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Sunset Review (2017)
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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of
Expedited Second Sunset Review of the Countervailing Duty
Order on Certain Lined Paper Products from India

Summary

We analyzed the substantive responses and comments of the interested parties submitted on the record of this expedited second sunset review of the countervailing duty (CVD) order on certain lined paper products from India. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of the issues in this review for which we received comments from interested parties:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidy

History of the Order

The Department of Commerce (the Department) published its final affirmative CVD determination on certain lined paper products from India on August 8, 2006.¹ In the *Final Determination*, the Department found estimated net countervailable subsidy rates of 7.05 percent for Aero Exports, 10.24 percent for Navneet Publications India Ltd. (Navneet), and 9.42 percent

¹ See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 45034 (August 8, 2006) (*Final Determination*) and accompanying Issues and Decision Memorandum (IDM).



for all other producers and exporters, except for Kejriwal Exports, a division of Kejriwal Paper Limited (Kejriwal), of CLPP from India. The Department found a *de minimis* rate for Kejriwal.² In the *Final Determination*, the Department found the following programs to confer countervailable subsidies: (1) Pre-shipment and Post-shipment Export Financing; (2) Export Promotion Capital Goods Scheme (EPCGS); (3) Duty Entitlement Passbook Scheme (DEPS); (4) Duty Free Replenishment Certificate (DFRC) Scheme; (5) Advance License Program, and (6) Income Tax Exemption Scheme under 80 HHC (Section 80 HHC). On September 28, 2006, the Department published the *Order*.³

Subsequent to the issuance of the *Order*, the Department completed an administrative review for the period of review (POR) February 15, 2006, through December 31, 2006.⁴ In that review, the Department found that the sole respondent, Navneet, received a total net countervailable subsidy rate of 8.76 percent *ad valorem* from the following three programs: (1) EPCGS; (2) DEPS; and (3) Income Deduction Program (80IB Tax Program).⁵ The Department did not conduct another review during the first sunset review period (*i.e.*, 2006 – 2011).

On December 6, 2011, the Department published the expedited final results of the first sunset review of the *Order*.⁶ The Department found that countervailable subsidies would likely continue to be conferred on Indian producers and exporters through the following programs: 1) Pre-shipment and Post-shipment Export Financing; (2) EPCGS; (3) DEPS; (4) DFRC Scheme; (5) Advance License Program; (6) Section 80 HHC and (7) the 80IB Tax Program. The Department further determined that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies at the following rates:⁷

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (percent)</u>
Aero Exports	7.52
Navneet	10.71
All Others ⁸	9.89

Since the completion of the *First Sunset Review*, the Department completed four administrative reviews of the *Order*. On April 17, 2013, the Department published the final results of the

² See *Final Determination*, 71 FR at 45035.

³ 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) (*Order*).

⁴ See *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review*, 74 FR 6573 (February 10, 2009) (2006 AR of Lined Paper from India) and accompanying IDM.

⁵ See 2006 AR of Lined Paper from India, 74 FR at 6574.

⁶ See *Final Results of Expedited Sunset Review of Countervailing Duty Order: Certain Lined Paper Products from India*, 76 FR 76147 (December 6, 2011) (*First Sunset Review*) and accompanying IDM.

⁷ See *First Sunset Review*, 76 FR at 76149.

⁸ Kejriwal was excluded from the *Order* based on *de minimis* subsidies during the investigation. See *Final Determination*, 71 FR at 45035.

administrative review covering the POR January 1, 2010, through December 31, 2010.⁹ In that review, the Department found that the sole respondent, A.R. Printing & Packaging India Private Limited (AR Printing), received a total net countervailable subsidy rate of 100.40 percent *ad valorem*¹⁰ from the following subsidy programs:¹¹ (1) Pre- and Post-Shipment Export Financing; (2) EPCGS; (3) Export Oriented Units (EOU) Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically; (4) Export Oriented Units Duty-Free Import of Capital Goods and Raw Materials; (5) Market Development Assistance (MDA); (6) Market Access Initiative (MAI); (7) Status Certificate Program; (8) 80IB Tax Program; (9) DEPS; (10) Advance Authorization Program (AAP); (11) Export Processing Zones (Renamed Special Economic Zones (SEZs)); (12) Target Plus Scheme (TPS); (13) Income Tax Exemptions Under Section 10A; (14) Income Tax Exemptions Under Section 10B; (15) Government of India (GOI) Loan Guarantee Program; (16) Tax Incentives Provided by the State Governments of Gujarat (SGOG), (17) Tax Incentives Provided by the State Government of Maharashtra (SGOM); (18) Electricity Duty Exemptions Under the SGOM Package Program of Incentives of 1993; (19) Loan Guarantees Based on Octroi Refunds by the SGOM; and (20) Land for Less than Adequate Remuneration (LTAR). However, the Department adjusted the cash deposit rate to reflect its finding that a program-wide change existed for the following subsidy programs, which the Department found were terminated effective April 1, 2012:¹² Income Tax Exemptions Under Section 10A, and Income Tax Exemptions Under Section 10B. On this basis, the Department calculated a cash deposit rate of 94.92 percent *ad valorem* for AR Printing.¹³ Additionally, while not included in the net countervailable subsidy rates calculated for AR Printing, the Department noted that the following three programs had been terminated in prior Indian CVD proceedings: (1) DFRC; (2) Exemption of Export Credits from Interest Taxes; and (3) Section 80 HHC.¹⁴

On May 12, 2014, the Department published the final results of the administrative review covering the POR January 1, 2011, through December 31, 2011.¹⁵ In that review, the Department found that the sole respondent, AR Printing, received a total net countervailable subsidy rate of 2.94 percent *ad valorem* from the following programs: (1) Pre-Shipment Export Financing; and (2) Duty-Free Import of Capital Goods and Raw Materials for EOUs.¹⁶

⁹ See *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; 2010*, 78 FR 22845 (April 17, 2013) (*2010 AR of Lined Paper from India*) and accompanying IDM.

¹⁰ See *2010 AR of Lined Paper from India*, 78 FR at 22845.

¹¹ *Id.*, and accompanying IDM at 4-8. The Department determined that AR Printing did not cooperate in the review. Thus, pursuant to section 776(b) of the Tariff Act of 1930, as amended (the Act) the Act, the Department resorted to the use of adverse inferences in determining the net subsidy rate applied to AR Printing for each of the programs at issue in the review. *Id.* at Comment 2.

¹² See *Certain Lined Paper Products from India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2010*, 77 FR 61742 (October 11, 2012) (*2010 AR of Lined Paper from India Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM) at 13-15, unchanged in *2010 AR of Lined Paper from India* and accompanying IDM at 16-17.

¹³ See *2010 AR of Lined Paper from India*, 78 FR at 22845.

¹⁴ *Id.* and accompanying IDM at 17.

¹⁵ See *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 26935 (May 12, 2014) (*2011 AR of Lined Paper from India*) and accompanying IDM.

¹⁶ See *2011 AR of Lined Paper from India*, 79 FR at 26935.

On April 13, 2015, the Department published the final results of the administrative review covering the POR January 1, 2012, through December 31, 2012.¹⁷ In that review, the Department found that the sole respondent, AR Printing, received a total net countervailable subsidy rate of 37.43 percent *ad valorem*¹⁸ from the following programs:¹⁹ 1) AAP; (2) EPCGS; (3) Pre-and Post-Shipment Loans; (4) EOU Reimbursement of CST Paid on Materials Procured Domestically; (5) EOU Exemptions on Importation on Importation of Capital Goods and Raw Materials; (6) MDA; (7) MAI; (8) SGOM Program: Sales Tax Incentives; (9) SGOM Program: Electricity Duty Exemptions; (10) SGOM program: Loan Guarantees Based on Octroi Refunds; and (11) SGOM Program: Land for LTAR.

Navneet requested a review for the POR January 1, 2013, through December 31, 2013, but later withdrew its request.²⁰

On April 17, 2017, the Department published the final results of the administrative review covering the POR January 1, 2014, through December 31, 2014.²¹ In that review, the Department found that the sole respondent, Goldenpalm Manufacturers PVT Limited (Goldenpalm), received a total net countervailable subsidy rate of 6.56 percent *ad valorem*²² from the following programs: (1) Duty Drawback (DDB); and (2) EPCGS.²³ On June 20, 2017, the Department amended the final results of the review to correct for certain ministerial errors.²⁴ The revised net countervailable subsidy rate for Goldenpalm was 8.30 percent *ad valorem*.²⁵

Background

On July 3, 2017, the Department initiated the second sunset review of the *Order* pursuant to section 751(c) of the Act.²⁶ On July 18, 2017, the Department received a notice of intent to participate on behalf of the Association of American School Paper Suppliers and each of its individual members (hereinafter referred to as the petitioner).²⁷ The petitioner claimed interested party status under sections 771(9)(C) and (F) of the Act, because the members of its association

¹⁷ See *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 80 FR 19637 (April 13, 2015) (*2012 AR of Lined Paper from India*) and accompanying IDM.

¹⁸ See *2012 AR of Lined Paper from India*, 80 FR at 19637-8.

¹⁹ The Department determined that AR Printing did not cooperate in the review. Thus, pursuant to section 776(b) of the Act, the Department resorted to the use of adverse inferences in determining the net countervailable subsidy rate applied to AR Printing for each of the programs at issue in the review. See *2012 AR of Lined Paper from India* and accompanying IDM at 1.

²⁰ See *Certain Lined Paper Products from India: Notice of Rescission of Countervailing Duty Administrative Review: 2013*, 80 FR 5507 (February 2, 2015).

²¹ See *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 18112 (April 17, 2017) (*2014 AR of Lined Paper from India*) and accompanying IDM.

²² *Id.*, 82 FR at 18113.

²³ *Id.* and accompanying IDM at 8-9.

²⁴ See *Certain Lined Paper Products from India: Amended Final Results of Countervailing Duty Administrative Review, 2014*, 82 FR 28047 (June 20, 2017) (*2014 Amended AR of Lined Paper from India*).

²⁵ *Id.*, 82 FR at 28048.

²⁶ See *Initiation of Five-Year (Sunset) Reviews*, 82 FR 30844 (July 3, 2017).

²⁷ See Letter from the petitioner, “Certain Lined Paper Products from India: Notice of Intent to Participate in Sunset Review,” dated July 18, 2017.

are manufacturers, producers, or wholesalers in the United States of the domestic like product.²⁸ The Department did not receive any notice of intent to participate from the GOI, or Indian producers or exporters of the merchandise covered by the *Order*. On August 2, 2017, the Department received a substantive response from the petitioner within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).²⁹ The Department did not receive any substantive response from the GOI, or Indian producers or exporters of the merchandise covered by the *Order*. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of the *Order*. This approach is consistent with Department's practice, including the prior sunset review of this *Order*.³⁰

The Department did not conduct a hearing because a hearing was not requested.

Discussion of the Issues

The Department conducted this review in accordance with section 751(c)(1) of the Act, to determine whether revocation of the *Order* would likely lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred and is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (ITC) the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (ASCM).

Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

The petitioner asserts that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies to Indian producers and exporters of certain lined paper products.³¹ The petitioner states that the record of this proceeding demonstrates that, since the

²⁸ *Id.* at 1-2.

²⁹ See Letter from the petitioner, "Certain Lined Paper Products from India: Substantive Response to Notice of Initiation of Sunset Review," dated August 2, 2017 (Petitioner Substantive Response).

³⁰ See, e.g., *Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Expedited Sunset Review of Countervailing Duty Order*, 76 FR 64900 (October 19, 2011); *Certain Pasta from Turkey: Final Results of Expedited Five-Year ("Sunset") Review of the Countervailing Duty Order*, 72 FR 5269 (February 5, 2007); and *Certain Carbon Steel Products from Sweden: Final Results of Expedited Sunset Review of Countervailing Duty Order*, 65 FR 18304 (April 7, 2000). See also *First Sunset Review*.

³¹ See Petitioner Substantive Response, at 2-11.

issuance of the *Order*, Indian producers and exporters have continued to benefit from countervailable subsidies in excess of *de minimis* levels.³²

Therefore, the petitioner argues that subsidies continue to be provided and are available to Indian producers and exporters of certain lined paper products. In addition, the petitioner contends that the original investigation and five subsequent administrative reviews demonstrate that the respondents examined by the Department benefitted from well-known subsidy programs that have been recently examined and found countervailable in other Indian CVD proceedings.³³ In sum, the petitioner asserts that the record of this proceeding supports the conclusion that subsidization of certain lined paper products from India would be likely to continue or recur if the *Order* were to be revoked.

Department's Position: Since the *First Sunset Review*, the Department has completed four administrative reviews covering calendar years 2010, 2011, 2012, and 2014. With the exception of the Income Tax Exemptions Under Section 10A, Income Tax Exemptions Under Section 10B, DFRC, Exemption of Export Credits from Interest Taxes, and Section 80 HHC programs that the Department found were terminated as part of the *2010 AR of Lined Paper from India*, the GOI has provided no evidence to the Department that the remaining programs at issue in this proceeding that were found to confer countervailable subsidies to Indian producers and exporters of the subject merchandise have been terminated. In fact, record evidence demonstrates that countervailable subsidy programs from the prior sunset review, as well as additional subsidy programs discovered and countervailed by the Department during the current sunset review period, continue to exist and provide benefits to Indian producers and exporters of the subject merchandise.³⁴

Under the Department's practice, the continued existence of countervailable subsidy programs and the addition of new countervailable subsidy programs are sufficient to establish that revocation would be likely to lead to the continuation or recurrence of countervailable subsidies.³⁵ Additionally, the presence of programs that have not been used, but also have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.³⁶

In the instant review, the Department did not receive a response from the foreign government or any other respondent interested party. Consistent with the Department's practice, absent argument or evidence to the contrary, we find that countervailable programs, many of which are

³² *Id.* at 5-7.

³³ *Id.* at 8-9.

³⁴ *See, e.g.*, additional subsidy programs examined in the *2010 AR of Lined Paper from India* and the *2014 AR of Lined Paper from India*.

³⁵ *See Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18874 (April 16, 1998) (*Policy Bulletin*).

³⁶ *See, e.g.*, *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010), and accompanying IDM at Comment 2 (Determined that, where a subsidy program is found to exist, the Department will normally determine that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization).

prohibited export subsidies, continue to exist and be used.³⁷ Furthermore, with the exception of the five subsidy programs noted above that the Department found were terminated as part of the *2010 AR of Lined Paper from India*, there is no information on the record that the programs at issue in the instant sunset review have been terminated without residual benefits or replacement programs or found non-countervailable.³⁸

On the basis of the above facts, it is reasonable to determine that countervailable subsidy programs continue to exist and are being utilized. Specifically, the continuation of programs is highly probative of the likelihood of the continuation or recurrence of countervailable subsidies. Therefore, because we find that the countervailable programs examined in this proceeding continue to exist and be used, and because the foreign government and other respondent interested parties did not participate in this sunset review before the Department, and absent argument or evidence to the contrary, the Department determines that revocation of the order would likely lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties. Our finding in this regard does not apply to Kejriwal, a company the Department excluded from the *Order* by virtue of the *de minimis* net countervailable subsidy rate it received in the underlying investigation.

2. Net Countervailable Subsidy

Interested Parties' Comments

The petitioner asserts that, "In selecting an appropriate margin to provide to the Commission, 'the Department normally will provide to the {ITC} the net countervailable subsidy that was determined in the final determination in the original investigation' because it 'is the only calculated rate that reflects the behavior of exporters... without the discipline of an order or suspension agreement in place.'"³⁹ In this case, the petitioner argues that the Department should select the rates from the investigation as the rates which would likely result from revocation of the *Order*, with the exception of AR Printing, whose margin increased since the *Order*.⁴⁰ Specifically, the petitioner argues that the estimated subsidy rates likely to prevail are 7.05 percent for Aero Exports, 10.24 percent for Navneet, 100.40 percent for AR Printing⁴¹ and 9.42 percent for all other Indian manufacturers, producers, and exporters.⁴²

Department's Position: When determining the net countervailable subsidy likely to prevail, the *Policy Bulletin* states that the Department normally will select a rate from the investigation, because that is the only calculated rate which reflects the behavior of exporters and foreign

³⁷ See, e.g., *Final Results of Expedited Sunset Review of Countervailing Duty Order: Sulfanilic Acid from India*, 70 FR 53168 (September 7, 2005) and accompanying IDM at Comment 1.

³⁸ See *2010 AR of Lined Paper from India*, 78 FR at 22846 nn.7 and 8.

³⁹ See Petitioner Substantive Response at 11 (citing *Policy Bulletin*, 63 FR at 18871 and 18875) (internal citations omitted).

⁴⁰ *Id.*

⁴¹ Concerning AR Printing, the petitioner cites to the assessed rate of 100.40 percent that the Department calculated in the *2010 AR of Lined Paper from India*, as opposed to the cash deposit rate of 94.92 percent. *Id.* (citing *2010 AR of Lined Paper from India*, 78 FR at 22845).

⁴² *Id.* at 11.

governments without the discipline of an order in place.⁴³ However, pursuant to the Department's practice, this rate may not be the most appropriate if, for example, the rate was derived from subsidy programs that were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent review.⁴⁴ In addition, the Department may make adjustments to the net countervailable subsidy calculated in the original investigation to take into account subsidy programs that were found in subsequent reviews to be eliminated.⁴⁵

As noted in the "History of the Order" section, above, the Department completed four administrative reviews since the *First Sunset Review*. During these administrative reviews, the Department found five programs (*i.e.*, Income Tax Exemptions Under Section 10A, Income Tax Exemptions Under Section 10B, DFRC, Exemption of Export Credits from Interest Taxes, and Section 80 HHC programs) to have been terminated by the GOI.⁴⁶ Additionally, in these four administrative reviews, the Department identified and countervailed several additional programs that were not examined in the investigation. Specifically, in the *2010 AR of Lined Paper from India*, the Department, pursuant to sections 776(a)-(b) of the Act, found that AR Printing received countervailable benefits under the following programs: EOU Reimbursement of CST Paid on Materials Procured Domestically, EOU Duty-Free Import of Capital Goods and Raw Materials, MDA, MAI, Status Certificate Program, Export Processing Zones (aka SEZs), TPS, GOI Loan Guarantee Program, Tax Incentives Provided by the SGOG, Tax Incentives Provided by the SGOM, Electricity Duty Exemptions Under the SGOM Package Program of Incentives of 1993, Loan Guarantees Based on Octroi Refunds by the SGOM, and Land for LTAR.⁴⁷ Additionally, in the *2014 AR of Lined Paper from India*, the Department found that Goldenpalm received a countervailable benefit under the DDB program.⁴⁸

Consistent with the Department's established practice for adjusting the company-specific rates in sunset reviews when warranted by findings in the intervening administrative reviews,⁴⁹ we excluded the rates for the five terminated programs and included the rates from the above-mentioned additional subsidy programs, in the rates likely to prevail. As such, based on the Department's program findings since the investigation and *First Sunset Review*, we computed the following company-specific sunset rates for those companies examined in the investigation:⁵⁰

⁴³ See *Policy Bulletin*, 63 FR at 18875.

⁴⁴ *Id.*, 63 FR at 18876.

⁴⁵ *Id.*

⁴⁶ See *2010 AR of Lined Paper from India Preliminary Results* and accompanying PDM, unchanged in *2010 AR of Lined Paper from India* and accompanying IDM.

⁴⁷ *Id.*, and accompanying IDM at 3-8.

⁴⁸ See *2014 AR of Lined Paper from India* and accompanying IDM at 8-9; see also *2014 Amended AR of Lined Paper from India*, 82 FR at 28048.

⁴⁹ See, *e.g.*, *Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, and Thailand: Final Results of Expedited Five-Year (Sunset) Reviews of the Countervailing Duty Orders*, 71 FR 70960 (December 7, 2006) and accompanying IDM at "Net Countervailable Subsidy Likely to Prevail."

⁵⁰ See Memorandum to the File, "Second Sunset Review Calculations," dated concurrently with this IDM.

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (percent)</u>
Aero Exports	84.98
Navneet	88.39
All Others	87.52

We note that the rates listed above reflect, in part, rates determined in the *2010 AR of Lined Paper from India*, a segment of the proceeding in which the Department determined the net countervailable subsidy rates entirely on facts otherwise available with adverse inferences under sections 776(a)-(b) of the Act.⁵¹ The inclusion of additional subsidy rates that are based entirely upon adverse inferences is in keeping with the guidance provided in the *Policy Bulletin*.⁵²

Lastly, we disagree with the petitioner that the Department should include AR Printing among the companies for which a net subsidy rate likely to prevail was calculated.⁵³ As explained in the *Policy Bulletin*, the Department limits company-specific subsidy rates likely to prevail to those companies that received above *de minimis* individual subsidy rates in the investigation.⁵⁴ Accordingly, we did not calculate a subsidy rate likely to prevail for AR Printing or Goldenpalm, because these companies were not examined in the investigation.

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department will provide the following information to the ITC concerning the nature of the subsidy, and whether the subsidy is a prohibited subsidy as described in Article 3 of the ASCM or a subsidy described in Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000. The petitioner did not address this issue in its substantive response of August 2, 2017.

We find that the following programs are prohibited subsidies as described in Article 3 of the ASCM.

1. *Preferential Pre-Shipment Export Financing Through Packing Credits*

The Reserve Bank of India (RBI), through commercial banks, provides “packing” credits or pre-shipment loans to exporters. With these pre-shipment loans, exporters may purchase raw materials to produce goods for export based on the presentation of a confirmed purchase order. In general, the pre-shipment loans are granted for a period of up to 180 days. The commercial

⁵¹ See *2010 AR of Lined Paper from India* and accompanying IDM.

⁵² See *Policy Bulletin*, 63 FR at 18876 (Where the Department has conducted an administrative review of the order, or suspension agreement, as applicable, and determined to increase the net countervailable subsidy rate for any reason, including as a result of the application of best information available or facts available, the Department may adjust the net countervailable subsidy rate determined in the original investigation to reflect the increase in the rate).

⁵³ See Petitioner Substantive Response at 11.

⁵⁴ See *Policy Bulletin*, 63 FR at 18875 (Where a company-specific countervailing duty rate was determined for a particular company in the original investigation, the Department normally will provide that rate to the Commission as the net countervailable subsidy that is likely to prevail for that company if the order is revoked or the suspended investigation is terminated).

banks extending export credit to Indian companies must charge interest at rates determined by the RBI. Because only exporters are eligible for these pre-shipment loans, they are countervailable to the extent that they are provided at preferential rates.⁵⁵

2. *Preferential Post-Shipment Financing*

The RBI, through commercial banks, provides post-shipment financing loans to exporters. The purpose of post-shipment financing is to enable exporters to extend favorable payment terms such as deferred payment to the foreign purchaser. Post-shipment financing loans may not exceed a period of 180 days. The commercial banks extending export credit to Indian companies must charge interest at rates determined by the RBI. Because only exporters are eligible for the post-shipment loans, they are countervailable to the extent that they are provided at preferential interest rates.⁵⁶

3. *Import Duty Exemptions Available through the Advance License Program*

Advance licenses are available to exporters to enable them to import raw material inputs used in the production of exports duty-free. Recipients of advance licenses are obligated under the terms of the license to export the products produced with the duty-free imports. The amount of imports allowed under an advance license is closely linked to the amount of exports to be produced. We considered the use of the advance licenses to be equivalent to a DDB program insofar as customs duties are not paid on physically incorporated, imported products used in the production of exports. However, where imported inputs are not physically incorporated into the exported product, we considered the duty savings afforded by the advance license to be a countervailable export subsidy.⁵⁷

4. *Import Duty Exemptions Available through EPCGS*

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, exporters may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to a multiple of the value of the capital goods, as determined by the GOI, within a period of time, as set by the GOI. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest. The Department considered duty and excise tax exemptions on imported capital goods that are contingent on export activities to be countervailable.⁵⁸

5. *Import Duty Exemptions Available through DEPS*

Under the DEPS, the GOI enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post-export basis, provided that the exported product is listed in the GOI's Standard Input/Output

⁵⁵ See *Final Determination* and accompanying IDM at 4.

⁵⁶ *Id.*

⁵⁷ *Id.* at 7.

⁵⁸ *Id.* at 5.

Norms. Post-export DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. Post-export DEPS credits are valid for 12 months and are transferable. Exporters are eligible to earn credits equal to a certain percentage, as designated by the GOI, of the free-on-board value of their export shipments. The Department found that the GOI could not adequately track the extent to which inputs imported duty free under the DEPS were re-exported. Therefore, the Department considered such duty exemptions to be countervailable.⁵⁹

6. *EOU Reimbursement of CST Paid on Materials Procured Domestically*

Designation as an EOU entitles the recipients to reimbursements of the CST paid on materials procured domestically, applicable to purchases of both raw materials and capital goods. They are countervailable in that they provide a financial contribution in the form of revenue forgone and confer a benefit in the amount of reimbursements of CST.⁶⁰

7. *EOU Duty-Free Import of Capital Goods and Raw Materials*

Companies that are designated as EOUs are entitled to import capital goods and raw materials duty-free. The program is specific as an export subsidy and provides a financial contribution in the form of revenue forgone. The benefit is the exemption and reimbursement of customs duties and certain sales taxes on capital equipment.⁶¹

8. *MDA*

The Federation of Indian Export Organization administers grants under the MDA program, subject to approval by the Ministry of Commerce. The purpose of the program is to provide grants-in-aid to approved organizations (*i.e.*, export houses) to promote the development of markets for Indian goods abroad. The program is countervailable in that it provides a financial contribution and is specific as an export subsidy.⁶²

9. *MAI*

The MAI is intended to provide financial assistance for medium term export promotion efforts with a 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 with a range of activities that can be funded. The program is countervailable in

⁵⁹ *Id.* at 6. See also 2006 AR of Lined Paper from India and accompanying IDM at “Duty Entitlement Passbook Scheme (DEPS).”

⁶⁰ See 2010 AR of Lined Paper from India Preliminary Results and accompanying PDM at 5, unchanged in 2010 AR of Lined Paper from India.

⁶¹ See 2010 AR of Lined Paper from India Preliminary Results and accompanying PDM at 6, unchanged in 2010 AR of Lined Paper from India.

⁶² See 2010 AR of Lined Paper from India Preliminary Results and accompanying PDM at 7, unchanged in 2010 AR of Lined Paper from India.

that it provides direct financial assistance and is specific as an export subsidy.⁶³

10. *Status Certificate Program*

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

- Authorizations and Customs clearances for both imports and exports on self-declaration basis;
- Fixation of Input-Output norms on priority within 60 days;
- Exemption from compulsory negotiation of documents through banks. The remittance, however, would continue to be received through banking channels;
- 100 percent retention of foreign exchange in EEEEC account;
- Enhancement in normal repatriation period from 180 days to 360 days;
- Exemption from furnishing of Bank Guarantee in Schemes under this Policy.⁶⁴

11. *Export Processing Zones (Renamed SEZs)*

The overall administrative control of SEZs resides with Development Commissioners assigned to each zone. The objective of the SEZ legislation is to promote exports, investment, infrastructure development, and employment. Because it provides export exemptions contingent upon export activity, it is countervailable in that it constitutes a financial contribution and is specific.⁶⁵

12. *TPS*

Under the TPS, the GOI provides credits for future payment of import duties. In prior Indian CVD proceedings, the Department found that the GOI did not have in place and did not apply a system that was reasonable and effective for the purposes intended to confirm which inputs, and in what amounts, were consumed in the production of the exported products. The Department has further determined that the entire amount of import duty exemption earned constitutes a countervailable benefit. Lastly, the Department has determined that benefits under the TPS are limited to firms with export activity.⁶⁶

⁶³ See 2010 AR of Lined Paper from India Preliminary Results and accompanying PDM at 7-8, unchanged in 2010 AR of Lined Paper from India.

⁶⁴ See 2010 AR of Lined Paper from India Preliminary Results and accompanying PDM at 8-9, unchanged in 2010 AR of Lined Paper from India.

⁶⁵ See 2010 AR of Lined Paper from India Preliminary Results and accompanying PDM at 11-12, unchanged in 2010 AR of Lined Paper from India.

⁶⁶ See 2010 AR of Lined Paper from India Preliminary Results and accompanying PDM at 12-13, unchanged in 2010 AR of Lined Paper from India.

13. *DDB Program*

The DDB program provides refunds on the purchase of raw materials of subject products. Under the program, the duty is paid initially then refunded after export. Because the program is limited to exporters, it is specific and is an export subsidy in the amount of revenue foregone.⁶⁷

The following programs do not fall within the meaning of Article 3 of the ASCM. However, they could be a subsidy described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are a subsidy to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions.

14. *Income Deduction Program (80IB Tax Program)*

Pursuant to the Income Tax Act of 1961, as amended by the Finance Act 2007, Chapter VIA, 80IB (4) (India) (2007), the GOI has implemented a tax policy to foster economic development in certain “industrially backward” regions in India. The tax exemptions allowed under the 80IB Tax Program are only available to companies located in designated geographical areas (referred to as “backward areas” by the GOI) within India.⁶⁸ Under the 80IB Tax Program, the GOI allows domestic companies that invest in economically less developed areas of India to reduce their corporate taxable income by up to 100 percent of profit gained at production facilities located in designated geographical areas for a period of five years and by up to 30 percent for the next five years. The benefit is applied to the gross total income of the tax payer and is claimed when a company files its income tax return at the end of every financial year.⁶⁹

15. *Loan Guarantees from the GOI*

In the *2010 AR of Lined Paper from India*, the Department found that the GOI extends loans to public sector companies in particular industrial sectors. The Department countervailed this program in the *2010 AR of Lined Paper from India*.⁷⁰

16. *Tax Incentives from the SGOM*

In the *2010 AR of Lined Paper from India*, the Department found that SGOM provided a package of incentives to encourage the development of certain regions of those states. These incentives are provided to privately-owned (as defined by the GOI to not be 100 percent government owned) manufacturers in selected industries that are located in designated regions. One incentive is the exemption or deferral of state sales taxes. Specifically, under these state

⁶⁷ See *2014 AR of Lined Paper from India* and accompanying IDM at 8.

⁶⁸ “Industrially backward” states are states and union territories specified in the Eight Schedule of the Indian tax code.

⁶⁹ See *2010 AR of Lined Paper from India Preliminary Results* and accompanying PDM at 9-10, unchanged in *2010 AR of Lined Paper from India*.

⁷⁰ See *2010 AR of Lined Paper from India* and accompanying IDM at 3.

programs, companies are exempted from paying state sales taxes on purchases, and from collecting state sales taxes on sales. The Department countervailed this program in the *2010 AR of Lined Paper from India*.⁷¹

17. Tax Incentives from the SGOG

In the *2010 AR of Lined Paper from India*, the Department found that SGOG provided a package of incentives to encourage the development of certain regions of those states. These incentives are provided to privately-owned (as defined by the GOI to not be 100 percent government owned) manufacturers in selected industries which are located in designated regions. One incentive is the exemption or deferral of state sales taxes. Specifically, under these state programs, companies are exempted from paying state sales taxes on purchases, and from collecting state sales taxes on sales. The Department countervailed this program in the *2010 AR of Lined Paper from India*.⁷²

18. Electricity Duty Exemptions Under the SGOM Package of Program Incentives of 1993

In the *2010 AR of Lined Paper from India*, the Department found that the SGOM implemented a policy to encourage industrialization of regions in Maharashtra that are less developed than the Bombay and Pune metropolitan areas, which included electricity duty exemptions. The Department countervailed this program in the *2010 AR of Lined Paper from India*.⁷³

19. Land for LTAR

In the *2010 AR of Lined Paper from India*, the Department found that the SGOM sold land for LTAR to firms operating in areas outside of the Bombay and Pune metropolitan areas. The Department countervailed this program in the *2010 AR of Lined Paper from India*.⁷⁴

20. Loan Guarantees Based on Octroi Refunds by the SGOM

In the *2010 AR of Lined Paper from India*, the Department found that the SGOM provided firms in Maharashtra with loan guarantees based on expected refunds of Octroi taxes from the provincial government authority that distributes the refunds. The Department countervailed this program in the *2010 AR of Lined Paper from India*.⁷⁵

⁷¹ *Id.*

⁷² *Id.*

⁷³ See 2010 AR of Lined Paper from India and accompanying IDM at 3.

⁷⁴ *Id.*

⁷⁵ *Id.*

Final Results of Review

We determine that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (percent)</u>
Aero Exports	84.98
Navneet	88.39
All Others	87.52

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this expedited sunset review in the *Federal Register* and notify the ITC of our determination.



Agree

Disagree

10/31/2017

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
Performing the non-exclusive functions and duties of
Assistant Secretary for Enforcement and Compliance