

DATE March 9, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for Final Results of
Expedited Sunset Review of the Countervailing Duty Order
on Carbazole Violet Pigment 23 from India.

Summary

We have analyzed the substantive response of the interested parties in the first sunset review of the countervailing duty (CVD) order covering carbazole violet pigment 23 (CVP-23) from India.¹ We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response.

History of the Order

On November 17, 2004, the Department of Commerce (the Department) published in the Federal Register its final affirmative CVD determination on CVP-23 from India. See Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 From India, 69 FR 67321 (November 17, 2004) (Final Determination). In the final determination of the investigation, the Department found net countervailable subsidy rates of 17.57 percent ad valorem for Alpanil Industries Ltd. (Alpanil), 17.33 percent ad valorem for Pidilite Industries Ltd. (Pidilite), 33.61 percent ad valorem for AMI Pigments Pvt. Ltd. (AMI), and 20.55 percent ad valorem for “all others.” The rates are based on the following programs found to be countervailable.

1. Government of India (GOI) Programs
 - a. Pre-Shipment Export Financing

¹ We only received comments from domestic interested parties and Petitioners in the original investigation, Nation Ford Chemical Company and Sun Chemical Corporation (collectively, domestic interested parties or Petitioners).

- b. Duty Entitlement Passbook Scheme
 - c. Income Tax Exemption Scheme, Section 80HHC
 - d. Export Promotion Capital Goods Scheme
2. State Programs
- a. State of Gujarat Sales Tax Incentives Scheme
 - b. State of Maharashtra Sales Tax Incentives Scheme

See Final Determination.² Based on the above-referenced CVD programs found to be countervailable in the investigation, and an affirmative determination of injury by the International Trade Commission (ITC), the Department published the CVD order on December 29, 2004. See Investigations Nos. 701-TA-437 and 731-TA-1060 and 1061 (Final), Carbazole Violet Pigment 23 From China and India, 69 FR 77776 (December 28, 2004), and Notice of Countervailing Duty Order: Carbazole Violet Pigment 23 from India, 69 FR 77995 (December 29, 2004).

The Department initiated administrative reviews on CVP-23 from India covering the period January 1, 2005 through December 31, 2005, and January 1, 2006 through December 31, 2006. These reviews were subsequently rescinded. See Carbazole Violet Pigment 23 from India: Notice of Rescission of Countervailing Duty Administrative Review, 72 FR 15113 (March 30, 2007), and Carbazole Violet Pigment 23 from India: Rescission of Countervailing Duty Administrative Review, 73 FR 44704 (July 31, 2008), respectively. The administrative review covering January 1, 2007 through December 31, 2007 is currently pending. See Carbazole Violet Pigment 23 From India: Preliminary Results of Countervailing Duty Administrative Review, 75 FR 977 (January 7, 2010). Final results of the review are scheduled to be issued on May 14, 2010. The administrative review covering January 1, 2008 through December 31, 2008 has just been initiated. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Initiation of Administrative Review, 75 FR 4770 (January 29, 2010). There have been no scope rulings, changed circumstances reviews, or completed administrative reviews of this 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 order would be likely to lead to the continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy rate. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy rate likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department

² In the final determination, the Department found that the GOI Program, Exemption of Export Credit from Interest Taxes, was terminated. We also determined that one program under investigation was not countervailable, and that six others were not used.

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 WTO Agreement on Subsidies and Countervailing Measures (SCM agreement).

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

In their substantive response, Petitioners argue that revocation of the order will lead to material injury to the domestic industry. Petitioners note that, in the investigation, the Department found net countervailable subsidy rates for individual companies, and for “all other” Indian producers/exporters of the subject merchandise. They further note that no administrative reviews of this order have been completed. Petitioners, referring to submitted data available on the ITC website, claim that there has been a “considerable” decline of CVP-23 imports to the United States since the order was imposed. They also point to information showing the continued existence of CVP-23 production capacity in India. See Petitioners’ December 2, 2009 substantive response.

Department's Position

The Department agrees with Petitioners that there is no evidence on the record of this case that supports concluding changes have occurred in Indian subsidy programs. The record in this proceeding indicates that the subsidy programs found countervailable during the investigation continue to exist. Neither the GOI nor any other Indian producer or exporter of CVP-23 has provided the Department information to support finding any termination or change in India’s subsidy programs in this case. As noted above, the Department normally will find that revocation of the order is likely to lead to the continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated. Therefore, based on the lack of evidence in this proceeding, the Department finds that revocation of the order is likely to lead to the continuation or recurrence of a countervailable subsidy.

2. Net Countervailable Subsidy likely to Prevail

Interested Parties' Comments

Petitioners argue that without completed administrative reviews of this order, the Department should report to the ITC the net countervailable subsidy rates determined in the investigation.

