



A-533-843
Administrative Review
9/1/2015 - 8/31/2016
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DATE: April 9, 2018

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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Lined Paper Products from India: Issues and Decision
Memorandum for the Final Results of the Antidumping Duty
Administrative Review; 2015-2016

I. Summary

On October 6, 2017, the Department of Commerce (Commerce) published the *Preliminary Results* of the administrative review of the antidumping duty order on certain lined paper products from India, in which Commerce preliminarily determined that Navneet Education Ltd. (Navneet) and SAB International (SAB) did not sell subject merchandise at less than normal value (NV) during the period of review, September 1, 2015, through August 31, 2016.¹ Based on our analyses of the comments received from interested parties, these final results differ from the *Preliminary Results* with respect to Navneet but do not differ with respect to SAB. We determine that Navneet made sales of subject merchandise at less than NV during the period of review and have calculated a final weighted-average dumping margin of 1.34 percent. We recommend that you approve the positions set forth in the “Analysis of Comments” section of this memorandum. Below is the complete list of the issues in this review for which we received comments.

¹ See *Certain Lined Paper Products from India: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015–2016*, 82 FR 46764 (October 6, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).



II. List of Comments

Comments Concerning Navneet:

- Comment 1: Whether Commerce Should Reclassify Navneet's Reported Levels of Trade
- Comment 2: Whether Commerce Should Grant Navneet's Claimed Duty Drawback Adjustment
- Comment 3: Whether Commerce Should Grant an Adjustment for Defective Product Claims Reported in the Other Rebates Field
- Comment 4: Treatment of Navneet's Excise Tax and Local Body Tax in Home Market Price and Cost Calculation
- Comment 5: Whether Commerce Should Correct the Miscoded PRIMEU Field

Comments Concerning SAB:

- Comment 6: Whether Certain Chain Stores Who May Be the Importer of Record Should Be Included in the Liquidation Instructions

III. Background

On October 6, 2017, Commerce published the *Preliminary Results* in the *Federal Register*.² On November 6, 2017, we received a case brief and a hearing request from the petitioners,³ and case briefs from Navneet and SAB.⁴ On November 13, 2017, we received rebuttal briefs from the petitioners and Navneet.⁵ On December 8, 2017, we received a request from the petitioners for a meeting *in lieu* of a hearing.⁶ On December 19, 2017, the petitioners' legal counsel met with Commerce officials to discuss the issues raised in their case and rebuttal briefs.⁷

IV. Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic), composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper), including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller

² See *Preliminary Results*.

³ The petitioners are the Association of American School Paper Suppliers (AASPS) and its individual members.

⁴ See the petitioners' letters dated November 6, 2017 (Petitioners' Case Brief and Petitioners' Hearing Request, respectively); see also Navneet's letter dated November 6, 2017 (Navneet Case Brief); see also SAB's letter dated November 6, 2017 (SAB Case Brief).

⁵ See the petitioners' letter dated November 13, 2017 (Petitioners' Rebuttal Brief); see also Navneet's letter dated November 13, 2017 (Navneet's Rebuttal Brief).

⁶ See Memorandum to File, "Petitioners Request for a Meeting in Lieu of a Hearing," dated December 8, 2017.

⁷ See Memorandum to the File, "Meeting with Interested Party," dated December 19, 2017.

dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8-3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or “tear-out” size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as “tablets,” “note pads,” “legal pads,” and “quadrille pads”), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;
- 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 4811.90.9035, 4811.90.9080, 4820.30.0040, 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 this order is dispositive.

V. Analysis of Comments

COMMENTS CONCERNING NAVNEET

Comment 1: Whether Commerce Should Reclassify Navneet’s Reported Levels of Trade

The Petitioners’ Case Brief Arguments

- Navneet reported one sales channel for all U.S. sales of subject merchandise and six sales channels for the company’s home market (HM) sales of subject merchandise. Navneet claimed that each sales channel merited its own level of trade (LOT) classification.⁸
- In the *Preliminary Results*, Commerce found that sales channel one (full-service HM sales of Navneet-branded products to distributors) and sales channel seven (full-service HM sales of Navneet-branded products to “super-stockists” who sell to distributors) involve a greater level of selling activities than the other HM sales channels and the single U.S. sales channel.

⁸ See Petitioners’ Case Brief at 4-5.

Thus, Commerce preliminarily collapsed sales channels one and seven into a single level of trade (*i.e.*, LOT1).⁹

- Commerce preliminarily collapsed sales channel two (sales of limited service Boss-branded products to distributors), sales channel three (sales to retail chains with their own distribution networks), sales channel four (sales to institutional end-users), and sales channel five (sales to schools for end-use and for resale to students) into a single level of trade (*i.e.*, LOT2). Commerce preliminarily determined that Navneet's U.S. sales, which all fall under sales channel six (sales to U.S. customers who distribute the products to retailers), were most similar to the HM sales in LOT2; therefore, only HM sales in LOT2 were compared to U.S. sales.¹⁰
- The record evidence on this issue has been clouded by Navneet's reported levels of selling activity, which appear inconsistent with its own descriptions of the customers involved and with its actual expense reporting.¹¹
- Commerce has accepted Navneet's characterization of the company's U.S. customers, but a closer examination of Navneet's own descriptions of its U.S. customers and common knowledge about their operations indicates that only sales channel three has customers that are similar to Navneet's U.S. customers.¹²
- Navneet's narrative descriptions of its selling activities in sales channel three and the selling expenses it reported suggest that sales channels three and six are more similar to each other than any of Navneet's other sales channels.¹³
- Navneet's reported level of "Inventory Maintenance" for sales channel three is contradicted by the actual expenses Navneet incurred with respect to inventory maintenance.¹⁴
- Similarly, Navneet's reported levels of activity for "Turnover Discounts (Rebate programs)" and "Early Payment Discounts" for sales channel three contradicts its own expense reporting.¹⁵
- Further, Navneet's reported levels of customer support activities, according to the table of selling activities it submitted in its initial questionnaire response, do not correspond with Navneet's descriptions of its customers in each sales channel and reported sales data.¹⁶
- The petitioners revised Navneet's table of selling activities to reflect the company's actual reported expenses for warehousing, discounts/rebates, and customer support, and assigned the numerical values commonly used by Commerce (*e.g.* high = 3, medium = 2, low = 1, none = 0), and noted that the total scores suggest that sales channel three is more similar to Navneet's U.S. sales channel than Navneet's other HM sales channels.¹⁷

⁹ *Id.* at 5-6; *see also Preliminary Results* at 13-15.

¹⁰ *Id.* at 5-6, *see also Preliminary Results* at 13-15.

¹¹ *Id.* at 7.

¹² *Id.* at 6-7.

¹³ *Id.* at 8-12.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 8; *see also* Navneet's February 3, 2017 Section A Questionnaire Response (Navneet's AQR) at Exhibit A-6.

¹⁶ *Id.* at 8-9; *see also* Navneet's AQR at Exhibit A-6.

¹⁷ *Id.* at 9-12 and Exhibit 1.

- For the reasons discussed above, Commerce should consider sales channel three to be its own, independent HM LOT that is comparable to U.S. sales channel six.

Navneet's Rebuttal Brief Arguments

- Commerce has consistently defined Navneet's levels of trade in essentially the same manner since Navneet's first administrative review nearly ten years ago.¹⁸ Commerce continued to apply these levels of trade definitions to Navneet for the final results of the previous administrative review, which involved an on-site verification of Navneet's sales and cost responses, and in the preliminary results in the instant review.¹⁹
- The petitioners have apparently tested a number of combinations of sales channels and levels of trade and have discovered the level of trade arrangement that will produce the highest margin.²⁰
- The petitioners attempt to single out sales channel three by ignoring Navneet's own descriptions of its operations and its self-reported levels of selling activities, and by misstating the numeric values that Navneet reported in its table of selling activities.²¹
- The numerical level of selling activity identified in the table of selling activities for Navneet is very close to the average of the other sales channels in LOT2 and is not significantly more like the U.S. sales channel than the other LOT2 channels.²²
- The petitioners assert that differences in expenses such as warehousing can distinguish channels with high levels of selling activities from those with low levels of selling activities. Navneet reported location-based warehousing expenses in its original questionnaire response; thus, the lower warehousing expenses in sales channel three are simply due to the fact that more customers in channel three are based in locations where the per kilogram warehousing cost happens to be lower, and not because customers in channel three require a different level of warehousing activities or inventory maintenance from customers in sales channels two and five.²³
- The petitioners falsely claim that Navneet "does not provide advertising materials or send advertising canvassers to the retail outlets for HM channel three, like it does for the other HM channels."²⁴ Navneet explained in its supplemental questionnaire response that digital and print advertisements are aimed directly to all consumers of Navneet-branded products, and hence are common to all HM sales channels, with the exception of channel two, which

¹⁸ See Navneet's Rebuttal Brief at 3; see also *Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review*, 75 FR 7563 (February 22, 2010) (2nd AR Final Results), and accompanying Issues and Decision Memorandum at Comment 5.

¹⁹ See Navneet's Rebuttal Brief at 3-4, citing to *Certain Lined Paper Products from India: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 71046 (October 14, 2016) (9th AR Preliminary Results), and accompanying Preliminary Decision Memorandum at 12-14, unchanged in *Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 14201 (March 17, 2017) (9th AR Final Results).

²⁰ *Id.* at 4.

²¹ *Id.* at 4-7.

²² *Id.* at 4-5 (citing to Navneet's AQR at Exhibit A-6).

²³ *Id.* at 5-6.

²⁴ *Id.* at 6 (quoting Petitioners' Case Brief at 10).

includes only Boss-branded products.²⁵ Further, advertising expenses for canvassers (reported in field ADVERTISEH2) are not incurred for sales channels two, three, four, or five; thus, there is no basis for the petitioners' claim that the level of canvassing activities in sales channel three is different from that in sales channels two, four, and five.²⁶

- The petitioners allege that Navneet's customers in sales channel three are similar to its U.S. customers, however, level of trade is not determined by a customer's identity or characteristics, but rather by the exporter's selling activities with respect to those customers.²⁷ Navneet's selling activities in sales channels two, three, four, and five, as reported in its original questionnaire response and further described in its supplemental questionnaire response, are not distinguishable in any meaningful way.²⁸
- The petitioners repeated the same arguments about Navneet's levels of trade in their May 17, 2017 comments on Navneet's questionnaire responses, and Commerce rejected those arguments in the *Preliminary Results*.²⁹ Commerce should reject these arguments again in the final results.

Commerce's Position: We agree with the petitioners that Navneet's HM sales in channel 3 are among the home sales channels that are at a similar LOT as Navneet's U.S. sales in channel 6; however, we do not find sufficient evidence to conclude that HM sales in channel 3 are at a different LOT from HM sales in channels 2, 4, and 5. As a result, we continue to consider sales in channels 2, 3, 4, 5, and 6 to be at the same LOT (*i.e.*, LOT2).

Pursuant to section 773(a)(1)(B)(i) of the Tariff Act of 1930, as amended (the Act), Commerce, to the extent practicable, will calculate NV based on HM sales at the same LOT as the U.S. sales. Substantial differences in selling functions, although required, are insufficient on their own to establish a different level of trade.³⁰ Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).³¹ To determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.³²

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* (citing to Navneet's AQR at Exhibit A-6 and Navneet's August 1, 2017 Supplemental Questionnaire Response (Navneet's SQR)).

²⁹ *Id.* at 4 and 7.

³⁰ See 19 CFR 351.412(c)(2); see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7.

³¹ See 19 CFR 351.412(c)(2).

³² See, e.g., *Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 16372 (April 4, 2017), and accompanying Issues and Decision Memorandum at 20; *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005), and accompanying Issues and Decision Memorandum at Comment 4.

The petitioners argue that Navneet's characterization of its sales activities are unreliable and are contradicted by the values contained in Navneet's HM database. For example, referencing Navneet's HM database, the petitioners argue that Navneet's HM sales in channel 3 have no discounts or rebates, whereas sales in channels 2, 4, and 5 include discounts and rebates and further argue that channels 2 and 5 have a high level of such activity. Thus, according to the petitioners, these purported differences make sales channels 2, 4, and 5, as a group, dissimilar to sales channel 3.

