



C-570-021  
Sunset Review  
**Public Document**  
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February 19, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting 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 Expedited First Sunset  
Review of the Countervailing Duty Order on Melamine from the  
People's Republic of China

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## I. SUMMARY

We have analyzed the substantive response of the domestic interested party in the first sunset review of the countervailing duty (CVD) order covering melamine from the People's Republic of China (China).<sup>1</sup> We did not receive a response from the Government of China (GOC) or from any other respondent interested party. Accordingly, we conducted an expedited (120-day) sunset review 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).<sup>2</sup> We recommend that you approve the positions described in the "Discussion of the 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 rate likely to prevail
3. Nature of the subsidies

## II. BACKGROUND

On November 3, 2020, Commerce published the notice of initiation of the first sunset review of the *Order*, pursuant to section 751(c) of the Act.<sup>3</sup> Commerce received a notice of intent to

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<sup>1</sup> See *Melamine from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders*, 80 FR 80751 (December 28, 2015) (*Order*).

<sup>2</sup> See *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005). Commerce normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response.

<sup>3</sup> See *Initiation of Five-Year (Sunset) Reviews*, 85 FR 69585 (November 3, 2020).



participate from Cornerstone Chemical Company (Cornerstone, or domestic interested party), within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>4</sup> Cornerstone claimed interested party status under section 771(9)(C) of the Act, as a domestic producer engaged in the production of melamine in the United States.

Commerce received a substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>5</sup> We received no substantive response from any other domestic or interested parties in this proceeding and no hearing was requested. As a result, pursuant to section 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 this CVD *Order*.

### III. HISTORY OF THE *ORDER*

On November 6, 2015, Commerce published its final determination that countervailable subsidies are being provided to producers and exporters of melamine from China.<sup>6</sup> In the investigation, we determined the subsidy rates listed below:<sup>7</sup>

<u>Producer/Exporter</u>	<u>Ad Valorem Subsidy Rate</u>
Far-Reaching Chemical Co., Ltd.	154.00
M and A Chemicals Corp China	154.00
Qingdao Unichem International Trade Co., Ltd.	154.00
Shandong Liaherd Chemical Industry Co., Ltd.	156.90
Zhongyuan Dahua Group Co., Ltd.	154.00
All Others	154.58

In the investigation, Commerce relied on adverse facts available to find that the following programs provided countervailable benefits to the respondents:

1. Policy Loans;
2. Preferential Export Financing from the Export-Import Bank of China;
3. Preferential Loans to State Owned Enterprises (SOEs);
4. Debt Forgiveness for State Owned Enterprises Located in Henan Province;
5. Debt Forgiveness for “Hundred Strong” Enterprises Located in Henan Province;
6. Reduced Fee Export Insurance;
7. Preferential Income Tax Program for High- or New-Technology Enterprises (HNTEs);
8. Preferential Income Tax Program for HNTEs in Designated Zones;
9. Preferential Income Tax Program Enterprises in Western China;
10. Tax Exemptions for Income from Technology Transfers;
11. Tax Exemptions or Reductions for Profits Generated by Restructuring;

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<sup>4</sup> See Cornerstone’s Letter, “Five-Year (‘Sunset’) Review Of Countervailing Duty Order On Melamine from the People’s Republic Of China: Domestic Interested Party Notice of Intent to Participate,” dated November 10, 2020.

<sup>5</sup> See Cornerstone’s Letter, “Five-Year (‘Sunset’) Review Of Countervailing Duty Order On Melamine from the People’s Republic Of China: Domestic Interested Party Substantive Response,” dated November 25, 2020 (Cornerstone’s Substantive Response).

<sup>6</sup> See *Melamine from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 68847 (November 6, 2015) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

<sup>7</sup> See *Final Determination*, 80 FR at 68849.

