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March 14, 2005

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

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

SUBJECT: Bottle-Grade Polyethylene Terephthalate (PET) Resin from
Thailand: Issues and Decision Memorandum in the Final Negative
Countervailing Duty Determination

Summary

On August 30, 2004, the Department of Commerce (the Department) published the Preliminary Negative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand, 69 FR 52862 (August 30, 2004) (Preliminary Determination). Since the Preliminary Determination, the Department issued additional supplemental questionnaires to, and conducted verification of the responses provided by, the Royal Thai Government (RTG), Bangkok Polyester Company (BPC), Thai Shinkong Industry Corporation Limited (Thai Shinkong), Indopet Thailand Limited (Indopet), and Asiapet Thailand Limited (Asiapet) (collectively - "Respondents").

The Department received comments and rebuttal comments on the Preliminary Determination and verification from the Respondents and the United States PET Resin Coalition (Petitioner). We have analyzed the results of verification and all of the comments submitted by interested parties. 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 analyses and positions we have developed in this memorandum.

I. COMMENTS

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

Comment 1: Whether the Department should apply Adverse Facts Available (AFA) to BPC

Comment 2: The Selection of the Discount Rate for Allocating Subsidies over Time

Comment 3: Whether the IPA Benefits for BPC, Thai Shinkong, Indopet, and Asiapet are Export Contingent

Comment 4: The Selection of the Denominator for Calculating *Ad Valorem* Subsidy Rates

Comment 5: The Appropriate Method for Calculating Section 35(3) Benefits

Comment 6: Whether Cross-Ownership Between Indopet and Indopet's Suppliers Exists

Comment 7: Whether or not Indopet, Thai Shinkong, and BPC Used Section 35(4) Benefits

II. SUBSIDIES VALUATION INFORMATION

A. Discount Rates

Thai Shinkong, BPC, Indopet and Asiapet received exemptions from import duties on the importation of capital equipment under Section 28 of the Investment Promotion Act of 1977 (IPA), which we have determined to provide non-recurring benefits in accordance with section 351.524(c) of the Department's regulations. For a discussion of our decision to treat these duty exemptions as non-recurring benefits, see "Duty Exemptions on Imports of Machinery Under IPA Section 28" in the Preliminary Determination. All three respondent companies received IPA Section 28 exemptions, collectively in the years 1995 through 2003. In the Preliminary Determination, we noted that none of the respondent companies provided a company-specific annual average cost of long-term, fixed-rate, baht-denominated loans. Therefore, in accordance with section 351.505(a)(3)(ii) of the Department's regulations, we used national average interest rates to allocate the benefits under this program in accordance with section 351.524(d) of the regulations.

In the Preliminary Determination, for the years 1997 through 2000, we used information published by the Bank of Thailand (BOT) and provided by the RTG. This interest rate information was reported monthly for the years specified; we calculated simple averages of the monthly data to obtain an annual average. For the Preliminary Determination, the RTG did not provide BOT information for the years 1995, 1996, and 2001 through 2003; therefore, we used the annual average long-term interest rate information from the International Monetary Fund's publication International Financial Statistics for those years.

At verification, we examined Respondents' long-term variable interest rate loans and confirmed that none of the Respondents had long-term, fixed-rate, baht-denominated loans during the relevant periods. See Memoranda from Thomas Gilgunn to File, Countervailing Duty

Investigation of Bottle Grade Polyethylene Terephthalate (PET) Resin from Thailand: Verification of the Questionnaire Responses Submitted by Bangkok Polyester Public Company Limited (BPC) (January 10, 2005)(BPC Verification Report); Countervailing Duty Investigation of PET Resin from Thailand: Verification of the Questionnaire Responses Submitted by Indopet (Thailand) Limited (Indopet), dated January 10, 2005 (Indopet Verification Report); Countervailing Duty Investigation of Bottle Grade Polyethylene Terephthalate (PET) Resin from Thailand: Verification of the Questionnaire Responses Submitted by Thai Shinkong Industry Company Limited (Thai Shinkong) (January 10, 2005) (Thai Shinkong Verification Report); and Countervailing Duty Investigation of PET Resin from Thailand: Verification of the Questionnaire Responses Submitted by Asiapet (Thailand) Limited (Asiapet), dated January 18, 2005 (Asiapet Verification Report). In addition, at verification, the BOT provided monthly interest rate information on commercial loans for the years 1995, 1996, and 2001 through 2003. See Countervailing Duty Investigation of PET Resin from Thailand: Verification of the Questionnaire Responses Submitted by the Royal Thai Government (January 10, 2005) (RTG Verification Report). This interest rate information was reported monthly for the years specified; we calculated simple averages of the monthly data to obtain an annual average. Accordingly, for the final determination we have used BOT interest rate information for the years 1995 through 2003.

Respondents and Petitioner provided comments regarding the Department's choice of discount rates. For a complete discussion, See "Comment 2: The Selection of the Discount Rate for Allocating Subsidies over Time" section, below. Based on our analysis of these comments and the information on the record of the proceeding, we are using annual average long-term interest rates as the discount rate for purposes of allocating non-recurring subsidies over time.

B. Allocation Period

Section 351.524(d)(2) of the Department's regulations states that 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 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 and the AUL from the IRS tables is significant.

As explained in the Preliminary Determination, because none of the Respondents had claimed that this AUL was not reasonable, the Department used an allocation period of 10 years, which is the AUL listed in the IRS tables for the PET Resin industry. See Preliminary Determination. Since the Preliminary Determination, none of the parties provided information to rebut the Department's presumption regarding the AUL. Neither did the Department's verification bring to light any information which rebuts the AUL presumption. Therefore, for the reasons set forth in the Preliminary Determination, we will continue to use the 10-year AUL as reported in the IRS

tables to allocate any non-recurring subsidies under investigation which were provided directly to BPC, Thai Shinkong, and Indopet.

C. Cross-Ownership and Attribution of Subsidies

In the Preliminary Determination, we noted that there might be a potential cross-ownership issue with respect to one of the respondent companies. At the time of the Preliminary Determination, we did not have enough information in the record to analyze this issue. Subsequent to the Preliminary Determination, we issued questionnaires and conducted verification. We gathered additional information in order to fully analyze this issue for the purposes of the final determination. In addition, we examined information with respect to this issue at verification. See Indopet Verification Report at 2-4; Asiapet Verification Report at 2-5; and RTG Verification Report at 6-10.

