UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-533-844
Administrative Review
POR: 01/01/2010 – 12/31/2010
Public Document
Office 3, Operations: JC; EBG

October 1, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Countervailing Duty (CVD) Administrative Review: Certain Lined Paper Products from India

SUBJECT: Decision Memorandum for Preliminary Results

Summary

The Department of Commerce (the Department) is conducting an administrative review of the CVD order on lined paper products from India. The review covers one producer/exporter of the subject merchandise, A.R. Printing & Packaging India Pvt. Ltd. (AR Printing). The period of review (POR) is January 1, 2010, through December 31, 2010. We preliminarily determine that AR Printing received countervailable subsidies during the POR.

Background

On September 28, 2006, the Department published the Lined Paper Order.[1] On September 2, 2011, the Department published a notice of opportunity to request an administrative review of this CVD order.[2] On September 30, 2011, we received a timely request for review of the CVD order from AR Printing and its U.S. importer, Gemstone Printing Inc. (Gemstone). On October 31, 2011, the Department published the Initiation of the administrative review of the CVD order on certain lined paper products from India covering the period January 1, 2010, through December 31, 2010.[3]

On November 18, 2011, the Department issued the initial questionnaire to AR Printing and the Government of India (GOI). On December 16, 2011, the Department granted the GOI's

---

[1] Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia, 71 FR 56949 (September 28, 2006) (Lined Paper Order).

[2] Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 76 FR 54735 (September 2, 2011).

[3] See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 76 FR 67133 (October 31, 2011) (Initiation).

request for an extension of time to respond to the initial questionnaire. The GOI submitted its initial questionnaire response on January 9, 2012 (GOI QNR). AR Printing did not submit a questionnaire response to the Department's questionnaire. On January 31, 2012, AR Printing and Gemstone submitted a request to withdraw its administrative review request. On March 1, 2012, the Department rejected AR Printing's request for withdrawal due to the fact that its request was submitted beyond the 90-day deadline established under 19 CFR 351.213(d)(1).[4]

On March 14, 2012, the Department issued the results of a query performed on the Customs and Border Protection (CBP) trade database.[5] The query results of the First CBP Memorandum indicated no entries from AR Printing during the POR. On March 29, 2012, petitioners commented on the First CBP Memorandum in which they argued that the Department performed the query using an incorrect spelling of AR Printing. Based on petitioners' comments, the Department issued the Second CBP Memorandum using the correct spelling of AR Printing.[6] The query results in the Second CBP Memorandum indicated entries from AR Printing during the POR.

On September 7, 10, and 14, 2012, the Department issued supplemental questionnaires to the GOI. In its September 21, 2012, supplemental questionnaire response, the GOI responded to the Department's questions concerning purportedly terminated subsidy programs.[7] However, the GOI requested an extension of time to respond to the remaining items contained in the Department's September 7, 10, and 14, 2012, supplemental questionnaires. On September 21, 2012, the Department, at the GOI's request, extended the due date of the remaining supplemental questionnaire responses to October 22, 2012, which is beyond the signature date of the preliminary results.

Scope of the Order

The merchandise subject to the order is certain lined paper products. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in the Lined Paper Order, remains dispositive.[8]

[4] See the March 1, 2012, letter from Melissa G. Skinner, Director, Office 3, Operations, "Rejection of Withdrawal for Request for Review."

[5] See the March 14, 2012, Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, "Release of Customs and Border Protection Query Results," (First CBP Query Memorandum).

[6] See the May 9, 2012, Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, "Second Release of Customs and Border Protection Query Results," (Second CBP Query Memorandum).

7 See the GOI's September 21, 2012, Supplemental Questionnaire Response (GOI Supp. QNR).

[8] Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia, 71 FR 56949 (September 28, 2006) (Lined Paper Order).

Application of Adverse Facts Available (AFA) – AR Printing

AR Printing failed to provide a response to the initial questionnaire. Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act), provide that the Department shall apply "facts otherwise available" if, inter alia, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Because AR Printing failed to provide the requested information by the established deadlines, the Department does not have the necessary information to determine the net subsidies received by AR Printing under the GOI and state government programs under examination in this administrative review. Therefore, the Department must base its determination on the facts otherwise available in accordance with section 776(a)(2)(B) of the Act with respect to the GOI and state government programs covered in this review.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the fact otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Because AR Printing did not provide the requested information on any of the programs covered by this review, we find that AR Printing did not act to the best of its ability and, therefore, pursuant to section 776(b) of the Act, we are employing adverse inferences in selecting from among the facts otherwise available. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the original determination, a previous administrative review, or other information placed on the record.

Therefore, as AFA, we find that AR Printing received a benefit under section 771(5)(E) of the Act from all programs we find constitute a financial contribution and are specific under the Act, as described under sections 771(5)(D) and 771(5A) of the Act, respectively.

In assigning net subsidy rates for each of the programs for which specific information was required from AR Printing, we were guided by the Department's approach in the prior reviews as well as recent CVD investigations involving India.[9] In these preliminary results, as AFA, we have first sought to apply, where available, the highest, above de minimis subsidy rate calculated for an identical program from any segment of this proceeding. Absent such a rate, we have applied, where available, the highest, above de minimis subsidy rate calculated for a similar program from any segment of this proceeding. Under our AFA approach, absent a subsidy rate calculated for the same or similar program within the segment, the Department applies the highest above de minimis, calculated subsidy rate for any program from any CVD proceeding involving the country in which the subject merchandise is produced, so long as the producer of the subject merchandise or the industry to which it belongs could have used the program for which the rates were calculated. In accordance with this methodology, we have applied AFA rates and have assigned these rates to Tata for all the subsidy programs as discussed further below.

---

[9] See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 20923 (May 6, 2009) (Final Results of Fifth HRS Review), and accompanying Issues and Decision Memorandum (Final Results of Fifth HRS Decision Memorandum) at "SGOC Industrial Policy 2004-2009" section.

Analysis of Programs

A. Programs Preliminarily Determined to be Countervailable

1. Pre- and Post-Shipment Export Financing

The Department of Banking Operations & Development, Directives Division of Reserve Bank of India (RBI) provides short-term pre-shipment export financing, or "packing credits," to exporters through commercial banks. Upon presentation of a confirmed export order or letter of credit to a bank, companies receive pre-shipment credit lines upon which they may draw as needed. Credit line limits are established by commercial banks based upon a company's creditworthiness and past export performance, and may be denominated either in Indian rupees or in foreign currency. Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates capped by the RBI. For post-shipment export financing, exporters are eligible to receive post-shipment short-term credit in the form of discounted trade bills or advances by commercial banks at preferential interest rates to finance the transit period between the date of shipment of exported merchandise and payment from export customers.

The Department has previously determined that these export financing programs are countervailable to the extent that the interest rates are capped by the GOI and are lower than the rates exporters would have paid on comparable commercial loans.[10] Specifically, the Department determined that the GOI's issuance of financing at preferential rates constituted a financial contribution pursuant to section 771(5)(D)(i) of the Act. The Department also found this program, to be contingent upon exports and therefore, specific within the meaning of section 771(5A)(B) of the Act. No new information or evidence of changed circumstances has been presented in this review to warrant a reconsideration of the Department's finding.

As above in the "Adverse Facts Available" section, AR Printing did not submit a response to any of the Department's questionnaires and, therefore, as AFA pursuant to section 776(b) of the Act, we preliminarily determine that AR Printing used and benefitted from pre-and post-export financing during the POR within the meaning of section 771(5)(E) of the Act.

Pursuant to the AFA methodology described above, for this program, we have assigned a net subsidy rate of 1.02 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the same program in another segment of this proceeding.[11]

---

[10] See, e.g., 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 (Final Results of 3rd PET Film Review Decision Memorandum) at "Pre-Shipment and Post-Shipment Export Financing" section.

[11] See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2006) (Lined Paper from India), and accompany Issues and Decision Memorandum (Lined Paper from India I&D Memorandum) at "Pre- and Post-Shipment Export Financing."

2. Export Promotion of Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption for excise taxes on imports of capital goods. Under this program, producers may import capital equipment at a reduced customs duty, subject to an export obligation equal to eight times the duty saved to be fulfilled over a period of eight years (12 years where the CIF value is Rs. 100 crore)[12] from the date the license was issued. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest.

The Department has previously determined that the import duty reductions provided under the EPCGS constitute a countervailable export subsidy.[13] Specifically, the Department has found that under the EPCGS program, the GOI provides a financial contribution under section 771(5)(D)(ii) of the Act. The Department also found this program to be specific under section 771(5A)(B) of the Act because it is contingent upon export performance. No new information or evidence of changed circumstances has been provided with respect to this program.

As explained above in the "Adverse Facts Available" section, AR Printing did not submit a response to any of the Department's questionnaires and, therefore, as AFA pursuant to section 776(b) of the Act, we preliminarily determine that AR Printing used and benefitted from the EPCGS during the POR within the meaning of section 771(5)(E) of the Act.

Pursuant to the AFA methodology described above, for this program, we are assigning a net subsidy rate of 1.36 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the same program in another segment of this proceeding.[14]

3. Export Oriented Units (EOU) Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically

In the Preliminary Determination of PET Resin, we found that under this program, EOUs are entitled to reimbursements of the CST paid on materials procured domestically, applicable to purchases of both raw materials and capital goods.[15] In the Final Determination of PET Resin from India, the Department determined that this program was countervailable.[16] Specifically, we found that the program is specific as an export subsidy within the meaning of section 771(5A)(B) of the Act. This program provides a financial contribution in the form of revenue foregone within the section 771(5)(D)(ii) of the Act and confers a benefit in the amount of reimbursements of CST in accordance with section 771(5)(E) of the Act. Id. In the instant review, we

---

[12] A crore is equal to 10,000,000 rupees.

[13] See, e.g., Final Results of 3rd PET Film Review Decision Memorandum at "Export Promotion Capital Goods Scheme" section.

[14] See Certain Lined Paper Products From India: Final Results of Countervailing Duty Administrative Review, 74 FR 6573 (February 10, 2009) (Final Results of 1st Lined Paper from India Review), and accompanying Issues and Decision Memorandum (1st Lined Paper Review I&D Memorandum) at "Export Promotion Capital Goods Scheme (EPCGS)."

[15] See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India (Preliminary Determination of PET Resin from India), 69 FR 52866, 52870 (August 30, 2004) (unchanged in the Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India, 70 FR 13460 (March 21, 2005) (Final Determination of PET Resin from India), and accompanying Issues and Decision Memorandum (PET Resin Investigation I&D Memorandum).

[16] Id.

preliminarily continue to find the GOI's provision of assistance under this program provides a financial contribution in the form of revenue forgone and is specific as an export subsidy within the meaning of sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively.

As explained above in the "Adverse Facts Available" section, AR Printing did not submit a response to any of the Department's questionnaires and, therefore, as AFA pursuant to section 776(b) of the Act, we preliminarily determine that AR Printing used and benefitted from the EOU tax program during the POR within the meaning of section 771(5)(E) of the Act.

This program has not been used by a respondent in any segment of the instant proceeding. Therefore, pursuant to the AFA methodology described above, for this program, we are assigning a net subsidy rate of 2.74 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding.[17]

4. Export Oriented Units Duty-Free Import of Capital Goods and Raw Materials

Under this program EOUs are entitled to import capital goods and raw materials duty-free. In the Preliminary Determination of PET Resin, we determined that this program was countervailable. We found that the assistance provided under this program was specific as an export subsidy within the meaning of section 771(5A)(B) of the Act.[18] We further found that this program provides a financial contribution in the form of forgone revenue within the meaning of section 771(5)(D)(ii) of the Act and confers a benefit in the amount of exemptions and reimbursements of customs duties and certain sales taxes on capital equipment in accordance with section 771(5)(E) of the Act and section 351.519(4)(i) of the Department's regulations.[19]

In the instant review, we preliminarily continue to find the GOI's provision of assistance under this program provides a financial contribution in the form of revenue forgone and is specific as an export subsidy within the meaning of sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively.

As explained above in the "Adverse Facts Available" section, AR Printing did not submit a response to any of the Department's questionnaires and, therefore, as AFA pursuant to section 776(b) of the Act, we preliminarily determine that AR Printing used and benefitted from the EOU duty exemption program during the POR within the meaning of section 771(5)(E) of the Act.

Pursuant to the AFA methodology described above, for this program, we are assigning a net subsidy rate of 6.93 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding.[20]

[17] See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2006) (Lined Paper from India Investigation), and accompanying Issues and Decision Memorandum (Lined Paper from India I&D Memorandum) at "Income Tax Exemption Scheme under 80HHC (80HHC)."

[18] See Preliminary Determination of PET Resin from India, 69 FR at 52870; unchanged in Final Determination of PET Resin from India.

[19] See PET Resin Investigation Decision Memorandum at "Export-Oriented Unit (EOU) Program: Duty-Free Import of Capital Goods and Raw Materials" section.

[20] See 1st Lined Paper Review I&D Memorandum at "Duty Entitlement Passbook Scheme (DEPS)."

5. Market Development Assistance (MDA)

In Iron Castings from India the Department found that the Federation of Indian Export Organization administers grants under the MDA program, subject to approval by the Ministry of Commerce.[21] The purpose of the programs is to provide grants-in-aid to approved organizations (i.e., export houses) to promote the development of markets for Indian goods abroad. Such development projects may include market research, export publicity, and participation in trade fairs and exhibitions.[22] The Department found that the MDA grants were countervailable.[23] The Department found that program provides a direct financial contribution and confers a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, and is specific as an export subsidy within the meaning of section 771(5A)(B) of the Act. Id. No new information or evidence of changed circumstances has been provided with respect to this program.

In the instant review, we preliminarily continue to find the GOI's provision of assistance under this program provides a financial contribution, in the form of a direct transfer of funds, and is specific as an export subsidy within the meaning of sections 771(5)(D)(i) and 771(5A)(B) of the Act, respectively.

As explained above in the "Adverse Facts Available" section, AR Printing did not submit a response to any of the Department's questionnaires and, therefore, as AFA pursuant to section 776(b) of the Act, we preliminarily determine that AR Printing used and benefitted from the EOU duty exemption program during the POR within the meaning of section 771(5)(E) of the Act.

As AFA, we first sought to apply, where available, the highest, above de minimis subsidy rate calculated for the MDA program from any segment of this proceeding. However, the Department has not calculated such a rate in this proceeding. Next, as AFA, we sought to apply the highest, above de minimis subsidy rate calculated for a grant program from any segment of this proceeding. However, the Department has not calculated a subsidy rate for a similar grant program in this proceeding. Therefore, absent a subsidy rate calculated for the same or similar program, we have, pursuant to our AFA methodology, applied the highest above de minimis, calculated subsidy rate for any program from any CVD proceeding involving India that AR Printing could have conceivably used. Specifically, as AFA, we assigned a net subsidy rate of 16.63 percent ad valorem.[24]

6. Market Access Initiative (MAI)

According to section 3.2 of the GOI's Foreign Trade Policy 2004-2009: "The Market Access Initiative (MAI) scheme is intended to provide financial assistance for medium term export promotion efforts with a sharp focus on a country/product, and is administered by the

[21] See Preliminary Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India, 55 FR 46699, 46702 (November 6, 1990) (Preliminary Results of Sixth Castings Review) (unchanged in Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India, 56 FR1956 (January 18, 1991) (Castings from India). Though the Department countervailed the MDA program in this proceeding, the calculated net subsidy was not above de minimis.
[22] Id.
[23] Id.
[24] See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 49635 (September 28, 2001) (HRS from India), and accompanying Issues and Decision Memorandum (HRS from India I&D Memorandum) at "Export Promotion Capital Goods Scheme)."

