




C-533-839
Sunset Review
Public Document
Operations AD CVD Ops/Office VII/JA

July 30, 2015

MEMORANDUM TO: Ronald K. Lorentzen
Acting 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 Second Sunset Review of the Countervailing Duty
Order on Carbazole Violet Pigment 23 from India

SUMMARY

We have analyzed the responses of interested parties in the expedited sunset review of the countervailing duty (CVD) order on carbazole violet pigment 23 (CVP-23) 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

Background

On April 1, 2015, the Department initiated a sunset review of the *CVD Order* pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c).¹ Nation Ford Chemical Company (NFC) and Sun Chemical Corporation (Sun), the Petitioners in the original investigation, (Petitioners) filed a timely notice of intent to participate on April 13, 2015, in accordance with 19 CFR 351.218(d). On May 1, 2015, the Department received substantive responses from Petitioners, in accordance with 19 CFR 351.218(d)(3).² The Department did not receive a response from the Government of the India (GOI) or any Indian manufacturers or exporters of the subject merchandise.

¹ See *Initiation of Five-Year ("Sunset") Reviews*, 80 FR 17388 (April 1, 2015).

² See Letter to the Department from NFC and Sun, "Carbazole Violet Pigment 23 from India/Petitioners' Substantive Response," dated May 1, 2015 (Substantive Response).



According to the Department's regulations at 19 CFR 351.218(e)(1)(ii)(B) and (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*.

History of the Order

The Department of Commerce (the Department) issued the *Final CVD Determination* in its CVD investigation for this case on November 17, 2004.³ On December 29, 2004, the Department published, in the *Federal Register*, the *CVD Order* on CVP-23 from India.⁴ We found the following programs countervailable in the original investigation:

A. GOI Programs

1. Pre-Export Financing;
2. Duty Entitlement Passbook Scheme (DEPS/DEPB)
3. Income Tax Exemption Scheme 80 HHC
4. Export Promotion Capital Goods Scheme

B. State Programs

1. State of Gujarat (SOG) Sales Tax Incentive Scheme
2. State of Maharashtra (SOM) Sales Tax Incentive Scheme

We found the following programs to be not used:

C. GOI Programs

1. Export Processing Zones/Export Oriented Units Programs
2. Income Tax Exemption Scheme (Sections 10A and 10 B)
3. Market Development Assistance
4. Special Imprest License
5. Duty Free Replenishment Certificate
6. Advance License Scheme
7. CENVAT Refund for Exports

For Alpanil Industries/Meghmani Organics Limited (Alpanil), we found a net countervailable subsidy rate of 22.29 percent *ad valorem*. For Pidilite Industries Corporation, Ltd. (Pidilite), we found a net countervailable subsidy rate of 17.93 percent *ad valorem*. For AMI Pigment Pvt. Ltd. (AMI), we found a net countervailable subsidy rate of 33.61 percent *ad valorem*. We determined the net countervailable subsidy rate for "All Others" was 20.09 percent *ad valorem*.

³ See *Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 from India*, 69 FR 67321(November 17, 2004) and accompanying Issues and Decision Memorandum (*Final CVD Determination*).

⁴ See *Notice of Countervailing Duty Order: Carbazole Pigment Violet 23 From India*, 69 FR 77995 (December 29, 2004) (*CVD Order*).

There was one administrative review of this *CVD Order* completed just before the final results of the first sunset review and continuation of this *CVD Order* were published.⁵ In this administrative review, we calculated an individual *ad valorem* subsidy rate for Alpanil, the only producer/exporter subject to review for the calendar year 2007, of 7.79 percent.⁶ Pursuant to 19 CFR 351.526(d), we found during the course of that administrative review that the GOI's program for Income Tax Exemption Scheme 80 HHC had been discontinued effective April 1, 2004. The GOI reported in the course of the administrative review that this program was available only until March 31, 2004.⁷ In addition, Alpanil reported that this program has not been replaced by another program, and that there are no residual benefits accruing due to the exports of CVP-23 from India under this program.⁸

