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International Trade Administration  
Washington, D.C. 20230

A-533-843  
Administrative Review  
POR: 9/1/11 – 8/31/12  
Public Document  
AD/CVD OIII: CR

April 30, 2014

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder *JPM*  
Director, Office of  
Antidumping and Countervailing Duty Operations

**SUBJECT:** Certain Lined Paper Products from India: Issues and Decision  
Memorandum for the Final Results of the Antidumping Duty  
Administrative Review; 2011-2012

## I. Summary

We analyzed the case and rebuttal briefs of the Petitioners<sup>1</sup> and Respondents<sup>2</sup> for the final results in the 2011-2012 administrative review of certain lined paper products (CLPP) from India. We recommend that you approve the positions we developed in the "Department's Position" sections of this memorandum.

## II. List of Comments

- Comment 1: Whether Navneet's Claimed Adjustments for Duty Drawback Are Valid
- Comment 2: Calculation Error Regarding Navneet's Drawback Credits
- Comment 3: Whether Navneet's Early Payment Discounts and Other Rebates Claims for Home Market Sales are Valid

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<sup>1</sup> Petitioners include ACCO Brands USA LLC, Norcom Inc., and Top Flight, Inc. See Petitioners' letter titled "Notification of Membership Change," dated April 1, 2013.

<sup>2</sup> The Respondents in this review include a mandatory respondent, Navneet Publications (India) Ltd. (Navneet) and a non-selected respondent, AR Printing & Packaging (India) Pvt. Ltd. (AR Printing).



### III. Background

The Department of Commerce (the Department) published the *Initiation Notice* on October 31, 2012.<sup>3</sup> On October 23, 2013, the Department published in the *Federal Register* the *Preliminary Results* of the antidumping duty administrative review for certain lined paper products (CLPP) from India.<sup>4</sup> The period of review (POR) is September 1, 2011, through August 31, 2012. We invited parties to comment on our *Preliminary Results*.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013. Therefore, all deadlines in this segment of the proceeding have been extended by 16 days.<sup>5</sup> Pursuant to the Tolling Memorandum, the deadlines for briefs and the final results of this review were revised with due dates of December 9 and December 14, 2013, for case and rebuttal briefs, respectively, and March 7, 2014, for the final results.<sup>6</sup>

On December 9, 2013, Navneet Publications (India) Ltd. (Navneet) submitted its case brief, and on December 11, 2013, Petitioners filed their case brief.<sup>7</sup> On January 3, 2014, Navneet filed its rebuttal brief. Petitioners did not submit a rebuttal brief.

On February 20, 2014, the Department issued a memorandum extending the time period for issuing the final results of this administrative review from March 7, 2014, to May 9, 2014.<sup>8</sup>

### IV. The Proper Rate to Apply to AR Printing, the Non-Selected Respondent

For the reasons discussed above, we made certain revisions to our calculations such that the dumping margin for the sole mandatory respondent, Navneet, is *de minimis*.

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<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 65858 (October 31, 2012) (*Initiation Notice*).

<sup>4</sup> See *Certain Lined Paper Products From India: Notice of Partial Rescission and Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 63162, (October 23, 2013) (*Preliminary Results*). The review was rescinded for all companies with the exception of Navneet and AR Printing.

<sup>5</sup> See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013) (Tolling Memorandum).

<sup>6</sup> See Memorandum to File, "Certain Lined Paper Products from India: Deadlines for Hearing Request, Briefs Submission, and Final Results," dated October 28, 2013.

<sup>7</sup> In accordance with 19 CFR 351.303(c)(2), Petitioners filed their case brief on December 9, 2013, subject to the one-day lag rule. Although Petitioners' proprietary case brief was dated December 9, 2013, Petitioners did not submit the final version until December 11, 2013. However, due to the inclement weather which caused the closure of the Federal Government on December 10, 2013, the Department found that the case brief submitted by Petitioners on December 11, 2013, was timely. In addition, the Department extended the time limit for interested parties to submit rebuttal brief until January 3, 2014. See Memorandum to File, "Certain Lined Paper Products from India: Deadline for Submission of Rebuttal Brief," dated December 23, 2013.

<sup>8</sup> See Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, "Certain Lined Paper Products from India: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review," dated February 20, 2014.

Though not briefed by parties, the fact that Navneet's margin is *de minimis* in these final results raises the issue of how the Department should calculate the non-selected rate for AR Printing, the firm that remains in the review but that is not subject to individual review.

