



C-533-844

Administrative Review
POR: 01/01/2012 – 12/31/2012
Public Document
Office III, Operations: JSC

April 6, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

SUBJECT: Decision Memorandum for Final Results

I. Summary

On October 7, 2014, the Department of Commerce (the Department) published its preliminary results of administrative review of the CVD order on certain lined paper products from India for the calendar year 2012.¹

As noted in the *Preliminary Results*, A.R. Printing & Packaging India Private Limited (AR Printing) did not respond to the Department's initial questionnaire.² The Government of India (GOI), however, submitted an initial questionnaire response and supplemental responses³ and the Department utilized information in the GOI's response in making its preliminary findings. In the *Preliminary Results*, we determined 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).⁴

Prior to the *Preliminary Results* the GOI claimed that AR Printing did not use certain programs during the period of review (POR), specifically the Market Development Assistance, Status

¹ See *Certain Lined Paper Products From India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 79 FR 60447 (October 7, 2014) (*Preliminary Results*), and accompanying Issues and Decision Memorandum, dated September 30, 2014 (Preliminary Decision Memorandum).

² See Preliminary Decision Memorandum at "Application of Adverse Facts Available (AFA) - AR Printing."

³ See GOI's January 7, 2014, initial questionnaire response, June 9, 2014, supplemental questionnaire response, and July 8, 2014, supplemental questionnaire response.

⁴ See Preliminary Decision Memorandum at "Application of Adverse Facts Available (AFA) - AR Printing."



Certificate, and Market Access Initiative programs along with four different programs administered by the state government of Maharashtra.⁵

After the *Preliminary Results*, the Department issued the GOI the third supplemental questionnaire, providing the GOI with another opportunity to submit complete and verifiable evidence and describe the steps on which it based its non-use claims with regard to certain programs administered by the GOI and the State Government of Maharashtra (SGOM),⁶ to which the GOI responded on October 31, 2014.⁷

On March 4, 2015, we conducted verification of certain programs at the GOI's offices in New Delhi, India.⁸

Petitioner⁹ submitted a case brief on March 11, 2015,¹⁰ and the GOI submitted a rebuttal brief on March 16, 2015.¹¹ The briefs concern a single issue: whether the Department should continue to find pursuant to adverse facts available that AR Printing benefited from the Status Certificate Program, Market Access Initiative Program and Market Development Assistance Programs during the POR.

We analyzed the comments submitted in the case and rebuttal briefs. The "Analysis of Comments" section below contains summaries of these comments and the Department's positions on the issues raised in the briefs.

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 loose leaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, loose leaf 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

⁵ The four programs from the SGOM are ; (1) Sales Tax; (2) Electricity Duties Exemptions Under the SGOM Package Program of Incentives of 1993; (3) Loan Guarantees Based on Octroi Refunds by the SGOM and (4) Land for Less than Adequate Remuneration (LTAR).

⁶ See the Department's October 10, 2014, Third Supplemental Questionnaire to the GOI.

⁷ See the GOI's October 31, 2014, Third Supplemental Questionnaire Response (Third QNR Response).

⁸ See Memorandum to Eric B. Greynolds, Program Manager, AD/CVD Duty Operations, Office III, "Verification of the Questionnaire Responses Submitted by the Government of India," (March 4, 2015) (GOI Verification Report).

⁹ Petitioner is the Association of American School Paper Suppliers (Petitioner).

¹⁰ See Petitioners' March 11, 2015, case brief.

¹¹ See the GOI's March 16, 2015, rebuttal brief.

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;
- 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 stationary (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, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000 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 the order is dispositive.

II. Analysis of Programs

Programs Determined to be Countervailable

A. Programs Addressed in the *Preliminary Results*

In addition to the three GOI administered programs identified above, in the *Preliminary Results*, the Department found the programs listed below to be countervailable. No party commented with regard to the programs listed below and, thus, we find that no new information or argument from parties has been presented that warrants the Department's reconsideration of its preliminary findings with regard to these programs. For a description of the programs listed below as well as the Department's basis for finding the programs countervailable and the subsidy rate attributed to each program, see the Preliminary Decision Memorandum that accompanied the *Preliminary Results*.¹²

1. Advance Authorization Program (AAP)
2. Export Promotion of Capital Goods Scheme (EPCGS)
3. Pre and Post-Shipment Loans
4. Export Oriented Units (EOUs)
5. State Government of Maharashtra (SGOM) Programs
 - A. Sales Tax Incentives Provided by SGOM
 - B. Electricity Duties Exemptions Under the SGOM Package Program of Incentives of 1993
 - C. Loan Guarantees Based on Octroi Refunds by the SGOM
 - D. Land for Less than Adequate Remuneration (LTAR)

B. Changes from the *Preliminary Results*

After the *Preliminary Results*, the Department received and verified the GOI's additional information concerning the Market Development Assistance, Status Certificate, and Market Access Initiative programs.¹³ Based on the findings at verification and for the reasons set forth below, we find that AR Printing did not use these three programs during the POR. Therefore, we did not include subsidy rates for these programs when determining the AFA attributable to AR Printing.

¹² See Preliminary Decision Memorandum at 7-20.

¹³ See GOI Verification Report.

Market Development Assistance (MDA)

The MDA program provides grants-in-aid to approved organizations (*i.e.*, export houses) to promote the development of markets for Indian goods abroad. Such development projects may include market research, export publicity, and participation in trade fairs and exhibitions.¹⁴ The Department found that the MDA grants were countervailable.¹⁵

In the IQR the GOI stated that AR Printing did not use the program.¹⁶ In the 1SQR, the GOI provided a letter from the Export Promotion Council, the government agency that disburses funds under the program, stating that AR Printing did not use the program. The Export Promotion Council based its statement on non-use on a review of its records.¹⁷

Concerning the MDA program, the GOI bases its non-use claim on information supplied by the Export Promotion Council, specifically the Export Promotion Council's statement that a review of the relevant program records indicated that AR Printing did not use the program.¹⁸ As noted above, we previously stated that where the foreign government can "demonstrate through complete, verifiable, positive evidence" that a non-cooperating mandatory respondent (including all facilities and cross-owned affiliates) is not located in particular provinces whose subsidies are being investigated, we will not include those provincial programs in determining the countervailable subsidy rate for those companies.¹⁹ Thus, we will, in certain situations, consider certain types of information from a foreign government for purposes of determining the extent to which a non-cooperating mandatory respondent used investigated subsidy programs in a given proceeding.

Based on the documents review at verification and as further discussed below in Comment 1, we find that AR Printing did not use this program during the POR.

Status Certificate Program

In the *2008 Review of HRS From India*, the Department explained that India's Status Certificate Program is detailed under paragraph 3.5 of its Foreign Trade Policy Handbook and that the program provides the following to exporters, depending on their export performance for the current year, plus the preceding three years:

- Authorizations and Customs clearances for both imports and exports on self-declaration basis;

¹⁴ See *Preliminary Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India*, 55 FR 46699, 46702 (November 6, 1990) (*Preliminary Results of Sixth Castings Review*) (unchanged in *Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India*, 56 FR1956 (January 18, 1991) (*Castings from India*)).

¹⁵ *Id.*

¹⁶ See the GOI's January 17, 2014, initial questionnaire response (IQR) at 34.

¹⁷ See the GOI's June 9, 2014, first supplemental response (1SQR) 1SQR at 8 and Exhibit S3.

¹⁸ See, *e.g.*, 1SQR at 8 and Exhibit S3.

¹⁹ See, *e.g.*, *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Extrusions from the PRC*) and accompanying Issues and Decisions Memorandum, dated March 28, 2011 (*Extrusions Decision Memorandum*) at 11.

- Fixation of Input-Output norms on priority within 60 days;
- Exemption from compulsory negotiation of documents through banks. The remittance, however, would continue to be received through banking channels;
- 100 percent retention of foreign exchange in EEEEC account;
- Enhancement in normal repatriation period from 180 days to 360 days;
- Exemption from furnishing of Bank Guarantee in Schemes under this Policy.²⁰

In the IQR, the GOI stated that AR Printing did not use the program.²¹ In the 1SQR the GOI provided a letter from the Directorate General of Foreign Trade (DGFT), the agency that administers the program, that the company did not use the program. The administering agency indicates that it based its statement of non-use on a review of its records.²²

The GOI bases its non-use claim on information supplied by the DGFT; specifically the Directorate's statement that a review of the relevant program records indicated that AR Printing did not use the program.²³ As noted above, we will, in certain situations, consider certain types of information from a foreign government for purposes of determining the extent to which a non-cooperating mandatory respondent used investigated subsidy programs in a given proceeding.

Based on the documents review at verification and as further discussed below in Comment 1, we find that AR Printing did not use this program during the POR.

Market Access Initiative (MAI)

In *2010 Lined Paper from India*, the Department stated that pursuant to section 3.2 of the GOI's Foreign Trade Policy 2004-2009, the MAI was:

... intended to provide financial assistance for medium term export promotion efforts with a sharp focus on a country/product, and is administered by the Indian Department of Commerce. Financial assistance is available for Export Promotion Councils, Industry and Trade Associations, Agencies of State Governments, Indian Commercial Missions abroad and other eligible entities as may be notified. A whole range of activities can be funded under the MAI scheme. These include, amongst others, market studies, sales promotion campaigns, and publicity campaigns.²⁴

In past proceedings, the Department investigated this program to the extent that it provides

²⁰ See *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) (*2008 Review of HRS From India*), and accompanying Issues and Decision Memorandum (2008 Review HRS from India Decision Memorandum) at "Status Certificate Program."

²¹ See IQR at 34.

²² See 1SQR at 8 and Exhibit S4.

²³ See, e.g., 1SQR at 8 and Exhibit S4.

²⁴ 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*), 78 FR 22845 (April 17, 2013) (*2010 Preliminary Results*) and accompanying Issues and Decision Memorandum (2010 Preliminary Decision Memorandum) at 7-8; unchanged in *Certain Lined Paper Products From India: Final Results of Countervailing Duty Administrative Review; 2010*, 78 FR 22845 (April 17, 2013) (*2010 Lined Paper from India*) and accompanying Issues and Decision Memorandum, dated April 9, 2013 (2010 Lined Paper Decision Memorandum) at 4.

financial assistance from the GOI to approved organizations which promote exports by offsetting the expense of foreign market analysis and promotional publications.²⁵ The GOI reported that this program was not changed during the POR.²⁶

In the IQR the GOI stated that AR Printing did not use the program.²⁷ In the 1SQR the GOI indicated that AR Printing did not use the program.²⁸ The GOI bases its non-use claim on information supplied by the Export Promotion Council; specifically the Council's statement that a review of the relevant program records indicated that AR Printing did not use the program."²⁹ As noted above, we will, in certain situations, consider certain types of information from a foreign government for purposes of determining the extent to which a non-cooperating mandatory respondent used investigated subsidy programs in a given proceeding.

Based on the documents review at verification and as further discussed below in Comment 1, we find that AR Printing did not use this program during the POR.

III. Analysis of Comments

Comment 1: Whether the Department Should Continue to Find Pursuant to Adverse Facts Available that AR Printing Benefited from the Status Certificate Program, Market Access Initiative Program and Market Development Assistance Programs During the POR

Petitioner's Arguments

- Consistent with the *Preliminary Results* and prior practice, the Department should continue to find pursuant to section 776(b) of the Act that AR Printing used and benefitted from the Status Certificate Program, MAI Program, and MDA Programs.
- AR Printing did not submit a response to the Department's initial questionnaire and has failed to provide any information to the agency since the *Preliminary Results* so as to warrant the agency's reconsideration of its preliminary findings. The Department's verification of the GOI questionnaire responses asserting that AR Printing did not use these three programs does not change the fact that AR Printing chose not to cooperate in this review and should not benefit from the GOI's decision to do so.
- As it did in *2010 Lined Paper from India*, the Department should continue to find that AR Printing received benefits under these three programs and include them in calculating the company's final margin.³⁰
- That the GOI submitted a post-preliminary supplemental questionnaire response asserting that AR Printing did not use these three programs should not change the *Preliminary Results*. As an initial matter, the verification report references documents and computer

²⁵ *Id.*

²⁶ *See* IQR at 34.

²⁷ *Id.*

²⁸ *See* 1SQR at 8-9 and Exhibit S3.

²⁹ *Id.*

³⁰ *See* 2010 Lined Paper Decision Memorandum at 3.

screen shots that the Department reviewed at verification, but were not collected as formal verification exhibits.³¹

- The Department's failure to collect these and other key documents as exhibits denies Petitioners an opportunity to evaluate the accuracy of the agency's verification findings and, thus, the record lacks documentation supporting the verifiers' findings.
- In *2010 Lined Paper from India*, AR Printing requested a review, but, as it did here, chose not to respond to the Department's questionnaire. The GOI, however, submitted an initial questionnaire response and the Department utilized information in the GOI's response in making its preliminary findings. In that review, the Department "assumed as 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."³² Thus, in *2010 Lined Paper from India*, the Department continued to find that, as AFA, AR Printing used and benefitted from the three programs.
- In *2010 Lined Paper from India*, the Department did not permit the GOI to supplant AR Printing's obligation to provide the agency with information regarding its use of subsidy programs, and it should not allow the GOI to do so here.
- The exceptions to the Department's general practice of concluding that, as AFA, an uncooperative respondent benefitted from a subsidy program are limited and inapplicable in this case. In the *Preliminary Results*, the Department explained that if a foreign government can "demonstrate through complete, verifiable, positive evidence" that an uncooperative respondent is not located in particular provinces whose subsidies are being investigated, the Department "will not include those provincial programs in determining the countervailable subsidy rate for those companies."³³ Consistent with this approach applied in the *Preliminary Results*, the same also holds true where a foreign government can demonstrate that a program has been terminated. In each case, if the foreign government is able to furnish information that establishes unequivocally that a respondent could not have benefitted from a specific program, the Department will not include that program in its subsidy calculations. These facts do not exist in this case.
- AR Printing was the party best able to provide the Department with information concerning use of the Market Development Assistance, Status Certificate, and Market Initiative Access programs; however, AR Printing chose not to do so.
- AR Printing should not be rewarded in these final results for its blatant noncooperation. Further, to permit foreign governments to satisfy a respondent firm's obligations to provide requested information eliminates a critical incentive for mandatory respondents to cooperate with the Department's requests.

GOI's Rebuttal Arguments

- The Department verified the GOI's questionnaire responses and verified non-use of Status Certificate Program, MAI Program and MDA Program with regard to AR Printing.³⁴

³¹ See GOI Verification Report at 1-4.

³² See 2010 Lined Paper Decision Memorandum at 2.

³³ See Preliminary Decision Memorandum at 5-6, referencing *Extrusions from the PRC* and *Extrusions Decision Memorandum* at 11.

³⁴ See GOI Verification Report at 1-4.

- Upon a review of the supporting evidence and explanations provided by the GOI officials during the verification, the Department noted in its verification report that AR Printing did not participate in any of the above listed GOI programs during the POR.³⁵
- The GOI has fully cooperated in this administrative review and provided necessary information that supports a finding that AR Printing did not use the Status Certificate, Market Access Initiative, and Market Development Assistance programs during the POR.
- The GOI never withheld any information nor impeded the proceeding in any manner. The GOI also provided all the necessary assistance to the USDOC officials to verify the information available on record.
- The Department can only apply adverse inferences in terms of section 776(b) of the Act when “an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.”
- The GOI has acted to the best of its ability to comply with every request for information in the entire proceeding. The Department should arrive at a final determination in this proceeding in light of the GOI’s cooperation and the available information on record that supports that AR Printing did not avail the programs during the period of review.
- In *2010 Lined Paper from India*, the Department determined that AR Printing did not avail benefits under Duty Free Replenishment Certificate Program because it had been terminated by the GOI.³⁶ The GOI cooperated in that review and provided the necessary information that aided the Department to arrive at its conclusion and that AR Printing did not cooperate in the 2010 administrative review. The Department relied upon the information provided by the GOI to arrive at that conclusion. Similarly, even though AR Printing has not cooperated in this proceeding, the Department should rely on the evidence provided by the GOI that indicates that AR Printing did not avail any benefits under the above programs.

