UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-570-917
Sunset Review
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November 12, 2013

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 Laminated Woven Sacks from the People's Republic of China

SUMMARY

We have analyzed the responses of interested parties in the expedited sunset review of the countervailing duty (CVD) order on laminated woven sacks from the People's Republic of China (PRC). 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 issued the Final Determination for this case on June 24, 2008.[1] On August 7, 2008, the Department of Commerce (the Department) published, in the Federal Register, the CVD order on laminated woven sacks from the PRC.[2] There have not been any administrative reviews of this case since the Order has been in place; however, the Department amended the rates for the programs found countervailable during the investigation in accordance with section 129(b)(4) of the URAA in response to a WTO dispute settlement.[3] The updated net

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[1] See Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008) and accompanying Issues and Decision Memorandum (Final Determination).
[2] See Laminated Woven Sacks From the People's Republic of China: Countervailing Duty Order, 73 FR 45955 (August 7, 2008) (Order).
[3] See Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China, 77 FR 52683 (August 30, 2012) (Section 129 Decision).

countervailable subsidy rates from the Section 129 Decision are noted below in the "Final Results of Review" section of this memorandum and are based on the following countervailable programs:

1. Government Provision of Land for Less Than Adequate Remuneration;
2. Government Provision of Inputs for Less Than Adequate Remuneration;
3. Government Policy Lending;
4. VAT Rebate for FIE Purchases of Domestically Produced Equipment;
5. VAT and Tariff Exemptions for FIEs Using Imported Technology and Equipment in Encouraged Industries;
6. VAT and Tariff Exemptions on Imported Equipment (Domestic Enterprises);
7. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program);
8. Preferential Tax Policies for Export-Oriented FIEs;
9. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises;
10. Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Origin Machinery;
11. Tax Program for FIEs Recognized as High or New Technology Enterprises;
12. Preferential Tax Policies for Research & Development;
13. Tax Subsidies to FIEs in Specially Designated Geographic Areas;
14. Preferential Tax Policies for Township Enterprises by FIEs;
15. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs;
16. The State Key Technologies Renovation Project;
17. Grants and Other Funding for High Technology Equipment for the Textile Industry;
18. Grants to Loss-Making, State-Owned Enterprises;
19. Export Interest Subsidy Funds for Enterprises Located in Zhejiang and Guangdong Provinces;
20. Technology Innovation Funds Provided by Zhejiang Province;
21. Programs to Rebate Antidumping Legal Fees;
22. Loan Forgiveness for LWS Producers by the GOC;
23. Grants for Market Exploration (Shandong Province);
24. Grants for Attending International Trade Fairs (Shandong Province);
25. Grants Key Export Enterprises (Shandong Province);
26. Interest Discount to Export Enterprises (Shandong Province);
27. Grants Covering Export Credit Insurance Fees (Shandong Province);
28. Grants to Enterprises Exporting Key Products (Shandong Province);
29. Interest Discounts for Export Enterprises (Shouguang Municipality);
30. Grants for Attending International Trade Fairs (Shouguang Municipality);
31. Preferential Treatment for Key Exporting Enterprises (Shouguang Municipality); and
32. Grants for Exporting Key Enterprises (Shouguang Municipality).

During the investigation, the "Government Provision of Electricity for LTAR" was determined to be not countervailable and the "Exemption from Payment of Staff and Worker Benefits for Export–Oriented Industries" was determined to be terminated.

Since the investigation, the Department has initiated and rescinded the first and second administrative reviews.[4]

There have been four scope determinations, one anti-circumvention ruling, and no changed circumstances reviews of the Order, pursuant to sections 751(a) and (c) of the Tariff Act of 1930, as amended (the Act).[5] Thus, the Order remains in effect for all manufacturers and exporters of the subject merchandise from the PRC.

Background

On July 1, 2013, the Department initiated a sunset review of the Order pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c).[6] Coating Excellence International, LLC, Exopack Holding Corp., Graphic Packaging International, Inc., Hood Packaging Corporation, Polytex Fibers Corporation, and SeaTac Packaging Manufacturing Corporation (collectively, the Laminated Woven Sacks Committee or "the Committee") filed a timely notice of intent to participate on July 15, 2013, in accordance with 19 CFR 351.218(d)(1). On July 30, 2013, the Department received substantive responses from the Committee, in accordance with 19 CFR 351.218(d)(3)(i).[7] The Department did not receive a response from the Government of the PRC (GOC) or any Chinese manufacturers or exporters of the subject merchandise.

In accordance with 19 CFR 351.218(e)(1)(ii)(C)(2), when there are inadequate responses from respondent interested parties, we "{n}ormally 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 in accordance with 19 CFR 351.308(f) (see section 751(c)(3)(B) of the Act and 19 CFR 351.221(c)(5)(ii))." Consistent with Department regulations and practice, we determine that in the absence of responses from the GOC and other respondent interested parties (i.e., manufacturers and exporters), the Department is conducting an expedited (120-day) sunset review of the Order.

Scope of the Order

The merchandise covered by this order is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip

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[4] See Laminated Woven Sacks from the People's Republic of China: Rescission of Countervailing Duty Administrative Review, 75 FR 15418 (March 29, 2010); see also Laminated Woven Sacks From the People's Republic of China: Rescission of Countervailing Duty Administrative Review, 75 FR 82376 (December 30, 2010).

[5] See Final Determination on Anti-Circumvention Request by Laminated Woven Sacks Committee, 78 FR 12716 (February 25, 2013) (three printed inks) (laminated woven sacks subject to the inquiry are not circumventing the orders); Notice of Scope Rulings, 77 FR 9893 (February 21, 2012) (the laminated woven sacks produced by the Super Poly Partnership from imported woven fabric are not within the scope of the orders); Final Scope Determination on Request from Shapiro Packaging (July 29, 2009) (Manna Pro Calf, Manna Horse Feed, and Red Head Deer Corn sacks are not within the scope of the orders) appealed to the Court of International Trade in Laminated Woven Sacks Committee v. United States, 716 F. Supp. 2d 1316 (CIT 2010) (Commerce determination affirmed); and Notice of Scope Rulings, 74 FR 43680, 43681 (August 27, 2009) (Archer Daniels Midland Company products "A" and "B" are within the scope of the orders; while products "C" through "F" are outside the scope of the orders).

[6] See Initiation of Five-Year ("Sunset") Reviews, 78 FR 39256 (July 1, 2013).

[7] See Letter to the Department, "Five-Year ("Sunset") Review Of Countervailing Duty Order On Laminated Woven Sacks From The People's Republic Of China: Domestic Industry Substantive Response" (July 30, 2013) (Domestic Response).

and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (BOPP) or to an exterior ply of paper that is suitable for high quality print graphics; "Paper suitable for high quality print graphics," as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500.

If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

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). We note that Article 6.1 of the SCM Agreement expired effective January 1, 2000.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

The Committee argues that subsidization of laminated woven sacks from the PRC 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."[8] In addition, the Committee notes that the investigation rates were amended and increased in a Section 129 proceeding.[9] The Committee states that all of the subsidy programs found to benefit laminated woven sack manufacturers during the original investigation still exist.[10] The Laminated Woven Sacks Committee further notes that, for one of the countervailed programs, the Government Provision of Land for Less Than Adequate Remuneration, the benefits will continue beyond the end of the sunset review because the subsidy was granted in 2005 and allocated over a 15-year period.[11] In addition, they note that the Department has not conducted any administrative or new shipper reviews since the investigation.[12] Thus, domestic interested parties argue that the net countervailable subsidy rates determined in the Final Determination, as amended in the Section 129 Decision, should be used in finding that revocation of the Order would likely lead to the continuation or recurrence of countervailable subsidies.[13]

Department's Position

According to the Statement of Administrative Action (SAA), the 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

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[8] Id. at 4.
[9] Id. at 5-6.
[10] Id. at 6-7.
[11] Id. at 8.
[12] Id. at 6.
[13] Id. at 5.
[14] See SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.
[15] See 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.

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]

In conclusion, based on the facts on the record and the Section 129 Decision, the Department determines that there is a likelihood of recurrence of countervailable subsidies because the record in this proceeding indicates that the subsidy programs found countervailable during the investigation continue to exist.[22] Furthermore, the Government Provision of Land for Less Than Adequate Remuneration subsidy program found countervailable during the investigation provides recurring benefits. As noted above, the benefits from this program will continue beyond the end of the sunset review because the subsidy was granted in 2005 and allocated over the term of the land agreement.[23]

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The Committee contends that section 752(c)(3) of the Act requires that the Department determine and report to the ITC the magnitude of the net countervailable subsidy that is likely to prevail if an order is revoked.[24] The Committee argues that because there have been no administrative reviews since the Final Determination, the original CVD rates (as amended by the Section 129 Decision) represent the best evidence of Chinese manufacturers' and exporters' behavior in the absence of an order. Accordingly, the Department should find that the likely CVD rates in the event of revocation of the Order are the revised company-specific and all-others rates determined in the Section 129 Decision.[25]

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[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 Section 129 Decision.
[23] See Final Determination, and accompanying Issues and Decision Memorandum at "Programs Determined To Be Countervailable: Government Provision of Land for Less Than Adequate Remuneration."
[24] See Domestic Response at 8.
[25] Id. at 9.

Department's Position

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 that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.[26] Section 752(b)(l) of the Act and the Sunset Policy Bulletin provide that revocation of a CVD order or termination of a suspended CVD investigation is likely to lead to continuation or recurrence of a countervailable subsidy where:

(a) a subsidy program continues;
(b) a subsidy program has been only temporarily suspended; or
(c) a subsidy program has been only partially terminated.[27]

In the instant case, there have been no administrative reviews, nor sunset reviews, of the Order. Consistent with the SAA and the Sunset Policy Bulletin, the Department has used the rates found in the Final Determination (subsequently revised in the Section 129 Decision) in finding that countervailable subsidies would be likely to continue or recur in the event that the Order were revoked for all of the programs determined to be countervailable in the investigation and listed above under the "History of the Order" section.