Indian Department of Commerce. Financial assistance is available for Export Promotion Councils, Industry and Trade Associations, Agencies of State Governments, Indian Commercial Missions abroad and other eligible entities as may be notified. A whole range of activities can be funded under the MA I scheme. These include, amongst others, market studies, sales promotion campaigns, and publicity campaigns.[25] In past proceedings, the Department has investigated this program to the extent that it provides financial assistance from the GOI to approved organizations which promote exports by offsetting the expense of foreign market analysis and promotional publications.[26] The GOI reported that this program was not changed during the POR.[27]

Based on information from the GOI, we preliminarily determine that benefits under this program constitute a financial contribution, in the form of a direct transfer of funds, and is specific as an export subsidy within the meaning of sections 771(5)(D)(i) and 771(5A)(B) of the Act, respectively.

As explained above in the "Adverse Facts Available" section, AR Printing did not submit a response to any of the Department's questionnaires and, therefore, as AFA pursuant to section 776(b) of the Act, we preliminarily determine that AR Printing used and benefitted from the MAI program during the POR within the meaning of section 771(5)(E) of the Act.

As AFA, we first sought to apply, where available, the highest, above de minimis subsidy rate calculated for the MDA program from any segment of this proceeding. However, the Department has not calculated such a rate in this proceeding. Next, as AFA, we sought to apply the highest, above de minimis subsidy rate calculated for a similar grant program from any segment of this proceeding. However, the Department has not calculated a subsidy rate for a similar grant program in this proceeding. Therefore, absent a subsidy rate calculated for the same or similar program, we have, pursuant to our AFA methodology, applied the highest above de minimis, calculated subsidy rate for any program from any CVD proceeding involving India that AR Printing could have conceivably used. Specifically, as AFA, we assigned a net subsidy rate of 16.63 percent ad valorem.[28]

7. Status Certificate Program

India's Status Certificate Program is detailed under paragraph 3.5 of its Foreign Trade Policy Handbook. This program details the following privileges to exporters, depending on their export performance for the current year, plus the preceding three years:

- Authorizations and Customs clearances for both imports and exports on self-declaration basis;
- Fixation of Input-Output norms on priority within 60 days;
- Exemption from compulsory negotiation of documents through banks. The remittance, however, would continue to be received through banking channels;
- 100 percent retention of foreign exchange in EEEC account;
- Enhancement in normal repatriation period from 180 days to 360 days;

[25] See GOI QNR 73 – 76.
[26] See Lined Paper from India I&D Memorandum at "Programs Determined to be Not Used" section.
[27] See GOI QNR at 76.
[28] See (HRS from India), and accompanying HRS from India I&D Memorandum at "Export Promotion Capital Goods Scheme)."

- Exemption from furnishing of Bank Guarantee in Schemes under this Policy.[29]

Information from the GOI leads us to preliminarily determine that the program continues to operate in the manner described above.[30] We preliminarily determine that the retention of foreign exchange under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act. Because the program is contingent upon exports, we preliminarily determine that the program is specific under section 771(5A)(B) of the Act. The Department examined the Status Certificate Program in the 2006 Review of HRS from India and adopted an approach in which it examined usage information from the respondent in order to determine whether a benefit was conferred.[31] Because AR Printing did not respond to the Department's initial questionnaire, pursuant to section 776(b) of the Act we are applying adverse inferences and assume that it benefited from this program during the POR.

Pursuant to the AFA methodology described above, for this program, we are assigning a net subsidy rate of 1.02 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding.[32]

8. Income Deduction Program (80IB Tax Program)

Pursuant to the Income Tax Act of 1961, as amended by the Finance Act 2007, Chapter VIA, 80IB(4) (India) (2007), the GOI has implemented a tax policy to foster economic development of certain "industrially backward" regions in India. The tax exemptions allowed under the 80IB Tax Program are only available to companies located in designated geographical areas (referred to as "backward areas" by the GOI) within India.[33] Under the 80IB Tax Program, the GOI allows domestic companies that invest in economically less developed areas of India to reduce their corporate taxable income by up to 100 percent of profit gained at production facilities located in designated geographical areas for a period of five years and by up to 30 percent for the next five years. The benefit is applied to the gross total income of the tax payer and is claimed when a company files its income tax return at the end of every financial year.