Generally, when calculating the margin for non-selected respondents (non-selected rate), the Department looks to section 735(c)(5) of the Tariff Act of 1930, as amended (the Act) for guidance, which provides instructions for calculating the all-others margin in an investigation. Section 735(c)(5)(A) of the Act provides that when calculating the all-others margin, the Department will exclude any zero and *de minimis* weighted-average dumping margins, as well as any weighted-average dumping margins based on total facts available. Accordingly, the Department's normal practice has been to average the margins for selected respondents, excluding margins that are zero, *de minimis*, or based entirely on facts available.<sup>9</sup> Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis* or based on total facts available, the Department may use "any reasonable method" for assigning a margin to non-selected respondents. One method contemplated by section 735(c)(5)(B) of the Act is "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

In this review, we calculated a *de minimis* weighted-average dumping margin for Navneet, the sole mandatory respondent. In past reviews, the Department determined that a "reasonable method" to use when the margins of selected mandatory respondents are zero or *de minimis* is to assign non-selected respondents the average of the most recently determined margins that are not zero, *de minimis*, or based entirely on facts available (which may be from a prior review or a new shipper review or the investigation).<sup>10</sup> However, if a non-selected respondent has its own calculated margin that is contemporaneous with or more recent than such previous margins, the Department applies that calculated margin to the non-selected respondent, including when that margin is zero or *de minimis*.<sup>11</sup> When "reaching back" for margins calculated in prior reviews, the Department also stated that it will not rely on margins that were based on the Department's zeroing methodology for reviews with preliminary determinations issued after April 16, 2012.<sup>12</sup>

In the instant review, we determine that a reasonable method for assigning a non-selected margin to AR Printing is to utilize the non-selected margin of 11.01 percent calculated in the prior review. The rate was also assigned to AR Printing in the prior review.<sup>13</sup> The non-selected margin of 11.01 percent utilizes the weighted-average dumping margins calculated for the mandatory respondents (zero percent) and the AFA rate assigned to the uncooperative companies (22.02 percent) in the 2010-2011 review. Accordingly, the rate from the prior review is neither

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<sup>9</sup> See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

<sup>10</sup> See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191, 47194 (September 15, 2009).

<sup>11</sup> *Id.*

<sup>12</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification*).

<sup>13</sup> See *Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 22232, 22234 (April 15, 2013), and accompanying Issues and Decision Memorandum at Comment 5.

*de minimis* nor based entirely on facts available. Further, the non-selected margin from the prior review does not utilize the zeroing methodology.<sup>14</sup>

## V. Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8-3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or “tear-out” size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as “tablets,” “note pads,” “legal pads,” and “quadrille pads”), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;

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<sup>14</sup> *Id.*

- desk and wall calendars and organizers (including but not limited to such products generally known as “office planners,” “time books,” and “appointment books”);
- telephone logs;
- address books;
- columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationery (including but not limited to products commonly known as “fine business paper,” “parchment paper”, and “letterhead”), whether or not containing a lined header or decorative lines;
- Stenographic pads (steno pads), Gregg ruled (“Gregg ruling” consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.), measuring 6 inches by 9 inches.

Also excluded from the scope of this order are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1" wide elastic fabric band. This band is located 2-3/8" from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face

(outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

- FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4810.22.5044, 4811.90.9050, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

## VI. Analysis of Comments

### Comment 1: Whether Navneet's Claim for Duty Drawback Adjustments Are Valid

#### *Petitioners' Arguments*

- The Department should find that Navneet did not sufficiently justify its entitlement to adjustments for duty drawback and, thus, the Department should not grant Navneet the adjustment in the final results.
- Navneet has the burden of proof in establishing the validity of its duty drawback claim in the instant administrative review. In *Primary Steel*, the Court of International Trade (CIT) found that "the burden of creating a record from which the ITA could determine whether {respondent} was entitled to a duty drawback adjustment rested with {respondents}, not Commerce."<sup>15</sup>
- The Department has a two-prong test when evaluating a respondent's duty drawback claims. The first prong of the test has not been satisfied because Navneet failed to provide linkage

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<sup>15</sup> *Primary Steel v. United States*, 17 CIT 1080, 1090 (1993) (*Primary Steel*); see also *U.S. Steel Corp. v. United States*, 844 F. Supp 2d 1334 (CIT 2012) (*U.S. Steel Corp.*).

between the import duty paid and any rebate granted for subject merchandise during the POR. It is impossible to establish any linkage because Navneet did not even provide the name of the duty drawback program, let alone a description that would allow the Department to conclude that any rebates received for exportation of subject merchandise were specifically linked to the import duties paid for inputs used to manufacture them.