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.

The programs listed below do not fall within the meaning of Article 3.1 of the SCM Agreement. However, they 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. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness 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, however, providing the ITC with the program descriptions.

During the investigation, Aifudi was the sole cooperative company. Therefore, the programs listed below include programs for which we calculated a rate for Aifudi as well as programs for which we calculated adverse facts available rates for the non-cooperative companies.

Countervailed Programs used by Aifudi

1. Government Provision of Land for Less Than Adequate Remuneration: Aifudi is located in Huantai New Century Industry Park in Shandong province. The company received a reduced price for its land from the local and county governments to locate in the area. According to Aifudi, after negotiations with the local town of Guoli, its application for land-use rights was

[26] See SAA at 890, and House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.
[27] See Policies Regarding The Conduct Of Five-Year ("Sunset") Reviews Of Antidumping And Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18874 (April 16, 1998) (Sunset Policy Bulletin).

first approved by the Huantai County Land Resource Bureau, which issued a temporary land-use certificate, and then approved at a higher level by the provincial authority, which issued a permanent certificate. Thus the sale of these land-use rights constitutes a benefit to the extent that such government provided goods or services are provided for less than adequate remuneration pursuant to section 771(5)(E)(iv)of the Act.

2. Government Provision of Inputs for Less Than Adequate Remuneration: The provision of biaxially-oriented polypropylene (BOPP) for less than adequate remuneration from state-owned petrochemical producers to manufacturers of laminated woven sacks constitutes a benefit to the extent that such government provided goods or services are provided for less than adequate remuneration pursuant to section 771(5)(E)(iv)of the Act.

3. Government Policy Lending: The GOC provides loans to manufacturers in the textile industry (laminated woven sacks are considered textiles) at below market interest rates. This loan program is specific in law because the GOC has a policy in place to encourage and support the growth and development of the textile industry and the laminated woven sack producers pursuant to section 771(5A)(D)(i) of the Act. This program also provides a direct financial contribution by the GOC and a benefit to loan recipients equal to the difference between what recipients paid on loans from government-owned banks and the amount they would have paid on comparable commercial loans pursuant to sections 771(5)(D)(i) and 771(5)(E)(ii) of the Act.

Programs Determined To Be Not Used by Aifudi but Assigned Rates as Adverse Facts Available for Non-Cooperating Respondents

1. VAT Rebate for FIE Purchases of Domestically Produced Equipment
2. VAT and Tariff Exemptions for FIEs Using Imported Technology and Equipment in Encouraged Industries
3. VAT and Tariff Exemptions on Imported Equipment (Domestic Enterprises)
4. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half)
5. Preferential Tax Policies for Export-Oriented FIEs
6. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises
7. Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Origin Machinery
8. Tax Program for FIEs Recognized as High or New Technology Enterprises
9. Preferential Tax Policies for Research & Development
10. Tax Subsidies to FIEs in Specially Designated Geographic Areas
11. Preferential Tax Policies for Township Enterprises by FIEs
12. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs
13. The State Key Technologies Renovation Project
14. Grants and Other Funding for High Technology Equipment for the Textile Industry
15. Grants to Loss-Making, State-Owned Enterprises
16. Export Interest Subsidy Funds for Enterprises Located in Zhejiang and Guangdong Provinces
17. Technology Innovation Funds Provided by Zhejiang Province
18. Programs to Rebate Antidumping Legal Fees

19. Loan Forgiveness for LWS Producers by the GOC
20. Grants for Market Exploration (Shandong Province)
21. Grants for Attending International Trade Fairs (Shandong Province)
22. Grants Key Export Enterprises (Shandong Province)
23. Interest Discount to Export Enterprises (Shandong Province)
24. Grants Covering Export Credit Insurance Fees (Shandong Province)
25. Grants to Enterprises Exporting Key Products (Shandong Province)
26. Interest Discounts for Export Enterprises (Shouguang Municipality)
27. Grants for Attending International Trade Fairs (Shouguang Municipality)
28. Preferential Treatment for Key Exporting Enterprises (Shouguang Municipality)
29. Grants for Exporting Key Enterprises (Shouguang Municipality)

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
Zibo Aifudi Plastic Packaging Co., Ltd.	83.34% ad valorem
Han Shing Chemical Co., Ltd.	277.54% ad valorem
Ningbo Yong Feng Packaging Co., Ltd.	277.54% ad valorem
Shandong Shouguang Jianyuan Chun Co., Ltd./ Shandong Longxing Plastic Products Company Ltd.	406.62% ad valorem
Shandong Qilu Plastic Fabric Group, Ltd.	358.20% ad valorem
All Others	280.65 % ad valorem

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

12 November 2013
Date