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

C-570-926
Sunset Review
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November 13, 2013

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 First Sunset Review of the Countervailing Duty Order on Sodium Nitrite 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 sodium nitrite 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

On August 27, 2008, the Department of Commerce (the Department) published, in the Federal Register, the CVD order on sodium nitrite from the PRC.[1] In the Final Determination of the subject CVD investigation,[2] covering the calendar year 2006, the Department found an estimated net countervailable subsidy rate of 169.01 percent for Shanxi Jiaocheng Hongxing Chemical Co., Ltd. (Shanxi Jiaocheng), 169.01 percent for Tianjin Soda Plant Tianjin Port Free Trade Zone Pan Boahai International Trading Co., Ltd. (Tianjin Soda Plant), and 169.01 percent for "all others," based on the 32 countervailable programs listed and described in the "Nature of the Subsidy" section of this memorandum.

[1] See Sodium Nitrite from the People's Republic of China: Countervailing Duty Order, 73 FR 50595 (August 27, 2008) (Order).

[2] See Sodium Nitrite From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 38981 (July 8, 2008) (Final Determination).

Since the issuance of the Order, no administrative reviews, new shipper reviews, changed circumstance reviews or scope determinations of this CVD order have been conducted. This is the first sunset review of the Order. 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 the first sunset review of the Order pursuant to section 751(c)(2) of the Tariff Act of 1930 as amended, (the Act) and 19 CFR 351.218(c).[3] General Chemical LLC (Petitioner) filed a timely notice of intent to participate on July 12, 2013, in accordance with 19 CFR 351.218(d)(1). On July 30, 2013, the Department received a substantive response from Petitioner, in accordance with 19 CFR 351.218(d)(3)(i).[4] The Department did not receive a response from the Government of the PRC (GOC) or any PRC producers or exporters.

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., producers and exporters), the Department is conducting an expedited (120-day) sunset review of the Order.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[5] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days.

Scope of the Order

The merchandise covered by this order is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this order may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is $NaNO_2$ and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0. For purposes of the scope of this order, the narrative description is

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

[4] See Letter to the Department, "Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China: Substantive Response to Notice of Initiation Five Years (First Sunset) Review of the Antidumping Duty Order" (July 30, 2013) (Petitioner Response).

[5] See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).

dispositive, not the tariff heading, CAS registry number or CAS name, which are provided for convenience and customs purposes.

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 described is in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures ("ASCM").

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Petitioner Comments
Petitioner argues that revocation of the Order would likely lead to the recurrence of imports of sodium nitrite that benefit from countervailable subsidies. Petitioner argues that, following the imposition of this Order, no PRC exporter has requested an administrative review in order to establish that it ceased receiving countervailable benefits. Petitioner further argues that revocation would result in significant increases in the volume of subsidized imports.[6]

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 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 Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("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.[7] The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.[8] 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.[9] Where a subsidy program is found to exist, the Department will

[6] See Petitioner Response.

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.[10]

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.[11] 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.[12] The Department normally expects a program to be terminated by means of the same legal mechanism used to institute it.[13] 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.[14]

As indicated above, there have been no administrative reviews nor other intervening segments of this proceeding since issuance of the Order. Moreover, neither the GOC or other respondent interested parties participated in this sunset review. There is no information indicating any changes in the programs. Based on the facts on the record, the Department determines that there is a likelihood of continuation or recurrence of countervailable subsidies because the record in this proceeding indicates that the subsidy programs found countervailable during the investigation continue to exist and be used.

2. Net Countervailable Subsidy Likely to Prevail

Petitioner Comments

Petitioner states that subject imports are not able to compete since the imposition of the order and that the Department should select the rate from the original investigation. For companies that did not begin shipping until after the order was issued, petitioner argues that the

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

[8] See id.

[9] 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.

[10] See id.

[11] 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).

[12] 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.

[13] 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.

[14] 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.

Department should select the "all others" rate, which applies to all imports from exporters who have not established eligibility for a separate rate.

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.[15]

Section 752(b)(l)(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 SAA and 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 rate was derived (in whole or part) from subsidy programs which were 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.[16]

In determining company-specific, net countervailable subsidy rates likely to prevail, the Department has started with the rates found in the original investigation. Because the Department has not conducted any administrative reviews of the Order, we do not need to adjust the rates from the investigation to account for additional subsidies, program-wide changes or terminated programs.

Consistent with section 752(b)(3) of the Act, the Department will provide to the ITC the net countervailable subsidy rates shown in the section entitled "Final Results of Review."

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 ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The following programs could fall within the definition of an export subsidy under Article 3.1 of the ASCM, as receipt of benefits under these programs may be contingent upon export activity. Moreover, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the

[15] See SAA at 890, and House Report, H.R. Rep. No. 103-826 (1994) ("House Report") at 64.
[16] See, e.g., Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Second Sunset Review, 75 FR 6210 l (October 7, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

ASCM. They could also fall within the meaning of Article 6.1 if they constitute debt forgiveness, or if they are subsidies to cover operating losses sustained by an industry or enterprise. Because there is insufficient information on the record to conclusively make this determination, the Department is providing to the ITC a list of the programs for which we applied adverse facts available to the non-cooperating respondents in the investigation.[17]

1. Loans and Interest Subsidies Related to the Northeast Revitalization Fund: Sodium nitrite producers are eligible to receive export credits and subsidies to revitalize old industries or restructure state-owned enterprises (SOE) if they are located in the old industry area or are an SOE that has been producing in the chemical industry for over 74 years.

2. The State Key Technologies Renovation Project Fund: Large-sized state-owned enterprises, large-size state holding enterprises, 512 key enterprises, 120 pilot enterprise groups and the leading enterprises in industries) receive payments in the form of "project investment facility" grants covering two years' worth of interest payments on loans to fund improvement projects, or up to three years for enterprises located in the northeast, central, or western areas of the country.

3. Grants to Loss-Making State-Owned Enterprises: The GOC offers grants and tax benefits to SOEs. This program is administered by the Ministry of Finance (MOF) at the national level with a similar program administered by the MOF in conjunction with local governments at the local level.

4. Provision of Electricity to SOEs for Less than Adequate Remuneration: The GOC provides cut rate electricity to SOEs in energy-intensive or highly polluting industries like sodium nitrite.

5. Provision of Land to SOEs for Less Than Adequate Remuneration: The GOC provides discounted land to SOEs, and to favored industries and companies in key strategic industrial sectors.

6. Income Tax Exemption for Export-Oriented Foreign Invested Enterprises (FIE): Recently established export-oriented or high-technology enterprises located in the western region, which includes Shannxi and Sichuan provinces, as well as Chongqing Municipality, qualify for an exemption or reduced income tax rate of 10 percent for two years under this preferential tax policy.

7. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program): Under Article 8 of the Foreign Invested Enterprise and Foreign Enterprise Income

[17] As indicated in the Final Determination, 73 FR at 38983, additional public information concerning the subsidy programs identified below can be found in the following determinations: Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007); Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008); 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); Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008).

Tax Law, an FIE is "productive" and is scheduled to operate for not less than 10 years may be exempt from income tax in the first two years of profitability and may pay income tax at half the standard rate for the next three years. This is known as the "Two Free, Three Half" program.

8. Reduced Income Tax Rates for FIEs Based on Location: FIEs located in special designated locations (e.g., coastal economic development zones, special economic zones, and economic and technical development zones) pay income tax at reduced rates.

9. Reduced Income Tax Rate for New or High Technology Enterprises: The GOC provides tax benefits to enterprises established in designated national new- or high-technology industrial development zones, as well as to FIEs established in designated national new- or high-technology industrial development zones.

10. Preferential Tax Policies for Research and Development by FIEs: FIEs engaged in research and development may offset 150 percent from that year's taxable income (if such expenses have increased by at least ten percent over the previous year).

11. Reduced Income Tax Rate for FIEs Under the West Revitalization Program: FIEs located in the western region, which includes Shannxi and Sichuan provinces, as well as Chongqing Municipality, receive a reduced income tax rate of 15 percent for three years under this preferential tax policy.

12. Income Tax Reduction or Exemption for Export-Oriented or High Technology Enterprises Under the West Revitalization Program: Recently established export-oriented or high-technology enterprises located in the western region, which includes Shannxi and Sichuan provinces, as well as Chongqing Municipality, qualify for an exemption or reduced income tax rate of 10 percent for two years under this preferential tax policy.

13. Preferential Tax Policies Under the West Revitalization Program: The GOC promotes domestic enterprises engaged in encouraged industries, and established economic and development areas through several preferential policies. Domestic enterprises engaged in encouraged industries, and enterprises located in certain economic development zones receive preferential income tax rates of 15 percent through 2010. Encouraged industries located in these areas receive a preferential tax rate of 7.5 percent, provided that 70 percent of the company's income originates from production.

14. Jiangsu Province Tax Programs: The Jiangsu provincial government provides reduced income tax rates to FIEs established in the Nanjing Chemical Industry Park. FIEs operating in this chemical park are eligible to receive reduced income tax rates in the manner authorized by the GOC FIE tax laws including: tax reductions for high-technology FIEs and for productive enterprises, the Two Free and Three Half program, etc.

15. Zhejiang Province Tax Programs: Enterprises in the Hangzhou Bay Fine Chemical Park are exempted from or pay reduced Enterprise Income Taxes, based on investment size or standing

with regard to tax payment status. Companies located in this park also receive a 10 percent rebate of VAT from local financial agencies in the first and second years of production.

16. Guangdong Province Tax Programs: FIEs in Guangdong province receive a reduced income tax rate of 15 percent, while non-FIEs are taxed at a rate of 30 percent. Further, productive FIEs operating for more than 10 years may be exempted from paying Enterprise Income Tax for the first two years of production, and are entitled to a 50 percent reduction of this tax for an additional three years.