- Though Navneet provided some documentation from the Indian Government, Navneet supplied no information indicating that it paid any import duties or was exempt from paying duties because of its exportation of subject merchandise.
- Navneet also failed to fulfill the requirements of the first prong because it did not identify the inputs for which it paid import duties. This oversight is critical because in past cases, the Department found that respondents must demonstrate that the imported materials are of the same type used to produce the exported subject merchandise.<sup>16</sup>
- Instead, the information provided by Navneet merely indicates that it received a rebate based upon the free on board (FOB) price of the exported subject merchandise. The Department previously examined Indian tariff rebate programs that operate in a similar manner and determined that companies that use such programs are not entitled to a duty drawback adjustment on the grounds that they do not adequately link the inputs to the duties paid.<sup>17</sup>
- Concerning the second prong, Navneet must demonstrate that there are adequate imports of the imported material to account for the duty drawback received upon exportation of subject merchandise.
- However, Navneet failed to provide any explanation or required documentation indicating that the quantity of imported inputs were at least as great as that used in the production of the exported product for which drawback is being claimed. Further, Navneet did not provide import quantity totals for its inputs, duty drawback totals for its exports, or any other basis on which the Department could conclude that Navneet demonstrated sufficient imports.
- Despite having the burden of proof, Navneet failed to provide the necessary information required to satisfy the Department's two-prong test and, thus, the Department should deny Navneet's request for a duty drawback adjustment.

#### *Navneet's Rebuttal Arguments*

- As instructed by the Department, Navneet reported the unit amount of duty drawback it received upon importation of the subject merchandise to the United States and explained how it calculated the amount of duty drawback received.<sup>18</sup>
- Further, in response to a supplemental questionnaire, Navneet provided the requested information concerning the taxes credited upon export. In addition, Navneet provided a sample invoice, detailed calculation and documentation for a specified sample sale, the relevant invoice, packing list, Indian customs drawback form, and screen-shot for the particular duty drawback receipt from Navneet's financial accounting system.<sup>19</sup>

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<sup>16</sup> See *Certain Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 71 FR 18715, 18716 (April 12, 2006).

<sup>17</sup> See *Stainless Steel Wire Rod from India: Final Results of Antidumping Duty Review*, 65 FR 31302 (May 17, 2000). The Department's decision in this regard was upheld by the CIT. See *Viraj Group v. United States*, 162 F. Supp 2d 656, 665 (*Viraj Group*).

<sup>18</sup> See Navneet's March 4, 2013, Initial A-D Questionnaire Response (Initial A-D QNR Response) at C-39 and C-40.

<sup>19</sup> See Navneet's June 24, 2013, First Supplemental Questionnaire Response (First Supp QNR Response) at 37-38 and Exhibit C-19.

- Thus, Navneet provided all information the Department requested concerning the duty drawback back adjustment. At no time did the Department indicate any dissatisfaction with the information Navneet supplied. Thus, Navneet had every reason to believe that its response was sufficient.
- Further, Petitioners had full access to all the information Navneet provided to the Department; however, at no time prior to the filing of the case briefs did Petitioners allege that there were deficiencies concerning Navneet's duty drawback response.
- Petitioners should have raised any objections to Navneet's questionnaire responses prior to the expiration of the factual deadline. Numerous cases confirm that a party cannot wait passively during a proceeding and then allege the existence of deficiencies in a factual filing at the briefing stage.<sup>20</sup>
- Petitioners' arguments concerning the duty drawback adjustment amount to a request for the Department to apply adverse inferences, as described under section 776(b) of the Act, with regard to information to which they belatedly objected. The Act provides that the Department cannot apply adverse inferences unless it first provides the respondent an opportunity to correct the error or omission. As noted above, at no time did the Department indicate that the information Navneet provided concerning the duty drawback adjustment was deficient.
- Therefore, given that Navneet has been fully cooperative and the Department did not identify any deficiencies concerning Navneet's duty drawback adjustment, the Department has no legal basis to deny making the adjustment.

**Department's Position:** If the Department were to disregard the duty drawback adjustment at issue, Navneet's overall cash deposit rate would remain *de minimis* as would the assessment rates for Navneet's importers.<sup>21</sup> Therefore, we are disregarding Navneet's duty drawback adjustment as insignificant as provided under 19 CFR 351.413 and section 777(a)(2) of the Act, and do not address the substance of the parties' comments.