Scope of the Order

The merchandise subject to this countervailing duty order is CVP-23 identified as Color Index No. 51319 and Chemical Abstract No. 6358-30-1, with the chemical name of diindolo [3,2-b:3',2'-m] triphenodioxazine, 8,18-dichloro-5, 15-diethy-5, 15-dihydro-, and molecular formula of C₃₄H₂₂Cl₂N₄O₂.¹ The bracketed section of the product description, [3,2-b:3',2'-m], is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature.⁹

The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.*, pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the investigation. The merchandise subject to this countervailing duty order is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

During this sunset review period, there was one scope ruling completed between October 1, 2011, and December 31, 2011.¹⁰ The scope ruling was requested by Petitioners. On October 14, 2011, we determined that finished carbazole violet pigment exported from Japan, made from crude carbazole violet pigment from India is within the scope of the *CVD Order*.

⁵ See *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13527 (March 19, 2010) and *Carbazole Violet Pigment 23 from India and the People's Republic of China: Continuation of Antidumping Duty Orders*, 75 FR 29718, (May 27, 2010).

⁶ See *Carbazole Violet Pigment 23 from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 33243 (June 11, 2010) (*CVP-23 India 2007 CVD Review*) and accompanying Issues and Decision Memorandum, dated concurrently with the FR notice.

⁷ See *Id.*

⁸ The Department also found in another case that this program had been terminated effective March 31, 2004, with no residual benefits, and that no replacement program had been implemented. See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 72 FR 6530 (February 12, 2007), and accompanying Issues and Decision Memorandum (*PET Film India 2004 CVD Review*), at "Income Tax Exemption Scheme 80HHC (80HHC)."

⁹ See December 4, 2003, amendment to petition at 8.

¹⁰ See *Notice of Scope Rulings*, 77 FR 38767 (June 29, 2012).

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset 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: 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 *CVD 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

Petitioners argue that “the Department normally finds that revocation of the order is likely to lead to continuation or recurrence of the countervailable subsidy where the program has continued without any significant changes.”¹¹ Petitioners note that the net countervailable subsidy for “All Others” determined in the original investigation was 20.55 percent *ad valorem*. Petitioners note that there has been one completed administrative review of this order, which involved one producer/exporter. Petitioners state “signifying that to date the Department has not found any significant changes to India’s subsidy programs.”¹² Petitioners also contend that no other evidence has been submitted to the Department establishing a change to India’s subsidy programs. Therefore, Petitioners argue that the Department should conclude that India’s subsidy programs have not changed and that revocation of the CVD order would lead to material injury to the domestic interested CVP-23 industry. Petitioners conclude that “{t}he narrow exception does not apply because there is no evidence of any long track record of non-usage of the subsidy programs by any producers of CVP-23 from India.”¹³

Department's Position

The Department determines that there is a likelihood of continuation or recurrence of countervailable subsidies if the *CVD Order* is revoked. 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

¹¹ See Substantive Response at 8.

¹² *Id.*

¹³ See Substantive Response at 9.

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 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 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.¹⁸ 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.¹⁹ The Department normally expects a program to be terminated by means of the same legal mechanism used to institute it.²⁰ 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.²¹

As indicated above, there has been one administrative review of this *CVD Order*, which occurred during the sunset review period. During the course of this administrative review, which covered calendar year 2007, we determined that Income Tax Exemption Scheme 80 HHC had been terminated.²² We recalculated the total subsidy rate for Alpanil, Pidilite and “All Others” based on the termination of the Income Tax Exemption Scheme 80 HHC. The record in this proceeding indicates that the remaining subsidy programs found

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

¹⁵ *Id.*

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 at Comment 1.

¹⁷ *Id.*

¹⁸ 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).

¹⁹ 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.

²⁰ 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.

²¹ 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.

²² See *CVP-23 India 2007 CVD Review*; see also *PET Film India 2004 CVD Review*.

countervailable during the investigation continue to exist.²³ Accordingly, the Department determines that there is a likelihood of continuation or recurrence of countervailable subsidies if the *CVD Order* is revoked.

