

MEMORANDUM TO: 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 Expedited Sunset  
Review of the Countervailing Duty Order on Stainless Steel Plate  
in Coils from South Africa; Final Results

Summary:

We have analyzed the substantive responses of the interested parties participating in the sunset review of the countervailing duty order on stainless steel plate in coils (“SSPC”) from South Africa. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this expedited sunset review for which we received comments by the domestic interested parties. Respondent interested parties did not comment.

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 March 31, 1999, the Department published in the Federal Register its final determination in the countervailing duty investigation on SSPC from South Africa. See Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from South Africa, 64 FR 15553 (March 31, 1999)(“Investigation”). In the investigation, the Department found that four programs were not used; one program was not countervailable; two programs were terminated; and two programs: Section 37E of the Income Tax Act and IDC/ImportFinance (“IDC/Impofin”) Loan Guarantees<sup>1</sup> conferred countervailable subsidies. The total net countervailable subsidy applied to Columbus Joint Venture (“CJV”) under these two programs is 3.93 percent.<sup>2</sup> The net subsidy rate under Section 37E of the Income Tax Act is 3.84 percent, and 0.09 percent for the IDC/Impofin Loan Guarantees program.

On May 11, 1999, the Department amended the final determination and countervailing duty order by increasing the net countervailable subsidy with respect to CJV. The correction was the result of the estimated net countervailable subsidy rate attributable to the Section 37E program increasing from 3.84 percent to 3.86 percent. See Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Notice of Countervailing Duty Orders:Stainless Steel Plate in Coils from Belgium, Italy and South Africa, 64 FR 25288 (“Amended Final Determination and Countervailing Duty Orders”). Thus, the total net subsidy rate is 3.95 percent for Columbus Stainless and for “All Others”. In addition, in this

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<sup>1</sup> Effective January 1, 1993, the IDC became a one-third and equal partner in the Columbus Joint Venture (“CJV”)

<sup>2</sup> Columbus Stainless Steel Company is the operating division of CJV.

notice of amended final determination and countervailing duty order, the Department amended the scope of the order to reflect the International Trade Commission's ("Commission") distinction between cold-rolled and all other stainless steel plate in coils. Amended Final Determination and Countervailing Duty Orders, 64 FR 25289 at 25289.

On March 11, 2003, the Department published in the Federal Register an amendment to the countervailing duty order with respect to the scope of the order. The Department removed the original language which excluded cold-rolled stainless steel plate in coils from the scope of the order, in accordance with a Court of International Trade final decision. See Notice of Amended Countervailing Duty Orders: Certain Stainless Steel Plate in Coils from Belgium, Italy, and South Africa, 68 FR 11524 (March 11, 2003).

On April 24, 2003, the Department published in the Federal Register a notice of correction to the amended countervailing duty determination. See Certain Stainless Steel Plate in Coils From Belgium, Italy, and South Africa; Notice of Correction to the Amended Countervailing Duty Orders, 68 FR 20115 (April 24, 2003). In the notice of correction to the amended countervailing duty orders, the Department noted that it inadvertently failed to convert certain old numbers under the Harmonized Tariff System ("HTS"), to their new HTS numbers in the scope section of the orders. U.S. Customs was instructed by the Department to require cash deposits on all entries of cold-rolled stainless steel plate in coils, as well as other stainless steel plate in coils subject to the order, as a result of the Court of International Trade's December 12, 2002, opinion in Allegheny Ludlum v. United States, December 12, 2002.

There have been no administrative reviews of this countervailing duty order since the issuance of this order. The net countervailable subsidy rates have remained unchanged since the

effective date of this order, May 11, 1999.

### Background

On April 1, 2004, the Department of Commerce (“the Department”) initiated a sunset review of the countervailing duty order on SSPC from South Africa pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Initiation of Five-Year (Sunset) Reviews, 69 FR 17129 (April 1, 2004).

Section 351.218(d)(1)(i) of the Department’s regulations provides domestic interested parties opportunity to file a Notice of Intent to Participate in a Sunset Review within 15 days of initiation of a sunset review. On April 16, 2004, the Department received a Notice of Intent to Participate from Allegheny Ludlum Corporation (“Allegheny Ludlum”), North American Stainless (“NAS”), and the United Steelworkers of America, AFL-CIO/CLC (“USWA”), collectively (“domestic interested parties”), within the applicable deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. The domestic interested parties claimed interested-party status under sections 771(9)(C) and (D) of the Act, as producers of subject merchandise or a certified union whose workers are engaged in the production of the subject merchandise in the United States.

The Department’s regulations at section 351.218(d)(3)(i) provide that a complete substantive response to a Notice of Initiation must be submitted to the Department within 30 days of initiation of the sunset review. On May 3, 2004, we received a complete substantive response from domestic interested parties within the 30-day deadline specified in the Department’s regulations. However, we did not receive responses from any respondent interested parties to this proceeding as required in section 351.218(d)(3)(i) of the Department’s

regulations. As a result of receiving no responses from respondent interested parties, the Department conducted an expedited (120-day) sunset review of this order pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C) of the Department's regulations.

Discussion of the Issues:

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the countervailing duty order would likely 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 and 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 ("Commission") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the Commission information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

Below we address the substantive responses of the interested parties.

1. Continuation or Recurrence of a Countervailable Subsidy:

Interested Parties' Comments

With respect to whether a countervailable subsidy would continue or recur were the countervailing duty order to be revoked, the domestic interested parties state that revocation of the countervailing duty order on SSPC from South Africa would likely lead to unfair

subsidization by the foreign governments and material injury to the U.S. industry. See Response of domestic interested parties (“Domestic Response”), May 3, 2004, at 27.

The domestic interested parties maintain that the Government of South Africa conferred countervailable subsidies as the Department determined in the countervailing duty determination. In the investigation the Department found that Section 37E Tax Allowances and IDC/Impofin Loan Guarantees programs were countervailable and assigned Columbus Stainless and “All Others” a net countervailable subsidy rate of 3.95 percent. Id.

In addition, the domestic interested parties argue that prior to the countervailing duty order, import volumes of SSPC from South Africa peaked to 15,377 short tons in 1998. Id. at 35. Immediately following the issuance of the countervailing duty order, import volumes of SSPC from South Africa plummeted to 342 short tons, a 97.8 percent decline in relation to 1998. Id. Subject imports continued to decline and by 2003 import volumes ceased. Id. Further, the cash deposit of 3.95 percent continues to exist. Id. The domestic interested parties conclude that the imposition of the countervailing duty order has had the effect of a decline in import levels. Id. Therefore, producers and exporters of SSPC from South Africa are incapable of shipping without receiving countervailable subsidies. Id.

In sum, the domestic interested parties assert that the record of this case supports the conclusion that subsidization of SSPC from South Africa would be likely to continue or recur if the order were to be revoked.

Department’s Position:

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreement Act (“URAA”), specifically the SAA, the Department issued its Sunset Policy

Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis. See section III.A.2 of the Sunset Policy Bulletin. Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy when (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated. See section III.A.3.a of the Sunset Policy Bulletin.

The Sunset Policy Bulletin, at section III.A.3 states that, consistent with the SAA at 888, continuation of a program will be probative of the likelihood of continuation or recurrence of countervailable subsidies. Temporary suspension or partial termination of a subsidy program also will be probative of continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary. In the investigation, Section 37E Tax Allowances and IDC/Impofin Loan Guarantees programs were determined to be countervailable. In the investigation, the Department also listed several programs that were not used. As stated above, the continued use of a program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies if the order were revoked. Additionally, the presence of programs that have not been used, but that also have not been terminated, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy. Here, two programs continued to exist and other programs, although not used, are available to South African producers and exporters of SSPC.

We note that import volumes of SSPC from South Africa have declined since the issuance of this order and there have been no administrative reviews of this order, nor has any evidence been submitted to the Department demonstrating the termination of these programs that conferred countervailable subsidies. With no information to the contrary from the Government

of South Africa, we find that these two programs continue to provide countervailable subsidies to producers and exporters of SSPC from South Africa, and that it is possible that other programs may be providing benefits. Absent any argument to the contrary, the Department concludes that revocation of the order would likely lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.

Based on the continued existence of programs found to confer countervailable subsidies; and no respondent responses, the Department had determined that it is likely that subsidization will continue if the order is revoked.

## 2. Net Countervailable Subsidy:

### Interested Parties' Comments

\_\_\_\_\_The domestic interested parties suggest that the Department select the original subsidy rate of 3.95 percent as the net countervailable subsidy rate likely to prevail if the order is revoked. Id. 38-39.

### Department's Position:

In the Sunset Policy Bulletin, the Department states that, consistent with the SAA at 890, and House Report at 64, 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 such cases, the Sunset Policy Bulletin

provides for adjustments to be made to the investigation rate to reflect intervening changes in the subsidy programs originally found countervailable. Additionally, where the Department determined company-specific countervailing duty rates in the original investigation, the Department normally will report to the Commission company-specific rates from the original investigation or where no company-specific rate was determined for a company, the Department normally will provide to the Commission the country-wide or “All-Others” rate. See Policy Bulletin at section III. B.

We agree with the domestic interested parties that the net subsidy rates the Department normally will report to the Commission are the rates from the investigation. There have been no administrative reviews of this order and no respondent interested party has provided information to show that countervailable programs have been terminated. Absent evidence or argument that there have been any changes to the programs, and consistent with the Sunset Policy Bulletin, the Department shall report to the Commission the net countervailable subsidy rates as contained in the *Final Results of Review* section of this decision memorandum, i.e., the rates from the investigation.

Nature of the Subsidy:

In the Sunset Policy Bulletin, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission 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. The programs found to be conferring subsidies in SSPC from South Africa are not subsidies described in Article 3. Further, we note that Article 6.1 of the Subsidies