## **Comment 2: Calculation Error Regarding Navneet's Drawback Credits**

### *Navneet's Argument*

- The Department incorrectly subtracted the duty drawback credits claimed by Navneet as an expense for U.S. price. The Department should instead add the expenses to U.S. Price.

Petitioners did not comment on this issue.

**Department's Position:** In the *Preliminary Results*, we inadvertently subtracted duty drawback credits claimed by Navneet as an expense for U.S. price rather than adding the expenses to U.S.

<sup>20</sup> See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Review; 2010-2011*, 78 FR 36166 (June 17, 2013) (*Sawblades from the PRC*) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>21</sup> See Memorandum to Eric B. Greynolds, Program Manager, Office III, AD/CVD Operations, "Calculations for Navneet Publications (India) Ltd. (Navneet) for Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review – 2011-2012," (May 9, 2014), in which the duty drawback adjustment has not been incorporated into the final margin program.



price.<sup>22</sup> However, as noted above, Navneet's overall cash deposit rate as well as the assessment rate for its importers remains *de minimis* even if the Department disregards the duty drawback adjustment. Therefore, we are disregarding Navneet's duty drawback adjustment as insignificant as provided under 19 CFR 351.413 and section 777(a)(2) of the Act.

**Comment 3: Whether Navneet's Early Payment Discounts and Other Rebates Claims for Home Market Sales are Valid**

*Petitioners' Arguments*

- Navneet's narrative explanation of its early payment discount claims does not match the data it reported to the Department.
- Navneet's home market (HM) database indicates that early payment 1 (EARLYPH1) applies to a large percentage of its HM sales. However, there are only limited instances in the HM database in which advanced payment occurs.
- Concerning early payment 2 (EARLYPH2), Navneet claims it reflects discounts that are not reflected on the invoice, but are granted pursuant to the customer agreement.
- However, many sales reflect both EARLYPH1 and EARLYPH2 discounts. It simply does not make sense that Navneet provided two early payment discounts to the same customer.
- Further, concerning EARLYPH2, though Navneet's narrative explanation states that EARLYPH2 is usually a small percentage discount, some EARLYPH2 discounts constituted a very large percentage of the gross unit price.
- For the other rebate (OTHREBH) field in the HM database, Navneet claimed distributor promotions which applied to a very large percentage of its sales, despite the fact that many of the sales containing this adjustment were to customers that would not seem to qualify for OTHREBH discounts. Further, the rebate level for OTHREBH in the HM database exceeds the rebate level discussed in the narrative portion of Navneet's initial questionnaire response.
- Navneet failed to submit adequate supporting documentation to substantiate the claims it made concerning the OTHREBH field.
- The Department should deny Navneet's reported EARLYPH1, EARLYPH2, and OTHREBH adjustments.

*Navneet's Rebuttal Arguments*

- As instructed in the initial and supplemental questionnaires, Navneet provided the requisite explanation, source documentation (e.g., a screen shot from Navneet's computerized accounting system reflecting the rebate provided in connection with the OTHREBH field and the relevant invoices reflecting early payment discounts in question), and sample calculations.<sup>23</sup>
- At no point in the review did the Department indicate that the information Navneet provided regarding the EARLYPH1, EARLYPH2, and OTHREBH fields was insufficient.

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<sup>22</sup> See Memorandum to the File through Eric B. Greynolds, Program Manager, Office III, AD/CVD Operations, "Preliminary Results of Antidumping Duty Administrative Review of Certain Lined Paper Products from India (2011-2012)," (September 30, 2013) at 7.

<sup>23</sup> For information regarding EARLYPH1 and EARLYPH2, see Initial A-D Questionnaire Response (Initial A-D QNR Response) at B-37 and First Supp QNR Response at Exhibit B-16. For information regarding OTHREBH, see Initial A-D QNR Response at B-40-41 and Exhibit 6 and First Supp QNR Response at 24-25 and Exhibit B-22.

- Petitioners neglected to submit any comments regarding Navneet's questionnaire responses prior to the *Preliminary Results*. Now, Petitioners argue for the first time in their case brief that the Department should disregard Navneet's early payment discount and other rebate claims. Petitioners' factual objections to certified information submitted by Navneet are, at this stage of this proceeding, too late for the Department to consider.
- The Department previously determined that interested parties cannot wait passively during a proceeding only to raise factual objections for the first time in their case briefs.<sup>24</sup> Rather, Petitioners should have raised their factual objections prior to the briefing stage of the proceeding.
- To deny Navneet's early payment discount and other rebate claims would constitute the application of adverse inferences. Such an approach would violate the Department's statutory obligation to notify Navneet that the information it submitted is in some way insufficient and provide it with an opportunity to remedy any perceived flaws.

