean producers of subject merchandise. They also state that, despite the completion of five administrative reviews by the time of their submission, the Department has not found most of the subsidy programs that provided benefits to corrosion-resistant carbon steel flat products production in the original investigation to be terminated. In addition, they note that the GOK has provided countervailable benefits under a number of additional subsidy programs. They assert that most of the countervailable subsidies originally provided to the Korean steel industry continue to be available today, despite being found not used by subject producers, and therefore Korean steel production could receive renewed benefits in the future. In addition, the domestic interested parties assert that although the benefits from the many newly identified countervailable subsidy programs have been de minimis, it is the discipline of the order that is causing the limitation on the subsidy levels. Therefore, they claim that in light of these facts the Department should find that revocation of the order is likely to lead to continuation or recurrence of countervailable subsidies.

##### Department’s Position

The Department makes its likelihood determination (i.e., of whether revocation of the order is

likely to lead to continuation or recurrence of a countervailable subsidy) on an order-wide (country-wide) basis, although company-specific rates are reported to the ITC. See Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 103-316, Vol. 1 (1994) at 879 and House Report, H.R. Rep. No. 103-826 (1994) at 56.

There was no participation in this review by any of the respondent interested parties. Further, except as noted below, the facts available to the Department indicate that, with the exception of the GOK's direction of credit to the steel industry from the original investigation, the subsidy programs previously found countervailable continue to exist.<sup>11</sup> In addition, as the domestic interested parties noted, despite the existence of the order, the GOK continue to provide benefits under several newly identified programs. As the domestic interested parties noted in their substantive response, the statute at 19 U.S.C. § 1675a(b)(4)(A) indicates that a zero or de minimis rate found in a subsequent review "shall not by itself require the administering authority to determine that revocation of a countervailing duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of a countervailable subsidy." Given the continued existence of numerous programs found to provide countervailable benefits, the Department finds that a countervailable subsidy is likely to continue or recur in the event that the CVD order is revoked.

## 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. They note that the GOK has implemented many new programs and claim that nothing has changed since the second sunset review that would lead to a different result, *i.e.*, not selecting the rate from the investigation. Although they note that adjustments to the original rate may be appropriate where, *e.g.*, programs have been terminated, the domestic interested parties cite to the previous sunset reviews and note that the Department found that the respondents had not demonstrated that most of the subsidy programs had been terminated. Therefore, the domestic interested parties posit that the Department should determine that the net countervailable subsidy likely to prevail is the rate calculated in the amended final CVD determination of 1.15 percent ad valorem for POSCO, Dongbu, and for all other producers/exporters.

### 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 at 64. Section 752(b)(1)(B) of the Act provides that the Department will consider whether any change in the

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<sup>11</sup> See 2007 Final and 2008 Final.

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.<sup>12</sup>

In the amended final determination to the investigation, we found that the GOK provided countervailable subsidies to producers of the subject merchandise. In both the first and second sunset reviews of the order, in the absence of any administrative reviews, the Department found that the rates likely to prevail were the rates determined in the underlying investigation, as amended. Since that time, as discussed above in the “Background” section, the Department has completed six administrative reviews. As the domestic interested parties noted, the Department has identified several additional programs pursuant to which the Korean producers/exporters of corrosion-resistant carbon steel flat products are receiving countervailable subsidies. Therefore, we are adjusting the rate likely to prevail to account for these additional subsidies. In addition, the Department determined that the GOK no longer provides countervailable benefits to the Korean producers/exporters of corrosion-resistant carbon steel flat products through the direction of credit and that the benefits from previously directed credit no longer exist.<sup>13</sup> Therefore, we are adjusting the rate from the investigation to reflect the elimination of benefits from this program. Our calculations are contained in the May 5, 2012, Memorandum to the File concerning “Calculation of Net Countervailable Subsidy Likely to Prevail for Final Results of Expedited Sunset Review of the Countervailing Duty Order on Corrosion-Resistant Carbon Steel Flat Products from South Korea.” Consistent with section 752(b)(3) of the Act, the Department will provide the ITC the net countervailable subsidy rates shown below in the section entitled “Final Results of 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 subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000. See Article 31 of the ASCM.

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

#### Reserve for Export Loss:

Under Article 22 of the Tax Exemption and Reduction Control Act, a corporation engaged in export activities can establish a reserve amounting to the lesser of one percent of foreign exchange

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<sup>12</sup> 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.

<sup>13</sup> See 2007 Final and 2008 Final.

earnings or 50 percent of net income for the respective tax year. This program confers a benefit that constitutes an export subsidy because it provides a deferment, contingent upon export performance, of direct taxes. In the period of investigation, the Department determined that Dongbu, POSCO, and Union Steel received benefits under this program.

Reserve for Overseas Market Development:

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:

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 be countervailable because the interest rates charged on the loans were less than what a firm would have had to pay on a comparable short-term commercial loan.

Unlimited Deduction of Overseas Entertainment Expenses:

Under Article 18-2 of the Corporation Tax Act and supporting legislation, entertainment expenses for domestic clients and foreign clients are eligible to be deducted from taxable income. The amount that can be deducted for domestic entertainment expenses is subject to a ceiling according to an established formula and depending on the amount of any overseas entertainment expenses claimed. There is no cap on overseas entertainment expenses. Because entertainment expense deductions are unlimited only for overseas clients, this program confers benefits that constitute export subsidies, to the extent that the overseas expenses claimed are greater than those which would have been allowed using the domestic cap formula.

Duty Drawback:

The GOK establishes an authorized loss rate for raw materials used in the manufacture of exported goods. Duty drawback includes the amount of duty remitted on the loss or wastage for the raw materials. The GOK reduces the amount of duty drawback received on the exported product to account for the sale produced from the excess raw materials used in the production of the exported goods. Duty drawback for loss or wastage only becomes countervailable when the allowance for this loss or wastage is unreasonable or excessive. Here, we found the duty drawback was not excessive and, therefore, was not countervailable with regard to POSCO. However, Union Steel was found to benefit from this program.

The following programs do not fall within the meaning of Article 3 of the ASCM. However, they could be a subsidy 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 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.

Government Equity Infusions Into POSCO:

In 1978 and 1980, the GOK provided equity to POSCO on terms inconsistent with commercial considerations.

GOK Infrastructure Assistance for POSCO's Integrated Steel Mill at Kwangyang Bay:

The GOK provided infrastructure development at Kwangyang Bay over the period 1983-1991. The Department determined in the investigation that the infrastructure investments constituted a specific and countervailable subsidy to POSCO because POSCO was found to be the predominant user.

Dockyard Fees:

We determined that the free use of 15 berths by POSCO in the Kwangyang Bay Industrial Estate constituted a countervailable benefit.

Reserve for Investment:

Industries that engage in manufacturing and mining using production facilities outside of metropolitan Seoul are allowed to establish a reserve amounting to ten percent of the value of their assets used in these activities. The reserve operates in the same manner as the reserves for export loss and overseas market development, i.e., any amounts in the reserve must be returned to income over a three-year period. Because this program provides benefits only to those industries that use certain production facilities outside of metropolitan Seoul, this program is a regional subsidy.

Preferential Utility Rates:

In the investigation, the Department determined that countervailable benefits were provided to the steel industry only with respect to certain discounts applied to electricity charges for certain firms.

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 rates listed below:

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (%)</u>
POSCO	0.57%
Dongbu	0.75%
Country-Wide (other than Union Steel)	1.26%

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 and notifying the ITC of our determination.

AGREE: ✓

DISAGREE:       

Ronald K Lorentzen

Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

May 2, 2012  
(Date)