We disagree with the petitioners that information in Navneet's HM database undercuts the description of sales activities Navneet provided in its questionnaire response. Sales channels 3 and 4 are essentially the same with regard to discount and rebate sales activity.³³ Specifically, the HM dataset submitted by Navneet indicates that none of the sales in channel 4 had rebates and only an extremely small percentage of the channel 4 sales had early payment discounts.³⁴ Given that the overwhelming majority of channel 4 sales have the same level of activity in terms of discounts and rebates as channel 3 sales, we conclude that, in terms of discounts and rebates, channel 3 sales are not made at a different LOT than channel 4 sales. While it is true that sales channels 2 and 5 have relatively high levels of discount and rebate sales activity (*e.g.*, relatively large numbers of observations with values in these fields) when compared to sales channel 3, we disagree that the difference in discount and rebate activity alone warrants finding that HM sales in channels 2 and 5 are at a different marketing stage than HM sales in channel 3. Furthermore, to the extent the petitioners argue that, taken together, sales channels 2, 4, and 5 are substantially different from sales channel 3 in terms of discount and rebate activities, the fact that sales channels 3 and 4 are essentially the same with regard to discount and rebate activities belies that argument.

Similarly, while the petitioners argue that inventory maintenance costs, as measured by inland freight and warehousing expenses, are lower for sales in channel 3 than in channels 2, 4, and 5, we find that a similar proportion of sales in channels 2, 3, 4, and 5 incur warehousing expenses, and that the total costs of inland freight and warehousing expenses fall within a fairly close range, such that they are all made at the same LOT.³⁵ U.S. sales, on the other hand, involve inland freight to the port but no warehousing expenses. Thus, even when using Navneet's actual HM selling expenses as a proxy for the level of selling activities, and ignoring the ratings in the selling functions chart listed in the narrative of Navneet's questionnaire response, we find the selling activities in channel 3 are similar to the selling activities in channels 2, 4, and 5 and, as a result, it is appropriate to find sales channels 2, 3, 4, and 5 in the HM and sales channel 6 in the U.S. market to be at the same LOT.

Further, we find that Navneet's method of reporting its sales activity is consistent with the sales activity levels Navneet reported and which were verified by Commerce in the prior administrative review.³⁶

³³ See Navneet's SQR at Exhibit B-18.

³⁴ *Id.*

³⁵ *Id.*

³⁶ See 9th AR Preliminary Results at 4 and 12-14, unchanged in 9th AR Final Results.

According to the information on the record, Navneet performed a majority of its reported selling activities at the same or similar level of intensity for HM sales in channels 2, 3, 4, and 5. Therefore, for the reasons discussed above, we continue to find that Navneet's HM sales channels 2, 3, 4, and 5 are at the same LOT as its U.S. sales channel 6.

Comment 2: Whether Commerce Should Grant Navneet's Claimed Duty Drawback Adjustment

The Petitioners' Case Brief Arguments

- Commerce should not grant Navneet a duty drawback adjustment for duties paid on input materials used to produce subject merchandise in the final results because Navneet has failed to demonstrate that it is entitled to a drawback adjustment based on Commerce's traditional two-prong test. Navneet has not provided information to demonstrate that the company imported any of its input materials, nor has Navneet provided any information to demonstrate that the quantity of exported goods for which the company received a duty drawback is related to the quantity of allegedly imported materials.³⁷
- Navneet has improperly based its duty drawback claim on a law that allows for duty drawback on non-imported materials.³⁸
- In *Oil Country Tubular Goods from India*, Commerce stated that it "first analyzes the record to determine if the information is sufficient to examine the drawback system and to determine if the government has controls in place to enable Commerce to examine the criteria for receiving a duty drawback adjustment."³⁹ Commerce cannot conclude that a respondent has established the required linkage simply because they received benefits under a duty drawback program. Instead, Commerce must examine the program itself and confirm that it satisfies Commerce's linkage requirements.⁴⁰
- Under the second prong of the test, Commerce looks at how the duty drawback system was applied to the respondent claiming a duty drawback adjustment and determines whether there are sufficient imports of the imported raw material to account for the duty drawback claimed by the respondent for the export of the manufactured product. The quantity of imported raw materials must be equal to or exceed the amount used in the production of the exported product for which the duty drawback is claimed.⁴¹ In *Polyester Staple Fiber from Korea* and

³⁷ *Id.* at 13.

