



C-570-938
Sunset Review
Public Document
OIII: MGS

July 30, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

RE: Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China

SUMMARY

We analyzed the responses of interested parties in the expedited sunset review of the countervailing duty ("CVD") order on citric acid and certain citrate salts ("citric acid") from the People's Republic of China ("PRC"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

History of the Order

On April 13, 2009, the Department published its *Final Determination* in the CVD investigation on citric acid from the PRC.¹ On May 29, 2009, the Department published in the *Federal Register* its CVD order on citric acid from the PRC.² The Department calculated subsidy rates of 12.68 percent for TTCA Co., Ltd. (a.k.a. Shandong TTCA Biochemistry Co., Ltd.) ("TTCA"), 3.60 percent for Yixing Union Biochemical Co., Ltd.; and Yixing Union Cogeneration Co., Ltd. ("Yixing"), 118.95 percent for Anhui BBKA Biochemical Co., Ltd. ("Anhui"), and 8.14 percent for all-others.³

The following programs were found to confer countervailable subsidies to TTCA and/or Yixing in the investigation:

¹ See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) ("*Final Determination*").

² See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Notice of Countervailing Duty Order*, 74 FR 25705 (May 29, 2009) ("*Order*").

³ See *Order*.



1. Policy Lending
2. “Famous Brands” Program – Yixing City
3. Reduced Income Tax Rates to Foreign-investment Enterprises (FIEs) Based on Location
4. “Two Free, Three Half” Program
5. Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs
6. Income Tax Credits on Purchases of Domestically Produced Equipment
7. VAT Rebate on Purchases by FIEs of Domestically Produced Equipment
8. VAT and Duty Exemptions on Imported Equipment
9. Local Income Tax Exemption and Reduction Program for “Productive” FIEs
10. Energy and Water Savings Grant
11. Provision of Land in the AEDZ for LTAR
12. Land-Use Rights Extension in Yixing City

In addition, the Department relied on adverse facts available and found the following additional programs to provide countervailable subsidies to Anhui.

Loan Programs

1. Discounted Loans for Export-Oriented Industries
2. Export Seller’s Credit for High and New Tech Products

Income Tax Programs

1. Two Free, Three Half
2. Reduced Income Tax Rates for FIEs Based on Location
3. Income Tax Exemption for Export-oriented FIEs
4. Reduced Income Tax Rate for High or New Technology Enterprises
5. Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs
6. Preferential Income Tax Rate for Research and Development at FIEs
7. Preferential Tax Programs for Encouraged Industries
8. Preferential Tax Policies for Township Enterprises
9. Local Income Tax Exemption and Reduction Program for Productive FIEs
10. Reduced Income Tax Rates for Encouraged Industries in Anhui Province

Income Tax Credit or Refund Programs

1. Income Tax Credits on Purchases of Domestically Produced Equipment
2. Tax Benefits to FIEs for Certain Reinvestment of Profits

Grant Programs

1. Famous Brands
2. Funds Provided for the Rationalization of the Citric Acid Industry
3. State Key Technology Program Fund
4. National Level Grants to Loss-making State-owned Enterprises (SOEs)
5. Provincial Level Grants to Loss-making SOEs

Less Than Adequate Remuneration (LTAR) and Land Programs

1. Provision of Land for LTAR in Anhui Province
2. Provision of Land to SOEs for LTAR

The Department has completed three administrative reviews and is currently conducting two administrative reviews pursuant to section 751(a) of the Tariff Act of 1930, as amended (“the Act”). In the first administrative review, which covered 2008 and 2009, the Department found net subsidy rates of 7.44 percent (2008) and 8.93 percent (2009) for RZBC Co., Ltd.; RZBC Import & Export Co., Ltd.; RZBC (Juxian) Co., Ltd. and RZBC Group Co., Ltd. (collectively “RZBC” or “the RZBC Companies”). In addition, the Department found net subsidy rates of 5.65 percent (2008) and 16.13 percent (2009) for Yixing.⁴ In the administrative review covering 2008 and 2009, the Department found the following programs conferred countervailable benefits to the respondents.

Loan Programs

1. Government Policy Lending

a. National Policy Lending

We determined that Yixing received a countervailable subsidy of 3.66 percent *ad valorem* in 2009.

b. Shandong Province Policy Loans Program

We determined that RZBC received a countervailable subsidy of 2.16 percent *ad valorem* in 2008 and 2.97 percent in 2009.

2. Export Seller’s Credit for High- and New-Technology Products (export-contingent)

We determined that RZBC received a countervailable subsidy of 4.25 percent *ad valorem* in 2008 and 1.91 percent in 2009.

Income Tax Programs

3. Reduced Income Tax Rates to FIEs Based on Location

We determined that Yixing received a countervailable subsidy of 0.21 percent *ad valorem* under this program in 2008.

4. “Two Free, Three Half” Program

We determined that Yixing received a countervailable subsidy of 0.41 percent *ad valorem* under this program in 2008.

5. Local Income Tax Exemption/Reduction Program for “Productive” FIEs

We determined that Yixing received a countervailable subsidy of 0.34 percent *ad valorem* under this program in 2008.

⁴ See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) and accompanying Issues and Decision Memorandum.

6. Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs

We determined that Yixing received a countervailable subsidy of 1.20 percent *ad valorem* under this program in 2008 and 0.18 percent in 2009.

7. Reduced Income Tax Rate for High or New Technology Enterprises

We determined that RZBC received a countervailable subsidy of 0.29 percent *ad valorem* under this program in 2009.

8. Income Tax Credits on Purchases of Domestically Produced Equipment

We determined that RZBC received a countervailable subsidy of 0.20 percent *ad valorem* under this program in 2008 and 1.38 percent in 2009.

Other Tax Programs

9. VAT and Duty Exemptions on Imported Equipment

We determined that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2008. Yixing's countervailable subsidies in 2008 and 2009 were 0.79 percent and 0.34 percent, respectively.

LTAR and Land Programs

10. Provision of Sulfuric Acid for LTAR

We determined that RZBC received a countervailable subsidy of 0.17 percent *ad valorem* in 2008 and 0.59 percent *ad valorem* in 2009. Yixing-Union's countervailable subsidies in those years were 2.63 percent and 11.82 percent, respectively.

11. Land-Use Rights Extension in Yixing City

We determined that Yixing-Union received a countervailable subsidy of 0.07 percent *ad valorem* in 2008 and 0.06 percent in 2009.

Grant Programs

Other Subsidies Received by RZBC

12. Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products (export-specific)

We determined that RZBC received a countervailable subsidy of 0.03 percent *ad valorem* in 2008 and a subsidy of 0.02 percent *ad valorem* in 2009.

13. Shandong Province: Special Fund for the Establishment of Key Enterprise Technology Centers

We determined that RZBC received a countervailable subsidy of 0.13 percent *ad valorem* in 2008.

14. Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River
We determined that RZBC received a countervailable subsidy of 0.31 percent *ad valorem* in 2009.

15. Rizhao City: Subsidies to Encourage Enterprise Expansion
We determined that RZBC received a countervailable subsidy of 0.05 percent *ad valorem* in 2008 and 0.04 in 2009.

16. Rizhao City: Subsidy for Antidumping Investigations (export-contingent)
We determined that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2008.

17. Shandong Province: Subsidy for Antidumping Investigations (export-contingent)
We determined that RZBC received a countervailable subsidy of 0.04 percent *ad valorem* in 2008.

18. Subsidy for Technique Improvement
We determined that RZBC received a countervailable subsidy of 0.04 percent *ad valorem* in 2008.

19. Fund for Energy-saving Technological Innovation
We determined that RZBC received a countervailable subsidy of 0.10 percent *ad valorem* in 2009.

