




C-533-849
Sunset Review
Public Document
Operations AD CVD Ops/Office VII/JA

March 3, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

RE: Issues and Decision Memorandum for the Final Results of the
Expedited Sunset Review of the Countervailing Duty Order on
Commodity Matchbooks from India

SUMMARY

We analyzed the responses of interested parties in the expedited sunset review of the countervailing duty (CVD) order on commodity matchbooks 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

The Department of Commerce (the Department) published the *Final Determination* in the original investigation for this case on October 22, 2009.¹ On December 11, 2009, the Department published, in the *Federal Register*, the CVD order on commodity matchbooks from India.² Based on an examination of Triveni Safety Matches Pvt. Ltd. (Triveni), the sole respondent in the original investigation, we found the following programs countervailable:

¹ See *Commodity Matchbooks From India: Final Affirmative Countervailing Duty Determination*, 74 FR 54547 (October 22, 2009) (*Final Determination*).

² See *Commodity Matchbooks from India: Countervailing Duty Order*, 74 FR 65740 (December 11, 2009) (*Order*).



1. Export Promotion Capital Goods Scheme (EPCGS);
2. Duty Entitlement Passbook Scheme (DEPS/DEPB);
3. Pre-shipment and Post-Shipment Export Financing.

We found the following programs to be not used:

1. Export-Oriented Unit Scheme
 - a. Duty-Free Import of Capital Goods and Raw Materials
 - b. Reimbursement of Central Sales Tax Paid on Goods Manufactured in India;
 - c. Duty Drawback on Fuel Procured from Domestic Oil Companies
 - d. Exemption from Income Tax under Sections 10A and 10B of Income Tax Act
2. Advance License Program
3. Duty Free Import Authorisation Scheme

For Triveni, we found a net countervailable subsidy rate of 9.88 percent, which we also applied as the rate for all other manufacturers and exporters of the subject merchandise from India.

There have been no administrative or other reviews of this case since the *Order* has been in place. Thus, the *Order* remains in effect for all manufacturers and exporters of the subject merchandise from India.

Background

On November 3, 2014, the Department initiated a sunset review of the *Order* pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c).³ D.D. Bean and Son (D.D. Bean) filed a timely notice of intent to participate on November 18, 2014, in accordance with 19 CFR 351.218(d)(1). On December 3, 2014, the Department received substantive responses from D.D. Bean, in accordance with 19 CFR 351.218(d)(3)(i).⁴ The Department did not receive a response from the Government of the India (GOI) or any Indian manufacturers or exporters of the subject merchandise.

According to the Department's regulations at 19 CFR 351.218(e)(1)(ii)(B)-(C), when there are inadequate responses from respondent interested parties, we normally will conduct an expedited sunset review and, no 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). Therefore, we are conducting an expedited (120-day) sunset review of the *CVD Order*.

³ See *Initiation of Five-Year ("Sunset") Reviews*, 79 FR 65186 (November 3, 2014).

⁴ See Letter to the Department from D.D. Bean, "Commodity Matchbooks from India: Substantive Response to Notice of Initiation" (December 3, 2014) (Substantive Response). (D.D. Bean had technical issues with its filing. However, the Department determined that the substantive was timely filed. See Memo from David Crespo to the File, "Sunset Reviews of Antidumping and Countervailing Duty Orders, on Commodity Matchbooks from India," dated December 4, 2014.

Scope of the Order

The scope of this order covers commodity matchbooks, also known as commodity book matches, paper matches or booklet matches.⁵ Commodity matchbooks typically, but do not necessarily, consist of twenty match stems which are usually made from paperboard or similar material tipped with a match head composed of any chemical formula. The match stems may be stitched, stapled or otherwise fastened into a matchbook cover of any material, on which a striking strip composed of any chemical formula has been applied to assist in the ignition process.

Commodity matchbooks included in the scope of this order may or may not contain printing. For example, they may have no printing other than the identification of the manufacturer or importer. Commodity matchbooks may also be printed with a generic message such as “Thank You” or a generic image such as the American Flag, with store brands (*e.g.*, Kroger, 7-Eleven, Shurfine or Giant); product brands for national or regional advertisers such as cigarettes or alcoholic beverages; or with corporate brands for national or regional distributors (*e.g.*, Penley Corp. or Diamond Brands). They all enter retail distribution channels. Regardless of the materials used for the stems of the matches and regardless of the way the match stems are fastened to the matchbook cover, all commodity matchbooks are included in the scope of this investigation. All matchbooks, including commodity matchbooks, typically comply with the United States Consumer Product Safety Commission (CPSC) Safety Standard for Matchbooks, codified at 16 CFR §1202.1 *et seq.*

The scope of this order excludes promotional matchbooks, often referred to as “not for resale,” or “specialty advertising” matchbooks, as they do not enter into retail channels and are sold to businesses that provide hospitality, dining, drinking or entertainment services to their customers, and are given away by these businesses as promotional items. Such promotional matchbooks are distinguished by the physical characteristic of having the name and/or logo of a bar, restaurant, resort, hotel, club, café/coffee shop, grill, pub, eatery, lounge, casino, barbecue or individual establishment printed prominently on the matchbook cover. Promotional matchbook cover printing also typically includes the address and the phone number of the business or establishment being promoted.⁶ Also excluded are all other matches that are not fastened into a matchbook cover such as wooden matches, stick matches, box matches, kitchen matches, pocket matches, penny matches, household matches, strike-anywhere matches (*aka* “SAW” matches), strike-on-box matches (*aka* “SOB” matches), fireplace matches, barbeque/grill matches, fire starters, and wax matches.

