



C-533-844  
CVD Review  
POR: 2010  
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**DATE:** April 9, 2013

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Import Administration

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

**SUBJECT:** Countervailing Duty (CVD) Review of Certain Lined Paper  
Products from India: Issues and Decision Memorandum for the  
Final Results of Review

## I. Summary

On September 28, 2006, the Department of Commerce (the Department) published the *Lined Paper Order*.<sup>1</sup> On September 2, 2011, the Department published a notice of opportunity to request an administrative review of the *Lined Paper Order*.<sup>2</sup> On September 30, 2011, the Department received a timely request for review of the *Lined Paper Order* from AR Printing & Packaging India Pvt. Ltd. (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.<sup>3</sup>

On November 18, 2011, the Department issued the initial questionnaire to AR Printing and the Government of India (GOI). 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 their administrative review request, which was one day past the 90-day deadline for filing a withdrawal request.<sup>4</sup> On March 1, 2012, the Department rejected AR Printing's request for

<sup>1</sup> See *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*).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 76 FR 54735 (September 2, 2011) (*Opportunity to Request Review*).

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 76 FR 67133 (October 31, 2011) (*Initiation*).

<sup>4</sup> See *Opportunity to Request Review*, 76 FR at 54736-37; see also *Initiation*, 76 FR at 67133; 19 CFR 351.213(d)(1).



withdrawal due to the fact that its request was submitted beyond the 90-day deadline established under 19 CFR 351.213(d)(1).<sup>5</sup>

On October 11, 2012, the Department issued the *Preliminary Results*.<sup>6</sup> As noted above, AR Printing did not respond to the Department's initial questionnaire.<sup>7</sup> The GOI, however, submitted an initial questionnaire response<sup>8</sup> and the Department utilized information in the GOI's response in making its preliminary findings. Thus, in the *Preliminary Results*, we assumed as adverse facts available (AFA) that AR Printing received a countervailable benefit in all instances in which information from the GOI indicated that the subsidy program at issue also constituted a financial contribution and was specific under the Tariff Act of 1930, as amended (the Act).<sup>9</sup> In the *Preliminary Results*, the Department assigned a cash deposit rate of 68.03 percent *ad valorem* and an assessment rate of 73.51 percent *ad valorem*.<sup>10</sup>

As noted in the *Preliminary Results*, the Department did not have sufficient information from the GOI to make a preliminary finding with regard to six additional subsidy programs.<sup>11</sup> In the *Preliminary Results*, we explained that the Department issued a supplemental questionnaire to the GOI in which the Department requested additional information regarding these programs and that, 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 the time of the *Preliminary Results*, we lacked the necessary information to make a preliminary determination for the six programs at issue. Thus, in the *Preliminary Results* we stated that we would issue a post-preliminary decision memorandum regarding these six programs.<sup>12</sup>

On January 25, 2013, the Department extended the time limit for completion of the final results by 60 days to April 9, 2013, in accordance with section 751(a)(3)(A) of the Act.<sup>13</sup>

On February 1, 2012, the Department issued a Post-Preliminary Decision Memorandum in which it explained that the GOI had failed to act to the best of its ability in responding to the Department's supplemental questionnaires as it concerns the six additional subsidy programs at

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<sup>5</sup> See the March 1, 2012, letter from Melissa G. Skinner, Director, Office 3, Operations, "Rejection of Withdrawal for Request for Review" (Rejection Letter).

<sup>6</sup> See *Certain Lined Paper Products From India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2010*, 77 FR 61742 (October 11, 2012) (*Preliminary Results*), and accompanying Issues and Decision Memorandum (Preliminary Decision Memorandum).

<sup>7</sup> See also Preliminary Decision Memorandum at "Application of Adverse Facts Available (AFA) - AR Printing."

<sup>8</sup> See GOI's January 9, 2012, initial questionnaire response.

<sup>9</sup> See also Preliminary Decision Memorandum at "Application of Adverse Facts Available (AFA) - AR Printing."

<sup>10</sup> The difference between the cash deposit and assessment rates is due the Department's preliminary finding that a post-period of review (POR) program-wide change exists with regard to two subsidy programs.

<sup>11</sup> The Department asked the GOI to provide further information on the following six programs: GOI Loan Guarantee Program; State Government of Gujarat Tax Incentives; State Government of Maharashtra Tax Incentives; Electricity Duty Exemptions Under the State Government of Maharashtra Package Program of Incentives of 1993; Loan Guarantees Based on Octroi Refunds by the State Government of Maharashtra; and Land for Less than Adequate Remuneration. See Preliminary Decision Memorandum at "Programs for Which the Department Requires Additional Information."

<sup>12</sup> *Id.*

<sup>13</sup> See Extension of Time Limit for Final Results from John Conniff, Senior International Trade Analyst to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, dated January 25, 2013.

issue.<sup>14</sup> As a result, pursuant to AFA, the Department determined that the six programs at issue constituted a financial contribution and were specific under the Act.<sup>15</sup> Further, because AR Printing failed to respond to the Department's initial questionnaire, we determined as AFA that the six programs at issue conferred benefits upon AR Printing.<sup>16</sup> In the Post-Preliminary Decision Memorandum, the Department assigned a net subsidy rate of 26.89 percent *ad valorem* with regard to the six programs at issue.

On February 14, 2013, AR Printing filed a case brief. On February 21, 2013, petitioners filed a rebuttal brief. No interested party requested a hearing.

We have analyzed the comments submitted in AR Printing's case brief and the petitioner's rebuttal brief.<sup>17</sup> The "Analysis of Comments" section below contains summaries of these comments and the Department's positions on the issues raised in the briefs. For the reasons discussed below, we recommend that the Department make no changes to the approaches taken in the *Preliminary Results* and Post-Preliminary Decision Memorandum. For a description of the subsidies programs at issue and methodologies employed, see the Preliminary Decision Memorandum and Post-Preliminary Decision Memorandum.

We recommend that you approve the positions described in this memorandum.

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

**Comment 1:** Whether the Department Should Accept AR Printing's Untimely Request to Withdraw Its Request for Administrative Review

**Comment 2:** Whether the Department Should Apply AFA to AR Printing

## **II. Programs Determined to be Countervailable**

### **A. Programs Addressed in the *Preliminary Results***

The Department found the programs listed below to be countervailable in the *Preliminary Results*. No new information or argument from parties has been presented that warrants the Department's reconsideration of its preliminary findings. As noted above, in the *Preliminary Results*, the Department assigned a total cash deposit rate of 68.03 percent *ad valorem* and a total assessment rate of 73.51 percent *ad valorem* with regard to the programs listed below. For a description of the programs listed below as well as the Department's basis for finding the programs countervailable, see the Preliminary Decision Memorandum that accompanied the *Preliminary Results*.<sup>18</sup>

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<sup>14</sup> See Memorandum to Paul Piquado, Assistant Secretary for Import Administration, "Post-Preliminary Issues and Decision Memorandum," (February 1, 2013) (Post-Preliminary Decision Memorandum).

<sup>15</sup> *Id.* at "Application of Adverse Facts Available (AFA)."

<sup>16</sup> *Id.*

<sup>17</sup> The petitioner is the Association of American School Paper Suppliers.

<sup>18</sup> See Preliminary Decision Memorandum at 3-15.

1. Pre- and Post-Shipment Export Financing
2. Export Promotion of Capital Goods Scheme (EPCGS)
3. Export Oriented Units (EOU) Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically
4. Export Oriented Units Duty-Free Import of Capital Goods and Raw Materials
5. Market Development Assistance (MDA)
6. Market Access Initiative (MAI)
7. Status Certificate Program
8. Income Deduction Program (80IB Tax Program)
9. Duty Entitlement Passbook Scheme (DEPS)
10. Advance Authorization Program (AAP)
11. Export Processing Zones (Renamed Special Economic Zones)
12. Target Plus Scheme (TPS)
13. Income Tax Exemptions Under Section 10A<sup>19</sup>
14. Income Tax Exemptions Under Section 10B<sup>20</sup>

#### B. Programs Addressed in the Post-Preliminary Decision Memorandum

The Department found the programs discussed below to be countervailable in the Post-Preliminary Decision Memorandum and for these programs assigned a total net subsidy rate of 26.89 percent *ad valorem*. No new information or arguments from parties has been presented that warrants the Department's reconsideration of its preliminary findings. Because the Post-Preliminary Decision Memorandum was not accompanied by a notice published in the *Federal Register*, we have included below a brief summary of each program found countervailable in the Post-Preliminary Decision Memorandum.

##### 1. GOI Loan Guarantee Program

In another CVD proceeding involving India, the GOI has stated that it normally extends loan guarantees to Public Sector Companies, in particular industrial sectors.<sup>21</sup> The Department has previously determined that loan guarantees issued by the GOI under this program are countervailable. Specifically, the Department found that the loan guarantees constitute a financial contribution under section 771(5)(D)(i) of the Act and were specific under section 771(5A)(D)(iii)(I) of the Act because they were limited to certain companies selected by the GOI on an *ad hoc* basis.<sup>22</sup>

For the reasons set forth in the Post-Preliminary Decision Memorandum, pursuant to section 776(b) of the Act, we determine as AFA that this program continues to constitute a financial

<sup>19</sup> See Preliminary Decision Memorandum at 14-15, where the Department determined that this program provided countervailable benefits during the POR but was terminated after the POR, effective April 1, 2012.

<sup>20</sup> See *id.*, where the Department determined that this program provided countervailable benefits during the POR but was terminated after the POR, effective April 1, 2012.

<sup>21</sup> See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 49635 (September 28, 2001) (*HRS from India Investigation*), and accompanying Issues and Decision Memorandum (*HRS from India Investigation I&D Memorandum*) at "Loan Guarantees from the GOI."

