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C-412-815  
Sunset Review  
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September 27, 2006

MEMORANDUM TO: James C. Leonard III  
Acting Assistant Secretary  
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for Final Results of Full  
Sunset Review of the Countervailing Duty Order on Cut-to-Length  
Carbon Steel Plate from the United Kingdom

### Summary

We have analyzed the arguments of the interested parties, as submitted in case and rebuttal briefs following the preliminary results of the full sunset review of the countervailing duty (CVD) order on cut-to-length carbon steel plate (CTL plate) from the United Kingdom (UK). In light of the parties' arguments, we have reviewed the record of this case since the investigation and have further examined the Department's regulations and practices as they apply to the facts in this case. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. We received comments from parties on the following issues:

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail

### History of the Order

On August 17, 1993, the Department of Commerce (Department) published in the Federal Register the CVD order on CTL plate from the United Kingdom. See Final Affirmative Countervailing Duty Determination: Certain Steel Products from the United Kingdom, 58 FR 37393 (July 9, 1993) (Final Determination) as amended by Countervailing Duty Order and Amendment to Final Affirmative Countervailing Duty Determination, (Order) 58 FR 43748 (August 17, 1993). The Department found six programs countervailable:

1. Government Equity Infusions into British Steel Corporation (BS plc);
2. Cancelled National Loan Fund (NLF) Debt;

3. Regional Development Grants (RDG);
4. European Regional Development Fund (ERDF) Aid;
5. European Coal and Steel Community (ECSC) Article 54 Loans/Interest Rebates;
6. Transportation assistance.

The net countervailable subsidy determined was 0.73 percent ad valorem for Glynwed Steel Limited (Glynwed)<sup>1</sup> and 12.00 percent ad valorem for “All-Other” producers/exporters including British Steel Corporation (BS plc).<sup>2</sup> See Order.

As a result of a 1995 Court of International Trade (CIT) decision, the average useful life (AUL) applied to these subsidies was increased from 15 to 18 years. See British Steel plc v. United States, 879 F. Supp 1254 (CIT 1995) (British Steel Litigation). Accordingly, the Department, applying the 18 year AUL, adjusted the rate applied to BS plc to 21.30 percent ad valorem for the six programs found to have been countervailable in the original investigation. See Final Results of Redetermination Pursuant to Court Remand on General Issue of Privatization, British Steel plc v. United States, Slip Op. 95-17 and Order (CIT Feb 9, 1995) (1995 Redetermination Final) and “Calculations supporting Final Results of Redetermination Pursuant to Court Remand on General Issues of Privatization: British Steel plc v. U.S.” (July 1, 1995), on file in the Central Records Unit, Room B-099 of the Department of Commerce building (CRU).

Since the investigation, no administrative reviews of the order have been conducted. The Department has completed one sunset review of the CVD order pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See Cut-to-Length Carbon Steel Plate from the United Kingdom; Final Results of Expedited Sunset Review of Countervailing Duty Order, 65 FR 18309 (April 7, 2000) (First Sunset Review). As a result of that review, the Department determined that revocation of the CVD order would be likely to lead to continuation or recurrence of a net countervailable subsidy of 0.73 percent ad valorem for Glynwed and 12.00 percent ad valorem for “All-Other” producers/exporters. In accordance with 19 CFR 351.218(f)(4), the Department published a notice of continuation of the order based on affirmative findings by both the Department and the International Trade Commission (ITC). See Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium,

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<sup>1</sup> On May 21, 1999, Niagara LaSalle Corp., a United States producer of cold drawn steel bars, purchased the equipment, inventory, and certain other assets of the eight steel bar businesses of Glynwed, and placed them into a newly created subsidiary, Niagara LaSalle (UK) Limited (Niagara), the current producer of the subject merchandise. See January 9, 2006 Niagara LaSalle “Final Decision in the Second 129 Proceeding – First Sunset review of the Countervailing Duty Order on Cut-to-Length Carbon Steel Plate from the United Kingdom” dated May 26, 2006 (Second 129) Response to Questions Regarding Change-in-Ownership with respect to Glynwed/Niagara Assets.

<sup>2</sup> British Steel Corporation (British Steel) was a government-owned entity, and in 1988, prior to the period of investigation (POI), it was privatized and reorganized as British Steel plc (BS plc). On September 17, 1995, the Department issued its 1995 Redetermination Final and determined the net subsidy rate for BS plc to be 21.30 percent ad valorem. BS plc has reported that in 1999, it became part of Corus after merging with Koninklijke Hoogovens.

Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, 65 FR 78469 (December 15, 2000).

Following the First Sunset Review, the Department conducted two Section 129 reviews. See Notice of Implementation Under Section 129 of the Uruguay Round Agreement Act; Countervailing Measures Concerning Certain Steel Products from the European Communities, 68 FR 64858 (November 17, 2003) (First 129) and “Final Decision in the Second 129 Proceeding – First Sunset review of the Countervailing Duty Order on Cut-to-Length Carbon Steel Plate from the United Kingdom” dated May 26, 2006 (Second 129). In the Second 129, the Department determined that the privatization of BS plc did not extinguish the non-recurring, allocable subsidies received by BS plc. However, with respect to the change in ownership of Glynwed, the Department concluded that the sale of Glynwed was an arm’s-length transaction negotiated between unrelated private parties. Thus, the Department concluded that because it was a private-to-private sale at arm’s length, and, absent evidence to the contrary, the transaction was for fair market value and the countervailable benefits attributed to Glynwed in the original investigation were extinguished by the change in ownership. See Second 129 at 15.

The Department also found in the Second 129 that because five of the six subsidy programs that were originally found to be countervailable by the Department continued to exist at the end of the sunset period, revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Additionally, we found that certain benefit streams from previously bestowed, non-recurring subsidies continued past the end of the sunset period.

### History of the Sunset Review

On November 1, 2005, the Department initiated a sunset review of the CVD order on cut-to-length carbon steel plate from the United Kingdom pursuant to section 751(c) of the Act. See Initiation of Five-year (“Sunset”) Reviews, 70 FR 65884 (November 1, 2005) (Notice of Initiation).

On December 21, 2005, the Department determined that the participation of the respondent interested parties was adequate, and that it was appropriate to conduct a full sunset review. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, Import Administration, Re: Adequacy Determination; Sunset Review of the Countervailing Duty Order on Cut-to-Length Carbon Steel Plate from the United Kingdom, on file in CRU. On February 10, 2006, the Department extended the time limit for the preliminary and final results of the sunset review of the CVD order on CTL plate from the United Kingdom (UK) to no later than July 14 and September 27, 2006, respectively. See Cut-to-Length Carbon Steel Plate from Belgium, Sweden, and the United Kingdom; Extension of Time Limits for Preliminary and Final Results of Full Five-Year (“Sunset”) Reviews of Countervailing Duty Orders, 71 FR 7017 (February 10, 2006).

On July 19, 2006, the Department published the preliminary results of the full sunset review, finding that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy. The Department requested comments from interested parties. See Preliminary Results.<sup>3</sup> Corus Group plc (Corus)<sup>4</sup> requested, and the Department granted, an extension of time for the submission of case briefs, hearing requests and rebuttal briefs. See Memorandum to All Interested Parties from Barbara E. Tillman, Office Director, Office of AD/CVD Operations 6, Re: Sunset Review of the Countervailing Duty Orders on Cut-to-length carbon steel plate from the United Kingdom; Extension of time to file case and rebuttal briefs dated July 31, 2006 and on file in CRU.

On August 4, 2006, the European Union Delegation of the European Commission (EC) submitted its brief on the Department's Preliminary Results. The Department noted that the case reference was incorrect and asked the EC to resubmit its brief with the proper case reference which it did on August 7, 2006. Additionally on August 7, 2006, the Government of the United Kingdom (UKG) and Corus submitted their briefs. These briefs were rebutted by Mittal Steel USA ISG Inc. (Mittal), Nucor Corporation, IPSCO Steel Inc., and Oregon Steel Mills (collectively, petitioners) on August 14, 2006. Niagara LaSalle (UK) Limited (Niagara)<sup>5</sup> did not submit comments on the Preliminary Results.

On August 24, 2006, representatives from the EC and UKG met with representatives from the Department to discuss petitioners' rebuttal brief. A memorandum recording this meeting was placed on the file and the EC submitted their arguments in writing on August 25, 2006. See Memorandum to The File, Re: August 24, 2006 Meeting with the Government of the United Kingdom and the European Commission, dated August 30, 2006.

On September 5 and 7, 2006, pursuant to section 351.104(a)(2) of the Department's regulations, the Department rejected the briefs of the UKG, the EC and Corus because they contained new factual information submitted after the time limit for submitting new factual information had expired. The Department removed the submissions from the record, and requested each party to refile its briefs without the new factual information. See Letters from Barbara E. Tillman, Director, Office of AD/CVD Enforcement 6 to James Hughes, First Secretary of Trade for the Embassy of the United Kingdom dated September 5, 2006; to Nikolaos Zaimis, Counselor - Head of Trade Section for the Delegation of the European Commission

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<sup>3</sup> In the Preliminary Results, with respect to the change in ownership of Glynwed Steel Limited (Glynwed), the Department concluded that the sale of Glynwed was an arm's-length transaction negotiated between unrelated private parties. Thus, the Department concluded that because it was a private-to-private sale at arm's length and, absent evidence to the contrary, the transaction was for fair market value and the countervailable benefits attributed to Glynwed in the original investigation were extinguished by the change in ownership. See Second 129 at 15.

