

rolled and corrosion-resistant carbon steel flat products from the Republic of Korea covering the period January 1, 1998, through December 31, 1998.

This notice is published in accordance with 19 CFR 351.213(d)(4).

Dated: January 27, 2000.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-508-605]

#### Final Results of Full Sunset Review: Industrial Phosphoric Acid From Israel

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of full sunset review: Industrial phosphoric acid from Israel.

**SUMMARY:** On September 27, 1999, the Department of Commerce ("the Department") published in the **Federal Register** (64 FR 51954) the preliminary results of the full sunset review of the countervailing duty order on industrial phosphoric acid from Israel pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results and received comments filed on behalf of domestic and respondent interested parties. As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, N.W., Washington, D.C. 20230; telephone: (202) 482-1930 or (202) 482-1560, respectively.

**EFFECTIVE DATE:** February 8, 2000.

#### Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and

Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

#### Scope

This order covers shipments of industrial phosphoric acid ("IPA") from Israel. According to the final results of the Department's most recent administrative review, the merchandise subject to this order is currently classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").<sup>1</sup> Although the HTSUS subheading is provided for convenience and customs purposes, the written description remains dispositive.

#### Background

On September 27, 1999, the Department published in the **Federal Register** the Preliminary Results of Full Sunset Review: Industrial Phosphoric Acid from Israel (64 FR 51954). In our preliminary results, we found that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy. Further, we found the net countervailable subsidy likely to prevail if the order were revoked to be 10.93 percent for Haifa Chemicals Ltd. ("Haifa") and 5.97 percent for "all others."

On November 16, 1999, we received a case brief on behalf of Albright and Wilson Americas Inc., FMC Corporation, and Solutia Inc. (collectively, "domestic interested parties"), within the deadline specified in 19 CFR 351.309(c)(1)(i). We also received a case brief on behalf of the Government of Israel ("GOI") and Rotem Amfert Negev Ltd. ("Rotem") (collectively, "respondent interested parties"). On November 23, 1999, within the deadline specified in 19 CFR 351.309(d), the Department received rebuttal comments from domestic and respondent interested parties. We have addressed the comments below.

Although the deadline for this determination was originally January 25, 2000, due to the Federal Government shutdown on January 25

and 26, 2000, resulting from inclement weather, the timeframe for issuing this determination has been extended by three days.

#### Comments

##### *Comment 1*

The domestic interested parties assert that the Department correctly concluded in its preliminary results that revocation of the order would likely lead to continuation or recurrence of a countervailable subsidy, and further, that this conclusion is appropriate for the final results in light of the results in the recently completed eleventh administrative review (*see* November 16, 1999, Case Brief of domestic interested parties at 5).

The respondent interested parties argue that, because of a recent WTO interim panel determination that privatization extinguishes prior non-recurring subsidies,<sup>2</sup> and because the Department has verified in the last several reviews the GOI's intention to fully privatize Rotem, the Department should reconsider its preliminary results and find that revocation of the order on Rotem will not lead to continuation of their benefits from subsidies (*see* November 16, 1999, Case Brief of respondent interested parties at 2). They claim that, whereas the privatization of Rotem was 68.48 percent complete as of the last administrative review, today, it is approximately 98 percent complete. *Id.* Therefore, the Department's calculation of the countervailing duty applicable to Rotem, which assumes that most prior, non-recurring subsidies are passed through to the new owners, is contrary to the WTO dispute panel determination. *Id.*

In rebuttal, the domestic interested parties argue that the WTO finding noted by respondent interested parties is neither relevant nor binding, and there is no reason why the Department should alter its reasoning as a result of an unadopted interim panel report with no legal status in U.S. domestic proceedings (*see* November 23, 1999, Rebuttal of Case Brief of domestic interested parties at 2). Further, they argue that the report apparently concludes that the United States should not assume, in an administrative review, that the sale of a company to private bidders automatically terminates the subsidies the company received when it was government-owned, and that the United States should recalculate anew

<sup>1</sup> *See Industrial Phosphoric Acid from Israel: Final Results and Partial Recession of Countervailing Duty Administrative Review*, 64 FR 49460 (September 12, 1999).

<sup>2</sup> *See* October 8, 1999, "WTO Interim Panel Finds Against U.S. CVD Rules on Privatization," 17 Inside U.S. Trade No. 140 at 4.

any countervailable subsidies received after privatization. *Id.* at 3. Therefore, the domestic interested parties assert that were the interim report adopted, its relevance to a sunset review would be unclear, and the Department still would be free to conclude, in a sunset review, that subsidization would be likely to continue or recur.