³⁸ *Id.*

³⁹ *Id.* at 16 (citing to *Certain Oil Country Tubular Goods from India: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 79 FR 10493 (February 25, 2014), and accompanying Preliminary Decision Memorandum at 13).

⁴⁰ *Id.*

⁴¹ *Id.* at 17 (citing to *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006) (*CORE from Korea*), and accompanying Issues and Decision Memorandum at Comment 2; *Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe*

Cooking Ware from Korea, Commerce stated that the amount of duty drawback must be based on a respondent's actual usage of imported inputs and that fixed-rate schemes that provide duty drawback based on the average rate of importation of inputs in an industry do not satisfy the second prong of the test on their own merits.⁴²

- Navneet has failed to meet Commerce's traditional two-prong test: (1) Navneet has not provided a direct link between import duties paid and duty drawback received because Navneet did not import materials directly and did not pay imports duties directly, and (2) Navneet has not provided information to demonstrate that the quantity of exported goods for which it received a duty drawback is related to the quantity of imported materials because Navneet has not shown that any of the materials for which it received a drawback were imported, either by itself or by its suppliers, and the Indian duty drawback system is based on a fixed drawback rate that is unrelated to Navneet's usage.⁴³

Navneet's Rebuttal Brief Arguments

- Navneet qualifies for a duty drawback on its export sales under Indian law, and it receives a drawback credit with respect to U.S. sales. This drawback increases the revenue that Navneet receives on its U.S. sales; therefore, Commerce properly made an upward adjustment to the U.S. price in the *Preliminary Results*.⁴⁴
- While the petitioners argue that a duty drawback can only be considered an adjustment if the exporter can track the exported product to a prior import of a raw material, Navneet has explained in its supplemental response that the revised Indian drawback law calculates a fixed drawback amount for a company in Navneet's situation, without having to prove a tie to imported inputs.⁴⁵
- Navneet received a drawback amount from the Indian government and that amount was directly related to U.S. sales, which qualifies as a difference in circumstances of sale that must be accounted for as an adjustment pursuant to 19 CFR 351.410.⁴⁶
- In the instant review, Navneet reported its duty drawback in exactly the same way, and with exactly the same supporting documentation and calculation worksheets as in the prior administrative review. In addition, Commerce conducted a verification of Navneet's responses during the previous review and closely examined the duty drawback program, including the relevant Indian government regulations and Navneet's reporting methodology. During that verification, Commerce confirmed Navneet's reporting methodology and

and Tube from Turkey, 70 FR 73447 (December 12, 2005), and accompanying Issues and Decision Memorandum at Comment 7).

⁴² *Id.* at 17-18 (citing to *Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review*, 67 FR 63616 (October 15, 2002) (*Polyester Staple Fiber from Korea*), and accompanying Issues and Decision Memorandum at Comment 5; *Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review*, 68 FR 7503 (February 14, 2003) (*Cooking Ware from Korea*), and accompanying Issues and Decision Memorandum at Comment 4).

⁴³ *Id.* at 18-22.

⁴⁴ See Navneet's Rebuttal Brief at 7.

⁴⁵ *Id.* at 7-8 (citing to Navneet's SQR at 9-10).

⁴⁶ *Id.* at 8.

included Navneet's reported duty drawback in its calculation for the final results of that review.⁴⁷

Commerce's Position: Section 772(c)(1)(B) of the Act provides that export price shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." In accordance with this statutory provision, we will grant a duty drawback adjustment where a respondent establishes that: (1) the import duty paid and the rebate payment are directly linked to, and dependent upon, one another; and (2) there were sufficient imports of the imported raw material to account for the drawback received upon the exportation of the manufactured product (*i.e.*, the "two-prong test").⁴⁸ The two-prong test has been sustained by the Court of Appeals for the Federal Circuit.⁴⁹

During the POR, Navneet domestically sourced all of its inputs for which it is claiming drawback and did not directly pay import duties.⁵⁰ Instead, it reported the amount of drawback it received under the Government of India's fixed drawback rates.⁵¹ While Navneet documented the drawback rebates it received upon export, it is not able to document the amount of import duties its input suppliers paid, or for that matter whether the inputs were, in fact, imported into India (as opposed to being produced domestically).⁵² As a result, we are unable to establish a direct link between the duty drawback the respondent received and the duties it paid on *imported* inputs and, thus, we find that the first prong of Commerce's "two-prong" test has not been met. Our finding in this regard is consistent with Commerce's practice. For example, in *Phosphor Copper from Korea*, Commerce found that the respondent did not meet the first prong because it did not directly import copper inputs and pay import duties, and it could not fully document the origin of its domestically sourced copper inputs.⁵³

Although the Indian system sets the fixed drawback rates according to the average rate of importation of inputs in a specified industry,⁵⁴ Commerce has repeatedly found that a fixed-rate system, by itself, does not meet the two-prong test.⁵⁵ The Indian fixed-rate scheme fails to meet Commerce's two-prong test on its own merits because the amount of export rebate is based upon the average experience of companies within the industry. In other words, the amount of rebate a

⁴⁷ *Id.* at 8-9 (citing to 9th AR Final Results, and accompanying Issues and Decision Memorandum).

⁴⁸ See *CORE from Korea* Issues and Decision Memorandum at comment 2; see also *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006).

⁴⁹ See *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011).

⁵⁰ See Navneet's SQR at 9 and 11.

⁵¹ *Id.* at 7-10 and Exhibit C.8.

⁵² *Id.* at 9-11.

⁵³ See *Phosphor Copper from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 82 FR 12433 (March 3, 2017) (*Phosphor Copper from Korea*), and accompanying Issues and Decision Memorandum at Comment 4.

⁵⁴ See Navneet's SQR at 7-8 and Exhibit C.8.

⁵⁵ See *Polyester Staple Fiber from Korea* Issues and Decision Memorandum at Comment 5; *Cooking Ware from Korea* Issues and Decision Memorandum at Comment 4.

company receives under the fixed-rate scheme is not based on its own experience and, therefore, may be more, less, or equal to the amount of the actual duties it paid on the inputs. Thus, Commerce requires that the respondents receiving rebates under a fixed-rate scheme demonstrate that they meet the two-prong test.⁵⁶ This approach is consistent with Commerce’s judicially-affirmed practice with respect to the burden of establishing entitlement to a duty drawback adjustment, which is to place the burden on the claiming respondent to demonstrate its eligibility for such an adjustment, specifically with regard to linking the imported inputs to exports of subject merchandise.⁵⁷

In the case of the instant review, Navneet did not supply any information demonstrating that the inputs on which drawback was received were, in fact, imported,⁵⁸ and it also did not provide information demonstrating that the quantity of imported materials (to the extent they were, in fact, imported) was sufficient to account for the duty drawback received upon export.⁵⁹ Thus, in the absence of such information from Navneet, and in keeping with Commerce’s practice concerning India’s fixed-rate drawback scheme as well as with Commerce’s practice with regard to duty drawback in general, we also find that Navneet has failed to meet the second prong of the “two-prong” test. Because Navneet has failed to meet the first and second prongs of the “two-prong” test, we find that Navneet has failed to demonstrate that it is entitled to a duty drawback adjustment.

With respect to Navneet’s argument that Commerce granted a duty drawback adjustment in the previous review with the same information that was submitted in this review, we disagree. In the prior review, we granted Navneet’s drawback adjustment because the company had some imports of inputs (in addition to domestically sourcing inputs). Further, whether the inputs that Navneet acquired from domestic suppliers were, in fact, imported was not an issue raised in the prior review. In light of new arguments raised by the petitioners and information presented in this review, we find that, unlike the prior review where Navneet had some imports of its inputs, there is no evidence that Navneet directly imported any of its inputs during the POR and it is unable to fully document the origin of its domestically sourced inputs. We determine that Navneet has not met the two-prong test and, therefore, is not entitled to a duty drawback adjustment in these final results.

⁵⁶ See *Polyester Staple Fiber from Korea* Issues and Decision Memorandum at Comment 5; *Cooking Ware from Korea* Issues and Decision Memorandum at Comment 4.