<sup>4</sup> Corus/BS plc relationship: See footnote 2.

<sup>5</sup> Glynwed Steel Limited (Glynwed)/Niagara relationship: see footnote 1.

dated September 7, 2006; and to Gregory McCue, Esq., Representative of Corus Group plc. dated September 7, 2006, on file in CRU.

### Rejection of Untimely Submitted New Factual Information

In their September 8 and September 13, 2006 letters responding to the Department's rejection of the UKG and EC briefs, the UKG and EC argue that the Department cannot reject as untimely the information in the briefs because they did not know until the release of the Department's Preliminary Results that the Department would be relying on information and evidence submitted in the Second 129. Therefore, what the UKG and the EC characterize as the faulty factual basis for the Department's determination that benefits would continue under the RDG program, based on the record of the Second 129, only became relevant after the deadline for new factual information had expired. The UKG further argues that, in the Second 129, the Department misinterpreted the record evidence, and that the information submitted in its case brief was necessary to explain why the Department's underlying assumptions were incorrect and not supported by record evidence.

The EC notes that the issue of alleged new subsidies under the RDG program did not surface until the Second 129 was issued on May 23, 2006 (the preliminary findings of which were issued on April 21, 2006). Further, it was not until July 12, 2006, well after the March 21, 2006 deadline, that it became known that the Department would transpose its Section 129 finding into the results of this second sunset review. Therefore, the EC argues, the Department expected the UKG, EC, and Corus to have presented all the data to rebut an allegation by March 21, 2006 that they could not have known to be relevant until April 21, 2006 at the earliest. Corus argues in this situation it is uniquely appropriate to extend the deadline for the submission of new factual information, and that section 351.302(b) of the Department's regulations gives the Department broad discretion to do so. Corus notes that without giving all parties reasonable time to provide factual information, the Department runs the risk of taking factual information out of context, which Corus claims the Department is doing here.

The Department's regulations, at section 351.218(d)(3)(ii)(F), provide for the submission of "a statement regarding the likely effects of revocation . . . which must include any factual information . . . to support such statement" in a sunset review. Furthermore, section 351.301 of the Department's regulations broadly provides for the submission of factual information that a party wishes the Department to consider in a sunset review. In their December 1, 2005 substantive responses, the respondents all provided statements regarding the likely effects of revocation, which did not include sufficient factual information to support these statements. While we recognize that the DTI State Aid Guide submitted by the EC; the information regarding the results of the UKG's database search and the regional aid programs which came after the RDG program; and, the notes to the British Steel financial statement which were provided by Corus, were provided by the parties to support their contentions regarding likelihood, this factual information was not provided until the parties submitted their case briefs in August 2006.

The Notice of Initiation was published on November 1, 2005, and under the regulations, new information could be submitted until March 21, 2006. This time period affords ample opportunity to interested parties to present in writing all evidence which they consider relevant to their statements regarding likelihood. The parties' arguments that the issues at hand were not raised until after the deadline for new factual information had passed are not persuasive because, when parties claim in their substantive responses that subsidy programs have been terminated and there are no continuing benefits, the burden is on the parties to provide the evidence of termination that the Department would normally require in an administrative review or in an investigation. Cf. Section 351.526(b) and (d) of the Department's regulations. Furthermore, when respondents received the April 21, 2006 Preliminary Results, they could have requested an extension at that point of time to submit new factual information they thought relevant to our analysis for the final results. At no point before the filing of their case briefs did respondents request that the deadline for submitting new factual information be extended.

The respondents argue that Article 12.1 of the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM) requires the Department to give parties "notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question." The parties argue that by rejecting as untimely the information in the brief, the Department has effectively denied them the opportunity to submit relevant evidence. Further, the Department's action is inconsistent with notions of due process and the United States' WTO obligations. The EC argues that the Appellate Body decision in Japan Hot-Rolled Steel establishes that procedural deadlines are not absolute and do not trump the basic principles of fairness and the obligation to provide "ample opportunity" to provide evidence. In addition, the EC cites to United States – countervailing duties on certain corrosion resistant carbon steel flat products from Germany (WT/DS213, 14 May 2002) (German Steel) interim report in which the panel found that in relying solely on procedural deadlines as a reason for refusing to accept information, the Department had breached the requirement to offer parties "ample opportunity" to submit evidence.

The Department's conduct of a sunset review is guided by U.S. law, which is consistent with the United States' international obligations. Moreover, the EC's reliance on the German Steel Interim Report does not further the EC's argument. The Department notes that in the German Steel Final Report, the Panel found, and the Appellate Body sustained, the Panel's finding that it did not have the jurisdiction to consider the allegation that the Department improperly rejected information as untimely. Therefore, the comments in Interim Report were dicta, and the Final Panel report does not support the EC's argument.