12. Income Tax Exemptions in the Puyang Economic & Development Zone;
13. Tariff Exemption for Imported Equipment;
14. Value Added Tax Rebates on Foreign Invested Enterprises Purchases of Chinese made Equipment;
15. Exemptions from Administrative Charges for Companies in Certain Industrial Zones;
16. Refunds of Land Fees in the Puyang Economic & Development Zone;
17. Exemptions and Reductions of Administrative Fees in the Puyang Economic & Development Zone;
18. Provisions of Land for Less Than Adequate Remuneration (LTAR) to Enterprises in Encouraged Industries in Sichuan Province, Henan Province (Zhumadian District), Xinjiang Province (Shaya County), and Chengdu Province (Qingbaijiang District);
19. Provisions of Land to SOEs for LTAR;
20. Land Program to Enterprises in Industrial Zones (Zhumadian Industrial Cluster Zone, Yiyuan Economic Development Zone, and Shaya Circular Economy Industrial Park);
21. Provision of Electricity for LTAR;
22. Provision of Natural Gas for LTAR;
23. Provision of Coal for LTAR;
24. Provision of Land for LTAR for “Hundred Strong” Enterprises Located in Henan Province;
25. State Key Technology Renovation Project Fund;
26. Environmental Protection Special Fund;
27. Grants to Cover Legal Fees in Trade Remedy Cases;
28. Special Fund for Energy Saving Technology Reform;
29. Clean Production Technology Fund;
30. Grants for Listing Shares;
31. Grants Under the Industrial Structure Adjustment Fund (Henan Province);
32. Grants for Enterprise Information Technology Projects;
33. Grants from Provincial, Municipal, and County Energy Saving and Emission Reduction Special Funds;
34. Structure Adjustment Awards (Puyang City);
35. Strong Industrial City Competition Awards;
36. Big Enterprise Cultivation Grant Program;
37. Cash Grants for Exports;
38. Special funds for sewage treatment for Shandong Liaherd;
39. Special funds for energy saving and emission reduction for Shandong Liaherd;
40. Compensation payments for melamine equipment for Shandong Liaherd;
41. Government support funds for Shandong Liaherd; and
42. Energy saving and emission reduction subsidies for Shandong Liaherd.<sup>8</sup>

Commerce also countervailed four programs that are contingent upon export performance: Reduced Fee Export Insurance, Preferential Export Financing from the Export-Import Bank of China, Cash Grants for Exports, and Grants to Cover Legal Fees in Trade Remedy Cases.<sup>9</sup>

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<sup>8</sup> See *Melamine from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 21706 (April 20, 2015) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM), unchanged in *Final Determination*.

<sup>9</sup> See *Preliminary Determination* PDM at 16-17, 23-24, 32-33, unchanged in *Final Determination*.

Since the investigation, no administrative reviews or new shipper reviews have been requested or conducted under the *Order*. Commerce has issued only one scope ruling since the issuance of the *Order*. The ruling was summarized in Commerce's *Notice of Scope Rulings*:

Requestor: JLS Chemical Inc.; certain melamine-based flame retardant products (i.e., melamine cyanurate, melamine polyphosphate, and ammonium-melamine-piperazine polyphosphate) are not subject to the orders on melamine from the People's Republic of China because the melamine raw material used to create these compounds is not intermingled or blended with other constituent chemicals but, rather, chemically-reacted with the other feedstock resulting in different products; February 22, 2017.<sup>10</sup>

Commerce has not issued any circumvention determinations or changed circumstances determinations with respect to this *Order*.

#### **IV. SCOPE OF THE ORDER**

The merchandise subject to this order is melamine (Chemical Abstracts Service (CAS) registry number 108-78-01, molecular formula  $C_3H_6N_6$ ).<sup>11</sup> Melamine is a crystalline powder or granule typically (but not exclusively) used to manufacture melamine formaldehyde resins. All melamine is covered by the scope of this order irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of this order. Melamine that is otherwise subject to this order is not excluded when commingled with melamine from sources not subject to this order. Only the subject component of such commingled products is covered by the scope of this order.

The subject merchandise is provided for in subheading 2933.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

#### **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 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.

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<sup>10</sup> See *Notice of Scope Rulings*, 83 FR 26257, 26257-58 (June 6, 2018).

<sup>11</sup> Melamine is also known as 2,4,6-triamino-s-triazine; 1,3,5-Triazine-2,4,6-triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names.

Pursuant to section 752(b)(3) of the Act, Commerce shall provide the U.S. International Trade Commission (ITC) with the net countervailable subsidy 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 (SCM).

## VI. DISCUSSION OF THE ISSUES

Below we address the comments of the domestic interested parties.

### 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

#### Interested Party Comments<sup>12</sup>

Citing to the Statement of Administrative Action (SAA),<sup>13</sup> and the *Policy Bulletin*,<sup>14</sup> Cornerstone asserts that an affirmative determination of continuation or recurrence is warranted because the subsidies at issue in the investigation remain in existence and have not been terminated or suspended. Cornerstone notes that the investigation rates remain in place for all exporters. Cornerstone has also expressed that, absent the *Order*, the volume of subsidized imports from China would likely increase significantly.

#### Commerce's Position

As stated above, in determining 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 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 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.<sup>15</sup> The SAA further states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.<sup>16</sup> The presence of programs that have not been used, but have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.<sup>17</sup> Where a subsidy program is found to exist, Commerce will normally determine that revocation of the relevant order would likely lead to continuation or recurrence of a countervailable subsidy, regardless of the level of subsidization.<sup>18</sup>

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<sup>12</sup> See Cornerstone's Substantive Response at 3-7.

<sup>13</sup> See Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 888.

<sup>14</sup> 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*).

<sup>15</sup> See SAA at 888.

<sup>16</sup> *Id.*

<sup>17</sup> 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.

<sup>18</sup> *Id.*

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.<sup>19</sup> 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.<sup>20</sup> Commerce normally expects a program to be terminated by means of the same legal mechanism used to institute it.<sup>21</sup> 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.<sup>22</sup>

In the investigation, Commerce found that countervailable subsidies were being provided to Chinese exporters and producers of melamine under the programs listed above.<sup>23</sup> As indicated above, there have been no administrative reviews since issuance of the Order, and no party submitted evidence to demonstrate that these countervailable programs have expired or have been terminated. Absent argument or evidence of any changes to the programs found countervailable during the investigation, we find that these countervailable programs continue to exist and be used. Therefore, Commerce determines that there is a likelihood of continuation or recurrence of countervailable subsidies if the *Order* was revoked.

## 2. Net Countervailable Subsidy Rates Likely to Prevail

### Interested Party Comments<sup>24</sup>

Cornerstone asserts that, consistent with the SAA and the *Policy Bulletin*, Commerce will normally select the rate determined in the original investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. Thus, according to Cornerstone, Commerce should report the following CVD rates to the ITC: (1) 154.00 percent for Far-Reaching Chemical Co., Ltd., M and A Chemicals Corp China, Qingdao Unichem International Trade Co., Ltd., and Zhongyuan Dahua Group Co., Ltd.; (2) 156.90 percent for Shandong Liaherd Chemical Industry Co., Ltd.; and (3) 154.58 percent for all others.

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<sup>19</sup> See, e.g., *Non-Oriented Electrical Steel from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order*, 85 FR 11339 (February 27, 2020), and accompanying IDM at 6; see also *Certain Pasta from Italy: Final Results of the Expedited Fourth Sunset Review of the Countervailing Duty Order*, 83 FR 62839 (December 6, 2018), 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 PDM 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).

<sup>20</sup> See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Full Third Sunset Review of Countervailing Duty Order*, 76 FR 70411 (November 14, 2011), and accompanying IDM at Comment 1.

<sup>21</sup> See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001), and accompanying IDM at Comment 7.

<sup>22</sup> See, e.g., *Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order*, 76 FR 25666 (May 5, 2011), and accompanying IDM at Comment 1.

<sup>23</sup> See *Final Determination* IDM.

<sup>24</sup> See Cornerstone's Substantive Response at 7-8.

## Commerce's Position

Consistent with the SAA and legislative history, Commerce will normally provide the ITC with the net countervailable subsidy rates that were determined in the investigation as the subsidy rates likely to prevail if the *Order* is revoked because they are the only calculated rates that reflect the behavior of exporters and foreign governments without the discipline of an *Order* in place.<sup>25</sup> However, section 752(b)(1)(B) of the Act provides that Commerce also shall consider “whether any change in the program which gave rise to the net countervailable subsidy” determination in the investigation has occurred that is likely to affect the net countervailable subsidy rate. 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.<sup>26</sup>

While section 752(b)(1)(B) of the Act provides that Commerce will consider whether any change in the programs which gave rise to the net countervailable subsidy determination in the investigation, in this instance, Commerce conducted no administrative reviews of the *Order* and no evidence has been provided that would warrant making a change to the net countervailable subsidy rate found for Chinese producers and exporters in the investigation. Therefore, in this sunset review, we determine the company-specific countervailable subsidy rates likely to prevail are the rates assigned in the investigation. The countervailable subsidy rates, which Commerce determines are likely to prevail upon revocation of the *Order*, are provided in the “Final Results of Review” section of this memorandum.

### 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 these subsidy programs and whether these programs constitute subsidies that fall within Article 3 or Article 6.1 of the SCM Agreement. We note that Article 6.1 of the SCM Agreement expired, effective January 1, 2000.

#### Article 3

The following programs fall within the definition of an export subsidy under 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.

#### Loan Programs

##### 1. Preferential Export Financing from the Export-Import Bank of China;

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<sup>25</sup> See SAA at 890.

<sup>26</sup> 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.

## **Insurance Programs**

1. Reduced Fee Export Insurance;

## **Grant Programs**

1. Cash Grants for Exports;
2. Grants to Cover Legal Fees in Trade Remedy Cases.

### **Article 6.1**

The following programs do not fall within the meaning of Article 3 of the SCM. However, they 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 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, Commerce is providing to the ITC the following list of programs:

## **Loan Programs**

1. Policy Loans;
2. Preferential Loans to SOEs;
3. Debt Forgiveness for SOEs Located in Henan Province;
4. Debt Forgiveness for “Hundred Strong” Enterprises Located in Henan Province;

## **Grant Programs**

1. State Key Technology Renovation Project Fund;
2. Environmental Protection Special Fund;
3. Special Fund for Energy Saving Technology Reform;
4. Clean Production Technology Fund;
5. Grants for Listing Shares;
6. Grants Under the Industrial Structure Adjustment Fund (Henan Province);
7. Grants for Enterprise Information Technology Projects;
8. Grants from Provincial, Municipal, and County Energy Saving and Emission Reduction Special Funds;
9. Structure Adjustment Awards (Puyang City);
10. Strong Industrial City Competition Awards;
11. Big Enterprise Cultivation Grant Program;
12. Special funds for sewage treatment for Shandong Liaherd;
13. Special funds for energy saving and emission reduction for Shandong Liaherd;
14. Compensation payments for melamine equipment for Shandong Liaherd
15. Government support funds for Shandong Liaherd;
16. Energy saving and emission reduction subsidies for Shandong Liaherd;

## **Tax Programs**

1. Tax Exemptions for Income from Technology Transfers;
2. Tax Exemptions or Reductions for Profits Generated by Restructuring;
3. Tariff Exemption for Imported Equipment;
4. Value Added Tax Rebates on Foreign Invested Enterprises Purchases of Chinese made Equipment;
5. Preferential Income Tax Program for HNTes;
6. Preferential Income Tax Program for HNTes in Designated Zones;
7. Preferential Income Tax Program Enterprises in Western China;
8. Income Tax Exemptions in the Puyang Economic & Development Zone;

## **Inputs for LTAR**

1. Provisions of Land for LTAR to Enterprises in Encouraged Industries in Sichuan Province, Henan Province (Zhumadian District), Xinjiang Province (Shaya County), and Chengdu Province (Qingbaijiang District);
2. Provision of Land to SOEs for LTAR;
3. Provision of Electricity for LTAR;
4. Provisions of Natural Gas for LTAR;
5. Provisions of Coal for LTAR;
6. Provisions of Land for LTAR for “Hundred Strong” Enterprises Located in Henan Province;

## **Land Programs**

1. Land Program to Enterprises in Industrial Zones (Zhumadian Industrial Cluster Zone, Yiyuan Economic Development Zone, and Shaya Circular Economy Industrial Park);
2. Exemptions from Administrative Charges for Companies in Certain Industrial Zones;
3. Refunds of Land Fees in the Puyang Economic & Development Zone; and
4. Exemptions and Reductions of Administrative Fees in the Puyang Economic & Development Zone.

## **VII. FINAL RESULTS OF REVIEW**

Commerce determines that revocation of the *Order* would be likely to lead to the continuation or recurrence of countervailable subsidies at the rates up to 156.90 percent, as determined in the investigation and listed in Section III, above.

**VIII. 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 these final results of this expedited sunset review in the *Federal Register*.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

2/19/2021

X



Signed by: CHRISTIAN MARSH  
Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance