

February 25, 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 Plate 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 Plate in Coils (“SSPC”) 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 October 21, 2004, the Department of Commerce (“the Department”) published the preliminary results of the full sunset review of the countervailing duty order on SSPC from Italy. See Notice of Preliminary Results of Full Sunset Review: Stainless Steel Plate in Coils from Italy (“preliminary sunset review results”), 69 FR 61800 (October 21, 2004) and the accompanying Issues and Decision Memorandum for the Full Sunset Review of the Countervailing Duty Order on Stainless Steel Plate in Coils from Italy: Preliminary Results (“SSPC preliminary results decision memorandum”) dated October 15, 2004.<sup>1</sup> In our preliminary sunset review results, we found that benefits from the following programs would likely continue or recur were the order revoked:

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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 October 15, 2004 decision memorandum.

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

On December 6, 2004, the Department received a joint case brief from the Government of Italy (“GOI”) and the European Commission (“EC”). See Case Brief from the EC and the GOI re: Sunset Review of the Countervailing Duty Order on Stainless Steel Plate in Coils from Italy (December 6, 2004) (“Joint Case Brief”) including separate GOI and EC Attachments. The Department also received a case brief from ThyssenKrupp Acciai Speciali Terni, S.p.A. (“TKAST”) (formerly Acciai Speciali Terni, S.p.A.) in a timely manner. See Case Brief from TKAST re: Stainless Steel Plate in Coils from Italy (Sunset) (December 13, 2004) (“TKAST Case Brief”). The Department did not receive a case brief from the domestic interested parties but did receive a rebuttal brief 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 Plate in Coils from Italy (December 20, 2004) (“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

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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 Plate 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).

In our preliminary determination, 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. We also noted that petitioners have appealed to the Court of International Trade (“CIT”) challenging our decision to lower the net subsidy rate. See Allegheny Ludlum v. United States, Court No. 03-00920. This appeal is stayed pending the resolution of an appeal involving stainless steel sheet and strip in coils from Italy which addresses similar privatization issues. See Allegheny Ludlum v. United States, Court No. 03-00919. Because there is no final 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.

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*

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 Joint Case Brief at 1 and TKAST Case Brief 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. 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 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. Respondent interested parties had ample opportunity since the issuance of the order to have the programs examined in the context of an administrative review, but chose not to do so. The Department is not required, in fact, in most cases, it is prohibited from recalculating subsidy rates in the context of a sunset review. 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 9-11. That court is

currently reviewing two appeals that affect this order – the first involving the original investigation and the second the Department’s Section 129 determination. 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*. Revocation of the order in this sunset review could lead to a significant error by the Department. See Petitioner’s Rebuttal Brief at 10.

*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.

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 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 reviews with respect to these determinations as they now stand, and revoke or continue an order, accordingly.

*Comment 2: European Social Fund*

Respondent interested parties argue that the European Social Fund (ESF) was substantially modified in 2000 and is a different program than that which was examined in either the original countervailing duty investigation of SSPC from Italy or the countervailing duty administrative review of grain-oriented steel from Italy. See Joint Case Brief at 1-2 and TKAST Case Brief at 5-6. They argue that, as a result of these modifications to the program, ESF is no longer specific, and as such, is non-countervailable, submitting two reports in support of their claim – a translated report entitled, “The Midterm Evaluation of 2000-2006 Objective 3 Community Support Framework in Italy,” (“Midterm Report”) and an untranslated report entitled, “Secondo Rapporto Sull’offerata di Formazione Professionale in Italia (Secondo

Rapporto”).” See Joint Case Brief at 1-3 and EC Annexes 1, 1(a) and 1(b). They also included a summary table entitled “ESF Recapitulative Table Beneficiaries (Economic Sectors)” (“ESF Recapitulative Table”) that they allege demonstrates that the program is neither regionally specific nor *de facto* specific with respect to steel.<sup>3</sup> Respondent interested parties argue that the Department should treat these changes to the ESF as a program-wide change and find the program is not likely to result in a continuing or recurring benefit if the order were revoked.

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. They argue that the Department should not reconsider its countervailability decisions outside the context of an investigation or administrative review. In particular, with respect to the specificity of the ESF, which has been found to be *de facto* specific, the Department should not rely on selective and insufficient information submitted in respondent interested parties’ case brief.

*Department Position:* Respondent interested parties argue that modifications to the ESF since the investigation resulted in a program-wide change that has not been examined in the context of this order or the administrative review of grain-oriented electrical steel from Italy referred to in the Department’s preliminary results. Although this is true with respect to this order and the order on grain-oriented steel, 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.

In the stainless steel bar investigation, the Department determined that ESF funding was *de facto* specific because neither the EC 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, respondent interested parties, specifically the EC and the GOI, have submitted additional information regarding the modifications to the ESF that they argue demonstrates that the program is no longer specific, and thus non-countervailable.

We have analyzed the additional information submitted by the EC and the GOI in their

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<sup>3</sup>According to the summary provided in the ESF Recapitulative Table, the Metal Works Sector (including steel) accounts for only 2.79 percent of the assistance granted under Objective 3.

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 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 EC 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.

As a result, the Department continues to find specificity and countervailability with respect to this program and that benefits from the ESF are likely to continue or recur were the order revoked.

*Comment 3: Law 451/94 Early Retirement*

Respondent interested parties argue that the Department must find 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

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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.*, 1342, 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.

receiving benefits under this program is fraction of those receiving benefits when the subsidy rate for this program was calculated in the original investigation. They also note that the Department has recognized that benefits from this program diminish over time as reflected in administrative reviews of orders. See TKAST Case Brief at 5 citing Stainless Steel Bar preliminary determination and Stainless Steel Wire Rod from Italy: Notice of Preliminary Results of Countervailing Duty Administrative Review, 67 FR 39357 at 35359 (June 7, 2002). Rather than rely on the subsidy rate for this program from the investigation, the Department must revise its approach to consider the information provided by respondent interested parties. According to respondent interested parties, examining the ratio of current covered early retirees to those covered at the time of the investigation to the investigation subsidy rate demonstrates that benefits under this program have fallen significantly and that any likely subsidy for this program is clearly *de minimis*. See Joint Case Brief at 3-4, GOI Exhibit 1 – Annexes A and Aa, and TKAST Case Brief at 3-5.

Domestic interested parties argue that the Department properly applied the investigation rate in its preliminary results. They note that it is clear from the record of this proceeding that benefits from this program continue beyond the sunset review period. 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 1, 3-4. Finally, domestic interested parties state that the extrapolated *de minimis* subsidy rate calculated by respondent interested parties is improper and that information submitted by respondent interested parties is insufficient to calculate an accurate rate for this program. See Petitioner Rebuttal Brief at 8.

*Department Position:* Section 752(b)(3) of the Act provides 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. 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.

In this case, it is undisputed that the benefit stream 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 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 subsidy rate for this program requires identification of employees by salary type to determine the benefits received as well as data necessary to determine the denominator used for

allocation of the benefit. 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 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 Plate 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 Plate Products from Germany; Final Results (August 2, 2000).

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 6 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 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 did not comment on this program.

*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.

*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 6. 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 determinations with respect to 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*

As discussed in the "General Comments" section, respondent interested parties argue that any subsidies remaining in this case are negligible. Therefore, 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 7 and TKAST Case Brief at 7. 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>6</sup>

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	0.69
European Social Fund	<u>0.04</u>
Final Net Countervailable Subsidy Likely to Prevail	0.73

As a result of this review, including the analysis set forth in our preliminary and final results, the Department finds that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy:

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

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<sup>6</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.

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 \_\_\_\_\_ DISAGREE \_\_\_\_\_

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Joseph A. Spetrini  
Acting Assistant Secretary for  
Import Administration

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(Date)