

70 FR 23094, May 4, 2005

C-475-825  
Sunset Review  
IA/HES/2-4340  
Public Document

April 27, 2005

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

FROM: Ronald K. Lorentzen  
Acting Director, Office of Policy

SUBJECT: Issues and Decision Memorandum for the Full Sunset Review of  
the Countervailing Duty Order on Stainless Steel Sheet and Strip in  
Coils from Italy: Final Results

Summary:

We analyzed the substantive responses and rebuttals of the interested parties in the full sunset review of the countervailing duty order on Stainless Steel Sheet and Strip in Coils (“SSSSC”) from Italy. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum for these final results of review. Below is the complete list of the issues in this full sunset review:

1. Likelihood of continuation or recurrence of countervailable subsidies
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

History of the Order:

On December 29, 2004, the Department of Commerce (“the Department”) published the preliminary results of the full sunset review of the countervailing duty order on SSSSC from Italy. See Notice of Preliminary Results of Full Sunset Review: Stainless Steel Sheet and Strip in Coils from Italy (“preliminary sunset review results”), 69 FR 78091 (December 29, 2004) and the accompanying Issues and Decision Memorandum for the Full Sunset Review of the Countervailing Duty Order on Stainless Steel Sheet and Strip in Coils from Italy: Preliminary Results (“SSSSC preliminary memorandum”) dated December 29, 2004.<sup>1</sup>

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<sup>1</sup>For a full discussion of the history of this order prior to the preliminary results of this sunset review, see the December 17, 2004 decision memorandum.

In our preliminary sunset review results, we found that benefits from the following programs would likely continue or recur were the order revoked:

- 1) *Law 675/77;*
- 2) *Law 451/94 Early Retirement Benefits; and*
- 3) *European Social Fund.*<sup>2</sup>

The company-specific subsidy rates listed in the preliminary results were as follows:

TKAST	0.80
Arinox	0.34 or <i>de minimis</i>
All Others	1.61

In our preliminary results, we considered the Department's implementation with regard to the exclusion of programs relating to pre-privatization subsidies from this order pursuant to the Department's Section 129 determination. Respondents appealed the Department's final determination to the U.S. Court of International Trade ("CIT") with respect to privatization issues. See Acciai Speciali Terni S.p.A. v. United States, CIT No. 99-00567. The appeal is currently stayed pending a final and conclusive court opinion in the stainless steel plate in coils from Italy litigation. See Acciai Speciali Terni S.p.A. v. United States, CIT No. 99-00364. Petitioners appealed the Department's Section 129 determination regarding stainless steel sheet and strip in coils from Italy. See Allegheny Ludlum et. al. v. United States, CIT No. 03-00919. Because there is no final and conclusive court opinion overturning the Department's Section 129 determination regarding the privatization of AST, we continue to adopt the Department's finding in the Section 129 determination.

On February 8, 2005, the Department received case briefs from ThyssenKrupp Acciai Speciali Terni, S.p.A. ("TKAST") (formerly Acciai Speciali Terni, S.p.A.); the Government of Italy ("GOI"); and the European Commission ("EC"). See Case Brief from TKAST re: Stainless Steel Sheet and Strip in Coils from Italy (Sunset): Case Brief (February 8, 2005) ("TKAST Case Brief"); Case Brief from the GOI re: Full Sunset Review of the Countervailing Duty Order on Stainless Steel Sheet and Strip in Coils – Case brief of the Government of Italy, Case C-475-825,

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<sup>2</sup>In the Issues and Decision Memorandum for the Determination under Section 129 of the Uruguay Round Agreements Act: Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy, October 24, 2003 ("Section 129 Memo"), the Department determined that the privatization of AST (currently TKAST) was at arm's length and for fair market value, and that allegations of broader market distortions were not sufficiently supported. Accordingly, any allocable, non-recurring subsidies granted to AST prior to its privatization were extinguished in their entirety and, therefore, are non-countervailable. On November 7, 2003, the U.S. Trade Representative requested the Department, pursuant to section 129(b)(4) of the Uruguay Round Agreements Act, to implement the determination in the Section 129 Memo. See Notice of Implementation under Section 129 of the Uruguay Round Agreements Act, 68 FR 64858, (November 17, 2003).

(February 8, 2005) (“GOI Case Brief”)<sup>3</sup>; Case Brief from the EC re: Sunset Review of the Countervailing Duty Order on Stainless Steel Sheet and Strip in Coils from Italy (February 8, 2005) (“EU Case Brief”). The Department received a rebuttal brief from the domestic interested parties to the briefs submitted by the GOI, EC, and TKAST. See Rebuttal Brief from Petitioners re: Sunset Review of the Countervailing Duty Order on Stainless Steel Sheet and Strip in Coils from Italy (February 14, 2005) (“Petitioner Rebuttal Brief”).

This memorandum discusses all issues to determine finally whether to revoke this countervailing duty order.

#### Discussion of the 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 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 programs which gave rise to the net countervailable subsidy has occurred. 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 comments submitted by the interested parties by category in the following order.

*Comment 1: General Comments*

*Comment 2: European Social Fund*

*Comment 3: Law 451/94 Early Retirement Benefits*

*Comment 4: Law 675/77*

*Comment 5: EC Steel Aid Code*

*Comment 6: Subsidy Rate to Report to the ITC*

*Comment 7: CVD Rate applicable to “All Others” Producers and Exporters*

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<sup>3</sup>The GOI and the EU submitted joint case briefs with separate attachments.

1. Continuation or Recurrence of a Countervailable Subsidy

*Comment 1: General Comments*

Respondent interested parties argue that the preliminary sunset review results do not properly reflect the negligible level of subsidy likely to prevail if the order were terminated. See Case Brief of the EU and the GOI (“Joint Case Brief”) (February 8, 2005) at 1 and TKAST Case Brief (February 8, 2005) at 1. Respondent interested parties argue that any remaining subsidies have since fallen to negligible levels, and, as a result, the Department must find that the level of likely subsidization is lower than the *de minimis* level of 0.50 percent and terminate this order, consistent with U.S. law and practice as reflected in the determinations in the sunset reviews regarding live swine from Canada and stainless steel wire rod from Italy as well as its international obligations under the WTO. See Joint Case Brief at 1 and TKAST Case Brief at 7. The lack of any administrative reviews of this order does not mean that the Department should rely on the investigation rates for these programs. Instead, the Department should rely on the information submitted by respondent interested parties to make its likelihood determination and, consistent with U.S. law and practice and its WTO obligations, find that there is no likelihood of subsidization if the order were revoked. See Joint Case Brief at 1-7 and TKAST Case Brief at 1, 3-7.

In their rebuttal brief, domestic interested parties argue that the Department correctly relied on the program rates from the investigation in making its preliminary likelihood determination. See Petitioner Rebuttal Brief at 2. The domestic interested parties state that the fact that countervailable subsidy programs continue beyond this sunset review is highly probative and warrants the Department making an affirmative likelihood of continued or recurring subsidy finding. Id. at 3, citing the SAA, H.R. Doc. No. 103-316 at 890 (1994) and Policies Regarding the Conduct of Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders, 63 FR 18871 at 18874 (April 16, 1998). In addition, the domestic interested parties state that the respondent interested parties have had ample opportunity since the issuance of the order to have the programs examined in the context of an administrative review but have chosen not to do so. See Petitioner Rebuttal Brief at 4.

Domestic interested parties also argue that if the Department were to revoke the order as respondent interested parties have requested, it would impermissibly intrude upon the jurisdiction of the U.S. Court of International Trade (“CIT”). See Petitioner Rebuttal Brief at 12-14. That court is currently reviewing two appeals that affect this order: (1) the original investigation (CIT Court No. 99-0-00567) and (2) the Department’s Section 129 determination (CIT Court No. 03-00919). Id. at 13. On February 8, 2005, the CIT issued a remand requiring the Department to change its evaluation of the nature of the AST privatization sale to substantiate the fair market value. Id. The result of either of these appeals could be a subsidy rate likely to prevail if the order were revoked at a level considerably above *de minimis*. For these reasons, the domestic interested parties request that the Department refrain from revoking this order. Id. at 14.

*Department Position:* In making a sunset likelihood determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews and whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the continuation or recurrence of a net countervailable subsidy. See Section 752(b) of the Act. In this review, the Department has found that there are a number of programs that no longer confer benefits. However, the Department has determined that benefits for two programs, the European Social Fund and Law 451/94 Early Retirement Benefits, continue beyond the period of this sunset review at above *de minimis* levels. Although respondent interested parties have argued that the nature of the Law 451/94 program means that benefits have declined over time to negligible levels, there have been no subsequent reviews of the countervailing duty order on which to evaluate this claim. Further, as discussed below, even if it were appropriate to calculate the current level of subsidization for this program in the context of this review, the information presented by respondent interested parties is insufficient to do so. We disagree that our likelihood determination is inconsistent with U.S. WTO obligations. The sunset provisions of the U.S. law, as implemented through the Uruguay Round Agreement Act, are consistent with our obligations under the WTO.