<sup>22</sup> *Id.*

contribution and is specific under sections 771(5)(D)(i) and 771(5A)(D)(iii)(I) of the Act, respectively.<sup>23</sup> Further, for the reasons set forth in the Post-Preliminary Decision Memorandum, we find, as AFA, that AR Printing used and benefitted from the program during the POR within the meaning of section 771(5)(E) of the Act.<sup>24</sup>

Pursuant to the AFA methodology described in the *Preliminary Results* and Preliminary Decision Memorandum,<sup>25</sup> 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.<sup>26</sup>

## 2. Tax Incentives Provided by the State Governments of Gujarat and Maharashtra

In another CVD proceeding involving India, the Department has found that certain states in India (including the states of Gujarat and Maharashtra) provide a package of incentives to encourage the development of certain regions of those states. These incentives are provided to privately-owned (as defined by the GOI to not be 100 percent government owned) manufacturers in selected industries which are located in designated regions. One incentive is the exemption or deferral of state sales taxes. Specifically, under these state programs, companies are exempted from paying state sales taxes on purchases, and from collecting state sales taxes on sales.<sup>27</sup>

As noted in the Post-Preliminary Decision Memorandum, the GOI and AR Printing failed to respond to the Department's questions concerning the two programs.<sup>28</sup> Thus, for the reasons set forth in the Post-Preliminary Decision Memorandum, we determine as AFA that the programs constitute a financial contribution and are specific, under sections 771(5)(D) and 771(5A) of the Act, respectively.<sup>29</sup> Further, for the reasons set forth in the Post-Preliminary Decision Memorandum, we find, as AFA, that AR Printing used and benefitted from the programs pursuant to section 771(5)(E) of the Act.<sup>30</sup>

Pursuant to the AFA methodology described in the *Preliminary Results* and Preliminary Decision Memorandum,<sup>31</sup> we are assigning a net subsidy rate of 2.74 percent *ad valorem* for each state government's tax incentive program, which corresponds to the highest above *de*

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<sup>23</sup> See Post-Preliminary Decision Memorandum at 6.

<sup>24</sup> See Post-Preliminary Decision Memorandum at 3 - 4.

<sup>25</sup> See Preliminary Decision Memorandum at 3; see also Post-Preliminary Decision Memorandum at 4.

<sup>26</sup> 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 accompanying Issues and Decision Memorandum (*Lined Paper from India I&D Memorandum*) at "Pre- and Post-Shipment Export Financing." The sum of the net subsidy rates the respondent Aero received under the two programs is 1.02 percent.

<sup>27</sup> See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*PET Film from India*), and accompanying Issues and Decision Memorandum (*PET Film from India I&D Memorandum*) at "State Sales Tax Incentives" section.

<sup>28</sup> See Post-Preliminary Decision Memorandum at 6 - 7.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 3 - 4.

<sup>31</sup> See Preliminary Decision Memorandum at 3; see also Post-Preliminary Decision Memorandum at 4.

*minimis* subsidy rate calculated for a similar program in another segment of this proceeding.<sup>32</sup> Thus, the total net subsidy rate for these two subsidy programs is 5.48 percent *ad valorem*.

### 3. Electricity Duty Exemptions Under the State Government of Maharashtra Package Program of Incentives of 1993

In this review, the Department is examining the State Government of Maharashtra's (SGM's) Package Scheme of Incentives of 1993 (PSI of 1993), in which the SGM has allegedly implemented a policy to encourage industrialization of regions in Maharashtra that are less developed than the Bombay and Pune metropolitan areas.<sup>33</sup> As noted above, the GOI and AR Printing failed to respond to the Department's questions concerning this program.

As in the Post-Preliminary Decision Memorandum, the GOI and AR Printing failed to respond to the Department's questions concerning this program.<sup>34</sup> Thus, for the reasons set forth in the Post-Preliminary Decision Memorandum, we determine that this program constitutes a financial contribution and is specific, under sections 771(5)(D) and 771(5A) of the Act, respectively.<sup>35</sup> Further, for the reasons set forth in the Post-Preliminary Decision Memorandum, we determine as AFA that the program conferred a benefit pursuant to section 771(5)(E) of the Act.<sup>36</sup>

Pursuant to the AFA methodology described in the *Preliminary Results* and Preliminary Decision Memorandum,<sup>37</sup> 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.<sup>38</sup>

### 4. Loan Guarantees Based on Octroi Refunds by the State Government of Maharashtra

In this review, the Department is examining whether firms in Maharashtra receive loan guarantees based on expected refunds of octroi taxes from the SGM authority that distributes the refunds.<sup>39</sup>

As noted above, in the Post-Preliminary Decision Memorandum, the GOI and AR Printing failed to respond to the Department's questions concerning this program.<sup>40</sup> Thus, for the reasons set forth in the Post-Preliminary Decision Memorandum, as AFA we determine that this program constitutes a financial contribution and is specific, under sections 771(5)(D) and 771(5A) of the Act, respectively.<sup>41</sup> Further, for the reasons set forth in the Post-Preliminary Decision

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<sup>32</sup> See Lined Paper from India I&D Memorandum at "Income Tax Exemption Scheme under 80HHC (80HHC)."

<sup>33</sup> See GOI QNR at II-20.

<sup>34</sup> See Post-Preliminary Decision Memorandum at 7.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 3 - 4.

<sup>37</sup> See Preliminary Decision Memorandum at 3; see also Post-Preliminary Decision Memorandum at 4.

<sup>38</sup> See Lined Paper from India I&D Memorandum at "Income Tax Exemption Scheme under 80HHC (80HHC)."

<sup>39</sup> See GOI QNR at II-20.

<sup>40</sup> See Post-Preliminary Decision Memorandum at 7.

