

Import Administration Policy Bulletin

Number: 10.1

Topic: Specificity of Subsidies Provided to State-owned Enterprises

Approved:

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date

SUMMARY

This policy bulletin confirms the Department's practice with respect to the specificity of subsidies granted to state-owned enterprises (SOEs). The Department's policy is that SOEs will normally be considered to be a "group" of enterprises within the meaning of section 771(5A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.502. Accordingly, subsidies that are limited in law or in fact to SOEs will normally be considered specific if the criteria for specificity contained in section 771(5A) of the Act are satisfied.

BACKGROUND

To be countervailable, a subsidy as defined in section 771(5)(B) of the Act must be specific within the meaning of section 771(5A) of the Act. Domestic subsidies may be specific, *e.g.*, as a matter of law or as a matter of fact. Thus, section 771(5A)(D)(i) of the Act provides:

Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry, the subsidy is specific as a matter of law.

Section 771(5A)(D)(iii) of the Act provides:

Where there are reasons to believe that a subsidy may be specific as a matter of fact, the subsidy is specific if one or more of the following factors exist:

- (I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.
- (II) An enterprise or industry is a predominant user of the subsidy.

(III) An enterprise or industry receives a disproportionately large amount of the subsidy.

(IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

The Act clarifies that the term “enterprise or industry” in section 771(5A) includes “a group of such enterprises or industries.” The Department’s regulations, at 19 CFR 351.502(b), provide that in determining whether a subsidy is being provided to a “group” of enterprises or industries, the Department “is not required to determine whether there are shared characteristics among the enterprises or industries that are eligible for, or actually receive, a subsidy.”

The Department has previously found that subsidies limited to SOEs are specific within the meaning of section 771(5A) of the Act.¹ Therefore, the Department has previously found SOEs to be a “group” of enterprises for specificity purposes. This is consistent with certain other prior findings by the Department, *e.g.*, that foreign-invested enterprises can constitute a “group” of enterprises for specificity purposes.²

STATEMENT OF POLICY

The Department will normally consider SOEs to be a “group” of enterprises for specificity purposes. This means that a subsidy can be specific as a matter of law if the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to SOEs. Further, the Department will also normally consider a subsidy to SOEs to be specific as a matter of fact, if one or more of the factors enumerated in section 771(5A)(D)(iii) of the Act exist. For example, a subsidy is specific as a matter of fact if SOEs are a predominant user of the subsidy or SOEs receive a disproportionately large amount of the subsidy.

IMPLEMENTATION

The Department will continue to apply its policy that SOEs will normally constitute a “group” of enterprises within the meaning of section 771(5A) of the Act. This Policy Bulletin may be referenced in any future determinations, as appropriate.

¹ See Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40480 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comments C.1, C.2, and F.11; Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia, 66 FR 49637 (September 28, 2001), and accompanying Issues and Decision Memorandum at Comment 3.

² See, *e.g.*, Certain Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009), and accompanying Issues and Decision Memorandum at Comment 12; Citric Acid and Certain Citrate Salts From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (April 13, 2009), and accompanying Issues and Decision Memorandum at Comment 16.