



C-533-807
Sunset Review
Segment: 2016
Public Document
O3/JSC

December 29, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of Expedited
Sunset Review of the Countervailing Duty Order on Sulfanilic Acid
from India

Summary

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

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidy

History of Order

The Department of Commerce (the Department) published its final affirmative CVD determination on sulfanilic acid from India in the *Federal Register* on January 8, 1993.¹ In the final determination, the Department found an estimated net subsidy for all manufacturers/producers/exporters of sulfanilic acid from India of 43.71 percent *ad valorem* based on four programs: (1) 2.17 percent under the Preferential Export Financing Through

¹ See *Final Affirmative Countervailing Duty Determination; Sulfanilic Acid From India*, 58 FR 3259 (January 8, 1993) (Final Determination).



Packing Credits; (2) 1.69 percent under the Preferential Post-Shipment Financing; (3) 6.13 percent under the Import Tax Deduction for Exporters (Section 80HHC); and (4) 33.72 percent under the Import Duty Exemptions Available Through Advance Licenses. Receipt of benefits under each of these programs was contingent upon exports. On March 2, 1993, the Department issued the CVD order, applying the subsidy rates calculated in the *Final Determination*.²

Since the issuance of the CVD order, the Department has not conducted an administrative review. On June 8, 2000, after the conclusion of the first sunset review, the Department published a notice of continuation of the CVD order.³ On May 11, 2006, after the conclusion of the second sunset review, the Department published a notice of continuation of the CVD order.⁴ On June 8, 2011, after the conclusion of the third sunset review, the Department published a notice of continuation of the CVD order.⁵

No additional reviews have been conducted.

Background

On September 1, 2016 the Department initiated the fourth sunset review of the CVD order pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(c).⁶ On September 30, 2016, the Department received a timely substantive response from NFC,⁷ filed in accordance with 19 CFR 351.218(d)(1)(i). 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). On September 30, 2016, the Department received a response from another party, Archroma, US, Inc. (Archroma), a U.S. importer of sulfanilic acid, in response to the Department's Notice of Initiation.⁸ However, the Department determined that Archroma's submission did not meet the standards required for a substantive response for any interested party in a sunset review pursuant to 351.218(d)(3)(ii).⁹ Moreover, as a respondent interested party, Archroma failed to address

² See *Countervailing Duty Order: Sulfanilic Acid From India*, 58 FR 12026 (March 2, 1993).

³ See *Continuation of Antidumping Duty Orders: Sulfanilic Acid From People's Republic of China and India; and Continuation of Countervailing Duty Order: Sulfanilic Acid From India*, 65 FR 36404 (June 8, 2000) (*First Sunset Review*), as amended, *Correction to the Notices of Continuation of Antidumping Duty Orders: Sulfanilic Acid From People's Republic of China and India; and Continuation of Countervailing Duty Order: Sulfanilic Acid From India*, 65 FR 37758 (June 16, 2000) (*Amended First Sunset Review*).

⁴ See *Continuation of Antidumping and Countervailing Duty Orders: Sulfanilic Acid from the People's Republic of China and India*, 71 FR 27449 (May 11, 2006) (*Second Sunset Review*).

⁵ See *Sulfanilic Acid From India; Final Results of Expedited Sunset Review of Countervailing Duty Order*, 76 FR 33243 (June 8, 2011) (*Third Sunset Review*).

⁶ See *Initiation of Five-Year (Sunset) Reviews*, 81 FR 60343, (September 1, 2016).

⁷ See Letter from NFC to the Department, dated September 30, 2016.

⁸ See Letter from Archroma's to the Department, dated September 30, 2016.

⁹ Specifically, Archroma's response failed to provide factual information and reasoning required in support of statements regarding the likely effects of revocation of the orders pursuant to 351.218(d)(3)(ii)(F) and omitted any

and/or provide additional information required of a respondent interested party pursuant to 19 CFR 351.218(d)(3)(iii), nor did it demonstrate whether the substantive submission is eligible to be considered adequate pursuant to 19 CFR 351.218(e)(1)(ii)(A). Thus, the Department determined that Archroma provided an inadequate substantive response to the notices of initiation for the above referenced sunset review, as required by 19 CFR 351.218(e)(1)(ii)(A). Consequently, the Department has conducted an expedited sunset review of the order, in accordance with 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope

The merchandise covered by the CVD order are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders.

Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate) is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

In response to a request from 3V Corporation, on May 5, 1999, the Department determined that sodium sulfanilate processed in Italy from sulfanilic acid produced in India is within the scope of the order. *See Notice of Scope Rulings and Anticircumvention Inquiries*, 65 FR 41957 (July 7, 2000).

The merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2921.42.22 and 2921.42.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Discussion of Issues

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended (the Act), the Department is conducting this review to determine whether revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the

discussion of the antidumping margins or countervailing duty rates likely to prevail, requisite pursuant to 351.218(d)(3)(ii)(G); *see* also letter from Erin Begnal, Director Office III, to Archroma, dated October 24, 2016.

Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the U.S. International Trade Commission (the ITC) the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (SCM).

Below we address NFC's substantive response.

1. Continuation or Recurrence of a Countervailable Subsidy

Interested Party Comments

In its substantive response, NFC argues that revocation of the CVD order on sulfanilic acid from India would result in the continuation or recurrence of a countervailable subsidy. NFC notes that there have been no administrative reviews that were not terminated prior to completion, arguing that this fact signifies that no interested parties from India have brought to the Department's attention any changes made to India's subsidy programs. Pointing out that no other evidence has been submitted to the Department purporting to establish a change in India's subsidy programs, NFC argues that the Department should conclude that India's subsidy programs have not changed and continue to exist. NFC also notes that imports of sulfanilic acid from India essentially have ceased since the issuance of the CVD order, which NFC claims is highly probative of the likelihood of the necessity for subsidization to enable exportation to the United States. Therefore, NFC concludes, revocation of the CVD order would lead to material injury to the domestic sulfanilic acid industry.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 rate(s) 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 rate(s). According to the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, the Department will consider the net countervailable subsidy rate(s) in effect after the issuance of the order and whether the relevant subsidy programs have been 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

¹⁰ See NFC September 30, 2016, submission at 6-10.

¹¹ See SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

¹² *Id.*

¹³ See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Full*

subsidy program is found to exist, the Department will normally determine that revocation of the Order is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.¹⁴

In the instant sunset review, the Department did not receive a timely response from the Government of India (GOI) or from any other respondent interested party. Absent argument or evidence to the contrary, we find that countervailable programs continue to exist and be used. Therefore, because countervailable programs continue to exist and be used, and the GOI and other respondent interested parties did not participate in this review, the Department concludes that revocation of the order would likely lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.

2. Net Countervailable Subsidy Likely to Prevail

Interested Party Comments

NFC asserts that the Department normally will select the rate from the investigation as the net countervailable subsidy likely to prevail if the order was revoked because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. In this case, absent any administrative reviews since the investigation, NFC argues that the Department should select the rate from the investigation, which is also the rate from the first and second sunset reviews, as the rate which would result from revocation of the CVD order. Specifically, NFC argues the estimated subsidy rate likely to prevail for all Indian manufacturers, producers, and exporters is 43.71 percent.¹⁵

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.¹⁶ 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 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.¹⁷

Sunset Review of Countervailing Duty Order, 75 FR 75455 (December 3, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁴ 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.

¹⁵ See NFC September 30, 2016, submission at 10.

¹⁶ See SAA at 890, and House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.

¹⁷ 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

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

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the SCM. We note that Article 6.1 of the SCM expired effective January 1, 2000. NFC did not address this issue in its substantive response of September 30, 2016.

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

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

production of exports duty-free. Recipients of advance licenses are obligated under the terms of the license to export the products produced with the duty-free imports. The amount of imports allowed under an advance license is closely linked to the amount of exports to be produced. We considered the use of the advance licenses to be equivalent to a duty drawback program insofar as customs duties are paid on physically incorporated, imported products used in the production of exports. However, where the imported inputs are not physically incorporated into the exported product, we considered the duty savings afforded by the advance license to be a countervailable export subsidy.

Final Results of Review

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

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

Recommendation

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

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Agree

Disagree

12/29/2016

X 

Signed by: PAUL PIQUADO

Paul Piquado
Assistant Secretary
for Enforcement and Compliance