<sup>41</sup> *Id.*

Memorandum, we determine as AFA that the program conferred a benefit pursuant to section 771(5)(E) of the Act.<sup>42</sup>

This program has not been used by a respondent in any segment of the instant proceeding. Therefore, pursuant to the AFA methodology described in the *Preliminary Results* and Preliminary Decision Memorandum,<sup>43</sup> 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.<sup>44</sup>

#### 5. Land for Less than Adequate Remuneration (LTAR)

In this review, the Department is examining whether the SGM sells land for less than adequate remuneration to firms operating in areas outside of the Bombay and Pune metropolitan areas.

As noted in the Post-Preliminary Decision Memorandum, the GOI and AR Printing failed to respond to the Department's questions concerning this program.<sup>45</sup> Thus, for the reasons set forth in the Post-Preliminary Decision Memorandum, as AFA we determine that this program constitutes a financial contribution and is specific under section 771(5A) of the Act.<sup>46</sup> Further, for the reasons set forth in the Post-Preliminary Decision Memorandum, we determine as AFA that the program conferred a benefit pursuant to section 771(5)(E) of the Act.<sup>47</sup>

As explained in the Post-Preliminary Decision Memorandum, we limited our selection of AFA rates to those subsidy programs that AR Printing or other members of the paper industry could have used.<sup>48</sup> The SGM's alleged subsidy program involving the provision of land to firms located in areas outside of Bombay and Pune metropolitan areas is not limited to firms engaged in specific industries. Further, because AR Printing failed to respond to the Department's Initial QNR, we lack information regarding the location of its facilities as well as the location of any of AR Printing's cross-owned affiliates. In addition, the GOI failed to provide any information indicating the location of AR Printing's facilities. Therefore, consistent with our approach in the Post-Preliminary Memorandum, in accordance with section 776(b) of the Act, we are assuming as AFA that AR Printing was eligible to receive benefits under this program.<sup>49</sup>

The Department has not calculated a rate for this program in any segment of the instant proceeding. Nor has the Department calculated a subsidy rate for a similar, LTAR, program in this proceeding. Therefore, absent a subsidy rate calculated for the same or similar program in this proceeding, 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.<sup>50</sup> Specifically, as AFA we assigned a net subsidy rate

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<sup>42</sup> *Id.* at 3 - 4.

<sup>43</sup> See Preliminary Decision Memorandum at 3; see also Post-Preliminary Decision Memorandum at 4.

<sup>44</sup> See Lined Paper from India I&D Memorandum at "Pre- and Post-Shipment Export Financing."

<sup>45</sup> See Post-Preliminary Decision Memorandum at 8; see also GOI QNR at II-21.

<sup>46</sup> See Post-Preliminary Decision Memorandum at 8.

<sup>47</sup> *Id.* at 3 - 4.

<sup>48</sup> *Id.* at 8.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 4.

of 16.63 percent *ad valorem*.<sup>51</sup>

### III. Analysis of Comments

**Comment 1:** Whether the Department Should Accept AR Printing's Untimely Request to Withdraw Its Request for Administrative Review.

#### *Arguments of AR Printing*

- In the *Initiation*, the Department stated that it would consider requests for withdrawal for review after the 90-day deadline if extra-ordinary circumstances exist. The facts surrounding AR Printing's request for withdrawal meet this standard.
- AR Printing had never before participated in the administrative review process and had no knowledge of the procedural requirements regarding requests for administrative reviews. Thus, it was completely unfamiliar with the Department's procedural requirements regarding withdrawal of review requests.
- Despite having filed the request for review and received the questionnaire, AR Printing's prior counsel was not directly communicating with AR Printing. Instead, counsel was communicating with Gemstone. This failure in communication resulted in the missing of applicable deadlines and the failure to file AR Printing's withdrawal request in a timely manner.
- Once AR Printing discovered the adverse effect of the late filing, it replaced its prior counsel with the present counsel.
- The Department has previously accepted a party's late submission where a party was able to demonstrate that the failure to meet a deadline was not its fault. In *Shrimp from India*, the Department accepted a quantity and value (Q&V) response after the preliminary results because the Department found that the respondent in question had never received the Q&V questionnaire and, thus, the respondent's failure to respond in a timely manner was beyond its control.<sup>52</sup>
- The instant review is akin to *Shrimp from India*, in that AR Printing's failure to file a timely withdrawal was beyond its control. As explained above, the untimely request for withdrawal stems from the lack of direct communication between AR Printing and its prior counsel, thereby causing AR Printing to miss the withdrawal deadline.
- AR Printing's failure to submit its withdrawal in a timely manner was inadvertent, as evidenced by the fact that AR Printing signed its certification of accuracy on January 27, 2011, three days before the withdrawal deadline. However, AR Printing's former counsel did not receive the certification in time and thereby delayed the filing of the withdrawal request until January 31, 2012.
- Given that AR Printing was already eligible for the non-reviewed company rate of 9.42 percent, it would be illogical for it to knowingly miss the withdrawal deadline and, thus,

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<sup>51</sup> See HRC from India Investigation I&D Memorandum at "Export Promotion Capital Goods Scheme."

<sup>52</sup> See *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (September 12, 2007) (*Shrimp from India*), and accompanying Issues and Decision Memorandum (Shrimp Decision Memorandum) at Comment 10.



potentially subject itself to a higher subsidy rate that would result from an intentionally filed late withdrawal request.

- At the time of AR Printing's withdrawal request, the Department had not expended significant resources and could have easily rescinded the proceeding as no other party had filed a review request.
- At the time of its withdrawal request, no other party objected to the one-day delay filing. Further, adequate time remained for the Department to rescind the review without expending any additional resources.
- Neither the Department nor any other interested party would be prejudiced if the Department accepted AR Printing's January 31, 2012, request for withdrawal because AR Printing was the only party that requested the review. The Department is not prejudiced in any way by terminating a review that no party wants, even if the request was briefly delayed.
- The facts of the instant review are analogous to *Grobest & I-Mei*, in which the Court examined the Department's decision to reject an untimely filed separate rate application.<sup>53</sup> In *Grobest & I-Mei*, the Court stated that the Department must first be guided by the "remedial, and not punitive, purpose" of the statute.<sup>54</sup>
- In *Grobest & I-Mei* the Court further stated that it will "review on a case-by-case basis whether the interests of accuracy and fairness outweigh the burden placed on the Department" and the impact of the finality of the Department's decisions.<sup>55</sup>
- In *Grobest & I-Mei*, the Department found that the Department's rejection of the untimely request to be unreasonable and an abuse of its discretion.<sup>56</sup>
- The facts of the instant review are indistinguishable from those of *Grobest & I-Mei*.
- AR Printing filed its request for withdrawal more than 10 months before the *Preliminary Results*. Thus, there is neither an undue burden on the Department nor is there a concern with the finality in this review as a result of the Department accepting AR Printing's request for withdrawal.

#### *Petitioners' Rebuttal Arguments*

- Many respondent firms are *pro se* parties that are unfamiliar with the Department's regulations and procedures; however, this fact does not give such parties *carte blanche* to ignore them.
- Further, AR Printing cannot argue that it was a *pro se* party lacking adequate guidance when it filed its review request through counsel.
- Even if AR Printing had been *pro se*, all such parties are expected to adhere to the plain directions of the Department's questionnaires and to respond to them in a timely manner or request extensions, as appropriate. AR Printing did neither in the instant review.
- Rather, AR Printing's only attempt to avoid the consequences of its failure to respond to the questionnaire was a late filed request for withdrawal. By the time that request was filed, the Department and the GOI had already expended considerable resources in the

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<sup>53</sup> See *Grobest & I-Mei Industrial (Vietnam) Co., Ltd. V. United States*, 815 F. Supp. 2d 1342, 1365 (CIT 2012) (*Grobest & I-Mei*)

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 1365-1366.

<sup>56</sup> *Id.*

proceeding.

- AR Printing's claim that it replaced its prior counsel upon learning of the failure to file the withdrawal request within the 90-day deadline is not supported by the facts. AR Printing's former counsel withdrew its representation almost two months after the Department rejected the company's withdrawal request and AR Printing did not hire new counsel (or even file any documents *pro se*) until a further 10 months had passed.
- AR Printing faults its counsel for failing to communicate directly with AR Printing. However, it would also appear that AR Printing failed to communicate directly with its counsel. As such, AR Printing has not shown that circumstances beyond its control resulted in its late filing. Instead, the circumstances at work appear to have been completely within the control of AR Printing.
- Contrary to the claims of AR Printing, other parties would be prejudiced by accepting the late withdrawal request. At the time AR Printing filed its request for withdrawal the GOI had already submitted its initial questionnaire response and continued to submit supplemental questionnaire responses throughout the proceeding. Further, the Department has expended considerable resources examining the information submitted by the GOI and petitioners have expended resources in examining to the Department's release of shipment data from Customs and Border Protection.
- AR Printing's citation to *Grobest & I-Mei* is off point. In *Grobest & I-Mei*, the Court noted that its holding was "necessarily case specific" and rested on the separate rate respondent's history of having always previously qualified for a separate rate as well as the Department's prior findings that the respondent in question was not under government control.<sup>57</sup>
- In contrast, in the instant review, the Department had no prior experience with AR Printing and AR Printing made no attempt to provide the Department with any information at all.
- Thus, *Grobest & I-Mei* involved an attempt to place information on the record, information that could not negatively affect any other party. By contrast, AR Printing's late filing in the instant review constituted an attempt to undo the review entirely, despite the fact that parties had already expended considerable resources on the process.
- The fact that foreign governments are also required to provide information in CVD reviews is an additional reason why the Department should not accept AR Printing's untimely request for withdrawal. If the Department were to permit respondent firms to file untimely requests for withdrawal after foreign governments had already expended considerable resources, the agency would jeopardize the willingness of foreign governments to provide information.

**Department's Position:** We have considered the comments submitted by AR Printing and continue to find that the Department reasonably exercised its discretion not to extend the time for AR Printing to withdraw its request for review in this case. As discussed below, the Department's policy, announced in the *Opportunity to Request Review and Initiation*, allows for extensions of time only where an extraordinary circumstance prevented a party from timely withdrawing its request for review.<sup>58</sup> AR Printing has not demonstrated that an extraordinary

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<sup>57</sup> See *Grobest & I-Mei*, 815 F. Supp 2d at 1365-1366.

<sup>58</sup> See *Opportunity to Request Review*, 76 FR at 54736; *Initiation*, 76 FR at 67133.

circumstance prevented it from submitting a timely withdrawal request. Therefore, we have not rescinded this administrative review with respect to AR Printing.

The regulation governing the withdrawal of a request for an administrative review and rescission of reviews, 19 CFR 351.213(d)(1), states the following:

The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.

The regulation indicates that the Secretary may “consider” an extension of the 90-day limit if it is reasonable to do so. The regulation affords the Department discretion in determining whether to extend the 90-day limit.

Exercising its discretion, the Department, in its *Opportunity to Request Review and Initiation*, put parties on notice that “{i}n order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline...the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request.”<sup>59</sup> The Department further stated that “{d}eterminations by the Department to extend the 90-day deadline will be made on a case-by-case basis.”<sup>60</sup> Only after considering the factual information described by AR Printing in its untimely withdrawal of review request has the Department determined that AR Printing failed to demonstrate that an extraordinary circumstance prevented it from filing its withdrawal of review request within the 90-day deadline. Specifically, in exercising its discretion to consider AR Printing’s untimely withdrawal request—and therefore whether to rescind its review—the Department, in the Rejection Letter as well as in these final results, has evaluated whether an extraordinary circumstance prevented AR Printing from submitting a timely withdrawal request.

We do not agree that AR Printing’s lack of experience with CVD proceedings constitutes an extraordinary circumstance that warrants an exception to the Department’s 90-day deadline to withdraw a request for review. AR Printing’s claims concerning its level of experience in dealing with CVD proceedings before the Department are belied by the fact that AR Printing was represented by counsel at the time of its administrative review request through the time that it submitted its untimely request for withdrawal.

AR Printing also attempts to base its argument concerning the existence of an extraordinary circumstance on its claims of complications in communication between it and its prior counsel, thereby causing the request for withdrawal to be filed in an untimely manner. We do not find this to constitute an extraordinary circumstance as envisioned by the Department’s 90-day deadline policy. The Department has previously stated that it does not draw a distinction between the respondent firm and its counsel in AD and CVD proceedings before the Department:

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<sup>59</sup> See *Opportunity to Request Review*, 76 FR at 54736; *Initiation*, 76 FR at 67133.

<sup>60</sup> *Id.*

... once counsel has entered an appearance on behalf of a company, with the exception of certifying the accuracy of information contained in a party's submission (which provision recognizes that counsel's knowledge may not be based upon firsthand knowledge but rather on information made available to counsel), our regulations do not recognize a distinction between counsel and its client. See 19 CFR 351.303(g)(1) & (2).<sup>61</sup>

Thus, in the instant review the Department does not find that the role that AR Printing's prior counsel purportedly played in the untimely filing of its request for withdrawal constitutes an extraordinary circumstance because the Department does not draw a distinction between respondent firms and their counsel.

We also disagree with AR Printing's argument that the Department should grant AR Printing's request for withdrawal because, at the time of the request, the review was in its early stages and therefore the Department had not expended significant time or resources. This consideration is not the focus of the Department's decision of whether to extend the 90-day deadline for withdrawal requests. As explained in the *Opportunity to Request Review and Initiation*, the Department's decision rests on whether extraordinary circumstances prevented a party from submitting a timely withdrawal request.<sup>62</sup> We do not find that extraordinary circumstances prevented AR Printing from timely withdrawing its request for review.

Furthermore, as the CIT stated in *ArcelorMittal*, a case that pre-dates the Department's announcement of its standards for strictly adhering to the 90-day deadline, "{t}he resources the Department expended in conducting the administrative review are not the only consideration that reasonably should affect {the Department's decision not to extend the ninety-day time period}, and it is questionable whether these expended government resources are the most important consideration."<sup>63</sup> As is evidenced by the court's language, the Department was within its discretion to deny AR Printing's request even at the relatively early stages of the review.

As stated in the *Opportunity to Request Review and Initiation*, the Department clarified its withdrawal of review request deadline "{i}n order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline."<sup>64</sup> In the past, extending the 90-day deadline depended, in large part, on the workload of the office conducting the review and the facts surrounding the review (in particular, the number of companies that were covered by the review, the amount of time remaining in that segment of the proceeding, etc.).<sup>65</sup> Depending on these factors, parties might have been granted an extension of the 90-day deadline. To enhance certainty and fairness in terms of consistency in the application of the deadline, the Department determined to apply the 90-day rule except where a requestor could demonstrate that an extraordinary circumstance prevented it from timely submitting a

<sup>61</sup> See Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part, 69 FR 6255 (February 10, 2004) (*Pasta from Italy*), and accompanying Issues and Decision Memorandum (Pasta Decision Memorandum) at Comment 10.

<sup>62</sup> See *Opportunity to Request Review*, 76 FR at 54736; *Initiation*, 76 FR at 67133.

<sup>63</sup> See *ArcelorMittal Dofasco Inc. v. United States*, 602 F. Supp. 2d 1330, 1336 (CIT 2009) (*ArcelorMittal*).

<sup>64</sup> See *Opportunity to Request Review*, 76 FR at 54736; *Initiation*, 76 FR at 67133.

<sup>65</sup> See, e.g., *Certain Helical Spring Lock Washers From the People's Republic of China: Rescission of Antidumping Duty Administrative Review*, 75 FR 16753, 16753-54 (April 2, 2010).

withdrawal of review request. Pursuing these objectives, in the absence of an extraordinary circumstance, the Department is adhering to its policy for untimely withdrawal requests, even where the withdrawal request was filed one day after the established deadline. Furthermore, we do not find the fact that AR Printing was the sole party to request the administrative review relevant to our determination whether there was an extraordinary circumstance meriting the acceptance of an untimely filed request for withdrawal. Administrative reviews of a single respondent are not an extraordinary occurrence in the Department's administration of the trade remedy laws. Treating them as such and applying a different standard would undermine the Department's policy objective of ensuring certainty and a consistent application of the deadline for withdrawals. Accordingly, the Department continues to determine that denying AR Printing's untimely withdrawal of review request was a reasonable exercise of its discretion pursuant to 19 CFR 351.213(d)(1) since AR Printing has not demonstrated that an extraordinary circumstance existed that prevented it from timely submitting its withdrawal of review request.

We disagree with AR Printing that the facts in *Shrimp from India* should compel the Department to accept AR Printing's untimely request for withdrawal. In *Shrimp from India* the Department ultimately decided to accept an untimely Q&V response because it found that the respondent in question had never received the Q&V questionnaire and, thus, the respondent's failure to respond in a timely manner was beyond its control.<sup>66</sup> The situation in the instant review is entirely different. AR Printing's withdrawal request was not a response to a questionnaire the Department issued but AR Printing did not receive. Rather, a withdrawal request is within the control of the submitting party and AR Printing could have submitted a timely request for withdrawal. Once AR Printing made the decision not to participate in the review (reflected in its failure to respond to the Department's questionnaire, due on December 17, 2011), there was no reason for it to delay until January 31, 2012, before filing a request to withdraw its review request. As discussed above, we find that none of the excuses offered up by AR Printing meet the Department's criteria for "extraordinary circumstances" that would warrant the acceptance of its untimely filed withdrawal request.

We also find that the Court's holding in *Grobest & I-Mei* is not applicable to the facts of the instant review. As petitioners note, the issue in *Grobest & I-Mei* dealt with whether the Department should have accepted a Vietnamese firm's untimely filed request for treatment as a separate rate respondent in a non-market economy antidumping review. In finding that the Department should have accepted the separate rate request, the Court drew upon the Department's past treatment of the firm as a separate rate respondent. Specifically, the Court noted that the Department had previously treated the firm as qualifying for a separate rate and that the Department had not previously found any information that would lead it to determine that the Vietnamese firm was under government control such that it was not eligible for a separate rate.

In contrast, in the instant review, the Department is not considering whether AR Printing merits treatment as a separate rate respondent, an analysis not conducted in a CVD proceeding. Rather, the Department is determining whether to accept or deny AR Printing's untimely request for withdrawal of its review request. As such, an examination of AR Printing's past involvement in

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<sup>66</sup> See Shrimp Decision Memorandum at Comment 10.

prior CVD proceedings (of which there is none) is not relevant to our analysis of whether extraordinary circumstances prevented AR Printing from submitting a timely withdrawal request. Furthermore, concerning *Grobtest & I-Mei*, the Court noted that its holding was “necessarily case specific.”<sup>67</sup> Therefore, we find that the Court’s holding in *Grobtest & I-Mei* is not applicable to the facts of the instant review.

**Comment 2:** Whether the Department Should Apply AFA to AR Printing

*Arguments of AR Printing*

- The Department should not assign facts otherwise available with an adverse inference to AR Printing.
- The Department’s rejection of the request for withdrawal seriously prejudices AR Printing with an inaccurate and punitive subsidy rate that has no factual relationship to AR Printing’s actual rate.

*Arguments of Petitioners*

- The Department’s continued application of AFA in the Preliminary Results and Post-Preliminary Decision Memorandum is appropriate

**Department’s Position:** AR Printing’s response to the initial questionnaire was due on December 17, 2011.<sup>68</sup> However, AR Printing failed to respond to the initial questionnaire. Furthermore, AR Printing did not request an extension of time to file its questionnaire response. As noted above, AR Printing requested to withdraw its administrative review request after the established 90-day deadline.<sup>69</sup> However, an untimely filed request for withdrawal does not relieve a party of the requirement to file a questionnaire response while the administrative review remains on-going.

AR Printing failed to respond to the Department’s initial questionnaire and, accordingly the Department applied facts otherwise available as provided under section 776(a)(2)(B) of the Act.<sup>70</sup> Also, because AR Printing failed to respond to the Department’s request for information, the Department found that AR Printing failed to cooperate by not acting to the best of its ability and applied facts otherwise available with an adverse inference as provided under section 776(b) of the Act.<sup>71</sup> Therefore, to the extent AR Printing argues that the Department’s decision not to rescind the review results in prejudice and injury to AR Printing, such is not the case. It is AR Printing’s own actions in not submitting a questionnaire response that have resulted in the application of AFA and, thus, deprived the Department of the information it requires to examine the extent to which AR Printing used and benefited from the subsidy programs at issue in the instant review.

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<sup>67</sup> See *Grobtest & I-Mei*, 815 F. Supp. 2d at 1365.

<sup>68</sup> See the Department’s November 18, 2011, initial questionnaire at I-1.

<sup>69</sup> See AR Printing’s January 31, 2012, request for withdrawal.

<sup>70</sup> See Preliminary Decision Memorandum at 3; see also Post-Preliminary Decision Memorandum at 3-4.

<sup>71</sup> See *Id.*

Furthermore, in applying AFA, and with no information on the record concerning the degree to which AR Printing benefited because it failed to provide information, the Department used its standard AFA methodology for CVD proceedings.

