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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum: Final Affirmative
Countervailing Duty Determination of Bottle-Grade Polyethylene
Terephthalate (PET) Resin from India

Summary

On August 30, 2004, the Department of Commerce (the Department) issued the Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India 69 FR 52866 (Preliminary Determination). Since the issuance of the Preliminary Determination, the Department issued supplemental questionnaires and conducted verification of the responses provided by the respondent parties. In addition, the Department issued supplemental questionnaires and received responses from the Government of India (GOI) and the four participating respondents, Reliance Industries Ltd. (Reliance), Futura Polyesters, Ltd. (Futura), South Asia Petrochem Ltd. (SAPL) and Elque Polyesters Ltd. (Elque).

Subsequent to verification, the Department issued a memorandum containing our preliminary analysis of the two EOU programs, which we had noted in the Preliminary Determination as programs for which additional information was needed. See Memorandum to the File from Sean Carey Acting Program Manager, through Dana S. Mermelstein, Acting Director, Office of AD/CVD Enforcement VI, to Barbara E. Tillman, Acting Deputy Assistant Secretary, Import Administration, Countervailing Duty Investigation of Polyethylene Terephthalate (PET) Resin from India: Preliminary Analysis of the Export Oriented Unit (EOU) Program on Duty Drawback on Furnace Oil Procured from Domestic Oil Companies Program and Purchases of Materials and Other Inputs Free of Central Excise Duty (EOU Program Memorandum), dated February 14, 2005.

The Department received comments in case and rebuttal briefs. The U.S. PET Resin Producers Coalition (petitioner), the GOI, Reliance, and SAPL submitted case and rebuttal briefs. Futura

and Elque did not submit case or rebuttal briefs. We have analyzed the results of verification and all of the comments submitted by interested parties. Separate comments regarding the EOU Program Memorandum were provided by petitioner, the GOI and SAPL. As a result of our analysis, we have made changes to our Preliminary Determination, which are fully discussed below. We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum.

I. List of Comments

Below is the complete list of issues raised by interested parties in their comments.

Comment 1:	Futura’s Debonding and Adjustment to Duty Free Exemptions
Comment 2:	Futura’s Central Sales Tax Reimbursement
Comment 3:	WBIDC Investment in SAPL
Comment 4:	DEPS Credit Offset
Comment 5:	EOU Exemptions on Raw Materials
Comment 6:	Program-Wide Change of DEPS Rate
Comment 7:	Denominator for the EPCGS Subsidy Calculation
Comment 8:	Benchmark Interest Rates for EPCGS
Comment 9:	EPCGS Benefits Received in the POI
Comment 10:	Allocation of EPCGS Benefits and the 0.5 Percent Test
Comment 11:	Reliance’s Loan Benchmarks for State of Maharashtra (SOM) and State of Gujarat (SOG) Sales Tax Incentive Programs
Comment 12:	Average Useful Life (AUL) for SAPL’s Assets
Comment 13:	Effective Interest Rate of SAPL’s Pre-Shipment Export Loans
Comment 14:	Treatment of Exemptions on Imported Capital Goods
Comment 15:	SAPL’s Cash Deposit Rate
Comment 16:	Central Sales Tax Reimbursements on Raw Materials
Comment 17:	EOU Duty Drawback on Furnace Oil

II. Subsidies Valuation Information

A. Loan Benchmarks

For those programs requiring the application of a benchmark interest rate, section 351.505(a)(1) of the Department’s regulations provides a preference for using an interest rate that the company could have obtained as a comparable loan in the commercial market. Both Futura and SAPL provided information on rupee-denominated short-term commercial loans that were outstanding during the period of investigation (POI), April 1, 2003 through March 31, 2004, which we were able to verify. See Countervailing Duty Investigation of Polyethylene Terephthalate (PET) Resin from India: Verification of Futura Polyesters Ltd. (Futura Verification Report), (January 26, 2004), Countervailing Duty Investigation of PET Resin from India: Verification of South Asia Petrochem Ltd. (SAPL Verification Report) (January 26, 2005). Thus, in accordance with

section 351.505(a)(1) of the Department's regulations, we are using these interest rates as company-specific benchmarks for purposes of calculating benefits arising from the rupee-denominated short-term loan programs we find countervailable. SAPL and Futura are the only two producers/exporters of subject merchandise which reported using these short-term loan programs.

SAPL also reported receiving short-term, commercial loans denominated in U.S. dollars. We verified the details of these loans. See SAPL Verification Report. When loans are denominated in a foreign currency, our practice, in accordance with section 351.505 of the Department's regulations, is to use a foreign currency benchmark denominated in the same foreign currency. See, e.g., Certain Pasta From Turkey: Final Results of Countervailing Duty Administrative Review, 66 FR 64398 (December 13, 2001) and accompanying Issues and Decision Memorandum in the section entitled "Benchmark Interest Rates for Short-term Loans." SAPL is the only respondent who reported dollar-denominated loans, and for which we can use a company-specific benchmark. For U.S. dollar-denominated short-term loans provided under the programs under investigation to the remaining respondents, we used as our benchmark a national average dollar-denominated short-term interest rate for the United States, as reported in the International Monetary Fund's publication International Financial Statistics.

For those programs requiring a rupee-denominated discount rate or the application of a rupee-denominated, long-term benchmark interest rate, only Reliance had a comparable company-specific, long-term, rupee-denominated loan from a commercial bank, that was outstanding only during the POI. We verified the details reported for this loan. See Countervailing Duty Investigation of Polyethylene Terephthalate (PET) Resin from India: Verification of Reliance Industries Ltd. (Reliance Verification Report) (January 25, 2005). Therefore, with the exception of Reliance for the year in which the long-term commercial loan was received, for programs requiring a rupee-denominated interest rate as a benchmark or discount rate, we used national average interest rates for the years in which the respondents did not report company-specific interest rates on comparable commercial loans in accordance with section 351.505(a)(3)(ii) of the Department's regulations. For these years, we relied on a rupee-denominated, short- to medium-term benchmark interest rate that provides a reasonable representation of long-term interest rates and because we could find no other information on long-term, rupee-denominated loan rates in India. In this case, we based these national average interest rates on short-to medium-term, rupee-denominated financing from private creditors, as published in the International Monetary Fund's International Financial Statistics.

B. Allocation Period

Under section 351.524(d)(2)(i) of the Department's regulations, we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably

reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant, pursuant to section 351.524(d)(2)(ii) of the Department's regulations. For assets used to manufacture products such as bottle-grade (BG) PET resin, the IRS tables prescribe an AUL of 10 years.

For the Preliminary Determination, we found that Futura and Elque provided information sufficient to rebut the presumption set out in section 351.524(d)(2)(i). As such, we used AULs of 17 years and 20 years for Futura and Elque, respectively. Since the Preliminary Determination, we have verified the reported AUL information. See Futura Verification Report, and Countervailing Duty Investigation of PET Resin from India: Verification of Elque Ltd. (Elque Verification Report), (January 26, 2005). We have received no information or argument which warrants a change from our Preliminary Determination. With respect to SAPL, we found in the Preliminary Determination, that the AUL information provided by SAPL was insufficient to rebut the regulatory presumption. Our findings at verification provide no basis for changing our Preliminary Determination. For a complete discussion of Department's analysis of SAPL's AUL information, see Comment 12, below. Thus, for SAPL and Reliance we will use the IRS presumption of 10 years to allocate any non-recurring subsidies for purposes of these final results.

C. Trading Company Subsidies

Elque reported that all of its exports of subject merchandise to the United States during the POI were made through an affiliated trading company, Plastosen Limited, and further reported that the trading company claimed Section 80 HHC deductions. At verification, the Department confirmed that Elque sold 100 percent of its exports through Platosen Limited and the total of 80HHC benefit claimed by Platosen Limited. We also confirmed that these two companies were affiliated. See Elque Verification Report at 2. For the Preliminary Determination, we attributed the trading company's export subsidy benefits from Section 80 HHC to Elque in accordance with section 351.525(c) of the Department's regulations. No new information or evidence of changed circumstances have been presented to warrant reconsideration of this finding.

III. Analysis of Programs

A. Programs Determined to be Countervailable

1. GOI Programs

a. Pre- and Post-Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment export financing, or "packing credits," to exporters in the form of pre-shipment loans or credit lines. Commercial banks extending export credit to Indian companies must, by law, charge

interest on this credit at rates capped by the RBI. SAPL reported using both the pre- and post-shipment export financing program during the POI, and Futura reported using the pre-shipment financing program during the POI.

In the Preliminary Determination, we determined that both export financing programs are countervailable because the financing is limited to exporters, and because the interest rates are set by the GOI and are lower than the rates exporters would have paid on comparable commercial loans. No new information or evidence of changed circumstances have been presented to warrant reconsideration of this finding.

Futura originally reported that it used pre-shipment financing in the form of packing credits during the POI. At verification, Futura established that the reported financing was not received under this program, but rather, was commercial financing. See Futura Verification Report at Exhibits 18(a) and (b). Therefore, Futura did not use pre-shipment financing.

At verification, SAPL established that the information on the record permits the Department to calculate the actual interest rate of each Pre-Shipment Export Financing Loan transaction. See SAPL Verification Report at 11-15. Thus, for purposes of this final determination, the Department has changed the methodology used to calculate SAPL's Pre-Shipment Export Financing Subsidy. See Comment 13 of the "Analysis of the Comments" section, below. Accordingly, the revised countervailable subsidy for pre-shipment financing for SAPL is 0.20 percent *ad valorem*. The countervailable subsidies for post-shipment financing for SAPL is 0.01 percent *ad valorem*.

b. Duty Entitlement Passbook Scheme (DEPS)

India's DEPS was enacted on April 1, 1997, as a successor to the Passbook Scheme (DEPBS). As with DEPBS, the DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post-export basis, provided that the GOI has established a standard input/output norm (SION) for the exported product. DEPS credits can be used to pay import duties on any subsequent imports, regardless of whether they are consumed in the production of an exported product. DEPS credits are valid for 12 months and are transferable after the foreign exchange is realized from the export sales on which the DEPS credits are earned. With respect to subject merchandise, the GOI has established a SION. Therefore, beginning in April 1, 2003, PET Resin exporters were eligible to earn credits equal to 17 percent of the FOB value of their export shipments until February 9, 2004, when the DEPS rate changed to 13 percent. Reliance was the only company that used this program during the POI.

In the Preliminary Determination, the Department found that DEPS is countervailable. No new information or evidence of changed circumstances has been presented since the Preliminary Determination to warrant reconsideration of this finding. We calculated the DEPS program rate using the value of the post-export credits that the respondents earned for their export shipments

of subject merchandise to the United States during the POI by multiplying the FOB value of each export shipment by the relevant percentage of DEPS credit allowed under the program for exports of subject merchandise. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6) of the Tariff Act of 1930, as amended (the Act). Finally, we took this sum (the total value of the licenses net of application fees paid) and divided it by respondent's exports of subject merchandise to the United States during the POI. On this basis, we determine Reliance's net countervailable subsidy from the DEPS program to be 16.96 percent *ad valorem*.

c. Income Tax Exemption Scheme, Section 80HHC

In the Preliminary Determination, the Department determined that deductions of profit derived from exports under section 80HHC of India's Income Tax Act are countervailable. No new information or evidence of changed circumstances has been submitted to warrant reconsideration of this finding. For the Preliminary Determination the Department found that only Reliance used this program during the POI. At verification, the Department confirmed that Elque's affiliated trading company, Plastosen Limited, claimed the allowable tax deduction under 80HHC.

Also, at verification, the Department learned that there are two ways to calculate the tax owed, and the Indian company must use the method which would result in the greatest tax being paid to the government. Domestic companies usually pay 35 percent tax on their net income and a five percent surcharge on the income tax added. However, there is also a provision under Chapter XII B, Section 115 JB of the Income Tax Act, which states that if a company's payable income tax is less than 7.5 percent of its book profit, "such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of seven and one-half percent." See Reliance Verification Report Exhibit 11 at 1.519 for relevant sections of the Income Tax Act. The Department found that, after subtracting section 80HHC duty exemptions, the amount of income tax payable for Reliance would exceed the 7.5 percent book profit.

To calculate the benefit for Reliance and Elque/Plastosen Limited, we subtracted the total amount of income tax Reliance and Plastosen Limited actually paid during the POI from the amount of tax the company would have otherwise paid absent the deduction under Section 80 HHC. We then divided this difference by the FOB value of Reliance and Elque's total exports during the POI. We thus determine the countervailable subsidy to be 0.64 percent *ad valorem* for Reliance and 0.07 percent *ad valorem* for Elque.

d. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and excise taxes on imports of capital goods. Under this program, producers may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to four or five times the value of capital goods over a period of eight years. For failure to meet the export obligation, a

company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest. Only Reliance used this program during the POI.

In the Preliminary Determination, the Department found that EPCGS is countervailable as an export-subsidy under section 771(5A)(B) of the Act. In addition, the Department used Reliance's reported information for EPCGS licenses to the export of subject merchandise in calculating the EPCGS rate for the Preliminary Determination. Following the Preliminary Determination, the Department discovered that the reported licenses were not "tied" solely to subject merchandise in the manner contemplated by section 351.525(b)(5) of the Department's regulations. Reliance then reported all the EPCGS licenses it received for all products, and we analyzed this information at verification. See Reliance's September 27, 2004, questionnaire response at Exhibits 2 and 3; see, also Reliance Verification Report at page 7. As a result of this information, the Department has determined that the licenses received by Reliance cannot be tied to either subject or non-subject merchandise. Accordingly, the Department will use all EPCGS licenses issued during the POI and for the past 10 years (Reliance's AUL) to calculate the benefit, and we will use Reliance's total exports as the revised denominator. See Comment 7 of the "Analysis of the Comments" section, below.

The Department treats EPCGS licenses that have not yet met the export obligation as contingency interest-free loans. For the Preliminary Determination, we calculated the benefits for EPCGS licenses issued during the POI for the full 2003-04 fiscal year. Reliance has argued that the Department should make an adjustment to the calculation of benefits for EPCGS licenses issued during the POI, starting from the actual day the licenses were issued. See Comment 9 of the "Analysis of the Comments" section, below. As indicated in the comment section, we agree with Reliance and we have adjusted the loan benefit for EPCGS licenses issued during the POI to recognize benefits beginning on the date of receipt of the EPCGS licenses.

Accordingly, to determine the countervailable subsidy rate for Reliance for the EPCGS, we combined, where applicable, the sum of the benefits received on waived duties allocated over Reliance's AUL from the date of the waiver, and the benefit from the non-waived licenses that we are treating as long-term loans. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6)(A) of the Act. Then, since the licenses were granted for a variety of products, and not specifically for BG PET resin, we divided Reliance's total benefit under the program by its total export sales of all products during the POI. On this basis, we determine the countervailable subsidy rate from this program to be 1.42 percent *ad valorem* for Reliance.

e. Export-Oriented Unit (EOU) Program: Duty Drawback on Furnace Oil Procured from Domestic Oil Companies

EOUs are eligible to receive a reimbursement for all purchases of domestic furnace oil. This duty drawback is provided at an all-industry rate applied to the invoice value of an EOU's total furnace oil purchases. We issued our preliminary finding on this program on February 14, 2004.

See EOU Program Memorandum. We preliminarily found that this program is limited to EOUs and therefore, is specific as an export subsidy under section 771(5A)(B) of the Act. In addition, we found that this program provides a financial contribution in accordance with section 771(5)(D)(ii) of the Act, in the amount of the reimbursement claimed. Finally, a benefit is conferred in accordance with section 351.519(a)(4)(ii) of the Department's regulations in the entire amount of the reimbursement claimed under this program, since the GOI does not have a system or procedure in place to confirm the amount of furnace oil consumed in the production of exports for purposes of claiming duty drawback. Further, since EOUs are permitted to sell products in the domestic market, and the duty drawback on furnace oil is received on all of an EOU's purchases of furnace oil regardless of the domestic volume of sales of finished product, the duty drawbacks exceed the actual duties on the inputs consumed in the production of exports. See section 351.519(a)(1)(i) of the Department's regulations. Also, see EOU Program Memorandum at pages 1-3 for a complete analysis of this program.