In the Final Results of 1st Lined Paper from India Review, we determined that the 80IB Tax Program is a countervailable program.[34] Specifically, we preliminarily determined that a financial contribution is provided under this program, in the form of foregone tax revenue, within

[29] See Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 75 FR 43488 (July 26, 2010) (2008 Review of HRS From India), and accompanying Issues and Decision Memorandum (2008 HRS from India I&D Memorandum) at "Status Certificate Program."
[30] See GOI QNR at 72 – 73.
[31] See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, "Decision Memorandum Regarding the Status Certificate Program," (May 15, 2008) a document that has been placed on the record of the instant view via a Memorandum to the File from John Conniff, Analyst, "Placement of Memorandum from 2006 HRS Countervailing Duty Review on Record of Instant Review," (October 1, 2012); see also Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008) (2006 Review of HRS from India), and accompanying Issues and Decision Memorandum (2006 HRS from India I&D Memorandum) at "Status Certificate Program."
[32] See Lined Paper from India I&D Memorandum at "Pre- and Post-Shipment Export Financing."
[33] "Industrially backward" states are states and union territories specified in the Eight Schedule of the Indian tax code.
[34] See 1st Lined Paper Review I&D Memorandum at "The Government of India's Income Deduction Program (80IB Tax Program)."

the meaning of section 771(5)(D)(ii) of the Act.[35] In addition, we determined that the program is limited to enterprises in geographically limited areas and, therefore, is specific within the meaning of section 771(5A)(D)(iv) of the Act.[36] No new information or evidence of changed circumstances has been provided with respect to this program.

As explained above in the "Adverse Facts Available" section, AR Printing did not submit a response to any of the Department's questionnaires and, therefore, as AFA pursuant to section 776(b) of the Act, we preliminarily determine that AR Printing used and benefitted from the 80IB tax program during the POR within the meaning of section 771(5)(E) of the Act.

Pursuant to the AFA methodology described above, for this program, we have assigned a net subsidy rate of 2.74 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the similar program in another segment of this proceeding.[37]

9. Duty Entitlement Passbook Scheme (DEPS)

The DEPS was enacted on April 1, 1997, as a successor program to the Passbook Scheme (PBS). As with PBS, the DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post-export basis, provided that the GOI has established a standard input output norm (SION) for the exported product. DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. DEPS credits are valid for 12 months and are transferable after the foreign exchange is realized from the export sales on which the DEPS credits are earned. With respect to subject merchandise, the GOI has established a SION for the steel industry.

In Lined Paper from India, the Department found that DEPS is a countervailable program, which provides a financial contribution and is specific as an export contingent subsidy within the meaning of sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively.[38] The Department further found that the benefit under section 771(5)(E) of the Act is the entire amount of import duty exempted, because the GOI does not have in place, and does not apply, a system that is within the meaning of 19 CFR 351.519(a)(4), reasonable and effective for determining what imports are consumed in the production of the exported product and in what amounts.[39] No new information or evidence of changed circumstances has been presented thus far in this review to warrant a reconsideration of the Department's prior finding as it pertains to financial contribution and specificity. Therefore, we preliminarily determine that the program constitutes a financial contribution and is specific under section 771(5)(D)(ii) and 771(5A)(B) of the Act in the manner described in Lined Paper from India.

As explained above in the "Adverse Facts Available" section, AR Printing did not submit a response to any of the Department's questionnaires and, therefore, as AFA pursuant to section 776(b) of the Act, we preliminarily determine that AR Printing used and benefitted from the DEPS during the POR within the meaning of section 771(5)(E) of the Act.

---

[35] Id.

[36] Id.

[37] See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2006) (Lined Paper from India Investigation) and accompanying Issues and Decision Memorandum (Lined Paper from India I&D Memorandum) at "Income Tax Exemption Scheme under 80HHC (80HHC)."

[38] See Lined Paper from India I&D Memorandum at "Duty Entitlement Passbook Scheme."

[39] Id.

Pursuant to the AFA methodology described above, for this program, we have assigned a net subsidy rate of 6.93 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the same program in another segment of this proceeding.[40]

In the instant review, the GOI claims that, pursuant to Customs Notification 51/2011, dated June 22, 2011, the DEPS was discontinued as of October 2011 and that a new scheme is likely to replace the program. See GOI QNR at 27. At this time, we lack the necessary information to make a determination as to whether the program has been terminated and to what extent a replacement program has been implemented. We will continue to examine whether the DEPS was terminated by the GOI and the extent to which the program provides residual benefits.

10. Advance Authorization Program (AAP)

The Department included the Advance License Program (ALP), a duty exemption program, in the initial questionnaire issued to the GOI. In its response, the GOI stated that the ALP is now known as the AAP and is administered by DGFT.[41] The Department issued a supplemental questionnaire to the GOI in which it requested information regarding the extent to which the ALP was terminated and the AAP is a successor program to the ALP. At the GOI's request, the Department extended the due date of the questionnaire response beyond the signature date of the preliminary results. We will continue to examine whether the ALP continues to exist and the AAP constitutes a successor program.

However, based on information supplied by the GOI, we preliminarily determine that the AAP, independent of the ALP, provides duty exemptions that are contingent upon export activity.[42] Therefore, we preliminarily determine that the duty exemptions provided under the AAP constitute a financial contribution and are specific under sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively. Further, as explained above, AR Printing failed to submit questionnaire responses regarding this subsidy program. Therefore, pursuant to section 776(b) of the Act, we are assuming as AFA that AR Printing used this program in a manner that conferred a benefit as described under section 771(5)(E) of the Act.

Pursuant to the AFA methodology described above, for this program, we have assigned a net subsidy rate of 2.55 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the similar program in another segment of this proceeding.[43]

11. Export Processing Zones (Renamed Special Economic Zones)

In its response, the GOI explained that the Export Processing Zones (EPZs) program had been renamed the Special Economic Zones (SEZs) program. According to the GOI, SEZs were enacted in April of 2005. The GOI states that overall administrative control of SEZs resides with Development Commissioners assigned to each zone. The GOI explains that the "objective of SEZ legislation is to provide a major thrust to exports, investment, infrastructure development, and employment." Under the program, exporting firms located in SEZs are exempted from customs duties.[44]

[40] See 1st Lined Paper Review I&D Memorandum at "Duty Entitlement Passbook Scheme."
[41] See GOI QNR at 15.
[42] Id. at 15 – 22.
[43] See Lined Paper from India I&D Memorandum at "Advance License Program."
[44] See GOI Supp QNR at 4 – 7.

Based on information supplied by the GOI, we preliminarily determine that the SEZ program provides duty exemptions that are contingent upon export activity.[45] Therefore, we preliminarily determine that the duty exemptions provided under the SEZ constitute a financial contribution and are specific under sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively. Further, as explained above, AR Printing failed to submit questionnaire responses regarding this subsidy program. Therefore, pursuant to section 776(b) of the Act, we are assuming as AFA that AR Printing used this program in a manner that conferred a benefit as described under section 771(5)(E) of the Act.

Pursuant to the AFA methodology described above, for this program, we have assigned a net subsidy rate of 2.55 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the similar program in another segment of this proceeding.[46]

12. Target Plus Scheme (TPS)

In the 2006 Review of HRS from India, the Department found that import duty exemptions under the TPS were countervailable. Specifically, the Department determined that a financial contribution, in the form of revenue forgone, as defined under section 771(5)(D)(ii) of the Act, was provided under program because the GOI provides credits for the future payment of import duties.[47] In addition, we found that the TPS program provides a benefit because the GOI did not have in place and did not apply a system that was reasonable and effective for the purposes intended to confirm which inputs, and in what amounts, were consumed in the production of the exported products.[48] Therefore, in accordance with 19 CFR 351.519(a)(4) and section 771(5)(E) of the Act, we determined that the entire amount of import duty exemption earned during the POR constitutes a benefit.[49] Moreover, we determined that the program was specific under section 771(5A)(B) of the Act because the program could only be used by exporters.[50]

No new information or evidence of changed circumstances has been presented thus far in this review to warrant a reconsideration of the Department's prior finding as it pertains to financial contribution and specificity. Therefore, we preliminarily determine that the program constitutes a financial contribution and is specific under section 771(5)(D)(ii) and 771(5A)(B) of the Act in the manner described in the 2006 Review of HRS from India.

As explained above in the "Adverse Facts Available" section, AR Printing did not submit a response to any of the Department's questionnaires and, therefore, as AFA pursuant to section 776(b) of the Act, we preliminarily determine that AR Printing used and benefitted from the TPS tax program during the POR within the meaning of section 771(5)(E) of the Act.

Pursuant to the AFA methodology described above, for this program, we have assigned a net subsidy rate of 6.93 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the similar program in another segment of this proceeding.[51]

In the instant review, the GOI claims that, pursuant to Directorate General for Foreign Trade Notification No. 57 dated March 31, 2009, the TPS was terminated as of April 1, 2006,

---

[45] Id.
[46] See Lined Paper from India I&D Memorandum at "Advance License Program."
[47] See 2006 HRS from India I&D Memorandum at "Target Plus Scheme."
[48] Id.
[49] Id.
[50] Id.
[51] See 1st Lined Paper Review I&D Memorandum at "Duty Entitlement Passbook Scheme."

and, therefore, no benefits accrued under this program during the POR.[52] The GOI further claimed that this notice clearly states that the TPS has been abolished for exports from April 1, 2006, forward and that any export made after this date is not entitled to the benefits under this program.[53] However, based on previous findings on this program that benefits are provided based on an increase in exports from a previous year, the termination of the program in 2006 does not indicate whether residual benefits earned prior to the termination may have been received during the POR.[54] The Department issued a supplemental questionnaire to the GOI in which it requested information regarding the legislation that terminated the TPS, the manner in which residual benefits are provided, and whether the GOI has instituted a successor program. In its response, the GOI provided the relevant legislation.[55] However, we find that we continue to lack sufficient information regarding the manner in which benefits earned prior to the April 1, 2006, termination date may be carried forward. As a result, at this time, we lack the necessary information to make a determination as to whether the program has been terminated. We will continue to examine whether the TPS was terminated by the GOI and the extent to which the benefits earned prior to the abolishment of the TPS may be carried forward.

B. Programs Preliminarily Determined to Constitute a Program-Wide Change

1. Income Tax Exemptions Under Section 10A

The GOI enacted the Section 10A program pursuant to the 1981 Finance Act 1981. The program took with effect starting from April 1, 1981. According to the GOI, under Section 10A, exemptions against export income are provided to newly established enterprises located in Free Trade Zones, Electronic Hardware Technology Parks or Software Technology Parks and Special Economic Zones.[56]

We preliminarily determine that the tax exemptions provided under the Section 10A program constitute a financial contribution, the form of revenue forgone, as provided under Section 771(5)(D)(ii) of the Act. Because benefits under this program are contingent upon export activity, we preliminarily determine that the program is specific under section 71(5A)(B) of the Act. Further, as explained above, AR Printing failed to submit questionnaire responses regarding this subsidy program. Therefore, pursuant to section 776(b) of the Act, we are assuming as AFA that AR Printing used this program in a manner that conferred a benefit as described under section 771(5)(E) of the Act.

