



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-570-019
Sunset Review
Public Document
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December 28, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
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 Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China

I. SUMMARY

We analyzed the substantive response of the domestic interested party¹ in this first sunset review of the countervailing duty (CVD) order² covering boltless steel shelving units prepackaged for sale (boltless steel shelving) from the People's Republic of China (China).³ We did not receive a substantive response from the Government of China (GOC) or any other respondent interested party. Accordingly, we conducted an expedited (120-day) sunset review of the *Order* pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2).⁴ We recommend that you approve the positions described in the

¹ The domestic interested party is Edsal Manufacturing Company, Inc.

² See *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 63745 (October 21, 2015) (*Order*).

³ See Domestic Interested Party's Letter, "Five-Year (Sunset) Review of the Countervailing Duty Order on Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China – Petitioner's Substantive Response to Notice of Initiation," dated September 30, 2020 (Substantive Response).

⁴ Commerce normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response. See *Procedures for Conducting Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005)



“Discussion of the Issues” section of this memorandum. Below is a complete list of issues for which we received a substantive response:

1. Likelihood of continuation or recurrence of a countervailable subsidy;
2. Net countervailable subsidy likely to prevail; and
3. Nature of the subsidies

II. BACKGROUND

The Department of Commerce (Commerce) published the *Order* on October 21, 2015.⁵ On September 1, 2020, we published the notice of initiation of the first sunset review of the *Order*, in accordance with section 751(c) of the Act.⁶ Subsequently, Commerce received a notice of intent to participate from a domestic interested party.⁷ The notice was timely filed within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested party claimed interested party status under section 771(9)(C) of the Act as a producer of boltless steel shelving.

On September 30, 2020, Commerce received a substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁸ We did not receive a substantive response from any other interested parties in this proceeding and no hearing was requested.

On October 27, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁹ As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*.

III. SCOPE OF THE ORDER

The scope of the *Order* covers boltless steel shelving units prepackaged for sale, with or without decks (boltless steel shelving). The term “prepackaged for sale” means that, at a minimum, the steel vertical supports (*i.e.*, uprights and posts) and steel horizontal supports (*i.e.*, beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also includes add-on kits. Add-on kits include, but are not limited to, kits that allow the end-user to add an extension shelving unit onto an existing boltless steel shelving unit such that the extension and the original unit will share common frame elements (*e.g.*, two posts). The term “boltless” refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts or screws. The vertical and horizontal support members for boltless steel shelving are assembled by methods such as, but not limited to, fitting a rivet, punched or cut tab or other similar connector on one support into a hole, slot or similar receptacle on another support. The

⁵ See generally *Order*.

⁶ See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 54348 (September 1, 2020).

⁷ See Domestic Interested Party’s Letter, “Five-Year (‘Sunset’) Review of Countervailing Duty Order on Boltless Shelving Units Prepackaged for Sale from the People’s Republic of China – Petitioner’s Notice of Intent to Participate,” dated September 14, 2020.

⁸ See generally Substantive Response.

⁹ See Commerce’s Letter, “Sunset Reviews Initiated on September 1, 2020,” dated October 27, 2020.

supports lock together to form the frame for the shelving unit, and provide the structural integrity of the shelving unit separate from the inclusion of any decking. The incidental use of nuts and bolts or screws to add accessories, wall anchors, tie-bars or shelf supports does not remove the product from scope. Boltless steel shelving units may also come packaged as partially assembled, such as when two upright supports are welded together with front-to-back supports, or are otherwise connected, to form an end unit for the frame. The boltless steel shelving covered by the *Order* may be commonly described as rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet (quasi-rivet) shelving as well as by other trade names. The term “deck” refers to the shelf that sits on or fits into the horizontal supports (beams or braces) to provide the horizontal storage surface of the shelving unit.

The scope includes all boltless steel shelving meeting the description above, regardless of: (1) vertical support or post type (including but not limited to open post, closed post and tubing); (2) horizontal support or beam/brace profile (including but not limited to Z-beam, C-beam, L-beam, step beam and cargo rack); (3) number of supports; (4) surface coating (including but not limited to paint, epoxy, powder coating, zinc and other metallic coating); (5) number of levels; (6) weight capacity; (7) shape (including but not limited to rectangular, square, and corner units); (8) decking material (including but not limited to wire decking, particle board, laminated board or no deck at all); or (9) the boltless method by which vertical and horizontal supports connect (including but not limited to keyhole and rivet, slot and tab, welded frame, punched rivet and clip).

