

DATE: June 21, 2011

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Edward C. Yang
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Preliminary Results of
Full Third Sunset Review of the Countervailing Duty Order on
Fresh and Chilled Atlantic Salmon from Norway

Summary

We have analyzed the substantive responses and rebuttal comments of the domestic and respondent interested parties for the preliminary results of this full sunset review of the countervailing duty (CVD) order on fresh and chilled Atlantic salmon from Norway. We recommend that you approve the positions, which we have developed in the “Discussion of Issues” section of this memorandum. The issues about which we received substantive responses from the interested parties are:

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 February 25, 1991, the Department of Commerce (the Department) issued a final affirmative determination in the CVD investigation, covering calendar year 1989. See Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon From Norway, 56 FR 7678 (February 25, 1991) (Salmon Final Determination). Due to the large number of producers/exporters of salmon in Norway, we conducted the investigation on an industry-wide basis. We found that the following six programs administered by the Government of Norway (GON) conferred countervailable subsidies on Norwegian producers/exporters of subject merchandise:

<i>Program</i>	<i>Rate (%)</i>
Regional Development Fund Loans and Grants	1.75
National Fishery Bank of Norway Loans	0.03
Regional Capital Tax Incentive	0.06
Reduced Payroll Taxes	0.42
Advance Depreciation of Business Assets	0.01
Government Bank of Agricultural Grants	<0.01

The total net subsidy of 2.27 percent ad valorem was calculated for all Norwegian producers/exporters of subject merchandise. The CVD order was published on April 12, 1991. See Countervailing Duty Order: Fresh and Chilled Atlantic Salmon From Norway, 56 FR 14921 (April 12, 1991).

On March 13, 2000, after conclusion of the first sunset review (expedited), the Department published a notice of continuation of the CVD order. See Continuation of Antidumping Duty and Countervailing Duty Orders: Fresh and Chilled Atlantic Salmon From Norway, 65 FR 13358 (March 13, 2000). Subsequently, on February 13, 2006, after conclusion of the second sunset review (expedited), the Department published a notice of continuation of the CVD order. See Continuation of Antidumping and Countervailing Duty Orders: Fresh and Chilled Atlantic Salmon from Norway, 71 FR 7512 (February 13, 2006).

On August 5, 2009, the Department issued a scope ruling determining that whole salmon steaks are within the scope of the CVD order. See Notice of Scope Rulings, 75 FR 14138 (March 24, 2010).

The Department has never received a request to conduct an administrative review of the CVD order. Also, the Department has not issued any changed-circumstances determinations concerning the CVD order.

Background

On January 3, 2011, the Department initiated the third sunset review of this CVD order for the period 2006 through 2010, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See Initiation of Five-Year (“Sunset”) Review, 76 FR 89 (January 3, 2011).

On January 13, 2011, the GON, the Norwegian Seafood Federation (NSF) and Aquaculture Division of the Norwegian Seafood Association (ADNSA) submitted their letters of appearance.¹ On January 18, 2011, Phoenix Salmon U.S., Inc. (Phoenix Salmon),² a domestic interested party, filed a notice of intent to participate in the review. On January 21, 2011, the NSF and ADNSA supplemented their letter of appearance by filing a list of their members. On February 2, 2011, Phoenix Salmon submitted a substantive response. The GON, NSF, and

¹ These public documents and all other public documents and public versions of proprietary documents with regard to this third full sunset review are available on the public record located in the Department’s Central Records Unit at room 7046 of the main Department of Commerce building.

² Phoenix Salmon claimed to be the successor to the two domestic producers who participated in the prior sunset review – Atlantic Salmon of Maine and Heritage Salmon Company, Inc.