Furthermore, although the Appellate Body in Japan Hot-Rolled Steel found, as the EC states, that "procedural deadlines are not absolute and do not trump basic principles of fairness and the obligation to provide 'ample opportunity' to provide the evidence," the Department finds that it has provided more than "ample opportunity" to parties to submit factual information showing the termination of these programs. All of the parties were aware of the deadlines, and

permitting respondents to submit significant new factual information for the record shortly before the issuance of the final decision impedes the Department's ability to analyze fully the information and denies the remaining parties the opportunity to comment, in a meaningful way, on the late information. See section 782(g) of the Act (before making a final decision, Department shall cease collecting information and provide a final opportunity for comment).

On December 1, 2005, the UKG, the EC and Corus submitted substantive responses to the Notice of Initiation. In its submission, the EC gave a brief response under the section asking for information pertaining to factual information showing termination of these programs. Similarly, the UKG submitted a brief narrative to show that programs had been terminated or no longer provide benefits and merely cited to the Commission Decision 2496/96 and Article 87 of the EC treaty, but provided no information concerning the termination of the programs. Thus, when the UKG and the EC submitted their responses, and certainly by March 2006, the UKG and the EC could have submitted the information regarding the results of the UKG's database search and the information regarding the regional aid programs which came after the RDG program, the complete DTI State Aid Guide and the notes to the BS plc financial statement, but chose not to do so. The conduct of the sunset review itself should have led the UKG and the EC to submit any and all documentation to support their claims that these subsidy programs have been terminated and no longer provide a benefit.

On September 11, 2006, Corus re-submitted its brief excluding the untimely new factual information. However, Corus argues that the information submitted was not new factual information and must be accepted by the Department. Corus states that even if the deadline for new factual information applies, the situation here requires that the Department extend the deadline for factual information and accept Corus' original case brief. Corus notes that it submitted the revised case brief in the event the Department continues not to consider the new information.

Corus argues that the information submitted is not "new" information because the information consisted of notes to the financial statements, excerpts of which were previously placed on the record. Corus argues that the financial statements must be read in conjunction with the accompanying notes. Corus concludes that the Department's position of accepting the excerpts and not accepting the explanatory notes would set a dangerous precedent.

Corus further argues that the financial statements are public documents available in the public realm. Finally, the preamble to the Department's regulations distinguishes between "new factual information" and "information in the public realm." Therefore, Corus argues that this information does not constitute new factual information and should be accepted by the Department. Corus notes that although the language in the preamble specifically relates to comments on verification reports, there is no basis to conclude that the Department intended to limit reliance on information in the public realm to portions of case briefs pertaining to verification reports.

While Corus complains that the notes it belatedly tried to submit explain the financial statements, Corus had ample opportunity to submit the notes within the deadline for submitting factual information. While it is true that the Department, upon a showing of good cause, may extend the deadline, Corus has not demonstrated good cause and, as noted above, the last minute submission of factual information hampers the Department's ability to complete the review within the statutory deadline and prejudices the other parties to the proceeding. Finally, with respect to Corus' argument that the Department should consider the information because it is in the public realm, the preamble language cited by Corus is not license for the Department to rely on any public (versus proprietary) information for purposes of a final determination or results of review without providing an opportunity for all interested parties to comment on it. Neither do interested parties have license to provide any such public (versus proprietary) information for the record at any time during the investigation or review.

The UKG and the EC state that the Department has an obligation to take account of their case briefs as originally filed. Based on the fact that the factual information was untimely submitted and that the UKG, the EC and Corus could have submitted this information in their substantive responses and for a significant period of time after their responses, we are not accepting the new factual information submitted by all three parties and have rejected these submissions as untimely submitted new factual information. Therefore, for purposes of these final results, we have only considered petitioners' brief and the brief refiled by Corus that removed the new factual information.

#### 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 CVD 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 any subsequent reviews, and whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect that net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM). Below we address the substantive responses and rebuttal comments of interested parties, as well as our findings pursuant to further analysis since the preliminary results.

As stated above, the Department rejected the comments submitted by the UKG, the EC and Corus because they contained untimely new factual information, in accordance with sections

351.104 and 351.301(b)(3) of the Department's regulations. Only Corus re-submitted its brief excluding the untimely new factual information. Therefore, for purposes of these final results we have considered all information submitted prior to the Preliminary Results, Corus' comments, petitioners' rebuttal comments and the concerns raised by the EC and UKG in their September 8 and 13, 2006 letters.

*1. Likelihood of Continuation or Recurrence of Countervailable Subsidy*

Interested Parties' Comments

Corus states that the Department's Preliminary Results were incorrect and argues that the Department has received consistent confirmation that the UK RDGs at issue are no longer permitted and all prior grants have been fully amortized. Thus, Corus argues that the Department should make a negative likelihood determination and revoke the CVD order on CTL Plate from the UK.

