




C-533-825
Sunset Review
Public Document
O6: SMC

July 30, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

RE: Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order on Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India

SUMMARY

We have analyzed the responses of interested parties in the expedited sunset review of the countervailing duty (CVD) order on polyethylene terephthalate (PET) film, sheet, and strip (PET Film) from India. 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 that we address in this expedited sunset review:

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

On July 1, 2002, the Department of Commerce (the Department) published, in the Federal Register, the CVD order on PET film from India.¹ In the final determination² of the investigation, covering the period April 1, 2000 through March 31, 2001, the Department found an estimated net countervailable subsidy rate of 19.42 percent for Ester Industries Ltd. (Ester), 25.47 percent for Garware Polyester Ltd. (Garware), 20.12 percent for Polyplex Corporation Ltd. (Polyplex), and 21.59 percent for "all others," based on the following countervailable programs:

¹ See Notice of Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India, 67 FR 44179 (July 1, 2002) (Order).

² See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India, 67 FR 34905 (May 16, 2002) (Final Determination).



1. Pre-Shipment and Post-Shipment Export Financing (Government of India (GOI));
2. Duty Entitlement Passbook Scheme (DEPS) (GOI);
3. Special Import Licenses (SILs) (GOI);
4. Export Promotion Capital Goods Scheme (EPCGS) (GOI);
5. State Sales Tax Incentive Scheme (State of Maharashtra (SOM) and State of Uttar Pradesh (SUP));
6. Electricity Duty Exemption Scheme (SOM);
7. Capital Incentive Scheme (SOM); and
8. Waiving of Interest on Loan by SICOM Limited (SOM).

These rates were adjusted for cash deposit purposes to reflect the Department's determination that one program, the SILs, was terminated. The adjusted rates were 18.43 percent for Ester, 24.48 percent for Garware, 18.66 percent for Polyplex, and 20.40 percent for "all others."³

The following programs were determined to be not used: Exemption of Export Credit from Interest Taxes, Income Tax Exemption Scheme (Sections 10A, 10B, and 80HHC), Loan Guarantees from the GOI, and Benefits for Export Processing Zones/Export Oriented Units (EOUs). The Advance License Program (ALP) was determined not to confer subsidies in the investigation.

In the first sunset review on imports of PET film from India, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("Act"), the Department found that revocation of the Order would be likely to lead to continuation or recurrence of subsidization.⁴ In providing to the International Trade Commission ("ITC") the subsidy rate likely to prevail if the Order were revoked, we first added to the net countervailable subsidy rate determined in the original investigation, the countervailable subsidy rates from the additional subsidy programs found countervailable during the first through third administrative reviews: Duty Free Replenishment Certificate (DFRC),⁵ ALP, EOU, and Capital Subsidy.⁶ The rates for these programs were added to each company's rate and to the all others rate, consistent with the Department's practice.⁷ Based on findings in the investigation and administrative reviews, we also determined that the SILs program had been terminated with no residual benefits past 2006, and found no evidence that this program had been replaced with any new program that

³ See Final Determination, 67 FR at 34906.

⁴ See Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Expedited Five-Year (Sunset) Review of the Countervailing Duty Order, 72 FR 57300 (October 9, 2007) (First Sunset Review) and accompanying Issues and Decision Memorandum.

⁵ This program was introduced in 2001 and was not examined in the investigation.

⁶ See id., First Sunset Review, Issues and Decision Memorandum, at 7. An additional program, the 80 HHC program, was found to be used in the first administrative review. However, in the third administrative review, this program was found to be terminated effective March 31, 2004. See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 72 FR 6530 (February 12, 2007) (Third Admin. Review).