We have now fully analyzed the relationship between Indopet, Asiapet, and another one of Indopet's suppliers. Much of the factual information we analyzed is business proprietary. The full analysis is contained in Memorandum from Dana S. Mermelstein to Barbara E. Tillman, Countervailing Duty Investigation of Bottle Grade Polyethylene Terephthalate (PET) Resin from Thailand: Attribution of Subsidies Received by Related Companies to Indopet, dated March 14, 2005 (Attribution of Subsidies Memo), a public version of which is on file in the Central Records Unit (CRU). On the basis of this analysis, we conclude that Indopet's relationship with Asiapet meets the definition of cross-ownership provided in the Department's regulations at section 351.525(b)(vi), and discussed in detail in the Preamble to the regulations. See Countervailing Duties Final Rule, 63 FR 65347, 65401 (November 25, 1998) ("Preamble"). Therefore, we have attributed subsidies received by Asiapet to the sum of Indopet's sales of PET Resin and Asiapet's total sales (excluding its sales to Indopet). We also conclude that Indopet's relationship with its other supplier meets the definition of cross-ownership provided in the Department's regulations at Section 351.525(b)(vi), and discussed in detail in the Preamble to the regulations. See Preamble. However, evidence on the record of this investigation indicates that benefits received by this other supplier were tied to the production of products other than BG PET Resin or its inputs. As such, we have not attributed subsidies received by this other supplier to Indopet. See Attribution of Subsidies Memo.

D. Export Contingency

In the Preliminary Determination, we did not find the IPA to be an export subsidy *per se* because the IPA did not generally require an export commitment. As such, it was necessary to analyze the application and approval experiences of the individual companies to determine if, in law or in fact, the granting of “promoted” status was contingent on export performance. Based on an analysis of the record, we determined that Thai Shinkong’s and BPC’s “promoted” status was conditioned upon a legal obligation to export BG PET Resin. Therefore, we preliminarily determined that Thai Shinkong’s and BPC’s specific packages of IPA benefits were conditioned upon an export requirement and that all benefits received by Thai Shinkong and BPC under the IPA were specific as export subsidies within the meaning of section 771(5A)(B) of the Tariff Act of 1930 (the Act). For Indopet, we preliminarily determined that Indopet’s “promoted” status was conditioned upon a legal obligation to be located in Investment Zone 3. Thus, we found that the benefits to Indopet under the IPA are *de jure* specific as regional subsidies, within the meaning of section 771(5A)(D)(iv) of the Act.

Respondents and Petitioner provided comments regarding the Department’s export contingency findings. For a complete discussion, see “Comment 3: Whether the IPA Benefits for BPC, Thai Shinkong, Indopet, and Asiapet are Export Contingent” in the “Analysis of Comments” section, below. The record shows that, in December 1999, the Investment Promotion Certificates issued to Thai Shinkong and BPC were amended to remove the export requirements included in the initial certificates. This removal does not affect the export requirement for benefits approved for either Thai Shinkong or BPC prior to December 1999. For the reasons outlined below, we have determined that we need not reach a determination of whether benefits provided or granted to BPC and Thai Shinkong pursuant to the December 1999 amended certificates no longer constitute *de jure* export subsidies. In calculating the countervailable subsidies arising from benefits approved after December 1999, we find that, both in conducting the 0.5 percent test provided for in Section 351.524(b)(2) of the Department’s regulations, and in determining the countervailable subsidy, the choice of denominator is immaterial to the resulting overall countervailable subsidy rates. Any Section 28 benefits provided to Thai Shinkong or BPC in the years 2000 through 2003 fail the 0.5 percent test regardless of whether the denominator is the company’s total sales or total exports for the relevant years, and thus are expensed in the year of receipt and not allocated to the POI. With respect to Section 35 benefits for BPC, the data on the record show that, even if we continue to use the total exports denominator, the overall countervailable subsidy rate for BPC remains below the two percent threshold for making a final affirmative countervailing duty determination. Thus, for the purposes of this final determination, we are continuing to treat benefits provided to Thai Shinkong and BPC as export subsidies.

E. Denominator for *Ad Valorem* Subsidy Rates

When selecting an appropriate denominator for use in calculating the *ad valorem* countervailable subsidy rate, the Department considered the basis for the respondent companies’ approval for benefits under the IPA. In the Preliminary Determination, we found that the benefits approved

for all three respondent companies were tied to their production of BG PET Resin, the merchandise subject to this investigation. Therefore, we found that the production and sales of BG PET Resin was the companies' "promoted" business, and we found that the benefits were tied to sales of subject merchandise in accordance with section 351.525 of the Department's regulations. As noted in the Preliminary Determination, two of the companies were approved for IPA benefits contingent on the basis of specific exportation requirements, rendering their subsidies export subsidies. Thus, for Thai Shinkong and BPC, we found that the appropriate denominator for calculating the *ad valorem* countervailable subsidy rates was total exports of subject merchandise. See section 351.525 of the Department's regulations.

At the start of verification, Thai Shinkong, BPC, and Indopet submitted minor revisions to their total sales for various years. See BPC Verification Report, Thai Shinkong Verification Report, and Indopet Verification Report. For this final determination, we made the appropriate changes to Thai Shinkong's, BPC's, and Indopet's respective sales and exports.

Respondents and Petitioner provided comments on the denominator issue. For a complete discussion, see "Comment 4: The Selection of the Denominator for Calculating *Ad Valorem* Subsidy Rates" in the "Analysis of Comments" section, below. Based on analysis of these comments and information on the record, we find that the benefits approved for all three respondent companies are tied to their production of all PET Resin. Therefore, we have attributed the IPA benefits to either the companies' total exports or total sales of all PET Resin, in accordance with section 351.525 of the Department's regulations.

Based on our analysis, the appropriate denominators are as follows: export sales of PET Resin for BPC and Thai Shinkong; total sales of PET Resin for Indopet (for Section 28 benefits received directly by Indopet); and the sum of Indopet's total sales of PET Resin and Asiapet's total sales of PET Resin excluding all sales made to Indopet (for Section 28 benefits granted to Asiapet).

III. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

Investment Incentives Under the Investment Promotion Act (IPA)

The IPA is administered by the Board of Investment (BOI) and is designed to provide incentives to invest in Thailand. In order to receive IPA benefits, each company must apply to the BOI for a Certificate of Promotion, which specifies the goods to be produced, any specific conditions concerning production and sales, and the benefits approved. The approval of the application by the BOI confers "promoted" status on the recipient. Once granted "promoted" status, a company may receive IPA benefits including import duty exemptions, income tax exemptions, and other tax benefits under various sections of the IPA. All three respondent companies applied for and received "promoted" company status. Their Certificates of Promotion indicate the specific sections of the IPA under which they are eligible for benefits.

We have analyzed the information collected since the Preliminary Determination, and considered the parties' arguments with respect to the basis of our specificity finding for each company. As discussed in the "Export Contingency" section, above, regardless of whether we use as our denominator total exports or total sales, both to determine whether subsidies received in prior years should be allocated over time or expensed in the year of receipt, and to calculate the countervailable subsidy for both BPC and Thai Shinkong, we do not reach an affirmative countervailing duty determination. Therefore, we find that we need not reach a determination with respect to whether the removal of the export contingency requirement in 1999 amended certificates alters our specificity decision for all benefits granted subsequent to 1999. We continue to find that benefits provided up through 1999 constitute export subsidies. In addition, we are now making a finding with respect to Asiapet, the company which we have determined to have cross ownership with Indopet. See Attribution of Subsidies Memo. Our review of the Asiapet's and Indopet's submissions indicate that the relevant application and certificate did not include any export commitments. However, the relevant promotion certificates were granted based on the Asiapet's co-location with Indopet, in Zone 3. Therefore, Asiapet's benefits are regionally specific under section 771(5A) of the Act.