**Department's Position:** Regarding EARLYPH1, we find that Petitioners conflate advanced payment with early payment. Early payment simply means payment prior to the date set by the agreed payment terms, *i.e.*, 10 days or 45 days or more after the date of shipment or invoice. Therefore, Petitioners' claim that only a small number of sales had pay dates that preceded the sales date and this information contradicts Navneet's statements in the questionnaire that customers paid on time in most cases is misleading. For example, Navneet's terms of payment clearly indicate that it provides early payment discounts when customers pay a certain number days after the invoice date.<sup>25</sup> Therefore, we accept Navneet's EARLYPH1 field as reported.

Regarding EARLYPH2, we find there is no information on the record indicating that EARLYPH1 and EARLYPH2 are mutually exclusive. Further, Navneet indicates in its questionnaire response that it typically processes EARLYPH2 discounts in batches for several invoices at a time.<sup>26</sup> For this reason, Navneet reports that it was not able to report EARLYPH2 on an invoice-specific basis and, thus, Navneet reported EARLYPH2 on a customer-specific basis.<sup>27</sup> Thus, we find the fact that Navneet allocated the expense by customer explains why EARLYPH2 applied to numerous HM sales and why EARLYPH2 was attributed to sales in which an EARLYPH1 discount was also provided.

Further, we note that Navneet's questionnaire response indicates that it "usually" grants a relatively small EARLYPH2 discount to its customers, thereby leaving open the possibility that some discounts could exceed that range.<sup>28</sup> Furthermore, a review of Navneet's HM database indicates that there are a very small number of observations in which EARLYPH2 exceeds the percentages discussed in the narrative of Navneet's Initial A-D QNR Response and that the total quantity for these sales are extremely small relative to Navneet's total sales in the home market.<sup>29</sup> Additionally, a review of Navneet's HM database indicates that, on average, the discounts reported in the EARLYPH2 field are at or below the percentages mentioned in the

<sup>24</sup> See, e.g., *Sawblades from the PRC*, and accompanying Issues and Decision Memorandum at Comment 4.

<sup>25</sup> See First Supp QNR Response at Exhibit B-16.

<sup>26</sup> See Initial A-D QNR Response at B-37.

<sup>27</sup> *Id.*

<sup>28</sup> See Initial A-D QNR Response at B-36.

<sup>29</sup> See First Supp QNR Response at Exhibit B.15 or its home market sales database, NAVTHM02.

narrative of Navneet's Initial A-D QNR Response.<sup>30</sup> Therefore, we do not agree with Petitioners' claim that the existence of EARLYPH2 discounts that exceed the percentage range mentioned in the narrative portion of Navneet's Initial A-D QNR Response is evidence of the unreliability of Navneet's HM database. Thus, we accept Navneet's EARLYPH2 discount as reported.

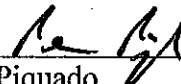
Navneet reported that the other rebate/distributor promotional rebate (reported to the Department as OTHREBH) is aimed at retailers, and that it implements and carries out the rebate through its distributor in the particular Indian state at issue.<sup>31</sup> Navneet's questionnaire response indicates that in such instances, the distributor will pass on the promotional price reduction when reselling to its downstream customers.<sup>32</sup> In its questionnaire response, Navneet indicates that it cannot tie the discount provided to a specific invoice or shipment because its rebate programs are state-wide and are not specific to a particular previous sale.<sup>33</sup> Thus, in keeping with the methodology utilized in prior reviews, Navneet calculated this type of rebate by collecting various credit notes for this program that were issued during the POR and allocated the corresponding amounts on a state-by-state basis.<sup>34</sup>

We find that Navneet's use of an allocation methodology explains why the OTHREBH field applied to numerous HM sales. In light of the fact that Navneet's distributors pass on the promotional price reduction when reselling to downstream customers, we find there is an adequate explanation as to why Navneet attributed the OTHREBH field to entities that are not distributors. Therefore, we accept the OTHREBH rebate as reported.

## **VII. Recommendation**

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

Agree ☒ Disagree ☐

  
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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

30 APRIL 2014  
\_\_\_\_\_  
Date

<sup>30</sup> *Id.*

<sup>31</sup> See Initial A-D QNR Response at 41.

<sup>32</sup> *Id.*, at 42.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*, at 42 and Exhibit B-6.