



C-560-824
Sunset Review
Public Document
E&C/Office VII: JA

January 29, 2016

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 First Sunset Review of the Countervailing Duty Order on Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia

SUMMARY

We have analyzed the responses of interested parties in the expedited sunset review of the countervailing duty order on certain coated paper suitable for high-quality print graphics using sheet-fed presses (certain coated paper) from Indonesia (*CVD Order*).¹ 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 Subsidies

Background

On November 17, 2010, the Department of Commerce (the Department) published the *CVD Order* on certain coated paper from Indonesia.² On October 1, 2015, the Department initiated the first sunset review of the *CVD Order* pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(c).³ Verso Corporation (Verso), S.D. Warren

¹ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Countervailing Duty Order*, 75 FR 70206 (November 17, 2010) (*CVD Order*).

² See *CVD Order*.

³ See *Initiation of Five-Year “Sunset” Reviews*, 80 FR 59133 (October 1, 2015).



Company d/b/a Sappi North America (Sappi), Appleton Coated LLC (Appleton), and the United Steel, Paper and Forestry, Rubber, and Manufacturing, Energy, Allied Industrial and Service Workers Union, AFL-CIO, CLC (USW) (collectively, Petitioners), interested parties pursuant to section 771(9)(C) and 771(9)(D) of the Act, timely filed a notice of intent to participate in the review.⁴ On October 30, 2015, the Department received a substantive response from Petitioners, in accordance with 19 CFR 351.218(d)(3)(i).⁵ The Department did not receive a response from the Government of Indonesia (GOI) or any Indonesian producers or exporters of subject merchandise. In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2), because there are inadequate responses from respondent interested parties, the Department is conducting an expedited (120-day) sunset review of the *CVD Order*.

History of the Order

On November 17, 2010 the Department published the *CVD Order* on certain coated paper.⁶ In the *Final Determination* of the subject CVD investigation,⁷ covering the calendar year 2008, the Department found a net countervailable subsidy rate of 17.94 percent for PT Pabrik Kertas Tjiwi Kimia, Tbk.; PT Pindo Deli Pulp and Paper Mills; and PT Indah Kiat Pulp and Paper, Tbk for these companies, collectively, Asia Pulp and Sinar Mas Group (APP/SMG);⁸ and 17.94 percent for “All-Others.”

We found the following programs countervailable for APP/SMG in the original investigation:

1. Provision of Standing Timber for Less Than Adequate Remuneration
2. Government Prohibition of Log Exports
3. Debt Forgiveness Through Indonesian Government’s Acceptance of Financial Instruments with No Market Value
4. Debt Forgiveness Through APP/SMG’s Buyback of Its Own Debt from the Indonesian Government

We determined the following programs were not used during the POI:⁹

⁴ See Letter to the Department, “First Five-Year (“Sunset”) Review of Countervailing Duty Order on Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Domestic Industry’s Notice of Intent to Participate In Sunset Review,” (October 15, 2015) (Notice of Intent to Participate).

⁵ See Letter to the Department, “Five-Year (“Sunset”) Review Of Countervailing Duty Order On Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia : Domestic Industry’s Substantive Response,” (October 30, 2015) (Substantive Response).

⁶ See *CVD Order*.

⁷ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia : Final Affirmative Countervailing Duty Determination (Final Determination)*, 75 FR 59209 (September 27, 2010) and accompanying Issues and Decision Memorandum (IDM), dated September 20, 2010.

⁸ In the Countervailing Duty Investigation of Certain Coated Paper from Indonesia, we stated: “[t]he Asia Pulp and Paper Company/Sinar Mas Group is comprised of a group of companies whose diverse interests include forestry/logging companies, pulp producers, and paper manufacturers linked by varying degrees of common ownership involving one family.” See the memorandum titled “Countervailing Duty Investigation: Certain Coated Paper from Indonesia: Cross-Ownership,” dated March 1, 2010 at 2.

⁹ See IDM at 21.

1. Government Provision of Interest Free Reforestation Loans
2. Government Forgiveness of Stumpage Obligations
3. Tax Incentives for Investment in Priority Business Lines and Designated Regions
 - a. Corporate Income Deduction
 - b. Accelerated Depreciation and Amortization
 - c. Extension of Loss Carryforward
 - d. Reduced Withholding Tax on Dividends

On December 30, 2013, we initiated the third administrative review for calendar period 2012, but we ultimately rescinded this review based on timely withdrawal of requests from interested parties.¹⁰ There have not been any completed administrative reviews of this order. This is the first sunset review of the *CVD Order*.

Scope of the Order

The scope of the order covers certain coated paper and paperboard (1) in sheets suitable for high quality print graphics using sheet-fed presses; coated on one or both sides with kaolin (China or other clay), calcium carbonate, titanium dioxide, and/or other inorganic substances; with or without a binder; having a GE brightness level of 80 or higher (2); weighing not more than 340 grams per square meter; whether gloss grade, satin grade, matte grade, dull grade, or any other grade of finish; whether or not surface-colored, surface-decorated, printed (except as described below), embossed, or perforated; and irrespective of dimensions. Certain coated paper includes (a) coated free sheet paper and paperboard that meets this scope definition; (b) coated groundwood paper and paperboard produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other coated paper and paperboard that meets this scope definition. Certain Coated Paper is typically (but not exclusively) used for printing multi-colored graphics for catalogues, books, magazines, envelopes, labels and wraps, greeting cards, and other commercial printing applications requiring high quality print graphics. Specifically excluded from the scope are imports of paper and paperboard printed with final content printed text or graphics.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 4810.29.1035, 4810.29.7035, 4810.92.1235, 4810.92.1435, 4810.92.6535, 4810.14.11, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.6000, 4810.14.70, 4810.19.1100, 4810.19.1900, 4810.19.2010, 4810.19.2090, 4810.22.1000, 4810.22.50, 4810.22.6000, 4810.22.70, 4810.29.1000, 4810.29.5000, 4810.29.6000, 4810.29.70, 4810.32.10, 4810.32.30, 4810.32.65, 4810.92.30, 4810.92.65, 4810.39.12, 4810.39.14, 4810.39.30, 4810.39.65, 4810.92.12, and 4810.92.14. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

¹⁰ See *Notice of Rescission of Countervailing Duty Administrative Review: Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia*, 78 FR 7752 (August 4, 2014).

