

71 FR 45034, August 8, 2006

C-533-844
Investigation
POI: 04/01/2004 - 03-31/2005
Public Document
Operations, Office 3: RC, MJ, JC

July 31, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
Import Administration

RE: Countervailing Duty Investigation of Certain Lined Paper Products
from India

SUBJECT: Issues and Decision Memorandum for Final Determination

I. Summary

We have analyzed the case briefs and rebuttal comments of interested parties in the above-referenced countervailing duty (CVD) investigation covering April 1, 2004 through March 31, 2005. After analyzing the comments, we have made certain modifications to the Notice of Preliminary Determination and Preliminary Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 7916 (February 15, 2006) (Preliminary Determination). The “Subsidies Valuation Information” and “Analysis of Programs” sections below describe the methodology followed in this review with respect to Aero Exports (Aero), Kejriwal Paper Limited (Kejriwal), and Navneet Publications (Navneet), the producers/exporters covered by this CVD investigation. Also below is the “Analysis of Comments” section, which contains the Department of Commerce’s (Department’s) response to the issues raised in the briefs.

Below is a complete list of the issues in this investigation for which we received comments and rebuttal comments from interested parties:

A. General Comments

Comment 1. Treatment of Contingent Liability Benefits Under the Export Promotion Capital Goods Scheme (EPCGS)

Comment 2. Valuation of DEPS Benefits

B. Navneet

Comment 3: Benchmark Used Under the EPCGS Program

Comment 4: Benchmark Used for Navneet Under the Pre-Shipment Export Financing Program

Comment 5: Navneet's Use of the 80 HHC Income Tax Exemption

Comment 6: Denominator Used to Calculate Navneet's Net Subsidy Rate Under the Pre-Shipment Export Financing Program

Comment 7: Denominator Used to Calculate Navneet's Net Subsidy Rate Under the Duty-Free Replenishment Certificate (DFRC) Scheme

C. Kejriwal

Comment 8: Benchmark Used to Calculate Countervailable Benefits Received by Kejriwal under the Post-Shipment Export Financing Program

Comment 9: Fulfillment of Export Obligation Under the EPCGS

D. Aero

Comment 10: Countervailability of the Advance License Program (ALP)

Comment 11: Program-Wide Changes With Respect to the ALP

Comment 12: Attribution of Subsidies Aero Received under the Post-Shipment Export Financing Program

II. SUBSIDIES VALUATION INFORMATION

A. Benchmark for Short-Term Loans

Where possible, we used an annual average of the interest rates on comparable, commercial, short-term loans obtained by the company during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. See 19 CFR 351.505(a)(2)(iv). Where such loan data were not available and because appropriate benchmark information was not provided by the Government of India (GOI), we used a national average short-term interest rate for India, as reported in the International Monetary Fund's (IMF) International Financial Statistics. We received comments from interested parties regarding the use of short-term benchmarks. See Comments 4 and 8.

B. Benchmark for Long-Term Loans Issued

Where possible, we used the interest rates of comparable commercial long-term loans obtained by the company, the terms of which were established during or immediately before the year in which the terms of the government-provided loan were established, pursuant to 19 CFR 351.505(a)(2)(iii). Where such company-specific loan data were not available and because appropriate benchmark information was not provided by the GOI, we used comparable, national average interest rates for short- to medium-term financing from private creditors, as reported in the IMF's International Financial Statistics. We received comments from interested parties regarding the use of long-term benchmarks. See Comment 3.

III. Critical Circumstances

Section 703(e)(1) of the Act, as amended, (the Act), provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that:

- (A) the alleged countervailable subsidy is inconsistent with the Subsidies Agreement; and
- (B) there have been massive imports of the subject merchandise over a relatively short period.

In the Preliminary Determination, the Department determined that, pursuant to section 703(e)(1) of the Act, and 19 CFR 351.206, critical circumstances did not exist with regard to imports of certain lined paper products (subject merchandise) from India covered by the above-referenced countervailing duty (CVD) investigation. See 71 FR at 7917; see also the Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Melissa G. Skinner, Director, Operations, Office 3, "Preliminary Negative Determination of Critical Circumstances" February 6, 2006, which is on file in the Central Records Unit (CRU), Room B-099, of the main Commerce building.

Based on the information on the record of this investigation, we continue to find that critical circumstances do not exist with regard to subject merchandise from India. As explained below, we have found that several GOI programs constitute countervailable export subsidies and, thus, petitioners' critical circumstances allegation fulfills the criterion described under section 703(e)(1)(A) of Act. However, because the available import data indicate that shipments of subject merchandise from India were not "massive" during the comparison period, as defined under section 703(e)(1)(B) of the Act and 19 CFR 351.206(h)(2), we find that critical circumstances do not exist. See the Memorandum to the Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Melissa G. Skinner, Director, Office 3, Operations, "Final Negative Determination of Critical Circumstances" (July 31, 2006), of which the public version is on file in the CRU.

IV. ANALYSIS OF PROGRAMS

A. Programs Determined to Confer Subsidies

1. Pre- and Post-Shipment Export Financing

In the Preliminary Determination, we found that the pre- and post-shipment export financing loan programs conferred a countervailable subsidy on respondents. See 71 FR at 7918. We determined that the GOI's issuance of financing at preferential rates constituted a financial contribution pursuant to section 771(5)(D)(i) of the Act and that the interest savings under these programs conferred a benefit within the meaning of section 771(5)(E)(ii) of the Act. Further, we determined that because receipt of the loans are contingent upon exports, the programs were specific pursuant to section 771(5A)(B) of the Act. See 71 FR at 7919; see also Preliminary Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 69 FR 907, 910 (January 7, 2004) (unchanged in final results). No comments have been submitted warranting reconsideration of this determination; therefore, we continue to find that the pre- and post-shipment export financing programs are countervailable. Aero, Kejriwal and Navneet had pre-shipment export financing loans outstanding during the period of investigation (POI). Aero and Kejriwal had post-shipment financing loans outstanding during the POI.

To calculate the benefit conferred by these loans, we compared the actual interest paid on the loan with the amount of interest that would have been paid at the benchmark interest rate. Where the benchmark interest exceeds the actual interest paid, the difference constitutes the benefit.

In the Preliminary Determination, for the pre-shipment loans, we divided the benefit received by each company by that company's total exports during the POI.¹ Id. We have continued this approach in the final determination.