⁷ See, e.g., Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, and Thailand: Final Results of Expedited Five-Year (Sunset) Reviews of the Countervailing Duty Orders, 71 FR 70960 (December 7, 2006), and accompanying Issues and Decision Memorandum at "Net Countervailable Subsidy Likely to Prevail."

was not also reflected in our likelihood findings.⁸ Accordingly, we subtracted the rate calculated for this terminated program from the adjusted company-specific rates and the adjusted all others rate.⁹ On May 8, 2008, the Department published the notice of continuation of the Order.¹⁰

The Department conducted a fourth administrative review covering the period January 1, 2005 through December 31, 2005. In the final results of review, the Department calculated a net countervailable subsidy rate of 10.37 percent for Garware and 33.94 percent for MTZ Polyfilms Ltd. (MTZ).¹¹ These rates were based on the following countervailable programs: Pre-Shipment and Post-Shipment Export Financing Program, ALP, EPCGS, DEPS, Union Territories Central Sales Tax (CST) Program, State Sales Tax Incentive Programs (SOM and State of Gujarat (SOG)), and Electricity Duty Exemption (SOM).¹²

The fifth administrative review covered the period January 1, 2006 through December 31, 2006, and involved MTZ. In the final results of review, the Department calculated a net countervailable subsidy rate of 65.59 percent for MTZ.¹³ This rate was based on the following countervailable programs: Pre- and Post-Shipment Export Financing Program, EPCGS, ALP, DEPS, Union Territories CST Program, and State Sales Tax Incentive Programs (SOG).¹⁴

The Department conducted a sixth administrative review covering the period January 1, 2007 through December 31, 2007.¹⁵ In the final results of review, the Department calculated a net countervailable subsidy rate of 7.17 percent for Jindal Poly Films Limited (Jindal).¹⁶ This rate was based on the following countervailable programs: Pre- and Post-Shipment Export Financing, ALP, EPCGS, EOU, and State and Union Territory Sales Tax Incentive Programs.¹⁷

⁸ See First Sunset Review, Issues and Decision Memorandum, at 8.

⁹ Because the 80HHC program was identified as a countervailable subsidy in the first administrative review and it was found to be terminated during the third administrative review, the rate from this program is not reflected in the rates from the investigation and, thus, it was not necessary to make any adjustments for this in the First Sunset Review.

¹⁰ See Continuation of Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India, 73 FR 26080 (May 8, 2008).

¹¹ See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 7708 (February 11, 2008), and accompanying Issues and Decision Memorandum.

¹² See id., Issues and Decision Memorandum, at section "Programs Determined to be Countervailable."

¹³ See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 75672 (December 12, 2008), and accompanying Issues and Decision Memorandum.

¹⁴ See id., Issues and Decision Memorandum, at section "Programs Determined to be Countervailable."

¹⁵ See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 75 FR 6634 (February 10, 2010), and accompanying Issues and Decision Memorandum (Sixth Admin. Review).

¹⁶ Id. Jindal was not a respondent in the original investigation. The Department determined in the second administrative review that the company changed its name from Jindal Polyester Limited to Jindal Poly Films Limited. See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 71 FR 7534, 7535 (February 13, 2006).

¹⁷ Pursuant to 19 CFR 351.510, sales tax exemptions, including CST, provide a benefit to the extent that a firm pays less in sales taxes than it would absent the program. Therefore, the Department combined the Union Territories CST Program and the State Sales Tax Incentive Programs, and countervailed both under one program as sales tax exemptions applicable to Jindal's purchases from other states, including the Union Territories. See Sixth Admin. Review, Issues and Decision Memorandum, at section "Programs Determined to be Countervailable," subsection "State and Union Territory Sales Tax Incentive Programs."