17. Shandong Province Tax Programs: Enterprises located in the Qilu Chemical Industry Park are entitled to preferential tax policies conferred on New and High Technological Development Zones by the Central Government.

18. Beijing Municipality Tax Programs: Enterprises located in Beijing's Fine Chemical Base are exempted from paying income tax to the District Finance authority for 15 years, and established enterprises receive a 50 percent income tax refund of the operations tax paid to the District Finance authority.

19. Tianjin Municipality Tax Programs: Productive enterprises, high-technology enterprises, and export-oriented enterprises located in Tianjin's Fine Chemical Industrial Park are provided a 15 percent tax reduction by the Tianjin Municipality government. Productive FIEs are exempted from income taxes levied by the district administration, and enterprises that are in operation for 10 or more years receive a tax rate similar to the Central Government's "Two Free and Three Half" program.

20. Shanghai Municipality Tax Programs: FIEs located in the Shanghai Chemical Industry Area receive a full exemption from the Enterprise Income Tax for the first and second years of operation, and a 50 percent exemption for the third to the fifth year of operation. In addition, the Shanghai Municipal government provides income tax exemptions to export-oriented FIEs, income tax refunds for reinvestment of FIE profits, reduced income tax rates for new or high-technology FIEs, and income tax credits for FIEs on purchases of domestically produced equipment.

21. Chongqing Municipality Tax Programs: Chemical companies located in the Chongqing Chemical Industrial Park, in the Chongqing municipality, receive refunds for Enterprise Income Tax retained for the government at the district level.

22. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises: FIEs that re-invest profits into themselves or use those profits to establish another FIE can receive a 40 percent refund of income tax paid on the invested amount, or a full refund where the reinvestment is for an export-oriented enterprise.

23. Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies: The GOC offers preferential income tax policies to domestic enterprises that upgrade their manufacturing operations with Chinese-made equipment. Domestic

enterprises that upgrade technology consistent with the GOC industrial policies may deduct 40 percent of the cost of equipment from their next year's income tax obligation.

24. Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies: The GOC offers preferential income tax policies to domestic enterprises that upgrade their manufacturing operations with Chinese-made equipment. Domestic enterprises that upgrade technology consistent with the GOC industrial policies may deduct 40 percent of the cost of equipment from their next year's income tax obligation.

25. Value Added Tax (VAT) Rebate for FIE Purchases of Domestically Produced Equipment: FIEs receive refunds on the VAT paid for purchases of domestically produced equipment that is classified in the Encouraged Category and the Restricted B Category of the Directive Category of Foreign-Funded Industries as well as purchases from domestic markets for investment projects listed in the Catalogue of Key Industries, Products and Technologies Encouraged for Development by the State, which includes the chemical industry.

26. VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries: The State Councils's Circular on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) exempts both FIEs and certain domestic enterprises from paying import tariffs and VAT payments on imported equipment provided that these goods are not for resale.

27. Reduced Interest Rate Loans Provided by Liaoning Province: Liaoning Province's Five-Year Framework policy provides assistance to develop certain products, among which "fine chemical engineering" is identified as a key area. Assistance includes loan interest subsidy earmarks by the Liaoning Province Financial Bureau, discounted loans to non-state owned enterprises as directed by the Liaoning Provincial government, and loan interest subsidies for enterprises in certain industries and coastal industrial parks.

28. Provincial Export Interest Subsidies (Guangdong and Zhejiang Provinces): The government of Zhejiang province provides local enterprises with export subsidies amounting to $1,250 for enterprises with more than $1 million in exports.

29. Guangdong Province Funds for Outward Expansion of Industries: Eligible private enterprises in Guangdong province may apply for special funding for the development of export activities.

30. Provision of Land for Less than Adequate Remuneration (Jiangsu Province, Zhejiang Province, and Chongqing Municipality): The Changzhou National High-Tech District located in Jiangsu province, provides discounts on land rates as an enticement to locate in certain zones.

31. Provision of Water for Less than Adequate Remuneration (Zhejiang Province): The Hangzhou Gulf Fine Chemical Zone offers productive enterprises located in the zone discounted rates on water use, and exempts enterprises located in the zone from water registration fees.

32. Chongqing Municipality Tax Programs: Chemical companies located in the Chongqing Chemical Industrial Park, in the Chongqing municipality, receive refunds for Enterprise Income Tax retained for the government at the district level.

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	Net countervailable subsidy rate (percent)
Shanxi Jiaocheng Hongxing Chemical Co., Ltd. (Shanxi Jiaocheng)	169.01 %
Tianjin Soda Plant Tianjin Port Free Trade Zone Pan Bohai International Trading Co., Ltd. (Tianjin Soda Plant)	169.01%
All Others	169.01%

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________

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

November 13, 2013

Date