2. Net Countervailable Subsidy Likely to Prevail

Interested Party's Comments

Petitioners did not address the net countervailable subsidy likely to prevail other than noting that the net countervailable subsidy for "All Others" determined in the original investigation was 20.55 percent *ad valorem*.²⁴

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.²⁵ 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 the 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 Department derived this rate (in whole or part) from subsidy programs 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.²⁶

In the instant case, there has been one administrative review as discussed above. Beyond the review and the scope proceeding, there have not been any other administrative proceedings of this *CVD Order* since it was established. Consistent with the SAA and the legislative history, the Department will provide the ITC the net countervailable subsidy rates found in the *Final CVD Determination* less the relevant amount of the subsidy for the Income Tax Exemption Scheme 80 HHC discussed above under the "History of the Order" section.²⁷

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.

These programs are export subsidies as described in Article 3 of the SCM Agreement.

²³ *Id.*

²⁴ See Substantive Response at 8.

²⁵ See SAA at 890 and the House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.

²⁶ See *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 4.

²⁷ See SAA at 890 and the House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.

1. Pre-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.

2. Duty Entitlement Passbook Scheme:

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. Export Promotion Capital Goods Scheme:

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

The following programs do not fall within the meaning of Article 3.1 of the SCM Agreement, but 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. The subsidies could also fall within the meaning of Article 6.1 if they constitute debt forgiveness, a grant to cover debt repayment, or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We are providing the ITC with the following program descriptions:

²⁸ See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001).

1. State of Gujarat Sales Tax Incentive Scheme

The SOG grants exemptions to, or deferrals from, sales taxes in order to encourage regional development. These incentives allow privately-owned (*i.e.*, not 100 percent owned by the GOI) manufacturers in select industries and located in designated regions, to purchase from suppliers located in certain regions of certain states, without paying sales taxes.

2. State of Maharashtra Sales Tax Incentive Scheme

The SOM grant exemptions to, or deferrals from, sales taxes in order to encourage regional development. These incentives allow privately-owned (*i.e.*, not 100 percent owned by the GOI) manufacturers in select industries and located in designated regions, to purchase from suppliers located in certain regions of certain states, without paying sales taxes.

FINAL RESULTS OF SUNSET 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	Net Countervailable Subsidy (Percent) ²⁹
Alpanil Industries Ltd.	14.93
Pidilite Industries Ltd.	15.24
AMI Pigments Pvt. Ltd.	33.61
All Others	18.66


²⁹ The countervailable subsidy rates listed are the rates reported from the *Final CVD Determination* less 2.64 percent for Alpanil and 2.10 percent for Pidilite, which is the amount for the Income Tax Exemption Scheme, Section 80 HHC. No amount was deducted for AMI as there was no subsidy included for the Income Tax Exemption Scheme, Section 80 HHC subsidy. See *Final CVD Determination*. The “All Other’s Rate was recalculated for this sunset review by weight-averaging the revised rates for Alpanil, Pidilite and the rate for AMI.” For the termination of the Income Tax Exemption Scheme, Section 80 HHC, see *CVP-23 India 2007 CVD Review*.



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Background

On April 1, 2015, the Department initiated a sunset review of the *CVD Order* pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c).¹ Nation Ford Chemical Company (NFC) and Sun Chemical Corporation (Sun), the Petitioners in the original investigation, (Petitioners) filed a timely notice of intent to participate on April 13, 2015, in accordance with 19 CFR 351.218(d). On May 1, 2015, the Department received substantive responses from Petitioners, in accordance with 19 CFR 351.218(d)(3).² The Department did not receive a response from the Government of the India (GOI) or any Indian manufacturers or exporters of the subject merchandise.

¹ See *Initiation of Five-Year ("Sunset") Reviews*, 80 FR 17388 (April 1, 2015).

² See Letter to the Department from NFC and Sun, "Carbazole Violet Pigment 23 from India/Petitioners' Substantive Response," dated May 1, 2015 (Substantive Response).