The seventh administrative review covered the period January 1, 2008 through December 31, 2008, and involved one producer/exporter of subject merchandise, Jindal. This review was rescinded because Jindal, the only respondent, withdrew its request and the petitioners did not file a request for a review.¹⁸

The Department conducted an eighth administrative review covering the period January 1, 2009 through December 31, 2009. In the final results of review, the Department calculated a net countervailable subsidy rate of 11.81 percent for Ester.¹⁹ This rate was based on the following countervailable programs: Pre- and Post-Shipment Export Financing, EPCGS, and DEPS.²⁰

The ninth administrative review covered the period January 1, 2010 through December 31, 2010. This review was first rescinded, in part, because the petitioners withdrew their request for a review of four companies; Ester, Garware, Jindal, and Polyplex. Two other respondents which requested to be reviewed, Vacmet India Ltd. and Polypacks Industries of India, also withdrew their self-request for an administrative review.²¹ For the sole remaining respondent that the petitioners requested to be reviewed, SRF Limited (SRF), the Department determined that there were no entries during the period of review (POR) of subject merchandise produced or exported by SRF, and therefore, rescinded the review for SRF. Because SRF was the sole remaining company in this administrative review, the rescission with respect to SRF resulted in a rescission of this administrative review in its entirety.²²

Further, the Department is currently conducting the tenth administrative review covering the period January 1, 2011 through December 31, 2011. The petitioners withdrew their requests for a review of Ester, Garware, Jindal, and Polyplex. Jindal also withdrew its self-request for an administrative review.²³ Because the review requests for SRF were not withdrawn, the Department is conducting the CVD administrative review of SRF. The preliminary results of the review are currently scheduled for August 2, 2013.²⁴

The Department has conducted one new shipper review since the continuation of the Order in the First Sunset Review. In the final results of review, the Department calculated a net countervailable subsidy rate of 3.04 percent for SRF. This rate was based on the following countervailable programs: Pre- and Post-Shipment Export Financing, ALP, EPCGS, and Special

¹⁸ See Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India: Rescission of Countervailing Duty Administrative Review, 74 FR 59526 (November 18, 2009).

¹⁹ See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 76 FR 76948 (December 9, 2011).

²⁰ See id., Issues and Decision Memorandum, at section "Programs Determined to be Countervailable."

²¹ See Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India: Rescission, in Part, of Countervailing Duty Administrative Review, 76 FR 58248 (September 20, 2011).

²² See Polyethylene Terephthalate Film, Sheet and Strip From India: Rescission of Countervailing Duty Administrative Review, 77 FR 19634 (April 2, 2012).

²³ See Polyethylene Terephthalate Film, Sheet and Strip From India: Partial Rescission of Countervailing Duty Administrative Review; 2011, 78 FR 2369 (January 11, 2013).

²⁴ See Memorandum to the Record from Edward C. Yang, Senior Director for China/Non-Market Economy Unit, regarding "Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated March 27, 2013.

Economic Zones (SEZs), formerly known as Export Process Zones/Export Oriented Units (EPZs/EOUs), and Union Territories Sales Tax Exemption.²⁵

There has been one scope determination and no changed circumstances reviews of the Order, pursuant to sections 751(a) and (c) of the Act.²⁶ Thus, the Order remains in effect for all manufacturers and exporters of the subject merchandise from India.

Background

On April 2, 2013, the Department initiated the second sunset review of the Order pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c).²⁷ DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (collectively, “domestic interested parties”) filed timely notices of intent to participate on April 17, 2013, in accordance with 19 CFR 351.218(d)(1). On May 2, 2013, the Department received substantive responses from domestic interested parties, in accordance with 19 CFR 351.218(d)(3)(i).²⁸ The Department did not receive a response from the Government of India (“GOI”) or any Indian producers or exporters.

In accordance with 19 CFR 351.218(e)(1)(ii)(C)(2), when there are inadequate responses from respondent interested parties, we “{n}ormally will conduct an expedited sunset review and, not later than 120 days after the date of publication in the Federal Register of the notice of initiation, issue final results of review based on the facts available in accordance with 19 CFR 351.308(f) (see section 751(c)(3)(B) of the Act and 19 CFR 351.221(c)(5)(ii)).” Consistent with Department regulations and practice, we determine that in the absence of responses from the GOI and other respondent interested parties (i.e., producers and exporters), the Department is conducting an expedited (120-day) sunset review of the Order.