Pursuant to the AFA methodology described above, for this program, we have assigned a net subsidy rate of 2.74 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the similar program in another segment of this proceeding.[57]

The GOI states that no deductions under Section 10A will be allowed to any firm for the tax years beginning on or after April 1, 2012.[58] The Department issued a supplemental questionnaire to the GOI in which it requested information regarding the legislation that

[52] See GOI QNR at 60 – 61.
[53] Id.
[54] See Final Results of Fourth HRS Review Decision Memorandum at "Target Plus Scheme" section and Comment 30.
[55] See GOI Supp QNR at 2 and Exhibit 2.
[56] See GOI QNR at 62.
[57] See Lined Paper from India I&D Memorandum at "Income Tax Exemption Scheme under 80HHC (80HHC)."
[58] See GOI QNR at 66.

terminated the program, the manner in which residual benefits are provided, and whether the GOI has instituted a successor program.

In its response, the GOI provided the requested legislation. It also stated that no benefits can be claimed under the program after April 1, 2012 and indicated that no successor program has been implemented to replace the program.[59]

Based on the information provided by the GOI, we preliminarily determine that this program was terminated on April 1, 2012, that benefits may not be provided after the termination date, and that the GOI has not implemented a successor program to replace the tax exemptions provided under Section 10A. Because the program was terminated after our POR but prior to the issuance of our preliminary determination, we preliminarily find that a program-wide change exists, as described under 19 CFR 351.526(b), with regard to this program. Accordingly, pursuant to 351.526(d), in these preliminary results we have not included the net subsidy rate discussed above into the overall cash deposit rate calculated for AR Printing.

2. Income Tax Exemptions Under Section 10B

The GOI enacted the Section 10B program pursuant to the 1988 Finance Act. The program took effect starting from April 1, 1989. According to the GOI, under Section 10B, tax exemptions against export income are provided to newly established "hundred per cent export oriented units (EOUs)".[60]

We preliminarily determine that the tax exemptions provided under the Section 10B program constitute a financial contribution, the form of revenue forgone, as provided under Section 771(5)(D)(ii) of the Act. Because benefits under this program are contingent upon export activity, we preliminarily determine that the program is specific under section 771(5A)(B) of the Act. Further, as explained above, AR Printing failed to submit questionnaire responses regarding this subsidy program. Therefore, pursuant to section 776(b) of the Act, we are assuming as AFA that AR Printing used this program in a manner that conferred a benefit as described under section 771(5)(E) of the Act.

Pursuant to the AFA methodology described above, for this program, we have assigned a net subsidy rate of 2.74 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the similar program in another segment of this proceeding.[61]

The GOI states that no deductions under Section 10B will be allowed to any firm for the tax years beginning on or after April 1, 2012.[62] The Department issued a supplemental questionnaire to the GOI in which it requested information regarding the legislation that terminated the program, the manner in which residual benefits are provided, and whether the GOI has instituted a successor program. In its response, the GOI provided the requested legislation. It also stated that no benefits can be claimed under the program after April 1, 2012 and indicated that no successor program has been implemented to replace the program.[63]

Based on the information provided by the GOI, we preliminarily determine that this program was terminated on April 1, 2012, that benefits may not be provided after the termination date, and that the GOI has not implemented a successor program to replace the tax exemptions

[59] See GOI Supp QNR at 2 – 3.
[60] See GOI QNR at 62.
[61] See Lined Paper from India I&D Memorandum at "Income Tax Exemption Scheme under 80HHC (80HHC)."
[62] See GOI QNR at 66.
[63] See GOI Supp QNR at 2 – 3.

provided under Section 10B. Because the program was terminated after our POR but prior to the issuance of our preliminary determination, we preliminarily find that a program-wide change exists, as described under 19 CFR 351.526(b), with regard to this program. Accordingly, pursuant to 351.526(c), in these preliminary results we have not included the net subsidy rate discussed above into the overall cash deposit rate calculated for AR Printing.

C. Programs Preliminarily Determined to be Terminated

1. Duty Free Replenishment Certificate (DFRC) Program

As explained in the 2008 Review of HRS from India, the DFRC scheme was introduced by the GOI in 2001 and was administered by the Directorate General for Foreign Trade.[64] The DFRC was a duty replenishment scheme that was available to exporters for the subsequent import of inputs used in the manufacture of goods without payment of basic customs duty. In order to receive a license, which entitled the recipient subsequently to import duty free certain inputs used in the production of the exported product, as identified in a SION, within the following 24 months, a company had to: (1) export manufactured products listed in the GOI's export policy book and against which there is a SION for inputs required in the manufacture of the export product based on quantity; and (2) have realized the payment of export proceeds in the form of convertible foreign currency. The application had to be filed within six months of the realization of the profits. DFRC licenses were transferrable, yet the transferee was limited to importing only those products and in the quantities specified on the license.[65]

In the past, the Department has found that in order to receive a DFRC license, firms must demonstrate that they made an export sale by submitting proof of payment to the GOI in the form of a bank realization certificate.[66] Further, we determined that the sale of DFRC licenses and the sales proceeds conferred a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. We also determined that because the receipt of DFRC licenses are contingent upon exports, the DFRC program was specific within the meaning of section 771(5A)(B) of the Act.[67]

In the 2008 Review of HRS from India, the GOI claimed that the DFRC program was terminated as of May 1, 2006, in accordance with paragraph 4.2.8 of Foreign Trade Policy (FTP) for the year 2006-07, and therefore no benefits accrued under this program during the POR covering calendar year 2008.[68] With respect to residual benefits from this program, the GOI, citing to paragraph 4.2.8 of the FTP for the period September 1, 2004-March 31, 2009, stated that any export made after April 30, 2006, is not eligible for benefits under the DFRC.[69] However, in the 2008 Review of HRS from India, we explained that, because the Department has previously determined that DFRC licenses can be used 24 months after they were issued, firms that had qualifying exports on April 30, 2006, would have been eligible to use benefits under the DFRC program through at least April 30, 2008, which is covered by the POR.[70] This finding,

---

[64] See 2008 HRS from India I&D Memorandum at "Duty Free Replenishment Certificate (DFRC) Program."
[65] Id.
[66] Id.
[67] Id.
[68] Id.
[69] Id.
[70] Id., citing to Lined Paper from India I&D Memorandum at "Duty Free Replenishment Certificate (DFRC) Scheme."

coupled with the fact that the respondent firm did not participate in the review, led the Department to conclude that it had no means of confirming whether the respondent received residual benefits during calendar year 2008, the POR. As a result, the Department found the program countevailable.[71]

The POR of the instant review is calendar year 2010. Therefore, in keeping with the Department's finding in the 2008 Review of HRS from India, we preliminarily determine that the DFRC program was terminated by the GOI on May 1, 2006, and that residual benefits under the program ceased to be provided 24 months after the termination date. However, in order for the Department to find that a program has been terminated, it requires information from the administering authority has not implemented a successor program.[72] In its initial questionnaire response, the GOI did not provide information as to whether it implemented a successor program to the DRFC.[73] The Department issued a supplemental questionnaire to the GOI in which it requested information regarding the manner in which residual benefits are provided, and whether the GOI has instituted a successor program. In its response, the GOI provided the requested legislation. It also stated that no benefits can be claimed under the program after May 1, 2006, and indicated that no successor program has been implemented to replace the program.74

Based on the information provided by the GOI, we preliminarily determine that this program was terminated on May 1, 2006, that benefits may not be provided after the termination date, and that the GOI has not implemented a successor program to replace the tax exemptions provided under the DFRC.

D. Programs Previously Determined to be Terminated

1. Exemption of Export Credit from Interest Taxes

Indian commercial banks were required to pay a tax on all interest accrued from borrowers. The banks passed along this interest tax to borrowers in its entirety. As of April 1, 1993, the GOI exempted from the interest tax all interest accruing to a commercial bank on export-related loans.

In the Carbazole Violet Pigment from India, the Department found that this program has been terminated in accordance with section 351.526(d).[75]

2. Income Tax Exemptions Under 80 HHC

In the Carbazole Violet Pigment from India, the Department had determined that deductions of profit derived from exports under section 80 HHC of India's Income Tax Act were

[71] See 2008 HRS from India I&D Memorandum at "Duty Free Replenishment Certificate (DFRC) Program."
[72] See 19 CFR 526(d)(2).
[73] See GOI QNR at 12.
[74] See GOI Supp QNR at 2 – 3.
[75] See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Carbazole Violet Pigment 23 from India, 69 FR 22763, 22768 (April 27, 2004) and Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 from India, 69 FR 67321 (November 17, 2004) (Carbazole Violet Pigment from India), and accompanying Issues and Decision Memorandum (Carbazole Violet Pigment from India I&D Memorandum) at "Program Determined To Be Terminated" section.

countervailable.[76] In the 2004 Review of PET Film from India, the Department determined that this program had been terminated effective March 31, 2004, and that no replacement program had been implemented.[77]

E. Programs for Which the Department Requires Additional Information

The GOI did not provide complete answers in its initial questionnaire response concerning the programs listed below. The Department issued a supplemental questionnaire to the GOI in which it requested additional information regarding these programs. At the GOI's request, the Department extended the due date of the questionnaire response beyond the signature date of the preliminary results. As a result, at this time, we lack the necessary information to make a preliminary determination for the programs. We will issue a post-preliminary decision memorandum regarding these programs, for which we will provide interested parties a comment period.

1. GOI Loan Guarantee Program
2. State Government of Gujarat Tax Incentives
3. State Government of Maharashtra Tax Incentives
4. Electricity Duty Exemptions Under the State Government of Maharashtra Package Program of Incentives of 1993
5. Loan Guarantees Based on Octroi Refunds by the State Government of Mahatrashtra
6. Land for Less than Adequate Remuneration

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the review in the Federal Register.

✓
Agree Disagree

Paul Piquado
Assistant Secretary
for Import Administration

1 OCTOBER 2012
Date

[76] See Carbazole Violet Pigment from India I&D Memorandum at "Programs Determined to Confer Subsidies."
[77] See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 72 FR 6530 (February 12, 2007) (2004 Review of PET Film from India), and accompanying Issues and Decision Memorandum (2004 Review of PET Film from India I&D Memorandum), at "Income Tax Exemption Scheme 80 HHC."