Because post-shipment loans are granted for particular shipments, our practice is to treat the loans, where possible, as being tied to particular markets and products within the meaning of 19 CFR 351.525(b)(4) and (5). Accordingly, for Kejriwal, we have attributed the benefit to Kejriwal's sales of subject merchandise to the United States during the POI. Regarding Aero, in the Preliminary Determination, we explained that it appeared to have reported its post-shipment loans for all shipments to all destinations. Therefore, in the Preliminary Determination, we divided all of Aero's benefits under the post-shipment export financing loan program by its total

¹ During verification, we learned that Aero booked in its export sales accounts transactions (Form-H sales) that were subsequently exported by unaffiliated parties. At verification, we collected the relevant source documents and established that the goods in question were shipped outside of India and confirmed that these were booked as export sales. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, and John Conniff, Case Analyst, Office 3, Operations, "Verification of the Questionnaire Responses Submitted by Aero Exports," at page 4 and Exhibit VE-2 (May 30, 2006) (Aero Verification Report), of which the public version is filed in the CRU. For the final determination, we have included the Form-H sales in Aero's total export sales denominator, which was used to calculate the net subsidy rate for the pre-shipment export financing, Export Promotion Capital Goods Scheme, and Advance License programs.

exports sales to all markets. Id. However, due to information collected at verification indicating that Aero differentiated benefits received under the program between subject and non-subject merchandise, we have revised the manner in which we have attributed subsidies received by Aero under the program. Based on this new information, we have attributed Aero's subsidies under the program to sales of subject merchandise to the United States. For further discussion of the pre- and post-shipment export financing programs, see Comments 4, 6, 8, and 12.

On this basis, we determine the net subsidy rate under the pre-shipment export financing program to be 0.85 percent ad valorem for Aero, 0.03 percent ad valorem for Kejriwal, and 0.63 percent ad valorem for Navneet. We determine the net subsidy rate under the post-shipment financing program to be 0.17 ad valorem for Aero, and 0.24 percent ad valorem for Kejriwal.

2. Export Promotion Capital Goods Scheme (EPCGS)

In the Preliminary Determination, we determined that import duty reductions under the EPCGS constituted a countervailable export subsidy. We found that the GOI provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act, in the form of revenue forgone that otherwise would have been due, and conferred a benefit, as defined by section 771(5)(E) of the Act. We further found that the EPCGS is specific under section 771(5A)(B) of the Act, as it is contingent upon export performance. Id.; see also Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 69 FR 26549 (May 13, 2004) (Final Results of 1st HRC Review) and the "EPCGS" section of the accompanying Issues and Decision Memorandum (Final Results of 1st HRC Review Decision Memorandum); and Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip from India, 67 FR 34905 (May 16, 2002) (PET Film Investigation), and the "EPCGS" section of the accompanying Issues and Decision Memorandum (PET Film Investigation Decision Memorandum). Aero, Kejriwal, and Navneet received benefits under the EPCGS.

As explained in the Preliminary Determination, under the Department's approach, there are two types of benefits under the EPCGS. The first benefit is the amount of unpaid import duties that would have to be paid to the GOI if accompanying export obligations are not met. The repayment of this liability is contingent on subsequent events, and in such instances, it is the Department's practice to treat any balance on an unpaid liability as an interest-free loan. Id. The second benefit is the waiver of duty on imports of capital equipment covered by those EPCGS licenses for which the export requirement has already been met. For those licenses for which companies demonstrate that they have completed their export obligations, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption. See Preliminary Determination, 71 FR at 7920.

To calculate the net subsidy rate under this program, we continued to divided the benefit by each company's total export sales during the POI.

We received comments regarding the calculation methodology we utilized for the EPCGS. We have made certain revisions to our benefit calculation from the Preliminary Determination. For further discussion of the EPCGS program, see Comments 1, 3, and 9. Therefore, we determine the net subsidy rate for the EPCGS to be 0.05 percent ad valorem for

Aero, 0.05 percent ad valorem for Kejriwal, and 0.86 percent ad valorem for Navneet.

3. Duty Entitlement Passbook Scheme (DEPS)

Under the DEPS, exporting companies may earn import duty exemptions in the form of passbook credits rather than cash. DEPS credits can be used for any subsequent imports regardless of whether they are consumed in the production of an export product. They are also transferable. In the Preliminary Determination, the Department determined that the DEPS conferred countervailable subsidies on the respondents. We found that a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI provides the respondents with credits for the future payment of import duties. Further, since the GOI does not have in place and does not apply a system to confirm which inputs, and in what amounts, are consumed in the production of the exported products that is reasonable and effective for the purposes intended under 19 CFR 351.519(a)(4), the entire amount of import duty exemption earned by the respondents during the POI constitutes a benefit pursuant to section 771(5)(E) of the Act. Because the DEPS can only be used by exporters, we found that it is specific under section 771(5A)(B) of the Act. See Preliminary Determination, 71 FR at 7920; see also the “DEPS” section of the PET Film Investigation Decision Memorandum.

Both Aero and Navneet reported earning duty exemption credits under the DEPS during the POI. As explained in the Preliminary Determination, in accordance with past practice and pursuant to 19 CFR 351.519(b)(2), we find that benefits from the DEPS are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned. We determined to calculate the benefit on an “as-earned” basis upon export because the DEPS credits are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis and, as such, it is at this point that recipients know the exact amount of the benefit (e.g., the duty exemption). See Preliminary Determination, 71 FR at 7920; see also Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India, 64 FR 73131, 73134 (December 29, 1999) (CTL Plate) at Comment 4.

Because DEPS credits are earned on a shipment-by-shipment basis, we normally calculate the net subsidy rate by dividing the benefit earned on subject merchandise exported to the United States by total exports of subject merchandise to the United States during the POI. See, e.g., CTL Plate, 64 FR at 73134. In the case of Aero, we have followed this calculation methodology. However, Navneet was unable to separately report its subject and non-subject sales of lined paper to the United States, and, thus, we have calculated the net subsidy rate by dividing the benefit Navneet earned during the POI on subject and non-subject paper shipments to the United States by its total exports sales to the United States during the POI. In the case of both companies, we treated any application fees as an allowable offset, in accordance with section 771(6)(A) of the Act. We received comments from interested parties concerning our treatment of the DEPS in the Preliminary Determination. See Comment 2. However, no new information or comments from interested parties warrant reconsideration of our approach. Therefore, we determine the net countervailable subsidy from this program to be 0.34 percent ad valorem for Aero and 5.88 percent ad valorem for Navneet.

4. Duty Free Replenishment Certificate (DFRC) Scheme

In the Preliminary Determination, we determined that the sales of DFRC licenses by Aero, Navneet, and Kejriwal constitute a financial contribution in the form of revenue forgone and that the sales proceeds confer a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Because the receipt of DFRC licenses are contingent upon exports, we determined that the DFRC program is specific within the meaning of section 771(5A)(B) of the Act. See Preliminary Determination, 71 FR at 7922. For purposes of this final determination, we continue to find that the sales of DFRC licenses confer countervailable export subsidies.

We received comments regarding our method for calculating the benefit and net subsidy rate under the DFRC. See Comment 7. However, comments from interested parties did not result in a change in the approach utilized in the Preliminary Determination. Thus, to calculate the countervailable benefits conferred to Aero, Navneet, and Kejriwal under the program, we identified the proceeds the three companies each realized from sales of DFRC licenses (net of fees) earned against U.S. sales. To calculate the net subsidy rate, we divided the benefit by each companies' respective export sales to the United States. On this basis, we determine the net subsidy rate to be 3.09 percent ad valorem for Aero, 0.13 percent ad valorem for Navneet, and 1.35 percent ad valorem for Kejriwal.

5. Advance License Program (ALP)

In the Preliminary Determination, we found that, with respect to the ALP, the systemic deficiencies found in the preliminary results of the second PET Film review continue to exist and, thus, we determined that the GOI does not have in place and does not apply a system that is reasonable and effective for purposes intended under 19 CFR 351.519(a)(4) to confirm which inputs, and in what amounts, are consumed in the exported products. See Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet and Strip from India, 70 FR 46483, 46486 - 46487 (August 10, 2005) (Preliminary Results of 2nd PET Film Review) (unchanged in the final results);² and Preliminary Determination, 71 FR at 7922. As a result, we determined that the entire amount of import duty exemptions earned by Aero (the only respondent that used the program during the POI) constitutes a financial contribution in the form of revenue forgone and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Because the ALP is contingent upon exports, we found that this program is specific within the meaning of section 771(5A)(B) of the Act. See Preliminary Determination, 71 FR at 7922. We received comments from interested parties regarding the Department's decision in the Preliminary Determination to countervail the ALP. See Comments 10 and 11. However, we continue to find that the ALP is

² In the final results of the second PET film review, the Department affirmed its decision to find the ALP countervailable. See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 71 FR 7534 (February 13, 2006) (Final Results of 2nd PET Film Review), and the accompanying Issues and Decision Memorandum at "Advance License Program" section and Comment 1 (Final Results of 2nd PET Film Review Decision Memorandum).

countervailable.

As stated above, we find the benefit under the ALP is equal to the duty exemptions received by Aero during the POI. To calculate the net benefit, we subtracted the total amount of exempted duties under the ALP during the POI from the actual amount of application fees paid for each license in accordance with section 771(6) of the Act. We then calculated the net subsidy rate by dividing the net benefit by Aero's total value of exports of during the POI. On this basis, we determine the net subsidy rate for Aero to be 2.55 percent ad valorem.

6. Income Tax Exemption Scheme under 80HHC (80HHC)

Under section 80HHC of the Income Tax Act, the GOI allows exporters to deduct profits derived from the export of merchandise from taxable income. In prior CVD proceedings, the Department has found this program to be an export subsidy, and thus countervailable, because receipt of the benefit is contingent upon export performance. See, e.g., Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review, 65 FR 31515 (May 18, 2000), and the "Income Tax Deductions Under Section 80 HHC" section of the accompanying Issues and Decision Memorandum. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with sections 771(5)(D) and (E) of the Act, we find this program countervailable because it results in a financial contribution by the government in the form of tax revenue not collected, which also constitutes a benefit. Moreover, because receipt of the tax deduction is contingent upon export performance, we continue to find the program to be an export subsidy under section 771(5A)(B) of the Act.

In the Preliminary Determination, we found that this program was not used. However, during the verification of the questionnaire responses submitted by Navneet, verifiers from the Department discovered that Navneet claimed the 80 HHC income tax deduction on the tax return filed during the POI. See Memorandum to Eric B. Greynolds, Program Manager, Office 3, Operations, from Robert Copyak and Preeti Tolani, Case Analysts, "Verification of the Questionnaire Responses Submitted by Navneet Publications Ltd. ("Navneet")" (Navneet Verification Report), at page 16 and pages 8 through 10 of Exhibit 21 (February 16, 2006), of which the public version is on file in the CRU. Thus, pursuant to 19 CFR 351.509(b)(1), we find that the benefit under the 80 HHC program was received in the year in which Navneet filed its income tax return (e.g., the POI). We received comments from interested parties concerning Navneet's use of the 80 HHC program. See Comment 5.

To calculate the benefit Navneet received under section 80HHC, we subtracted the total amount of income tax the company actually paid during the investigation period from the amount of tax the company otherwise would have paid had it not claimed a deduction under section 80HHC. We then divided this difference by the value of Aero's total exports. On this basis, we determine the net subsidy rate for Navneet to be 2.74 percent ad valorem.

B. Programs Determined Not to be Used

1. Export Processing Zones (EPZ) and Export Oriented Units (EOU)
2. Income Tax Exemption Scheme (Sections 10A and 10B)
3. Market Development Assistance (MDA)
4. Status Certificate Program
5. Market Access Initiative
6. State of Gujarat Sales Tax Incentives
7. State of Maharashtra Sales Tax Incentives

V. TOTAL AD VALOREM RATES

The total net subsidy rate for Aero is 7.05 percent ad valorem for the period April 1, 2004, through March 31, 2005. The total net subsidy rate for Kejriwal is 1.67 percent ad valorem for the period April 1, 2004, through March 31, 2005. The total net subsidy rate for Navneet is 10.24 percent ad valorem for the period April 1, 2004, through March 31, 2005. The total “all others” rate for the period April 1, 2004, through March 31, 2005 is 9.42 percent ad valorem.

VI. ANALYSIS OF COMMENTS

A. General Comments

Comment 1. Treatment of Contingent Liability Benefits Under the EPCGS

In the Preliminary Results, the Department treated as interest-free, contingent liability loans duty exemptions that Navneet made against EPCGS licenses for which it had yet to fulfill its export obligation. Navneet argues that the Department’s treatment of such duty exemptions under the EPCGS overstates the benefit. According to Navneet, failure to fulfill an export obligation under the EPCGS results in exporters being required to pay customs duties as well as penalty interest. Thus, argues Navneet, the Department has overvalued the benefits accruing to Navneet based on a presumption of noncompliance concerning a future event that is unsupported by the record.

Petitioners argue that where the export obligation under the EPCGS is unfulfilled, an immediate benefit in the form of reduced duties and taxes is realized by recipient companies. Petitioners also contend that any long range penalty referenced by respondents does not eliminate the immediate benefit received in the waiver of duties. Petitioners also point out that respondents provide no evidence that any of the respondents have been required to pay penalties for failure to meet their export obligations. On this basis, petitioners urge the Department to continue to treat as interest-free, contingent liabilities duty exemptions made against EPCGS licenses for which respondents have yet to fulfill their export obligations.

Petitioners also contend that the Department should continue to treat duty reductions under the EPCGS as grants where Navneet has met its export obligations. Petitioners further argue that the Department should continue to treat an export obligation as fulfilled only after the

GOI has issued a discharge letter. Absent an official discharge letter from the GOI, petitioners assert that the Department should continue to treat duty reductions as interest-free, contingent liabilities.

Department's Position: It is the Department's long-standing practice to treat unpaid customs duties under the EPCGS as interest-free, long-term loans until the GOI issues a formal waiver stating that the entire export commitment has been met. See, e.g., Final Results of 1st HRC Review Decision Memorandum at the "Export Promotion Capital Goods Scheme" section; see also, Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 69 FR 51063 (August 17, 2004) (Final Results of 1st PET Film Review) and accompanying Issues and Decision Memorandum at Comment 5 (Final Results of 1st PET Film Review Decision Memorandum). While companies that fail to meet their export obligations may be subject to payment of the duty reductions as well as penalty interest, such potential payments do not negate the immediate benefit realized by exporters in the form of an interest-free, contingent liability loan.

On this basis, we have continued to treat the unpaid customs duties under the EPCGS as grants in those instances in which the GOI has issued a formal waiver stating that the entire export commitment has been met. Absent such notification from the GOI, we have continued to treat the unpaid customs duties as interest-free, long-term, contingent liabilities.

Comment 2: Valuation of DEPS Benefits

Respondents claim that the Department's reliance on its regulations, and the Preamble to the regulations, to value benefits received by respondents under the DEPS at face value upon export, rather than the amount received by the companies after the sale of the DEPS licenses, conflicts with the facts of this case and the Department's broader mandate to accurately countervail grants and the benefit thereby received. Respondents cite the Preamble of the Department's regulations as directing the Department to focus on the enhanced value received by Navneet and Aero from the sale of their DEPS licenses, not the theoretical value. See Countervailing Duties; Final Rule, 63 FR 65348, 65361 (November 25, 1998). Respondents argue that the Department has the actual benefit conferred from the sale of the DEPS licenses and should use this amount to measure any subsidy thereby conferred as it does with respect to other subsidies in this investigation (i.e., as under the DFRC where the Department deems benefits received when companies use their DFRC licenses to import inputs duty-free or sell them). Respondents further argue that to measure the benefit Navneet and Aero received from the DEPS licenses using a value other than the sales value would violate the United States' commitments under the World Trade Organization's Agreement on Subsidies and Countervailing Measures (SCM Agreement) and precedent under Rhone Poulenc v. United States, 899 F. 2d 1185, 1191 (Fed. Cir. 1990).

Petitioners argue that the Department should continue with the methodology used in the Preliminary Determination, as it follows the Department's consistent practice. Petitioners claim that respondents' proposed approach would result in the Department considering the effect of the receipt of the subsidy, which the Department is not required to do under 19 CFR 351.503(c).

Department's Position: The Department's practice has been to treat benefits received under DEPS as conferred as of the date of exportation of the shipment for which the relevant DEPS credits are earned because it is at this point where the amount of the benefit in the form of an exemption is known. See e.g., Final Results of 1st HRC Review Decision Memorandum at Comment 2, CTL Plate, 64 FR at 73140; and Certain Welded Carbon Steel Pipe and Tube and Welded Carbon Steel Line Pipe from Turkey, 63 FR 18885, 18888 (April 16, 1998) at Comment 1, in which the Department explained that:

it is the Department's long-standing practice to countervail an export subsidy on the date of export on an "earned basis" rather than on the date the benefit is received where it is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis, and the exact amount of the countervailable subsidy is known at the time of export.

Further, this approach was recently affirmed by the Court of International Trade (CIT). See Essar Steel Ltd. v. United States, 395 F. Supp. 2d 1275, 1278 (CIT 2005) (Essar Steel) where the Court found:

Commerce correctly determined that because Essar earned DEPS credits by processing its shipment of the subject merchandise to the United States under this program, it obtained a financial contribution. Additionally, because Commerce acted within its discretion to calculate the benefit earned from this financial contribution on an "as earned" basis, Commerce correctly determined that Essar obtained a benefit.

Furthermore, calculating benefits under the DEPS on an as-earned basis is consistent with the Department's long standing practice of not tracing what companies do with the subsidies they have received. See 19 CFR 351.503(c). Although the facts of this investigation differ slightly with respect to disposition of the DEPS license in Essar Steel - Essar retained the license it earned during the POR while respondents in the instant proceeding sold licenses that were earned during the POI - the Court's affirmation of countervailing DEPS licenses on an as-earned basis is still applicable. Specifically, in the case of benefits received under the DEPS, once the Department is able to ascertain the value of benefits received under the program, as defined by the date on which they are earned, the Department does not continue its benefit analysis by examining whether the licenses are somehow discounted due to a subsequent sale.

We note that respondents' argument urging the Department to apply an as-used benefit methodology, as it has done under the DFRC, is not convincing. As we stated in the Preliminary Determination, the DEPS provides value-based licenses. As such, the recipients of DEPS credits know the value of the credits at the time they are received, which corresponds to the time when the credits are earned. See 71 FR at 7920. In contrast, the DFRC licenses are quantity-based licenses in which the recipients will only know the total value of the duty credits when they use the licenses or choose to sell them. See 71 FR at 7921. In both the DEPS and the DFRC programs, the Department determines the benefits are received when the actual value of the benefit is known.

We disagree with respondents' claim that the Department's methodology for valuing the benefit under the DEPS violates the Department's regulations and the legislative history behind the regulations. We note that in Essar Steel, the CIT dismissed similar claims that the Department's methodology of valuing DEPS credits on an as-earned basis violated the U.S.'s commitments under the SCM Agreement. See Essar Steel, 395 F. Supp. 2d at 1279.

On this basis, we are continuing the approach we have taken in prior cases and the Preliminary Determination and have calculated the benefit under the DEPS on an as-earned" basis at the time of export.

B. Navneet

Comment 3: Benchmark Used Under the EPCGS Program

Navneet argues that the benchmark interest rate the Department used to measure the benefit of interest-free, contingent liability loans under the EPCGS program is improper. Navneet argues that, due to a lack of need, it does not have any outstanding long-term, commercial loans and that this fact is indicative of Navneet's extremely high credit rating. As such, it contends that the interest rates for short- and medium-term loans published in the IMF publication, "International Financial Statistics," are not representative of Navneet's financial situation. Navneet argues that the Department should instead use actual interest rates obtained by the company as the best information concerning the commercial rate that would have been applicable to Navneet. Specifically, Navneet argues that the Department should use a short-term interest rate from a commercial loan it received from the Reserve Bank of India, which Navneet submitted in its supplemental questionnaire. See Navneet Supplemental Questionnaire Response at Exhibit S-7 (January 23, 2006).

Petitioners disagree with Navneet's claim that the Department used the wrong benchmark interest rate for calculating the benefit received by Navneet under the EPCGS program. Petitioners reference the Department's regulations as explicitly requiring the Department to apply a long-term interest rate benchmark if the contingency exceeds one year. According to petitioners, the Department's regulations require the Department to use a national average interest rate in the case where a respondent has no long-term loans outstanding during the POI. Petitioners argue that the Department correctly applied its regulations by using a national average long-term loan benchmark (i.e., the rupee-denominated interest rates in International Financial Statistics) and should continue this approach for the final determination. Alternatively, petitioners argue that the Department could use the long-term commercial benchmark rate calculated for Aero as a proxy for Navneet's long-term benchmark.

Navneet counters petitioners' argument that the Department should use Aero's long-term interest rate as a benchmark for Navneet. Navneet argues that there is no meaningful comparison between Navneet and Aero or the two companies' creditworthiness. Navneet reiterates its contention that the Department should use the interest rate it obtained from the Reserve Bank of India as the benchmark for EPCGS duty exemptions treated as long-term, interest-free contingent liabilities.

Department's Position: To determine whether a government loan program confers a benefit, the Department compares the interest paid on the government loan to the interest that would have been paid on a comparable, commercial loan. See 19 CFR 351.505(a)(1). Under 19 CFR 351.505(a)(2), in selecting a loan that is "comparable," the Department places primary emphasis on similarities in the structure, currency of the loan, and the maturity of the loan. Because the duration of the contingent liability under the EPCGS is longer than one year, we are directed to treat the duty exemptions as long-term, interest-free loans. Thus, pursuant to 19 CFR 351.505(a)(2), it is not appropriate to measure the benefit on these long-term, interest-free loans using a short-term benchmark interest rate.

Under 19 CFR 351.505(a)(3)(ii), where the firm has no comparable commercial loans, the Department may use a national average interest rate. As explained in the Preliminary Determination, information on long-term publicly available interest rates in India were not available. We therefore used national average interest rates for short- and medium-term, rupee-denominated financing from private creditors, as published in the IMF's International Financial Statistics. See 71 FR at 7918. This approach is consistent with the Department's practice. See e.g., the PET Film Investigation Decision Memorandum at the "Benchmark for Loans and Discount Rate" section; Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India, 66 FR 49635 (September 28, 2001) (HRC Investigation), and the accompanying Issues and Decision Memorandum at the "Benchmark for Loans and Discount Rate" section (HRC Investigation Decision Memorandum); Preliminary Results of 2nd PET Film Review, 70 FR at 46485 (unchanged in the Final Results of 2nd PET Film Review); Final Results of 1st PET Film Review Decision Memorandum at the "Benchmarks for Loans and Discount Rate" section; and the Final Affirmative Countervailing Duty Determination of Bottle-Grade Polyethylene Terephthalate (PET) Resin from India, 70 FR 13460 (March 21, 2005), and accompanying Issues and Decisions Memorandum at the "Loan Benchmarks" section in which the Department stated:

. . .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 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.

We acknowledge that the interest rates from International Financial Statistics include short-term rates. However, in keeping with the Department's practice, we find the publication also includes medium-term loans and, thus, its interest rates adhere more closely to the comparability criteria enumerated under 19 CFR 351.505(a)(2). On this basis, in our benefit calculations for Navneet under the EPCGS program, we have continued to base the benchmark on the interest rate information published in the IMF's International Financial Statistics.

Comment 4: Benchmark Used for Navneet Under the Pre-Shipment Export Financing Program

Navneet claims that the Department should not have rejected the dollar-denominated commercial benchmark it supplied for the pre-shipment export financing program. Navneet argues that the Department verified the pre-shipment interest rate provided in its questionnaire response and should use this interest rate when calculating the benefit on dollar-denominated loans under the pre-shipment export financing program.

Petitioners did not comment on this issue.

Department's Position: In the Preliminary Determination, the Department rejected the short-term, dollar-denominated benchmark interest rate provided by Navneet for the pre-shipment program. We rejected Navneet's benchmark rate because it was derived from loans offered by a government-owned special purpose bank and, therefore, was not usable under 19 CFR 351.505(a)(2)(ii). See Preliminary Determination, 71 FR at 7918. However, at verification, Navneet reported that during its preparations for verification, it had discovered a short-term, dollar-denominated working capital line of credit that was outstanding during the POI. See Navneet Verification Report at pages 2 through 3.

We have examined this line of credit and find that it constitutes a comparable commercial benchmark within the meaning of 19 CFR 351.505(a)(2). First, the commercial loan in question is of the same currency and has a comparable duration and structure as the government loan. Second, information obtained at verification indicates that the loan in question was issued to Navneet by a commercial lending institution, as opposed to a special purpose bank. Lastly, during verification, we were able to confirm that the benchmark loan information constituted all of Navneet's comparable, commercial, short-term debt outstanding during the POI, thereby allowing the Department to calculate a representative, annual weighted-average benchmark interest rate, as provided under 19 CFR 351.505(a)(2)(iv).

Comment 5: Navneet's Use of the 80 HHC Income Tax Exemption

Navneet asserts that it did not use the 80HHC Income Tax Exemption Scheme because the amounts received under this program relate to a period prior to the POI. Navneet argues that the tax return it submitted in October 2004 pertained to the period ending March 31, 2004, and therefore, the Department should not include this program in the final determination.

Petitioners did not comment on this issue.

Department's Position: Under 19 CFR 351.509(b), in the case of a full or partial exemption or remission of a direct tax, the Department will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. Sub-paragraph (b) further states that, normally, this date will be the date on which the firm filed its tax return. At verification, the Department found that the tax return Navneet filed in October 2004, a date that falls within the POI, included an exemption under the

80 HHC Income Tax Exemption program. Given the Department's long-standing practice to link the receipt of benefits under the 80 HHC program to the tax return filed during the period of investigation or review, we find there is no basis for the Department to deviate from the standard practice described under sub-paragraph (b). See e.g. Certain Iron-Metal Castings From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 64 FR 61592 (November 12, 1999) (unchanged in the final results).

Therefore, to calculate the benefit Navneet received under the 80HHC program, we subtracted the total amount of income tax the company actually paid during the POI from the amount of tax the company otherwise would have paid during the POI had it not claimed a deduction under section 80HHC. Because this program is contingent upon export performance, we divided the benefit by the f.o.b. value of the Navneet's total exports.

Comment 6: Denominator Used to Calculate Navneet's Net Subsidy Rate Under the Pre-Shipment Export Financing Program

Petitioners argue that the Department should apply adverse facts available and, thus, assume that all of Navneet's pre-shipment export financing is tied to sales of subject merchandise to the United States. According to petitioners, the Department's verification demonstrated that Navneet, contrary to its pre-verification submissions, can determine which orders were tied to which loans as well as determine what proportion of each loan was tied to sales of subject merchandise to the United States during the POI.

Respondents argue that Navneet has not declined to provide any information; instead, the arbitrarily designed scope has made it difficult for Navneet to reconcile the information as it was exactly requested. Navneet further claims that it has demonstrated the difficulty it has with providing its worldwide exports of subject merchandise. Navneet also cites the Department's verification report as evidence that Navneet's system is not capable of tying a pre-shipment loan to a particular order. As a result, Navneet argues that the Department should continue to calculate an allocated pre-shipment credit for Navneet's U.S. sales.

Department's Position: The Department's practice is to use a respondent's total exports as the denominator as this program is contingent upon export. See PET Film Investigation Decision Memorandum at the "Pre-Shipment and Post-Shipment Export Financing" section and Comment 8. Further, we find there is no evidence on the record of this investigation to support petitioners' claim that Navneet can tie benefits under the program to specific shipments. See page 9 of the Navneet Verification Report where it states that Navneet uses the pre-shipment export financing program for "large bundles of shipments rather than shipment-by-shipment." On this basis, we have continued to calculate the net subsidy rate calculated under this program by dividing the benefit by Navneet's total export sales.

Comment 7: Denominator Used to Calculate Navneet's Net Subsidy Rate Under the DFRC

Petitioners argue that the Department should continue its methodology for calculating the

net subsidy Navneet received under the DFRC. Petitioners contend that since Navneet provided no information on the exports that would enable the Department to differentiate between DFRC credits tied to subject and non-subject merchandise, the Department should continue to divide the total amount of the sale of the DFRC credits by its total exports to the U.S.

Respondents argue that the Department's preliminary calculations for the DFRC program are overstated because the Department based the calculations on the total amount of benefits received and total exports. They argue that using information obtained at verification, the Department should, wherever possible, base its calculations on benefits received for exports of subject merchandise to the United States.

Department's Position: Our verification report indicates that Navneet is unable to differentiate between sales of subject and non-subject merchandise on the DFRC license(s) sold. See Exhibits VE-23 and VE-24 of the Navneet Verification Report. Therefore, we find it appropriate to continue our methodology adopted in the Preliminary Results and attribute subsidies under this program to Navneet's total exports to the United States. Similarly, the information on the record regarding the DFRC license(s) sold by Aero and Kejriwal do not allow us to make such a differentiation. Therefore, we have continued to attribute subsidies under this program to the companies' respective total exports to the United States during the POI.

C. **Kejriwal**

Comment 8: Benchmark Used to Calculate Countervailable Benefits Received by Kejriwal under the Post-shipment Export Financing Program

Kejriwal argues that the Department should base the benchmark used to calculate the benefit under the post-shipment export financing program on company-specific loan information the Department obtained at verification. Kejriwal argues that the information the Department obtained during verification is more representative than the national average interest rate obtained from International Financial Statistics that the Department used in the Preliminary Determination.

Petitioners also argue that the Department should replace the national average benchmark interest rate used in the Preliminary Determination with company-specific loan information obtained during the verification of Kejriwal. However, petitioners argue that the Department should use a different set of loan information, showing a higher interest rate, for purposes of calculating the benchmark under the post-shipment export financing program.

Department's Position: Kejriwal failed to report all of its benchmark loan information to the Department. Therefore, the Department could not calculate an annual, weighted-average interest rate as contemplated by 19 CFR 351.505(a)(2)(iii). Therefore, we have determined to continue to use for benchmark purposes the national average interest rates published in the IMF's International Financial Statistics to calculate the benefit Kejriwal received under the GOI's post-shipment export financing program. We find that this interest rate constitutes the most appropriate interest rate available. Further, the use of interest rate information from the

International Financial Statistics publication for benchmark purposes is consistent with the Department's practice. See e.g., HRC Investigation Decision Memorandum at the "Benchmarks for Loans and Discount Rate" section.

The comments we received from interested parties and the Department's position regarding this issue involve the discussion of business proprietary information. See Memorandum to the File Through Eric B. Greynolds, Program Manager, Office 3, Operations, from Robert Copyak, Case Analyst, "Proprietary Comment Concerning the Benchmark Used to Calculate Countervailable Benefits Received by Kejriwal Under the Post-shipment Export Financing Program" (July 31, 2006), of which the public version of this memorandum is available in the CRU.

Comment 9: Whether Documentation from Kejriwal Indicates That it Fulfilled its Export Obligation Under the EPCGS

Petitioners argue that the Department should be suspicious of the "completion letters" from the GOI that were obtained at verification. They argue that although Kejriwal's initial questionnaire response was dated after the date of the two completion letters, Kejriwal never stated that it had received the documents and did not provide the letters in any subsequent questionnaire responses or factual submissions. Petitioners argue that Kejriwal had ample time to file such completion letters and, thus, the Department should not accept them in this investigation. Lacking evidence that Kejriwal's fulfilled its export obligation under the EPCGS, petitioners contend that, for purposes of calculating the benefit, the Department should follow its practice and treat the unpaid import duties as long-term, interest-free loans.

Petitioners add that should the Department accept the letters as evidence that Kejriwal completed its export obligation under the EPCGS, the Department should treat the deferred amounts as grants. They argue that the Department should use in its calculations the higher excise duty rate and required duty collection rate that were found at verification, not the rates originally reported by Kejriwal.

Kejriwal rebuts that there is no basis to question the thoroughness and credibility of Kejriwal's submissions and no basis to reject credible verified information. Kejriwal argues that the Department reviewed the program at verification and that, as company officials explained, the differences in the excise duty rate and the duty collection rate were due to an education surcharge that is not part of the EPCGS program.

Department's Position: It is the Department's practice to rely on verification to corroborate information provided by respondents in their questionnaires responses. In its December 19, 2005, questionnaire response, Kejriwal reported that it had fulfilled the export obligations but was awaiting the recognition letters from the GOI. At verification, we reviewed and collected copies of the EPCGS licenses and supporting documents. Among these documents are letters from the GOI regarding Kejriwal's export obligations. See Memorandum to Eric B. Greynolds, Program Manager, Office 3, Operations, from Robert Copyak and Preeti Tolani, Case Analysts, Office 3, Operations, "Verification of the Questionnaire Responses Submitted by Kejriwal Paper Limited (Kejriwal)" at page 5 (June 2, 2006) (Kejriwal Verification Report), of which the public

version is on file in the CRU.

Although Kejriwal stated in its questionnaire response that it has completed its export requirements, the letters from the GOI obtained at verification discussing Kejriwal's export obligations under the EPCGS are dated after the POI. Thus, there is no evidence on the record indicating that Kejriwal's duties were waived prior to the end of the POI. Therefore, we have not calculated a benefit using our grant methodology. Consistent with our practice, we continue to calculate the benefit under the program by treating the unpaid customs duties outstanding during the POI as long-term, interest-free loans. See, e.g., Final Results of 2nd PET Film Review Decision Memorandum at Comment 6.

It is the Department's practice to calculate the benefit by subtracting the amount the company actually paid from the amount that the company would have paid absent the program. Therefore, we agree with petitioners and have made an adjustment to the benefit calculation to account for the Department's finding at verification that rates otherwise due absent the program and actually paid by Kejriwal were slightly higher than what the company originally reported. In other words, in our calculations we have used the higher excise duty rate and required duty collection rate that were found at verification, not the rates originally reported by Kejriwal. See Kejriwal Verification Report at pages 13 through 16 of Exhibit VE-15.

D. Aero

Comment 10: Whether to find the ALP Countervailable

Aero explains that in the Final Results of 2nd PET Film Review the Department held that, with regard to the ALP, the GOI did not have in place and did not apply a system that was reasonable and effective for the purposes intended as required by U.S. law. Aero notes the Department's decision to countervail the ALP in the Final Results of 2nd PET Film Review was based on its finding that (a) the GOI lacked an effective implementation and monitoring scheme; (b) the GOI could not demonstrate how the PET Film Standard Input Output Norms (SION) used to determine the duty exemptions were calculated or that the SIONs for PET Film had been updated; and (c) the ALP program permits exporting companies to meet their export requirements through deemed exports.

Aero argues that since the Department's ruling in the Final Results of 2nd PET Film Review, there have been improvements and changes to the ALP Program to address the deficiencies noted by the Department. Aero, the sole user of the ALP during the POI, asserts that there have been three significant changes to the program since the implementation of the Final Results of 2nd PET Film Review. First, Aero argues that pursuant to regulatory changes enacted under the ALP in April 2003, the manufacturing unit of the advance licence holder must maintain a register for all inputs imported/procured duty-free under the ALP. Aero claims that under this requirement, the licensing authority maintains a record indicating the starting and closing dates of the obligation period for exports. Aero asserts that the Department confirmed this change to the ALP during the verification of the GOI's questionnaire response.

Second, Aero claims that the GOI carefully monitors companies' use of the program and has revamped the system for reviewing the SION's utilized by the lined paper industry under the

ALP. Aero claims that the Ministry of Commerce, in conjunction with export promotion councils and various industries and associations, appoints a technical committee to fix the SIONs for a given product. Aero further argues that the Commerce Ministry periodically updates SIONs used in the ALP. It notes that, in the case of the lined paper industry, the SION was revised as recently as June 2005. Aero argues that the Department confirmed these facts concerning the development of the SION during verification.

Third, Aero asserts that the GOI is able to monitor use of the ALP through its control of the ports of entry, record keeping system, and mechanisms that track imports and exports. Further, Aero contends that the GOI monitors the completion of the export obligation under the ALP and sanctions companies for non-compliance.

Petitioners note that Aero was the only Indian producer to use the ALP during the POI and that in the Preliminary Determination the Department found that (1) the Indian government could not demonstrate that the program was implemented and monitored effectively; (2) participants could meet their export requirements through “deemed exports”; and (3) the Indian government could not show how the SIONs used to determine duty exemptions were calculated. See 71 FR at 7922.

Petitioners claim that the Department’s verification of Aero confirms the correctness of the Department’s preliminary decision. At verification, the Indian government was not able to provide the source documents upon which the SION for the lined paper industry was based. Thus, argue petitioners, the Department cannot determine how the SION for the lined paper industry was calculated. Nor, petitioners contend, is there any indication on the record of the investigation that the GOI has eliminated under the ALP the ability of companies to earn duty exemptions on inputs that are subsequently incorporated into “deemed” exports.

Aero rebuts that since it had no domestic sales during the POI, the issue of deemed exports is moot in this particular investigation.

Department’s Position: In the Final Results of 2nd PET Film Review, the Department changed its previous policy on the ALP. In that proceeding, the Department determined that the GOI had changed its guidelines from the 1997-2002 program that the Department had earlier not found countervailable. There, the Department examined the 2002-2007 Export/Import Policy Guidelines underlying the ALP and found the program to be countervailable, in accordance with 19 CFR 351.519(a)(4). See Final Results of 2nd PET Film Review Decision Memorandum at “Advance License Program” section and Comment 1.

In the Final Results of 2nd PET Film Review, the Department identified a number of systemic deficiencies that led to the Department’s determination that respondents failed to demonstrate that the ALP was monitored and regulated effectively, as evidenced by the lack of information related to verification or implementation of extension or penalties. The GOI could not identify the number of companies during the POR that either failed to meet export commitments under the ALP, were penalized for failing to meet the export requirements under the ALP, or were penalized for claiming excessive credits. Moreover, the Department noted that if the GOI had carried out an examination that might demonstrate monitoring of the ALP, it should identify when the examination took place and the results of the examination. Despite the Department’s request, the GOI did not cite any specific examination or verification of a producer

in any industry. See Final Results of 2nd PET Film Review Decision Memorandum, at Comment 1.

In addition, the Department noted that the system allows for the availability of ALP benefits for a broad category of “deemed” exports that are not limited to the actual exportation of the subject merchandise, and provides for government discretion to bestow benefits under the program even more broadly. Id.

Further, in the Final Results of 2nd PET Film Review, the GOI could not provide the SION calculations for the PET industry or any documentation demonstrating that the process outlined in its regulations was actually applied in calculating the PET film SION.

In this investigation, Aero and the GOI placed information on the record indicating certain revisions to aspects of the ALP. At verification, we reviewed how inputs and exports were tracked by the GOI through its Directorate General for Foreign Trade (“DFGT”) and the Government of India Customs house (“GOI Customs”), all within an 18-month period. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, and John Conniff, Case Analyst, Office 3, Operations, “Verification of the Questionnaire Responses Submitted by the Government of India,” at pages 4 and 6 (May 17, 2006) (GOI Verification Report), of which the public version is on file in room B-099 of the Central Records Unit of the main Commerce building; see also Aero Verification Report at page 10. Further, at verification we learned that a company can continue to bring in more materials under the ALP program by applying for an amendment, which then increases the corresponding export requirements. See Aero Verification Report at page 11.

Further, the GOI enters information from companies’ bills of entry into a customs database that it uses to track the inputs imported duty-free under the ALP. In this manner, the GOI is able to maintain a running tally regarding the amount of inputs companies are allowed to import against a given SION. See GOI Verification Report, at page 4.

In addition, under the ALP registration process, companies must provide, among other things, a copy of the license, indicate the CIF and FOB value of the license, and the amount of the bank guarantee that accompanies their license. GOI officials explained that Customs then enters the license number and date, company name, bank guarantee number, bond amount, and due date of the bank guarantee (which corresponds with the due date of the export obligation) into what is referred as a Duty Exemption Entitlement Certificate (“DEEC book”). GOI officials explained that they use the DEEC book to track the date on which companies must fulfill their export obligation. GOI officials explained that Customs will cash the bank guarantee of those companies that fail to meet their export obligation. See GOI Verification Report, at page 4 and pages 7 and 8 of VE-7A, which discusses a letter from GOI to a company that failed to meet its export obligation as well as worksheet indicating how Customs calculated the total amount owed by the company.

However, in spite of the procedures that the Department observed at verification, systematic issues continue to exist that demonstrate that the GOI lacks a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. Neither the GOI nor Aero placed information on the record demonstrating changes to the ALP 2002-2007 Guidelines affecting many of the other specific deficiencies enumerated in

the Final Results of 2nd PET Film Review. For example, the GOI is still unable to document how it developed the underlying SION in effect for the lined paper. While the Department confirmed at verification that the GOI has recently updated the SION for the lined paper industry, the GOI was unable to provide source documents concerning the initial formation and subsequent revision of the SION used for the lined paper industry, including the SION in effect during the POI. See GOI Verification Report, at pages 2 through 4.

In the instant investigation, neither respondents nor the GOI demonstrated that a mechanism existed during the POI to systematically evaluate the underlying SIONs to determine whether they remain reasonable over time. Aero was unable to provide information demonstrating that there was a requirement that the GOI review the SIONs during the POI. Additionally, no information was placed on the record of this investigation on the ALP Guidelines allowing for companies applying to create a SION to use their own untested SIONs if the GOI fails to review them within four months, or with respect to extensions of time to meet export obligations.

Finally, although Aero argues that it did not use “deemed exports” to earn duty exemptions under the ALP during the POR, neither Aero nor the GOI have claimed that the laws and procedures underlying the ALP have changed with respect to the issue of “deemed exports” during the POI. Therefore, because Aero failed to provide information demonstrating that the ALP was implemented and monitored effectively during the POI, as evidenced by the information listed above, we continue to find that the GOI has not demonstrated that it has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts or that the ALP was reasonable and effective for the purposes intended. Thus, in accordance with 19 CFR 351.519(a)(4), we have considered the entire amount of the duty exemptions Aero received under the ALP to confer a benefit.

Comment 11: Whether Sufficient Evidence Exists to Warrant Finding Program-wide Changes Have Occurred with Respect to the Advance License Program

Aero notes that if a subsidy program has been changed, and if such a program-wide change is not limited to individuals or firms but is more in the nature of an institutional change and provided that such a change is measurable, the Department may reduce the cash deposit rate accordingly in accordance with 19 CFR 351.526. Aero asserts that a program-wide change under 19 CFR 351.526 can be brought about through an amendment to a law by a foreign government that has the effect of removing the countervailable elements of its laws. In support of its contention, Aero cites to the HRC Investigation in which it claims the Department agreed that significant changes had been made to the ALP such that it found the program countervailable only to the extent that the advance licenses resulted in an over-rebate of duties on imports not consumed in the production process. See HRC Investigation Decision Memorandum at the “Advance License” section. Aero claims that in the HRC Investigation, the Department verified the use of the ALP and concluded that it utilized a built-in monitoring system by virtue of the application process and the manner in which the amount of duty exemption to be granted was

limited by the quantity stipulated in the license. *Id.* Aero argues that the Department should draw a similar conclusion in this investigation and, thus, set the cash deposit rate to zero with respect to the ALP.

In addition to the aspects of the ALP discussed above, Aero argues that there have been significant changes to the ALP subsequent to the POI that merit consideration as a program-wide change. In particular, Aero notes that subsequent to the POI, manufacturing units of advance license holders who import/procure the duty-free inputs under the ALP must maintain documentation that is certified by a chartered, public accountant concerning the usage of such imports towards exports. Thus, Aero argues that for the final determination, the department should find that the GOI's revisions to the ALP during and after the POI warrant a finding of a program-wide change and, thus, the Department should establish a net subsidy rate of zero for the ALP for cash deposit purposes.

Petitioners note that Aero was the only Indian producer to use the ALP during the POI and that in its Preliminary Determination the Department found that (1) the Indian government could not demonstrate that the program was implemented and monitored effectively; (2) participants could meet their export requirements through "deemed exports"; and (3) the Indian government could not show how the SIONs used to determine duty exemptions were calculated.

Petitioners claim that the Department's verification of Aero confirms the correctness of the Department's decision. At verification, the Indian government was unable to provide the documents upon which the SION was based, so the Department could not determine how the SION was calculated, nor was there any indication that the GOI had eliminated "deemed" exports from eligibility for the ALP.

Department's Position: Aero has requested that the Department take program-wide changes into account for the ALP pursuant to 19 CFR 351.526. However, as noted above in the Department's position in Comment 10, systemic issues continue to exist that bring into question whether the GOI was able to effectively monitor and regulate the program during the POR. Further, there is no information that these systemic issues have been resolved subsequent to the POI, as required under 19 CFR 351.519. On this basis, we find there is no basis to invoke the program-wide changes regulation, as defined by 19 CFR 351.526, when calculating the cash deposit rate applicable to companies that benefitted under the ALP during the POI.

Comment 12: Attribution of Subsidies Aero Received under the Post-shipment Export Financing Program

Petitioners note that in the Preliminary Determination, Aero was unable to segregate out benefits from the post-shipment export financing program that were tied solely to non-subject merchandise. As a result, to calculate the benefit under this program the Department divided the total benefits under this program by the value of Aero's total exports. Petitioners assert that, because Aero was unable to demonstrate at verification that it could, in fact, separate out the benefits from the post-export financing program tied solely to subject merchandise, in the final determination the Department should attribute Aero's benefits under this program to exports of subject merchandise to the United States.

Aero did not comment on this issue.

Department's Position: During the Department's verification of the questionnaire responses submitted by Aero, we observed and verified Aero's method of allocating loan amounts specifically to the subject merchandise. Aero used information from its invoice numbers to explain how it reported information on the post-shipment loan program for subject merchandise shipped to the United States. See Aero Verification Report at page 6. Thus, we agree with petitioners and have attributed the benefits to Aero's exports of subject merchandise to the United States under the post-shipment export financing program to its total exports of subject merchandise to the United States during the POI.

VII. Recommendation

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

_____ Agree

_____ Disagree

David M. Spooner
Assistant Secretary
for Import Administration

Date