C-570-938
Sunset Review
Public Document
E&C/OII: BH

August 27, 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 Expedited Second Sunset Review of the Countervailing Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China

---

I. SUMMARY

We have analyzed the substantive response of the domestic interested parties in the second sunset review of the countervailing duty (CVD) order covering citric acid and certain citrate salts (citric acid) from the People's Republic of China (China).[1] We did not receive a response from the Government of China (GOC) or from any other interested party. Accordingly, we conducted an expedited (120-day) sunset review of the CVD *Order*, 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 rate likely to prevail; and
3. Nature of the subsidy.

II. BACKGROUND

On May 1, 2020, Commerce published the notice of initiation of the second sunset review of the CVD *Order* on citric acid from China, pursuant to section 751(c) of the Act.[2] Commerce received a notice of intent to participate from Archer Daniels Midland Company; Cargill, Incorporated; and Tate & Lyle Ingredients Americas LLC (collectively, domestic interested

---

[1] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Notice of Countervailing Duty Order*, 74 FR 25705 (May 29, 2009) (*Order*).
[2] *See Initiation of Five-Year (Sunset) Review*, 85 FR 25386 (May 1, 2020).

parties), within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] Each claimed interested party status under section 771(9)(C) of the Act, as domestic producers engaged in the production in the United States of citric acid.

Commerce received a substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We did not receive a substantive response from any other domestic or interested parties in this proceeding, nor was a hearing requested.

On June 22, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.[5] 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 CVD *Order*.

III. SCOPE OF THE *ORDER*

The scope of this order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of this order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of this order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of this order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively.

Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

---

[3] *See* Domestic Interested Parties' Letter, "Second Five-Year ("Sunset") Review of Antidumping And Countervailing Duty Orders On Citric Acid And Certain Citrate Salts from the People's Republic of China: Domestic Industry's Notice Of Intent To Participate," dated May 18, 2020.
[4] *See* Domestic Interested Parties' Letter, "Second Five-Year ("Sunset") Review of The Countervailing Duty Order On Citric Acid And Certain Citrate Salts from the People's Republic of China: Domestic Industry's Substantive Response," dated June 1, 2020 (Domestic Interested Parties' Substantive Response).
[5] *See* Commerce's Letter, "Sunset Reviews Initiated on May 1, 2020," dated June 22, 2020.

IV. HISTORY OF THE *ORDER*

On April 13, 2009, Commerce published its final determination in the CVD investigation of citric acid from China.[6] We calculated subsidy rates of: (1) 3.60 percent to Yixing Union Biochemical Co., Ltd. and Yixing Union Cogeneration Co., Ltd. (collectively, Yixing Union); (2) 12.68 percent to TTCA Co., Ltd. (TTCA); (3) 118.95 percent to Anhui BBCA Biochemical Co., Ltd. (Anhui BBCA); and (4) 8.14 percent to all others.[7]

Commerce found the following programs to confer countervailable subsidies to TTCA and/or Yixing Union in the *Final Determination*:[8]

1. Policy Lending
2. "Famous Brands" Program in Yixing City
3. Reduced Income Tax Rates to foreign Invested Enterprises (FIEs) Based on Location
4. "Two Free, Three Half" Program
5. Reduced Income Tax Rate for Technology Intensive FIEs
6. Income Tax Credits on Purchases of Domestically Produced Equipment
7. VAT Rebate on Purchases by FIEs of Domestically Produced Equipment
8. VAT and Duty Exemptions on Imported Equipment
9. Local Income Tax Exemption and Reduction Program for "Productive" FIEs
10. Energy and Water Savings Grant
11. Provision of Land in the AEDZ for Less Than Adequate Remuneration (LTAR)
12. Land-Use Rights Extension in Yixing City

In addition, Commerce relied on adverse facts available and found the following additional programs to provide countervailable subsidies to Anhui BBCA:[9]

<u>Loan Programs</u>

1. Discounted Loans for Export-Oriented Industries
2. Export Seller's Credit for High and New Tech Products

<u>Income Tax Programs</u>

1. Two Free, Three Half
2. Reduced Income Tax Rates for FIEs Based on Location
3. Income Tax Exemption for Export-oriented FIEs
4. Reduced Income Tax Rate for High or New Technology Enterprises
5. Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs
6. Preferential Income Tax Rate for Research and Development at FIEs
7. Preferential Tax Programs for Encouraged Industries
8. Preferential Tax Policies for Township Enterprises

---

[6] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).
[7] *See Order*, 74 FR at 25705.
[8] *See Final Determination* IDM at 12-24.
[9] *Id.* at 4-7.

9. Local Income Tax Exemption and Reduction Program for Productive FIEs
10. Reduced Income Tax Rates for Encouraged Industries in Anhui Province

Income Tax Credit or Refund Programs

1. Income Tax Credits on Purchases of Domestically Produced Equipment
2. Tax Benefits to FIEs for Certain Reinvestment of Profits

Grant Programs

1. Famous Brands
2. Funds Provided for the Rationalization of the Citric Acid Industry
3. State Key Technology Program Fund
4. National Level Grants to Loss-making State-owned Enterprises (SOEs)
5. Provincial Level Grants to Loss-making SOEs

LTAR Programs

1. Provision of Land for LTAR in Anhui Province
2. Provision of Land to SOEs for LTAR

Since the issuance of the CVD *Order*, Commerce has completed five administrative reviews pursuant to section 751(a) of the Act. The results of each review are as follows:

Subsidy Rates from the First Review:[10]
Commerce calculated subsidy rates of 16.13 percent for Yixing Union; and 8.93 percent for RZBC Co., Ltd.; RZBC Import & Export Co., Ltd. RZBC (Juxian) Co., Ltd.; and RZBC Group Co., Ltd. (collectively, RZBC).

In addition to the subsidies listed above that were found to be countervailable in the original investigation, Commerce found the following subsidies to be countervailable in the first administrative review:[11]

1. Shandong Province Policy Loan Program
2. Export Sellers' Credit for High and New-Technology Products
3. Reduced Income Tax Rate for High or New Technology Enterprises
4. Provision of Sulfuric Acid for LTAR
5. Fund for Optimizing Import and Export Structure
6. Shandong Province Special Fund for the Establishment of Key Enterprise Technology Centers
7. Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River
8. Rizhao City Subsidies to Encourage Enterprise Expansion
9. Rizhao City Subsidy for Antidumping Investigations
10. Shandong Province Subsidy for Antidumping Investigations
11. Subsidy for Technique Improvement
12. Fund for Energy-Saving Technological Innovation

---

[10] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011), and accompanying IDM.
[11] *Id.* at 11-12, 14, 16-18, and 20-29.

13. Shandong Province Award Fund for Industrialization of Key Energy-Saving Technology
14. Shandong Province Environmental Protection Industry R&D Funds
15. Shandong Province Construction Fund for Promotion of Key Industries
16. Shandong Province Science and Technology Development Fund
17. Enterprise Development Supporting Fund from Zibo City Financial Bureau
18. Shandong Province Financial Special Fund for Supporting High and New Technology Industry Development Project
19. Rizhao City Special Fund for Enterprise Development
20. Rizhao City Technology Innovation Grants
21. Rizhao City Technology Research and Development Fund
22. Shandong Province Waste Water Treatment Subsidies
23. Yixing City Lending Enterprise Program
24. Yixing City Tai Lake Water Improvement Program
25. Jiangsu Province Energy Conservation and Emissions Reduction Program

<u>Subsidy Rate from the Second Review</u>:[12]
Commerce calculated a subsidy rate of 5.27 percent for RZBC.

In the second administrative review, Commerce found the following additional programs to be countervailable:[13]

1. Provision of Steam Coal for LTAR
2. Science and Technology Export Innovation Support
3. Donggang Finance Bureau IPO Preparation Subsidy
4. First Industrial Enterprises Development Budget in District Level
5. First and Second Industrial Enterprises Development Budget in City Level
6. Award for Contribution to City and People
7. Award for Enterprise Technology Improvement Project
8. Shandong Self-Innovation Subsidy

<u>Subsidy Rate from the Third Review</u>:[14]
Commerce calculated a subsidy rate of 18.28 percent for RZBC.

In the third administrative review, Commerce found the following additional programs to be countervailable:[15]

1. Provision of Calcium Carbonate for LTAR
2. Provision of Land to Enterprises in Strategic Emerging Industries in Shandong

---

[12] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 72323 (December 5, 2012), and accompanying IDM.
[13] *Id.* at 19-25.
[14] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Countervailing Duty Administrative Review and Notice of Amended Final Results Pursuant to Court Decision; 2011*, 81 FR 21537 (April 12, 2016); *see also Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014), and accompanying IDM.
[15] *Id.* at 24-34.

3. Return of Land Use Right Deed Tax for Initial Public Offering Companies
4. Enterprise Technology Research and Development Subsidy
5. Financial Resource Construction Award
6. Technology Innovation Advance Unit Award
7. Special Fund for Foreign Trade Public Service Platform
8. Subsidy for Providing Employment Internship Base
9. Application Technology Research and Development Fund
10. Self-Innovation Special Fund
11. Economic Task Special Contribution Award
12. Self-Innovation Achievement Convert into Major Industry Structure Optimization Upgrade Project

Subsidy Rates from the First Sunset Review:[16]
Commerce calculated a subsidy rate of 44.31 percent for TTCA; 36.46 percent for Yixing Union; 150.58 percent for Anhui BBCA; and 39.77 percent for all others.

Since the date of the completion of the first sunset review, Commerce completed the fourth and fifth administrative reviews of this order.

Subsidy Rate from the Fourth Review:[17]
Commerce calculated a subsidy rate of 17.55 percent for RZBC.

In the fourth administrative review, Commerce found the following additional programs to be countervailable:[18]

1. Export-Import Bank of China: Buyer's Credit[19]
2. Provision of Caustic Soda for LTAR[20]

Subsidy Rate from the Fifth Review:[21]
Commerce calculated a subsidy rate of 30.93 percent for Laiwu Taihe Biochemistry Co. Ltd. (Taihe).

In the fifth administrative review, Commerce found the following additional programs to be countervailable:[22]

---

[16] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Expedited Sunset Review of the Countervailing Duty Order*, 79 FR 45761 (August 6, 2014) (*First Sunset Review*).
[17] *See Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid Fourth AR*), and accompanying IDM.
[18] *Id.* at 16-26.
[19] We determined that RZBC received a countervailable subsidy rate of 10.54 percent under this program.
[20] We determined that RZBC received a countervailable subsidy rate of 0.96 percent under this program.
[21] *See Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013*, 80 FR 77318 (December 14, 2015) (*Citric Acid Fifth AR*), and accompanying IDM.
[22] *Id.* at 32-37.

1. Provision of Land in the Laiwu High-Tech Industrial Development Zone for LTAR[23]
2. Laiwu City Award for Advanced Construction of Large Projects[24]
3. Laiwu High-Tech Zone Development Fund for Small & Medium Enterprises with Regional Characteristic Industries[25]
4. Provision of Electricity for LTAR[26]
5. Environmental Tax Offset[27]
6. National Support Fund for 2011 Energy Saving Project, Circulation Economy and Resource Conservation Project and Pollution Abatement Project[28]

Commerce rescinded the sixth and seventh administrative reviews of the CVD *Order* for the 2014 and 2015 calendar year PORs.[29] No interested party requested an administrative review for the 2016, 2017, or 2018 calendar year PORs. There are currently no on-going administrative reviews of the CVD *Order*.

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would likely 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 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 parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

---

[23] We determined that Taihe received a countervailable subsidy rate of 1.05 percent under this program.
[24] We determined that Taihe received a countervailable subsidy rate of 0.03 percent under this program.
[25] We determined that Taihe received a countervailable subsidy rate of 0.01 percent under this program.
[26] We determined that Taihe received a countervailable subsidy rate of 2.92 percent under this program.
[27] We determined that Taihe received a countervailable subsidy rate of 0.21 percent under this program.
[28] We determined that Taihe received a countervailable subsidy rate of 0.04 percent under this program.
[29] *See Citric Acid and Certain Citric Salts: Rescission of Countervailing Duty Administrative Review; 2014*, 80 FR 59731 (October 2, 2015); *see also Citric Acid and Certain Citric Salts: Rescission of Countervailing Duty Administrative Review; 2015*, 81 FR 72568 (October 20, 2016).

Interested Party Comments[30]

Citing section 752(b)(1) of the Act, the SAA,[31] and the *Policy Bulletin*,[32] the domestic interested parties assert that an affirmative determination of continuation or recurrence is warranted because the subsidies at issue in the original investigation and in subsequent reviews remain in existence and have not been terminated or suspended. Further, the domestic interested parties note that nothing has changed since the first sunset review, where Commerce found "that there is a likelihood of recurrence of countervailable subsidies because the record in this proceeding indicates that the subsidy programs found to be countervailable during the investigation continue to exist and be used."[33] The domestic interested parties point out that subsidies have continued at above *de minimis* levels since the imposition of the *Order*. Additionally, the domestic interested parties note the significant decline in imports since the imposition of the *Order* is a direct result of the efficacy of the *Order* and argue that, absent the *Order*, subsidized imports from China would likely increase significantly.

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, 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.[34] The SAA further states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.[35] The continued existence of programs that have not been used, and have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.[36] Where a subsidy program is found to exist, Commerce will normally determine that revocation of the relevant order would likely lead to continuation or recurrence of a countervailable subsidy, regardless of the level of subsidization.[37]

Consistent with prior 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

---

[30] *See* Domestic Interested Parties' Substantive Response at 4 – 12.
[31] *See* Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 888.
[32] *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*).
[33] *See* Domestic Interested Parties' Substantive Response at 4-5; *see also First Sunset Review* IDM at 13.
[34] *See* SAA at 888.
[35] *Id.*
[36] *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.
[37] *Id.*

program must be terminated; and (2) any benefit stream must be fully allocated.[38] To determine whether a program has been terminated, we will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program.[39] Commerce normally expects a program to be terminated by means of the same legal mechanism used to institute it.[40] 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 and was not granted as part of a broader, government program.[41]

As explained above, in the investigation and subsequent administrative reviews of the *Order*, Commerce found that countervailable subsidies were being provided to Chinese exporters and producers of citric acid under the programs listed above. No party submitted evidence to demonstrate that these countervailable programs have expired or been terminated, and there is no information on the record of this proceeding indicating any changes to the programs found countervailable during the investigation. Absent argument or evidence to the contrary, we find that these countervailable programs continue to exist and be used.[42] Therefore, Commerce determines that there is a likelihood of continuation or recurrence of countervailable subsidies if the *Order* were revoked.

2. Net Countervailable Subsidy Rates Likely to Prevail

<u>Interested Party Comments</u>[43]

The domestic interested parties assert that subsidization would continue at the rates established in the original investigation and subsequent administrative reviews. They further assert that, consistent with the SAA 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. Accordingly, the domestic interested parties argue that pursuant to the principles set forth in the SAA, Commerce should report the following CVD rates to the ITC: (1) 12.68 percent for

[38] *See, e.g.*, *Non-Oriented Electrical Steel from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 85 FR 11339 (February 27, 2020), and accompanying IDM at 6; *see also Certain Pasta from Italy: Final Results of the Expedited Fourth Sunset Review of the Countervailing Duty Order*, 83 FR 62839 (December 6, 2019), and accompanying IDM at 11; and *Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006), and accompanying Preliminary 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).
[39] *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 IDM at Comment 1.
[40] *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 IDM at Comment 7.
[41] *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 IDM at Comment 1.
[42] *See, e.g.*, *Sulfanilic Acid from India; Final Results of Expedited Sunset Review of Countervailing Duty Order*, 76 FR 33243 (June 8, 2011); *see also 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).
[43] *See* Domestic Interested Parties' Substantive Response at 13 – 14.

TTCA; (2) 118.95 percent for Anhui BBCA; (3) 16.13 percent for Yixing Union; (4) 17.55 percent for RZBC; (5) 30.93 percent for Taihe; and (6) 8.14 percent to all others.

Commerce's Position:

Consistent with the SAA and legislative history, Commerce will normally provide the ITC with the net countervailable subsidy rate 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.[44] Section 752(b)(l)(B) of the Act provides, however, 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. Therefore, although Commerce normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, Commerce derived this rate (in whole or part) from subsidy programs found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.[45]

In this instance, Commerce has completed five administrative reviews in which, as discussed above, it found several additional subsidy programs to be countervailable. We note that, in the *First Sunset Review*, Commerce adjusted the rates determined for each of the companies and all others in the investigation to reflect the programs that Commerce subsequently found to be countervailable.[46] The fourth and fifth administrative reviews were completed following the completion of the *First Sunset Review*.[47] Therefore, in providing to the ITC the subsidy rates likely to prevail if the CVD *Order* were revoked, Commerce added to the net countervailable subsidy rates determined in the original investigation the countervailable subsidy rates from the additional subsidy programs found to be countervailable during the subsequent administrative reviews. 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.

Article 3

[44] *See* SAA at 890.
[45] *See 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 4.
[46] *See First Sunset Review* IDM at 17.
[47] *See Citric Acid Fourth AR* IDM; *see also Citric Acid Fifth AR* IDM.

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 Program

1. Export Seller's Credit for High – and New-Technology Products (export-contingent)
2. Export-Import Bank of China: Buyer's Credit (export-contingent)

Grant Programs

3. Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products (export-contingent)
4. Rizhao City: Subsidy for Antidumping Investigations (export-contingent)
5. Science and Technology Export Innovation Support (export-contingent)
6. Shandong Province: Subsidy for Antidumping Investigations (export-contingent)

Article 6.1

The following programs do not fall within the meaning of Article 3 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. They also could 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, Commerce is providing to the ITC the following list of programs:

Loan Programs

For the following programs, the GOC, through its policy banks and state-owned banks, provides preferential loans to the respondents, which were found to be specific.

1. Government Policy Lending
    a. National Policy Lending
    b. Shandong Province Policy Loans Program

Income Tax Programs

For the following programs, the GOC provides income tax exemptions, or reductions to the income tax rate, which were found to be specific to certain enterprises or industries.

2. Reduced Income Tax Rates to FIEs Based on Location
3. "Two Free, Three Half" Program
4. Local Income Tax Exemption/Reduction Program for "Productive" FIEs

5. Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs
6. Reduced Income Tax Rate for High or New Technology Enterprises

<u>Other Tax Programs</u>

7. Income Tax Credits on Purchases of Domestically Produced Equipment
8. VAT and Duty Exemptions on Imported Equipment
9. Environmental Tax Offset

<u>Inputs for LTAR</u>

For the following programs, GOC authorities provided inputs to producers of citric acid for LTAR, which we found to be *de facto* specific.

10. Provision of Sulfuric Acid for LTAR
11. Provision of Steam Coal for LTAR
12. Provision of Calcium Carbonate for LTAR
13. Provision of Caustic Soda for LTAR
14. Provision of Electricity for LTAR

<u>Land Programs</u>

15. Land-Use Rights Extension in Yixing City
16. Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Shandong Province
17. Provision of Land in the Laiwu High-Tech Industrial Development Zone for LTAR

<u>Grant Programs</u>

For the following programs, the GOC provided direct financial assistance to certain enterprises or industries, which we found specific.

18. Application Technology Research and Development Fund
19. Award for Contribution to City and People
20. Award for Enterprise Technology Improvement Project
21. Donggang Finance Bureau IPO Preparation Subsidy
22. Economic Task Special Contribution Award
23. Enterprise Development Supporting Fund from Zibo City Financial Bureau
24. Enterprise Technology Research and Development Subsidy
25. Financial Resource Construction Award
26. First and Second Industrial Enterprises Development Budget in City Level
27. First Industrial Enterprises Development Budget in District Level
28. Fund for Energy-saving Technological Innovation
29. Jiangsu Province Energy Conservation and Emissions Reduction Program
30. Return of Land Use Right Deed Tax for Initial Public Offering (IPO) Companies
31. Rizhao City: Special Fund for Enterprise Development

32. Rizhao City: Subsidies to Encourage Enterprise Expansion
33. Rizhao City: Technological Innovation Grants
34. Rizhao City: Technology Research and Development Fund
35. Self-Innovation Achievement Convert into Major Industry Structure Optimization Upgrade Project
36. Self-Innovation Special Fund
37. Shandong Province: Award Fund for Industrialization of Key Energy-saving Technology
38. Shandong Province Construction Fund for Promotion of Key Industries
39. Shandong Province: Environmental Protection Industry R&D Funds
40. Shandong Province Financial Special Fund for Supporting High and New Technology Industry Development Project (Technology Special Fund)
41. Shandong Province Science and Technology Development Fund
42. Shandong Province: Special Fund for the Establishment of Key Enterprise Technology Centers
43. Shandong Province: Waste Water Treatment Subsidies
44. Shandong Self-Innovation Subsidy
45. Special Fund for Foreign Trade Public Service Platform
46. Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River
47. Subsidy for Providing Employment Internship Base
48. Subsidy for Technique Improvement
49. Technology Innovation Advanced Unit Award
50. Yixing City: Leading Enterprise Program
51. Yixing City: Tai Lake Water Improvement Program
52. Laiwu High-Tech Zone Development Fund for Small & Medium Enterprises with Regional Characteristic Industries
53. Laiwu City Award for Advanced Construction of Large Projects
54. National Support Fund for 2011 Energy Saving Project, Circulation Economy and Resource Conservation Project and Pollution Abatement Project

In addition, during the investigation, Commerce determined the following programs did not provide a benefit to, or were not used by TTCA or Yixing Union, but found the programs to be countervailable on the basis of adverse facts available for Anhui BBCA.

Loan Programs

1. Discounted Loans for Export-Oriented Industries

Income Tax Programs

2. Income Tax Exemption for Export-oriented FIEs
3. Reduced Income Tax Rate for High or New Technology Enterprises
4. Preferential Income Tax Rate for Research and Development at FIEs
5. Preferential Tax Programs for Encouraged Industries
6. Preferential Tax Policies for Township Enterprises
7. Reduced Income Tax Rates for Encouraged Industries in Anhui Province

Income Tax Credit or Refund Programs

8. Tax Benefits to FIEs for Certain Reinvestment of Profits

Grant Programs

9. Funds Provided for the Rationalization of the Citric Acid Industry
10. State Key Technology Program Fund
11. National Level Grants to Loss-making State-owned Enterprises
12. Provincial Level Grants to Loss-making State-owned Enterprises

LTAR and Land Programs

13. Provision of Land for Less than Adequate Remuneration in Anhui Province
14. Provision of Land to SOEs for LTAR

VII. FINAL RESULTS OF SUNSET REVIEW

Commerce determines that revocation of the CVD *Order* on citric acid from China would be likely to lead to the continuation or recurrence of countervailable subsidies at the rates listed below:

Producer/Exporter	*Ad Valorem* Subsidy Rate
TTCA Co., Ltd.	60.07 percent
Yixing Union Biochemical Co., Ltd.; and Yixing Union Cogeneration Co., Ltd.	52.22 percent
Anhui BBCA Biochemical Co., Ltd	166.34 percent
All Others	55.53 percent

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

8/27/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance