

June 7, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Countervailing Duty Administrative Review of Carbazole Violet
Pigment 23 (CVP-23) from India

I. Summary

We have analyzed the case brief submitted by the company respondent, Alpanil Industries, Ltd. (Alpanil) in response to the preliminary results of this review. See Carbazole Violet Pigment 23 from India: Preliminary Results of Countervailing Duty Administrative Review, 75 FR 977 (January 7, 2010) (Preliminary Results). We did not receive any comments from any other parties; neither did we receive a request for a hearing. The domestic interested parties in this case are Nation Ford Chemical Company and Sun Chemical Corporation, petitioners in the original investigation.

The “Subsidies Valuation Information” and the “Analysis of Programs” sections below set forth our determinations with respect to the programs under review as well as the methodologies applied in analyzing these programs. These sections are followed by the “Analysis of Comments” section, which contains the Department of Commerce’s (the Department) response to the issues raised in the case brief. We recommend that you approve the positions described in this memorandum.

These are the issues raised by Alpanil in its case brief:

Comment 1: Whether Pre-Shipment Loans Provided a Benefit to Subject Merchandise

Comment 2: Whether Certain Shortfall Amounts Were Incorrectly Included in the DEPBS Benefit Calculation

II. Subsidies Valuation Information

Period of Review (POR)

The period for which we are measuring subsidies (the POR) is January 1, 2007 through December 31, 2007.

Benchmark Interest Rates

For programs requiring the application of a benchmark interest rate or discount rate, 19 CFR 351.505(a)(1) states a preference for using an interest rate that the company could have obtained on a comparable loan on the market. Also, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient “could actually obtain on the market” the Department will normally rely on actual short-term and long-term loans obtained by the firm. However, when there are no comparable commercial loans, the Department may use a national average interest rate, pursuant to 19 CFR 351.505(a)(3)(ii).

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a government-provided, short-term loan program, the preference would be to use a company-specific annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. For this review, the Department required a rupee-denominated short-term loan benchmark rate to determine benefits received under the Pre-Shipment and Post-Shipment Export Financing program. For further information regarding this program, see the “Pre-Shipment and Post-Shipment Export Financing” section below.

Alpanil did not have any rupee-denominated short-term loans outstanding during the POR. Therefore, for these final results, in accordance with 19 CFR 351.505(a)(3)(ii), the Department continues to use a national average rupee-denominated short-term interest rate, as reported in the International Monetary Fund’s publication, International Financial Statistics as the benchmark to determine if Alpanil received benefits under the pre-shipment export financing program.

II. Analysis of Programs

A. Programs Determined to be Countervailable

1. Pre-Shipment and Post-Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or “packing credits,” to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes (i.e., purchasing raw materials, warehousing, packing, transportation, etc.) for merchandise destined for exportation. Companies may also establish pre-shipment credit lines upon which they can draw as needed. Limits on credit lines are established by commercial banks and are based on a company's creditworthiness and past export performance. Credit lines may be denominated either in Indian rupees or in a foreign currency.

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to the lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of the proceeds from the sale to the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize proceeds from their export sales within 180 days of shipment. Post-shipment financing is, therefore, a working capital program used to finance export receivables. In general, post-shipment loans are granted for a period of not more than 180 days.

Alpanil reported that it did not have any post-shipment loans on which principal or interest was outstanding during the POR. Alpanil reported it had pre-shipment loans outstanding during the POR, but claimed that this program was not used with respect to its sales destined for the United States. However, Alpanil did not demonstrate that the loans were only for shipments to countries other than the United States. See Preliminary Results at “Pre-Shipment and Post-Shipment Export Financing.” As we have in past countervailing duty cases involving India, in the Preliminary Results we found that this export financing is countervailable to the extent that the interest rates set by the GOI are lower than the rates exporters would have paid on comparable commercial loans. See, e.g., Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) From India, 67 FR 34905 (May 16, 2002), and accompanying Issues and Decision Memorandum (PET Film Final Determination), at “Pre-Shipment and Post-Shipment Financing;” see Commodity Matchbooks From India: Final Affirmative Countervailing Duty Determination, 74 FR 54547 (October 22, 2009) and accompanying Issues and Decision Memorandum (Matchbooks Final Determination), at “Pre-Shipment and Post-Shipment Export Financing;” see also Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 from India, 69 FR 67321 (November 17, 2004), and accompanying Issues and Decision Memorandum (CVP-23 Final Determination), at “Pre-Shipment Export Financing.” None of the information or argument provided since the Preliminary Results warrant the reconsideration of this finding. See comment 1 below.

With regard to pre-shipment loans, the benefit conferred is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan (i.e., the short-term benchmark). Because we have determined that pre-shipment export financing is not tied to exports of subject merchandise, we calculated the subsidy rate for these loans by first subtracting the interest Alpanil actually paid on its pre-shipment export loans from the interest Alpanil would have paid using the short-term benchmark rate. See ‘Benchmark Interest Rates’ section above. We summed these differences to determine the total benefit from the program and then divided the benefit by the value of Alpanil’s total exports during the POR. See 19 CFR 351.525(b)(2). On this basis, we determined the net countervailable subsidy from pre-shipment export financing for Alpanil to be 0.80 percent ad valorem during the POR.

2. Duty Entitlement Passbook Scheme (DEPBS)

The DEPBS program enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPBS credits on a post-export basis, provided that the GOI has established a Standard Input Output Norm (SION) for the exported product. DEPBS credits can be used to pay import duties for any subsequent imports, regardless of whether they are consumed in the production of an exported product. DEPBS credits are earned at the time of export and are valid for twelve months and are transferable after the foreign exchange is realized from the export sales on which the DEPBS credits are earned. With respect to subject merchandise, the GOI has established a SION. See CVP-23 Final Determination at “Duty Entitlement Passbook Scheme.” Therefore, CVP-23 exporters were eligible to earn DEPBS credits. Alpanil reported that the rate at which they earned DEPBS credits was 5 percent for the period January 1 through March 31, 2007, and 7 percent for the period April 1 through December 31, 2007.

As we have in past cases, in the Preliminary Results, the Department found that DEPBS is countervailable. See, e.g., PET Film Final Determination at “DEPS;” see Matchbooks Final Determination at “Duty Entitlement Passbook Scheme;” see also CVP-23 Final Determination at “Duty Entitlement Passbook Scheme.” None of the information or argument provided since the Preliminary Results warrant the reconsideration of this finding. See comment 2 below. In accordance with 19 CFR 351.519(b)(2), we find that benefits from DEPBS are conferred as of the date of exportation of the shipment for which the pertinent DEPBS credits are earned. Therefore, we calculate the benefit on an “as-earned” basis upon export because DEPBS credits are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis, and it is at this point that recipients know the exact amount of the benefit (e.g., the duty exemption). See also, e.g., Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India, 64 FR 73131, 73134 (December 29, 1999) (CTL Plate from India), and accompanying Issues and Decision Memorandum, at Comment 4. See also Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 75672 (December 12, 2008), and accompanying Issues and Decision Memorandum, at “Duty Entitlement Passbook Scheme.”

Alpanil reported that it earned post-export credits on shipments of subject merchandise under the DEPBS program during the POR. Alpanil also reported that it paid required application fees for each DEPBS license associated with its export shipments during the POR. We recognize that these fees provide an allowable offset to DEPBS benefits in accordance with section 771(6)(A) of the Act. We calculated the DEPBS program rate by multiplying the FOB value of each export shipment of subject merchandise to the United States by the relevant percentage of DEPBS credit allowed under the program during the POR. We then subtracted, as an allowable offset, the application fees paid for the licenses for the post-export credits earned on exports of subject merchandise to the United States, in accordance with section 771(6) of the Act. Finally, we took the total value of the licenses attributable to subject merchandise, net of application fees paid, and divided it by Alpanil’s exports of subject merchandise to the United States during the POR. On this basis, we determined Alpanil’s countervailable subsidy from the DEPBS program to be 6.99 percent ad valorem.

B. Programs Determined To Be Not Used

Based on the questionnaire responses, we determined that Alpanil did not apply for or receive benefits during the POR under the programs listed below:

1. Export Promotion Capital Goods Scheme (EPCGS)
2. Export Processing Zones (EPZs) / Export Oriented Units (EOUs) Programs
3. Income Tax Exemption Scheme (Sections 10A and 10B)
4. Market Development Assistance
5. Special Imprest Licenses
6. Duty Free Replenishment Certificate
7. Advance License Scheme
8. State of Gujarat (SOG) Sales Tax Incentive Scheme
9. State of Maharashtra (SOM) Sales Tax Incentive Scheme

C. Program Determined To Be Terminated

Income Tax Exemption Scheme 80 HHC

In the CVD investigation of CVP-23, the Department determined that deductions of profit derived from exports under section 80HHC of India's Income Tax Act were countervailable. See CVP-23 Final Determination, at "Programs Determined to Confer Subsidies." In this review, Alpanil stated that the GOI has discontinued the income tax exemption scheme 80 HHC effective April 1, 2004. The GOI has reported that this scheme was available only until March 31, 2004. In addition, Alpanil reported that this program has not been replaced by another program, and that there are no residual benefits accruing due to the exports of CVP-23 from India under this program. The Department found in another case that this program had been terminated effective March 31, 2004, with no residual benefits, and that no replacement program had been implemented. See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 72 FR 6530 (February 12, 2007), and accompanying Issues and Decision Memorandum (PET Film India 2004 CVD Review), at "Income Tax Exemption Scheme 80HHC (80HHC)."

In the Preliminary Results, the Department found there was no information on the record of this proceeding to contradict the determination in PET Film India 2004 CVD Review that the program had been terminated. Therefore, pursuant to 19 CFR 351.526(d), we find that this program has been terminated.