20. Shandong Province: Award Fund for Industrialization of Key Energy-saving Technology
We determined that RZBC received a countervailable subsidy of 0.07 percent *ad valorem* in 2008.

21. Shandong Province: Environmental Protection Industry R&D Funds
We determined that RZBC received a countervailable subsidy of 0.03 percent *ad valorem* in 2008.

22. Shandong Province Construction Fund for Promotion of Key Industries
We determined that RZBC received a countervailable subsidy of 0.48 percent *ad valorem* in 2009.

23. Enterprise Development Supporting Fund from Zibo City Financial Bureau
We determined that RZBC received a countervailable subsidy of 0.10 percent *ad valorem* in 2008 and 0.08 percent *ad valorem* in 2009.

24. Shandong Province Financial Special Fund for Supporting High and New Technology Industry Development Project (Technology Special Fund)
We found that RZBC received a countervailable subsidy under the Technology Special Fund program of 0.14 percent *ad valorem* in 2008.

25. Rizhao City: Special Fund for Enterprise Development

We determined that RZBC received a countervailable subsidy of 0.04 percent *ad valorem* in 2009.

26. Rizhao City: Technological Innovation Grants

We determined that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2008.

27. Rizhao City: Technology Research and Development Fund

We determined that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2009.

28. Shandong Province: Waste Water Treatment Subsidies

We determined that RZBC received a countervailable subsidy of 0.02 percent *ad valorem* in 2009.

Other Subsidies Received by Yixing-Union

29. Yixing City: Leading Enterprise Program

We determined that Yixing received a countervailable subsidy of 0.01 percent *ad valorem* in 2009.

30. Yixing City: Tai Lake Water Improvement Program

We determined that Yixing received a countervailable subsidy of 0.01 percent *ad valorem* in 2009.

31. Jiangsu Province Energy Conservation and Emissions Reduction Program

We determined that Yixing received a countervailable subsidy of 0.05 percent *ad valorem* in 2009.

In the second administrative review, which covered 2010, the Department found a net subsidy rate of 5.27 percent for RZBC.⁵ In the 2010 administrative review, the Department found the following programs conferred countervailable benefits on the respondent.

Loan Programs

1. Shandong Province Policy Loans Program

We found that RZBC received a countervailable subsidy of 0.40 percent *ad valorem*.

2. Export Seller's Credit for High- and New-Technology Products (export-contingent)

We found that RZBC received a countervailable subsidy of 0.74 percent *ad valorem*.

⁵ See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2010, 77 FR 72323 (December 5, 2012) and accompanying Issues and Decision Memorandum.

Income Tax Programs

3. Reduced Income Tax Rate for High or New Technology Enterprises

We found that RZBC received a countervailable subsidy of 0.91 percent *ad valorem*.

4. Income Tax Credits on Purchases of Domestically Produced Equipment

We found that RZBC received a countervailable subsidy of 1.36 percent *ad valorem*.

LTAR and Land Programs

5. Provision of Sulfuric Acid for LTAR

We found that RZBC received a countervailable subsidy of 1.29 percent *ad valorem* in 2010.

6. Provision of Steam Coal for LTAR

We determined that RZBC received a countervailable subsidy of 0.19 percent *ad valorem* in 2010.

Grant Programs

7. Science and Technology Export Innovation Support (export-contingent)

We determined that RZBC received a countervailable export subsidy of 0.01 percent *ad valorem* in 2010.

8. Donggang Finance Bureau IPO Preparation Subsidy

We determined that RZBC received a countervailable subsidy of 0.02 percent *ad valorem*.

9. Shandong Province Science and Technology Development Fund

We determined that RZBC received a countervailable subsidy of 0.01 percent *ad valorem*.

10. First Industrial Enterprises Development Budget in District Level

We determined that RZBC received a countervailable subsidy of 0.02 percent *ad valorem*.

11. First and Second Industrial Enterprises Development Budget in City Level

We determined that RZBC received a countervailable subsidy of 0.04 percent *ad valorem*.

12. Award for Contribution to City and People

We determined that RZBC received a countervailable subsidy of 0.01 percent *ad valorem*.

13. Award for Enterprise Technology Improvement Project

We determined that RZBC received a countervailable subsidy of 0.01 percent *ad valorem*.

14. Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River

We determined that RZBC received a countervailable subsidy of 0.16 percent *ad valorem*.

15. Shandong Self-Innovation Subsidy

We determined that RZBC received a countervailable subsidy of 0.03 percent *ad valorem*.

16. Enterprise Development Supporting Fund from Zibo City Financial Bureau

We found that RZBC received a countervailable subsidy of 0.07 percent *ad valorem*.

In the third and most recently completed administrative review, which covered 2011, the Department found a net subsidy rate of 35.87 percent for RZBC.⁶ In the 2011 administrative review, the Department found the following programs conferred countervailable benefits on the respondent:

Loan Programs

1. Shandong Province Policy Loans Program

We found that RZBC received a countervailable subsidy of 0.60 percent *ad valorem*.

2. Export Seller's Credit for High- and New-Technology Products (export contingent)

We found that RZBC received a countervailable subsidy of 1.10 percent *ad valorem*.

Income Tax Programs

3. Reduced Income Tax Rate for High or New Technology Enterprises

We found that RZBC received a countervailable subsidy of 1.43 percent *ad valorem*.

4. Income Tax Credits on Purchases of Domestically Produced Equipment

We found that RZBC received a countervailable subsidy of 0.68 percent *ad valorem*.

LTAR and Land Programs

5. Provision of Sulfuric Acid for LTAR

We determined that RZBC received a countervailable subsidy of 4.10 percent *ad valorem* in 2011.

6. Provision of Steam Coal for LTAR

We determined that RZBC received a countervailable subsidy of 3.17 percent *ad valorem* in 2011.

7. Provision of Calcium Carbonate for LTAR

We determined that RZBC received a countervailable subsidy of 22.32 percent *ad valorem* in 2011.

⁶ See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014) and accompanying Issues and Decision Memorandum.

8. Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Shandong Province

We calculated a net subsidy rate of 1.37 percent *ad valorem* for RZBC.

Grant Programs

9. Return of Land Use Right Deed Tax for Initial Public Offering (IPO) Companies

We determined that RZBC received a countervailable subsidy of 0.05 percent *ad valorem*.

10. Award for Contribution to City and People

We determined that RZBC received a countervailable subsidy of 0.01 percent *ad valorem*.

11. Enterprise Technology Research and Development Subsidy

We determined that RZBC received a countervailable subsidy of 0.03 percent *ad valorem*.

12. Financial Resource Construction Award

We determined that RZBC received a countervailable subsidy of 0.06 percent *ad valorem*.

13. Technology Innovation Advanced Unit Award

We determined that RZBC received a countervailable subsidy of 0.01 percent *ad valorem*.

14. Special Fund for Foreign Trade Public Service Platform

We determined that RZBC received a countervailable subsidy of 0.04 percent *ad valorem*.

15. Subsidy for Providing Employment Internship Base

We determined that RZBC received a countervailable subsidy of 0.01 percent *ad valorem*.

16. Shandong Province Science and Technology Development Fund

We determined that RZBC received a countervailable subsidy of 0.02 percent *ad valorem*.

17. Application Technology Research and Development Fund

We determined that RZBC received a countervailable subsidy of 0.01 percent *ad valorem*.

18. Self-Innovation Special Fund

We determined that RZBC received a countervailable subsidy of 0.02 percent *ad valorem*.

19. Economic Task Special Contribution Award

We determined that RZBC received a countervailable subsidy of 0.01 percent *ad valorem*.

20. Self-Innovation Achievement Convert into Major Industry Structure Optimization Upgrade Project

We determined that RZBC received a countervailable subsidy of 0.27 percent *ad valorem*.

21. Shandong Self-Innovation Subsidy

We determined that RZBC received a countervailable subsidy of 0.03 percent *ad valorem*.

22. Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River

We determined that RZBC received a countervailable subsidy of 0.43 percent *ad valorem*.

23. Fund for Energy-saving Technological Innovation

We determined that RZBC received a countervailable subsidy of 0.04 percent *ad valorem*.

24. Enterprise Development Supporting Fund from Zibo City Financial Bureau

We found that RZBC received a countervailable subsidy of 0.06 percent *ad valorem*.

Background

On April 1, 2014, the Department initiated a sunset review of the CVD order on citric acid from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”).⁷ The Department received a notice of intent to participate in the review on behalf of Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas LLC, (collectively, “the domestic industry”) within the deadline specified in 19 CFR 351.218(d)(1)(i). Each of these companies claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of the domestic like product.

The Department received adequate substantive responses collectively from the domestic industry within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department did not receive a substantive response from any government or respondent interested party to the proceeding. Because the Department received no response from the respondent interested parties, the Department conducted an expedited review of this CVD order, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

⁷ See *Initiation of Five-Year (“Sunset”) Review*, 79 FR 18279 (April 1, 2014).

Scope of the Order

The scope of the order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of the order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of the order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of the order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (“HTSUS”), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of 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: 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 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 the subsidy described is in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (“ASCM”).

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

The domestic industry argues that subsidization of citric acid from the PRC would likely continue or recur if the Department revoked the order because the subsidy programs identified in the original investigation remain in existence and the Department has identified additional countervailable subsidy programs in the course of its administrative reviews. In addition, the domestic industry notes that, in the investigation and administrative reviews, the Department allocated the benefits from certain subsidies over time and the allocated benefits extend beyond the period of the sunset review thereby warranting an affirmative finding of likelihood of continuation. Therefore, the domestic industry argues that the Department should conclude that subsidization would likely continue or recur if the CVD order on citric acid were revoked.

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 (“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.⁸ The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.⁹ 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.¹⁰ 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.¹¹

⁸ See SAA, H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

⁹ *Id.*

¹⁰ 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.

¹¹ *Id.*

As indicated above, the Department has completed three administrative reviews of the order since it went into effect during which it identified additional countervailable subsidy programs providing benefits to PRC producers of citric acid. Additionally, no party submitted evidence to demonstrate that the countervailable programs have expired or been terminated. Thus, based on the facts on the record, the Department determines that there is a likelihood of recurrence of countervailable subsidies because the record in this proceeding indicates that the subsidy programs found countervailable during the investigation continue to exist and be used.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The domestic industry asserts that subsidization is likely to continue at margins equivalent to or greater than those found in the original investigation.¹² The domestic industry states that section 752(b)(1) of the Act specifies that the Department shall consider “the net countervailable subsidy determined in the investigation and subsequent reviews” and “whether any change in the program which gave rise to the net countervailable subsidy” has occurred that is likely to affect the net countervailable subsidy.¹³ For companies not subject to an administrative review, the Department should rely on the rates set out in the *Order*. For those companies that have been subject to an administrative review – Yixing and RZBC – the Department should find that the rates from the most recently completed review are the rates likely to prevail. Specifically, the domestic industry recommends the following rates are the rates likely to prevail: 12.68 percent for TTCA, 118.95 percent for Anhui BBKA Biochemical, 16.13 percent for Yixing, 35.87 percent for RZBC, and 8.14 percent for all others.¹⁴

Department's Position

The Department normally will provide the ITC the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is 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.¹⁵ 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.¹⁶

¹² See Domestic Industry Substantive Response at 4-13.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See SAA at 890, and House Report, H.R. Rep. No. 103-826 (1994) (“House Report”) at 64.

¹⁶ 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 Issues and Decision Memorandum at Comment 2.

Where the Department has conducted an administrative review of the order and determined to increase the net countervailable subsidy rate for any reason, including as a result of the application of facts available, the Department may adjust the net countervailable subsidy rate determined in the original investigation to reflect the increase in the rate.¹⁷ Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide the “all others” rate determined in the investigation as the rate likely to prevail.¹⁸

In this instance, the Department has completed three administrative reviews in which, as discussed above, several additional subsidy programs were found countervailable. As a result, we have adjusted the rates for each of the companies and the “all others” to reflect the programs that were subsequently found countervailable. As a result, the Department determines the net countervailable subsidies that would be likely to prevail in the event of revocation of the order would be 44.31 percent *ad valorem* for TTCA Co., Ltd. (a.k.a. Shandong TTCA Biochemistry Co., Ltd.), 36.46 percent *ad valorem* for Yixing Union Biochemical Co., Ltd.; and Yixing Union Cogeneration Co., Ltd., 150.58 percent *ad valorem* for Anhui BBCA Biochemical Co., Ltd., and 39.77 percent *ad valorem* for “all others.”¹⁹

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 subsidies and whether the subsidies are subsidies as described in Article 3 or Article 6.1 of the WTO ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The following programs fall within the definition of an export subsidy under Article 3.1 of the ASCM, as receipt of benefits under these programs is contingent upon export activity.

Loan Program

1. Export Seller’s Credit for High- and New-Technology Products (export-contingent)

Grant Programs

2. Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products (export-contingent)
3. Rizhao City: Subsidy for Antidumping Investigations (export-contingent)
4. Science and Technology Export Innovation Support (export-contingent)
5. Shandong Province: Subsidy for Antidumping Investigations (export-contingent)

¹⁷ 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*”) at III.B.3(d).

¹⁸ *Id.* at III.B.2.

¹⁹ See Memorandum To File concerning Calculation of Net Countervailable Subsidy Likely to Prevail.

The following programs do not fall within the meaning of Article 3 of the ASCM. However, they could be subsidies 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. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or if they are subsidies to cover operating losses sustained by an industry or enterprise. Because there is insufficient information on the record to conclusively make this determination, the Department is providing to the ITC the following list of programs:

Loan Programs

For the following programs, the GOC, through its policy banks and state-owned banks, provides preferential loans to the respondents, which were found to be specific.

1. Government Policy Lending
 - a. National Policy Lending
 - b. Shandong Province Policy Loans Program

Income Tax Programs

For the following programs, the GOC provides income tax exemptions, or reductions to the income tax rate, which were found to be specific to certain enterprises or industries.

2. Reduced Income Tax Rates to FIEs Based on Location
3. “Two Free, Three Half” Program
4. Local Income Tax Exemption/Reduction Program for “Productive” FIEs
5. Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs
6. Reduced Income Tax Rate for High or New Technology Enterprises

Other Tax Programs

7. Income Tax Credits on Purchases of Domestically Produced Equipment
8. VAT and Duty Exemptions on Imported Equipment

Inputs for LTAR

For the following programs, GOC authorities provided inputs to producers of citric acid for less than adequate remuneration (LTAR), which we found to be *de facto* specific.

9. Provision of Sulfuric Acid for LTAR
10. Provision of Steam Coal for LTAR
11. Provision of Calcium Carbonate for LTAR

Land Programs

12. Land-Use Rights Extension in Yixing City - The GOC provided land for LTAR limited to an enterprise, which we found to be *de jure* specific under section 771(5A)(D)(i) of the Act.

13. Provision of Land for LTAR to Enterprises in Strategic Emerging Industries in Shandong Province – The GOC provided land for LTAR limited to strategic emerging industries, and thus, we found this program to be *de jure* specific under section 771(5A)(D)(i) of the Act.

Grant Programs

For the following programs, the GOC provided direct financial assistance to certain enterprises or industries, which we found specific.

14. Application Technology Research and Development Fund
15. Award for Contribution to City and People
16. Award for Enterprise Technology Improvement Project
17. Donggang Finance Bureau IPO Preparation Subsidy
18. Economic Task Special Contribution Award
19. Enterprise Development Supporting Fund from Zibo City Financial Bureau
20. Enterprise Technology Research and Development Subsidy
21. Financial Resource Construction Award
22. First and Second Industrial Enterprises Development Budget in City Level
23. First Industrial Enterprises Development Budget in District Level
24. Fund for Energy-saving Technological Innovation
25. Jiangsu Province Energy Conservation and Emissions Reduction Program
26. Return of Land Use Right Deed Tax for Initial Public Offering (IPO) Companies
27. Rizhao City: Special Fund for Enterprise Development
28. Rizhao City: Subsidies to Encourage Enterprise Expansion
29. Rizhao City: Technological Innovation Grants
30. Rizhao City: Technology Research and Development Fund
31. Self-Innovation Achievement Convert into Major Industry Structure Optimization Upgrade Project
32. Self-Innovation Special Fund
33. Shandong Province: Award Fund for Industrialization of Key Energy-saving Technology
34. Shandong Province Construction Fund for Promotion of Key Industries
35. Shandong Province: Environmental Protection Industry R&D Funds
36. Shandong Province Financial Special Fund for Supporting High and New Technology Industry Development Project (Technology Special Fund)
37. Shandong Province Science and Technology Development Fund
39. Shandong Province: Special Fund for the Establishment of Key Enterprise Technology Centers
40. Shandong Province: Waste Water Treatment Subsidies
41. Shandong Self-Innovation Subsidy
42. Special Fund for Foreign Trade Public Service Platform
43. Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River
44. Subsidy for Providing Employment Internship Base
45. Subsidy for Technique Improvement
46. Technology Innovation Advanced Unit Award
47. Yixing City: Leading Enterprise Program
48. Yixing City: Tai Lake Water Improvement Program

In addition, during the investigation, the Department determined the following programs did not provide a benefit to, or were not used by TTCA or Yixing, but found the programs to be countervailable on the basis of adverse facts available for Anhui.

Loan Programs

1. Discounted Loans for Export-Oriented Industries

Income Tax Programs

1. Income Tax Exemption for Export-oriented FIEs
2. Reduced Income Tax Rate for High or New Technology Enterprises
3. Preferential Income Tax Rate for Research and Development at FIEs
4. Preferential Tax Programs for Encouraged Industries
5. Preferential Tax Policies for Township Enterprises
6. Reduced Income Tax Rates for Encouraged Industries in Anhui Province

Income Tax Credit or Refund Programs

1. Tax Benefits to FIEs for Certain Reinvestment of Profits

Grant Programs

1. Funds Provided for the Rationalization of the Citric Acid Industry
2. State Key Technology Program Fund
3. National Level Grants to Loss-making State-owned Enterprises
4. Provincial Level Grants to Loss-making State-owned Enterprises

LTAR and Land Programs

1. Provision of Land for Less than Adequate Remuneration in Anhui Province
2. Provision of Land to SOEs for LTAR

FINAL RESULTS OF REVIEW

The Department finds that revocation of the order would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:

| Exporter/Manufacturer | Net Subsidy Rate |
|---|----------------------------------|
| TTCA Co., Ltd. (a.k.a. Shandong TTCA Biochemistry Co., Ltd.) | 44.31 percent <i>ad valorem</i> |
| Yixing Union Biochemical Co., Ltd.; and Yixing Union Cogeneration Co., Ltd. | 36.46 percent <i>ad valorem</i> |
| Anhui BBKA Biochemical Co., Ltd. | 150.58 percent <i>ad valorem</i> |
| All Others | 39.77 percent <i>ad valorem</i> |

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
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

30 JULY 2014
Date