1. Duty Exemptions on Imports of Machinery Under IPA Section 28

IPA Section 28 allows companies to import machinery, equipment, and spare parts (fixed assets) with an exemption of import duties. In the Preliminary Determination, we found that Section 28 import duty exemptions provided a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue foregone that is otherwise due to the RTG. We found that the benefit is the extent to which the import charges paid by the companies as result of the program are less than what they would have paid in the absence of the program. See section 351.510(a) of the Department's regulations. Since these import duty exemptions were for the purchase of capital equipment, we treated these exemptions as non-recurring benefits in accordance with section 351.524(c)(2)(iii).

To measure the benefit allocable to the POI, we first conducted the "0.5 percent test" for each year a company received Section 28 import duty exemptions. See section 351.524(b)(2) of the Department's regulations. For each year in which a company received Section 28 import duty exemptions, we summed the value of the company's duty exemptions provided in that year and divided that sum by the relevant sales denominator for that year. The appropriate denominators are as follows: export sales of all PET Resin for BPC and Thai Shinkong; total sales of all PET Resin for Indopet (for Section 28 benefits received directly by Indopet); and the sum of Indopet's total sales of all PET Resin and Asiapet's total sales of all PET Resin excluding all sales made to Indopet (for Section 28 benefits granted to Asiapet). For a more detailed discussion of this analysis, see "Comment 4: The Selection of the Denominator for Calculating *Ad Valorem* Subsidy Rates" section, below.

As a result, we found that, for certain companies in certain years, Section 28 import duty exemptions should be allocated over time. For those years, we allocated the annual total

exemptions, in accordance with section 351.524(d) of the Department's regulations, to determine the Section 28 benefits attributable to the POI (see "Allocation Period" section above). In addition, for exemptions received during the POI that did not pass the "0.5 percent test," we recognized the total value of the exemptions as a benefit during the POI. For each company, we then summed the benefits allocable to the POI and divided that amount by the appropriate denominator (see "Denominator for *Ad Valorem* Subsidy Rates" section, above). Thus, we have determined a countervailable subsidy of 0.46 percent *ad valorem* for BPC, 0.40 percent *ad valorem* for Indopet/Asiapet, and 0.31 percent *ad valorem* for Thai Shinkong.

2. Additional Income Tax Deductions Under IPA Section 35

IPA Section 35 provides various income tax deductions and exemptions for "promoted" firms. Section 35(2) allows "promoted" companies a 50 percent reduction in income tax for an additional five years after the eight years of income tax exemptions under Section 31 expires. Section 35(3) allows "promoted" companies to deduct from taxable income double the cost of transportation, electricity, and water for 10 years after the "promoted" company first derives income. Section 35(4) allows for an additional deduction of 25 percent of the cost of installation and construction of the "promoted" facilities. During the POI, all three Respondents claimed benefits under Section 35(3) on their tax returns filed during the POI. None of the companies claimed the benefits available under Sections 35(2) or (4).

To measure the benefit for Section 35(3), we examined Thai Shinkong's, BPC's, and Indopet's 2002 tax returns, which were filed during the POI. We then determined the extent to which the countervailable tax deduction under Section 35(3) reduced the companies' taxable income by removing the Section 35(3) deductions claimed on the tax return filed during the POI. To the extent that a company was in a taxpaying position before and after we removed the Section 35(3) deductions from its tax calculation for 2002, we calculated the benefit by multiplying the Thai tax rate by the difference between the taxable income calculated by the company and the taxable income calculated after removing the Section 35(3) deductions. To the extent that a company in a tax loss position had taxable income after we removed the Section 35(3) deductions from the 2002 tax calculation, we calculated the benefit by multiplying the Thai tax rate by the taxable income resulting from our calculation.

To the extent that a company carried losses forward from prior years to offset taxable income in 2002, we removed prior year Section 35(3) deductions from the prior years' losses. If this removal resulted in taxable income in 2002, we then calculated the benefit by multiplying the Thai tax rate by that income. If the result was a tax loss, then the company received no benefit from this program during the POI. To determine the countervailable subsidy rate, we then divided each company's benefit by the appropriate denominator (see "Denominator for *Ad Valorem* Subsidy Rates" section, above). Thus, we determined the countervailable subsidy to be 0.27 percent *ad valorem* for BPC, 0.30 percent *ad valorem* for Indopet, and zero percent *ad valorem* for Thai Shinkong.

B. Programs Determined To Be Not Countervailable

Duty Exemptions on Imports of Raw and Essential Materials Under IPA Section 36

Section 36 provides companies with export-specific import duty and tax exemptions. Section 36(1) allows companies to import raw and essential materials that are incorporated into goods for export with exemptions on import duties. Thai Shinkong, BPC, and Indopet received duty exemptions on imports of raw and essential materials under Section 36(1). In our Preliminary Determination, we found that this program was not countervailable within the meaning of section 351.519(a)(4) of the Department's regulations. However, we also indicated that we would continue to examine the operation of this program to ensure that it meets the provisions of section 351.519 and ensure that imported inputs are consumed in production of exports, making normal allowance for waste. At verification, we examined the process by which the RTG determined that each company's respective BG PET Resin formula conformed with internationally accepted norms for PET Resin production. Moreover, we also verified that the manner in which the RTG administers this duty drawback program and the system it uses to monitor and track the consumption and/or re-export of goods imported, making normal allowance for waste, was reasonable and effective. See RTG Verification Report, Indopet Verification Report, Thai Shinkong Verification Report, and BPC Verification Report. Therefore, we determine that import duty exemptions on imports of raw and essential materials under IPA Section 36 are not countervailable.

C. Programs Determined To Be Not Used

We determined that the producers/exporters of BG PET Resin did not apply for or receive benefits during the POI under the programs listed below:

- 1. Import Duty Exemptions on Raw and Essential Materials Under IPA Section 30**
- 2. Corporate Income Tax Exemptions Under IPA Section 31**

For purposes of the Preliminary Determination, we relied on the RTG and respondent companies' responses to preliminarily determine non-use of the programs listed above. At verification, the Department confirmed that the respondent companies did not receive benefits from these privileges during the POI. See RTG Verification Report, Indopet Verification Report, Thai Shinkong Verification Report, and BPC Verification Report.

IV. TOTAL AD VALOREM RATES

The total net countervailable subsidy rate is 0.73 percent *ad valorem* for BPC, 0.31 percent *ad valorem* for Thai Shinkong, 0.70 percent *ad valorem* for Indopet, and 0.47 percent *ad valorem* for all other companies.