⁵ Such commodity matchbooks are also referred to as “for resale” because they always enter into retail channels, meaning businesses that sell a general variety of tangible merchandise, *e.g.*, convenience stores, supermarkets, dollar stores, drug stores and mass merchandisers.

⁶ The gross distinctions between commodity matchbooks and promotional matchbooks may be summarized as follows: (1) if it has no printing, or is printed with a generic message such as “Thank You” or a generic image such as the American Flag, or printed with national or regional store brands or corporate brands, it is commodity; (2) if it has printing, and the printing includes the name of a bar, restaurant, resort, hotel, club, café/coffee shop, grill, pub, eatery, lounge, casino, barbecue, or individual establishment prominently displayed on the matchbook cover, it is promotional.

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

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Party's Comments

D.D. Bean argues that subsidization of commodity matchbooks would likely continue or recur if the Department revoked the *Order* because the subsidies identified in the original investigation remain in existence and have not been terminated or suspended.”⁷ D.D. Bean states that there have been no imports of subject merchandise since the order was instituted, but expects that shipments would resume if the *Order* were revoked as the original respondent, Triveni, still has the equipment originally used to manufacture the subject merchandise.⁸ D.D. Bean states that all of the subsidy programs found to benefit commodity matchbook manufacturers during the original investigation still exist.⁹ Finally, D.D. Bean also states that the programs included in the Department's final determination are still included in the Foreign Trade Policy as published by the GOI.¹⁰

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. The Statement of Administrative Action (SAA) provides further guidance, noting that the Department will consider the net countervailable subsidies in effect after the issuance of the order and whether the relevant subsidy programs have been

⁷ *Id.* at 2.

⁸ *Id.* at 8.

⁹ *Id.* at 6-7.

¹⁰ *See* 6 and Exhibit 1 of Substantive Response at 61 and 71.

continued, modified, or eliminated.¹¹ The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.¹² 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.¹³ 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.¹⁴

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 be fully allocated.¹⁵ 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.¹⁶ The Department normally expects a program to be terminated by means of the same legal mechanism used to institute it.¹⁷ 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.¹⁸

As indicated above, there have been no administrative or other reviews of this case since the *Order* has been in place. No party has submitted evidence in this proceeding to demonstrate that the countervailable programs have expired or been terminated. Thus, the record in this proceeding indicates that the subsidy programs found countervailable during the investigation continue to exist. Accordingly, the Department determines that there is a likelihood of continuation or recurrence of countervailable subsidies if the *Order* is revoked

¹¹ See Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

¹² See *id.*

¹³ 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 at Comment 1.

¹⁴ *Id.*

¹⁵ 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).

¹⁶ 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.

¹⁷ 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.

¹⁸ 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.

2. Net Countervailable Subsidy Likely to Prevail

Interested Party's Comments

D.D. Bean argues that the rates the Department established in the original investigation represent the best evidence of Indian manufacturers' and exporters' behavior in the absence of an order. Since the imposition of the *Order*, imports have ceased.¹⁹ Accordingly, D.D. Bean argues the Department should find that the likely CVD rates in the event of revocation of the *Order* are the rates from the investigation.²⁰

Department's Position

Consistent with the SAA and the legislative history, the Department normally will provide the ITC with the net countervailable subsidy 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.²¹ Section 752(b)(1)(B) of the Act provides 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.²²

In the instant case, there have been no administrative reviews, nor changed circumstance reviews, nor any other administrative segments of the proceeding pertaining to this *Order* that would warrant making a change to the net countervailable subsidy rates found in the investigation. Consistent with the SAA and the legislative history, the Department is reporting to the ITC the rates found in the *Final Determination* for all of the programs determined to be countervailable in the investigation.²³ These rates are listed below in the section entitled "Final Results of 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 SCM Agreement. We note that Article 6.1 of the SCM Agreement expired on January 1, 2000.

¹⁹ See Domestic Response at 10.

²⁰ *Id.* at 9.

²¹ See SAA at 890 and the House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.

²² 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.

²³ See SAA at 890 and the House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.

Because Triveni was the only company investigated, the programs listed below are those for which we calculated subsidy rates based on the benefits received by Triveni. These programs are export subsidies as described in Article 3 of the SCM Agreement. There are no other subsidies for which we calculated a rate in this proceeding and, thus, no additional programs that could within the meaning of Article 6.1 of the Subsidies Agreement.

1. Export Promotion Capital Goods Scheme (EPCGS):
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 five years. Failing to meet the export obligation, a company is subject to payment of all or part of the duty reduction. Because this program is contingent on exports, we determined it to be a countervailable export subsidy.
2. Duty Entitlement Passbook Scheme (DEPS/DEPB):
The DEPS was introduced on April 1, 1997, to replace the Passbook Scheme. The DEPS provides credits to passbook holders on a post-export basis. The provision of pre-export credits was abolished effective April 1, 2000. All merchant and manufacturing export units are eligible for DEPS credits. Because this program can only be used by exporters, we determined it to be a countervailable export subsidy.
3. Pre-Shipment and Post-Shipment Export Financing:
The Reserve Bank of India, through commercial banks, provided pre-shipment export financing, or “packing credits” to exporters. Commercial banks extending export credit to Indian companies must charge interest on this credit at rates determined by the Reserve Bank of India. The post-shipment financing provided under this program consists of loans in the form of trade bills discounting or advances by commercial banks. The credit covers the period from the date of shipment of goods to the date of realization of export proceeds from the overseas customer. Because receipt of export financing under these programs was contingent upon export performance we determined that they constitute a countervailable export subsidy.

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:

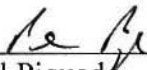
Manufacturers/Exporters	Subsidy Rates
Triveni Safety Matches Pvt. Ltd.	9.88%
All Others	9.88%

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 Enforcement and Compliance

3 MARCH 2015
Date