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 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: 1) the net countervailable subsidy determined in the investigation and any subsequent reviews, and 2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the 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 described is in Article 3 or Article 6.1 of the

²⁵ Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty New Shipper Review, 76 FR 30910 (May 27, 2011).

²⁶ Prior to the First Sunset Review, the Department found tracing and drafting film not within the scope of the Order. See Notice of Scope Rulings, 70 FR 24533 (May 10, 2005).

²⁷ See Initiation of Five-Year (“Sunset”) Reviews, 78 FR 19647 (April 2, 2013).

²⁸ See Letter to the Department, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Substantive Response to the Notice of Initiation” (May 2, 2013) (“Domestic Response”).

1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (“ASCM”).

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties’ Comments

Domestic interested parties argue that subsidization of PET film from India would likely continue or recur if the Department revoked the Order because “(1) subsidization continues and (2) the Department has always found countervailable subsidies for Indian respondents at rates significantly above *de minimis*.”²⁹ Domestic interested parties state that all but one of the subsidy programs found to benefit Indian PET film manufacturers during the original investigation and in subsequent administrative reviews remain in place.³⁰ In addition, they note that the Department has not made findings in any subsequent administrative review since the First Sunset Review that any of the relevant subsidy programs have been terminated, have no residual benefits, and have not likelihood of reinstatement or replacement.³¹ Thus, domestic interested parties argue that the net countervailable subsidy determined in the First Sunset Review should be used in finding that revocation of the Order would likely lead to the continuation or recurrence of countervailable subsidies.³²

Department’s Position

According to the Statement of Administrative Action (“SAA”), the Department will consider the net countervailable subsidies in effect after the issuance of the order and whether the relevant subsidy programs have been continued, modified, or eliminated.³³ The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.³⁴ Additionally, the presence of programs that have not been used, but also have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.³⁵ Where a subsidy program is found to exist, the Department will normally determine that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.³⁶

As the Department has stated in other sunset determinations, two conditions must be met in order for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: (1) the program must be terminated; and (2) any benefit stream must

²⁹ See Domestic Response at 6.

³⁰ See *id.*

³¹ See *id.*

³² See *id.* at 7.

³³ See SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

³⁴ See *id.*

³⁵ See, e.g., Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Full Sunset Review of Countervailing Duty Order, 75 FR 75455 (December 3, 2010) (Hot-Rolled Brazil) and accompanying Issues and Decision Memorandum at Comment 1.

³⁶ See *id.*

be fully allocated.³⁷ The Department has further stated that, in order to determine whether a program has been terminated, the Department will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program.³⁸ The Department normally expects a program to be terminated by means of the same legal mechanism used to institute it.³⁹ Where a subsidy is not bestowed pursuant to a statute, regulation or decree, the Department may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence that was not part of a broader government program.⁴⁰

In conclusion, based on the facts on the record, the Department determines that there is a likelihood of recurrence of countervailable subsidies because the record in this proceeding indicates that the subsidy programs found countervailable during the investigation continue to exist, with the exception of the SILs program which the Department previously found to be terminated with no residual benefits and found no replacement program.⁴¹ Furthermore, all of the remaining subsidy programs found countervailable during the investigation provide recurring benefits. As noted above, the 80HHC program was not used until the first review and, prior to the first sunset review, was found to have been terminated.⁴²

In addition, the Department noted in the First Sunset Review that four more programs were found to confer countervailable subsidies in subsequent administrative reviews: Capital Subsidy, ALP, EOU program, and DFRC.⁴³ Consequently, the Department found in the First Sunset Review that countervailable subsidies would be likely to continue or recur in the event that the Order was revoked for seven of the eight programs determined to be countervailable in the investigation,⁴⁴ and for four programs determined to be countervailable in subsequent reviews.⁴⁵ Since the First Sunset Review, the benefits under the Capital Subsidy Program have been fully

³⁷ See, e.g., Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France, 71 FR 30875 (May 31, 2006) and accompanying Issues and Decision Memorandum at 5-7, unchanged in Corrosion-Resistant Carbon Steel Flat Products From France: Final Results of Full Sunset Review, 71 FR 58584 (October 4, 2006).