With respect to the domestic interested parties' comment that the Department must not revoke the order in order not to infringe upon any possible future ruling by the CIT, such a practice would paralyze the Department and make it impossible for the Department to conduct its sunset reviews in a timely manner and meet the statutory deadlines as the Act prescribes. See section 751(c)(5) of the Act. The litigation referred to by domestic interested parties is ongoing and may not be resolved for a considerable period of time, particularly if any aggrieved party seeks further appeals beyond the CIT. The findings of the original investigation and the Section 129 determination are final unless and until there is a final and conclusive court action affirming a different outcome. Until such time, the Department will base its analysis and reasoning in the context of sunset review with respect to these determinations as they now stand and revoke or continue the order accordingly.

*Comment 2: European Social Fund*

Respondent interested parties argue that the European Social Fund (ESF) was substantially modified in 2000, and that assistance from this program is non-specific. See Joint Case Brief at 1-3, Annex 1 and TKAST Case Brief at 5-6. TKAST states that the Department must consider the program-wide change in the ESF program in accordance with the Department's statutory obligations because there has not been a significant opportunity to evaluate the program in other proceedings where the Department has declined to review the program because it would not materially affect the rate. See TKAST Case Brief at 6. The EU and the GOI argue that the Department's finding in the grain-oriented electrical steel ("GOES") from Italy case is not applicable because the period of review in the GOES case was 1998, a time before the entry into force of the new ESF system. See Joint Case Brief at 2 and TKAST Case Brief at 6. The EU and GOI state that the reform of the ESF is a 'program-wide change' as defined in the Policy Bulletin. Id. They contend that the reform is a change not limited to any

specific firm or industry; and the reform has been promulgated through a European Council Regulation binding all EU member states, a situation similar to the program-wide change recognized by the Department in the 1999 sunset review of the countervailing duty order on sugar from the EU. *Id.*

Domestic interested parties state that the Department was correct in finding that benefits from the ESF are likely to continue if the order were revoked and noted that, consistent with the Department's practice and guidance provided to it by the SAA, the Department properly relied on its original determination and the net countervailable subsidy rate from the investigation in its analysis. *See* Petitioner Rebuttal Brief at 8. They argue that in general, the Department should not reconsider its countervailability decisions outside the context of an investigation or an administrative review. *Id.* at 6. With respect to the specificity of the ESF, the Department should not rely on selective and insufficient information submitted in respondent interested parties' case brief which has not been examined in the context of an administrative review. *Id.* at 6-7. Further, domestic interested parties argue that the information submitted regarding Objective 3 of the ESF program is new factual information and therefore is untimely. *See* Petitioners' Rebuttal Brief at 1. The domestic interested parties contend that the submission of this information at such a late date undermines the ability to analyze and respond to the information and should be rejected by the Department. *Id.* at 2. For all of these reasons, the Department should affirm its preliminary finding that the ESF program exists and revocation of this order would likely lead to continuation of a countervailable subsidy.

*Department Position:* Respondent interested parties argue that modifications to the ESF since the investigation resulted in a program-wide change, even though the program has not been examined in the context of this order or the administrative review of GOES from Italy referred to in the Department's preliminary results. Respondent is correct that the Department has not examined the modified ESF with respect to this order and the order on GOES. However, the Department has examined the ESF in its current state and the specificity arguments raised by the respondent interested parties previously, specifically in the countervailing duty investigation on stainless steel bar from Italy. *See* Notice of Final Affirmative Countervailing Duty Determination: Stainless Steel Bar from Italy, 67 FR 3163 (January 23, 2002) ("Stainless Steel Bar from Italy"), and the accompanying Issues and Decision Memorandum: Final Determination in the Countervailing Duty Investigation of Stainless Steel Bar from Italy (January 15, 2002) ("Stainless Bar Decision Memorandum"). *See also*, Joint Case Brief, EC Annex 1. The program was also recently examined in the sunset review of the countervailing duty order on stainless steel plate in coils from Italy. *See* Notice of Final Results of the Full Sunset Review of the Countervailing Duty Order on Stainless Steel Plate in Coils from Italy, 70 FR 10357 (March 3, 2005) ("Stainless Steel Plate in Coils Sunset Determination"), and the accompanying Issues and Decision Memorandum: Final Results of the Full Sunset Review of the Countervailing Duty Order on Stainless Steel Plate in Coils from Italy (February 25, 2005) ("Stainless Steel Plate in Coils Memorandum").

In the stainless steel bar investigation, the Department determined that ESF funding was

*de facto* specific because neither the EU nor the GOI provided the Department with the detailed industry and regional distribution information necessary to evaluate the specificity of the program. See Stainless Bar Decision Memorandum – European Social Fund section, Comment 16: European Social Fund, and referenced Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Bar From Italy, 66 FR 30414 (June 6, 2001) (“Stainless Steel Bar from Italy preliminary determination”), at 30421-30422. In this sunset review, the EU and the GOI submitted information regarding the modifications to the ESF to demonstrate that the program is no longer specific, and thus non-countervailable. This same information was submitted and examined by the Department in the sunset review of the countervailing duty order on stainless steel plate in coils from Italy. See Stainless Steel Plate in Coils Memorandum at 5-6.

We have analyzed the information submitted by the EU and the GOI in their joint case brief regarding *de facto* specificity for ESF funding. We find that the translated Midterm Report does not contain detailed information regarding the distribution of ESF benefits across regions and/or industries. However, it does contain a discussion of regional training systems, Objective 3 areas (Valle d’Aosta, Lombardia and Trento), Objective 3 regions and target categories. See Midterm Evaluation, sections 5.3 – Quality of Regional Training Systems and 6.2 Employment Impact of ESF Training Interventions on Particular Target Categories. These terms are often associated with *de facto* specific regional or industrial programs. The data referred to in the untranslated report, Secondo Rapporto, and summarized in the ESF Recapitulative Table of the Joint Case Brief, support, rather than contradict, a finding of specificity. For example, Table 24 from the untranslated report<sup>4</sup> – the source for the ESF Recapitulative Table – includes information regarding the percentage of the total that each of the listed sectors represents. In the case of Metal Works sector, this percentage is 26.1 percent – the third highest economic sector listed and considerably higher than any other industrial or manufacturing sector.<sup>5</sup> See EU Annex 1(b), Table 24. Such a heavy distribution to the Metal Works sector is indicative of disproportionate use and is consistent with a finding of *de facto* specificity for this program.

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<sup>4</sup>The Department’s regulations require submission of an English translation with a foreign language document. 19 CFR 351.303(e). Respondent interested parties failed to do so.

<sup>5</sup>The ESF Capitulative Table submitted in the Joint Case Brief adds a column that calculates percentages for each sector based on the sum of individual line totals indicating that the Metals Works sector only accounted for 2.79 percent of the total. However, that calculation appears to be incorrect. First, the denominator used to calculate the 2.79 percent reported in the ESF Capitulative Table is approximately 12,580, more than 250 percent higher than the 4,832 total listed in the chart and the figure used to calculate all but one or two of the other sectoral percentages in the table. This results in a figure of 7.26 percent for the Metal Works sector, not 2.79 percent. Second, it appears from Table 24 that the total figure of 4,832 may be overstated because of overlap in responses. The total percentage figures calculated for each line item in Table 24 (including the 26.1 percent figure for the Metals sector) appear to be calculated using a common number of sectors as a denominator (*i.e.*, 1,342, not the 4,832 total). However, without translation of the documents, including explanatory footnotes, which would have allowed for further examination and exploration of the data contained within, it is not possible to draw definitive conclusions from this information.

As a result, and consistent with its finding in the sunset review of the countervailing duty order on stainless steel plate in coils, the Department continues to find specificity and countervailability with respect to ESF and that benefits from this program are likely to continue or recur were the order revoked.