IV. Analysis of Comments

Comment 1: Whether Pre-Shipment Loans Provided a Benefit to Subject Merchandise

Alpanil argues that the Department has wrongly concluded that Alpanil received pre-shipment export financing for sales to the United States. According to Alpanil, the loans that Alpanil received that were outstanding during the POR were not tied in any way to Alpanil's U.S. sales, and therefore, did not provide a benefit to subject merchandise. Alpanil states that loans received under this program are obtained by demonstrating to the Government that the company has secured a specific export sale, and further, the exporter must present documentation evidencing a specific export order in order to obtain the loan. Alpanil further states that based on the security represented by that sale, the Government grants a loan that is repaid from the proceeds of the sale. As such, Alpanil contends, every loan can be traced to a sale made to a particular market, and that evidence on the record demonstrates that there were no pre-shipment loans in connection with U.S. sales. Therefore, Alpanil urges the Department to find that Alpanil did not realize any benefit from this program.

Department Position:

In the Preliminary Results, the Department found that Alpanil did not demonstrate that the loans outstanding during the POR were only for shipments to countries other than the United States. In its case brief, Alpanil has not explained how the record demonstrates that these loans are tied to a particular market or that they are not tied to the United States, other than making a general claim that it did not apply for or receive loans under this program against export orders to the United States. As we stated in the Preliminary Results, while Alpanil was able to demonstrate that none of its pre-shipment loans were provided for exports to the United States in the original investigation, the documentation provided by Alpanil in the instant review did not demonstrate that the loans were only for shipments to countries other than the United States. The Department specifically asked Alpanil to tie each borrowing to an export order during the POR and to identify the destination of the export sales. In response, Alpanil referred the Department to a sample document ("Form A," containing details of the specific export order) that, according to Alpanil, contained the relevant information upon which the pre-shipment loan was released by the bank. However, this document pertained to only one specific loan out of more than sixty loans outstanding during the period of review. Alpanil did not provide information with regard to the remaining loans. Alpanil further stated that the spreadsheet it provided contained details showing how the loans were tied to a particular export sale; however, in our review of the spreadsheet, we did not find sufficient detail to identify the export destination for all of the shipments that were the bases of these loans to confirm whether the destination for these shipments, and thus the loans, was a country other than the United States. See Alpanil's second supplemental response dated December 1, 2009 at pages 16, 18 and 19.

The pre-shipment export financing program does not explicitly exclude shipments to the United States from eligibility. As such, absent a demonstration through specific documentation that the loans obtained by the company were tied only to markets other than the United States, we continue to find that all of Alpanil's reported pre-shipment loans are countervailable under this

program for these final results. As we did in the Preliminary Results, however, we have divided Alpanil's loan benefits by total exports, to reflect the lack of record evidence that these loans are tied to particular products or markets. See 19 CFR 351.525(b).

Comment 2: Whether Certain Shortfall Amounts Were Incorrectly Included in the DEPBS Benefit Calculation

Alpanil alleges the Department ignored evidence presented on the record showing that there was a shortfall in DEPBS benefits actually realized and booked. Alpanil cites to its first supplemental questionnaire response dated June 2, 2009 at Exhibit 5. Alpanil states the net amount actually realized in DEPBS benefits was lower than the amount recognized by the Department. Alpanil, therefore, requests the Department to adjust its calculation to remove the shortfall for the final results.

Department Position:

In accordance with past precedent and pursuant to 19 CFR 351.519(b)(2), we find that benefits from the DEPBS are conferred at the date of exportation of the shipment for which the pertinent DEPBS credits are earned. Because DEPBS 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 (i.e., the credit that can be used to pay import duties), we calculate the benefit on an "as-earned" basis, regardless of whether and how Alpanil used the credits or the value Alpanil actually realized from the sale of those credits. See, e.g., CTL Plate from India and accompanying Issues and Decision Memorandum, at Comment 4. See also Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 75672 (December 12, 2008), and accompanying Issues and Decision Memorandum, at "Duty Entitlement Passbook Scheme." See also Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Certain Lined Paper Products From India, 71 FR 7916 (February 15, 2006), at "Duty Entitlement Passbook Scheme (DEPS)." Furthermore, 19 CFR 351.503(c) states that in determining whether a benefit is conferred, the Department "... is not required to consider the effect of the government action on the firm's performance, including its prices or output, or how the firm's behavior otherwise is altered" (emphasis added). The Preamble to the Department's regulations explains that:

In analyzing whether a benefit exists, we are concerned with what goes into a company, such as enhanced revenues and reduced-cost inputs in the broad sense that we have used the term, not with what the company does with the subsidy. Countervailing Duties; Final Rule, 63 FR 65348, 65361 (November 25, 1998) (providing the rationale for 19 CFR 351.503(c)).

Given that the Department treats benefits under the DEPBS program as recurring subsidies that are received on the date of export (e.g., when they are earned) and that 19 CFR 351.503(c) directs the Department not to track what companies do with their subsidies after they have received them, we determine that the benefit under the DEPS program is equal to the amount of DEPBS credit at the time of receipt, regardless of how the company at issue uses the

license.¹ The information provided by Alpanil provides no basis to alter our standard calculation methodology for this program. Thus, for DEPBS credits that were earned during the POR, we calculated the benefit based on the amount of credits earned, as described above.

Recommendation

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

Agree

Disagree

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date

¹ We note that this approach differs from how we treat sales of quantity-based licenses, such as those that exist under the advance license program. See, e.g., CTL Plate from India at 73135.