#### *Department's Position*

We disagree with the respondent interested parties that the WTO interim panel finding requires the Department to alter its approach to privatization in the instant case and revise its preliminary determination of likelihood. The domestic interested parties are correct in noting that, because the final panel report has not been adopted by the Dispute Settlement Body, the United States has no obligation with respect to the report. As the report has not been adopted, it is premature to consider what obligations, if any, the panel report may impose on the United States.

Even if it were not premature for the Department to reconsider our approach to privatization in light of the panel report, and it were otherwise appropriate to do so, 19 U.S.C. § 3533(g)(1) provides that a regulation or practice may not be amended, rescinded, or otherwise modified in the implementation of such report unless and until very specific statutorily mandated actions have been fulfilled and the appropriate congressional committees have been consulted. Thus, we continue to determine that a portion of subsidies bestowed on a government-owned company prior to privatization continues to benefit the production of the privatized company.

#### *Comment 2*

The domestic interested parties agree with the Department's method of adjusting the original net subsidies to reflect new and terminated programs, and increased usage of a program. Further, they agree with the rates selected by the Department to report to the Commission for Rotem and Haifa (see November 16, 1999, Case Brief of domestic interested parties at 6–7).

Respondent interested parties assert that, should the Department maintain its position that subsidization will continue, then it must revise the magnitude of the margin in the preliminary results to reflect the Department's findings in the most recent review. The respondent interested parties reassert that the Department's methodology with respect to privatization of previously subsidized companies is contrary to the WTO dispute panel determination holding that the Department is in violation of

the WTO Subsidies Agreement (see November 16, 1999, Case Brief of respondent interested parties at 2). Thus, they argue, the Department should adjust its calculation of the countervailing duty for Rotem. *Id.* Respondent interested parties add that should the Department find that it can take into account only the level of privatization as of the most recently completed administrative review, then the Department should still recalculate the rate using the privatization level of 68.48 percent to reflect that review. Therefore, the Department should report to the Commission a rate of 1.88 percent for Rotem ( $5.97 - (0.6848 * 5.97 = 1.88\%)$ ). *Id.* at 3.

Accordingly, the Department should adjust the Encouragement of Capital Investments Law ("ECIL") Grants benefits from 5.58 percent to the 5.43 percent from the most recent review. *Id.* at 3. Further, the subsidy of 0.11 percent from the Environmental Grants Program was expensed entirely by the Department in the 1996 review and was found not to be used in the 1997 review; therefore, the Department should not include the program in its calculations. Finally, the Department should find no benefit from Long-Term Industrial Development ("LTID") Loans because, as verified in the original investigation, all loans were terminated in 1985 and any loan taken in 1985 would be fully repaid ten years later, in 1995. Thus, no benefits from this program were found in the results of the 1996 review.

In summary, the respondent interested parties assert that the calculation of the likely level of subsidization for Rotem should exclude two programs, Environmental Grants Program and LTID Loans, and reduce the subsidy from ECIL Grants benefits from 5.58 percent to 5.43 percent. Thus, according to respondent interested parties, the Department should adjust its calculations to include: (1) 5.43 percent from the ECIL Grants; (2) 0.18 percent from the Infrastructure Grant Program; and (3) 0.04 percent from the Encouragement of Research and Development Law ("EIRD") Grants, for a net subsidy of 5.65 percent.

In rebuttal, the domestic interested parties reassert that the Department's calculation of the net countervailable subsidy for Rotem reflects the Department's standard methodology of presuming that the rate calculated in the original investigation is the best indicator of the behavior of exporters and foreign governments without the discipline of the order in place (see November 23, 1999, Rebuttal Brief of domestic interested parties at 4). Further, the domestic interested parties reassert that the Department's

adjustments to the original subsidy rate fall well within the Department's discretion. *Id.*

#### *Department's Position*

The Department agrees, in part, with the respondent interested parties' argument. We agree that, in the original investigation, the Department found the LTID Loans program was terminated in 1985. The Department, nonetheless, included an estimated subsidy from the program on the basis that loans taken prior to termination of the program would continue to provide countervailable benefits. Loans taken in 1985 would not be fully repaid until ten years later; after 1995, there would be no benefits conferred by this program. In the 1996 review, the GOI stated that the LTID Loan program was terminated in 1985 and had not been reinstated. Accordingly, in the 1996 review and all subsequent reviews, the Department found the program "not used" and that Rotem did not hold any outstanding loans from this program.

