

DATE: December 31, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of
the Countervailing Duty Order on Carbon and Certain Alloy Steel
Wire Rod from Brazil; Final Results

Summary

We have analyzed the substantive responses of domestic interested parties in the expedited sunset review of the countervailing duty order on carbon and certain alloy steel wire rod (“wire rod”) from Brazil. 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 in this expedited sunset review for which we received comments from interested parties:

1. Likelihood of Continuation or Recurrence of Countervailable Subsidies
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidies

History of the Order

Investigation

On August 30, 2002, the Department of Commerce (“the Department”) published its final determination in the countervailing duty investigation of wire rod from Brazil. See Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55805 (August 30, 2002). On September 27, 2002, the Department published its amended final determination. See Notice of Amended Final Affirmative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 61071 (September 27, 2002). On October 22, 2002, the Department published the countervailing duty order in the Federal Register. See Notice of

Countervailing Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil and Canada, 67 FR 64871 (October 22, 2002).

The following seven programs were found to confer countervailable subsidies in the original investigation:

- (1) Financing for the Acquisition or Lease of Machinery and Equipment through the Special Agency for Industrial Financing;
- (2) Programa de Financiamento as Exportacoes;
- (3) Tax Incentives Provided by the Amazon Region Development Authority (“SUDAM”) and the Northeast Region Development Authority (“SUDENE”);
- (4) Debt Forgiveness/Equity Infusions Provided to Usina Siderurgica da Bahia S.A. (previously 1988 Equity Infusions/Debt Forgiveness Provided to Usina Siderurgica da Bahia S.A.) (specific to Gerdau);
- (5) National Bank for Economic and Social Development Financing for the Acquisition of Dedini Siderurgica de Piracicaba (specific to Belgo Mineira);
- (6) National Bank for Economic and Social Development Financing for the Acquisition of Mendes Junior Siderurgica S.A. (specific to Belgo Mineira); and
- (7) “Presumed” Tax Credit for the Program of Social Integration and the Social Contributions of Billings on Inputs Used in Exports.

In the original investigation, the Department also determined that three programs were not countervailable, four programs were not used by the companies under investigation, one program was determined to have been terminated, one program was determined not to exist, and for two programs no determination was made. The list below identifies manufacturers, producers, and exporters, and net subsidies determined by the Department in the original investigation.

Manufacturers/Producers/Exporters	Net subsidy (percent)
Companhia Siderurgica Belgo-Mineira (“Belgo Mineira”)	6.74
Gerdau S.A.	2.76
All-Others	5.64

There have been no administrative reviews since the issuance of the order. Also, the order remains in effect for all Brazilian wire rod producers and exporters.

On August 21, 2003, following a request by petitioners, the Department initiated a changed circumstances review to clarify the technical description of certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that were excluded from the original scope of the orders. See Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Initiation of Changed Circumstances Antidumping Duty Administrative Review and Countervailing Duty Administrative Reviews, and Intent to Revoke Orders in Part, 68 FR 50513 (August 21, 2003). In its final results, the Department amended the technical description so that certain grade 1080

tire cord steel wire rod and grade 1080 tire bead quality “having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns” rather than just those “having no inclusions greater than 20 microns” were revoked from the orders effective July 24, 2003. See Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Final Results of Changed Circumstances Review, 68 FR 64079 (November 12, 2003).

On May 11, 2004, the Department initiated a scope inquiry to clarify the exclusion for grade 1080 tire cord quality wire rod and tire bead quality wire rod from the antidumping and countervailing duty orders on wire rod from Brazil. See Memorandum to Jeffrey May from Carol Henninger, dated May 11, 2004. On May 9, 2005, the Department issued a final scope ruling and determined that for grade 1080 tire cord quality wire rod and tire bead quality wire rod, the phrase, “having no inclusions greater than 20 microns” means no inclusions greater than 20 microns in any direction. See Notice of Scope Rulings, 70 FR 55110 (September 20, 2005).