Department’s Position: We find that the GOI’s third supplemental response for certain programs provided complete and verifiable official government documentation showing that AR Printing did not use the Market Development Assistance, Status Certificate, and Market Access Initiative programs.

As an initial matter, we disagree with Petitioner that the Department erred when it determined to solicit and ultimately rely upon information submitted by the GOI for purposes of determining whether AR Printing used the three programs at issue. Contrary to Petitioner’s claims, allowing foreign governments to submit information for purposes of determining non-use of certain subsidy benefits where there is no cooperating respondent is a long-standing practice of the Department.³⁷ Furthermore, in several recent proceedings, including proceedings in which the mandatory respondent was not cooperating or otherwise participating in the proceeding, the

³⁵ *Id.*

³⁶ See 2010 Lined Paper Decision Memorandum at 17.

³⁷ See, e.g., Extrusions Decision Memorandum at 11, referencing *Certain Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Racks from the PRC*), and accompanying Issues and Decision Memorandum (*Racks Decision from the PRC Decision Memorandum*) at “Use of Facts Otherwise Available and Adverse Facts Available.”

Department has relied on information from foreign governments to find that certain programs were terminated or not used by the mandatory respondent.³⁸

We also disagree with Petitioner that the information submitted by the GOI and the information examined at verification fails to support the GOI's claims that AR Printing did not use the Market Development Assistance, Status Certificate, and Market Initiative Access programs.

Concerning the Status Certificate program, the GOI stated in the Third QNR Response that it maintains a list of users of the program on a centralized computer server. It further explained that it performed a query of the server in order to determine that AR Printing did not use the program.³⁹ At verification, the verifiers, working with GOI officials from Directorate General for Foreign Trade (DGFT), examined a government website which listed all current holders of Status Certificates and observed that AR Printing was not among the listed holders of such a certification.⁴⁰ Additionally, the verifiers observed DGFT officials as they recreated the query on the database containing all users of the Status Certificate program.⁴¹ The verifiers noted that AR Printing did not appear as a user of the program in the query results.⁴²

With regard to the Market Development Assistance and Market Access Initiative programs, the GOI provided bank records covering the POR from Chemical & Allied Products Export Promotion Council (CAPEXIL), the administering authority for both programs, which identified the trade events for which recipients received funds under the programs during the POR.⁴³ At verification, the verifiers examined the original documents and traced the documents to the corresponding on-line accounts for both programs.⁴⁴ The GOI Verification Report indicates that there were a total of 23 trade shows associated with the Market Development Assistance program and five trade shows associated with the Market Access Initiative program during the April 2011 to March 2013, a period of time which spans the POR.⁴⁵ For both programs, the verifiers examined supporting documents for each trade event, including expense summaries, participant lists, invoices for services rendered, and Ministry of Commerce disbursement of funds through CAPEXIL to Indian firms.⁴⁶ Additionally, for each program the verifiers tied specific transactions to the respective CAPEXIL's bank records and did not note any discrepancies with regard to the documents submitted in the Third Supplemental QNR.⁴⁷ Based

³⁸ See, e.g., 2010 Lined Paper Decision Memorandum at 16-17, in which the Department relied on information from the GOI to determine that certain programs were terminated and, thus, as part of its resulting program-wide change findings, the Department did not include subsidy rates for these programs in the cash deposit rate of the non-cooperating mandatory respondents. See also *Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination*, 79 FR 61602 (October 14, 2014) (*NOES from Taiwan*) and accompanying Issues and Decision Memorandum (*NOES Decision Memorandum*) at 9 and Comment 5, in which the Department relied on information submitted by the Government of Taiwan to determine that a non-cooperative respondent did not use certain programs.

³⁹ See Third QNR Response at 1-2 and Exhibit I, which contains a screenshot of the GOI's query results.

⁴⁰ See GOI Verification Report at 1-2.