*Comment 3: Law 451/94 Early Retirement*

Respondent interested parties argue that the Department inappropriately relied upon the determination and rate for Law 451/94 from the original countervailing duty investigation in its preliminary results. They argue that information on the record of this sunset review demonstrates that any countervailable subsidies provided by Law 451/94 are now negligible. They note that: 1) the program was terminated in 1996; 2) benefits can only last for a maximum of 10 years or such time that early retirees reach retirement age; 3) the number of workers receiving benefits has consistently decreased since the termination of the program; and 4) the number of workers now receiving benefits under this program is a fraction of those receiving benefits when the subsidy rate for this program was calculated in the original investigation. See TKAST Case Brief at 3. They also note that the Department has recognized that benefits from this program diminish over time and has made adjustments in the subsidy rate for this program in administrative reviews of other orders. See TKAST Case Brief at 5. Rather than rely on the subsidy rate for this program from the investigation, respondent interested parties argue that the Department must revise its approach to consider the information they have provided which demonstrates that benefits under this program have fallen significantly and that any likely subsidy for this program is clearly *de minimis*, a rate which is equivalent to zero. See Joint Case Brief at 3-4, GOI Exhibit 1 – Annexes A and Aa, and TKAST Case Brief at 3-5. They also argue that the Department retains the discretion to make adjustments to the net subsidy rate for purposes of evaluating likelihood and is not precluded from doing so by the statute in this situation. See Joint Case Brief at 3 and TKAST Brief at 3. In fact, they note that, in effect, this is what the Department has already done so with respect to Arinox in its preliminary results.

Domestic interested parties argue that the Department properly applied the investigation rate in its preliminary results. Domestic interested parties argue that the Department's preliminary results are both accurate and consistent with the law and established Department practice regarding residual benefits. See Petitioner Rebuttal at 8. They note that it is clear from the record of this proceeding that benefits from this program continue beyond the sunset review period and warrant a finding of likelihood of continued or recurring subsidy for this program by the Department. They also note that respondent interested parties have had numerous opportunities to request an administrative review of the order and have the program properly reviewed and any changes in benefits reflected in a newly calculated subsidy rate. See Petitioner Rebuttal at 3-4. The extrapolated *de minimis* subsidy rate calculated by respondent interested parties based on selective factual information is improper, and the information submitted by respondent interested parties is insufficient to calculate an accurate rate for this program. See Petitioner Rebuttal Brief at 6.

The domestic interested parties argue that the Department erred in its treatment of Arinox with respect to Law 451/94. *Id.* at 11. Given that Arinox was not participating in the review and there has been no administrative review to verify a complete record on whether the company continues to receive benefits from this program, the domestic interested parties contend that it is legally impermissible for the Department to revoke the order as to Arinox because the Department did not evaluate the legal method the GOI used to eliminate Law 451-94 and the likelihood of the GOI to reinstate the program. *Id.* at 10-11.

*Department Position:* Section 752(b)(3) of the Act states that the Department will provide to the ITC the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated. 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 or suspension agreement in place. As discussed in the “Net Countervailable Subsidy Likely to Prevail” section below, the Department has, pursuant to section 752(b)(1)(B), made certain adjustments to the rate from the investigation to reflect certain changes in programs resulting in the cessation of benefits, including the benefit for Arinox for this program. However, as was done in the preliminary results of this sunset review, no adjustment is being made to the investigation rate for Law 451/94 for TKAST.

In this case, it is undisputed that the benefit stream for TKAST continues after the end of the review. Also, it is undisputed that the program has not been examined in any subsequent review of this order, and that no other subsidy rate exists for Law 451/94 for TKAST within the context of this countervailing duty order. As stated by the respondent interested parties, the Department has reexamined this subsidy program in administrative reviews of other countervailing duty orders and calculated new rates based on the records of those administrative reviews. However, an accurate calculation of the recurring benefit and subsidy rate for this program not only requires identification of employees by salary type to determine the benefits received but also the relevant data necessary to properly expense the benefit in the year it is received.<sup>6</sup> As noted in other sunset reviews, the information needed, the complexity of issues, and the problems that may arise in trying to reexamine a program and calculate a subsidy rate in a sunset review demonstrates why claims as to changes in the level of subsidization are normally best addressed in the context of administrative reviews. See, e.g., Notice of Final Results of Full Sunset Review of Countervailing Duty Order: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Italy, 66FR 13909 (March 8, 2001) and

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<sup>6</sup>Benefits under Law 451 are recurring and must be properly expensed in the year of receipt of the benefit. In its case brief, TKAST provided an untranslated and unidentified document listing employees still eligible for Law 451/94 benefits along with three three-letter codes that TKAST stated corresponded to two worker types – blue collar workers and white collar workers. TKAST did not provide the source for the document nor did it provide any data that could be used to expense the benefit and accurately calculate the subsidy rate. The Department also notes that the program had three categories – blue collar worker, white collar worker and managerial worker. The missing managerial category had an average wage more than three times that of the blue collar worker and more than double that of the white collar worker.

accompanying Issues and Decision Memorandum for the Full Sunset Review of Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Italy; Final Results (March 8, 2001); and Notice of Final Results of Full Sunset Reviews of Countervailing Duty Order: Certain Corrosion-Resistant Carbon Steel Flat Products; Cold-Rolled Carbon Steel Flat Products; and Cut-to-Length Carbon Steel Sheet and Strip Products from Germany, 65 FR 47407 (August 2, 2000) and accompanying Issues and Decision Memo for the Sunset Reviews of the Countervailing Duty Orders on Certain Corrosion-Resistant Carbon Steel Flat Products; Cold-Rolled Carbon Steel Flat Products; and Cut-to-Length Carbon Steel Sheet and Strip Products from Germany; Final Results (August 2, 2000). For that reason, the SAA clearly states that, “Only under the most extraordinary circumstances should Commerce rely on . . . net countervailable subsidy rates other than those it calculated and published in its prior determinations.” See SAA at 891. Failure of respondent interested parties to avail themselves of the administrative review process during the sunset review period is not the most extraordinary of circumstances envisioned by the SAA.

With respect to Arinox, the Department’s finding was both appropriate and consistent with its treatment of TKAST. The information on the record of this sunset review and the original investigation clearly demonstrated that unlike TKAST, Law 451/94 benefits to Arinox had ceased and were not likely to continue beyond the sunset review because of the termination of the program. This does not mean that Arinox is excluded from the order as a result of this sunset review. Determinations in sunset reviews are order-wide; there is no company-specific revocation as a result of the review.

Accordingly, we determine that this program continues to provide benefits beyond the end of the sunset review period.

*Comment 4: Law 675/77*

Respondent interested parties state that the Department improperly rejected the argument that information placed on the record at the time of the investigation demonstrated that the program and its benefit streams had terminated. See Joint Case Brief at 7 and TKAST Case Brief at 2. For further clarification and confirmation that the benefits to TKAST from this program have terminated, respondent interested parties submitted documentation that the two IRI loans under Law 675/77 were fully repaid as of July 2000. See Joint Case Brief at Exhibit 2 and TKAST Case Brief at Exhibit 1. Therefore, respondent interested parties request that any subsidy rate reported to the ITC be reduced to reflect repayment of the loans.

Domestic interested parties request that the submitted information regarding IRI loans to TKAST is new factual information and as such, is untimely. See Petitioners’ Rebuttal Brief at 1. The domestic interested parties contend that the submission of this information at such a late date undermines the ability to analyze and respond to the information and should be rejected by the Department. Id. at 2.

*Department's Position:* In their substantive response, respondent interested parties argued that the loans to TKAST under this program had been repaid as was evidenced by the due dates of the loans reported in the original investigation. In the preliminary results of this review, the Department stated that such information was insufficient to determine whether the loans had, in fact, been repaid. Based on the clarifying information submitted by respondent interested parties, the Department finds that the loans have been repaid and that the revocation of the countervailing duty order is not likely to lead to continuation or recurrence of a countervailable subsidy under Law 675/77. This same information was submitted and examined by the Department in the sunset review of the countervailing duty order on stainless steel plate in coils from Italy. The Department reached the same conclusion with respect to this program in that sunset review. See Stainless Steel Plate in Coils Memorandum at 8.

*Comment 5: EC Steel Aid Code*

Respondent interested parties stress that the EC Steel Aid Code only authorizes subsidies regarding the environment and research and development in certain circumstances; however, the Member States are not forced to grant them. See Joint Case Brief at 7. They remark that the EC steel aid code provides no evidence of any likely recurrence of subsidization. Domestic interested parties did not comment on this program.

*Department Position:* The EC Steel Aid Code was not examined at any time during this order, nor is it being examined in this sunset review. The Department's discussion of the EC Steel Aid Code in the preliminary results of this sunset review was in response to arguments raised by respondent interested parties regarding likelihood of future subsidization. We are not making any determination with respect to possible benefits granted under the EC Steel Aid Code in the context of this sunset review.