Background

On September 4, 2007, the Department published the notice of initiation of the sunset review of the countervailing duty order on wire rod from Brazil, pursuant to section 751(c) of the Tariff Act of 1930, as amended, (“the Act”). See Initiation of Five-Year (“Sunset”) Reviews, 72 FR 50659 (September 4, 2007) (“Notice of Initiation”). The Department received a notice of intent to participate from the following domestic parties: Gerdau Ameristeel U.S. Inc.; ISG Georgetown, Inc.; Keystone Consolidated Industries, Inc.; and Rocky Mountain Steel Mills within the deadline specified in 19 CFR 351.218(d)(1)(i). The companies claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic-like product in the United States. The Department received a separate notice of intent to participate from Nucor Corporation within the deadline specified in 19 CFR 351.218(d)(1)(i). Nucor Corporation claimed interested party status under section 771(9)(C) of the Act, as a manufacturer of a domestic-like product in the United States.

Gerdau Ameristeel U.S. Inc. reported that it is related to Gerdau S.A., a producer and exporter of subject merchandise in Brazil. ISG Georgetown, Inc. reported that it is related to Belgo Siderurgia S.A. in Brazil, a producer and exporter of subject merchandise. Pursuant to section 771(4)(B) of the Act, a domestic interested party may be excluded from participating as part of the domestic industry if it is related to an exporter of subject merchandise. In this sunset review, even if we excluded the parties above from participating as part of the domestic industry in the sunset review of the order, there would still be sufficient participation by other domestic interested parties to merit a sunset review of the order. Since there is sufficient industry support regardless of whether these two companies are included, we do not need to resolve the issue of whether to include or exclude Gerdau Ameristeel U.S. Inc. and ISG Georgetown, Inc. Therefore, collectively, Gerdau Ameristeel U.S. Inc., ISG Georgetown, Inc., Keystone Consolidated Industries, Inc.; Rocky Mountain Steel Mills; and Nucor Corporation will be known as the “domestic interested parties.”

The Department received a complete substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from respondent interested parties, nor was a hearing requested.

Therefore, we conducted an expedited (120-day) sunset review of the CVD order on wire rod from Brazil as provided for in section 351.218 (e)(1)(ii)(C)(2) of the Department's regulations.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether termination of the countervailing duty 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 program 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 ("ITC") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), 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 6.1 of the 1994 World Trade Organization ("WTO") Agreement on Subsidies and Countervailing Measures.

Below, we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Party Comments

The domestic interested parties state that revocation of this order is likely to lead to continuation or recurrence of countervailable subsidies to Brazilian producers and exporters. See domestic interested parties' Substantive Response at 9 (October 4, 2007). In support of this statement, the domestic interested parties assert that the programs found countervailable in the investigation continue to exist today and there is no evidence that any of these subsidy programs have been terminated because no administrative reviews have been conducted. Id. at 10.

Domestic interested parties also state that the Department's subsidy enforcement website lists all the countervailable subsidy programs from the original investigation, including those that were "not used." Id. at 10-11. The domestic interested parties contend that the Department has made clear that it cannot determine that programs have been terminated without conducting an administrative review. See Id. at 11-12 (citing Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy; Final Results of Full Sunset Review of Countervailing Duty Order, 66 FR 13909 (March 8, 2001) and accompanying Issues and Decision Memorandum at Net Countervailable Subsidy Likely to Prevail; Grain-Oriented Silicon

Electrical Steel from Italy; Final Results of Full Sunset Review of Countervailing Duty Order, 65 FR 65295 (November 1, 2000) and accompanying Issues and Decision Memorandum at Comment 1).

Domestic interested parties contend that the presence of “not used” programs is also probative of continuation or recurrence of a countervailable subsidy. See Id. at 11 (citing Final Results of Expedited Sunset Review of Countervailing Duty Order: Sulfanilic Acid from India, 70 FR 53168 (September 7, 2005) (“Sulfanilic Acid from India”) and accompanying Issues and Decision Memorandum at 3).