ADNSA (collectively, “the respondents”) also timely filed a joint substantive response on February 2, 2011. We received rebuttal comments from Phoenix Salmon and the GON on February 14, 2011.³

In its February 14, 2011, rebuttal, Phoenix Salmon argued that the Department must reject NSF and ADNSA’s response and conduct an expedited review because each association failed to establish that it qualifies as an “interested party” under section 771(9)(A) of the Act, specifically as a “trade or business association a majority of the members of which are producers, exporters, or importers of” subject merchandise.⁴ Phoenix Salmon stated that NSF and ADNSA failed to demonstrate that they satisfy the majority-membership requirement, by not identifying which of their members produce or export the subject merchandise.⁵ On February 25, 2011, the GON submitted a surrebuttal to Phoenix Salmon’s rebuttal responding to the company’s claims that NSF and ADNSA are not interested parties and that the respondents’ joint response is incomplete.⁶

On March 3, 2011, counsel for Phoenix Salmon met with Department officials about the interested party status of NSF and ADNSA.⁷ On March 4, 2011, the Department issued a letter to NSF and ADNSA requesting that each association identify their members that are producers or exporters of the subject merchandise.⁸ On March 11, 2011, NSF and ADNSA submitted annotated membership lists, which identify the members of each association that are producers or exporters of subject merchandise.⁹ On March 16, 2011, Phoenix Salmon submitted comments on the membership lists submitted by NSF and ADNSA.

On April 6, 2011, the Department issued its adequacy determination memorandum. The Department found that the domestic and respondent parties submitted adequate substantive responses and that NSF and ADNSA have standing as interested parties in this review. The Department, therefore, determined to conduct a full sunset review of this CVD order. See Memorandum to Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Melissa Skinner, Director, Antidumping and Countervailing Duty Operations, Office 3, regarding “Adequacy Determination: Third Sunset Reviews of the Antidumping and Countervailing Duty Orders on Fresh and Chilled Atlantic

³ In response to a February 4, 2011, request on behalf of Phoenix Salmon, the Department granted an extension for filing rebuttal comments to no later than February 14, 2011. See Memorandum to the File from Melissa Skinner, Director, AD/CVD Operations, Office 3, regarding “Extension of Deadline for Filing Rebuttal Comments,” (February 7, 2011).

⁴ See Phoenix Salmon’s “Rebuttal Comments to Respondents’ Joint Substantive Response,” (February 14, 2011) at 2.

⁵ Id. at 6-8.

⁶ Though there is no opportunity for parties to respond to rebuttal comments, the GON’s surrebuttal is immaterial to the Department’s analysis because of the request for additional information on March 4, 2011, regarding NSF’s and ADNSA’s members and the Department’s subsequent finding that the trade associations have standing as interested parties under section 771(9)(A) of the Act and that the respondents’ joint response is substantive and complete.

⁷ See Memorandum to the File, through Melissa Skinner, Director, AD/CVD Operations, Office 3, from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Meeting with Counsel for the Domestic Interested Party,” (March 3, 2011).

⁸ See Letter to NSF and ADNSA, regarding “Request for Additional Information,” (March 4, 2011).

⁹ See NSF and ADNSA’s “Response to Department’s March 4, 2011 Request for Additional Information,” (March 11, 2011).

Salmon from Norway,” (April 6, 2011). On April 12, 2011, the Department extended the deadline for the preliminary and final results of this sunset review. See Fresh and Chilled Atlantic Salmon From Norway: Extension of Time Limits for Preliminary and Final Results of Full Third Antidumping and Countervailing Duty Sunset Reviews, 76 FR 20312 (April 12, 2011). The Department did not receive comments on the adequacy determination memorandum from any party to this review.

Discussion of Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the CVD order would likely 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 changes in the programs, which gave rise to the net countervailable subsidy, have occurred that are likely to affect that 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 was 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 subsidies and whether the subsidies are subsidies described in Article 3 or Article 6.1 of the 1994 World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM).

Below we address the substantive responses and rebuttal comments of the interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties’ Comments

Phoenix Salmon states that because neither the GON nor any Norwegian producer or exporter has requested an administrative review of the CVD order, the Department should determine that the GON continues to subsidize producers/exporters of the subject merchandise.

The respondents assert that just because there have been no administrative reviews, the Department should not conclude that it is “reasonable to assume” that all the programs that were found countervailable in the investigation must still exist today and must still be conferring countervailable subsidies. The respondents state that the GON has eliminated or modified the six programs found countervailable in the investigation such that they no longer confer countervailable subsidies, or they provided benefits at de minimis levels. With regard to those programs, the respondents state:

- “*Regional Capital Tax Incentive*” and “*Advance Depreciation of Business Assets*”—These tax programs, which were found to be regionally-specific, had their legal basis in the “Regional Tax Act of 19 June 1969,” and were repealed

without continuation on January 1, 1991. In support of their termination claim, the respondents provided a copy of the “Act of 21 December 1990, No. 69 with effect from 1 January 1991, repealing Act of 19 June 1969, No. 72.”¹⁰

- “*Regional Development Fund Loans and Grants*”(RDF) — This regionally-specific program was revised in 1993, when the GON established the Norwegian Industrial and Regional Development Fund (known as SND)¹¹ and the funding for RDF programs was transferred into the SND. Later, in 2004, the GON established Innovation Norway and transferred all SND programs to this new entity.¹²

The respondents maintain that the loan and grant programs of Innovation Norway include country-wide loans and grants that are available to multiple industries and offered on commercial terms, pursuant to broad eligibility criteria.¹³ Of the remaining programs that are specific to certain regions or industries, they claim that the total level of benefits conferred over the past five years to salmon producers was below the de minimis threshold of 0.5 percent of sales.¹⁴

They further state that since the second sunset review, two programs have provided support to companies engaged in the production of subject merchandise: “Regional Risk Loans,” which are regionally-specific loans, and “Grants,” which are regionally- or industry-specific assistance.¹⁵ They claim, however, that the salmon farming industry has not received funding through either loans or grants at levels above de minimis and provided a calculation to illustrate that the benefits conferred by the loans and grants for the 2006 through 2010 period was less than 0.03 percent of total sales revenue for these years.¹⁶

- “*Reduced Payroll Taxes*” — Though the program was modified after 1991, regional differentiation remains. Under the current system, there are seven zones within Norway and the rates for employers’ payroll tax on employee wages range from 0.0 to 14.1 percent.¹⁷ They claim that the volume of salmon produced per employee has increased such that the subsidy per kilogram of subject merchandise produced, which was below de minimis (at 0.42 percent) in the

¹⁰ See Respondents’ Substantive Response (February 2, 2011) at Exhibit 2.

¹¹ Id. at Exhibit 3 for the “Act of 3 July 1992, No. 97 relating to the Norwegian Government Fund for Industrial and Regional Development.”

¹² Id. at Exhibit 4 for the “Act of 19 December 2003, No. 130 on Innovation Norway, § 1.”

¹³ Id. at 8 and Exhibit 12 for “Innovation Norway, Fact Sheet ‘Low-Risk Loans.’”

¹⁴ Id. at 8-10.

¹⁵ Id. at 13-14 and 16. The grants are “Industrial Development Grant” (industry specific), “Regional Development Investment Grants” (region specific), “Regional Enterprise Development Grants” (region specific), and “Marine Innovation Program” (industry specific).

¹⁶ Id. at 14, 16-17.

¹⁷ Id. at Exhibit 14. Also, in 1989 (the period of investigation), there were four zones and the tax rates ranged from 2.2 to 16.7 percent.

investigation, is now significantly below that level.¹⁸

- “*National Fishery Bank (NFB) of Norway Loans*” — The NFB has not provided loans to aquaculture since January 1, 1988.¹⁹ The respondents state that in 1988, NFB’s loan portfolio was transferred to Den Norske Industribank A/S (Norwegian Industry Bank),²⁰ which was later merged into the SND and then transferred to Innovation Norway.²¹ They add that the Department determined in the investigation that loans issued by the Norwegian Industry Bank were not countervailable because they were available to all industries without sector or regional limitations.²² They further maintain that because NFB has not provided loans to the aquaculture industry since pre-1988, and because the average useful life (AUL) of assets in the fish farming industry is 10 years,²³ benefits attributable to any NFB loans issued during its existence have been fully amortized and, thus, this program can no longer generate countervailable subsidies.