Specifically excluded from the scope are:

- wall-mounted shelving, defined as shelving that is hung on the wall and does not stand on, or transfer load to, the floor;¹⁰
- wire shelving units, which consist of shelves made from wire that incorporates both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create the finished shelving unit;
- bulk-packed parts or components of boltless steel shelving units; and
- made-to-order shelving systems.

Subject boltless steel shelving enters under the United States through Harmonized Tariff Schedule of the United States (HTSUS) statistical subheadings 9403.20.0018, 9403.20.0020, 9403.20.0025, and 9403.20.0026, but may also enter through HTSUS 9403.10.0040. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

¹⁰ The addition of a wall bracket or other device to attach otherwise freestanding subject merchandise to a wall does not meet the terms of this exclusion.

IV. HISTORY OF THE ORDER

On October 21, 2015, Commerce published its amended final CVD determination and *Order*¹¹ Commerce determined the following net countervailable subsidy rates:

Table 1 – Subsidy Rates Determined in the Investigation	
Producer/Exporter	Subsidy Rate (percent)
Ningbo ETDZ Huixing Trade Co., Ltd. (ETDZ)	12.40
Nanjing Topsun Racking Manufacturing Co., Ltd. (Topsun)	15.05
Dalian Huameilong Metal Products Co., Ltd.*	80.39
Dongguan Yuan Er Sheng Machinery Source Hardware Co., Ltd.*	80.39
Dong Rong Metal Products Co., Ltd.*	80.39
Global Storage Equipment Manufacturer Limited *	80.39
Intradin (Shanghai) Import & Export Co., Ltd.*	80.39
Jinhua Development District Hongfa Tool, Ltd.*	80.39
Kunshan Jisheng Metal & Plastic Co., Ltd.*	80.39
Nanjing Huade Warehousing Equipment Manufacturing Co. Ltd.*	80.39
Nanjing Whitney Metal Products Co., Ltd.*	80.39
Nanjing Yodoly Logistics Equipments Manufacturing Co., Ltd.*	80.39
Ningbo Decko Metal Products Trade Co., Ltd.*	80.39
Ningbo Haifa Metal Works Co., Ltd.*	80.39
Ningbo HaiFa Office Equipment Co., Ltd.*	80.39
Ningbo TLT Metal Products Co., Ltd.*	80.39
All Others	13.73

* *Non-cooperative company to which an adverse facts available rate was applied.*

As explained in the *Final Determination* IDM, we determined that the following programs provided countervailable benefits to ETDZ and/or Topsun:

1. Electricity for Less Than Adequate Remuneration (LTAR)
2. Hot-Rolled Coiled Steel for LTAR
3. Foreign Trade Bureau Award
4. Export Credit Insurance
5. Export Subsidy for High-tech Merchandise
6. Clean Energy Measures Subsidy

¹¹ See *Order* (issuing the CVD order and correcting a ministerial error with respect to the CVD rate applied to companies that did not respond to Commerce's quantity and value questionnaire); see also *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

7. Innovative Growth Subsidy
8. Two Free, Three Half Tax Program

In addition, Commerce relied on adverse facts available and found the following additional programs to provide countervailable subsidies to the non-cooperative companies:

1. Exhibition Subsidy
2. Export Sellers' Credits from the Export-Import Bank of China
3. Export Buyer's Credits from the Export Import Bank of China
4. Income Tax Reductions for Export Oriented Foreign-Invested Enterprises (FIEs)
5. Income Tax Benefits for FIEs Based on Geographic Location
6. Local Income Tax Exemption and Reduction Programs for Productive FIEs
7. Income Tax Reduction for High or New Technology Enterprises
8. Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law
9. Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies
10. Import Tariff and Value-Added Tax (VAT) Reductions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encourage Industries
11. Tax Rebates Based on Location in Shiqiao Town Industrial Cluster Zone
12. VAT Refunds for FIEs Purchasing Domestically Produced Equipment
13. GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands
14. Special Fund for Energy Savings Technology Reform
15. International Market Exploration Fund (Small and Medium Enterprise (SME) Fund)
16. Export Assistance/Outward Expansion Grants in Guangdong Province
17. Guangdong Province Funds to Support the Adoption of E-Commerce by Foreign Trade Enterprises
18. Technology to Improve Trade Research and Development Fund
19. Rental/Purchase Assistance in Ningbo Municipality District Yinzhou District Southern Commercial Zone

Since the issuance of the *Order*, no administrative reviews, changed circumstances reviews, or new shipper reviews have been requested or completed. Commerce has conducted six scope inquiries related to the *Order*.¹²

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce conducted this sunset review to determine whether revocation of the *Order* would likely lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, Commerce shall consider: (1) the net countervailable subsidy rate determined in the investigation and any subsequent reviews; and (2) whether any changes in the programs which gave rise to the net countervailable subsidy rate have occurred that are likely to affect the net countervailable subsidy.

¹² See *Notice of Scope Rulings*, 83 FR 31733 (July 9, 2018); *Notice of Scope Rulings*, 83 FR 23634 (May 22, 2018); *Notice of Scope Rulings*, 82 FR 26454 (July 7, 2017); and *Notice of Scope Rulings*, 81 FR 69784 (October 7, 2016).

Pursuant to section 752(b)(3) of the Act, Commerce shall provide the ITC with the net countervailable subsidy rate likely to prevail if the *Order* were revoked. In addition, consistent with section 752(a)(6) of the Act, Commerce shall provide the ITC with 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 (ASCM).

VI. DISCUSSION OF THE ISSUES

Below we address the comments of the domestic interested party.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Domestic Interested Party Comments

Commerce found that respondents benefitted from numerous countervailable subsidy programs in the original investigation and has not conducted any subsequent administrative reviews.¹³ Therefore, there is no evidence demonstrating that any of the programs have been terminated. Accordingly, revocation of the *Order* would likely lead to the continuation or recurrence of countervailable subsidization of boltless steel shelving from China.¹⁴

Since 2015, neither the GOC nor any Chinese producer has requested an administrative review of the *Order* nor attempted to demonstrate termination of any of these subsidy programs. Accordingly, there is no evidence indicating that any of the subsidy programs that were found to be countervailable in the original investigation have been discontinued, modified, or eliminated.

¹³ See Substantive Response at 9.

¹⁴ *Id.*

Commerce's Position:

To determine the likelihood of continuation or recurrence of a countervailable subsidy, section 752(b)(1) of the Act directs Commerce to consider the net countervailable subsidy rate determined in the investigation and subsequent reviews and whether there have been any changes in a program found to be countervailable that are likely to affect that net countervailable subsidy rate. According to the Statement of Administrative Action (SAA), Commerce will consider the net countervailable subsidies in effect after the issuance of an order and whether the relevant subsidy programs have been continued, modified, or eliminated.¹⁵ The SAA further states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.¹⁶ The continued existence of programs that have not been used, and have not been terminated without residual benefits or replaced, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.¹⁷ Where a subsidy program is found to exist, Commerce normally will determine that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.¹⁸

Consistent with prior determinations, two conditions must be met in order for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: (1) the program must be terminated; and (2) any benefit stream must be fully allocated.¹⁹ In order to determine whether a program has been terminated, we will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program. Commerce normally expects a program to be terminated by means of the same legal mechanism used to institute it. Where a subsidy is not bestowed pursuant to a statute, regulation or decree, Commerce may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence and was not granted as part of a broader, government program.

Based on the facts on the record, and because no party has submitted evidence to demonstrate that the above-referenced countervailable programs have expired or been terminated without any residual benefits, Commerce determines that the subsidy programs found countervailable during the investigation continue to exist.

Because the continuation of programs is highly probative of the likelihood of the continuation or recurrence of countervailable subsidies, we determine that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies.

¹⁵ See SAA accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) at 888.

¹⁶ *Id.*

¹⁷ See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010), and accompanying IDM at Comment 1.

¹⁸ *Id.*

¹⁹ See *Certain Pasta from Italy: Final Results of the Expedited Fourth Sunset Review of the Countervailing Duty Order*, 83 FR 62838 (December 6, 2019), and accompanying IDM at 11; and *Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006), and accompanying Preliminary Decision Memorandum at 5-7, unchanged in *Corrosion-Resistant Carbon Steel Flat Products from France: Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006).

2. Net Countervailable Subsidy Rates that Are Likely to Prevail

Domestic Interested Party Comments

Commerce should follow the instructions set forth in the SAA and its *Policy Bulletin* which state that it should, in most cases, begin by selecting the subsidy rate established in the original investigation because it “is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.”²⁰ Therefore, Commerce should rely on the countervailable subsidy rates found in the original investigation, as amended.²¹

Commerce’s Position:

Consistent with the SAA and legislative history, Commerce normally will provide to the ITC the net countervailable subsidy rates that were determined in the investigation as these are the rates likely to prevail if the order is revoked because these are the only calculated rates that reflect the behavior of exporters and foreign governments without the discipline of the order in place.²² Section 752(b)(1)(B) of the Act provides, however, that Commerce also will consider whether any change in the program(s) which gave rise to the net countervailable subsidy determination in the investigation has occurred that is likely to affect the net countervailable subsidy rates. Therefore, although the SAA provides that Commerce normally will select a rate from the investigation, this rate may not be the most appropriate if the rate was derived from countervailable subsidy programs found in subsequent reviews to be terminated, there has been a program-wide change, or the rate does not include a program or programs found to be countervailable in subsequent reviews.²³

Because we have not uncovered additional countervailable subsidy programs in subsequent reviews, and no party has submitted information indicating that any program from the investigation has been terminated, Commerce is providing the ITC with the rates found in the original investigation. Consistent with section 752(b)(3) of the Act, Commerce will provide to the ITC the net countervailable subsidy rates shown in the section entitled “Final Results of Review.”

3. Nature of the Subsidies

In accordance with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of the subsidy programs, and whether these programs constitute subsidies that fall within the meaning of Article 3 or Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

²⁰ See Substantive Response at 12 (citing SAA at 890; and *Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18875 (April 16, 1998) (*Policy Bulletin*)).

²¹ See *Order*; see also Table 1 in the “History” section, above.

²² See SAA at 890; see also H.R. Rep. No. 103-826 (1994) at 64.

²³ See, e.g., *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62101 (October 7, 2010), and accompanying IDM at Comment 2.

Article 3 Subsidies

The following programs fall within the definition of an export subsidy under Article 3.1 of the ASCM, 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.

Grant Programs

1. Foreign Trade Bureau Award (export-contingent)
2. Export Credit Insurance (export-contingent)
3. Export Subsidy for High-tech Merchandise (export-contingent)
4. Exhibition Subsidy (export-contingent)
5. GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands (export-contingent)
6. International Market Exploration Fund (SME Fund) (export-contingent)
7. Export Assistance/Outward Expansion Grants in Guangdong Province (export-contingent)

Loan Program

8. Export Sellers' Credits from the Export-Import Bank of China (export-contingent)
9. Export Buyer's Credits from the Export Import Bank of China (export-contingent)

Direct/Indirect Tax Programs

10. Income Tax Reductions for Export Oriented FIEs (export-contingent)
11. Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies (use of domestic over imported goods)
12. VAT Refunds for FIEs Purchasing Domestically Produced Equipment (use of domestic over imported goods)

Article 6.1 Subsidies

The following subsidy programs do not fall within the meaning of Article 3 of the ASCM, but may be subsidies as described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. The subsidies may also fall within the meaning of Article 6.1 if they constitute debt forgiveness, are grants to cover debt repayment, or are subsidies to cover operating losses sustained by an industry or enterprise.

LTAR Programs

1. Electricity for LTAR
2. HRCS for LTAR

Grant Programs

3. Clean Energy Measures Subsidy
4. Innovative Growth Subsidy
5. Special Fund for Energy Savings Technology Reform

- 6. Guangdong Province Funds to Support the Adoption of E-Commerce by Foreign Trade Enterprises
- 7. Technology to Improve Trade Research and Development Fund
- 8. Rental/Purchase Assistance in Ningbo Municipality District Yinzhou District Southern Commercial Zone

Direct/Indirect Tax Programs

- 9. Two Free, Three Half Tax Program
- 10. Income Tax Benefits for FIEs Based on Geographic Location
- 11. Local Income Tax Exemption and Reduction Programs for Productive FIEs
- 12. Income Tax Reduction for High or New Technology Enterprises
- 13. Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law
- 14. Import Tariff and VAT Reductions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encourage Industries
- 15. Tax Rebates Based on Location in Shiqiao Town Industrial Cluster Zone

VII. FINAL RESULTS OF SUNSET REVIEW

As a result of this sunset review, Commerce finds that revocation of the *Order* would likely lead to a continuation or recurrence of countervailable subsidies at the rates listed in Table 1, above.

VIII. RECOMMENDATION

Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this expedited sunset review in the *Federal Register* and notify the ITC of our findings.

Agree

Disagree

12/28/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance