



C-533-844

Administrative Review  
POR: 01/01/2014 – 12/31/2014  
Public Document  
Office III, Operations: JSC

April 10, 2017

**MEMORANDUM TO:** Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Senior Director, Office I  
Antidumping and Countervailing Duty Operations

**RE:** Countervailing Duty Administrative Review: Certain  
Lined Paper Products from India

**SUBJECT:** Issues and Decision Memorandum for the Final Results of  
Administrative Review

## I. Summary

The Department of Commerce (the Department) conducted an administrative review of the countervailing duty (CVD) order<sup>1</sup> on certain lined paper products from India for the period of review (POR) January 1, 2014, through December 31, 2014. The Department finds that Goldenpalm Manufacturers PVT Limited (Goldenpalm)<sup>2</sup> received countervailable subsidies during the POR. Below is a complete list of issues raised in this administrative review for which we received comments from interested parties:

**Comment 1:** Whether the Department Should Reject Petitioner's Case Brief

**Comment 2:** Whether the Department Should Attribute the Benefits that Goldenpalm Received Under Certain Export Promotion Capital Goods Scheme (EPCGS) Licenses to Exports of the Subject Merchandise.

**Comment 3:** Whether the Department Should Allocate Benefits for Certain EPCGS Licenses Over the Average Useful Life (AUL) of the Subject Merchandise

---

<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> Goldenpalm made export sales to the United States through its cross-owned entity, GMC International Limited (GMC). See *Certain Lined Paper Products from India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2014*, 81 FR 70091 (October 11, 2016) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum at 6, which explains that the Department preliminarily found Goldenpalm and GMC to be cross-owned. The Department has not changed its determination for these final results.



**Comment 4:** Whether the Department Should Apply Partial Adverse Facts Available (AFA) to Goldenpalm and Whether the Department Should Use Goldenpalm's Company-Specific Interest Rates as Benchmarks

**Comment 5:** Whether Goldenpalm Understated Its EPCGS Benefits

**Comment 6:** Whether the Department Should Find that the Annexure 45 Program Provides Countervailable Subsidies.

## **II. Background**

On October 11, 2016, the Department published the *Preliminary Results* of this administrative review.<sup>3</sup> In the *Preliminary Results*, the Department stated that it lacked necessary information with respect to the Duty Drawback (DDB) and Annexure 45 programs, and that it would continue to examine these programs and address them in a post-preliminary analysis.<sup>4</sup> Accordingly, the Department issued supplemental questionnaires to the Government of India (GOI),<sup>5</sup> and received timely responses.<sup>6</sup> On February 14, 2017, the Department issued its Post-Preliminary Memorandum.<sup>7</sup> On that same day, the Department also set the schedule for interested parties to submit case and rebuttal briefs.<sup>8</sup> This briefing schedule was later extended<sup>9</sup> at the request of petitioner.<sup>10</sup>

Petitioner submitted its case brief on February 23, 2017.<sup>11</sup> On February 27, 2017, Goldenpalm requested that the Department reject petitioner's case brief, due to a complaint about service, or, alternatively, grant Goldenpalm an extension to submit its rebuttal comments.<sup>12</sup> On February 28, 2017, the Department granted Goldenpalm an extension to submit its rebuttal comments.<sup>13</sup> On March 6, 2017, Goldenpalm submitted its rebuttal brief.<sup>14</sup>

---

<sup>3</sup> See *Preliminary Results* and accompanying Preliminary Decision Memorandum.

<sup>4</sup> See Preliminary Decision Memorandum at 11.

<sup>5</sup> The Department issued supplemental questionnaires to the GOI on October 21, 2016, November 7, 2016, and December 27, 2016.

<sup>6</sup> The Department received timely responses from the GOI on November 1, 2016 (November 1 SQR), November 21, 2016 (November 21 SQR), and January 3, 2017 (January 3 SQR).

<sup>7</sup> See Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Erin Begnal, Director, Office III, Antidumping and Countervailing Duty Operations, "Post-Preliminary Issues and Decision Memorandum," dated February 14, 2017 (Post-Preliminary Memorandum).

<sup>8</sup> See Memorandum from John Conniff to the File, "Briefing Schedule," dated February 14, 2017.

<sup>9</sup> See letter from Eric B. Greynolds, Program Manager AD/CVD Operations, "Extension of Briefing Schedule," dated February 17, 2017.

<sup>10</sup> Petitioner is the Association of American School Paper Suppliers (petitioner).

<sup>11</sup> See petitioner's February 24, 2017, case brief (petitioner's case brief).

<sup>12</sup> See Goldenpalm's February 27, 2017, Objection to Case Brief, letter to the Department (Goldenpalm's Objection to Case Brief).

<sup>13</sup> See Memorandum to the File from John Conniff, "Extension of Rebuttal Comments," dated February 28, 2017, (Extension of Rebuttal Comments Memorandum).

<sup>14</sup> See Goldenpalm's March 6, 2017, rebuttal brief (Goldenpalm's Rebuttal Brief).

On December 29, 2016, the Department extended the deadline for the final results of this administrative review until April 10, 2017.<sup>15</sup> On March 10, 2017, petitioner withdrew its request for a hearing.<sup>16</sup> On March 22, 2017, the Department met with petitioner to discuss issues contained in its case brief.<sup>17</sup>

### **III. 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 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

---

<sup>15</sup> See Memorandum from John Conniff to Christin Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operation, Extension of Deadline for Final Results of Countervailing Duty Administrative Review, dated December 29, 2016.

<sup>16</sup> See petitioner’s letter to the Department on November 10, 2016, requesting a hearing and its March 10, 2017, letter to the Department withdrawing its request.

<sup>17</sup> See Memorandum from John Conniff to the File, “Meeting with petitioners,” dated March 28, 2017.

- 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 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, 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.

#### **IV. Subsidies Valuation Information**

##### **A. Allocation Period**

The Department made no changes to the allocation period and the allocation methodology used in the *Preliminary Results* and no issues were raised by interested parties in case briefs nor was any new information provided that would lead the Department to reconsider its preliminary determination regarding the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for these final results, see the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 5.<sup>18</sup>

---

<sup>18</sup> See also Calculations for the Preliminary Results: Goldenpalm Manufacturers PVT Ltd. dated October 5, 2016, (Goldenpalm Preliminary Calculation Memorandum).

## **B. Attribution of Subsidies**

The Department made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies, and no new factual information was provided that would lead the Department to reconsider its preliminary determination regarding the attribution of subsidies. In its rebuttal brief, however, Goldenpalm argues that the Department should apply the value of benefits to the value of export sales of its related entity GMC.<sup>19</sup> The Department addressed this issue in Comment 3, below.

## **C. Benchmark Interest Rates**

The Department made certain changes to its benchmark interest rates used in the *Preliminary Results*, specifically its use of national average long-term interest rates from the International Financial Statistics, a publication of the International Monetary Fund (IMF) Statistics.<sup>20</sup> In its case brief, petitioner raised issues related to the Department's use of IMF Statistics for purposes of long-term lending rates, as opposed to company-specific commercial loans, in calculating benefits resulting from Goldenpalm's use of the EPCGS program.<sup>21</sup> For these final results, the Department is using Goldenpalm's company-specific long-term interest rate, which is characterized as a type of line of credit that was drawn on by Goldenpalm during the POR,<sup>22</sup> to make its calculations. This issue is further addressed in Comment 4, below.

## **D. Denominator**

In the *Preliminary Results* and the Post-Preliminary Memorandum, the Department divided the countervailable benefits received by Goldenpalm by its total exports sales during the POR. In these final results we have revised this approach with regard to certain countervailable benefits Goldenpalm received under the EPCGS program. As discussed below, for the final results, we have divided certain subsidy benefits Goldenpalm received under this program by the company's total export sales of subject merchandise during the POR. For all other countervailable benefits received by Goldenpalm, we have continued to use a sales denominator comprised of the company's total export sales.

## **V. Use of Facts Otherwise Available and Adverse Inferences**

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

---

<sup>19</sup> See Goldenpalm's Rebuttal Brief at 7.

<sup>20</sup> See Preliminary Decision Memorandum at 7-8.

<sup>21</sup> See petitioner's case brief at 9-10.

<sup>22</sup> See Goldenpalm's February 19, 2016, Supplemental Questionnaire (Goldenpalm 2SQR) at 6 and Exhibit 4(b) for a description of the terms of the loan.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Under the Trade Preferences Extension Act of 2015 (TPEA), numerous amendments to the AD and CVD laws were made.<sup>23</sup> The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this administrative review.<sup>24</sup>

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>25</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.<sup>26</sup>

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>27</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>28</sup>

---

<sup>23</sup> See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The text of the TPEA may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>24</sup> See *Applicability Notice*, 80 FR at 46794-95.

<sup>25</sup> See section 776(b)(1)(B) of the Act; See also the Trade Preferences Extension Act of 2015 (TPEA), Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015), section 502(1)(B).

<sup>26</sup> See also 19 CFR 351.308(c).

<sup>27</sup> See also 19 CFR 351.308(d).

<sup>28</sup> See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. No. 103-316, Vol. 1 at 870 reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (1994).

## **Application of AFA: Duty Drawback Program (DDB) Constitutes a Financial Contribution**

The Department made no changes to the partial AFA determination applied to the DDB program in its post-preliminary analysis. No issues were raised by interested parties in case and rebuttal briefs with respect to the DDB program that would lead the Department to reconsider its post-preliminary determination. In the Post-Preliminary Memorandum, the Department determined that, pursuant to sections 776(a) and (b) of the Act, the DDB program at issue constitutes a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue foregone.<sup>29</sup> For details regarding the remainder of the Department's analysis of the DDB program, *see* the "Analysis of Programs" section, below.

### **VI. Analysis of Programs**

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

##### **1. Duty Drawback Program (DDB)**

During the POR, Goldenpalm reported that it used the DDB program for the purchase of raw materials of subject products, such as paper.<sup>30</sup> For small volume purchases, the duty is paid initially and then refunded after export.<sup>31</sup> As stated in the Post-Preliminary Memorandum, based on the information provided by the GOI, we determine that the program is limited to exporters and, thus, specific under section 771(5A)(B) of the Act and that pursuant to sections 776(a)-(b) of the Act, the DDB program at issue constitutes a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue foregone.

Pursuant to 19 CFR 351.519(a)(4), the Department will consider the entire amount of an exemption, deferral, remission, or drawback to confer a benefit, unless the Department determines that:

(i): The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

(ii): If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the

---

<sup>29</sup> *See* Post-Preliminary Memorandum at 2.

<sup>30</sup> *Id.*, at 2-3.

<sup>31</sup> *See* Preliminary Decision Memorandum at 8-11.



production of the exported product, and in what amounts.

As described in the Post-Preliminary Memorandum, the GOI failed to respond adequately to the Department's questionnaires with respect to the DDB program and, thereby, pursuant to section 776(b) of the Act, did not cooperate to the best of its ability by impeding the Department's analysis of whether the GOI has a reasonable system in place set forth under 19 CFR 351.519(a)(4)(i) and (ii). As a result, we have treated the total amount of duties waived during the POR as the benefit attributable to Goldenpalm. To calculate the net subsidy rate, we divided the total benefit amount by Goldenpalm's total exports during the POR. On this basis, we determine a net subsidy rate of 0.23 percent *ad valorem*.<sup>32</sup>

## 2. EPCGS

The EPCGS provides for a reduction or exemption of customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to four to five times the value of the capital goods within a period of eight years. Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, plus a penalty interest.<sup>33</sup> In the *Preliminary Results*, the Department found that import duty reductions provided under the EPCGS are countervailable export subsidies because: (1) the scheme provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone for not collecting import duties; (2) the respondent receives two different benefits under section 771(5)(E) of the Act; and (3) the program is contingent upon export performance, and is specific under section 771(5A)(A) and (B) of the Act.<sup>34</sup>

In its case brief, petitioner raised issues related to the Department's treatment of EPCGS benefits in the *Preliminary Results*.<sup>35</sup> As explained below in the Department's position in the Comments section, the Department made certain calculation changes regarding its preliminary findings on EPCGS: (1) we find that duty exemptions received in connection with certain EPCGS licenses are attributable to Goldenpalm's total export sales of subject merchandise (*see* Comment 2); (2) we have revised the 0.5 percent test conducted with regard to duty exemptions received in connect with certain EPCGS licenses whose export obligations were fulfilled before the POR and, for benefits amounts that exceeded the 0.5 percent threshold, we allocated the benefits over Goldenpalm's average useful life (AUL) using a company-specific interest rate for the year in which the year the export obligations were fulfilled (*see* Comment 3); (3) we utilized a company-specific interest rate and not the IMF interest rate used in the *Preliminary Results* to calculate benefits Goldenpalm received under the EPCGS program (*see* Comment 4); and (4) we employed a single uniform standard to calculate benefits that Goldenpalm received from the EPCGS program relying upon the source documentation Goldenpalm provided as opposed to a chart summary provided in the narrative of Goldenpalm's response (*see* Comment 5).

---

<sup>32</sup> See Goldenpalm Preliminary Calculation Memorandum.

<sup>33</sup> See Preliminary Decision Memorandum at 8.

<sup>34</sup> *Id.*, at 9.

<sup>35</sup> See Comments 2 through 5.

As a result of these changes, we determine the net subsidy rate of 6.33 percent *ad valorem* for Goldenpalm.<sup>36</sup>

**B. Programs Determined To Not Be Used During the POR**

The Department made no changes to its preliminary findings with regard to the programs listed below.<sup>37</sup> No issues were raised by interested parties in case and rebuttal briefs regarding these programs. The Department continues to find that, for these final results, the following programs were not used by Goldenpalm during the POR:

1. Formulation of Standard Input/Output Norm
2. Advance License Program /Advance Authorization Program
3. Duty Entitlement Passbook Scheme
4. Export Oriented Units
5. Export Processing Zones
6. Market Development Assistance
7. Status Certificate Program
8. Market Access Initiative
9. Loan Guarantees from the GOI
10. Income Deduction Program, (80IB Tax Program)
11. State Government of Gujrat Provided Tax Incentives
12. Sales Tax Program from Maharashtra
13. Electricity Duty Exemptions Under the State Government of Maharashtra (SGM) Package Scheme of Incentives of 1993
14. Refunds of Octroi Under the PSI of 1993, Maharashtra Industrial Policy and Maharashtra Industrial Policy
15. Infrastructure Subsidies to Mega Projects
16. Land for Less than Adequate Remuneration
17. Loan Guarantees Based on Octroi Refunds by the SGM

**C. Programs Determined To Not Be Countervailable**

**1. Central Value-Added Tax (CENVAT) Reimbursements**

The Department made no changes to its preliminary finding regarding CENVAT reimbursements<sup>38</sup> and no issues were raised by interested parties in case and rebuttal briefs nor was any new information provided that would lead the Department to reconsider its preliminary determination. Accordingly, the Department continues to find that, for these final results, CENVAT reimbursements are not countervailable.

---

<sup>36</sup> See Goldenpalm Preliminary Calculation Memorandum.

<sup>37</sup> See Preliminary Decision Memorandum at 12.

<sup>38</sup> *Id.*, at 11.

## 2. Annexure 45 Program

The Department made no changes to its post-preliminary analysis regarding the Annexure 45 program.<sup>39</sup> In its case brief, petitioner raised issues related to the Department's determination that the Annexure 45 program was not countervailable.<sup>40</sup> The Department addresses these issues in Comment 6, below.

## VII. Analysis of Comments

### Comment 1: Whether the Department Should Reject Petitioner's Case Brief

#### *Goldenpalm's Rebuttal Arguments*<sup>41</sup>

- The Department should reject the case brief submitted by petitioner and not consider any argument presented therein.
- Petitioner ignored the Department's regulations regarding service of its case brief and attempted to "game" the system by depriving Goldenpalm of its allotted time to respond.
- Petitioner did not prepare a version of the case brief reflecting the business proprietary information (BPI) of Goldenpalm pursuant to 19 CFR 351.306(c)(2) and did not serve any version of the case brief either by hand delivery on the date of the filing or by overnight courier on the next business day.
- Petitioner's failure to properly serve its brief pursuant to both the letter and the spirit of the regulations is tantamount to a failure to file its brief in a timely fashion.
- Failure to serve the brief on the due date and its unilateral decision to postpone transmission of the service copy until the next day, which coincidentally fell on a Friday, deprived Goldenpalm of three of the five days provided to it to prepare a response.

**Department's Position:** We agree that Goldenpalm was not served by petitioner in accordance with section 351.303(f)(i) and 351.306(c)(2) of the Department's regulations. However, section 351.309(d)(1) allows the Department to alter the time limits for rebuttal briefs. Accordingly, the Department followed its past practice in such situations by granting an extension to Goldenpalm for submitting its rebuttal brief.<sup>42</sup> Consequently, Goldenpalm received the full five-day period, as allowed under 19 CFR 351.309(d), to develop and present its rebuttal brief arguments. As the extended deadline accounted for petitioner's failure to properly serve Goldenpalm with the business proprietary version of its case brief, petitioner's initial failure to serve Goldenpalm did not result in any prejudice to Goldenpalm.<sup>43</sup> Therefore, petitioner's case brief will remain on the

---

<sup>39</sup> See Post-Preliminary Memorandum at 4-5.

<sup>40</sup> See petitioner's case brief at 12-15.

<sup>41</sup> Goldenpalm did not submit a case brief. Goldenpalm provided the following arguments, for the first time, in its rebuttal brief.

<sup>42</sup> See, e.g., *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 71 FR 54269 (September 14, 2006), and accompanying Issues and Decision Memorandum at Comment 4; see also *Extension of Rebuttal Comments Memorandum*.

<sup>43</sup> See *Guangdong Chems. Imp. & Exp. Corp. v. United States*, 414 F. Supp. 2d 1300, 1310 (CIT 2006) ("There must... be some indication that failure to comply with the regulation in some way inhibited {the interested party's} presentation of its case").

record.

**Comment 2:** Whether the Department Should Attribute the Benefits that Goldenpalm Received Under Certain EPCGS Licenses to Exports of the Subject Merchandise.

*Petitioner's Arguments*

- The Department should attribute the benefits that Goldenpalm received under this program to the company's exports of subject merchandise.
- Goldenpalm reported its usage of EPCGS licenses under two separate groups – “machinery for subject products” and “machinery for non-subject products.”
- Pursuant to the Department's tying methodology, the Department should consider whether a government was aware of the intended use of a subsidy at the time that the subsidy was provided.
- The Department has attributed the benefits received to a respondent's exports of subject merchandise where, as here, the EPCGS licenses specified that subject goods were among those to be exported. For instance, in *Polyethylene Terephthalate Resin from India*, the respondent reported receiving EPCGS licenses for the purchase of capital goods to produce subject merchandise and non-subject merchandise.<sup>44</sup>
- The benefits provided under the EPCGS program were tied to the production of subject merchandise from the moment that the GOI issued licenses allowing for the importation of capital goods at reduced duty rates.
- In recent cases involving the EPCGS program, the Department has attributed the benefits received to a respondent's exports of subject merchandise where, as here, the EPCGS licenses specified that subject goods were among those to be exported.
- The Department should revise its benefit calculation to attribute the benefits received under certain of Goldenpalm's EPCGS licenses to the company's exports of subject merchandise consistent with section 351.525(b)(5) of the Department's regulations.

*Goldenpalm's Rebuttal Arguments*

- The export obligation cannot start to be satisfied until the good is placed into service.
- Petitioner is seeking to have it both ways – to have benefits for goods which are not used to produce subject merchandise applied to exports of subject merchandise, and to have benefits for goods used to produce merchandise generally, including only subject merchandise, applied only to subject merchandise.
- If the Department is to make any adjustment, it should apply the value of the benefits to the value of the export sales to the first unrelated customer, *i.e.*, the sales by Goldenpalm's related entity, and not Goldenpalm. To act to the contrary would result in an overstatement of the benefits as the total benefit would be calculated on a percentage basis and then applied to a greater value resulting in an overstatement of the benefit.

---

<sup>44</sup> See petitioner's case brief at 4 (citing *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin From India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination*, in *Part*, 81 FR 13334 (March 14, 2016) and accompanying Issues and Decision Memorandum at 15).

- To the extent that the Department makes any adjustment to the calculation, it should adjust the calculation to increase the value of the total exports.

**Department's Position:** Petitioner points to three EPCGS licenses that it claims are tied to the exportation of subject merchandise.<sup>45</sup> We have reviewed the proprietary EPCGS licenses in question and find that for two of the three EPCGS licenses noted by petitioner the exemption of import duties under the program was contingent upon Goldenpalm's exports of "binded note books."<sup>46</sup> With regard to these two EPCGS licenses, we find that the term "binded note books" constitutes sufficient evidence to conclude that the receipt of the exemptions under these particular licenses was tied to subject merchandise, pursuant to 19 CFR 351.525(b)(5). Therefore, we have attributed import duty exemptions received under these two EPCGS licenses to Goldenpalm's sales of subject merchandise during the POR.<sup>47</sup>

However, with regard to all other EPCGS licenses for which Goldenpalm received duty exemptions, we find that the licenses do not contain specific references to particular products that would enable the Department to conclude that the issuance of the licenses were tied to subject or non-subject merchandise.<sup>48</sup> Therefore, for these licenses, we have attributed the duty exemptions received by Goldenpalm to its total export sales during the POR.<sup>49</sup> We find this approach is consistent with the practice the Department employed in the *PET Film from India Investigation*, in which the Department based its attribution decisions on the language contained in each EPCGS license under examination.<sup>50</sup>

We disagree with Goldenpalm that petitioner's comments amount to it "trying to have it both ways." Goldenpalm's argument on this point assumes that if benefits on certain licenses are tied to subject merchandise, then the other licenses must necessarily be tied to non-subject merchandise. That is not the case. As indicated above, and consistent with our practice in such cases as *PET Film from India Investigation*, the Department determines how to attribute benefits received under the EPCGS program by examining the contingencies in place at the time that the GOI conferred the duty exemptions by examining the information contained in each EPCGS license.

In this review, evidence on the record indicates that duty exemptions for two licenses was contingent upon Goldenpalm's exportation of subject merchandise; however, the information in the remaining licenses at issue in this review did not specify particular products that would enable the Department to find that the benefits were tied to either subject or non-subject merchandise. As a result, for these licenses, we have used Goldenpalm's total export sales.

---

<sup>45</sup> See petitioner's case brief at 3-5.

<sup>46</sup> See Goldenpalm's December 24, 2015, Questionnaire (Goldenpalm Initial QR) at Exhibit 5(b).

<sup>47</sup> See the Final Calculations Memorandum for Goldenpalm, dated concurrently with this memorandum (Goldenpalm Final Calculations Memorandum).

<sup>48</sup> See Goldenpalm Initial QR at Exhibit 5(a) for the chart and Exhibit 5(b) for the licenses.

<sup>49</sup> See Goldenpalm Final Calculations Memorandum.

<sup>50</sup> See *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India*, 67 FR 34905 (May 16, 2002) (*PET Film from India Investigation*) and accompanying Issues and Decision Memorandum at "EPCGS" in section in section 5 of General Issues.

Lastly, as explained in the Preliminary Decision Memorandum, Goldenpalm failed to provide sufficient evidence required by the Department to adjust its sales denominator to account for the sales mark-up charged by its Hong Kong-based affiliate.<sup>51</sup> Therefore, in the final results, we have not adjusted Goldenpalm's export sales denominator to account for this sales mark-up.

**Comment 3:** Whether the Department Should Allocate Benefits for Certain EPCGS Licenses Over the AUL of the Subject Merchandise

*Petitioner's Arguments*

- In the *Preliminary Results*, the Department found that Goldenpalm received benefits under EPCGS licenses that were fulfilled before the POR.
- Although the Department stated that it conducted the 0.5 percent test for this program in accordance with section 351.524(b)(2) of its regulations, a review of the Department's preliminary calculations indicates that the agency did not conduct it for certain licenses.
- For its final determination, the Department should conduct the 0.5 percent test by dividing the total benefits approved by Goldenpalm's total export sales for the year of approval.
- The Department should allocate the benefits received under these licenses beginning in the year fulfilled over the AUL of the subject merchandise in accordance with section 351.524(d) of the Department's regulations.
- The Department should use a discount rate that is consistent with section 351.524(d)(3)(i) of the Department's regulations.

*Goldenpalm's Rebuttal Arguments*

- The Department should conduct the 0.5 percent test.
- The results of the test do not exceed the 0.5 percent threshold when applied to the value of sales to the first unrelated party – which is the value of Goldenpalm's related sales entity.
- Applying these values to the transfer price of Goldenpalm to its related sales entity understates the value of the sales.

**Department's Position:** We agree with petitioner and Goldenpalm that we should conduct the 0.5 percent test. The Department made an inadvertent error in the *Preliminary Results* when it did not perform the 0.5 percent test for duty exemptions received in connection with certain EPCGS licenses.<sup>52</sup> Therefore, in these final results we have performed the 0.5 percent test for licenses for which Goldenpalm received duty exemptions.<sup>53</sup>

The Department's practice is to treat EPCGS duty exemptions as interest-free loans until the

---

<sup>51</sup> See Preliminary Decision Memorandum at 6.

<sup>52</sup> In the *Preliminary Results*, the Department correctly stated how it computes the two different benefits that can be available to Indian companies that utilize this program, but the Department did not perform the calculations in the manner described in the *Preliminary Results*. See the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 8-11 and Goldenpalm Preliminary Calculation Memorandum.

<sup>53</sup> See Goldenpalm Final Calculations Memorandum.

export obligations specified on a given license have been fulfilled. Upon fulfillment, the Department treats the duty exemptions as grants.<sup>54</sup> For EPCGS duty exemptions that are treated as grants, the Department conducts the 0.5 percent test using sales information that corresponds to the year of fulfillment. Grant amounts received under the EPCGS program that exceed the 0.5 percent threshold are allocated over time using a long-term discount rate that corresponds to the year of fulfillment.<sup>55</sup> Thus, consistent with the Department's practice, we have employed this calculation methodology with regard to duty exemptions for which Goldenpalm fulfilled its export obligation.<sup>56</sup> Specifically, Goldenpalm reported that it fulfilled certain export obligations in the year for which it provided a company-specific interest rate.<sup>57</sup> Thus, for the relevant EPCGS licenses, we performed the 0.5 percent test using the sales data for the year in which the loan was fulfilled. For fulfilled EPCGS licenses whose duty exemptions passed the 0.5 percent test, we allocated the total duty waived using a company-specific interest rate that corresponded to this time period.<sup>58</sup>

Lastly, we disagree with Goldenpalm that the Department should adjust its denominator to account for the mark-up charged by its Hong-Kong cross-owned affiliate.<sup>59</sup> Consistent with the *Preliminary Results*, the Department has continued not to include the transfer price to Goldenpalm's affiliated entity because Goldenpalm did not provide information the Department requires to make such an adjustment.<sup>60</sup> Namely, Goldenpalm did not provide information indicating that there was a one-to-one correlation between the invoice that reflects the price on which subsidies are received and the invoice with the mark-up that accompanies the shipment. Furthermore, Goldenpalm has not provided information indicating that the sales invoices can be tracked on a back-to-back basis and that they are identical except for price.<sup>61</sup>

**Comment 4:** Whether the Department Should Apply Partial AFA to Goldenpalm and Whether the Department Should Use Goldenpalm's Company-Specific Interest Rates as Benchmarks

*Petitioner's Arguments*

- In its *Preliminary Results*, the Department stated that it used a company-specific interest rate that corresponded to 2014. However, the Department lacked company-specific interest rate information for other years due to Goldenpalm's failure to provide the requested information.
- Further, a review of the record indicates that Goldenpalm reported its company-specific

---

<sup>54</sup> See *Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014), and accompanying Issues and Decision Memorandum at 6; see also *Certain Lined Paper Products From India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 80 FR 19637 (April 13, 2015), and accompanying Issues and Decision Memorandum at 5.

<sup>55</sup> *Id.*

<sup>56</sup> See Goldenpalm Final Calculations Memorandum.

<sup>57</sup> See Goldenpalm 2SQR at 6 and Exhibits CVDS-4(a) and 4(b).

<sup>58</sup> *Id.*, for the loan rate of the year in question and Goldenpalm Final Calculations Memorandum.

<sup>59</sup> See Goldenpalm's Rebuttal Brief at 7-8.

<sup>60</sup> See Preliminary Decision Memorandum at 6-7.

<sup>61</sup> See Goldenpalm's February 12, 2016, Supplemental Questionnaire at Exhibit CVDS-1 and Preliminary Decision Memorandum at 6.

interest rate for a year that was, in fact, not the POR (*i.e.*, 2014). Thus, the Department lacks the necessary information to the extent that it continues to require the use of an interest rate corresponding to 2014. The lack of such information is the result of Goldenpalm's repeated refusal to provide company-specific interest rates for the correct time periods, as requested by the Department.

- Specifically, Goldenpalm failed to report benchmark information for all commercial long-term loans obtained by the company that correspond to the year(s) in which it imported the capital good under the program, despite numerous requests from the Department.
- Goldenpalm did not provide information for the entire AUL, nor did it explain why it could not do so.
- Pursuant to section 776 of the Act, the Department may base a determination on facts available when necessary information is not on the record or an interested party withholds information, fails to provide information in a timely manner, significantly impedes a proceeding, or provides unverifiable information.
- Goldenpalm failed to provide interest/discount rates for each year in which the company received EPCGS license approvals, which is information the Department needs in order to perform its benefit calculations. Thus, the application of AFA is warranted.
- As AFA, the Department should adjust the IMF rates used in the *Preliminary Results* to account for the clearly established and significant company-specific spread between the IMF rate and Goldenpalm's company-specific interest rate.

#### *Goldenpalm's Rebuttal Arguments*

- Goldenpalm provided interest rates for all years specified by the Department. Therefore, the application of AFA is not warranted.
- The Department should use the interest rate reported by Goldenpalm for the POR. To the extent it requires interest rates for other years, then it should use interest rates published by the IMF.

**Department's Position:** As explained in the *Preliminary Results*, there are two types of benefits received under the EPCGS program. The first benefit is the amount of unpaid import duties that would have to be paid to the GOI if the accompanying export obligations are not met. The repayment of this liability is contingent on subsequent events and, in such instances, it is the Department's practice to treat any balance on an unpaid liability as a contingent liability interest-free loan, pursuant to 19 CFR 351.505(d)(1). In performing the benefit calculation for these types of EPGCS licenses, we use a long-term interest rate that corresponds to the year in which the company imported capital goods under the program.

The second benefit is the waiver of duty on imports of capital equipment covered by those EPCGS licenses for which the export requirement has already been met. For those licenses for which companies demonstrate that they have completed their export obligation, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2). To calculate the benefit for such EPCGS licenses, the Department first performs the 0.5 percent test using sales information that corresponds to the year of fulfillment. Grant amounts that exceed the 0.5



percent test are allocated over time using the Department's grant allocation formula under 19 CFR 351.524(d)(1) using a long-term interest rate that corresponds to the year of fulfillment.

Upon further review of the calculations, we find that the only year for which we require a company-specific, long-term interest rate is the year in which Goldenpalm provided a company-specific, long-term interest rate. The loan corresponds to the year in which Goldenpalm fulfilled its export obligation on its EPCGS licenses. Further, the loan also corresponds to the year in which Goldenpalm imported items under the EPCGS licenses that remained unfulfilled as of 2014, because Goldenpalm provided a company-specific interest rate for that period. Therefore, we find that we have the necessary information to calculate benefits under this program, and as a result, the use of AFA is not necessary.

Petitioner argues that Goldenpalm failed to provide the necessary information with regard to company-specific interest rates. However, its arguments in this regard are based on a misunderstanding concerning the years for which the Department requires company-specific interest rate information.

#### **Comment 5: Whether Goldenpalm Understated Its EPCGS Benefits**

##### *Petitioner's Arguments*

- In its initial questionnaire response, Goldenpalm provided a chart containing the duty exemptions it received under the program.<sup>62</sup> This chart, however, does not accurately list the actual amount of duty exemptions received by the company as evidenced by information contained in the corresponding EPCGS licenses themselves.
- Specifically, on some of the licenses that the Department used in its calculations, Goldenpalm underreported the benefits it received compared to the others.<sup>63</sup>
- The Department relied on inaccurate information from Goldenpalm in its preliminary calculations, and should correct this error for these final results.
- The Department should ensure that it relies upon a uniform standard to calculate a benefit for all of the EPCGS benefits that Goldenpalm received during the POR.

##### *Goldenpalm's Rebuttal Arguments*

- The calculated amount of benefit under the EPCGS program was correct.
- The difference between the amounts reported in the chart and the amounts listed in the source documentation relates to the duty calculation applied and issues as to rounding the amount of duty.
- This difference is meaningless given that the results of the 0.5 percent test indicate that all benefits received under the EPCGS program were fully expensed prior to the POR.

**Department's Position:** In the *Preliminary Results*, the Department used a chart provided by Goldenpalm that allegedly reflected the source documentation of its actual EPCGS licenses used

---

<sup>62</sup> See petitioner's case brief at 6.

<sup>63</sup> *Id.*, at 10-11.

during the POR.<sup>64</sup> Upon further review, the Department notes that for certain licenses, some numbers are significantly different for the actual EPCGS licenses than are reflected in the chart that Goldenpalm provided.<sup>65</sup> Furthermore, as referenced in Comment 3, the Department should have allocated the fulfilled benefits that Goldenpalm received prior to the POR because some of the licenses passed the 0.5 percent test, and we are making that adjustment for the final results. Accordingly, we agree with petitioner that the Department should determine the amount of EPCGS benefits based on the duty waiver amounts indicated on the actual EPCGS licenses and bill of entry numbers rather than the chart summary provided in the narrative of Goldenpalm's response.<sup>66</sup> Thus, for the final results, we employed a single uniform standard<sup>67</sup> to calculate benefits Goldenpalm received under this program relying upon the source documentation that Goldenpalm provided.<sup>68</sup>

**Comment 6:** Whether the Department Should Find that the Annexure 45 Program Provides Countervailable Subsidies.

*Petitioner's Arguments*

- The Department should reverse its preliminary finding and conclude that the Annexure 45 program provides countervailable subsidies.
- In its Post-Preliminary Memorandum, the Department improperly determined that the Annexure 45 program is not specific.
- Record evidence establishes that this program is an export subsidy and that the GOI exercises discretion about the provision of excise duty exemptions under this program.
- Goldenpalm reported that its receipt of excise duty exemptions under this program was contingent on export.
- The Department relied, in part, on the GOI's claims in its November 1, 2016, supplemental response that the program is not export contingent, or otherwise limited to any enterprise, industry, or geographic region or sector.
- In its November 1, 2016, response, the GOI claimed that the governing act, notifications and relevant rules do not explicitly restrict this program to exporting firms or any enterprise, industry, or geographic region or sector.
- The legal and regulatory framework for this program leaves significant discretion to GOI authorities to decide the exact conditions that must be met for a manufacturer to receive benefit to under the program.
- The *CVD Preamble*<sup>69</sup> clarifies that “{u}nder this approach, if a subsidy is *de jure* specific or meets any one of the enumerated *de facto* specificity factors, in order of their appearance in section 771(5A)(D)(iii) of the Act, further analysis is unnecessary and is not undertaken.

---

<sup>64</sup> See Goldenpalm Preliminary Calculation Memorandum.

<sup>65</sup> See Goldenplam's Initial IQR at Exhibit 5(a) for the chart that Goldenpalm submitted to the Department and Exhibit 5(b) for the source documentation of the EPCGS licenses.

<sup>66</sup> *Id.*

<sup>67</sup> Because the standard is BPI, for further information, see Goldenpalm's Final Calculations Memorandum.

<sup>68</sup> See Goldenpalm Final Calculation Memorandum and Goldenplam's Initial IQR at Exhibit 5(b).

<sup>69</sup> See petitioner's case brief at 14-15 (citing *Countervailing Duties*, 63 FR 65348, 65402 (Nov. 25, 1998) (*CVD Preamble*)).

- The Department should find the Annexure 45 program to be *de facto* specific within the meaning of section 771(5A)(B) of the Act because Goldenpalm’s questionnaire responses indicate that its receipt of these excise duty exemptions under Annexure 45 program was export contingent.

### *Goldenpalm’s Rebuttal Arguments*

- In the Post-Preliminary Memorandum, the Department found that any payments received under the Annexure 45 program did not constitute countervailable subsidies as they were not specific.
- Petitioner cites to the statements made by Goldenpalm to dispute the Department’s post-preliminary finding. However, Goldenpalm’s statements were general in nature.
- The GOI confirmed in its submissions that no formal mechanism for verification exists, which under the Department’s practice means a lack of export specificity.

**Department’s Position:** In its Post-Preliminary Memorandum, the Department found that based on the information from the GOI, as well as the language in Section 5 of the Central Excise Act and Notification Number 34/2001, the Annexure 45 program is not limited by law to any enterprise or industry, or limited to firms in a designated geographical region, as described under section 771(5A) (D)(i) or (iv) of the Act, respectively.<sup>70</sup> Specifically, the Department stated:

For example, the language of Section 5A of the Central Excise Act states that the excise exemption may be provided to goods “of any specified description,” and that the excise exemption shall not apply regarding goods manufactured in a free trade or economic zone or to firms that are deemed by the GOI as “hundred percent export-oriented undertakings.” Further, we find there is no information on the record indicating that GOI had a means by which it could exercise discretion with regard to the provision of excise exemptions provided under this program that would result in the exemptions being specific in fact to an enterprise or industry, as described under section 771(5A)(D(iii) of the Act. For example, the GOI states that no applications for the exemption are rejected if applicants submit accurate applications to the GOI. Therefore, we preliminarily determine that the program is not countervailable.<sup>71</sup>

Goldenpalm reported in its supplemental questionnaire response that it received benefits under this program.<sup>72</sup> In light of this information, we sought and obtained additional information from the GOI as to how it administers this program.<sup>73</sup> The GOI reported that, pursuant to Section 5A of the Central Excise Act and Notification Number 34/2001-CE (N.T.), it exempts imports of a

---

<sup>70</sup> See Post-Preliminary Memorandum at 4-5.

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

<sup>72</sup> See Goldenpalm’s February 19, 2016, Supplemental Questionnaire Response at 4-5 and Goldenpalm’s April 22, 2016, Supplemental Questionnaire at 2 and 3.

<sup>73</sup> See the GOI’s November 1 SQR, November 21 SQR, and January 3 SQR.

wide variety of goods from the excise tax.<sup>74</sup> The GOI also reported that, under Section 5A of the Central Excise Act and Notification Number 34/2001-CE (N.T.), the Annexure 45 program is not export contingent or otherwise limited to any particular enterprise, industry, or geographic region or sector.<sup>75</sup>

Additionally, we disagree with petitioner that this program is specific based on discretion exercised by the GOI. Section 771(5A)(D)(iii)(IV) of the Act states that a program may be specific in fact if “{t}he manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy such that an enterprise or industry is favored over others.” We find there is no information on the record of this review to warrant a finding of specificity under this prong of the Act. To the contrary, as explained in the Post-Preliminary Memorandum, information from the GOI indicates that no applications for the exemption under the program are rejected, provided that applicants submit accurate applications to the government.<sup>76</sup>

Finally, the Department based its decision on information from the government because the GOI is the administering authority and possesses the necessary information for the Department to determine if the financial contribution from the Annexure 45 program is specific. Therefore, we continue to find that this program is not specific under section 771(5A) of the Act.

### VIII. Recommendation

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



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

4/10/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

\_\_\_\_\_  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

<sup>74</sup> See GOI's Nov. 1 SQR at 7 -9.

<sup>75</sup> *Id.*, and the GOI's Nov. 21 SQR at 6.

<sup>76</sup> See Post-Preliminary Memorandum at 5.