Corus argues that there is no likelihood of continuation or recurrence of any countervailable subsidy. Corus agrees with the Department's determination that three of the programs have been terminated but argues that the Department's conclusion regarding the three remaining programs, the RDG, the ERDF Aid and the ECSC Article 54 Loans/Interest Rebates, does not comport with either the information provided or the standards in the Act and the Department's Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18874 (April 16, 1998) (Sunset Policy Bulletin).

Corus states that the Department's analysis of the three programs found not to be terminated did not fully reflect the actual language of the materials provided for the record. Further, Corus argues that the Department failed to explain why the information submitted did not answer the questions before the Department. Corus also argues that the Department failed to cite to any specific record evidence and did not include an analysis memorandum comparing the terms of the three remaining programs to the EC and UK laws.

Corus argues that the Department's analysis was not based on what was likely to occur, as required by the statute; rather, Corus contends, the analysis appears to have been based on what might or could happen. Corus argues that the Department's conclusion that the evidence on the record is general as it does not specifically name the programs at issue, is flawed because the more general prohibitions must necessarily include the more specific programs; the fact that such aid is broadly prohibited necessarily means that the specific programs countervailed under this order are also prohibited. Corus argues that, at a minimum, the general prohibitions demonstrate that recurrence of these amortized subsidies is not likely.

Corus faults the Department for stating, without pointing to any evidence of actual assistance, that assistance provided under an exception to the general prohibition could be

actionable. Corus argues that it would be unsupportable in the final results for the Department to base a finding of likelihood consistent with the Act on an event that could occur, but has not occurred, and is generally prohibited from occurring.

Corus notes that the Sunset Policy Bulletin states that where the Department has found that the benefit stream will not continue beyond the end of the sunset review, the Department should find that the subsidy will not continue to exist. Corus notes that the Department has recognized that the ECSC Article 54 Loans and the ERDF aid to BS plc were fully allocated prior to the sunset review, and there is no evidence that additional disbursements have been made under these programs since the investigation. Thus, Corus argues, the Department should recognize that these programs no longer exist and that no recurrence of a countervailable subsidy is likely under these programs. Corus points to the Multisectoral Framework<sup>6</sup> which was submitted by the UKG and the EC on March 13, 2006 in the Second 129 proceedings, as specific documentation of the prohibition on the receipt by Corus of RDG from the UKG.

Corus argues that the evidence provided in this review makes it clear that any grants under the three remaining programs are prohibited and that all prior grants have been fully amortized. Corus states that there is no evidence on the record that supports the conclusion that continuation or recurrence of subsidization is likely. Corus requests that the Department recognize the information submitted and apply the “likely” standard required by the Act, and find in the final results of this sunset review that revocation of the order would not likely lead to continuation or recurrence of any countervailable subsidy.

Petitioners rebut the UKG, EC and Corus (collectively, respondents) submissions<sup>7</sup> and argue that the Department should reject respondents’ arguments, uphold the preliminary results, and continue to find that revocation of the subject CVD order would be likely to lead to continuation or recurrence of subsidization at above *de minimis* levels for all other producers/exporters, including BS plc.

Petitioners argue that certain information submitted in the UKG case brief constitutes new factual information, submitted after the deadline under section 351.301(b)(3) of the Department’s regulations, and the Department should disregard it. Petitioners also argue that the Department correctly concluded that there was insufficient evidence to show that the three remaining programs had been terminated.

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<sup>6</sup> The Multisectoral Framework was issued in 2002, and replaced the 1996 EC Steel Aid Code; it states that regional aid to the steel industry is not compatible with the common market.

<sup>7</sup> The Department finds that most of petitioners’ rebuttal arguments are relevant as rebuttal arguments to Corus’ case brief, as refiled on September 11, 2006. We have not addressed petitioners’ rebuttal arguments that relate solely to the UKG and EC briefs, which were rejected because they contained untimely filed new factual information and were not refiled.

Petitioners state that the Department should reject Corus' arguments that the Department was given sufficient evidence to find that the three remaining programs had been terminated with no residual benefit or replacement programs. Additionally, petitioners rebut the contention that the Department has changed its standard to what "might or could happen, rather than what is 'likely' to happen." Petitioners argue that the Department's finding was that three subsidy programs still exist, that these programs had provided countervailable subsidies in the past and, because they still exist, are likely to be used again in the future. Further, petitioners argue that the Department was only provided with references to general prohibitions which did not refer to specific programs and carried exceptions.

Citing to the Department's Sunset Policy Bulletin, petitioners note that as long as the subsidy program continues to exist, the Department will not consider company- or industry-specific renunciations of countervailable subsidies, by themselves, as an indication that continuation or recurrence of countervailable subsidies is unlikely. Thus, petitioners state that respondents must provide the Department with specific evidence that the programs have been terminated. Further, petitioners argue that by merely contending that the general prohibition includes the more specific by default and is "broadly encompassing," while failing to provide specific evidence to address the specific programs and the exceptions, respondents have fallen short of the evidentiary standard articulated by the Department.

Additionally, petitioners argue that the respondents have been given multiple opportunities to provide more than references to general prohibitions to demonstrate that these specific programs have been terminated, and has repeatedly failed to do so. Petitioners note that in the Second 129, the Department explicitly requested that the UKG provide evidence that the programs had been terminated, but the UKG responded only with references to the 1996 EC Steel Aid Code and its memoranda and advisories to its agencies providing guidance on compliance. Petitioners claim that in this review, respondents again failed to provide adequate evidence demonstrating that the programs have been terminated with no residual benefits or replacement programs.

Petitioners rebut respondents' claims that the UK RDG scheme was terminated by noting that no evidence has been provided showing that in the absence of an order, Corus would be prevented from attempting to take advantage of the RDG programs in the future. Because we rejected the UKG's case brief, we are not addressing petitioners' comment in response to that submission. Petitioners made additional arguments which have been rendered moot as a result of Corus' re-submission and the Department's rejection of Corus' original submission.

Moreover, petitioners note that British steel producers took advantage of subsidies when there was no order in place; thus, petitioners state that the Department must address whether Corus would be likely to do so again if the order were revoked. Petitioners state that if respondents are not able to show that the general prohibitions include the specific programs and that the exceptions do not and cannot apply in the absence of any order, the Department may rightly conclude that the programs still exist and it is likely that benefits would flow in the future.

## Department's Position

The Department finds that revocation of the order would not likely lead to continuation or recurrence of a countervailable subsidy to the subject merchandise. 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 changes in the programs which gave rise to the net countervailable subsidies determined in the investigation and subsequent reviews has occurred that is likely to affect that net countervailable subsidy. In the instant case, there have not been any administrative reviews of the order.

In conducting this sunset review, the Department has examined the record of the original investigation as amended by British Steel Litigation, as well as the records developed in the First Sunset Review, the First 129, and the Second 129, all of which are available in CRU. We concluded in the Preliminary Results that three of the six programs originally found to be countervailable had been terminated. With respect to the three remaining programs, the RDG, the ERDF Aid and the ECSC Article 54 Loans/Interest Rebates, we found insufficient evidence that these programs had been terminated with no residual benefit and that therefore subsidization would be likely to continue or recur. In light of Corus' arguments, the Department has examined the record and is finding, as discussed below, that the UK RDG program has been terminated with no residual benefits.

In its December 1, 2005 substantive response to the Initiation of Sunset Review, the EC provided Commission Decision 2496/96 of 18 December 1996, which states that "any aid in any form whatsoever and whether specific or non-specific which Member States might grant to their steel industries is prohibited pursuant to Article 4(c) of the Treaty." This, in itself, does not refer to the specific programs countervailed under this order. The UKG, in its response to the Notice of Initiation, reported that Commission Decision 2496/96 of 18 December 1996 was updated in 2002 as the Multisectoral Framework following the expiration of the ECSC Treaty, which with certain exceptions prohibits the granting of aid to the steel industry. We found in the Second 129 that the exceptions in the 2002 Multisectoral Framework left the possibility for the UK to grant RDG to the steel industry. However, on March 13, 2006, in the Second 129 proceeding, the UKG submitted excerpts of the Department of Trade and Industry (DTI) State Aid Guide which was published in September 2005. Because this document was not in effect during the first sunset review period, it did not apply to our analysis in the Second 129. However, in reviewing the DTI State Aid Guide, the Department finds that the prohibition on regional aid to the steel sector is absolute. Therefore, for these final results we find that there is no likelihood that subsidization will continue or recur under the RDG.

The Department recognizes that the regulations of the European Commission (Commission) may apply to all Member States, but until the Department is given affirmative evidence that a Member State has implemented these Commission regulations or that the regulations are automatically, directly binding upon the Member State, we cannot rely on

Commission prohibitions regarding state aid as sufficient evidence of termination of a specific program or programs, particularly when there are exceptions to the prohibition. While the Department recognizes that a Member State government might not enact a *statutory* change to prohibit aid under a given program to a specific industry to implement the Commission regulation, we must have some affirmative evidence that the Member State government has implemented the prohibition. Here, we find the guidelines officially issued by the UKG Department of Trade and Industry constitute such evidence. The guidelines clearly state under the Regional Aid section: exceptions and special sectoral rules that “{s}pecial sectoral rules apply to...the steel industry (no regional aid is allowed to the steel industry).” In addition, under the State Aid section, the guidelines state “{u}nder the Commission’s 2002 Communication on a multilateral framework on regional aid for large investment projects, no investment by the steel industry is eligible for regional investment state aid during the life of the framework.” See DTI State Aid Guide: Guidance for state aid practitioners, dated September 2005, at 29 and 47 (emphasis in original).

In the Preliminary Results, we analyzed the Commission’s state aid prohibitions as a whole and even though the 2002 Multisectoral Framework states that state aid is prohibited to the steel sector, we noted that there were three exceptions. It was our view in the Preliminary Results that these exceptions could allow governments to provide aid to the steel industry through any program, including the RDG. However, after reviewing Corus’ comments and reexamining the record, we find that the Guidelines issued by the DTI in the State Aid Guide make clear that no aid of any kind can be provided to the steel industry under programs like the RDG program, *i.e.* regional aid. Thus, we find that this program has been terminated in accordance with section 351.526(b) of the Department’s regulations. Therefore, for these final results, we find that there is no likelihood that subsidization will continue or recur under the UK RDG program.

Finally, in light of the change in our likelihood determination for the RDG program, we have re-examined our preliminary findings for the ERDF Aid and the ECSC Article 54 Loans/Interest Rebates programs, the only remaining subsidies that provide a basis for our likelihood determination. Section 752(b)(4)(A) of the Act states that a “net countervailable subsidy. . . that is zero or *de minimis* shall not by itself require the administering authority to determine that revocation of a countervailing duty order. . . would not be likely to lead to continuation or recurrence of a countervailable subsidy.” However, as stated in the Statement of Administrative Action, “if the combined benefits of all programs considered by Commerce for purposes of its likelihood determination have never been above *de minimis* at any time the order was in effect, and if there is no likelihood that the combined benefits of such programs would be above *de minimis* in the event of revocation or termination, Commerce should determine that there is no likelihood of continuation or recurrence of countervailable subsidies.” See the Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1, at 892 (1994) (SAA).

As we noted in the Preliminary Results, the combined benefits from those programs have never been above zero. We determine that there is no evidence on the record to indicate that the

subsidy rate would be above *de minimis* in the event of revocation or termination. Thus, we find that there would be no likelihood of continuation or recurrence of a countervailable subsidy were the order to be revoked. See Final Results of Full Sunset Review: Brass Sheet and Strip from France, 71 FR 10651 (March 2, 2006), and accompanying Issues and Decisions Memorandum.

## 2. *Net Countervailable Subsidy Likely to Prevail*

### Interested Parties' Comments

Corus argues that the net countervailable subsidy likely to prevail is zero for all programs. Corus states that the Department correctly determined that the rate likely to prevail for the ECSC Article 54 loans and interest rebates and the ERDF aid to BS plc is zero. However, Corus argues that the Department's statement that it found evidence that indicates amounts under the RDG program were released to BS plc in 1996-98 misapplies the relevant analysis and the facts to which the Department refers.

Further, Corus notes that the Sunset Policy Bulletin makes clear that the appropriate analysis is whether the benefit stream, as defined by the Department, will continue beyond the end of the sunset review. Thus, Corus argues that, using either a 15- or an 18- year amortization period, the last RDG received in 1985/86 has been fully amortized at this time. Additionally, Corus argues that the record in this case, including materials submitted by the EC, the UKG and Corus, demonstrates that new grants are prohibited. Therefore, Corus argues that the only logical conclusion for the Department is that evidence indicating the release of grants to BS plc in 1996-98 was not new grants, but, rather continued recordation of the same grant from 1985/86. Corus also argues that even if BS plc amortized these grants on its books for a period longer than that defined by the Department, the Department has explicitly stated that it is the benefit stream as defined by the Department, not the parties, that will control.

Corus argues that the Department's conclusion that BS plc's 1997-98 Annual Report provided an indication that amounts under the RDG program were released to BS plc in 1996-1998 is incorrect, and the Department cannot use the Annual Report as the basis to find that new distributions were made to BS plc, especially when, as Corus argues, all the information on the record demonstrates that no such grants were permitted. Corus, citing to multiple British Steel Annual Reports from 1985-86, 1986-87, 1987-88 and 1988-89, which are already on the record, states that the Annual Reports explain that Corus' books will apply 25 years as the estimated useful life of plant and machinery for iron and steel making. Therefore, Corus argues that these notes demonstrate that British Steel Annual Reports would have included this grant because the grant was being amortized over a 25-year period rather than the 15- or 18- year period that the Department is using. Thus, Corus argues that all of the evidence before the Department confirms that no new grant was or could have been given and that, under the Department's shorter amortization period, the actual grant is fully amortized.

Corus concludes that the privatization of British Steel was an arm's-length transaction at fair-market value and that the privatization extinguished any continuing benefit from past subsidies. On that basis, Corus argues this order should be revoked. In addition, Corus argues that in this sunset review the Department has received repeated and consistent confirmation that the programs at issue in the original investigation are no longer permitted and all prior grants have now been fully amortized under the period relevant to the Department's analysis. Accordingly, Corus argues that under the likely standard set forth in the Act, the Department should find in the final results of this sunset review that recurrence of these long-ago, now prohibited, fully amortized grants is not likely and, thus that the rate likely to prevail is zero for all programs and this order should be revoked.

Petitioners argue that the evidence suggests that BS plc received aid, the benefits of which still continue. Petitioners rebut respondents' argument that the RDG funds that appear in BS plc's 1997-98 Annual Report must have been grants distributed to British Steel in 1985-86 by stating that no evidence has been provided by Corus, its predecessor British Steel or the UKG to show that these amounts relate to grants that were actually given in 1985-86. Petitioners further rebut Corus' explanation that the grants only appear in the BS plc Annual Reports because they were amortized over a 25-year period, which is ten years longer than the 15-year period used by the Department, by stating that mere assertions do not constitute evidence. Petitioners challenge Corus' statement that the only logical conclusion is that the entries are a continued recordation of the same grant from 1985-86 because materials submitted demonstrate that new grants were prohibited beginning in 1996. According to petitioners, it is possible that aid to British Steel *could* have been granted in 1995 and, given the 15-year amortization period, would be outstanding during this sunset review period. Thus, petitioners agree with the Department's reliance on the investigation rate as the rate likely to prevail for the RDG program.

Petitioners state that without complete and conclusive evidence of the programs' termination, the Department's reliance on the Annual Report is reasonable and not in any way inconsistent with other decisions in this proceeding or in any other case. In conclusion, petitioners state that the Department should uphold its preliminary results with respect to the rate likely to prevail and reject respondents' arguments to the contrary.

#### Department's Position

As noted above, since the issuance of the order, the Department has conducted a second Section 129 review of the First Sunset Review, in which we were able to review these six countervailable programs in light of the privatization of British Steel and the change in ownership of Glynwed. However, the Department has not conducted any administrative reviews of the CVD order. In conducting this sunset review, the Department has examined the record of the original investigation as amended by British Steel Litigation, as well as the records developed in the First Sunset Review, the First 129, and the Second 129, all of which are available in CRU.

The Department normally will provide to the ITC the net countervailable subsidy that was determined in the original investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. However, this rate may not always be the most appropriate rate. In the instant case, as we recognized in the Preliminary Results, three programs previously found to be countervailable have been terminated. Thus, we excluded these three programs from our calculation of the net countervailable subsidy likely to prevail.

For one of the remaining programs, the UK RDG program, the Department now determines that there is no likelihood that subsidization will continue or recur. While petitioners maintain that, as we found in the Preliminary Results, it is possible that the entry regarding regional development grants in the 1996-98 BS plc Annual Report relates to a grant issued in 1995, we find the notation is more consistent with the evidence of a 25-year amortization period as indicated in several BS plc Annual Reports that are on the record. See e.g., BS plc Annual Reports from 1985-86, 1986-87, 1987-88 and 1988-89 submitted as Exhibits 4-6 in Corus' September 11, 2006 refiled brief, available in CRU. Thus, although we determined that privatization did not extinguish any non-recurring benefits in the Second 129, we find that the totality of the evidence on the record supports a finding that there have been no new UK RDGs provided and that the benefit stream from the previously-bestowed grants have expired.

Because we have found the UK RDG program to be terminated with no residual benefits and since, as described in *Comment 1* above, the total combined subsidy for the remaining two programs has never been above zero, and is not likely to be above zero, we have found that there is no likelihood of continuation or recurrence of countervailable subsidies. Therefore, we find that the net subsidy likely to prevail if the order were revoked is zero.

### Final Results of Review

As a result of this sunset review, the Department determines that revocation of the CVD order would not be likely to lead to continuation or recurrence of a countervailable subsidy for the reasons set forth above. As a result, we are revoking this order effective December 15, 2005, the fifth anniversary of the date of publication in the Federal Register of the notice of continuation. See Notice of Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, 65 FR 78469 (December 15, 2000). Further, we find that the net subsidy likely to prevail if the order were revoked is zero.

We will notify the ITC of these results. Because we have determined that revocation is not likely to result in the continuation or recurrence of a countervailing subsidy, we are not providing the ITC with a rate likely to prevail or information concerning the nature of the subsidy.

Recommendation

Based on our examination of the record and our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

AGREE \_\_\_\_\_

DISAGREE \_\_\_\_\_

\_\_\_\_\_  
James C. Leonard III  
Acting Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date