

May 31, 2011

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

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Expedited Sunset Review of the Countervailing Duty Order on Sulfanilic Acid from India

SUBJECT: Issues and Decision Memorandum for Final Results

Summary

We have analyzed the substantive response of National Ford Chemical Company (“NFC”), the only interested party participating in the third sunset review of the countervailing duty (“CVD”) order covering sulfanilic acid from India. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

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

History of the Order

The Department of Commerce (“the Department”) published its final affirmative CVD determination on sulfanilic acid from India in the Federal Register on January 8, 1993. See Final Affirmative Countervailing Duty Determination; Sulfanilic Acid From India, 58 FR 3259 (January 8, 1993)(“Final Determination”). In the final determination, the Department found an estimated net subsidy for all manufacturers/producers/exporters of sulfanilic acid from India of 43.71 percent ad valorem based on four programs: (1) 2.17 percent under the Preferential Export Financing Through Packing Credits; (2) 1.69 percent under the Preferential Post-Shipment Financing; (3) 6.13 percent under the Import Tax Deduction for Exporters (Section 80HHC); and (4) 33.72 percent under the Import Duty Exemptions Available Through Advance Licenses. Receipt of benefits under each of these programs was contingent upon exports.

On March 2, 1993, the Department issued the CVD order, utilizing the subsidy rates found

in the original investigation. See Countervailing Duty Order: Sulfanilic Acid From India, 58 FR 12026 (March 2, 1993). Since the issuance of the order, the Department has not conducted an administrative review of this order.

On June 8, 2000, after the conclusion of the first sunset review, the Department published a notice of continuation of the CVD order on sulfanilic acid from India. See Continuation of Antidumping Duty Orders: Sulfanilic Acid From People's Republic of China and India; and Continuation of Countervailing Duty Order: Sulfanilic Acid From India, 65 FR 36404 (June 8, 2000), as corrected, Correction to the Notices of Continuation of Antidumping Duty Orders: Sulfanilic Acid From People's Republic of China and India; and Continuation of Countervailing Duty Order: Sulfanilic Acid From India, 65 FR 37758 (June 16, 2000).

On May 11, 2006, after the conclusion of the second sunset review, the Department published a notice of continuation of the CVD order on sulfanilic acid from India. See Continuation of Antidumping and Countervailing Duty Orders: Sulfanilic Acid from the People's Republic of China and India, 71 FR 27449 (May 11, 2006).

No additional reviews have been conducted.

Discussion of 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 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 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. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the U.S. 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 (“SCM”).

Below we address NFC’s substantive response.

1. Continuation or Recurrence of a Countervailable Subsidy

Interested Party Comments

As noted above, NFC is the only interested party participating in this review. In its substantive response, NFC argues that revocation of the CVD order on sulfanilic acid from India would result in the continuation or recurrence of a countervailable subsidy. NFC notes that there have been no administrative reviews that were not terminated prior to completion, and argues that this fact signifies that no interested parties from India have brought to the Department’s attention

any changes made to India's subsidy programs. Pointing out that no other evidence has been submitted to the Department purporting to establish a change in India's subsidy programs, NFC argues that the Department should conclude that India's subsidy programs have not changed and continue to exist. NFC also notes that imports of sulfanilic acid from India essentially have ceased since the issuance of the order, which NFC claims is highly probative of the likelihood of the necessity for subsidization to enable exportation to the United States. Therefore, NFC concludes, revocation of the CVD order would lead to material injury to the domestic sulfanilic acid industry. See NFC April 29, 2011, submission at 7 - 10.

Department's Position

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 have also not been terminated, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.

In the instant review, the Department did not receive a response from the Government of India ("GOI") or from any other respondent interested party. Absent argument or evidence to the contrary, we find that countervailable programs continue to exist and be used. Therefore, because countervailable programs continue to exist and be used, and the GOI and other respondent interested parties did not participate in this review, 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.

2. Net Countervailable Subsidy Likely to Prevail

Interested Party Comments

NFC asserts that the Department normally will select the rate from the investigation as the net countervailable subsidy likely to prevail if the order was 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. In this case, absent any administrative reviews since the investigation, NFC argues that the Department should select the rate from the investigation and the first and second sunset reviews as the rate which would result from revocation of the order. Specifically, NFC argues the estimated subsidy rate likely to prevail for all Indian manufacturers, producers, and exporters is 43.71 percent. See NFC April 19, 2011, submission at 9 - 10.

Department's Position

As noted above, the Department has not conducted an administrative review of this order. Thus, we have never found that substantive changes have been made to any of the Indian subsidy programs. Therefore, absent any argument or evidence to the contrary, the Department determines that the net countervailable subsidy rate likely to prevail in the event of revocation of the order would be 43.71 percent for all producers and exporters of the subject merchandise from India, the rate from the investigation and the prior sunset reviews.

3. 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 subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the SCM. We note that Article 6.1 of the SCM expired effective January 1, 2000. NFC did not address this issue in its substantive response of April 19, 2011.

Consistent with our findings in the Final Determination and because the receipt of benefits provided by the GOI under all four of the programs are contingent on exports, these programs fall within the definition of an export subsidy under Article 3.1(a) of the SCM. There are no programs that fall within Articles 3.1(b) or 6.1 of the SCM. The Department is providing the ITC with the following program descriptions.

1. *Preferential Export Financing Through Packing Credits*: The Reserve Bank of India ("RBI"), through commercial banks, provides "packing" credits or pre-shipment loans to exporters. With these pre-shipment loans, exporters may purchase raw materials to produce goods for export based on the presentation of a confirmed purchase order. In general, the pre-shipment loans are granted for a period of up to 180 days. Because only exporters are eligible for these pre-shipment loans, they are countervailable to the extent that they are provided at preferential rates.
2. *Preferential Post-Shipment Financing*: The RBI, through commercial banks, provides post-shipment financing loans to exporters. The purpose of post-shipment financing is to enable exporters to extend favorable payment terms such as deferred payment to the foreign purchaser. Post-shipment financing loans may not exceed a period of 180 days. Because only exporters are eligible for the post-shipment loans, they are countervailable to the extent that they are provided at preferential interest rates.
3. *Import Tax Deduction for Exporters (Section 80HHC)*: For tax returns filed during the period of investigation, the GOI allowed exporters to claim a tax deduction related to their export sales. This tax deduction was calculated by dividing export sales by total sales and then multiplying the resulting figure by the exporter's profit as shown in the tax return. This amount is then deducted from taxable profits. Because this program is only available to exporters, we determine it to be countervailable.
4. *Import Duty Exemptions Available Through Advance Licenses*: Advance licenses are available to exporters, to enable them to import raw material inputs used in the production of exports duty-free. Recipients of advance licenses are obligated under the terms of the license to export the products produced with the duty-free imports. The amount of imports allowed under an advance license is closely linked to the amount of exports to be produced. We considered the use of the advance licenses to be equivalent to a duty drawback program insofar as customs duties are not paid on physically incorporated, imported products used in the production of exports. However, where imported inputs are not physically incorporated into the exported product, we considered the duty savings

afforded by the advance license to be a countervailable export subsidy.

Final Results of Review

We determine that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

<u>Manufacturer/Exporter</u>	<u>Net Countervailable Subsidy (percent)</u>
All Manufacturers/Producers/Exporters	47.31

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, and notify the ITC of our determination.

AGREE: _____

DISAGREE: _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

(Date)