Finally, domestic interested parties argue that, immediately after the imposition of the order, the volume of imports of subject merchandise from Brazil declined significantly and remained below pre-order levels. Id. at 12. Domestic interested parties also believe that all of the imports shown are actually imports of merchandise excluded from the scope of the order. Therefore, domestic interested parties conclude that, absent the order, Brazilian producers/exporters are likely to receive continued subsidies if the order is revoked, leading to increased imports from Brazil.

Department’s Position

In accordance with section 752(b)(1) of the Act, in determining whether revocation of a CVD order would likely lead to continuation or recurrence of a countervailable subsidy, the Department will 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 determined in the investigation and subsequent reviews has occurred that is likely to affect that net countervailable subsidy. We make our likelihood determination on an order-wide (country-wide) basis.

In determining 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., Stainless Steel Bar From Italy: Final Results of Expedited Five-Year (“Sunset”) Review of the Countervailing Duty Order, 72 FR 31288 (June 6, 2007) (“SS Bar from Italy”), and accompanying Issues and Decision Memorandum at Likelihood of Continuation or Recurrence of Countervailable Subsidy. Programs eliminated through administrative action, for example, may be more likely to be reinstated than those eliminated through legislative action. This is fully consistent with other areas of our countervailing duty practice (e.g., program-wide changes) where we normally expect a program to be terminated by means of the same legal mechanism in which it is instituted. See, e.g., Corrosion-Resistant Carbon Steel Flat Products from France; Final Results of Full Sunset Review, 71 FR 58584 (October 4, 2006), and accompanying Issues and Decision Memorandum at Likelihood of Continuation or Recurrence of Countervailable Subsidy.

As noted in the “History of the Order” section above, no administrative reviews have been conducted of the countervailing duty order on wire rod from Brazil. As such, the Department

has not made any findings that the programs found countervailable in the investigation have been terminated or changed in any way. We note that respondent interested parties may provide information and argument in the sunset review concerning the termination of programs. See, e.g., Initiation of Five-year (“Sunset”) Reviews, 72 FR 55742, 55743 (October 1, 2007) at Information Required from Interested Parties. However, in this sunset review, we do not have any participation from respondent interested parties.

We agree with the domestic interested parties contention that the presence of “not used” programs is also probative of continuation or recurrence of a countervailable subsidy. See, e.g., Sulfanilic Acid from India.

Thus, we find that all programs found countervailable in the investigation continue to exist and may continue to provide countervailable subsidies to the producers and exporters of wire rod from Brazil. This is consistent with Department practice, as noted in SS Bar from Italy, where the Department found that subsidization is likely to continue or recur from all programs except for the one program where the Department found no evidence of residual subsidy benefits or a replacement subsidy program (Valle d’Aosta Regional Assistance Associated with the Sale of CAS: Waste Plant). See, e.g., SS Bar from Italy. Therefore, we find that revocation of the order is likely to lead to continuation or recurrence of countervailable subsidies.

2. Net Countervailable Subsidy Likely to Prevail

Interested Party Comments

Citing to the Department’s Policy Bulletin and the Statement of Administrative Action (“SAA”) at 890, the domestic interested parties point out that in determining the magnitude of the subsidy rates that are likely to prevail in the event of revocation, the Department normally selects the subsidy rates established in the original investigation. The domestic interested parties add that the subsidy rate in most cases is to be the company-specific, final rate from the original investigation, as that subsidy rate best reflects the behavior of the respondents free of the constraints of a countervailing duty order. See domestic interested parties’ Substantive Response at 13-14 (October 4, 2007).

Department’s Position

It is the Department’s practice normally to select a rate from the investigation as the net countervailable subsidy 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 or suspension agreement in place. See, e.g., Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, and Thailand: Final Results of Expedited Five- Year (Sunset) Reviews of the Countervailing Duty Orders, 71 FR 70960, (December 7, 2006), and accompanying Issues and Decision Memorandum at Net Countervailable Subsidy Likely to Prevail. We note, however, that this rate may not be the most appropriate rate 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 administrative review. See, e.g., Final Results of Expedited Sunset Reviews of the Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium from Canada, 70 FR 67140 (November 4, 2005), and accompanying Issues and Decision Memorandum at Net Countervailable Subsidy Likely to Prevail.