³⁸ See, e.g., Fresh and Chilled Atlantic Salmon From Norway: Final Results of Full Third Sunset Review of Countervailing Duty Order, 76 FR 70411 (November 14, 2011), and accompanying Issues and Decision Memorandum at Comment 1.

³⁹ See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India, 66 FR 49635 (September 28, 2001), and accompanying Issues and Decision Memorandum at Comment 7.

⁴⁰ See, e.g., Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order, 76 FR 25666 (May 5, 2011), and accompanying Issues and Decision Memorandum at Comment 1.

⁴¹ See First Sunset Review, Issues and Decision Memorandum, at 8.

⁴² See Third Admin. Review, Issues and Decision Memorandum, at "Income Tax Exemption Scheme 80 HHC."

⁴³ See First Sunset Review at section "Likelihood of Continuation or Recurrence of a Countervailable Subsidy."

⁴⁴ (1) Pre- and Post-Shipment Export Financing; (2) DEPS; (3) EPCGS; (4) State Sales Tax Incentive Programs (SOM, SUP, and SOU); (5) SOM Electricity Duty Exemption Scheme; (6) SOM Capital Incentive Scheme; and (7) Waiving of Interest on Loan by SICOM Ltd. (SOM).

⁴⁵ (1) ALP; (2) EOU; (3) Capital Subsidy; and (4) DFRC.

allocated.⁴⁶ The program provided a non-recurring countervailable subsidy to Polyplex in 1989, the year in which the capital grant was received, and the benefits were allocated over 18 years, the company-specific AUL. However, as noted earlier, in order to remove a non-recurring subsidy program from the determination that subsidization is likely to continue or recur the program must be terminated and the benefit must be fully allocated prior to the sunset review. Because the Capital Subsidy Program has not been found to have been terminated, we continue to determine that the countervailable subsidy from this program is likely to continue or recur in the event that the Order were revoked.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

Domestic interested parties contend that section 752(b)(3) of the Act requires that the Department determine and report to the ITC the magnitude of the net countervailable subsidy that is likely to prevail if an order is revoked.⁴⁷ As previously noted above, the domestic interested parties state that the Department has not made findings in any subsequent administrative review since the First Sunset Review that any of the relevant subsidy programs have been terminated, have no residual benefits, and have no likelihood of reinstatement or replacement.⁴⁸ Therefore, the Department should reach the same conclusions that revocation of the Order would be likely to lead to continuation or recurrence of countervailable subsidies at the same company-specific and all-others rates determined in the First Sunset Review.⁴⁹

Department's Position

The Department normally will provide the ITC the net countervailable subsidy that was determined in the investigation as the subsidy rate 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.⁵⁰ Section 752(b)(1)(B) of the Act provides, however, that the Department will consider whether any change in the program which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy. Therefore, although the SAA and House Report provide that the Department normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, the rate was derived (in whole or part) from subsidy programs which were found in

⁴⁶ See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 69 FR 51063 (August 17, 2004) (First Admin. Review), and the accompanying Issues and Decision Memorandum, at "Capital Subsidy." See also Third Admin. Review, Issues and Decision Memorandum, at "Capital Subsidy."

⁴⁷ See Domestic Response at 8.

⁴⁸ See id. at 9.

⁴⁹ See id.

⁵⁰ See SAA at 890, and House Report, H.R. Rep. No. 103-826 (1994) ("House Report") at 64.

