



C-533-839
Sunset Review
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January 29, 2021

MEMORANDUM TO: Christian Marsh
Acting 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 Expedited Third Sunset
Review of the Countervailing Duty Order on Carbazole Violet
Pigment 23 from India

I. SUMMARY

We have analyzed the substantive response of the domestic interested party in the third sunset review of the countervailing duty (CVD) order covering carbazole violet pigment 23 (CVP 23) from India.¹ We did not receive a response from the Government of India (GOI) or from any other respondent interested party. Accordingly, we conducted an expedited (120-day) sunset review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2). 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 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

II. BACKGROUND

On October 1, 2020, Commerce published the notice of initiation of the third sunset review of the CVD order on CVP 23 from India,² pursuant to section 751(c) of the Act.³ Commerce received a notice of intent to participate from Sun Chemical Corporation (domestic interested

¹ See *Notice of Countervailing Duty Order: Carbazole Violet Pigment 23 from India*, 69 FR 77995 (December 29, 2004) (Order).

² See Order.

³ See *Initiation of Five-Year (Sunset) Review*, 85 FR 61928 (October 1, 2020).



party or Sun), within the deadline specified in 19 CFR 351.218(d)(1)(i).⁴ Sun claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of CVP 23 in the United States.

Commerce received a substantive response from the domestic interested party⁵ within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive response from any other domestic or interested parties in this proceeding, nor was a hearing requested.

On November 20, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁶ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this *Order*.

III. HISTORY OF THE *ORDER*

On November 17, 2004, Commerce published its final determination that countervailable subsidies are being provided to producers and exporters of CVP 23 from India.⁷ We applied subsidy rates of 22.29 percent to Alpanil Industries/Meghmani Organics Limited (Alpanil), 17.93 percent to Pidilite Industries Corporation, Ltd. (Pidilite), 33.61 percent to AMI Pigment Pvt. Ltd. (AMI), and 20.09 percent to all others.⁸

We found the following programs countervailable in the original investigation:⁹

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 See Sun's Letter, "Carbazole Violet Pigment 23 from the Republic of India: Notice of Intent to Participate In 3rd Sunset Review of Countervailing Duty Order," dated October 9, 2020.

⁵ See Sun's Letter, "Carbazole Violet Pigment 23 from the Republic of India: Petitioner's Substantive Response," dated October 30, 2020 (Sun's Substantive Response).

⁶ See Commerce's Letter, "Sunset Reviews Initiated on October 1, 2020," dated November 20, 2020.

⁷ See *Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 from India*, 69 FR 67321 (November 17, 2004) (*CVD Final*), and accompanying Issues and Decision Memorandum (IDM).

⁸ See *CVD Final* IDM; see also *Order*, 69 FR at 77996.

⁹ See *CVD Final* IDM.

4. Special Imprest License
5. Duty Free Replenishment Certificate
6. Advance License Scheme
7. CENVAT Refund for Exports

Since the issuance of the *Order*, Commerce has conducted two administrative reviews,¹⁰ and issued one scope ruling.¹¹ In addition, Commerce has conducted two sunset reviews resulting in continuation of the *Order*.¹² Commerce has not conducted any new shipper reviews, circumvention determinations, or changed circumstances determinations.

IV. SCOPE OF THE *ORDER*

The merchandise covered by the scope of the *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 C₃₄H₂₂Cl₂N₄O₂.¹³ 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 order.

The merchandise subject to this *Order* is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise covered by the scope of the *Order* is dispositive.

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce conducted this sunset review to determine whether revocation of the *Order* would likely lead to continuation or recurrence of a

¹⁰ See *Carbazole Violet Pigment 23 from the Republic of India: Final Results of Countervailing Duty Administrative Review*, 75 FR 33243 (June 11, 2010) (finding a subsidy of 7.79 percent for Alpanil Industries, Ltd. and finding that the GOI's program for Income Tax Exemption Scheme 80 HHC (80 HHC) had been discontinued effective April 1, 2004, had not been replaced by another program, and that there were no residual benefits accruing due to the exports of CVP 23 from India under this program); see also *Carbazole Violet Pigment 23 from the Republic of India: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 62697 (October 5, 2020) (finding a subsidy of 3.13 percent for Pidilite Industries Limited).

¹¹ See *Notice of Scope Rulings*, 77 FR 38767 (June 29, 2012) (finding, in response to a request from Nation Ford Chemical Co. and Sun Chemical Corp., that finished carbazole violet pigment exported from Japan, made from crude carbazole violet pigment from India and/or the People's Republic of China, is within the scope of the antidumping duty and countervailing duty orders; October 14, 2011).

¹² See *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying IDM; see also *Carbazole Violet Pigment 23 from India: Continuation of Countervailing Duty Order*, 75 FR 29719 (May 27, 2010); *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order*, 80 FR 47462 (August 7, 2015), and accompanying IDM; and *Carbazole Violet Pigment from India and the People's Republic of China: Continuation of the Antidumping Duty Orders and Countervailing Duty Order*, 80 FR 71773 (November 17, 2015).

¹³ The bracketed section of the product description, [3,2-b:3',2'-m], is not business proprietary information; the brackets are simply part of the chemical nomenclature.

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

VI. DISCUSSION OF THE ISSUES

Below we address the comments of the domestic interested party.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Domestic Interested Party's Comments¹⁴

Citing section 752(c)(1) {sic} of the Act, a prior sunset review,¹⁵ and the *Policy Bulletin*,¹⁶ the domestic interested party asserts that an affirmative determination of continuation or recurrence is warranted because all but one of the subsidies at issue in the original investigation remain in existence and have not been terminated or suspended. Additionally, the domestic interested party claims that imports of CVP 23 from India have declined considerably since the imposition of the *Order*.

Commerce's Position:

As stated above, in determining the likelihood of continuation or recurrence of a countervailable subsidy, section 752(b)(1) of the Act directs Commerce 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 SAA,¹⁷ Commerce will consider the net countervailable subsidies in effect after the issuance of an order and whether the relevant subsidy programs have been continued, modified, or eliminated. The SAA further states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.¹⁸ The presence of programs that have not been used, but have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or

¹⁴ See Sun's Substantive Response at 3-9.

¹⁵ See Sun's Substantive Response at 7 (citing *Final Results of Expedited Sunset Review: Sulfanilic Acid from India*, 65 FR 6171, 6173 (February 8, 2000)).

¹⁶ See *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Policy Bulletin*).

¹⁷ See Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 888.

¹⁸ *Id.*

recurrence of a countervailable subsidy.¹⁹ Where a subsidy program is found to exist, Commerce will normally determine that revocation of the relevant order would likely to lead to continuation or recurrence of a countervailable subsidy, regardless of the level of subsidization.²⁰

In the investigation, Commerce found that countervailable subsidies were being provided to Indian exporters and producers of CVP 23 under the programs listed above. While Commerce found the 80 HHC program found terminated in 2014, no party submitted evidence to demonstrate that any other of these countervailable programs have expired or been terminated, and there is no information on the record of this proceeding indicating any changes to the other programs found countervailable during the investigation. Absent argument or evidence to the contrary, we find that, except as indicated above with respect to the 80 HHC program, these countervailable programs continue to exist and be used. Therefore, Commerce determines that there is a likelihood of continuation or recurrence of countervailable subsidies.

2. Net Countervailable Subsidy Rates Likely to Prevail

Domestic Interested Party's Comments²¹

The domestic interested party asserts that, consistent with the statute and the *Policy Bulletin*, Commerce will normally select the rate determined in the original investigation, as that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. They state that in the second sunset review of this *Order*, Commerce recalculated the rates from the investigation based on the termination of the Income Tax Exemption Scheme 80 HHC. Accordingly, the domestic interested party argues that Commerce should report the following CVD rates to the ITC: (1) 14.39 percent for Alpanil; (2) 15.24 percent for Pidilite; (3) 33.61 percent for AMI Pigments Pvt. Ltd.; and (4) 18.66 percent for all others.

Commerce's Position:

Consistent with the SAA and legislative history, Commerce will normally provide the ITC with the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked because, as noted by the domestic interested parties, it is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.²² Section 752(b)(1)(B) of the Act provides that Commerce will consider whether any change in the programs 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. As explained above, Commerce determined that the 80 HHC program was terminated, without replacement. Therefore, in this sunset review, we determine the company-specific countervailable subsidy rates likely to prevail are the rates assigned in the

¹⁹ 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 IDM at Comment 1.

²⁰ *Id.*

²¹ See Sun's Substantive Response at 9.

²² See SAA at 890.

Order, as adjusted to reflect the termination of the 80 HHC programs. The countervailable subsidy rates, which Commerce determines are likely to prevail upon revocation of the order, are provided in the “Final Results of Review” section of this memorandum.

3. Nature of the Subsidies

In accordance with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of these subsidy programs and whether these programs constitute subsidies that fall within Article 3 or Article 6.1 of the SCM Agreement. We note that Article 6.1 of the SCM Agreement expired, effective January 1, 2000.²³

Article 3 Subsidies

The following programs fall within the definition of an export subsidy under Article 3.1 of the SCM, which states that the following subsidies shall be prohibited: (a) subsidies contingent, in law or in fact whether solely or as one of several other conditions, upon export performance, and (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

Loan Programs

1. Pre-Shipment Export Financing

Tax Programs

2. Duty Entitlement Passbook Scheme (DEPS)

3. Export Promotion Capital Goods Scheme (EPCGS)

Article 6.1 Subsidies

The following programs do not fall within the meaning of Article 3.1 of the SCM. However, they could be subsidies described in Article 6.1 of the SCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM. 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.

Tax Programs

1. State of Gujarat (SOG) Sales Tax Incentives Scheme

2. State of Maharashtra (SOM) Sales Tax Incentives Scheme

²³ See Article 31 of the SCM Agreement.

VII. FINAL RESULTS OF REVIEW

Commerce determines that revocation of the CVD order on CVP from India would be likely to lead to the continuation or recurrence of countervailable subsidies at the rates listed below:

Manufacturers/Producers/Exporters	Net Countervailable Subsidy Rate (<i>Ad Valorem</i>) (percent)
Alpanil Industries Ltd.	14.93
Pidilite Industries Ltd.	15.24
AMI Pigments Pvt. Ltd.	33.61
All Others	18.66

VIII. 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 these final results of this expedited sunset review in the *Federal Register*.



Agree

Disagree

1/29/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh

Acting Assistant Secretary
for Enforcement and Compliance