Accordingly, in determining the company-specific, net countervailable subsidy rates likely to prevail if the countervailing duty order were revoked, the Department has looked first to the rates found in the investigation. Because there have been no administrative reviews subsequent to the investigation, we have no new information pertaining to the subsidies found countervailable in the investigation. Therefore, we determine that the net subsidy rates for all producers and exporters of wire rod included in this review are those listed below. The Department will report these rates to the ITC as the net countervailable subsidy likely to prevail if the countervailing duty order were revoked.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order on wire rod from Brazil would likely lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Manufacturers/Producers/Exporters	Net subsidy (percent)
Belgo Mineira	6.74
Gerdau S.A.	2.76
All Others	5.64

3. Nature of Subsidies

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 WTO Agreement on Subsidies and Countervailing Measures (“ASCM”). We note that Article 6.1 of the ASCM expired effective January 1, 2000.

In the instant review, there were three programs that fall within the meaning of Article 3.1 of the ASCM which states that the following subsidies shall be prohibited: (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, and (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

1) Programa de Financiamento as Exportacoes

The PROEX program is administered by the Banco do Brasil. PROEX funding is available to Brazilian companies involved in exporting only. PROEX funds are available in two forms:

- (1) PROEX Financing, which involves the direct financing of a company's exports, and
- (2) PROEX Equalization, which reimburses certain interest costs to Brazilian exporters.

- 2) "Presumed" Tax Credit for the Program of Social Integration and the Social Contributions of Billings on Inputs Used in Exports

In 1996, through Law 9363, the Government of Brazil established the PIS and COFINS tax credit program to provide a rebate of PIS and COFINS contributions assessed on the purchase of raw materials, intermediate products, and packing materials used in the production of exports. The PIS and COFINS "presumed" tax credit was established to prevent the cascading effect of these taxes which accrue at each point in the chain of production. A company calculates its own PIS and COFINS credit, on a monthly basis, using a standard formula established by Law 9363, and claims the credit by making deductions from the Industrial Products Tax due.

- 3) Financing for the Acquisition or Lease of Machinery and Equipment through the Special Agency for Industrial Financing

The FINAME program, which is administered through BNDES and agent banks throughout Brazil, was established in 1966 by Decree No. 59.170 of September 2, 1966, and Decree/Law No. 45 of November 18, 1966. FINAME loans provide capital financing to companies located in Brazil for the acquisition or leasing of new machinery and equipment. Although financing is available for both machinery manufactured in Brazil and non-domestic machinery, almost all FINAME financing is provided for new machinery and equipment manufactured in Brazil. FINAME financing is available for non-Brazilian machinery only when domestically-manufactured machinery is unavailable. FINAME financing for leasing of equipment or machinery is only available for domestic equipment. Under the terms of this program, FINAME loans may be used to finance no more than 80 percent of the purchase price of the machinery.

The following programs do not fall within the meaning of Article 3.1 of the ASCM, but 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, grants to cover debt repayment, 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. We are providing the ITC with the following program descriptions:

- 1) Tax Incentives Provided by the Amazon Region Development Authority ("SUDAM") and the Northeast Region Development Authority ("SUDENE")

The SUDENE program was created under Law No. 3692 to promote the development of the Northeast Region of Brazil. The SUDAM program is a similar program that promotes the development of the Amazonia Region of Brazil. Both programs are administered by the Brazilian federal government, and are linked to the Ministry of National Integration. Under these programs, companies can receive either a partial or complete tax exemption from the Brazilian corporate income tax, which is assessed at a rate of 25 percent. The tax exemption applies only to income from facilities operating in the designated regions. Both programs allow companies a 100 percent exemption if the company (1) makes an initial investment in the region involved, (2) increases capacity in the applicable region, or (3) modernizes its facilities in the specific region. If a company does not meet these three criteria, it is permitted to exempt 37.5 percent of its income from facilities operating in that region from taxation.