⁴¹ *Id.*

⁴² *Id.*

⁴³ See Third QNR Response at 1-2 and Exhibit 2-3.

⁴⁴ See GOI Verification Report at 3-4.

⁴⁵ *Id.* at 3-4.

⁴⁶ *Id.*

⁴⁷ *Id.*

on this examination, the verifiers found no indication that AR Printing participated in any of the events for which firms received funds under the two programs during the period April 2011 through March 2013.⁴⁸

Thus, based on the information submitted by the GOI and documents reviewed at verification, we find that AR Printing did not use the Market Development Assistance, Status Certificate, and Market Access Initiative programs.

We acknowledge that in *2010 Lined Paper from India*, a proceeding in which AR Printing was a non-cooperating mandatory respondent, the Department, pursuant to AFA, determined that AR Printing used and benefitted from the Market Development Assistance, Status Certificate, and Market Access Initiative programs.⁴⁹ However, in *2010 Lined Paper from India*, the GOI did not submit verifiable information indicating that AR Printing did not use the three programs.⁵⁰ Thus, concerning these three programs, the facts of *2010 Lined Paper from India* differ from those of the instant proceeding where the GOI provided affirmative evidence to support its non-use claims for these three programs. Furthermore, as noted above, with regard to other subsidy programs at issue in *2010 Lined Paper from India*, the Department afforded the GOI an opportunity to demonstrate that AR Printing no longer benefitted from certain programs that the GOI claimed were terminated.⁵¹ Ultimately, based on the information supplied by the GOI, the Department determined that certain programs were terminated.⁵² In the instant review, consistent with its approach in *2010 Lined Paper from India*, the Department has continued to permit the GOI to submit information concerning AR Printing's purported non-use of subsidy programs and to consider that information as part of its analysis.

Lastly, we disagree with Petitioner that the Department's verification procedures are called into question because the verifiers did not collect the source documents reviewed at verification as exhibits. As the Court of Appeals for the Federal Circuit (CAFC) has stated with respect to whether information is verified, "the statute gives the Department wide latitude in its verification procedures."⁵³ As the Department noted in its verification report, we determined that the information examined substantiated the information placed on the record by the GOI.⁵⁴ In fact, in the Third Supplemental QNR, the GOI submitted a screen shot of the query results performed on the database that contained the list of firms that used the Status Certificate program.⁵⁵ Further, at verification, the verifiers confirmed the GOI's ability to recreate the results of that query.⁵⁶ Thus, contrary to Petitioner's claims, verified copies of the query results with respect to the Status Certificate Program are on the record.

⁴⁸ *Id.*

⁴⁹ See 2010 Lined Paper Decision Memorandum at 3-4.

⁵⁰ *Id.*

⁵¹ *Id.* at 16-17.

⁵² *Id.*

⁵³ See *Micron Technology, Inc. v. United States*, 117 F.3d 1386, 1394 (CAFC 1997); see also *American Alloys, Inc., v. United States*, 30 F.3d 1469, 1475 (CAFC 1994).

⁵⁴ See GOI Verification Report at 2-5.

⁵⁵ See Third QNR Response at 1-2 and Exhibit I, which contains a screenshot of the GOI's query results.

⁵⁶ See GOI Verification Report at 2.

Similarly, concerning the Market Development Assistance and Market Access Initiative programs, the GOI submitted the bank statements it relied upon to determine that AR Printing did not use the two programs.⁵⁷ At verification, the verifiers examined the original copies of these bank statements and traced the statements to their corresponding source documents. In performing these verification procedures, the verifiers found no discrepancies.⁵⁸ Thus, we find there is information on the record as well demonstrating that AR Printing did not use the Market Development Assistance and Market Access Initiative programs.

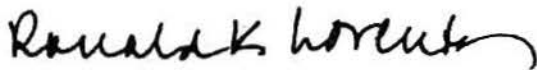
IV. Recommendation

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

✓

Agree

Disagree



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

April 6, 2015
Date

⁵⁷ See Third QNR Response at 1-2 and Exhibit 2-3.

⁵⁸ See GOI Verification Report at 3-4.