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.⁵¹

Consistent with the SAA and the Department's Policy Bulletin 98.1, found at Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998), the Department has started with the rates found in the First Sunset Review in finding that countervailable subsidies would be likely to continue or recur in the event that the Order were revoked for seven of the eight programs determined to be countervailable in the investigation,⁵² and for four programs determined to be countervailable in subsequent reviews.⁵³ Where the Department has found that a program was terminated with no residual benefits and no likelihood of reinstatement or replacement, the Department normally will adjust the net countervailable subsidy rate determined in the original investigation to reflect the change. For non-recurring benefits, if the Department can determine from information in the records of the investigation or subsequent administrative reviews that the benefits have been fully allocated prior to the end of the sunset review period, the Department has recognized that the assistance no longer benefits the company and has removed the program-specific rate from the net countervailable subsidy rate likely to prevail.

As noted above in the "Likelihood of Continuation or Recurrence of a Countervailable Subsidy" section, one of the four programs (Capital Subsidy Program) determined to be countervailable in the First Admin. Review, provided a non-recurring benefit which has now been fully allocated. Accordingly, we have subtracted the 0.02% Capital Subsidy Program rate from the rates likely to prevail under this second sunset review from each company-specific rate and the all others rate used in the First Sunset Review.

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 subsidies and whether the subsidies are subsidies as described in Article 3 or Article 6.1 of the WTO ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The following programs fall within the definition of an export subsidy under Article 3.1 of the ASCM, as receipt of benefits under these programs are contingent upon export activity.

1. Pre-Shipment and Post-Shipment Export Financing: The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or "packing credits," to exporters. Upon presentation of a confirmed export order or letter of credit to a bank,

⁵¹ See, e.g., Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Second Sunset Review, 75 FR 62101 (October 7, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

⁵² (1) Pre- and Post-Shipment Export Financing; (2) DEPS; (3) EPCGS; (4) State Sales Tax Incentive Programs (SOM, SUP, and SOU); (5) SOM Electricity Duty Exemption Scheme; (6) SOM Capital Incentive Scheme; and (7) Waiving of Interest on Loan by SICOM Ltd. (SOM).

⁵³ (1) ALP; (2) EOU; (3) Capital Subsidy; and (4) DFRC.

companies may receive pre-shipment loans for working capital purposes, i.e., for the purchase of raw materials, warehousing, packing, and transporting of export merchandise.

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to their lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of export proceeds from the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize export proceeds within 180 days from the date of shipment, which is monitored by the RBI. Post-shipment financing is, therefore, a working capital program used to finance export receivables. Therefore, pre- and post-shipment export financing constitute countervailable export subsidies.

2. Duty Entitlement Passbook Scheme: India's DEPS was enacted on April 1, 1997, and enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. Exporting companies may obtain DEPS credits on a pre-export basis or on a post-export basis. Eligibility for pre-export DEPS credits is limited to manufacturers/exporters that have exported for a three-year period prior to applying for the program. All exporters are eligible to earn DEPS credits on a post-export basis, provided that the exported product is listed in the GOI's Standard Input and Output Norms (SIONs). Post-export DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product.

3. Duty Free Replenishment Scheme: The DFRC scheme was introduced by the GOI in 2001 and is administered by the Director-General for Foreign Trade. The DFRC is a duty replenishment scheme that is available to exporters for the subsequent import of inputs used in the manufacture of goods without payment of basic customs duty. Exporters receive a license entitling them to subsequent duty-free imports of certain inputs used in the production of the exported product, as identified in the SION. Within 24 months following the receipt of a license, a company must: (1) export manufactured products listed in the GOI's export policy book, against which there is a SION for inputs required in the manufacture of the export product; and (2) have realized the payment of export proceeds in the form of convertible foreign currency. The application must be filed within six months of the realization of the profits. DFRC licenses are transferrable, yet the transferee is limited to importing only those products and in the quantities specified on the license.

4. Export Promotion Of Capital Goods Scheme: 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 four to five times the value of the capital goods within a period of eight years. 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. The company is also subject to the payment of penalty interest.

5. Advance License Program: Under the ALP, exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported. The

exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled their export requirement. The quantities of imported materials and exported finished products are linked through SIONs established by the GOI. Advance intermediate licenses and special imprest licenses are also used to import inputs duty-free.

6. Export Oriented Units: A company that is designated as an EOU is eligible to receive various forms of assistance in exchange for committing for five years to export all of the products it produces, excluding rejects and certain domestic sales. Companies designated as EOUs may receive the following benefits: (a) duty-free importation of capital goods and raw materials; (b) reimbursement of CST paid on materials procured within India; (c) purchase of materials and other inputs free of central excise duty; and (d) receipt of duty drawback on furnace oil procured from domestic oil companies.

(a) Duty-Free Importation of Capital Goods and Raw Materials: Under this program, an EOU is entitled to import, duty-free, capital goods and raw materials for the production of exported goods in exchange for committing to export all of the products it produces, with the exception of sales in the Domestic Tariff Area, over five years.

(b) Reimbursement of Central Sales Tax: Paid on Materials Procured Domestically: Under this program, EOUs are entitled to reimbursements of the CST paid on materials procured domestically. This reimbursement is available on purchases of both raw materials and capital goods.⁵⁴

The following programs do not fall within the meaning of Article 3.1 of the SCM Agreement. However, they could be subsidies described in Article 6.1 of the SCM Agreement if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM Agreement. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We are, however, providing the ITC with the following program descriptions:

1. State Sales Tax Incentive Programs: In previous CVD administrative reviews, the Department determined that various state governments in India grant exemptions to, or deferrals from, sales taxes in order to encourage regional development. These incentives allow privately-owned (i.e., not one hundred percent owned by the GOI) manufacturers in selected industries and located in designated regions, to purchase from suppliers located in certain regions of certain states without paying sales taxes. Over the life of the Order, respondents have received benefits under the programs administered by the states of Chattisgarh, Daman, Delhi, Gujarat, Himachal Pradesh, Karnataka, Punjab, Rajasthan, SOM,

⁵⁴The Department found Purchase of Materials and Other Inputs Free of Central Excise Duty not countervailable. See Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 from India, 69 FR 67321 (November 17, 2004) and accompanying Issues and Decision Memorandum at "Programs found not Countervailable." Indian PET film producers/exporters have not received benefits under the Receipt of Duty Drawback on Furnace Oil Procured from Domestic Oil Companies.

Tamilnadu, Union Territory of Dadra & Nagarhaveli, Uttaranchal/Uttar Pradesh (SOU/SUP), and West Bengal.

2. SOM Capital Incentive Scheme: In the investigation, the Department determined that one respondent received grants under this program through the SOM 1988 package scheme of incentives. The benefits of this program, grants of up to 3,000,000 rupees, are available to certain privately-owned (i.e., not one hundred percent owned by the GOI) industries that make capital investments in specific regions of Maharashtra.

3. Waiving of Interest on Loan by SICOM Limited: SICOM, a public entity, had made an intercorporate deposit with a respondent. During the period of investigation SICOM waived the interest owed by the respondent on this intercorporate deposit.

4. SOM Electricity Duty Exemption Scheme: The SOM Electricity Duty Exemption Scheme provides for an exemption from the payment of tax on electricity charges through this program. The benefits of this program are limited to industries located within designated geographical regions within the SOM.

FINAL RESULTS OF REVIEW

The Department finds that revocation of the Order would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:


<u>Manufacturers/Exporters</u>	<u>Subsidy rates</u>
Ester Industries Ltd.	27.37 % <u>ad valorem</u>
Garware Polyester Ltd.	33.42 % <u>ad valorem</u>
Polyplex Corporation Ltd.	22.69 % <u>ad valorem</u>
All Others	29.34 % <u>ad valorem</u>

RECOMMENDATION

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this review in the Federal Register, and notify the ITC of our findings.

AGREE ✓

DISAGREE _____


Paul Piquado
Assistant Secretary
for Import Administration

20 July 2012
Date