2. Net Countervailable Subsidy Likely to Prevail

*Comment 6: Subsidy Rate to Report to the ITC*

Respondent interested parties argue that the Department inappropriately determined the rate from the investigation in its preliminary results without considering the new and relevant information provided in this review. See TKAST Case Brief at 1. As discussed in the "General Comments" section, respondent interested parties argue that any subsidies remaining in this case are negligible. Therefore, in accordance with the Department's statutory mandate and the guidance set forth in the Policy Bulletin, the Department must find that the level of any subsidization likely to prevail is below *de minimis* and, as a result, should terminate the order in question. See Joint Case Brief at 1 and TKAST Case Brief at 1-2, 7. The fact that no administrative reviews of the countervailing duty order on stainless steel sheet and strip have been conducted is irrelevant. Id. at 2.

In their rebuttal brief, domestic interested parties state that TKAST continues to receive

above *de minimis* benefits from certain programs found countervailable in the original investigation and argues that the Department should continue to apply the applicable program rates from investigation to determine the rate likely to prevail if the order was revoked. See Petitioner’s Case Brief at 2.

*Department’s Position:* The Department normally will 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 in place. However, 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. In this sunset review, consistent with section 752(b)(1)(B) of the Act, the Department has made adjustments to the investigation rate to reflect cessation of benefits or intervening changes in the subsidy programs originally found countervailable, as appropriate (i.e., Law 796/76 Exchange Rate Guarantees, the outcome of the section 129 Determination, and Law 675/77). As a result of the rate adjustments, the net countervailable subsidy rate is now 0.73 percent, a rate that remains above *de minimis* levels.

Therefore, we will report to the ITC a rate of 0.73 percent as the rate likely to prevail if the order is revoked. This rate is contained in the *Final Results of Review* section of this decision memorandum.<sup>7</sup>

*Comment 7: CVD Rate applicable to “All Others” Producers and Exporters*

The respondent interested parties disagree with the Department’s preliminary determination of the rate applicable to “all other” Italian manufacturers. First, Law 675/77 provided benefits to only state-owned companies that were controlled by the IRI Group, so the EU and the GOI find it difficult to see how the scheme applies to private companies. See Joint Case Brief at 7. Second, the EU and GOI points out the Department knows that no new request for eligibility in Law 451/94 could have been accepted after 1994. Id. at 8. Therefore, the EU and the GOI request that the Department revise its approach and apply a CVD rate that reflects the level of subsidization likely to continue or recur should any new company start producing or exporting SSSS to the United States.

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<sup>7</sup>In a sunset review the Department does not report any rates to the U.S. Customs and Border Protection. The five-year sunset review is a limited review, unlike an administrative review, to determine if revocation of the order is likely to lead to continuation or recurrence of dumping or net countervailable subsidy and at what rate. As noted above, the Department is required to report to the ITC the magnitude of the net countervailable subsidy rate likely to prevail if the order were revoked. Furthermore, with respect to Arinox, the calculation of a *de minimis* net subsidy rate likely to prevail has no impact on Arinox’s status with respect to the countervailing duty order on stainless steel sheet and strip from Italy. Arinox remains subject to the countervailing duty order at its current cash deposit rate.

*Department Position:* The all others rate applies to any producer who was not investigated in the original investigation or a subsequent administrative review, not just new producers. However, the Department has adjusted the all others rate to reflect its finding in these final results regarding Law 675/77. As a result, the all others rate in this sunset review is now 0.73 percent.

3. Nature of the Subsidy:

Consistent with section 752(a)(6) of the Act, the Department will provide to the ITC information 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. None of the programs at issue is a subsidy described in Article 3 of the Subsidies Agreement. Also, our review of the determinations on the record does not lead us to conclude that the programs in this proceeding fall within the definition of a subsidy under Article 6.1. We note that as of January 1, 2000, Article 6.1 has ceased to apply (see Article 31 of the Subsidies Agreement).

Final Results of Review

We determine that benefits from the following programs would likely continue or recur were the order revoked: Law 451/94 Early Retirement Benefits and the European Social Fund. As a result of this review, the Department finds that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy at the following rates:

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<u>Manufacturers/Producers/Exporters</u>	<u>Net Countervailable Subsidy (percent)</u>
TKAST	0.73
Arinox	<i>de minimis</i>
All Others	0.73

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Recommendation

Based on our analysis of the comments 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          x                          DISAGREE                          

*ORIGINAL SIGNED*

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Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

4/27/05

\_\_\_\_\_  
(Date)