- 2) Debt Forgiveness/Equity Infusions Provided to Usina Siderurgica da Bahia S.A. (previously 1988 Equity Infusions/Debt Forgiveness Provided to Usina Siderurgica da Bahia S.A.)

Prior to 1989, Usiba was owned by Siderurgica Brasileira S.A.- SIDERBRAS (“SIDERBRAS”), the Brazilian government entity responsible for all state-owned steel companies. As part of the first phase of Brazilian privatizations carried out under the auspices of Decree 95.886, SIDERBRAS, through BNDES Participacoes S.A.- BNDESPAR (“BNDESPAR”), sold Usiba to Gerda in a privatization auction in October 1989.

In order to restructure Usiba and to restore its operational viability, as well as to prepare Usiba for privatization, SIDERBRAS made several investments in the company. First, in 1988, SIDERBRAS restructured some Usiba debt in a debt-for-equity swap. As part of this arrangement, according to Usiba’s 1988 Financial Statement, SIDERBRAS “cleans{ed}” past due debt of 58,888,558,000 Cruzados in exchange for increased equity in Usiba. In addition to this debt restructuring, SIDERBRAS also made equity infusions into Usiba of 101,243,000 Cruzados in 1986; 13,182,699,000 Cruzados in 1987; and 8,204,000 Cruzados in 1989.

- 3) National Bank for Economic and Social Development Financing for the Acquisition of Dedini Siderurgica de Piracicaba

Until 1997, Belgo Mineira was involved in a partnership with the Dedini Group, a consortium of companies with operations in numerous sectors, through Belgo Mineira’s 49 percent ownership of the Dedini Group’s steel operations. Due to economic problems, the Dedini Group decided to restructure its operations and sell some of its assets, including its steel operations.

After several rounds of negotiations between Belgo Mineira and Dedini, Belgo Mineira agreed to take over certain of Dedini’s debts as recorded in Dedini’s books, including

debt owed to BNDES and another government creditor, in exchange for the remaining 51 percent of the Dedini Group's steel operations and three Dedini properties. Once Belgo Mineira and Dedini reached an agreement on this issue, the two companies approached the creditors involved, including BNDES, to receive approval in order to complete the transactions. In giving its approval in late 1997, BNDES agreed that Belgo Mineira would assume the amount of the Dedini debt agreed upon by Belgo Mineira and Dedini, and that BNDES would write off any remaining debt in its books as a loss. Separate negotiations took place between Belgo Mineira and the other government creditor to which Dedini was indebted.

- 4) National Bank for Economic and Social Development Financing for the Acquisition of Mendes Junior Siderurgica ("MJS") S.A.

MJS operated a steel mill in the state of Minas Gerais. In 1995, because MJS could no longer service its existing debt obligations, it entered into negotiations with Belgo Mineira. MJS and Belgo Mineira reached an agreement in which Belgo Mineira would lease MJS' facility in the state of Minas Gerais. In 1998, Belgo Mineira negotiated an agreement with BNDES in which BNDES transferred MJS' outstanding debt, exclusive of any late fees and penalties, to Belgo Mineira in exchange for R\$98 million in debentures and certain other rights, the details of which are proprietary. At the time of the BNDES negotiation, MJS' debt was categorized by BNDES as a non-performing loan and any outstanding late fees and penalties in excess of the original debt amount were written off by BNDES.

The debentures issued by Belgo Mineira to BNDES in this transaction are for a term of 12 years and pay the Brazilian Long Term Interest Rate ("TJLP") plus three percent. (The TJLP is the Brazilian long-term interest rate, a rate set periodically by the Brazilian Central Bank.) Furthermore, the agreement between BNDES and Belgo Mineira was structured such that, if Belgo Mineira had reached agreement with other creditors of MJS on terms more favorable than those in the BNDES-Belgo Mineira agreement, then Belgo Mineira would compensate BNDES in the amount of the difference.

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 expedited final results of review in the Federal Register.

Agree _____

Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

Date