

March 1, 2009

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

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Sunset
Review of the Countervailing Duty Order on Prestressed Concrete Steel Wire
Strand from India

Summary

We have analyzed the substantive response of the interested parties in the sunset review of the countervailing duty (CVD) order covering prestressed concrete steel wire strand (PC strand) from India. We recommend that you approve the positions we have developed in the Discussion of 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 likely to prevail
3. Nature of the subsidy

History of the Order

The Department of Commerce (the Department) published its final affirmative CVD determination on PC strand from India in the Federal Register on December 8, 2003. See Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India, 68 FR 68356 (December 8, 2003) (Final Determination). In the Final Determination the Department found the following 19 programs to confer countervailable subsidies:

Government of India Programs

- (1) Pre-shipment and Post-shipment Export Financing;

- (2) Duty Entitlement Passbook Scheme (DEPS);
- (3) Export Promotion Capital Goods Scheme (EPCGS);
- (4) Loans From the Steel Development Fund (SDF);
- (5) Exemption of Export Credit From Interest Taxes;
- (6) Advance Licenses;
- (7) Income Tax Exemption Scheme (Section 80 HHC);
- (8) Loan Guarantees;

State of Maharashtra, Bihar, and/or Jharkhand Programs

- (9) Sales Tax Incentives;
- (10) Capital Incentive Scheme;
- (11) Electricity Duty Exemption Scheme;
- (12) Octroi Refund Scheme;
- (13) Exemption of Sales and Purchase Taxes for Certain Investments Related to Automobiles or Automobile Components;
- (14) Captive Electricity Generative Plant Subsidy;
- (15) Interest Subsidy;
- (16) Stamp Duty and Registration;
- (17) Pollution Control Equipment Subsidy;
- (18) Mega Units; and
- (19) Captive Electricity Tax Exemptions.

In the Final Determination the Department found an estimated net subsidy, for all manufacturers/producers/exporters of PC strand from India, of 62.92 percent ad valorem based on the above programs. On February 4, 2004, the Department issued the CVD order, utilizing the subsidy rates found in the original investigation. See Countervailing Duty Order: Prestressed Concrete Steel Wire Strand From India, 69 FR 5319 (February 4, 2004) (Order). Since the issuance of the Order, the Department has not conducted an administrative review.

Discussion of Issues

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended (the Act), the Department is conducting this review to determine whether revocation of the 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 the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy has occurred that is 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 (the ITC) the net countervailable subsidy likely to prevail if the 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 WTO Agreement on Subsidies and Countervailing Measures (SCM).

Below we address the substantive response of the interested parties.

1. Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

In its substantive response, American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corporation (collectively, the petitioners), argue that revocation of the Order would result in the continuation or recurrence of a countervailable subsidy. The petitioners note that neither the Government of India (GOI) nor any Indian producer has requested an administrative review or attempted to demonstrate termination of any of these programs found to provide subsidies during the investigation. Noting that there is no other evidence before the Department indicating any change in India's subsidy programs, the petitioners argue that the Department should conclude that India's subsidy programs have not changed and continue to exist. Therefore, the petitioners conclude that countervailable subsidies to Indian PC strand producers are likely to continue or recur in the event of revocation. See petitioners' December 19, 2008, submission at 6 - 7.

Department's Position

The continued use of a program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies if the order were revoked. See, e.g., Final Results of Expedited Sunset Review of Countervailing Duty Order: Sulfanilic Acid from India, 70 FR 53168 (September 7, 2005) (Sulfanilic Acid from India) and accompanying Issues and Decision Memorandum (Sulfanilic Acid from India Decision Memorandum) at Comment 1. Additionally, the presence of programs that have not been used, but have also not been terminated, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy. Id.

In the instant review, the Department did not receive a response from the foreign government or from any other respondent interested party. Consistent with the Department's practice, absent argument or evidence to the contrary, we find that countervailable programs continue to exist and be used. See, e.g., Sulfanilic Acid from India Decision Memorandum at Comment 1. Furthermore, there is no information that the programs at issue in the instant sunset review have been terminated or found non-countervailable. Therefore, because we find the countervailable programs continue to exist and be used, and because the foreign government and other respondent interested parties did not participate in this review before the Department, and absent evidence to the contrary, the Department concludes that revocation of the order would likely lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The petitioners assert that the Department normally will select the rate from the investigation as the net countervailable subsidy likely to prevail if the order were revoked because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. In this case, petitioners argue that absent any administrative reviews since the investigation, the Department should select the rate from the investigation as the rate which would result from revocation of the order. Specifically, the petitioners argue the estimated subsidy rate likely to prevail for all Indian manufacturers, producers, and exporters is 62.92 percent. See petitioners' December 19, 2008, submission at 7 - 8.

Department's Position

As noted above, the Department has not conducted an administrative review of this order. Thus, we have never found that substantive changes have been made to any of the GOI subsidy programs. Therefore, absent any argument or evidence to the contrary, the Department, consistent with its practice, determines that the net countervailable subsidy that would likely prevail in the event of revocation of the order would be 62.92 percent for all producers and exporters of the subject merchandise from India. See, e.g., Sulfanilic Acid from India Decision Memorandum at Comment 2.

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. The petitioners did not address this issue in its substantive response of December 19, 2008.

Consistent with our findings in the Final Determination, in the instant review there were six programs that fall within the meaning of 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. Below are descriptions of these six programs:

1. *Preferential Pre-Shipment Export Financing Through Packing Credits*: The Reserve Bank of India (RBI), through commercial banks, provides "packing" credits or pre-shipment loans to exporters. With these pre-shipment loans, exporters may purchase raw materials to produce goods for export based on the presentation of a confirmed purchase order. In general, the pre-shipment loans are granted for a period of up to 180 days. The commercial banks extending export credit to Indian companies must charge interest at rates determined by the RBI. Because

only exporters are eligible for these pre-shipment loans, they are countervailable to the extent that they are provided at preferential rates.

2. *Preferential Post-Shipment Financing*: The RBI, through commercial banks, provides post-shipment financing loans to exporters. The purpose of post-shipment financing is to enable exporters to extend favorable payment terms such as deferred payment to the foreign purchaser. Post-shipment financing loans may not exceed a period of 180 days. The commercial banks extending export credit to Indian companies must charge interest at rates determined by the RBI. Because only exporters are eligible for the post-shipment loans, they are countervailable to the extent that they are provided at preferential interest rates.

3. *Import Tax Deduction for Exporters (Section 80HHC)*: For tax returns filed during the period of investigation, the GOI allowed exporters to claim a tax deduction related to their export sales. This tax deduction was calculated by dividing export sales by total sales and then multiplying the resulting figure by the exporters' profit as shown in the tax return. This amount is then deducted from taxable profits. Because this program is only available to exporters, we determined it to be countervailable.

4. *Import Duty Exemptions Available through Advance Licenses*: Advance licenses are available to exporters, to enable them to import raw material inputs used in the production of exports duty-free. Recipients of advance licenses are obligated under the terms of the license to export the products produced with the duty-free imports. The amount of imports allowed under an advance license is closely linked to the amount of exports to be produced. We considered the use of the advance licenses to be equivalent to a duty drawback program insofar as customs duties are not paid on physically incorporated, imported products used in the production of exports. However, where imported inputs are not physically incorporated into the exported product, we considered the duty savings afforded by the advance license to be a countervailable export subsidy.

5. *Import Duty Exemptions Available through EPCGS*: The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, exporters may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to a multiple of the value of the capital goods, as determined by the GOI, within a period of time, as set by the GOI. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest. The Department considered duty and excise tax exemptions on imported capital goods that are contingent on export activities to be countervailable.

6. *Import Duty Exemptions Available through DEPS*: The DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post-export basis, provided that the exported product is listed in the GOI's Standard Input/Output Norms (SIONs). Post-export DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of

an export product. Post-export DEPS credits are valid for 12 months and are transferable. Exporters are eligible to earn credits equal to a certain percentage, as designated by the GOI, of the f.o.b. value of their export shipments. The Department found that the GOI could not adequately track the extent to which inputs imported duty free under the DEPS were re-exported. Therefore, the Department considered such duty exemptions to be countervailable.

The following programs 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 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.

GOI Programs

1. *Loans from the SDF*: Under the SDF program, steel consumers are compelled by the GOI to pay a levy, the proceeds of which are channeled back to a select group of steel producers. A benefit is conferred on recipients of SDF loans provided that the amount of interest paid under the program is less than what would have been paid on a commercially comparable loan.

2. *GOI Loan Guarantees*: The GOI provides loan guarantees on a case-by-case basis. Loan guarantees are normally extended to “Public Sector Companies” in particular industrial sectors. A benefit is conferred on recipients of SDF loans provided that the amount of interest paid under the program is less than what would have been paid on a commercially comparable loan.

State Government of Maharashtra (SGOM) Programs

1. *Sales Tax Incentives*: Incentives offered by the SGOM under the Industrial Policy of Maharashtra 1993 provide either exemption or deferral of state sales taxes. Under this program, companies are exempted from paying state sales taxes on purchases and collecting sales taxes on sales, or as an alternative, recipients are allowed to defer submitting sales taxes collected on sales to the SOM for ten to twelve years. After the deferral period expires, the companies are required to submit the deferred sales taxes to the SOM in equal installments over five to six years.

2. *Capital Incentive Scheme*: Companies operating in specific areas of the SGOM are eligible to receive capital incentives in the form of either cash grants (of up to 3,000,000 rupees) or sales tax incentives.

3. *Electricity Duty Exemption Scheme*: This program provides an exemption from the payment of tax on electricity charges for manufacturers located in specific regions of Maharashtra.

4. *Octroi Refund Scheme*: Under the Octroi Refund Scheme, industrial establishments that make capital investments in specific regions of Maharashtra are entitled to the refund of octroi duty, a

tax levied by local authorities on goods that enter a town or district.

5. *Exemption of Sales and Purchase Taxes for Certain Investments Related to Automobiles or Automobile Components:* Under this program, automobile investment projects over Rs. 15 billion in Category A districts are eligible to receive tax incentives.

State Government of Bihar (SGOB) Programs

Sales Tax Incentives: Under the Industrial Policy of Bihar 1995, the government granted tax incentives to companies that invested in “backward areas” within Bihar. In addition, the SGOB expands its sales tax scheme by expanding the eligibility criteria to include new or existing industrial units undertaking expansion, modernization, or diversification through an investment of more than Rs. 500 crores (equivalent to Rs. 5,000,000,000, as Rs. 1 crore = 10,000,000 rupees). Under this sales tax scheme, “new industrial units” are permitted to either “set off” or exempt sales taxes paid on the purchase of raw materials within the state and either defer or exempt sales taxes on the sale of finished goods.

State Government of Jharkhand (SGOJ) Programs

1. *Sales Tax Incentives:* “Existing industrial units” as well as “new industrial units” are eligible to “set off” the Jharkhand sales tax paid on purchases of raw materials against the amount of sales tax payable to Jharkhand on the sale of finished products.
2. *Captive Electricity Generative Plant Subsidy:* Under the Jharkhand Industrial Policy 2001, the SGOJ provides a grant to “new industrial units” in certain industries that invest in a captive electricity generating plant within “backward areas” of the state.
3. *Interest Subsidy:* Under the Jharkhand Industrial Policy 2001, the SGOJ provides an interest subsidy to eligible “new industrial units” that invest in “backward areas” within the state.
4. *Stamp Duty and Registration:* Under the Jharkhand Industrial Policy 2001, the SGOJ grants an exemption from the payment of 50 percent of the stamp duty and registration fee required for the purpose of registering documents with the state relating to the purchase of land and buildings for establishing a “new industrial unit” within certain “backward areas” of the state.
5. *Pollution Control Equipment Subsidy:* Under the Jharkhand Industrial Policy 2001, the SGOJ provides a capital investment subsidy in the form of a grant for installation of pollution control and monitoring equipment to eligible new and existing industrial units in “backward areas” of the state.
6. *Mega Units:* Under the Jharkhand Industrial Policy 2001, the SGOJ formulates special tax incentives and tax deferrals for new projects with an investment of more than Rs. 500,000,000 (“mega units”) on a case-by-case basis.

7. *Captive Electricity Tax Exemptions*: Under the Jharkhand Industrial Policy 2001, captive power generation and purchases shall be exempted from electricity duty for a period of ten years from the date of commercial production.

State Government of Gujarat (SGOJ) Programs

Sales Tax Incentives: Pursuant to the 1995 Industrial Policy of Gujarat, the government granted sales tax incentives to eligible investments located in specific areas in Gujarat. Only “banned industries” and operations in “banned areas” were ineligible. Eligible units were entitled to purchase raw materials, consumable stores, packing materials and processing materials required for production free of charge. Other available benefits included exemptions or deferment from sales tax on the sales of goods, intermediate products by-products, scrap, and waste as well as exemptions or deferment from turnover tax and the Central Sales Tax. With the 2000 Industrial Policy, the State of Gujarat extended the availability of these sales tax incentives, allowing companies to continue benefitting after 2000.

Final Results of Review

We determine that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

<u>Manufacturer/Exporter</u>	<u>Margin (percent)</u>
All Manufacturers/Producers/Exporters	62.92

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 the final results of review in the Federal Register.

AGREE: _____

DISAGREE: _____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

(Date)