V. ANALYSIS OF THE COMMENTS

Comment 1: Whether the Department should apply Adverse Facts Available (AFA) to BPC

Petitioner argues that the Department should base its final determination with respect to BPC on facts available because the record of this investigation shows that BPC has failed to provide information requested by the Department in the form or manner requested. Petitioner states that section 776(a) of the Act provides that, if an interested party withholds or fails to provide information that has been requested by the Department by the deadlines for the submission of the information, or in the form or the manner requested, the Department shall make a determination based on the facts otherwise available in reaching its determination. Moreover, Petitioner contends that BPC has repeatedly and consistently provided incomplete responses to the Department's requests for information and, thus, the Department should determine that this company has failed to cooperate to the best of its ability and rely on adverse inferences with regard to BPC in determining the facts otherwise available.

Petitioner points to several instances in which they allege that BPC failed to provide information requested by the Department. Petitioner maintains that BPC provided an inaccurate translation of its IPA certificate initially and that BPC provided an accurate translation "two months later only when Petitioner pointed out the discrepancy." Petitioner also contends that even though BPC was required by the Thai tax authorities to submit an amended corporate tax return for 2002 after an audit was completed on May 28, 2004, BPC submitted the original, inaccurate 2002 tax return to the Department in its June 14, 2004, questionnaire response.

In addition, Petitioner contends that, at verification, BPC revised a substantial amount of information that it had previously provided to the Department. Specifically, Petitioner points out that, at verification, BPC revised its reported sales for 2003 and 1998; its long-term variable interest rate for U.S. dollar-denominated loans; the value of machinery it imported; and its hypothetical 2002 tax return. Petitioner argues that these changes were significant and cannot be considered "minor corrections" to information already on the record. Petitioner argues that the Department should reject this revised information and use adverse inferences to determine the facts otherwise available with respect to BPC.

According to BPC, section 776(b) of the Act provides that the Department may make an inference that is adverse to the interests of a respondent, if it determines that the respondent has failed to cooperate to the best of its ability to provide the Department with requested information. BPC contends that the facts of this case show that BPC cooperated fully with Department by submitting full, complete, and verifiable information in response to the Department's multiple requests for information.

BPC argues that the record of this investigation provides no basis for the application of facts otherwise available or the use of adverse inference in the selection of facts otherwise available.

According to BPC, Section 776(a)(2) the Act, provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(I), the Department shall, subject to section 782(d), use facts otherwise available in reaching the applicable determination.

According to BPC, the record shows that BPC responded to the Department's original questionnaire and three supplemental questionnaires in a complete and timely manner. BPC concedes that both the 2002 tax return and the translation of its IPA certificate which it submitted in its June 14, 2004 questionnaire response were subsequently corrected in later supplemental questionnaire responses. However, BPC argues, the fact that BPC made these two corrections to information it submitted during the course of responding to the Department's four questionnaires does not demonstrate that the responses were pervasively or persistently deficient.

BPC concedes that, at verification, BPC revised its reported sales for 2003 and 1998; its long-term variable interest rate for U.S. dollar-denominated loans; the value of machinery it imported; and its hypothetical 2002 tax return. (See BPC Verification Report.) However, Respondents maintain that these corrections were minor revisions to existing information and neither constitute "new information" nor should result in any modification to the Department's methodology. Moreover, BPC points out that the Department accepted and verified these minor corrections. Accordingly, BPC urges the Department to continue to rely on BPC's verified record information as the basis of its final determination.

Department Position: The record of this investigation does not provide a basis for the application of facts available or the use of adverse inferences in choosing from facts available with respect to BPC.

As both Petitioner and Respondents acknowledge, section 776(a)(2) of the Act provides that the Department shall use facts otherwise available if a respondent: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified. Furthermore, both parties agree that section 776(b) of the Act states that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information.

Specifically, the Department issued an initial questionnaire and three supplemental questionnaires to BPC. In these three supplemental questionnaires, the Department requested that BPC provide additional, clarifying information necessary to analyze whether the benefits it received under the IPA were countervailable. BPC's responses to these questionnaires were

timely. Moreover, BPC's responses provided adequate additional, clarifying information, including a revised 2002 tax return and a revised translation of its IPA certificate. As such, the application of facts available to BPC pursuant to sections 776(a)(2)(A) and (B) of the Act is not warranted.

The record also shows that, at verification, BPC submitted minor revisions to certain information in its questionnaire responses. At verification, Department officials questioned company officials regarding these revisions and in consultation, Department officials in Washington concluded that these minor revisions did not constitute "new information" but rather minor corrections of information already on the record. Department officials accepted and were able to verify all aspects of the information provided by BPC. (See BPC Verification Report.) Since BPC's submitted information was verified, the application of facts available to BPC pursuant to section 776(a)(2)(D) is not warranted. We note that as BPC has adequately provided information requested by the Department in a timely manner and in the form requested and such information has been verified, there is no basis to determine that BPC has significantly impeded this proceeding. Thus, the application of facts available to BPC pursuant to section 776 (a)(2)(C) is not warranted.

Comment 2: The Selection of the Discount Rate for Allocating Subsidies over Time

Respondents contend that, in the Preliminary Determination, the Department incorrectly used a Thai national average interest rate to allocate non-recurring benefits derived from Section 28 import duty exemptions. Respondents state that section 351.524(d)(3) of the Department's regulations provides the following hierarchy with respect to the selection of a discount rate: (A) the cost of long-term, fixed-rate loans of the firm in question, excluding any loans that the Secretary has determined to be countervailable subsidies; (B) the average cost of long-term, fixed rate loans in the country in question; or (C) a rate that the Secretary considers to be most appropriate. Based on this hierarchy, Respondents maintain that the Department should have used the company-specific actual long-term, fixed-rate loans for the purposes of calculating the Section 28 benefits.

Respondents contend that information regarding company-specific interest rates for long-term, fixed-rate loans is on the record. See Thai Shinkong's August 16, 2004, response at 10 and 13, BPC's August 19, 2004 response at 14, and Indopet's August 17, 2004, response at 11. Moreover, Respondents claim that the Department verified this company-specific loan information. See BPC Verification Report at 6; Thai Shinkong Verification Report at 6; and Indopet Verification Report at 7.

Respondents claim that the Department chose not to use the company-specific interest rates because the long-term, fixed-rate loan information at issue was for loans denominated in foreign currency rather than for Thai baht-denominated loans. Respondents concede that section 351.505 of the Department's regulations defines a comparable commercial loan as having similarities in structure, maturity, and currency to a government loan, but argue that the Department has

selected commercial loans that were not in the same currency for use as the discount rate in past cases. See Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55805 (August 23, 2003) (Brazil Wire Rod) and Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30636, 30640 (June 8, 1999) (Korean Stainless). Moreover, Respondents maintain that, in the preamble to the regulations, the Department states that while the Department places “primary emphasis on the three basic characteristics in determining whether particular loans are comparable to the government loan (structure, maturity, currency), it ‘recognizes that many characteristics could factor into a decision of whether a loan should be considered comparable to the government provided loan.’” See Preamble, 63 FR 65348, 65363. Thus, Respondents argue that the Department should use their company-specific loan information for calculating non-recurring benefits derived from Section 28 import duty exemptions.