We disagree with AR Printing that the AFA rates assigned to it in the *Preliminary Results* and Post-Preliminary Decision Memorandum are punitive and inaccurate. Pursuant to its standard methodology for determining AFA rates in CVD proceedings, the Department applied to AR Printing subsidy rates calculated for cooperative respondents for similar programs in other segments of this and other CVD proceedings concerning merchandise from India. In the absence of information from AR Printing concerning the rate at which it benefited from the programs at issue, rates calculated for cooperative respondents provide a non-punitive and “reasonably accurate estimate of” AR Printing’s rates “with some built-in increase intended as a deterrent to non-compliance.”<sup>72</sup>

In assigning net subsidy rates for each of the programs at issue in the instant review, we were guided by the Department’s approach in the prior reviews as well as recent CVD investigations involving India.<sup>73</sup> Thus, 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 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 proceeding, the Department applied 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 the instant review, following the Department’s hierarchy, the Department identified subsidy rates for use as AFA rates from other segments within the proceeding as well as other CVD proceedings involving India. In accordance with this methodology, we assigned the rates to AR Printing for those subsidy programs the Department determined confer countervailable subsidies, as discussed in the Preliminary Decision Memorandum and Post-Preliminary Decision Memorandum.

Rates calculated in other segments of this proceeding constitute secondary information.<sup>74</sup> Section 776(c) of the Act provides that when the Department relies upon secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The Department considers information to be corroborated if it has probative value.<sup>75</sup> “Commerce assesses the probative value of secondary information by examining the reliability and relevance of the information to be used.”<sup>76</sup>

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<sup>72</sup> See *F.lli De Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (CAFC 2000).

<sup>73</sup> See Preliminary Decision Memorandum at 3; see also Post-Preliminary Decision Memorandum at 4.

<sup>74</sup> The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) defines secondary information as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.” SAA, H.R. Doc. 103-316, vol. 1 at 870 (1994).

<sup>75</sup> *Id.*

<sup>76</sup> See *Mittal Steel Galati S.A. v. United States*, 491 F. Supp. 2d 1273, 1278 (CIT 2007).

We note that our reliance on rates calculated in prior proceedings is necessary when a company respondent does not cooperate or act to the best of its ability in providing the requested information. There is a limited amount of information which the Department may choose for corroboration purposes. For example, the Department has found limitations in its ability to corroborate company-specific benefits resulting from a countervailable subsidy program because “{u}nlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.”<sup>77</sup> That being said, the United States Court of Appeals for the Federal Circuit has affirmed the Department’s use of the highest available rate.<sup>78</sup>

The Department determines that the AFA rates the Department applied in the *Preliminary Results* and Post-Preliminary Decision Memorandum are reliable and accurate because they reflect subsidy rates that the Department calculated for cooperating respondents in other administrative reviews and/or investigations involving India, and no information has been presented that calls into question the reliability of these calculated rates. Further, in terms of relevance and accuracy, the AFA methodology the Department employs in CVD proceedings relies on the premise that the behavior of the government (in this case the GOI) with regard to companies investigated in another segment of a same proceeding, or alternatively with regard to companies in another proceeding, provides a reasonable estimate of the level of subsidization provided by the government in the case at issue.

As discussed in the *Preliminary Results* and the Post-Preliminary Decision Memorandum, due to the failure of AR Printing and the GOI, in part, to respond to the Department’s questionnaires concerning the programs at issue, the Department relied on the information concerning Indian subsidy programs from other segments within the proceeding as well as other CVD proceedings involving India.<sup>79</sup> Because these rates reflect the actual behavior of the GOI with respect to identical or similar subsidy programs, and lacking responses from AR Printing to the Department’s questionnaire demonstrating otherwise, the rates calculated for cooperative respondents provide a non-punitive, accurate, and reasonable adverse facts available rate.

#### **IV. Programs Determined to be Terminated, Constituting a Program-Wide Change**

In the *Preliminary Results*, the Department found that the following programs were terminated, with the circumstances constituting a program wide change under 19 CFR 351.526.<sup>80</sup> No new information or arguments from interested parties has been presented that warrants

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<sup>77</sup> See *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009) (*CWASPP from the PRC*), and accompanying Issues and Decision Memorandum at III.B.

<sup>78</sup> See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (upholding use of highest dumping margin where highest available rate was most probative on the record); see also *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (upholding use of highest prior margin where respondent offered no evidence showing that recent margins were more probative of current conditions than the highest prior margin).

<sup>79</sup> See Preliminary Decision Memorandum at 3; see also Post-Preliminary Decision Memorandum at 4.

<sup>80</sup> See Preliminary Decision Memorandum at 15-16.



reconsideration of our prior findings. Therefore, for these final results, the Department continues to find that the program wide change regulation applies to the following terminated programs:

- Duty Free Replenishment Certificate (DFRC) Program
- Exemption of Export Credit from Interest Taxes<sup>81</sup>
- Income Tax Exemptions Under 80 HHC<sup>82</sup>

## V. Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register*.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date

<sup>81</sup> The Department previously found this program to be terminated in accordance with 19 CFR 351.526(d) in *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.

<sup>82</sup> The Department previously found this program to be terminated in accordance with 19 CFR 351.526(d) in *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.”