Scope Rulings

On September 13, 2012, we found: (1) APP/SMG's Zenith packaging paperboard with a basis weight of 215 grams per square meter (gsm), APP/SMG's Sinar Vanda packaging paperboard with a basis weight of 210 gsm, and APP/SMG's blue-, grey-, and black-center playing card board which SMG/APP exports are within the scope of the *CVD Order*; and (2) APP/SMG's Zenith packaging paperboard (except with a basis weight of 215 gsm) and APP/SMG's Sinar Vanda packaging paperboard (except with a basis weight of 210 gsm), which APP/SMG exports are not within the scope of the *CVD Order*.¹¹

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation 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 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 *CVD 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 it is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM).

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Domestic Interested Parties' Comments

Petitioners state that the Department's practice is to reach an affirmative determination in a sunset review where no administrative reviews have been conducted and where no party has provided evidence that the countervailable programs have been terminated.¹² Petitioners argue that revocation of the *CVD Order* would likely lead to a continuation or recurrence of countervailable subsidies since countervailable subsidy programs continued after the issuance of the order.¹³

Petitioners state that "the Department 'normally will provide to the Commission the net countervailable subsidy that was determined in the final determination in the original

¹¹ See *Notice of Scope Ruling*, 78 FR 9370 (February 8, 2013).

¹² Petitioners cite to *Certain Hot-Rolled Carbon Steel Flat Products From India, Indonesia, and Thailand: Final Results of Expedited Sunset Reviews*, 78 FR 15252 (March 14, 2013) in Substantive Response at footnote 11.

¹³ See Substantive Response at 6-7.

investigation.¹⁴ Petitioners argue that the appropriate rates are 17.94 percent for the companies that comprise APP/SMG and 17.94 percent for “All-Others.”

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.¹⁵ The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.¹⁶ 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.¹⁷ 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.¹⁸

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.¹⁹ 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.²⁰ The Department normally expects a program to be terminated by means of the same legal mechanism used to institute it.²¹ 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.²²

¹⁴ See *Sunset Policy Bulletin*, 63 FR 18875.

¹⁵ See SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

¹⁶ *Id.*

¹⁷ 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.

¹⁸ *Id.*

¹⁹ 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 IDM 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).

²⁰ 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.

²¹ 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.

²² 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.

Given that the Department has not completed any administrative reviews since issuance of the *CVD Order*, there is no information indicating changes in the programs found countervailable during the investigation. Moreover, neither the GOI nor other respondent interested parties participated in this sunset review. Based on the absence of any record evidence to demonstrate the countervailable programs have expired or been terminated, the Department determines that there is a likelihood of continuation or recurrence of countervailable subsidies.

2. Net Countervailable Subsidy Likely to Prevail

Domestic Interested Parties' Comments

Petitioners state that the Department should use the rates from the original investigation. These rates are 17.94 percent for the companies that comprise APP/SMG and 17.94 percent for "All-Others."

Department's Position:

Consistent with the SAA and legislative history, the Department normally will provide the ITC with the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked, because it is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.²³ Section 752(b)(1)(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.²⁴

In determining whether company-specific, net countervailable subsidy rates are likely to prevail, the Department has started with the rates found in the original investigation. As there is no information suggesting changes in the programs found countervailable during the investigation, 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 report to the ITC the net countervailable subsidy rates from the original investigation as indicated below in the section entitled "Final Results of Review."

²³ See SAA at 890, and H.R. Rep. No. 103-826 (1994) (House Report) at 64.

²⁴ See, e.g., *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 Comment 2.

3. Nature of the Subsidies

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

The following programs do not fall within the meaning of Article 3.1 of the ASCM, but could be subsidies as 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 ASCM. The subsidies could also could fall within the meaning of Article 6.1 if they constitute debt forgiveness, grants to cover debt repayment, or subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review for the Department to make such a determination. We are, in any case, providing the ITC with the following program descriptions:

1. *Provision of Standing Timber for Less Than Adequate Remuneration:* The GOI controls nearly all of Indonesia's harvestable forest land and leases the right to harvest roundwood (*i.e.*, logs) for less than adequate remuneration.
2. *Government Prohibition of Log Exports:* The GOI's log export ban induces log suppliers to sell logs domestically at suppressed prices to benefit Indonesia's downstream wood processing industries, which benefits the expansion of the downstream users of wood, particularly the pulp and paper industries.
3. *Debt Forgiveness Through Indonesian Government's Acceptance of Financial Instruments with No Market Value:* The GOI's acceptance of valueless certificates of entitlement as partial payment of APP/SMG's debt constitutes countervailable debt forgiveness.
4. *Debt Forgiveness Through APP/SMG's Buyback of Its Own Debt from the Indonesian Government:* The GOI's sale of APP/SMG's own debt to an APP/SMG affiliate for less than the value of the outstanding debt constitutes countervailable debt forgiveness.

FINAL RESULTS OF REVIEW

The Department finds that revocation of the *CVD 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)
APP/SMG (PT Pabrik Kertas Tjiwi, Tbk/ PT Pindo Deli Pulp and Paper Mills/ PT Indah Kiat Pulp and Paper, Tbk.)	17.94
All-Others	17.94

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

Date