To calculate the countervailable export subsidy for Elque, SAPL, and Futura, we summed the amount of duty drawback claimed under this program during the POI, and divided this benefit by each company's total export sales during the POI. Thus, the countervailable subsidy is 0.34 percent *ad valorem* for Elque, 0.18 *ad valorem* for SAPL, 0.17 *ad valorem* for Futura.

f. Export-Oriented Unit (EOU) Program: Duty-Free Import of Capital Goods and Raw Materials

Under this GOI program, EOUs are entitled to import capital goods and raw materials duty-free. Futura, SAPL, and Elque reported using this program during the POI.

In the Preliminary Determination, we determined that this program was countervailable. Specifically, we found that the assistance provided under this EOU program was specific within the meaning of section 771(5A)(B) of the Act. We also found in the Preliminary Determination that this program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act through the foregoing of duty and tax payments, and this program confers a benefit in the amount of exemptions and reimbursements of customs duties and certain sales taxes on capital equipment in accordance with section 771(5)(E) of the Act. We also found that the duty-free import of raw materials was countervailable because the GOI does not have a system in place to ensure that the duty exemptions on raw materials meet the criteria for non-countervailable in accordance with section 351.519(4)(i) of the Department's regulations. No new information or evidence of changed circumstances have been presented to warrant reconsideration of this finding.

To calculate the countervailable subsidy for Elque, SAPL, and Futura, we summed the duty exemptions on raw material inputs received during the POI and the duty exemptions on capital goods allocated to the POI. We then divided each company's total benefits under the program by their total export sales during the POI. On this basis, we determine the countervailable subsidy

from this program to be 11.20 percent *ad valorem* for Elque, 18.60 percent *ad valorem* for SAPL, and 5.93 percent *ad valorem* for Futura.

g. Export-Oriented Unit (EOU) Program: Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically

Under this GOI program, EOUs are entitled to reimbursements of the CST paid on materials procured domestically. This reimbursement is available on purchases of both raw materials and capital goods. For the reimbursement of CST paid on materials procured domestically, EOUs record the CST reimbursement at the point of purchase and receipt of invoice from the domestic supplier. EOU companies then enter the claims in their book of accounts at the point of purchase and, simultaneously, deduct CST from the cost of domestic goods procured. Futura, SAPL, and Elque reported using this program during the POI.

In the Preliminary Determination, we determined that this program was countervailable. Specifically, we found that the assistance provided under this EOU program was specific as an export subsidy within the meaning of section 771(5A)(B) of the Act. We also found in the Preliminary Determination that this program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act through the foregoing of tax payments, and this program confers a benefit in the amount of reimbursements of CST in accordance with section 771(5)(E) of the Act. No new information or evidence of changed circumstances have been presented to warrant reconsideration of this finding.

To calculate the benefit for Elque, SAPL, and Futura, we summed the reimbursements of the CST paid on raw materials procured domestically that each company received during the POI. For CST reimbursements on capital goods received during the POI, we first conducted the “0.5 percent” test, a test that determines whether the allocation of non-recurring benefits provided under this program is necessary, according to section 351.524(b)(2) of the Department’s regulations. Based on the result of this test, if the non-recurring benefits divided by total export sales is greater than 0.5 percent, we allocate the total CST reimbursements received during the POI over each company’s AUL using the appropriate discount rate (see “Subsidies Valuation Information” section above), or, if less than 0.5 percent, we attribute the total CST reimbursements received during the POI to the POI, as appropriate. See Id. We then summed the benefits on capital goods allocated to the POI with the benefits on raw materials attributed to the POI, and divided these total benefits under the program by the company’s total export sales during the POI. On this basis, we determine the countervailable subsidy from this program to be 0.07 percent *ad valorem* for SAPL, 0.79 percent *ad valorem* for Elque, and 0.05 percent *ad valorem* for Futura.

2. State Programs

a. State of Gujarat (SOG) Sales Tax Incentive Scheme

Under the 1995 Industrial Policy of Gujarat, companies located in specific areas of Gujarat are exempted from payment of sales tax on the purchase of raw materials, consumable stores, packing materials, and processing materials. Other available benefits include exemption or deferral from sales tax and turnover tax on the sale of intermediate products, by-products, and scrap. After the deferral period expires, the companies are required to submit the deferred sales taxes to the SOG in equal installments over six years.

We preliminarily determined that the program is countervailable because it is limited to companies located in designated geographical areas; that the SOG provides a financial contribution in the form of revenue foregone; and that there is a benefit in the amount of the sales tax exemptions. There is no new information or evidence of changed circumstances which would warrant reconsideration of the Preliminary Determination. At verification, we were able to confirm, through the review of SOG records, that Reliance received benefits under this program. See Reliance Verification Report at 9. As a domestic subsidy, we are attributing these incentives to all products sold by a firm in accordance with section 351.525(b)(3) of the Department's regulations.

To calculate the program rate, we first summed Reliance's benefits received on sales taxes exempted during the POI. We also treated the amount of sales taxes deferred as an interest-free loan received in the year in which the deferral was granted, and we calculated the benefits conferred in the form of unpaid interest on the deferred sales taxes. We added together the benefits from the exempted and the deferred taxes. We then divided Reliance's total benefit under the program by its total sales during the POI. On this basis, we determine the countervailable subsidy from this program to be 1.13 percent *ad valorem* for Reliance.

b. State of Maharashtra (SOM) Sales Tax Incentive Scheme

The State of Maharashtra (SOM) grants a package scheme of incentives for privately-owned (*i.e.*, not 100 percent owned by the GOI) manufacturers to invest in certain areas of Maharashtra. One of these incentives consists of either an exemption or deferral of state sales taxes. Through this incentive, companies are exempted from paying state sales taxes on purchases, and collecting sales taxes on sales; or, as an alternative, are allowed to defer submitting sales taxes collected on sales in the SOM for 10 to 12 years. After the deferral period expires, the companies are required to submit the deferred sales taxes to the SOM in equal installments over five to six years. The total amount of the sales tax incentive either exempted or deferred is based on the size of the capital investment, and the area in which the capital is invested. No interest is charged on deferred sales taxes.

In the Preliminary Determination, we found that SOM Sales tax deferrals are specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits are limited to industries located in designated areas. The SOM provides a financial contribution under section 771(5)(D)(ii) of the Act by foregoing the collection of interest on deferred sales taxes. Finally, there is a benefit in the amount of the interest which would otherwise be payable under section 771(5)(E) of the Act. No new information or evidence of changed circumstances has been presented since the Preliminary Determination to warrant reconsideration of this finding. Only Reliance received benefits under this program during the POI.

To calculate the program rate, we first summed Reliance's benefits received on sales taxes exempted during the POI. For deferred sales taxes from prior years which were outstanding during the POI, we calculated the benefits conferred in the form of unpaid interest on the deferred sales taxes. We added together the benefits from the exempted and the deferred taxes. We then divided Reliance's total benefit under the program by its total sales during the POI. On this basis, we determine the countervailable subsidy from this program to be 0.13 percent *ad valorem* for Reliance.

c. State of West Bengal (SWB) Programs

The Department initiated on the New Economic Policy on Industrial Development, a SWB scheme begun in the year 2000. See "Countervailing Duty Investigation Initiation Checklist." The GOI reported that no BG PET resin company benefitted from this program during the POI. However, the GOI reported that Elque received benefits under the West Bengal Scheme of 1993 (Scheme 1993), and SAPL received benefits under the West Bengal Scheme of 1999 (Scheme 1999), and we determined that it was appropriate to analyze incentives received by BG PET Resin companies under these earlier schemes to determine whether they are countervailable subsidies. See Memorandum from Dana Mermelstein to Barbara E. Tillman entitled Countervailing Duty Investigation of Bottle-Grade Polyethylene Terephthalate (PET) Resin from India: Initiation of Investigations of State of West Bengal Scheme of 1993 and 1999 (August 30, 2004) on file in the CRU.

In the Preliminary Determination, we found that the assistance granted to Elque under Scheme 1993 and the assistance granted to SAPL under Scheme 1999 are specific within the meaning of section 771(5A)(D)(iv) of the Act, because the benefits are limited to companies located in specific regions within the SWB. The capital grant which Elque received is a financial contribution in accordance with 771(5)(D)(i) of the Act. The sales tax exemption which SAPL received is revenue foregone, and therefore a financial contribution in accordance with 771(5)(D)(ii) of the Act. Both forms of assistance provide benefits in accordance with 771(5)(E) of the Act. No new information or evidence of changed circumstances have been presented since the Preliminary Determination to warrant reconsideration of this finding.

To calculate the countervailable subsidy for Elque, because the capital grant is a non-recurring subsidy (see 19 CFR 351.504), we allocated each of the grant disbursements over Elque's AUL.

We used a discount rate from 1995, the year in which Elque was approved for the total capital grant. See “Subsidies Valuation Information” section above. We summed the benefits allocable to the POI, and divided that sum by Elque’s total sales during the POI. To calculate the countervailable subsidy for SAPL, we divided the total sales tax exemptions received by SAPL during the POI divided by SAPL’s total sales. We thus determine the countervailable subsidy to be 0.01 percent *ad valorem* for Elque and 0.02 percent *ad valorem* for SAPL.

B. GOI Program Determined To Be Not Countervailable

Export-Oriented Unit (EOU) Program: Purchase of Materials and other Inputs Free of Central Excise Duty

The Department initiated its investigation of the EOU program involving the purchases of materials and other inputs free of central excise duty, based on petitioner’s allegation that countervailable benefits were provided to exporters under these programs. See Notice of Initiation of Countervailing Duty Investigations: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India (C-533-842) and Thailand (C-549-824), 69 FR 21096 (April 20, 2004). In the Preliminary Determination, we were unable to determine whether this program provides a financial contribution in accordance with section 771(5)(D)(ii) of the Act, or a benefit in accordance with section 771(5)(E)(iv) of the Act.

Following verification, the Department issued a preliminary finding that this EOU program was not countervailable. For a discussion of this finding, see EOU Program Memorandum. No interested parties commented on our finding for this program. Therefore, for purposes of the final determination, we continue to find that the exemptions on central excise duty available under the EOU program are not countervailable.

C. Programs Determined To Be Not Used

GOI Programs

- a. Status Certificate Program**
- b. Market Development Assistance (MDA)**
- c. Income Tax Exemption Scheme (Sections 10A and 10B)**
- d. Loan Guarantees from the GOI**
- e. Special Economic Zones (SEZs) formerly called Export Processing Zones (EPZs)**

D. Program Determined To Be Terminated

Exemption of Export Credit from Interest Taxes

Under the program for the Exemption of Export Credit from Interest Taxes, the GOI allowed Indian commercial banks to be exempted from paying a tax on interest accrued from borrowers, for all interest accruing on export-related loans. The Department had previously found this tax exemption to be terminated, with no residual benefits accruing to exporters under this program, and no replacement program implemented since its termination. See Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 from India (CVP-23), 69 FR 67321 (November 17, 2004), and accompanying Issues and Decision Memorandum (CVP-23 Issues and Decision Memo) at section entitled “Program Determined To Be Terminated” at page 10. No new information or evidence of changed circumstances has been presented to warrant reconsideration of this finding.

IV. Analysis of Comments

Comment 1: Futura’s Debonding and Adjustment to EOU Duty Free Exemptions on Capital Goods

For the Preliminary Determination, we summed Futura’s reported duty exemptions on capital goods allocated to the POI. We then divided Futura’s total benefits under the program by their total export sales during the POI. Petitioner contends the Department should not make an adjustment to the total import duties saved with respect to debonded machinery when analyzing Futura’s duty-free importation of capital goods. According to Petitioner, the explanation provided by Futura in its responses and at verification is that, at the time of importation, the machinery was imported into the EOU unit that produced PET Resin and further manufactured PET resin into preforms. As noted in the verification report, the Preforms Division was part of Futura’s EOU until February 2001, when it was debonded. See Futura Verification Report. Petitioner notes that the verification report states that at the time of debonding, the machinery and spares were debonded and transferred to an EPCGS license with an eight-year export obligation based on the depreciated value of the machinery and spares transferred from the EOU unit. The verification team further noted that in order for Futura to obtain the EPCGS license, the company was required to pay five percent customs duty on the assessable value of the depreciated machinery and spares. See Futura Verification Report at Exhibit 8. Petitioner argues that at the time of debonding, Futura was not required to pay duties on the machinery originally imported into the EOU duty-free. Therefore, the Department should not adjust the benefits to exclude the duty savings on this machinery import.

Petitioner further argues that Futura’s verification report does not demonstrate that the duties saved on importation of preform machinery provide no benefits to PET Resin. Moreover, petitioner argues that the duties saved benefitted both the Polymer Division and the PET Resin

Division. Petitioner also states that it is not possible to ascertain from the verification exhibit whether the machinery listed is solely associated with Futura's preform division.

Petitioner also argues that should the Department elect to render an adjustment, the adjustment should be implemented in the allocation formula after 2001, the fiscal year in which the debonding occurred.

Department's Position: At verification, we confirmed the actual amount of import duty exemptions that were transferred from Futura's EOU to an EPCGS license held by Futura's preform business, a separate division that makes the downstream product, preforms, used in the manufacture of plastic bottles. We verified that this EPCGS license enabled Futura to avoid paying the exempted import duties tied to the depreciated value of the debonded machinery and spare parts associated with its preforms unit. Contrary to Petitioner's arguments, we also verified that the machinery that was debonded and transferred from the EOU unit could not be used in the production of subject merchandise. See Futura Verification Report at page 2 and page 7. Thus, it is appropriate to remove the benefit attributable to the duty exemptions on this debonded and transferred machinery from our overall subsidy calculation for this program.

In the Preliminary Determination, we had deducted the duty exemptions based on the full value of the imported machinery that was debonded from the total amount of import duty exemptions received by Futura's EOU. For the final results, we again allocated the total amount of import duty exemptions received on all imported capital goods. However, we calculated a separate benefit stream only for the duty exemptions received on the debonded capital goods and spare parts. We deducted the benefits attributed to the debonded machinery and spares which are allocated to the POI, from the overall benefits allocated to the POI for duty exemptions on all imported capital goods, inclusive of the debonded capital goods. Since the original benefits associated with this program are tied to the EOU as a whole, and not to particular merchandise produced by the EOU, we find this to be the most appropriate way of accounting for the debonding without altering the allocation of benefits over time.

Comment 2: Futura's Central Sales Tax Reimbursement

Regarding the Central Sales Tax (CST), petitioner contends that the Department improperly accepted at verification a chart that demonstrates the division of CST paid from 1999 through 2004 into benefits attributable to raw materials, and benefits attributable to capital goods and spares. Petitioner contends that this is new information introduced at verification, which the Department should not have accepted. Petitioner also states that there is no indication that the verification team was able to verify this new information. Petitioner urges the Department to disregard this information.

Department's Position: We disagree with petitioner. At verification, the Department requested clarification on information reported by Futura in the aggregate concerning its CST reimbursements for raw materials and capital goods from 1999 through 2004. Therefore, we do

not consider this to be new information but rather, corrections and further clarification of information previously submitted.

At verification, Futura provided a chart, at our request, showing the division of CST paid from 1999 through 2004 for raw materials and consumables, and for capital goods and spares. See Futura Verification Report at Exhibit 16b. We checked the accuracy of this chart by confirming the amounts recorded for the second quarter of fiscal year 2001-02, and tying these amounts to Futura's "Details of Goods Brought into Unit and Central Sales Tax Paid during the Quarter July-September 2001," a copy of which is included in Exhibit 16a of the Futura Verification Report, showing that it was certified by an Indian Chartered Accountant and submitted in Futura's claim to the GOI. As a result, the Department finds the information in this chart to be reliable for purposes of calculating a subsidy rate with regard to this program, and we have used it in our calculations.

Comment 3: West Bengal Industrial Development Corporation (WBIDC) Investment in SAPL

Petitioner argues that the investment by the WBIDC into SAPL provides a countervailable benefit to SAPL. Petitioner notes that this investment had not been disclosed or explained in the company's responses to the Department's questionnaires. Petitioner requests that as a subsidy discovered at verification, the Department should treat the full amount of the investment as a countervailable subsidy during the POI.

Department's Position: As an initial matter, we disagree with petitioner's contention that SAPL provided no information regarding the WBIDC investment. SAPL did report the WBIDC's investment holdings in SAPL. This information was included in section 14(h) of SAPL's 2003-04 Annual Report under "General Shareholder Information," attached as Exhibit 47 to its response to the Department's second supplemental questionnaire, dated August 13, 2004. Furthermore, since these are equity investments, section 351.507(a)(7) of the Department's regulations requires an allegation that an equity investment provides a countervailable subsidy to be supported by information establishing a reasonable basis to believe or suspect that the firm is unequityworthy. Petitioner has not provided any information which would form the basis for the Department to believe or suspect that SAPL was not equityworthy at the time of the investment by the WBIDC.

In addition, with respect to equity infusions, the Department "will not investigate an equity infusion in a firm absent a specific allegation by the petitioner which is supported by information establishing a reasonable basis to believe or suspect that the firm received an equity infusion that provides a countervailable benefit." See section 351.507(a)(7) of the Department's regulations. Petitioner has not provided information establishing a reasonable basis to believe or suspect that the WBIDC investment constitutes such an equity infusion. Therefore, the Department has no reason for investigating whether the WBIDC investment is a countervailable subsidy.

Comment 4: DEPS Credit Offset

The GOI contends that exporters can no longer use DEPS credit to offset the Special Additional Duty (SAD), and therefore the Department should adjust the countervailing rate for this program. The GOI adds that the DEPS rate also corresponds to the value addition ordinarily inherent in the conversion of the imported inputs into the final product.

Petitioner argues that this change might constitute a program-wide change, but the required showing under the Department's regulations has not been met. Therefore, the Department should continue to include SAD in its calculation of DEPS benefits.

Department's Position: The fact that the GOI has changed the way exporters can use DEPS credits, by no longer allowing exporters to offset the SAD with DEPS credit, does not alter the fact that DEPS credits can still be used to offset an exporter's payments of other customs duties. In addition, it does not change the amount of DEPS credits that can be used in any subsequent imports. As such, this change does not alter our treatment of the entire DEPS credit (less the application fee) as a recurring benefit that is conferred on the date of exportation of the shipment for which the pertinent DEPS credits are earned.

Comment 5: EOU Exemptions on Raw Materials

The GOI contends that its system of monitoring an EOU's inputs and outputs is not limited solely to whether an EOU is a Net Foreign Exchange (NFE) earner. The GOI and SAPL both note that Indian customs officials record and track the use of inputs through input and output registers which track all goods entering and leaving the bonded warehouse, and EOUs file quarterly reports to the GOI. They claim that this system ensures that an EOU receiving an import duty exemption on raw material imports either exports the finished product or ultimately pays the GOI the equivalent of the duty. Therefore, the Department should not hold the duty exempted on imported raw materials to be countervailable because the GOI has a system in place to confirm what imports are consumed in production pursuant to section 351.519(a)(4) of the Department's regulations. In addition, the GOI states that the GOI verification report does not accurately reflect its process of tracking indigenous inputs and sales made by an EOU in the domestic trading area (DTA).

SAPL contends that an EOU is required to pay higher excise duties on its DTA sales of subject merchandise in order for the GOI to recapture the import duties exempted on the imported material. SAPL claims that information provided at verification supports its claim that the import duties exempted on raw materials are recaptured when the finished product is sold in the domestic market.

Finally, SAPL submits that the provisions of section 351.519(a)(4) of the Department's regulations are intended to apply to situations in which a company may sell a significant amount of its products domestically and, thereby, may receive benefits on domestic sales that are

permitted for exports only. SAPL argues that it is required to export all of its production with the exception of a few minimal sales that are permitted in the DTA. Therefore, according to SAPL, the exemptions can only be countervailable to the extent that SAPL does not export the finished product, which at most, would be the minimal amount of DTA sales made by SAPL.

Petitioner argues that the systems and procedures for EOU monitoring are not reasonable within the meaning of section 351.519(a)(4) of the Department's regulations. Petitioner notes that according to the GOI verification report, the monitoring conducted by the GOI officials focuses on foreign exchange inflow and outflow, and is restricted to monitoring whether an EOU is a net foreign exchange earner. In addition, petitioner asserts that there is not full recovery of exempted import duties for an EOU's sales in the DTA. Finally, petitioner notes that the GOI tracks waste and scrap in the DTA through the standard input output norms (SIONs). Petitioner contends that the SIONs are not formulated to be all inclusive of industry experience in India and therefore, do not meet the requirements under section 351.519(a)(4) of the Department's regulations.

Petitioner also asserts that the case brief submitted by the GOI introduces new facts regarding two areas of perceived monitoring weakness. These areas are the GOI's process for (i) tracking indigenous material and (ii) for tracking sales into the Domestic Tariff Area.

Department's Position: Although the GOI's monitoring system for EOUs can track the amount of inputs entering the bonded warehouse, and can determine if they enter the production process through various registers maintained by the EOU and Indian customs officials, the GOI does not have a reasonable and effective system in place to confirm the actual amount of import duty exemptions that are attributed to inputs consumed in the production of merchandise sold in the DTA. Without such a system, the GOI cannot ensure that the import duty exemptions do not exceed the import duties applicable to the actual inputs consumed in the production of exported products. See section 351.519(a)(4) of the Department's regulations. The GOI explained at verification that it applies a higher excise duty to an EOU's DTA sales in order to capture the customs duties exempted on imported inputs. Normally, the GOI assesses a domestic manufacturer (non-EOU) a 16 percent excise duty on domestic sales of finished goods. However, in the case of EOUs, it assesses a higher excise duty that is based on 50 percent of the Basic Customs Duty on the finished product, plus 50 percent of the CVD duty (an import excise duty) on the finished product. See Countervailing Duty Investigation of Polyethylene Terephthalate (PET) Resin from India: Verification of the Government of India's (GOI) Questionnaire Responses (GOI Verification Report), dated January 25, 2005, at page 4.

The GOI noted in both their questionnaire responses and at verification, that an EOU selling into the DTA would collect more excise duties from an Indian customer as a result of this higher excise duty as compared to the regular excise duty assessed by the non-EOU manufacturer. Id. at page 4; see also GOI supplemental questionnaire, dated September 22, 2004, at page 5. While this may be true when comparing the amount of excise duties the Indian customer in the home market would pay an EOU vs. a non-EOU, it does not demonstrate that these additional excise

duties recapture the actual amount of import duty exemptions otherwise payable by the EOU for the inputs used in the production of the finished product sold in the DTA.

An EOU is allowed to sell its products domestically and import all of its raw materials duty free. However, the GOI does not have a system in place that is reasonable and effective for the purposes of confirming which inputs, and in what amounts, are consumed in the production of the finished products sold in the DTA with the objective of collecting the applicable duty. Accordingly, we find that the entire amount of import duty exemptions received by an EOU during the POI, constitutes a benefit in accordance with section 351.519(a)(4) of the Department's regulations and section 771(5)(E) of the Act.

Comment 6: Program-Wide Change of DEPS Rate

Reliance contends that the DEPS cash deposit rate should be reduced from 17 percent to 13 percent to take account of the GOI's reduction in the rate on February 9, 2004. Reliance notes that this reduction was effectuated by an "official act" that is applicable to all exporters and therefore it constitutes a "program-wide change." Furthermore, Reliance argues that the reduction is measurable and occurred more than six months prior to publication of the Preliminary Determination. Finally, Reliance argues that the Department previously found that a change in the DEPS rate constitutes a program-wide change in Notice of Final Affirmative Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India (PET Film), 69 FR 51063 (August 17, 2004).

Petitioner argues that the DEPS rate change is not a program-wide change and points to the Department's most recent precedent in CVP-23. In addition, Petitioner notes that the GOI has the authority to increase or decrease the DEPS rate retroactively.

Department's Position: In CVP-23, the Department found that the "official" published DEPS rate for a particular time period can be retroactively changed after its publication. As a result, the Department found that published DEPS rates in official notifications are not reliable since the GOI can, at any time, adjust the rates to account for changes in the custom duties on imported inputs, and that these adjustments can be made retroactively. See CVP-23 Issues and Decision Memo at "Comment 8." Thus, in CVP-23, the Department found that the requirements of section 351.526(a)(2) of the Department's regulations concerning program-wide changes had not been met. There is no new information regarding how and when the GOI can change the DEPS rate. As explained in Comment 8 below, the finding in CVP-23 supercedes the finding in PET Film cited by respondent. Therefore, we will not adjust the countervailing duty cash deposit rate for the DEPS program.

Comment 7: Denominator for the EPCGS Subsidy Calculation

Reliance argues that the Department should amend its calculations for the EPCGS rate by correcting the denominator to include all of Reliance's exports. Reliance notes that EPCGS

export obligations can be fulfilled with exports of one or more products, in any combination, and therefore, are not tied to particular products. According to Reliance, the Department's practice supports this methodology; there are numerous cases where the Department had divided the total benefit by the producer's total exports of all products. Finally, Reliance states that the numerator used in the Department's calculations in the Preliminary Determination included benefits from EPCGS licenses for both subject and non-subject merchandise. Therefore, Reliance argues that the Department should correct its calculations for the final determination by using a denominator of all products exported by Reliance during the POI.

Petitioner argues that the denominator used in the Preliminary Determination is correct and should not include all exports. Petitioner contends that Reliance, in a questionnaire response, stated that they were granted import duty reductions on "capital goods used in the production of PET resin or its upstream inputs." Petitioner states that Reliance reported EPCGS benefits which are tied to designated capital goods to be imported and to specific products to be exported which used that capital equipment.

Petitioner argues that even though Reliance contends that an EPCGS license can be amended at any time to include other products, the Department's verification report notes that Reliance has never requested an amendment. Petitioner contends that the evidence does not support Reliance's claim that its EPCGS license obligations can be met through the export of any of its manufactured products. Petitioner contends that Reliance should have made an attempt to break down the export figures to support its claim that multiple products may be used to satisfy the EPCGS license export requirement. Petitioner argues that Reliance should have attempted to analyze the specific licenses at issue in cases where the Department found that EPCGS licenses are not tied to specific products.

Department's Position: We agree with Reliance that an EPCGS export obligation can be fulfilled through the export of any product manufactured by the EPCGS license holder. In the Preliminary Determination, the Department analyzed the EPCGS license information reported at that time by Reliance, which only included EPCGS licenses that were specifically granted for the export of subject merchandise among other products identified in the license. Since the Preliminary Determination, the GOI has reported information that demonstrates that the export requirement for EPCGS licenses can be fulfilled with exports of both subject and non-subject merchandise and that the licenses are not product specific. Specifically, the GOI stated that "as regards the export obligation, it is an aggregate export obligation and a separate export obligation or export quota is not set for each particular product exported." See GOI's September 22, 2004 submission at page 2. During verification, the GOI noted that an EPCGS license "can also be amended retroactively to allow for the fulfillment of the export obligation by products other than those originally identified." See GOI Verification Report at page 3.

Since the Preliminary Determination, Reliance reported EPCGS licenses issued to Reliance during the POI and the preceding 10 years. This information was verified. Our analysis of the additional record information developed since the Preliminary Determination and the results of

verification leads us to a conclusion that Reliance's EPCGS licenses are not tied to the production of particular products within the meaning of section 351.525(b)(5) of the Department's regulations. As such, the licenses benefit all of Reliance's exports. Accordingly, the Department is revising its calculation for the final determination to include in the numerator the import duty exemptions granted by all of Reliance's EPCGS licenses over the relevant period, and to include in the denominator the value of Reliance's total exports of all products.

Comment 8: Benchmark Interest Rates for EPCGS

Reliance states that the Department should not use the International Monetary Fund (IMF) statistics as a long-term loan benchmark for its final determination. Reliance contends that the Department should use the company-specific loan information obtained at verification as a long-term benchmark for the EPCGS program. Reliance states that this information reflects Reliance's actual experience in obtaining commercial loans that are comparable to the benefits received under this program, and is in accordance with section 351.505(a)(3)(i) of the Department's regulations for selecting a loan benchmark.

Petitioner argues that the Department's use of IMF interest rates was correct, and that at the time of the Preliminary Determination, Reliance had not provided any company-specific interest rate information. Furthermore, Petitioner notes that for programs that require a rupee-denominated interest rate such as the EPCGS program, the Department's practice is to apply a weighted-average company-specific rupee denominated long-term interest rate where such information is available. When such information is not available, Petitioner states that the Department relies on published national average interest rates for commercial loans denominated in the national currency.

Department's Position: In accordance with section 351.505(a)(2) of the Department's regulations, we define "comparable commercial loan" to mean one that has "similarities in the structure of the loans (e.g., fixed interest rate v. variable interest rate), the maturity of the loans (e.g., short-term v. long-term), and the currency in which the loans are denominated." The Department treats the benefits for outstanding EPCGS licenses under this program as long-term, interest-free, rupee-denominated, contingent liability loans. With the exception of the POI, Reliance had no such comparable commercial long-term loans denominated in rupees that were either reported or verified. Therefore, we will continue to use the IMF statistics as the benchmark for EPCGS benefits outside of the POI.

During verification, the Department learned that Reliance does not have outstanding loans during the relevant period prior to the POI. Rather, Reliance relies on internal cash and general borrowing in various currencies to obtain the most favorable interest rates in Indian and overseas markets, and selects loan and financing instruments based on currency strength and prevailing interest rates. See (Reliance Verification Report) at page 4. However, the general borrowing utilized by Reliance and reported in its financial statements includes financing available on either a short-term or long-term basis, and is mostly denominated in foreign currency. Id. at pages 4-5.

As such, none of Reliance's actual borrowing meets the requirements of section 351.505(a)(2) of the Department's regulations for comparable commercial loans. Therefore, we will continue to use the national average rupee-denominated interest rates published by the IMF as the loan benchmark for years prior to the POI. For the POI, we will use as our benchmark Reliance's only long-term, rupee-denominated financing that was taken out during the POI.

Comment 9: EPCGS Benefits Received in the POI

Reliance contends that the Department has overstated the benefit of the EPCGS program in its Preliminary Determination calculations by failing to calculate the benefits from EPCGS licenses received during the POI based on the date of receipt. According to Reliance, benefits received during the POI should be calculated based on the actual number of days remaining in the POI at the time the imports were made. Reliance states that this is the Department's normal practice, and is consistent with our findings in Certain Hot-Rolled Carbon Steel Flat Products from India (Hot-Rolled from India) 66 FR 20240 (April 20, 2001). According to Reliance, the Department's methodology in the Preliminary Determination resulted in the benefit being calculated as if the amount of the duty exemption occurred on the first day of the POI, rather than at the time of import.

Petitioner contends that the Department may calculate benefits from the EPCGS program in an investigation differently than in an administrative review, and therefore the Department does not need to prorate the benefit received.

Department's Position: Since the Department treats the benefit from outstanding EPCGS licenses (those for which the export obligation has yet to be fulfilled) as an interest-free loan, it is appropriate to recognize the actual number of days each "loan" is outstanding during the POI. For EPCGS licenses received during the POI, such an approach necessitates changing the calculation used for the Preliminary Determination to remove the presumption that EPCGS licenses received during the POI amount to "loans" outstanding for the entire year. For the final determination, we have determined the number of days the "loan" is outstanding based on the date the license was received, and calculated the interest savings based on the number of days remaining in the POI. This is consistent with the calculation methodology used in Hot-Rolled from India, and does not constitute pro-rating as petitioner claims.

Comment 10: Allocation of EPCGS Benefits and 0.5 Percent Test

Reliance contends that the Department should apply the 0.5 percent test to all completed EPCGS licenses in accordance with section 351.524(b)(2) of the Department's regulations. Reliance notes that the Department's regulations provide that non-recurring benefits will normally be expensed in the year in which the benefits were received, if the total amount approved under the subsidy program is less than 0.5 percent of relevant sales of the firm in question for the year in which the subsidy was approved. Reliance contends that the Department should apply the

expense test for its licenses completed in 1996, 2000, and 2001, using Reliance’s total exports for each of these years.

Petitioner objects to using the 0.5 percent rule, noting that, in the Preliminary Determination, the benefit data for EPCGS licenses related exclusively to capital goods that were used to produce subject merchandise. Petitioner also argues that the use of total exports as the denominator for the 0.5 percent test is inappropriate because there has been no demonstration by Reliance that all of its exports can be used to satisfy the export obligations imposed under the EPCGS licenses.

Department’s Position: Consistent with our past practice where historical sales information is available, the Department performed this test in order to determine whether to allocate non-recurring benefits over the AUL period. At the time of the Preliminary Determination, the record did not contain all of the historical export sales information that was needed to conduct the expense test for each year in which EPCGS licenses were fulfilled and import duties finally waived. The export information necessary to conduct the 0.5 percent test for all of the relevant fiscal years is now on the record. As noted above in “Comment 7,” we will use total exports as the relevant denominator for determining whether to expense the EPCGS benefits in accordance with section 351.524(b)(2) of the Department’s regulations.

Comment 11: Reliance’s Loan Benchmarks for State of Maharashtra (SOM) and State of Gujarat (SOG) Sales Tax Incentive Programs

Reliance contends that company-specific loan information obtained during verification should be used as a benchmark for calculating the benefit accruing from the deferral component of the State of Maharashtra (SOM) and State of Gujarat (SOG) sales tax incentive program.

Petitioner argues the benchmark interest rates used in the Preliminary Determination should continue to be used because Reliance did not put the interest rate information on the record before the Preliminary Determination.

Department’s Position: For the reason noted above in the “Loan Benchmarks” section, and discussed more fully in “Comment 8,” we will continue to use the IMF Statistics as the loan benchmark for Reliance in the years prior to the POI. For the POI, we will use as our long-term benchmark, the interest rate for Reliance’s only rupee-denominated long-term loan, which was taken out during the POI and was reviewed at verification.

Comment 12: Average Useful Life (AUL) for SAPL’s Assets

SAPL argues that the Department incorrectly used a 10-year AUL rather than the 18-year AUL calculated by SAPL. Further, SAPL notes that the GOI provided Indian depreciation schedules that demonstrate depreciation rates that exceed the IRS Tables presumption of 10 years. Finally, SAPL argues that the Department used AULs of more than 10 years for other Indian producers of subject merchandise participating in this investigation.

Petitioner argues that the information that the Department has already rejected as insufficient is the information which SAPL argues demonstrates its calculation of an 18-year AUL. Petitioner also states that the GOI verification report does not discuss the depreciation schedule submitted by the GOI, and that SAPL does not appear to be advocating the use of a particular period appearing in this schedule. Finally, Petitioner states that SAPL failed to mention that, in the Preliminary Determination, the Department used the IRS Table presumption of 10 years for Reliance.

Department's Position: We continue to find that SAPL's company-specific AUL does not meet the requirements set forth in section 351.524(d)(2)(iii) of the Department's regulations. In order to obtain a company-specific AUL, the company must, *inter alia*, base its depreciation on an estimate of the actual useful lives of its assets, and the AUL is calculated by dividing the actual annual average gross book values of the firm's depreciable productive fixed assets by the company's aggregated annual charge to accumulated depreciation, for a period considered appropriate by the Secretary. As indicated in the Preamble to the 1998 CVD Regulations, 63 FR at 65397, the Department has generally considered the "appropriate period" to be 10 years of actual historical data (i.e., data for the POI and the preceding nine years).

While it is true that the Department's practice is to use 10 years of historical data, we do not require, in all cases, that a company-specific AUL be based on 10 years of actual historical data. However, in Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from South Africa, 66 FR 50412 (October 3, 2001), and the accompanying Issues and Decision Memorandum, in the section entitled "Allocation Period," the Department determined that one year cannot reasonably serve as a basis for calculating a company-specific AUL, because it does not accurately reflect the AUL of renewable physical assets. Since SAPL had depreciation data for only a seven-month period, we likewise determine that there is no reasonable basis to calculate a company-specific AUL for SAPL.

Finally, we find that the GOI's depreciation schedule does not meet the requirements of section 351.524(d)(2)(i) of the Department's regulations requiring a country-wide AUL for the industry under investigation. The GOI's reported country-wide rate of 5.28 percent annually is for plant and machinery used in a "continuous process plant." There is no information to indicate that this rate is specific to either the PET Resin industry or even to the chemical products industry as a whole, or that it was specifically determined based on an analysis of the industry's actual useful life of assets. Therefore, for the final results, we are continuing to allocate SAPL's subsidies over the 10-year period indicated by the IRS Tables.

Comment 13: Effective Interest Rate of SAPL's Pre-Shipment Export Loans

SAPL argues that the Department incorrectly calculated a rate for the Pre-Shipment Export Loan Program using the interest payments and the monthly closing balances instead of using the actual interest rate reported by SAPL. SAPL contends that the monthly closing balances do not accurately reflect the amount of borrowing because, in many months, even though the interest

may have been paid during the month, there may be no loan balance or a minimal balance at the end of the month, resulting in excessively high interest rates. SAPL further contends that in other months, borrowing may be low at the beginning of the month and then increase toward the end of the month, resulting in a unrealistically low interest rate. For these reasons, SAPL requests that the Department revise its methodology to correctly reflect the actual effective interest rate loans.

Petitioner contends that SAPL's request to revise the calculation is based solely on obtaining a favorable result for SAPL. Petitioner notes that SAPL has not demonstrated why an alternative approach would result in a more accurate calculation than the methodology used by the Department in the Preliminary Determination.

Department's Position: The Department agrees in part with SAPL and will use the actual interest charged by the bank during the POI in order to calculate the benefit for SAPL's pre-shipment export loans where a definite repayment schedule is applicable. We reviewed this information at verification, and the Department was able to determine that the interest rate charged from each bank during the POI was the actual rate that SAPL paid these short-term loans. See SAPL Verification Exhibit 24. For SAPL's rupee-denominated, pre-shipment credit lines, there is no specific repayment schedule since these are rolling balances with interest payments made on a monthly basis. Therefore, we will continue to determine the effective interest rate for these rupee-denominated, pre-shipment credit lines by calculating an effective interest rate based on the average monthly interest payments paid on the average monthly balance for each of SAPL's rolling credit lines from each bank.

Comment 14: Treatment of EOU Exemptions on Imported Capital Goods

SAPL argues that during the POI, SAPL had only been in existence for one year. As a result, it has outstanding export obligations as an EOU, and is liable for the duty exemptions it has received in the event that it does not meet these export obligations. SAPL explains that they must be Net Foreign Exchange (NFE) earners for a period of five years in order to meet its export obligations. Furthermore, if they do not meet this obligation, SAPL states that it will be liable to pay duties and penalties on the capital goods purchased under this EOU program. Therefore, whether SAPL meets these requirements will depend on the company's future sales. Accordingly, SAPL argues that the Department should have treated the exempted duties as interest-free loans rather than as grants, pursuant to the Department's practice of treating outstanding EPCGS liabilities as interest-free loans rather than as grants.

Petitioner disagrees with SAPL and argues that the Department should continue to apply its grants methodology used in the Preliminary Determination. Petitioner contests SAPL's statement that its export obligations have not been completed, and points to the information reported by SAPL in page III-17 of SAPL's original response, dated June 17, 2004.

Department’s Position: The Department will continue to treat EOUs’ duty exemptions on capital goods as grants. Although an EOU has a projected, five-year export obligation outlined in its Letter of Permission (LOP) issued by the GOI, we found at verification that the GOI’s purpose in monitoring this program is to ensure that EOUs are NFE earners. See GOI Verification Report at page 4. Respondent companies at verification likewise noted that being a NFE earner is the only requirement for being an EOU. See, e.g., Futura Verification Report at page 8, where Futura officials stated that it “can import any items duty-free, and that the only requirement to be an EOU is that the company must be a net foreign exchange earner.” Therefore, we recommend continuing to treat EOU import duty exemptions on capital goods as grants since a company maintains its status as an EOU by being a NFE earner, rather than by meeting any specific export obligation.

Thus, the duty exemption liability cannot be tied to specific imports of capital goods or exports of finished products. Accordingly, we do not find it appropriate to treat an EOU’s duty exemptions as contingent liabilities since their export obligations are not tied to specific imports of capital equipment.

Comment 15: SAPL’s Cash Deposit Rate

SAPL contends that because its production started only during the POI, it lacked full annual production and sales for the POI. As such, SAPL argues that the denominator the Department used to calculate the *ad valorem* benefit is unfairly skewed against SAPL because it does not include a full-year’s worth of sales. SAPL requests that the Department adjust either the numerator or the denominator of its calculations to permit a more fair analysis of the company’s actual *ad valorem* benefits from countervailable programs. SAPL suggests the Department only consider the benefits received during its commercial run, e.g., from September 1, 2003, through the end of the POI on March 31, 2004. Alternatively, SAPL requests that the Department use an entire year of sales data based on the period after SAPL began commercial production, e.g., sales from August 2003 through July 2004. Another alternative SAPL suggests is that the Department derive a reasonable sales value to represent a full 12-month period by taking the monthly average of the sales that took place during the commercial run and multiplying the average by 12.

Petitioner disagrees with SAPL’s alternative methodologies for calculating its cash deposit rate. Petitioner contends the Department’s method does not overstate SAPL’s benefits because it only takes into account the benefits received during the POI, and attributes these benefits to the corresponding POI sales. Therefore, Petitioner argues against implementing any of the alternate policies suggested by SAPL.

Department’s Position: We disagree with SAPL’s alternative methodologies for calculating its *ad valorem* subsidy rate. Section 351.525(a) of the Department’s regulations states that the Department “will calculate an *ad valorem* subsidy rate by dividing the amount of the benefit allocated to the period of investigation or review by the sales value during the same period.” The Department’s regulations and practice do not make exceptions for newly established companies,

or for instances where a company is not operating under full production for the relevant period of investigation. Therefore, we will continue to calculate SAPL's *ad valorem* subsidy rate by using the relevant sales information for the POI.

Comment 16: Central Sales Tax Reimbursements on Raw Materials

The GOI argues that, with respect to CST, the reimbursement is only granted after the Development Commissioner has verified that the purchases are essential for the production of the goods meant for export. Furthermore, when an EOU submits an application for CST reimbursement, it is also required to submit a Chartered Accountant's certificate, certifying that the inputs are essential for production of the exported product or have been used in the production of the exported product. The GOI points out that every EOU has to apply in the prescribed form (Appendix 14 I1), submit the "C" form and supply a certified account's certificate, before it can claim a reimbursement paid on interstate purchases of raw materials, which is contrary to the information in the GOI verification report that states EOUs are automatically eligible for benefits and do not have to apply separately, except for the duty drawback on furnace oil program. Next, the GOI notes that the GOI Verification Report incorrectly notes that "non-EOUs considered 'deemed exporters' are eligible for CST reimbursements when selling raw materials to an EOU." The GOI adds that it is only the purchaser or the EOU that can claim the CST reimbursement, and a supplier or deemed exporter is not eligible for CST reimbursement.

The GOI also argues that there is strict monitoring of inputs for which the EOU claims a CST reimbursement. As soon as the goods are received by an EOU, the goods are entered in the material receipt register, and the register shows the details of goods, quantity, source of purchases, and the "C" forms against which the purchase is made. These registers are subject to periodic checks by the authorized staff of the Zone or Customs. EOUs are required to maintain original "C" forms for three years. They are also required to preserve all original documents including original invoices, money receipts/bank statements for random review by the Development Commissioner. In cases where irregularity is detected in claiming CST reimbursement, the amount so reimbursed is collected along with penalty interest from the EOU.

Petitioner reiterates their argument with respect to EOU monitoring in rebuttal to the GOI's arguments on the CST reimbursement.

Department's Position: For the Preliminary Determination, the Department found this program to be countervailable. At verification, the Department found no evidence that demonstrates how inputs procured under the CST program are accounted for in the production of exports. Although the GOI's monitoring system for EOUs tracks the amount of inputs entering the warehouse and can determine if such inputs enter the production process, it does not actually monitor the amount of inputs consumed in the production process for the exported merchandise. See "Comment 5" for the complete analysis of the GOI's monitoring system. Furthermore, while SIONs are applicable to the domestic sale of scrap, there is no allowance for scrap and waste that is applied

to export sales. Accordingly, we determine it appropriate to countervail the entire amount of the CST reimbursement on raw materials claimed during the POI in accordance with section 351.518(a)(4)(ii), since the GOI's monitoring system does not confirm the amount of inputs consumed in the production of the exported product.

Comment 17: EOU Duty Drawback on Furnace Oil

The GOI and SAPL contend that the duty drawback on furnace oil is not countervailable due to the GOI's extensive monitoring system which utilizes a bonded warehouse. Both SAPL and the GOI argue that this system ensures that every input is monitored as it enters and exits the warehouse. Furthermore, the GOI reviews its specific reimbursement procedure which examines the invoicing, removal, receipt and payment of furnace oil from the supplier to the EOU. The GOI also contends that furnace oil is consumable and by its nature can only be used for generating energy needed for the production process of PET resin. Finally, the GOI notes that if the Department does determine that a benefit exists under this program, it should only account for reimbursements actually received during the POI.

SAPL claims that any excess consumption of the oil is subject to a refund of the drawback along with penalty and interest. Additionally, SAPL claims that its EOU status implies virtually all of its production is exported, and therefore the oil was used in the production process of exports.

Petitioner agrees with the Department's preliminary finding that the program is countervailable. Petitioner also argues that the GOI does not have a system in place to track the amount of furnace oil consumed in the production of PET resin or any other specific product. In response to SAPL's claims, petitioner notes that SAPL does not cite to any contrary evidence to tie the production process to a particular industry or product, and that SAPL's reported domestic sales are not minimal.

Department's Position: The Department will follow its preliminary finding and continue to find this program countervailable as an export subsidy. The Department views the full amount of the duty drawback as a countervailable subsidy because the duty drawback rate is given at an all-industry rate based on the duty price paid by the Indian importers/domestic suppliers of furnace oil. The drawback rate bears no relation to the actual import duties applicable to the furnace oil consumed in the production of exports. The program does not reflect any specific consumption information for any industry or product. Further, EOUs which sell their finished products domestically do not experience any reduction in the drawback amount. Therefore, the entire amount of the duty drawback is countervailable in accordance with section 351.519(a)(4)(ii) of the Department's regulations since the GOI does not have a system or procedure in place to confirm the amount of furnace oil consumed in the production of subject merchandise.

The Department has determined it will calculate the benefit based on the total duty drawback amount claimed during the POI, due to the fact that the application for drawback is based on purchases of furnace oil, rather than the export of any product. The company knows at the time

of the furnace oil purchase that it will receive a drawback. The company also knows the amount of the drawback. Thus, it is appropriate to recognize the benefit at the time of the claims, rather than at the time of receipt. See EOU Program Memorandum.

V. Recommendation

Based on the results of verification and our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final determination in the Federal Register.

Agree_____

Disagree_____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date