We disagree with the respondent interested parties' argument that we should eliminate the benefits from the Environmental Grants Program from our calculation of the net subsidy. The Department has not found the program terminated in any administrative reviews. Without such Department determination, consistent with the *Sunset Policy Bulletin*, we find that this program continues to exist and may provide benefits in the future. Therefore, we will continue to include a benefit in our calculation of the rate to report to the Commission.

We disagree with the respondent interested parties' assertion that we erred in selecting a benefit from the 1996 administrative review of 5.58 percent for the ECIL Grant program on the basis that the 1997 administrative review (with the rate of 5.43 percent) reflects the results of the Department's most recent review. While the final results of our 1997 administrative review, which was issued after the deadline for submitting comments for our preliminary results, were not addressed by interested parties in pre-preliminary comments, we do not agree that our policy is to select the benefit rates from the most recently completed review. Rather, as noted in section III.B.3(d) of the *Sunset Policy Bulletin*, where the Department has conducted an administrative review of an order and determined to increase the net countervailable subsidy rate for any reason, the Department may adjust the net countervailable subsidy rate determined in the original investigation to reflect the increase in the rate. In our preliminary results we stated that

because, over the life of the order, there has been a consistent pattern of increased usage of the grants provided by this program, we determined that the rate for this program from the original investigation should be adjusted to reflect this increased usage. While the reduction in the rate from the 1996 to 1997 administrative review reflects a decrease in the benefits from the previously bestowed grants, it does not necessarily reflect the behavior of the exporters and foreign government without the discipline of the order. The ECIL Grant program continues to exist and grants continue to be available. Therefore, we will continue to determine that the history of increased usage of this program makes it appropriate that the Department select a more recently calculated rate that reflects the increased usage of this program. Therefore, we will continue to add the benefit as determined in the 1996 administrative review to determine the net countervailable subsidy likely to prevail.

Therefore, the Department will not include benefits from LTID Loans in the net countervailable subsidy. With respect to the ECIL Grants, the Department will continue to use the rate of 5.58 percent from the preliminary results for Haifa and "all others."

#### *Comment 3*

The respondent interested parties argue that the Department should not report a higher rate for Haifa than the rate it will report for Rotem. Specifically, the rate for the LTID Loans program should be 0.00 percent instead of 5.02 percent because, as noted above, the LTID Loans program was terminated in 1985, and any residual benefits from the program ended in 1995, after all ten-year loans were repaid (see November 16, 1999 Case Brief of the respondent interested parties at 7). Further, the

respondent interested parties note that the Department has used Rotem's rates for all other programs to determine Haifa's overall rate. Therefore, should the Department disagree with a rate of zero for the LTID Loans, then the rate for this program for Haifa should still be no greater than 0.06 percent, Rotem's rate for this program. *Id.* at 7.

In rebuttal, the domestic interested parties contend that the Department has no information indicating that Haifa did not obtain LTID Loans or that it has not received residual benefits from such loans in later years (see November 23, 1999, Rebuttal Brief of domestic interested parties at 6). Thus, there is no basis for a downward adjustment to Haifa's net countervailable subsidy. Additionally, they reassert that the original rate is the most accurate predictor of Haifa's actions were the order revoked and the Department should not recalculate this rate for its final results. *Id.* at 7.

#### *Department's Position*

The Department agrees with the respondent interested parties. As noted above, we determined in the original investigation that the program was terminated in 1985, but that benefits from loans granted under the LTID Loans program would be conferred through 1995. Further, we found the program to be not used in the administrative reviews since 1996. Therefore, we will not include the benefits from this terminated program in our calculation of the net subsidy likely to prevail. With respect to the respondent interested parties assertion that the Department has used Rotem's rates for all other programs to determine Haifa's overall rate, two programs, the Infrastructure Grant Program and the Environmental Grant Program, were not included in the original investigation. The third program, EIRD Grants

conferred the same benefits on Haifa and "all others" in the final determination. Therefore, the Department, in each instance, has used the only available rates to determine Haifa's net subsidy.

#### *Comment 4*

The domestic interested parties agree with the Department's description of the information it intends to provide to the Commission with respect to the nature of the subsidies found and their categorization (whether the subsidy is a subsidy described in Article 3 or 6.1) under the WTO Subsidies Agreement (see November 16, 1999, Case Brief of domestic interested parties at 9). Specifically, they agree that the Bank of Israel Export Loans would fall under Article 3 of the Subsidies Agreement. Further, domestic interested parties assert that the remaining subsidies are actionable subsidies under Article 5 of the Subsidies Agreement, which defines an actionable subsidy as one that is "specific" within the meaning of Articles 1 and 2 of the Agreement, and causes adverse effects to the interests of other WTO members. *Id.* at 9. Finally, the domestic interested parties note that, of the eleven administrative reviews of the order, a net countervailing subsidy exceeding five percent was found in all but one (the 1992 review). *Id.* at 11. Accordingly, it is reasonable to assume that these programs continue to exist and are utilized, and that the Department is justified in reporting to the Commission that these subsidies constitute "serious prejudice" to the interests of the United States under Article 6.1 of the Subsidies Agreement.

In their rebuttal brief, respondent interested parties agree with the Department's approach of providing the

Commission with "descriptions" of the nature of the subsidy (*see* November 23, 1999, Rebuttal Brief of the respondent interested parties at 2). However, with respect to the Bank of Israel Export Loans, they assert that, because the Department found in the original investigation that the loans were no longer at preferential rates, the program's consistency with the Subsidies Agreement is irrelevant. *Id.* at 3.

With respect to the other programs, respondent interested parties contend that, even as measured by the Department's methodology, the other programs will not exceed the five percent threshold of Article 6 of the Subsidies Agreement in future reviews. First, of the six subsidies mentioned in the Preliminary Results other than the Bank of Israel Export Loans, three are not relevant: The LTID Loans and the Exchange Rate Risk Insurance Scheme ("ERIS") have been terminated, and the Environmental Grant Program was used only one time and provides no residual benefits. *Id.* All the other programs combined *i.e.*, the ECIL Grants, EIRD Grants, and Infrastructure Grant Program will not exceed five percent in the future. *Id.* at 3-4. This is because ECIL and infrastructure grants are diminishing, both as a result of their allocation over time and as a result of the fact that any new grants have been minimal. Additionally, further privatization of Rotem, from about 31 percent government ownership to about two percent, will significantly reduce the residual subsidization from prior grants. *Id.* at 4.

#### *Department's Position*

The Department agrees with the respondent interested parties' assertion that descriptions of the Bank of Israel Export Loans, LTID Loans, and ERIS should not be included in the nature of the subsidy section because these programs were found to be terminated. However, as noted above, the Department has not found the Environmental Grant Program to be terminated. Therefore, we will revise the descriptions of the nature of the subsidies from these programs.

Additionally, as we noted in our preliminary results, we do not have information with which to calculate the net countervailable subsidy in accordance with Annex IV of the Subsidies Agreement, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review.

#### **Nature of the Subsidy**

In the *Sunset Policy Bulletin*, the Department states that, consistent with

section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

Although the programs conferring benefits do not fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement, they could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds five percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to make such a calculation, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Rather, we are providing the Commission with the following program descriptions.

The Encouragement of Capital Investments Law (ECIL) Grants. In the 1987 original investigation, the Department found that Negev Phosphates, Ltd. ("Negev") and Haifa Chemicals, Ltd. received countervailable subsidies from this program, the benefits of which depend on the geographic location of the eligible enterprises. ECIL Grants were found to confer subsidies in each subsequent administrative review.

Encouragement of Research and Development Law ("EIRD") Grants. Israeli manufacturers, producers or exporters of IPA may benefit from research and development grants under this program. With the exception of the 1988, 1989 and 1991 administrative reviews, the Department found the EIRD Law Grants to be countervailable in each yearly review since the issuance of the order.

Infrastructure Grant Program. In the administrative review of the 1996 period, the Department found that this program enables the GOI to establish new industrial areas by partially reimbursing companies for their costs of developing the infrastructure in certain geographical zones.

Environmental Grant Program. Additionally, in the 1996 administrative review, the Department found that the GOI administers this countervailable subsidy program to provide financial assistance for the adaptation of existing industrial facilities to new environmental requirements.

#### **Final Results of Review**

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy for the reasons set forth in the final

results of review. As discussed more fully above, we will adjust our calculations of the net subsidy to reflect the termination of the LTID Loans program on the rates listed below:

Manufacturer/Exporter	Margin (Percent)
Haifa, Ltd. ....	5.91
All Others .....	5.91

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 28, 2000.

**Holly A. Kuga,**

*Assistant Secretary for Import Administration.*

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## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

[C-469-004]

#### **Final Results of Expedited Sunset Review: Stainless Steel Wire Rod From Spain**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of expedited sunset review: Stainless steel wire rod from Spain.

**SUMMARY:** On July 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on stainless steel wire rod from Spain (64 FR 35589) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of the domestic interested parties, as well as inadequate response from respondent interested parties, the Department determined to conduct an expedited (120 day) review. As a result of this