Petitioner contends that in the Preliminary Determination, the Department correctly used national average baht-denominated interest rates to calculate non-recurring benefits from Section 28 import duty exemptions. Petitioner accepts the hierarchy presented in section 351.524(d)(3) of the Department’s regulations. However, Petitioner maintains that none of the Respondents provided a company-specific annual average cost of long-term fixed-rate loans in baht. Petitioner therefore argues that the Department correctly used national average interest rates in accordance with section 351.524(d)(3)(B) of the Department’s regulations.

Petitioner takes issue with the Respondents’ claim that BPC, Thai Shinkong, and Indopet provided loan information for long-term, fixed-rate loans as contemplated in section 351.524(d)(3)(A) of the Department’s regulations. Petitioner argues that to the contrary, the loan information which Respondents reported was for variable interest rate loans, and that such information is the only company-specific information on the record.

Moreover, Petitioner contends that in instances where a company has not reported loan information for a loan that can be used as a discount rate, the Department’s preference is to use the average cost of long-term fixed-rate loans in the country in question. See Pure Magnesium and Alloy Magnesium From Canada: Final Results of Countervailing Duty Administrative Reviews, 69 FR 55412 (September 14, 2004). See Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom, 69 FR 40869 (July 7, 2004) (Uranium from Germany, etc.) Petitioner therefore argues that, consistent with the regulations and established practice, the Department should continue to use the national average interest rate for long-term, fixed-rate loans as the discount rate.

Department Position: The record shows that the RTG calculates and collects import duties denominated in Thai baht. Thus, the benefits which result from this non-recurring subsidy are also denominated in Thai baht. Respondents provided company-specific interest rate information for loans that were long-term, at variable-rates, and denominated in foreign currencies. As such, the company-specific loans in question do not have the same structure or currency as

contemplated in sections 351.505(a)(2)(i) and 351.524(d)(3)(A) of the Department's regulations. Respondents' reliance on the Department's prior determinations is misplaced. In Brazil Wire Rod, the Department used, as discount rates, U.S. dollar-denominated commercial lending rates because it found that there was no long-term commercial financing in Brazilian currency. See Brazil Wire Rod, Unpublished Decision Memorandum at 5. That is not the case in this investigation, where, as described above, the record contains evidence on long-term, fixed-rate commercial financing denominated in Thai baht. Moreover, in Korean Stainless, the Department used foreign currency denominated loans to measure the benefit from subsidized loans that were also denominated in foreign currency. 64 FR at 30640. As such, using discount rates in the same currency in which the benefit is provided, is the Department's practice. For these reasons, we will continue to use long-term interest rate information published by the BOT and provided by the RTG for the years 1997-2000. We note that, at verification, the BOT provided long-term interest rate information for the years 1995, 1996, and 2001-2003. Therefore, for purposes of this determination, we will use the long-term interest rate information published by the BOT for the years 1995, 1996, and 2001-2003 instead of the annual average long-term interest rate information from the International Monetary Fund's publication International Financial Statistics that we used for those years in the Preliminary Determination.

Comment 3: Whether the IPA Benefits for BPC, Thai Shinkong, Indopet, and Asiapet are Export Contingent

Respondents contend that, in the Preliminary Determination, the Department erroneously found that all benefits received by Thai Shinkong and BPC under the IPA were specific as export subsidies within the meaning of section 771(5A)(B) of the Act. Respondents concede that the IPA promotion certificates awarded to Thai Shinkong and BPC in December 1994 and August 1995, respectively, were contingent upon each company's legal obligation to export PET Resin. Respondents maintain that the RTG repealed the export requirement for both Thai Shinkong and BPC in November 1999. See RTG Questionnaire Response (August 18, 2004) at Exhibit 4. Moreover, Respondents contend that the Department verified that the RTG removed the export requirement for both Thai Shinkong and BPC in 1999. (See RTG Verification Report.)

Therefore, Respondents argue that there is verified information on the record showing that the export requirement contained in both Thai Shinkong and BPC's certificates was terminated. Respondents argue that because of these changes, the Department can no longer find that Thai Shinkong's and BPC's IPA benefits are export subsidies pursuant under section 771(5A) of the Act.

Respondents maintain that it is the Department's practice not to countervail benefits granted under a program after the removal of an export requirement from said program. Specifically, Respondents contend that the Department has found that a program no longer constituted an export subsidy where the export performance requirement was removed from the program prior to a respondent company's application and approval for benefits under the program. See Final Affirmative Countervailing Duty Determination: Certain Hot- Rolled Carbon Steel Flat

Products from South Africa 66 FR 50412 (October 3, 2001) (Hot-Rolled from South Africa). Thus, Respondents argue that the Department should find that IPA benefits with respect to Thai Shinkong and BPC are not export subsidies within the meaning of section 771(5A) of the Act, and are not countervailable.

Petitioner contends that, in the Preliminary Determination, the Department correctly found that IPA benefits provided to Thai Shinkong and BPC were specific as export subsidies. Petitioner states that, according to section 771(5A)(B) of the Act, an export subsidy is “a subsidy that is, in law or in fact, contingent upon export performance alone or as 1 of 2 or more conditions.” Petitioner maintains that BPC’s application for “promoted” status included a commitment to export a portion of its PET Resin production. See BPC’s June 14, 2004, Questionnaire Response at Exhibit 4. Petitioner states that BPC’s original certificate granting it “promoted” status stated that it must export a certain percentage of its production. See BPC’s August 19, 2004 response at Exhibit 4. Petitioner maintains that, although Thai Shinkong’s certificate does not include an explicit stipulation to export, BOI Announcement 1/1993 mandated an export requirement of 50 percent for majority foreign-owned companies, such as Thai Shinkong. Moreover, Petitioner contends, the record shows that the BOI considered BPC’s and Thai Shinkong’s export performance when analyzing the companies’ respective applications for IPA benefits. See RTG Verification Report. Thus, Petitioner states that the Department correctly found that the benefits received by Thai Shinkong and BPC under the IPA were specific as export subsidies within the meaning of section 771(5A)(B) of the Act.

Petitioner contends the Respondents’ reliance on Hot-Rolled from South Africa is misplaced. Petitioner maintains that in Hot-Rolled from South Africa, the Department found that the tax program at issue did not constitute an export subsidy for a respondent company because the export performance requirement was removed from the tax program prior to the respondent company’s application for and approval for benefits under the program. See Hot-Rolled from South Africa. Petitioner contends that in the instant case, Thai Shinkong and BPC applied for and were granted IPA benefits subject to an export requirement which was not removed until several years after they were granted “promoted” status. See BPC’s July 26, 2004, response at 2 and Exhibit 2 and Thai Shinkong’s August 16, 2004 Questionnaire Response at Exhibit 2. Moreover, Petitioner argues that the RTG’s removal of the export contingency for BPC and Thai Shinkong in 1999 was merely a *pro forma* action. Petitioner maintains that, at the time the export contingency requirement was removed, Thai Shinkong and BPC were not required to re-qualify for benefits under the program by submitting a new application or otherwise reapplying for IPA benefits. As a result, Petitioner contends that the BOI’s removal of the export requirement in 1999 did not have any practical implication for the government’s expectation that each promoted PET Resin producer would continue to focus on exporting. Thus, Petitioner maintains that Thai Shinkong’s and BPC’s promoted status remained contingent on their qualification under the conditions in their original BOI Certificates.

Moreover, Petitioner argues that, although the export requirement may have been removed, the BOI continues to favor projects for approval that “earn foreign exchange.” See Petition For The

Imposition of Antidumping and Countervailing Duties on Behalf of The United States PET Resin Producers Coalition (March 24, 2004) (“Petition”) at Exhibit 38, Section 2. Petitioner also contends that, although Indopet’s benefits were not deemed export contingent in the Preliminary Determination, the Department should rely on evidence examined at verification and find that Indopet’s IPA benefits also constituted an export subsidy. See RTG Verification Report at 8-9.

Petitioner therefore argues that the Department was correct in finding that IPA benefits received by Thai Shinkong and BPC are export subsidies and, as such, are countervailable. Petitioner argues that Department should also find that Indopet’s benefits are export subsidies for the final determination. Petitioner contends that, if the Department finds that IPA benefits do not constitute export subsidies, the Department should find that IPA benefits with respect to Indopet, Asiapet, Thai Shinkong, and BPC are regional subsidies pursuant to section 771(5A)(D)(iii) of the Act, and should urge the Department to find the benefits received under the IPA program to be countervailable.

Department Position: Pursuant to section 771 (5A)(B) of the Act, an export subsidy is “a subsidy that is, in law or in fact, contingent upon export performance alone or as 1 of 2 or more conditions.” The record of this investigation shows that export performance was a condition for both BPC’s and Thai Shinkong’s approval for IPA benefits. Therefore, we conclude that the benefits granted to Thai Shinkong and BPC under the IPA were specific as export subsidies within the meaning of section 771(5A)(B) of the Act.

The facts of the instant case show that Thai Shinkong and BPC applied for and were granted IPA benefits on an export contingent basis in 1994 and 1995, respectively, and that Investment Promotion Certificates under which both companies were granted benefits were modified by the RTG in December 1999. This modification eliminated the clause from both companies’ certificates which contained the export contingency. These facts differ from those under investigation in Hot-Rolled from South Africa. As Respondents correctly note, in that case, the program’s export contingency was removed prior to the respondent’s application and approval for benefits. Thus, we have not followed Hot-Rolled from South Africa in this case.

However, we must consider whether the RTG’s subsequent removal of the export contingency for BPC and Thai Shinkong in December 1999 alters the specificity analysis. As discussed in the “Export Contingency” section, above, regardless of whether we use as our denominator total exports or total sales, both to determine whether subsidies received in prior years should be allocated over time or expensed in the year of receipt, and to calculate the countervailable subsidy for both BPC and Thai Shinkong, the subsidies fail the 0.5 percent test and the overall countervailable subsidy rate remains below two percent, or *de minimis* for Thailand. Accordingly, we would not reach an affirmative countervailing duty determination. Therefore, we find that we need not reach a determination with respect to whether the removal of the export contingency requirement in 1999 amended certificates alters our specificity decision for all benefits granted subsequent to 1999. We continue to find that benefits provided up through 1999 constitute export subsidies.

In the Preliminary Determination, we determined that Indopet's benefits were not export contingent. Petitioners have argued that, based on results of verification, the Department should attribute Asiapet's subsidies to Indopet and that those subsidies should be deemed export-specific. Because we have decided that Asiapet's subsidies should be attributed to Indopet, we must also address whether the supplier's subsidies are contingent upon export within the meaning of section 771(5A)(B) of the Act. We have examined Asiapet's promotion certificate and it shows no specific requirement to export. However, Indopet's "promoted status" part of which was transferred to Asiapet, was conditioned upon a legal obligation to be located in Investment Zone 3. As such, we are treating Asiapet's subsidies to be *de jure* specific as regional subsidies, within the meaning of section 771(5A)(D)(iv) of the Act.

Comment 4: The Selection of the Denominator for Calculating *Ad Valorem* Subsidy Rates

Respondents contend that, in the Preliminary Determination, the Department incorrectly used the total sales of Bottle-Grade PET Resin as Indopet's denominator and total exports of subject merchandise as the denominator for Thai Shinkong and BPC.

Respondents argue that the Department's methodology is contradicted by its regulations and past practice. Respondents state that section 351.525(a) of the regulations directs the Department to select an appropriate denominator based upon the respondent company's sales value during the POI of the product or products to which the subsidy is attributed. Respondents maintain that, pursuant to section 351.525(b)(5) of the regulations, if the Department finds that a subsidy is tied to the production of a particular product, then the Department will attribute the subsidy to sales of that product. Respondents further maintain that, in instances where subsidies benefit the firm's total production and sales, the Department will attribute the subsidy to sales of all products of the company.

Respondents contend that the Department's practice is "to capture every part of the sales transaction that could benefit from subsidies" in the total denominator." See General Issues Appendix, Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062 (July 9, 1993). Respondents, therefore, maintain that the Department's practice includes an analysis of the basis for the benefits involved and whether these benefits are in fact provided to the sales of the subject merchandise only or to all products sold by the company. Respondents state that in cases where the Department has found that benefits were provided to the production of subject and non-subject merchandise, the Department has selected total sales of all products as the denominator. See Certain Pasta From Italy: Final Results of the Fourth Countervailing Duty Administrative Review, 66 FR 64214 (December 12, 2001)(Pasta from Italy); Final Affirmative Countervailing Duty Determination: Certain Cut- to-Length Carbon-Quality Steel Plate From Italy, 64 FR 63244, 73274 (December 29, 1999); see Uranium from Germany, etc. Respondents also contend that the Department has attributed the benefits of all subsidies received by a company to its sales of all products when the Department found that the benefits were tied to the company's production and sale of all products, rather than only to subject merchandise. See Pasta from Italy.

Respondents recall that, in the Preliminary Determination, the Department found that IPA benefits for Respondents were tied to their production of subject merchandise. However, Respondents argue that these IPA benefits are not only attributable to the subject merchandise, but apply to the production of all PET Resin. Respondents argue that the BOI certificates issued under the IPA to Indopet, Thai Shinkong, and BPC specifically state that they are “for the manufacture of PET Resin.” See Indopet’s June 14, 2004, Questionnaire Response at 12 and Exhibit 4, Thai Shinkong’s June 14, 2004, Questionnaire Response at 8, 14 and Exhibit 4, and BPC’s June 14, 2004, Questionnaire Response at 8 and Exhibit 3. Respondents contend that these BOI Certificates do not specify a particular type of PET Resin by viscosity, and therefore do not cover only the subject BG PET Resin. Therefore, Respondents argue that IPA benefits apply to sales of all PET Resin.

Thus, Respondents contend that, for all Respondents, the total sales of PET Resin (bottle grade and non-bottle grade), should be used for computation of benefits. Moreover, Respondents argue that if, in the case of Thai Shinkong and BPC, the Department finds an export subsidy, the Department should use the total export sales of all PET Resin as its denominator.

Petitioner contends that, in the Preliminary Determination, the Department correctly found the Respondents’ approvals for benefits were tied to each company’s production of the subject merchandise. Moreover, Petitioner maintains that because the subsidies provided to Thai Shinkong and BPC are contingent upon exports, the correct denominator should be export sales of subject merchandise.

Petitioner states that section 351.525 of the Department’s regulations provides that the Department considers the basis for the Respondent companies’ approval for IPA benefits when selecting the appropriate denominator for use in calculating the countervailable subsidy rate. Petitioner contends that the Respondents’ applications for promotion as well as information provided in their questionnaire responses make it clear that the production and sale of BG PET Resin are these companies’ “promoted” business, and the benefits granted to the companies are tied to the production and sale of BG PET Resin. See Indopet’s June 14, 2004 response at Exhibit 5, Thai Shinkong’s August 16, 2004 response at Exhibit 1 and 2, and BPC’s June 14, 2004 response at III-4 and Exhibit 4 and 10.

Thus, Petitioner contends it is clear that the production and sale of BG PET Resin are the “promoted” business of Indopet, Thai Shinkong, and BPC. Moreover, because the IPA subsidies provided to Thai Shinkong and BPC are export subsidies, the appropriate denominator for Thai Shinkong and BPC is export sales of Bottle Grade PET Resin.

Department Position: Section 351.525(a) of the regulations directs the Department to select an appropriate denominator based upon the respondent company’s sales value of the product or products to which the subsidy is attributed. Section 351.525(b)(5) of the Department’s

regulations directs that if the Department finds that a subsidy is tied to the production of a particular product, then the Department will attribute the subsidy to sales of that product.

Based on our analysis of the promotion certificates, we have determined that the benefits each company received are tied to the production of PET Resin and not expressly to BG PET Resin. Specifically, the Department has found Sections 28 and 35(3) of the IPA to be countervailable.

As discussed above, Section 35(3) provides benefits in the form of double deductions from taxable income of transportation, electricity, and water costs. Under the RTG tax code, promoted companies are required to maintain separate accounts for promoted and non-promoted business activities. Indeed, the tax returns submitted by Indopet, BPC, and Thai Shinkong to the RTG had separate columns in which they reported income and expenses for promoted business activities and non-promoted business activities separately. In their respective tax returns, Indopet, Thai Shinkong, and BPC reported revenue and expenses associated with the sales and production of all PET Resin products as promoted business activity. Conversely, the companies only reported non-operational revenue and expenses (*i.e.*, investments, interest, dividends, etc.) in the non-promoted business column of their tax returns. Moreover, the RTG allowed Indopet, Thai Shinkong, and BPC to claim Section 35(3) double deductions for expenses related to the production of all PET Resin products. Thus, pursuant to section 351.525(a) of the Department's regulations, we find the appropriate denominator for the benefits received by each company is the total sales or exports of PET Resin produced by that company. See section 351.525 of the Department's regulations.

Comment 5: The Appropriate Method for Calculating Section 35(3) Benefits

BPC argues that the Department's finding that BPC received a benefit under Section 35(3) of the IPA during the POI failed to take into account that BPC was in a tax loss position for 2002. Respondent maintains that, in its Preliminary Determination, the Department set forth the following methodology for measuring benefits under the 35(3) program: "to the extent that a company carried losses forward from prior years to offset taxable income in 2002, the Department removed prior year Section 35(3) deductions from the prior years' losses. If the result was a tax loss, then the company received no benefit from this program during the POI." Respondent maintains that at verification, BPC corrected and the Department confirmed the amount of BPC's loss carry forward excluding prior years' Section 35(3) benefits. Respondent argues that, even after removing Section 35(3) benefits from prior years' loss carry forward, BPC was in a tax loss situation during the POI. Therefore, Respondent argues, the Department should revise its calculation and find that BPC did not receive Section 35(3) benefits during the POI. Specifically, the Department should calculate the total loss for 2002 (excluding Section 31 and 35 benefits) by subtracting the prior year loss carry forward (excluding Section 35 benefits) from total net revenues for 2002.

Petitioner maintains that the Department's "guiding principle with regard to companies incurring losses and loss carry forwards would be to treat as a countervailable benefit the difference

between the taxes a company actually pays and the taxes it would have paid if it had not incurred a loss or a diminished profit as a result of a loss carryforward.” See Extruded Rubber Thread from Malaysia: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 57 FR 38472 (August 25, 1992). Petitioner argues that the Department’s methodology for measuring Section 35(3) benefits did not provide for the netting out of any double deductions for electricity, water, and transportation attributable to 2002 business activity and claimed on the 2002 tax form. Petitioner also argues that, to the extent that loss carry forwards were claimed on the 2002 tax form, the Department should consider that the subsidies earned in previous years for Section 35(3) benefits would be claimed first and that any such carry forwards would be considered subsidies that provide benefits during the POI.

Petitioner proposes that the Department change its calculations as follows: subtract net taxable income (loss) after applying IPA excess deductions claimed for 2002 activity; add net taxable (income) loss after applying prior year loss carry forward (excluding Section 35 benefits); multiply net income (loss) by Thai tax rate of 30 percent; divide “total taxes” saved by 2003 export sales.

Respondent argues that Petitioner’s proposed calculation methodology does not calculate “anything of relevance.” Moreover, Respondent maintains that the Department’s Section 35(3) methodology was correct for the following reasons: it eliminated current year 35(3) benefits; it eliminated prior year Section 35 benefits; it determined whether the company would have a profit or loss; it determined that, if the company had a loss after the effect of all current year and prior year Section 35 benefits were removed, the company did not enjoy Section 35 benefits; and it determined that if the company would have had a profit after the effect of all current year and prior year Section 35 benefits were removed, that profit would be multiplied by the Thai Corporate tax rate of 30 percent to calculate the benefits received by that company.

Department Position: We have not changed our calculation of Section 35(3) benefits for this final determination. Consistent with section 351.509(a)(1) of the Department’s regulations, we have treated as a countervailable benefit the difference between the taxes a company actually paid and the taxes it would have paid absent the use of the countervailable tax deductions. To determine whether there was such a difference, we examined both whether the company had incurred a loss or a diminished profit as a result of current year Section 35(3) deductions and whether prior year Section 35(3) deductions, as part of a loss carry forward, affected the company’s current year taxable income. We determined the extent to which the countervailable tax deduction under Section 35(3) reduced the companies’ taxable income by removing the Section 35(3) deductions claimed during the POI on its 2002 tax return as follows. To the extent that a company in a tax loss position had taxable income after we removed the current year Section 35(3) deductions from the 2002 tax calculation, we calculated the benefit by multiplying the Thai tax rate by the taxable income resulting from our calculation. To the extent that a company carried losses forward from prior years to offset taxable income in 2002, we removed prior year Section 35(3) deductions from the prior years’ losses. If this removal resulted in taxable income in 2002, we then calculated the benefit by multiplying that income by the Thai

tax rate. If the result was a tax loss, then the company received no benefit from this program related to prior year section 35(3) deductions during the POI. To determine the countervailable subsidy rate, we divided each company's benefit by the appropriate denominator. See "Denominator for *Ad Valorem* Subsidy Rates" section, above.

Comment 6: Whether Cross-Ownership Between Indopet and Indopet's Suppliers Exists

Petitioner and Respondents have commented on whether of Indopet is cross-owned with other companies and whether those companies' subsidies should be attributed to Indopet. However, the details of both parties' comments are business proprietary. A full discussion of the parties' arguments is contained in the Attribution of Subsidies Memo, a public version of which is on file in the Central Records Unit, B-099 (CRU).

Department Position: We have now fully analyzed the relationship between Indopet, Asiapet, and another supplier to Indopet. The factual information we analyzed and the results of our analysis are business proprietary. The full analysis is contained in the Attribution of Subsidies Memo, a public version of which is on file in the CRU. Based on our analysis, we have attributed subsidies received by Asiapet to Indopet's production; we have not attributed subsidies received by the other supplier to Indopet.

Comment 7: Whether or not Indopet, Thai Shinkong, and BPC Used Section 35(4) Benefits

Petitioner contends that Indopet, Asiapet (Indopet's supplier), BPC, and Thai Shinkong were granted benefits under Section 35(4) of the IPA, which provides for the deduction from net profit of 25 percent of certain installation or construction costs, over and above normal depreciation, for a period of 10 years from the date of the first sale. Petitioner argues that because Indopet, Asiapet, Thai Shinkong, and BPC each built PET Resin production facilities, each would be expected to have incurred substantial construction expenses which would have qualified for additional deductions pursuant to Section 35(4) and that these deductions would have contributed significantly to each company's loss carry forwards. Petitioner maintains that none of the responding companies provided any information with respect to their Section 35(4) benefits.

Specifically, Petitioner contends that Indopet failed to show the effect of its tax status if the benefits received under Section 35(4) were removed. Petitioner argues that Indopet must have incurred substantial construction expenses related to building its production facilities. Petitioner contends that Indopet failed to show the effect of the removal of the additional 25 percent deduction for construction expenses provided for in Section 35(4). Petitioner maintains that Section 35(4) benefits should have been recorded in the "Details of Tax Exempt Income or Additional Deduction" section under "Other Adjustments" in Indopet's tax returns. Petitioner contends that expense amounts appear in the "Details of Tax Exempt Income or Additional Deduction" section under "Other Adjustments" in Indopet's 2001 and 2002 tax returns, but that Indopet "selectively excluded" in the "Details of Tax Exempt Income or Additional Deduction" section under "Other Adjustments" on its tax returns for 1995-2000.

Petitioner also contends that Thai Shinkong and Asiapet were also approved for Section 35(4) benefits. Petitioner maintains that Thai Shinkong's and Asiapet's Section 35(4) benefits should have been recorded in the "Details of Tax Exempt Income or Additional Deduction" section under "Other Adjustments." Petitioner notes that neither company recorded its Section 35(4) benefits on tax returns submitted to the Department. Therefore, Petitioner argues that BPC, Thai Shinkong, and Indopet did not show with precision the Section 35(4) benefits claimed, with respect to the 25 percent construction deduction. Thus, Petitioner contends that the Department should apply adverse inferences to BPC, Thai Shinkong and Indopet with respect to the unreported construction deductions.

Respondents concede that BPC, Indopet, and Thai Shinkong were granted section 35(4) privileges by the BOI. However, Respondents maintain that the additional deduction allowed under Section 35(4) applies only to construction expenses for infrastructure such as roads, ports, electrical grids, and water systems. Respondents never claimed or received any Section 35(4) benefits because they only incurred expenses related to the construction of their production facilities and not any related to the types of infrastructure construction expenses covered by Section 35(4).

Moreover, Respondents argue that the Department thoroughly verified all components of BPC's Thai Shinkong's, and Indopet's questionnaire responses with respect to Section 35 benefits claimed during and prior to the POI. Respondents maintain that the Department examined all aspects of the expenses recorded in Item 10 sub-item 4 of Indopet's 2001 and 2002 tax returns and determined that they were not related to Section 35(4) additional deductions. Moreover, Respondents take issue with Petitioner's claim that Indopet selectively excluded Item 10 sub-item 4 from its 1995- 2002 tax returns. Respondents maintain that the Department verified that the format of the Thai tax form changed after 2000. Moreover, Respondents argue that the Department thoroughly examined all aspects of Section 35 benefits claimed by all Respondents and confirmed that none of the Respondents claimed or received Section 35(4) benefits. Thus, Respondents argue that there is no basis to apply adverse inferences to Indopet, Thai Shinkong, or BPC with respect to Section 35(4).

Department Position: Petitioners argue that we should apply adverse inferences to Indopet, Thai Shinkong, and BPC is based on the position that Indopet, Thai Shinkong, or BPC withheld information with respect to Section 35(4) and/or that information was not verifiable pursuant to sections 776(a)(2)(A) and (C) of the Act. An examination of the record of this investigation demonstrates that there is no basis for the application of facts available with respect to Section 35(4) benefits for Indopet, Thai Shinkong, or BPC.

BOI announcement 4/2537 states that Section 35(4) of the IPA allows for an additional deduction of installation and construction costs for: transportation systems (*i.e.*, roads, ports, railways); and infrastructure directly related to the promoted activity (*i.e.*, electric grid or water system). (See exhibit 20 of the RTG's June 14, 2004 response.) Each of the respondent companies maintains that none of its construction expenses were related to the type of infrastructure construction

which qualifies for an additional Section 35(4) benefit and, as such, it did not claim or receive Section 35(4) benefits on any of its tax returns filed with the RTG. At verification, we examined each company's financial and accounting records and found no evidence that any of the companies had availed itself of Section 35(4) benefits for its 2002 business activity. Moreover, we examined each company's tax returns for the years 2002 and found that none had claimed Section 35(4) benefits in 2002. Finally, we thoroughly examined each company's loss carry forward calculations and determined that none of the companies' loss carry forwards included any Section 35(4) claims.

As such, Respondents have provided all information requested by the Department with respect to Section 35(4) and that information was verifiable. Therefore, the application of facts available to Indopet, Thai Shinkong, or BPC pursuant to sections 776(a)(2)(A) and (C) of the Act is not warranted, and there is no basis to apply adverse inferences to Indopet, Thai Shinkong, or BPC with respect to Section 35(4). Further, we determine that none of the respondent companies used Section 35(4) during the POI.

VI. RECOMMENDATION

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

Agree _____

Disagree _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date