Lastly, they add that the NFB was dissolved on January 1, 1997, and provided a copy of the law which repealed the law under which the NFB was formed.²⁴

- “*Government Bank of Agricultural (GBA) Grants*” — The GBA was dissolved effective January 1, 2000, and its outstanding loans were transferred to SND, which was later dissolved and its programs transferred to Innovation Norway.²⁵ The respondents provided a copy of the “Act of 22 December 1999, No. 103 on the repeal of Act of 5 February 1965, No. 2, regarding the Government Bank of Agriculture etc. and Transferring its Tasks to the Norwegian Government Fund for Industrial and Regional Development.”²⁶ They add that in Salmon Final Determination, the Department found that none of the loans provided under this program was countervailable, and only one grant to one salmon farmer was countervailable at a 0.01 percent rate.²⁷ They assert that because GBA ceased to exist over 10 years ago and the industry AUL is 10 years, the benefits attributable to the grant found countervailable have been fully amortized and, therefore, the GBA program can no longer generate countervailable subsidies.

Phoenix Salmon asserts that modifications to a subsidy program that result in a reduced

¹⁸ Id. at 15 -17.

¹⁹ See Salmon Final Determination, 56 FR at 7678.

²⁰ See Respondents’ Substantive Response at Exhibit 7 and Exhibit 9.

²¹ Id. at Exhibit 4.

²² See Salmon Final Determination, 56 FR at 7678.

²³ Id.

²⁴ See Respondents’ Substantive Response at Exhibit 7

²⁵ Id. at 12-13.

²⁶ Id. at Exhibit 8. The Norwegian Government Fund for Industrial and Regional Development is known by its Norwegian acronym “SND,” (see Respondents’ Substantive Response at 7).

²⁷ See Salmon Final Determination, 56 FR at 7678.

subsidy rate are not equivalent to the termination of the program and do not preclude the government from conferring additional countervailable benefits upon the subject producers in the future.²⁸ Phoenix Salmon states that though NFB and GBA were dissolved, their programs were not as they were transferred to Innovation Norway in 2004. Phoenix Salmon adds that Innovation Norway continues to provide countervailable subsidies and, thus, there is evidence that the countervailable benefits for subsidized loans and grants previously provided by NFB and GBA have not been eliminated.

Phoenix Salmon further notes that the RDF assistance programs, now under Innovation Norway, and the Reduced Payroll Tax, the two subsidies that were the primary sources of subsidization in the investigation, continue to exist.

Additionally, Phoenix Salmon states that there were several subsidy programs found “not used” in the investigation. Phoenix Salmon notes that the Department’s Policy Bulletin does not distinguish between programs that were used and those that were not used. 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) (quoting the Statement of Administrative Action (SAA), H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. at 888 (1994)). Rather, the company notes, the only relevant consideration is whether the subsidy program continues. See Policy Bulletin, 63 FR at 18874 (stating that “{c}ontinuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies”) (quoting SAA at 888). In the investigation, the Department found five programs available to, but not used by, the Norwegian salmon industry.²⁹ Phoenix Salmon states that the respondents did not provide any evidence that these programs have been terminated, and the Department’s Subsidies Enforcement website indicates that only the Norwegian Central Bank Loans to Salmon Farmers program has been terminated.³⁰ Phoenix Salmon also contends that the loan guarantees provided under the RDF, which were found to be not countervailable in the investigation,³¹ may now be countervailable under the Department’s current regulations because of changes in policy regarding the finding of a benefit from a loan guarantee program.³²

Lastly, Phoenix Salmon asserts that there is evidence of new GON programs that could provide benefits to salmon producers: (1) export financing through Eksportfinans, an entity jointly-owned by banks and the Norwegian Ministry for Trade and Industry,³³ and (2) an export insurance program operated by the Norwegian Institute for Export Credits, which promotes the export of goods and services and investments abroad by issuing guarantees on behalf of the

²⁸ See, e.g., Final Results of Full Sunset Review: Carbon Steel Wire Rod From Argentina, 64 FR 53331, 53332 (October 1, 1999).

²⁹ These programs are: (1) Norwegian Industrial Fund, (2) Norwegian Central Bank Loans to Salmon Farmers, (3) Sales Promotion Assistance, (4) Special Tax-Free Reserves for Export Development, and (5) Regional Transport Subsidies. See Salmon Final Determination, 56 FR at 7682.

³⁰ See Phoenix Salmon’s Rebuttal Comments to Respondents’ Substantive Response (February 14, 2011) (Phoenix Salmon’s Rebuttal) at 25, with reference to: <http://ia.ita.doc.gov/esel/eselframes.html>.

³¹ See Salmon Final Determination, 56 FR at 7681.

³² See 19 CFR 351.506(a)(1).

³³ See Phoenix Salmon’s Rebuttal at 26 and footnote 8, with reference to a page printed from the website www.eksportfinans.no/ (see Exhibit 7).

Norwegian state.’’³⁴

Department’s Position

In accordance with section 752(b)(1) of the Act, in determining whether revocation of a CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy, the Department will consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any changes in the programs, which gave rise to the net countervailable subsidy determined in the investigation and subsequent reviews, have occurred that are likely to affect that net countervailable subsidy. For this case, they have been no administrative reviews of the order.

In the investigation, the Department found that six programs administered by the GON conferred countervailable subsidies on Norwegian producers/exporters of the subject merchandise. While the respondents claim that those programs have been abolished, revised such that programs are unlikely to provide countervailable subsidies in the future, or the benefit streams have been fully allocated, we disagree with respect to four of the programs.

First, 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.³⁵ Although a number of programs no longer provided benefits by the end of the sunset period, the evidence provided by the GON does not established that these program could not provide benefits in the future or were terminated.

In determining 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. Programs eliminated through administrative action, for example, may be more likely to be reinstated than those eliminated through legislative action. See Policy Bulletin, 63 FR at 18875. This approach is fully consistent with other areas of the Department’s CVD practice (e.g., program-wide changes), where we normally expect a program to be terminated by means of the same legal mechanism in which it was instituted.³⁶

With regard to the Regional Capital Tax Incentive and Advance Depreciation of Business Assets programs, both programs were established through the “Regional Tax Act of 19 June 1969,” and both were abolished without continuation on January 1, 1991, through the “Act of 21 December 1990, No. 69 with effect from 1 January 1991, repealing Act of 19 June 1969, No. 72,” a copy of which the GON provided to the Department. Because the Regional Capital Tax Incentive and Advance Depreciation of Business Assets tax savings programs were terminated by the same legal basis in which they were established, and these processes were through legislative actions, we preliminarily determine that the Regional Capital Tax Incentive and Advance

³⁴ Id. at 26 and footnote 10, with reference to the Norwegian Institute for Export Credits’ (aka, GIEK) 2009 Annual Report at 3 (see Exhibit 9).

³⁵ See Corrosion-Resistant Carbon Steel Flat Products From France: Final Results of Full Sunset Review, 71 FR 58584 (October 4, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

³⁶ See 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 (where program is initiated by a Government Policy Handbook, termination can occur through the same method).

Depreciation of Business Assets programs were terminated in their entirety and can no longer provide countervailable subsidies in the future.

Concerning the four remaining programs, we find that the Department has not been provided with sufficient evidence to support a finding that the programs have been terminated, without residual benefits or replacement programs, or modified such that they can no longer provide countervailable benefits to producers/exporters of subject merchandise in Norway. While the NFB and GBA were dissolved, their programs were transferred to Innovation Norway, which provides assistance to the salmon farming industry. As reported by the respondents, Innovation Norway provides country-wide loans and grants as well as programs that are specific to certain regions or industries.³⁷ Thus, there is evidence that the countervailable benefits for subsidized loans and grants previously provided by the NFB and GBA have not been eliminated with the dissolution of these particular entities.

Similarly, the regionally-specific RDF loan and grant program was transferred to Innovation Norway and the respondents report that companies engaged in the production of subject merchandise have received assistance through Innovation Norway's "Regional Risk Loans," which are regionally-specific and "Grants," which are regionally- or industry-specific.³⁸ Lastly, though modified, the Reduced Payroll Taxes program continues to exist and the amount of tax contributions is still geographically differentiated.

Based on the facts submitted on the record, these four programs continue to exist and, therefore, the level of subsidization provided to subject producers over the last five years or the full allocation of program benefits from the investigation are moot issues when determining the likelihood of continuation or recurrence of countervailable subsidies. The Department's Policy Bulletin makes clear, the "{c}ontinuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies." See 63 FR at 18874. The Department has determined that modifications to a subsidy program that resulted in a reduced subsidy rate are not equivalent to a termination of the program in question and do not preclude the government from conferring additional countervailable benefits upon the subject producers in the future.³⁹ Further, section 752(b)(4)(A) of the Act states that a "net countervailable subsidy ... that is zero or de minimis shall not by itself require the administering authority to determine that revocation of a countervailing duty order ... would not be likely to lead to continuation or recurrence of a countervailable subsidy." Additionally, the Policy Bulletin also states that "as long as a subsidy program continues to exist, the Department should not consider company- or industry-specific renunciations of countervailable subsidies, by themselves, as an indication that continuation or recurrence of countervailable subsidies is unlikely." See 63 FR at 18874. Thus, 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.

Therefore, because the following programs, found countervailable in the investigation, continue to exist, we preliminarily determine that revocation of the order would likely lead to continuation or recurrence of a countervailable subsidy for producers/exporters of subject

³⁷ See Respondents' Substantive Response at 7-9 and 13-14.

³⁸ Id. at 14.

³⁹ See, e.g., Final Results of Full Sunset Review: Carbon Steel Wire Rod from Argentina, 64 FR at 53332.

merchandise in Norway: 1) RDF loans and grants, 2) Reduced Payroll Taxes, 3) NFB loans, and 4) GBA grants.

Lastly, while the information that Phoenix Salmon provided with regard to other potential subsidy programs available to producers/exporters of salmon in Norway is informative, we do not consider that information to be dispositive for this sunset review.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The respondents maintain that the net CVD rate would be de minimis if the Department revoked the order, because the GON has eliminated or modified its programs such that they no longer confer countervailable subsidies, or they have provided financial benefits at de minimis levels over the entire five-year period since the last sunset review. They submitted data on the remaining/surviving regionally- and industry-specific loans and grants provided by Innovation Norway from 2006 through 2010.⁴⁰ To demonstrate negligibility of the subsidy levels of these programs, they compiled the benefit rates per kilogram of subject merchandise for the past five years.⁴¹ They contend that the benefits conferred by the loans and grants over the five-year period are less than 0.03 percent of total sales revenue for these years.⁴² They add that even when adding the subsidy for the “Reduced Payroll Tax” program at the 0.42 percent rate calculated in the investigation (which they contend is lower today because of the decline in rates listed in the contribution schedule and the significant increase in labor productivity),⁴³ the combined figure derived from the Innovation Norway programs plus the Reduced Payroll Tax is below 0.5 percent of the total sales value.⁴⁴ Hence, they assert that the GON has provided, over the five-year period, subsidies to the Norwegian salmon industry at rates that are below the Department’s de minimis threshold. Because of this, they argue that there is no basis for the Department to conclude that subsidization would recur at the rates calculated in the investigation if the order was revoked.

Phoenix Salmon states that, in determining the magnitude of the subsidy rate that is likely to prevail in the event of revocation, the Department should adhere to its established policy and select the rate from the investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. See Policy Bulletin, 63 FR at 18875 (quoting SAA at 890). Phoenix Salmon adds that the Policy Bulletin further states that “{w}here the Department has not conducted an administrative review of the order ...the Department normally will not make adjustments to the net countervailable subsidy rate determined in the original investigation.” Id. at 18876. As there have been no administrative reviews of the CVD order, Phoenix Salmon asserts that the Department should find the net countervailable subsidy likely to prevail is the country-wide rate of 2.27 percent ad valorem, calculated in the investigation.

⁴⁰ See Respondents’ Substantive Response at 15-18.

⁴¹ Id. at 16.

⁴² Id. See also Respondents’ Rebuttal Comments to Substantive Response (February 14, 2011) at 6.

⁴³ See Respondents’ Substantive Response at 14-15.

⁴⁴ Id. 17-18.

The respondents argue that the presumption of continued existence of a program cannot be probative of the likely continuation of countervailable subsidies where there is evidence that the surviving programs have conferred de minimis benefits. They assert that the Department must consider the evidence which demonstrates revision and termination of programs that were found to be countervailable in the investigation, as well as the de minimis level of benefits conferred under any surviving programs.

Department's Position

We agree with Phoenix Salmon that the Department normally will provide to the ITC the net countervailable subsidy that was determined in the investigation because that is the only calculated rate which reflects the behavior of exporters and foreign governments without the discipline of an order in place. See SAA at 890. This rate, however, may not be the most appropriate rate if, for example, the rate was derived 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. See Policy Bulletin, 63 FR at 18876.

Based on the information submitted by the respondents, we preliminarily find that the Regional Capital Tax Incentive and Advance Depreciation of Business Asset tax programs were terminated without continuation on January 1, 1991. These programs were established via a legal decree in 1969, prior to the investigation, and the subsidies examined in the investigation were based on benefits from tax savings realized during the period of investigation. All of the benefits were terminated prior to the five-year period covered by this sunset review. Under the law terminating these programs, the last possible year in which benefits could conceivably be conferred under these two programs was 1992. As such, there are no residual benefits from these two terminated programs. Consequently, the Department is adjusting the rate from the investigation by removing the countervailable subsidy rates associated with these terminated programs.

Concerning the remaining four programs found to be countervailable in the investigation, while there may have been some program modifications, those programs still exist and provide countervailable benefits as discussed above in the "Likelihood of Continuation or Recurrence of a Countervailable Subsidy." As such, on the basis of the rates calculated in the investigation for those programs, we preliminarily find that the countervailable subsidy rate likely to prevail if the order were revoked is 2.20 percent ad valorem.

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department will provide the following information to the ITC concerning the nature of the subsidies, and whether the subsidies are subsidies described in Article 3 or Article 6.1 of the WTO ASCM. None of the parties addressed this issue. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The following programs are not subsidies described in Article 3 of the ASCM. However, during the period of investigation, they could have been subsidies described in Article 6.1 of the

ASCM if the amount of the subsidy exceeded five percent, as measured in accordance with Annex IV of the ASCM. We are providing to the ITC the following descriptions of the four programs, which we preliminarily determine continue to exist:

RDF Loans and Grants. The RDF provides loan guarantees, long-term loans, and investment and business development grants to producers and exporters located only in specified regions of Norway to strengthen the economic base and to increase employment in regions with low levels of economic activity.

Reduced Payroll Taxes. This program aims at encouraging employment of persons living in underdeveloped regions of Norway. Under the National Insurance Act, employers are liable for the payment of payroll taxes which are based on a percentage of the wages paid in the course of a year. However, since 1975, the amount of contributions has been geographically differentiated depending on the municipality in which the employee resides.

NFB Loans. The NFB provided loans for the financing of fish farms from 1974 through 1987, including long-term loans for investment in production equipment and buildings.

GBA Grants. The Bank administers the Norwegian Fund of Development in Agriculture which was established to create supplemental income and employment for farmers. The Bank provides both long-term loans and interest-free loans and grants to all agricultural producers throughout Norway; however, there are maximum levels of assistance which differ by region.

Preliminary Results of Review

We preliminarily find that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy for the reasons set forth in the preliminary results of this full sunset review. Further, we preliminarily find that the net countervailable subsidy rate likely to prevail if the order was revoked is 2.20 percent ad valorem for all producers/exporters of subject merchandise from Norway.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the preliminary results of review in the Federal Register.

AGREE: _____

DISAGREE: _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

(Date)