



C-552-805
2015 Sunset Review
Public Document
Office VII: JJZ

DATE: July 24, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam

Summary

In this first sunset review of the countervailing duty (CVD) order covering polyethylene retail carrier bags (PRCBs) from the Socialist Republic of Vietnam (Vietnam), domestic interested party Polyethylene Retail Carrier Bag Committee (the Committee),¹ submitted a substantive response on May 1, 2015.² No respondent interested party submitted a substantive response. In accordance with our analysis of the domestic interested party's Substantive Response, we recommend adopting the positions described below. The following is a complete list of issues in this sunset review for which we received substantive responses:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail

Background

On April 1, 2015, the Department of Commerce (the Department) published a notice of initiation of the first sunset review of the CVD order on PRCBs from the Vietnam.³ On April 16, 2015, a domestic interested party timely notified the Department of its intent to participate within the deadline specified in 19 CFR 351.218(d)(1)(ii), claiming domestic interested party status under section 771(9)(C) of the Tariff Act of 1930, as amended (the Act).⁴

¹ The Committee is an *ad hoc* association comprised of the following five domestic producers of PRCBs: Hilex Poly Co., LLC, Superbag Corporation, Unistar Plastics, LLC, Command Packaging, and Roplast Industries, Inc.

² See Letter from the Committee to the Department, entitled "Five-Year ("Sunset") Review Of Countervailing Duty Order On Polyethylene Retail Carrier Bags From The Socialist Republic Of Vietnam: Domestic Industry's Substantive Response," dated May 1, 2015 (Substantive Response).

³ See *Initiation of Five-Year ("Sunset") Review*, 80 FR 17388 (April 1, 2015).

⁴ See Letter to the Department from the Committee, dated April 16, 2015.



On May 1, 2015, the domestic interested party timely submitted its Substantive Response. The Department did not receive a substantive response from any respondent interested party. Consequently, the Department is conducting an expedited (120-day) sunset review consistent with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Order

The scope of this order covers polyethylene retail carrier bags, which also may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products. The scope of this order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash-can liners.

Imports of merchandise included within the scope of this order are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of this order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

History of the Order

On May 4, 2010, the Department published the *CVD Order* on PRCBs from Vietnam.⁵ The Department determined that the Government of Vietnam (GOV) provided benefits that constitute subsidies within the meaning of section 701 of the Act to Vietnamese manufacturers, producers, and exporters of this merchandise. The Department found that the following five programs conferred countervailable subsidies during the period of investigation to the mandatory respondent companies:⁶

⁵ See *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Countervailing Duty Order*, 75 FR 23670 (May 4, 2010) (*CVD Order*).

⁶ See *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428 (April 1, 2010).

1. Income Tax Preferences for Encouraged Industries
2. Income Tax Preferences for FIEs
3. Land Rent Reduction or Exemption for Exporters
4. Import Duty Exemptions for Imported Raw Materials for Exported Goods
5. Exemption of Import Duties on Imports of Spare Parts and Accessories for Industrial Zone Enterprises

The Department found the following net subsidies in the original investigation:⁷

Exporter/Manufacturer	Net Subsidy Rate (percent)⁸
Advance Polybag Co., Ltd.	52.56
Fotai Vietnam Enterprise Corp. and Fotai Enterprise Corporation (Fotai)	5.28
All Others	5.28

Since the *CVD Order* was issued, there have been no administrative reviews of the order.

Discussion of the Issues

Legal Framework

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 subsequent reviews; and (2) whether any change 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 Department revoked the *CVD Order*. 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 Agreement on Subsidies and Countervailing Measures (SCM Agreement).

⁷ See *CVD Order*.

⁸ Chin Sheng Company, Ltd. was excluded from the order as the company received a *de minimis* rate in the original investigation.

Analysis

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

The domestic interested party argues that the Department should determine that subsidies countervailed in the original investigation have continued and would be likely to continue or recur under revocation of the *CVD Order* because of the following:⁹

- 1) An affirmative determination of continuation or recurrence is warranted, because there is no evidence that any of the subsidies identified in the original investigation have been terminated or suspended.
- 2) The Department's practice is to reach an affirmative determination in sunset reviews where no administrative reviews have been conducted and where no party provides evidence that the countervailable programs have been terminated.
- 3) There have been no administrative reviews of the order, and there is no evidence that any of the above-referenced programs has been terminated or suspended.

As a result, the domestic interested party concludes that revocation of the *CVD Order* is likely to lead to a continuation of countervailable subsidization.

Department's Position: The Department determines that there is a likelihood of recurrence or continuation of countervailable subsidies. 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. The Statement of Administrative Action (SAA) provides further guidance, noting that 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.¹⁰ The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.¹¹ 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.¹² 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 of a countervailable subsidy regardless of the level of subsidization.¹³

As indicated above, the Department did not conduct an administrative review of the *CVD Order* since it went into effect. Further, no party submitted evidence to demonstrate that the

⁹ See Substantive Response at 5-7.

¹⁰ See Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

¹¹ *Id.*

¹² See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

¹³ *Id.*

countervailable programs have expired or been terminated. As a result, the Department determines that there is a likelihood of recurrence or continuation of countervailable subsidies.

2. *Net Countervailable Subsidy Likely to Prevail*

The domestic interested party argues that subsidization is likely to continue at rates the Department established in the original investigation.¹⁴

Citing the *Sunset Policy Bulletin*, the domestic interested party argues that the Department should provide to the ITC the net countervailable subsidy that was determined in the final determination of the original investigation. The domestic interested party further argues that as there have been no administrative reviews of the order, and no evidence has been provided that warrants making a change to the subsidy rates, the subsidy rates that are likely to prevail in the event of revocation of the *CVD Order* are as follows:¹⁵

- Advance Polybag Co., Ltd.: 52.56 percent *ad valorem*;
- Chin Sheng Company, Ltd.: 0.44 percent *de minimis*;
- Fotai Vietnam Enterprise Corp. and Fotai Enterprise Corporation: 5.28 percent *ad valorem*;
- All Others: 5.28 percent *ad valorem*.

Department's Position: As the domestic interested party noted, consistent with the SAA and the legislative history, the Department normally will provide the ITC with the net countervailable subsidy 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.¹⁶

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.

In this instance, the Department did not conduct an administrative review, and the Department did not adjust the rates determined for each of the companies and "all others" in the investigation. As a result, and consistent with section 752(b)(3) of the Act, the Department will provide to the ITC the net countervailable subsidy rates shown in the section titled "Final Results of Sunset Review" below.¹⁷

¹⁴ See Substantive Response at 7-8.

¹⁵ *Id.*

¹⁶ See SAA at 890 and the House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.

¹⁷ See Memorandum to the File regarding "Calculation of Net Countervailable Subsidy Likely to Prevail," dated concurrently with this IDM (Sunset Calculation Memorandum).

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 any of the subsidies are as described in Article 3 or Article 6.1 of the SCM Agreement. However, Article 6.1 of the SCM Agreement expired on January 1, 2000.

The following programs are export subsidies as described in Article 3 of the SCM Agreement:

1. Land Rent Reduction or Exemption for Exporters

Fotai received a countervailable land rent reduction or exemption under this program. The Department determined that the benefit for this program was specific because the receipt of this benefit was contingent upon export performance.¹⁸

2. Import Duty Exemptions for Imported Raw Materials for Exported Goods

Fotai received countervailable import duty exemptions for imported raw materials under this program. The Department determined that the benefit for this program was specific because receipt was contingent upon export performance.¹⁹

The following programs do not fall within the meaning of Article 3.1 of the SCM Agreement, but could be subsidies described in Article 6.1 of the SCM Agreement if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM Agreement. The subsidies could also fall within the meaning of Article 6.1 if they constitute debt forgiveness, a grant to cover debt repayment, or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We are providing the ITC with the following program descriptions:

1. Income Tax Preferences for Encouraged Industries

The Department determined that the government of Vietnam, provided respondents with income tax preferences for the PRCBs industry, which was an encouraged industry.²⁰

2. Income Tax Preferences for FIEs

The Department determined that the government of Vietnam provided respondents with an income tax reduction under this program, which the Department found to be specific by law to certain enterprises; *i.e.*, FIEs.²¹

¹⁸ See *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination Investigation Final*, 75 FR 16428 (April 1, 2010) and accompanying IDM at 7-8.

¹⁹ *Id.* at 8-9.

²⁰ *Id.* at 6.

²¹ *Id.* at 7.

3. Exemption of Import Duties on Imports of Spare Parts and Accessories for Industrial Zone Enterprises

The Department determined that the government of Vietnam provided respondents with exemption of import duties on imports of spare parts and accessories for industrial zone enterprises under this program, which the Department found to be specific by law to certain enterprises; *i.e.*, industrial zone enterprises.²²

Final Results of Sunset Review

Based on the analysis above, 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/Producers/Exporters	Net Subsidy Rate (Percent)
Advance Polybag Co., Ltd.	52.56
Fotai Vietnam Enterprise Corp. and Fotai Enterprise Corporation	5.28
All Others	5.28

Recommendation

Based on our analysis of the domestic interested party's Substantive Response and the record evidence, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this first sunset review in the *Federal Register* and notify the ITC of our determination.

AGREE

DISAGREE



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 July 2015
Date

²² *Id.* at 10.