



C-533-849
Sunset Review
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June 23, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Second Expedited
Sunset Review of the Countervailing Duty Order on Commodity
Matchbooks from India

I. Summary

We have analyzed the response of D.D. Bean & Sons Co. (the petitioner) in the second 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 in this sunset review for which we received substantive response from the petitioner:

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

II. Background

The Department of Commerce (Commerce) published the CVD order on commodity matchbooks from India on December 11, 2009.¹ On March 2, 2020, Commerce published the notice of initiation of the second sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² Commerce received a notice of intent to participate from the petitioner, within the deadline specified in 19 CFR 351.218(d)(1)(i).³ The petitioner claimed interested party status under section 771(9)(C) of the Act, as a producer of the domestic like product in the United States.

¹ See *Commodity Matchbooks from India: Countervailing Duty Order*, 74 FR 65740 (December 11, 2009) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 12253 (March 2, 2020) (*Notice of Initiation*).

³ See Petitioner’s Letter, “Five Year (“Sunset”) Review of the Countervailing Duty Order on Commodity Matchbooks from India -Notice of Intent to Participate,” dated March 2, 2020.



The petitioner subsequently filed its substantive response to the *Notice of Initiation*.⁴ We did not receive comments on the adequacy of responses in this sunset review nor did we receive substantive responses from respondent interested parties, including the Government of India (GOI).

On May 22, 2020, Commerce notified the International Trade Commission (ITC) that it did not receive adequate substantive responses from respondent interested parties.⁵ As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting an expedited (120-day) sunset review of the *Order*.

III. Scope of the Order

The scope of this order covers commodity matchbooks, also known as commodity book matches, paper matches or booklet matches.⁶ 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

⁴ See Petitioner’s Letter, “Commodity Matchbooks from India: Substantive Response to a Notice of Initiation,” dated April 2, 2020 (Petitioner’s Substantive Response).

⁵ See Commerce’s Letter to the ITC, “Sunset Review Initiated on March 2, 2020,” dated April 22, 2020.

⁶ 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.

printing also typically includes the address and the phone number of the business or establishment being promoted.⁷ 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.

The merchandise subject to this order is properly classified under subheading 3605.00.0060 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 3605.00.0030 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

IV. History of the Order

Commerce published the *Final Determination* in this case on October 22, 2009.⁸ 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. 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 Scheme⁹

We found a net countervailable subsidy rate of 9.88 percent for Triveni, which we also applied as the rate for all other manufacturers.¹⁰ On December 10, 2009, the International Trade

⁷ 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.

⁸ See *Commodity Matchbooks from India: Final Affirmative Determination*, 74 FR 54547 (October 22, 2009) and accompanying Issues and Decision Memorandum (*Final Determination*).

⁹ See *Final Determination* and accompanying Issues and Decision Memorandum at “IV. Analysis of Programs.”

¹⁰ *Id.*

Commission published its affirmative final determination of injury.¹¹ On December 11, 2009, Commerce published the *Order* in the *Federal Register*.¹²

Since the issuance of the *Order*, there have been no: (1) administrative reviews; (2) changed circumstances determinations; (3) new shipper reviews; (4) scope rulings; (5) duty absorption findings; (6) anti-circumvention inquiries; (7) section 129 proceedings; or (8) changed circumstance reviews in connection with the *Order*. Following the first sunset review, Commerce published a notice in the *Federal Register* continuing the *Order*.¹³ The *Order* remains in effect for all Indian manufacturers, producers, and exporters of the subject merchandise.

Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce 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 Commerce 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, Commerce 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, Commerce 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).

V. Discussion of the Issues

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Petitioner's Comments

The petitioner contends that subsidization of commodity matchbooks would likely continue or recur if Commerce revoked the *Order* because the subsidies identified in the original investigation remain in existence and have not been terminated or suspended.¹⁴ The petitioner states that there have been no imports of subject merchandise since the *Order* was imposed, but expects that shipments would resume if the *Order* were revoked.¹⁵ The petitioner notes

¹¹ See *Commodity Matchbooks from India*, 74 FR 65549 (December 10, 2009).

¹² See *Order*.

¹³ See *Commodity Matchbooks from India: Continuation of Antidumping Duty and Countervailing Duty Orders*, 80 FR 24232 (April 30, 2015) (*Continuation Notice*).

¹⁴ See Petitioner's Substantive Response at 7.

¹⁵ *Id.* at 8.

that all of the subsidy programs found to benefit commodity matchbook manufacturers during the original investigation still exist.¹⁶ In conclusion, the petitioner states that the programs included in Commerce's final determination are still included in the Foreign Trade Policy as published by the GOI.¹⁷

Commerce's Position

Section 752(b)(1) of the Act directs Commerce 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 Commerce 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.¹⁸ The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.¹⁹ 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.²⁰ Where a subsidy program is found to exist, Commerce 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.²¹

As Commerce 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.²² Commerce has further stated that, in order to determine whether a program has been terminated, Commerce will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program.²³ Commerce normally expects a program to be terminated by means of the same

¹⁶ *Id.* at 6-7.

¹⁷ See Petitioner's Substantive Response at Attachment 1.

¹⁸ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) at 888 (SAA).

¹⁹ *Id.*

²⁰ 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.

²¹ *Id.*

²² 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).

²³ 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.

legal mechanism used to institute it.²⁴ Where a subsidy is not bestowed pursuant to a statute, regulation or decree, Commerce 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.²⁵

As indicated above, there have been no administrative or other reviews of this case since the *Continuation Notice* was published (or in fact 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, Commerce determines that there is a likelihood of continuation or recurrence of countervailable subsidies if the *Order* is revoked.

2. Net Countervailable Subsidy Rate Likely to Prevail

Petitioner's Comments

The petitioner argues that the same subsidy programs found to exist in the original investigation continue to exist.²⁶ Given this fact, the petitioner contends that the net countervailable subsidy likely to prevail would be 9.88 percent – the rate determined in the original investigation.²⁷

Commerce's Position

Consistent with the SAA and the legislative history, Commerce normally will provide the ITC with the net countervailable subsidy rate 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.²⁸ Section 752(b)(1)(B) of the Act provides that Commerce 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 provides that Commerce normally will select a rate from the investigation, this rate may not be the most appropriate if the rate was derived (in whole or in part) from countervailable subsidy programs found in subsequent reviews to have been

²⁴ 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.

²⁵ 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.

²⁶ See Petitioner's Substantive Response at 8.

²⁷ *Id.* at 8-9.

²⁸ See SAA at 890 and the House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.

terminated, there has been a program-wide change, or the rate does not include a program or programs found to be countervailable in subsequent reviews.²⁹

In the instant case, there have been no administrative reviews or changed circumstance reviews, nor any other administrative proceedings of this *Order*. Therefore, consistent with the SAA and the legislative history, Commerce is reporting subsidies likely to prevail at the rates found in the *Final Determination*, based on the programs listed above under the “History of the Order” section, in the event the *Order* is revoked³⁰

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, Commerce 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 World Trade Organization’s Agreement on Subsidies and Countervailable Measures (WTO SCM Agreement). We note that Article 6.1 of the SCM Agreement expired on January 1, 2000.

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.

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 producers and exporters 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

²⁹ 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.

³⁰ *Id.*

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.

There were no subsidies within the meaning of Article 6.1 of the WTO SCM Agreement.

VI. Final Results of Sunset Review

We determine that revocation of the *Order* would likely lead to continuation or recurrence of a countervailable subsidy at the following rates: Triveni 9.88 percent; all other producers 9.88 percent.

VII. Recommendation

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



Agree

Disagree

6/23/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance