

DATE: November 16, 2011

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited First Sunset
Review of the Countervailing Duty Order on Lined Paper Products
from Indonesia: Final Results

Summary

We have analyzed the substantive responses of the domestic interested parties, the Association of American School Paper Suppliers and its members (collectively, “Petitioners”), the only interested parties participating in the expedited sunset review of the countervailing duty (“CVD”) order on certain lined paper products (“lined paper”) from Indonesia. The Department did not receive a substantive response from respondents. We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is a complete list of the issues in this expedited sunset review for which we received comments from interested parties:

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

History of the Order

The Department of Commerce (the “Department”) published its final CVD determination on lined paper from Indonesia on August 16, 2006.¹ In the *Final Determination*, the Department

¹ See *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia*, 71 FR 47174 (August 16, 2006) (“*Final Determination*”).

found that the Government of Indonesia (“GOI”) conferred countervailable benefits on PT. Pabrik Kertas Tjiui Kimia Tbk (“TK”) and “all others” at an *ad valorem* rate of 40.55 percent. Following the Department’s affirmative finding of subsidization and the affirmative finding of the International Trade Commission (“ITC”) that unfairly traded imports had materially injured the U.S. industry,² the Department published a CVD order on lined paper from Indonesia.³ In the investigation, the following programs were found to confer countervailable subsidies:

- a. Provision of Standing Timber at Preferential Rates
- b. Subsidized Funding of Reforestation

There have been no administrative reviews since the issuance of the *CVD Order*. Also, there have been no changed circumstance reviews, duty absorption findings, or scope rulings. The order remains in effect for all Indonesia producers and exporters of lined paper products.

Background

On August 1, 2011, the Department initiated this sunset review of the *CVD Order* on lined paper from Indonesia, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). *See Initiation of Five-Year (“Sunset”) Reviews*, 76 FR 45778 (August 1, 2011). The Department received the notice of intent to participate from Petitioners within the deadline specified in 19 CFR 351.218(d)(1)(i). Petitioners are U.S. producers of the domestic like product and, thus, claim interested party status under section 771(9)(C) of the Act. On August 31, 2011, the Department received a substantive response from Petitioners.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether termination of the *CVD 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 subsequent reviews, and 2) whether any change in the program which gave rise to the net countervailable subsidy has occurred and is likely to affect that net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (“SCM”).

² *See Certain Lined Paper School Supplies From China, India, and Indonesia*, Inv. Nos. 701-TA-442-443 and 731-TA-1095-1097 (Final), USITC Pub. 3884 (September 2006) (“*ITC Final*”).

³ *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia* (“*CVD Order*”), 71 FR 56949 (September 28, 2006).

Below, we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Petitioners state their support for the continuation of the *CVD Order* on lined paper from Indonesia. They assert that, since the order was issued, Indonesian producers and exporters have continued to benefit from countervailable subsidies in excess of *de minimis* levels and that import levels have decreased. Petitioners note that in the *Final Determination*, the Department concluded that TK benefitted from two countervailable subsidy programs, the Provision of Standing Timber at Preferential Rates and Subsidized Funding of Reforestation. Petitioners cite the recent coated paper final determination, in which the Department also concluded that the GOI provided standing timber for less than remuneration to respondents.⁴

Petitioners allege that the imposition of CVDs on lined paper has had a significant impact on imports of the subject merchandise. Petitioners state that with the *CVD Order* in place, import volumes have decreased, thereby reinforcing the inability of Indonesian producers to sell in the U.S. market without the benefit of subsidies. Petitioners claim that, in 2005, nearly 39.3 million units of Indonesian lined paper entered the United States under the tariff provisions in which lined paper is classified.⁵ In comparison, Petitioners state that, in 2010, Indonesia imports under these provisions totaled less than 2.2 million units, a mere fraction of 2005 import levels.⁶

Thus, Petitioners maintain that U.S. imports of certain lined paper products from Indonesia have decreased substantially since the imposition of the order. According to Petitioners, despite the recent downward trend in U.S. imports of the subject merchandise, the GOI's subsidization of Indonesian producers and exporters continues, and the absence of an order would guarantee the continuation and acceleration of imports of lined paper.

Department's Position

Section 752(b) of the Act directs the Department to consider the CVD rates calculated in the investigation and any subsequent reviews, and whether any changes have occurred that would likely affect the rates. According to the SAA at 888,⁷ the continuation of a program is "highly probative of the likelihood of continuation or recurrence of countervailable subsidies." As explained above, there have been no administrative reviews. Moreover, there is no information indicating any changes in the programs. Therefore, consistent with our practice, we find that

⁴ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination*, 75 FR 59209 (September 27, 2010).

⁵ See *ITC Final* at IV-3 (Table IV-2).

⁶ Data are based on current Harmonized Tariff Schedule of the United States ("HTSUS") numbers 4810.22.5044, 4811.90.9050, 4820.10.2030, and 4820.10.2040. Kilograms reported under HTSUS 4810.22.5044, 4811.90.9050 have been converted to units using the conversion factor identified by the ITC in the original investigation. See Attachment 3 of Petitioner's August 31, 2011 submission; see also *ITC Final* at IV-1 n.6.

⁷ See Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1, at 888 (1994) ("SAA").

countervailable programs continue to exist and be used.⁸ Consequently, we determine that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.

2. *Net Countervailable Subsidy Likely to Prevail*

According to Petitioners, revocation of the *CVD Order* on lined paper from Indonesia would likely lead to the continuation or recurrence of subsidization in the U.S. market at subsidy rates equal to or greater than those found in the investigation. To determine an appropriate margin that the Department should provide to the ITC, Petitioners cite to the Department's *Policy Bulletin*, which states that "the Department normally will provide to the Commission the net countervailable subsidy that was determined in the final determination in the original investigation" because it "is the only calculated rate that reflects the behavior of exporters...without the discipline of an order or suspension agreement in place."⁹ Applying these principles, Petitioners state that the Department should rely on the CVD rates established in the investigation, 40.55 percent for all Indonesian producers/exporters.¹⁰

Department's Position:

Absent any argument or evidence to the contrary, and consistent with our practice,¹¹ the Department determines that the net countervailable subsidy rate likely to prevail in the event of revocation of the order would be 40.55 percent, the rate from the investigation, for all producers and exporters of the subject merchandise from Indonesia.

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 subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the SCM. We note that Article 6.1 of the SCM expired effective January 1, 2000.

Consistent with our findings in the *Final Determination*, there are no programs that fall within the definitions under Article 3 or Article 6.1 of the SCM. Petitioners did not address this issue in its substantive response of August 31, 2011.

The Department is providing the ITC with the following program descriptions:

⁸ See *Sulfanilic Acid From India: Final Results of Expedited Sunset Review of Countervailing Duty Order*, 76 FR 33243 (June 8, 2011) ("*Sulfanilic Acid from India*"); 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) ("*CVP 23 from India*").

⁹ See *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin* 63 FR 18871, 18875 (April 16, 1998) ("*Policy Bulletin*").

¹⁰ See *CVD Order*.

¹¹ See *Sulfanilic Acid From India*; see also *CVP 23 from India*.

1. Provision of Standing Timber at Preferential Rates: The GOI's provision of a good, logs, to the cross-owned forestry companies of the respondent conferred a countervailable subsidy on the respondent.

2. Subsidized Funding of Reforestation (HTI): The GOI entered into an agreement with private companies for the establishment of companies that would operate HTI forest plantations. In the creation of the joint venture company, the private company and the GOI each contributed equity capital, and the GOI also provided a zero-interest loan.

Final Results of Review

We determine that revocation of the CVD order on lined paper from Indonesia would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Manufacturers/Producers/Exporters	Net Countervailable Subsidy (percent)
PT. Pabrik Kertas Tjiwi Kimia Tbk	40.55
All Others	40.55

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting the above positions. If these recommendations are approved, we will publish the expedited final results of review in the *Federal Register*, and notify the ITC of our determination.

_____ Agree _____ Disagree

Paul Piquado
Assistant Secretary
For Import Administration

Date