



C-533-829
Sunset Review
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March 2, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
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 Prestressed Concrete Steel Wire Strand from the India

Summary

The Department of Commerce ("Department") analyzed the responses of interested parties in the expedited sunset review of the countervailing duty ("CVD") *Order*¹ on prestressed concrete steel wire strand ("PC strand") from India, and finds that revocation of the *Order* would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the "Final Results of Review" section of this notice. 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

The Department published its final affirmative CVD determination on PC strand from India in the *Federal Register* on December 8, 2003.² In the *Final Determination* the Department found the following 19 programs to confer countervailable subsidies:

Government of India Programs

1. Pre-shipment and Post-shipment Export Financing;
2. Duty Entitlement Passbook Scheme ("DEPS");

¹ See *Countervailing Duty Order: Prestressed Concrete Steel Wire Strand From India*, 69 FR 5319 (February 4, 2004) ("Order").

² See *Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India*, 68 FR 68356 (December 8, 2003) ("Final Determination").



3. Export Promotion Capital Goods Scheme (“EPCGS”);
4. Loans From the Steel Development Fund (“SDF”);
5. Exemption of Export Credit From Interest Taxes;
6. Advance Licenses;
7. Income Tax Exemption Scheme (“Section 80 HHC”);
8. Loan Guarantees;

State of Maharashtra, Bihar, and/or Jharkhand Programs

1. Sales Tax Incentives;
2. Capital Incentive Scheme;
3. Electricity Duty Exemption Scheme;
4. Octroi Refund Scheme;
5. Exemption of Sales and Purchase Taxes for Certain Investments Related to Automobiles or Automobile Components;
6. Captive Electricity Generative Plant Subsidy;
7. Interest Subsidy;
8. Stamp Duty and Registration;
9. Pollution Control Equipment Subsidy;
10. Mega Units; and
11. Captive Electricity Tax Exemptions.

In the *Final Determination* the Department found an estimated net subsidy, for all manufacturers/producers/exporters of PC strand from India, of 62.92 percent *ad valorem* based on the above programs.³ On February 4, 2004, the Department issued the CVD *Order*, utilizing the subsidy rates found in the original investigation.⁴

Since the issuance of the *Order*, the Department has not conducted an administrative review and there have been no scope rulings, circumvention findings, or changed circumstances determinations with respect to this *Order*. On December 1, 2008, the Department initiated the *First Sunset* review and issued on April 8, 2009, issued an expedited sunset review final determining that revocation of the CVD *Order* would likely lead to continuation or recurrence of a countervailable subsidy at the rate of 62.92 percent for all manufacturers/producers/exporters.⁵ After the International Trade Commission determined that revocation of the CVD *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, the Department ordered continuation of the order.⁶

³ See *Final Determination*, 68 FR at 68356.

⁴ See *Order*, 69 FR at 5319.

⁵ See *Final Results of Expedited Sunset Review of Countervailing Duty Order: Prestressed Concrete Steel Wire Strand From India*, 74 FR 15938 (April 8, 2009) (“*First Sunset*”) accompanying Issues and Decision Memorandum, entitled “Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Prestressed Concrete Steel Wire Strand from India” (March 1, 2009) (“IDM”).

⁶ See *Continuation of Antidumping and Countervailing Duty Finding and Orders: Prestressed Concrete Steel Wire Strand From Brazil, India, Japan, The Republic of Korea, Mexico, and Thailand*, 74 FR 65739 (December 11, 2009).

Background

On November 3, 2014, the Department initiated the second sunset review of the *Order* pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the “Act”) and 19 CFR 351.218(c).⁷ On November 17, 2014, the Department received a timely notification of intent to participate from Insteel Wire Products Company and Sumiden Wire Products Corporation (collectively, “Domestic Parties” or “Petitioners”), filed in accordance with 19 CFR 351.218(d)(1)(i). On December 3, 2014, the Department received a substantive response from Petitioners, timely filed in accordance with 19 CFR 351.218(d)(3)(i).⁸

Pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2) and section 751(c)(3)(B) of the Act, when there are inadequate responses from respondent interested parties, the Department 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. The Department did not receive a substantive response from the Government of India (“GOI”) or any Indian producers or exporters. Accordingly, we conducted an expedited (120-day) sunset review of the *Order*.

Scope of the Order

The merchandise subject to this order is PC strand, which is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under this order is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

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 International Trade Commission (“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

⁷ See *Initiation of Five-Year (“Sunset”) Review*, 79 FR 65186 (November 3, 2014).

⁸ See Letter to the Department, entitled “Prestressed Concrete Steel Wire Strand from India: Five-Year (“Sunset”) Review of Countervailing Duty Order,” dated December 3, 2014 (“Domestic Producers’ Response”).

ITC information concerning the nature of the subsidy and whether the subsidy described is in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (“ASCM”).

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Domestic Parties’ Comments

The Domestic Parties contend that, as in the *First Sunset* review, the Department should determine that revocation of the *Order* would likely lead to the continuation or recurrence of countervailable subsidies to Indian producers/exporters of PC strand.⁹ The Domestic Parties note that the net countervailable subsidy determined in the original investigation was a substantial rate of 62.92 percent. Moreover, as discussed in section V of the Domestic Parties’ Response, that rate reflected the GOI’s provision of a wide array of subsidies through 19 different programs to the Indian companies.¹⁰ Furthermore, according to the Domestic Parties, since the *Order* was issued, neither the GOI nor any Indian producer has requested an administrative review of the *Order* or attempted to demonstrate termination of any of these subsidy programs and no Indian respondent participated in the prior sunset review.¹¹ Accordingly, there is no evidence to indicate that any subsidy program found to be countervailable in the original investigation has been discontinued, modified or eliminated.¹² Absent any information to the contrary, the Domestic Parties argue that the Department should find that all of the countervailable programs continue to exist and, thus, there is a strong likelihood that subsidies will continue if the *Order* is revoked.¹³

Department’s Position

Section 752(b)(1) of the Act directs the Department in determining the likelihood of continuation or recurrence of a countervailable subsidy to consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether there has been any change in a program found to be countervailable that is likely to affect that net countervailable subsidy. According to the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (“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.¹⁴ The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.¹⁵ 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

⁹ See Domestic Parties’ Response, at 7

¹⁰ See *id.*, at 5-6 and 8.

¹¹ See *id.*, at 8.

¹² See *id.*, at 8-9.

¹³ See *id.*, at 9-10.

¹⁴ See Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

¹⁵ See *id.*

countervailable subsidy.¹⁶ 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.¹⁷

As indicated above, there have been no administrative reviews since issuance of the *Order*, and no party submitted evidence to demonstrate that the countervailable programs have expired or been terminated without a replacement program or residual benefits. Based on the facts on the record, the Department determines that there is a likelihood of continuation or recurrence of countervailable subsidies because the record in this proceeding indicates that the subsidy programs found countervailable during the investigation continue to exist and be used.

2. Net Countervailable Subsidy Likely to Prevail

Domestic Parties' Comments

The Domestic Parties argue that the SAA and standard policy direct the Department to rely upon the net subsidy rate of 62.92 percent *ad valorem* for all Indian producers and exporters of PC strand, as this is the company-specific final subsidy rate that best reflects the behavior of respondents free of constraints of the *Order* and consistent with the prior sunset determination.¹⁸

Department's Position

Consistent with the SAA and legislative history, 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 it is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.¹⁹

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 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.²⁰

In this instance, however, the Department conducted no administrative reviews of the *Order* and no evidence has been provided that would warrant making a change to the net countervailable subsidy rate found for Indian producers and exporters in the investigation. Accordingly, consistent with our practice we will not adjust the rates from the investigation to

¹⁶ 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) and accompanying Issues and Decision Memorandum ("IDM") at Comment 1.

¹⁷ See *id.*

¹⁸ See Domestic Producers' Response, at 10-11.

¹⁹ See SAA at 890, and House Report, H.R. Rep. No. 103-826 (1994) ("House Report"), at 64.

²⁰ 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 IDM at Comment 2.

account for additional subsidies, program-wide changes or terminated programs, and will provide to the ITC the net countervailable subsidy rates found in the investigation, as shown in the section entitled “Final Results of Review” below.

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.

I. Export Subsidies

As indicated in the *Final Determination*, 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 may be contingent upon export activity.

1. *Preferential Pre-Shipment 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. The commercial banks extending export credit to Indian companies must charge interest at rates determined by the RBI. 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. The commercial banks extending export credit to Indian companies must charge interest at rates determined by the RBI. 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 exporters’ profit as shown in the tax return. This amount is then deducted from taxable profits. Because this program is only available to exporters, we determined 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.

5. *Import Duty Exemptions Available through 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, exporters may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to a multiple of the value of the capital goods, as determined by the GOI, within a period of time, as set by the GOI. 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. The Department considered duty and excise tax exemptions on imported capital goods that are contingent on export activities to be countervailable.
6. *Import Duty Exemptions Available through DEPS*: 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 exported product is listed in the GOI's Standard Input/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. Post-export DEPS credits are valid for 12 months and are transferable. Exporters are eligible to earn credits equal to a certain percentage, as designated by the GOI, of the f.o.b. value of their export shipments. The Department found that the GOI could not adequately track the extent to which inputs imported duty free under the DEPS were re-exported. Therefore, the Department considered such duty exemptions to be countervailable.

II. Other Subsidies

The following programs could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They could also fall within the meaning of Article 6.1 if they constitute debt forgiveness, or if they are subsidies to cover operating losses sustained by an industry or enterprise. Because there is insufficient information on the record to conclusively make this determination, the Department is providing to the ITC a list of the programs for which we applied adverse facts available to the non-cooperating respondents in the investigation.

A. GOI Programs:

1. *Loans from the SDF*: Under the SDF program, steel consumers are compelled by the GOI to pay a levy, the proceeds of which are channeled back to a select group of steel producers. A benefit is conferred on recipients of SDF loans provided that the amount of interest paid under the program is less than what would have been paid on a commercially comparable loan.
2. *GOI Loan Guarantees*: The GOI provides loan guarantees on a case-by-case basis. Loan guarantees are normally extended to “Public Sector Companies” in particular industrial sectors. A benefit is conferred on recipients of SDF loans provided that the amount of interest paid under the program is less than what would have been paid on a commercially comparable loan.

B. State Government of Maharashtra (“SGOM”) Programs:

1. *Sales Tax Incentives*: Incentives offered by the SGOM under the Industrial Policy of Maharashtra 1993 provide either exemption or deferral of state sales taxes. Under this program, companies are exempted from paying state sales taxes on purchases and collecting sales taxes on sales, or as an alternative, recipients are allowed to defer submitting sales taxes collected on sales to the SOM for ten to twelve years. After the deferral period expires, the companies are required to submit the deferred sales taxes to the SOM in equal installments over five to six years.
2. *Capital Incentive Scheme*: Companies operating in specific areas of the SGOM are eligible to receive capital incentives in the form of either cash grants (of up to 3,000,000 rupees) or sales tax incentives.
3. *Electricity Duty Exemption Scheme*: This program provides an exemption from the payment of tax on electricity charges for manufacturers located in specific regions of Maharashtra.
4. *Octroi Refund Scheme*: Under the Octroi Refund Scheme, industrial establishments that make capital investments in specific regions of Maharashtra are entitled to the refund of octroi duty, a tax levied by local authorities on goods that enter a town or district.
5. *Exemption of Sales and Purchase Taxes for Certain Investments Related to Automobiles or Automobile Components*: Under this program, automobile investment projects over Rs. 15 billion in Category A districts are eligible to receive tax incentives.

C. State Government of Bihar (“SGOB”) Programs

1. *Sales Tax Incentives*: Under the Industrial Policy of Bihar 1995, the government granted tax incentives to companies that invested in “backward areas” within Bihar. In addition, the SGOB expands its sales tax scheme by expanding the eligibility criteria to include new or existing industrial units undertaking expansion, modernization, or diversification through an

investment of more than Rs. 500 crores (equivalent to Rs. 5,000,000,000, as Rs. 1 crore = 10,000,000 rupees). Under this sales tax scheme, “new industrial units” are permitted to either “set off” or exempt sales taxes paid on the purchase of raw materials within the state and either defer or exempt sales taxes on the sale of finished goods.

D. State Government of Jharkhand (“SGOJ”) Programs

1. *Sales Tax Incentives*: “Existing industrial units” as well as “new industrial units” are eligible to “set off” the Jharkhand sales tax paid on purchases of raw materials against the amount of sales tax payable to Jharkhand on the sale of finished products.
2. *Captive Electricity Generative Plant Subsidy*: Under the Jharkhand Industrial Policy 2001, the SGOJ provides a grant to “new industrial units” in certain industries that invest in a captive electricity generating plant within “backward areas” of the state.
3. *Interest Subsidy*: Under the Jharkhand Industrial Policy 2001, the SGOJ provides an interest subsidy to eligible “new industrial units” that invest in “backward areas” within the state.
4. *Stamp Duty and Registration*: Under the Jharkhand Industrial Policy 2001, the SGOJ grants an exemption from the payment of 50 percent of the stamp duty and registration fee required for the purpose of registering documents with the state relating to the purchase of land and buildings for establishing a “new industrial unit” within certain “backward areas” of the state.
5. *Pollution Control Equipment Subsidy*: Under the Jharkhand Industrial Policy 2001, the SGOJ provides a capital investment subsidy in the form of a grant for installation of pollution control and monitoring equipment to eligible new and existing industrial units in “backward areas” of the state.
6. *Mega Units*: Under the Jharkhand Industrial Policy 2001, the SGOJ formulates special tax incentives and tax deferrals for new projects with an investment of more than Rs. 500,000,000 (“mega units”) on a case-by-case basis.
7. *Captive Electricity Tax Exemptions*: Under the Jharkhand Industrial Policy 2001, captive power generation and purchases shall be exempted from electricity duty for a period of ten years from the date of commercial production.

E. State Government of Gujarat (“SGOJ”) Programs

1. *Sales Tax Incentives*: Pursuant to the 1995 Industrial Policy of Gujarat, the government granted sales tax incentives to eligible investments located in specific areas in Gujarat. Only “banned industries” and operations in “banned areas” were ineligible. Eligible units were entitled to purchase raw materials, consumable stores, packing materials and processing materials required for production free of charge. Other available benefits included exemptions or deferment from sales tax on the sales of goods, intermediate products by-products, scrap, and waste as well as exemptions or deferment from turnover tax and the Central Sales Tax. With the 2000 Industrial Policy, the State of Gujarat extended the

availability of these sales tax incentives, allowing companies to continue benefitting after 2000.

Final Results of Review

The Department finds that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies for all producers/manufacturers/exporters at a net rate of 62.92 percent.

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

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

2 MARCH 2015

Date