Department's Position

The Department normally will select the rates from the investigation as the net countervailable subsidy rates likely to prevail if the order were to be revoked, because those are the only rates that reflect the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. See SAA at 890. However, these net subsidy rates may not be the most appropriate rates if, for example, the rates were derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rates ignore a program found to be countervailable in a subsequent administrative review. See, e.g., Final Results of Expedited Sunset Reviews of the Countervailing Duty Orders:

Pure Magnesium and Alloy Magnesium from Canada, 70 FR 67140 (November 4, 2005), and accompanying Issues and Decision Memorandum at 12-13. However, there have been no completed administrative reviews of this order. Although there are two administrative reviews currently ongoing, final results have not yet been issued in either review. Furthermore, respondent interested parties chose not to participate in the sunset review and there is no new information or evidence presented in this review indicating a change in India's subsidy programs.

Based on a lack of information in this proceeding, and consistent with the Department's regulations on the conduct of the five-year (sunset) reviews, we find that the net countervailing duty rates from the investigation are the rates likely to prevail if the order were to be revoked. Thus, the Department will provide the ITC with the rates that were determined in the investigation as the rates likely to prevail without the order in place.

Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidies, and whether the subsidies are subsidies as described in Article 3 or Article 6.1 of the SCM agreement.³

Article 3.1

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

1. Pre-Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment export financing, or "packing credits," to exporters in the form of pre-shipment loans or credit lines. Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates capped by the RBI. This program was determined to be countervailable through adverse inferences in the Final Determination, and the Department did not, therefore, directly address the question of whether it was an export subsidy in that determination. The Department, however, found this program to be contingent on exports under section 771(5A)(B) of the Act in the preliminary determination and in other proceedings. See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Carbazole Violet Pigment 23 from India, 69 FR 22763 (April 27, 2004) (Preliminary Determination) and Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India, 67 FR 34905 (May 16, 2002), respectively.

³ We note that on January 1, 2000, Article 6.1 of the SCM Agreement expired.

2. Duty Entitlement Passbook Scheme (DEPS)

India's DEPS was enacted on April 1, 1997, as a successor to the Passbook Scheme (PBS). As with PBS, the DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post-export basis, provided that the GOI has established a standard input/output norm (SION) for the exported product. DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an exported product. DEPS credits are valid for twelve months and are transferable after the foreign exchange is realized from the export sales on which the DEPS credits are earned. This program was found to be contingent on exports under section 771(5A)(B) of the Act. See Final Determination.

3. Income Tax Exemption Scheme, Section 80HHC

Producers of subject merchandise may receive countervailable subsidies in the form of tax deductions under section 80HHC of India's Income Tax Act. Eligible companies could claim full income tax exemptions from profits derived from their export sales. Tax exemptions under section 80HHC can be claimed by any exporter. This program was found to be contingent on exports under section 771(5A)(B) of the Act. See Final Determination.

4. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to eight times the CIF value of capital goods to be fulfilled over a period of time. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest. This program was determined to be countervailable through adverse inferences in the Final Determination, and the Department, therefore, did not directly address the question of whether it was an export subsidy in that determination. The Department, however, has found this program to be contingent on export performance under section 771(5A)(B) of the Act in other proceedings. See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 49635 (September 28, 2001).

Article 6.1

In the instant review, there could be programs that fall within the meaning of Article 6.1 of the SCM agreement if the total ad valorem subsidization of a product exceeds five percent. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness, grants to cover debt repayment, or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review for the

Department to make such a determination. We, however, are providing the ITC with the following program descriptions.

1. State of Gujarat (SOG) Sales Tax Incentives Scheme

Under the 1995 Industrial Policy of Gujarat, companies located in specific areas of Gujarat are exempted from payment of sales tax on the purchase of raw materials, consumable stores, packing materials, and processing materials. Other available benefits include exemption or deferment from sales tax and turnover tax on the sale of intermediate products, by-products, and scrap. After the deferral period expires, the companies are required to submit the deferred sales taxes to the state government in equal installments over six years.

2. State of Maharashtra (SOM) Sales Tax Incentives Scheme

Maharashtra grants sales tax incentives for manufacturers to invest in designated geographical areas of Maharashtra. The incentives take the form of either an exemption or deferral of state sales taxes. Through this incentive, companies are exempted from paying state sales taxes on purchases, and collecting sales taxes on sales; as an alternative, they are allowed to defer submitting sales taxes collected on sales to the state government. After the deferral period expires, the companies are required to submit the deferred sales taxes in equal installments over five to six years. No interest is charged on the deferred taxes. The total amount of the sales tax incentive either exempted or deferred is based on the size of the capital investment, and the area in which the capital is invested.

Recommendation

Based on our analysis of the substantive response 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 _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date