⁵⁷ See *Fujitsu Gen. v. United States*, 88 F.3d 1034, 1039-40, 1045-46 (CAFC 1996).

⁵⁸ See Navneet’s SQR at 7-11.

⁵⁹ *Id.*

Comment 3: Whether Commerce Should Grant an Adjustment for Defective Product Claims Reported in the Other Rebates Field

The Petitioners' Case Brief Arguments

- In its questionnaire responses, Navneet claimed a price adjustment for defective product claims and reported the adjustment amount in the OTHREBH2 field in the company's HM sales database.⁶⁰
- While the claimed expenses are reported in the "Other Rebates" field, Navneet describes the expenses not as rebates but as an adjustment for damaged goods. According to Navneet,

{ if a } customer returns damaged or defective goods, the goods are returned to inventory... However, if the goods are not returned, Navneet may issue a credit note in the amount of the "defective" or "damaged" goods... Navneet cannot tie the discount provided to a specific invoice or shipment, because the information to tie the credit to the invoice does not exist on its electronic accounts.⁶¹

- According to Navneet's description, these expenses are not a typical rebate, but instead reflect expenses that arise when customers claim that goods are defective or damaged. Navneet treats these expenses as a price adjustment because it "generally considers such claims... to be of questionable validity, more in the nature of a 'self-awarded' discount."⁶²
- Navneet cannot tie these claims of defective or damaged goods to any specific sales and has instead collected the various credit notes issued under this program during the POR, allocated them on a per-customer basis, and reported this amount in the field OTHREB2.⁶³
- Regardless of Navneet's motives in incurring these expenses, they should not be treated as price adjustments because Navneet cannot tie them to particular sales and an unknown amount of the claims relate to non-subject merchandise. As a result, Commerce should not grant an adjustment for the defective product expenses reported in OTHREBH2.⁶⁴

Navneet's Rebuttal Brief Arguments

- In the petitioners' May 16, 2017, letter to Commerce, they argued that, because the rebates Navneet grants for defective product claims cannot be tied to particular sales, the quantity, not the price, should be reduced. Therefore, the petitioners requested that Commerce recharacterize Navneet's rebates for defective product claims as an indirect selling expense.⁶⁵

⁶⁰ See Petitioners' Case Brief at 23.

⁶¹ *Id.* (citing to Navneet's March 3, 2017 Section B Questionnaire Response (Navneet's BQR) at 39).

⁶² *Id.* at 24 (citing to Navneet's BQR at 39).

⁶³ *Id.* (citing to Navneet's BQR at 39).

⁶⁴ *Id.*

⁶⁵ See Navneet's Rebuttal Brief at 9 (citing to the petitioners' letter, "Certain Lined Paper Products from India: Deficiency Comments on Navneet's Questionnaire Responses," at 12-13).

- The petitioners now argue in their case brief that Commerce should simply ignore the credits and deny the adjustment entirely.⁶⁶
- A rebate for a defective product claim only comes about when a customer submits a claim but does not actually return the product.⁶⁷ When a customer does return a defective product, Navneet reports it as a quantity adjustment, and when products are replaced because of a warranty claim, Navneet credits the original invoice and issues a new invoice for the replacement products.⁶⁸
- Navneet reported the unit value of each rebate given to its customers, as requested by Commerce, and explained that the OTHREBH2 field represents credits given to its customers for products reported as “defective” or “damaged,” but which are not returned and which cannot be substantiated for a warranty claim.⁶⁹ Navneet explained that these credits constitute post-invoice discounts that result in an overall reduction of the price to a given customer.⁷⁰
- Navneet provided additional information about this rebate in a supplemental questionnaire response, and provided calculation worksheets and supporting documentation.⁷¹
- Navneet has reported its defective product claims in the field OTHREB2 in exactly the same way as it has in prior reviews, and has provided the same supporting documentation and calculation worksheets.⁷² Commerce verified the methodology Navneet used for calculating this rebate in the prior review and properly applied it as a price adjustment in the final results of that review.⁷³

Commerce’s Position: Navneet offers two types of post-delivery and invoicing rebates, a turnover rebate reported in OTHREBH and a rebate for defective and damaged goods reported in OTHREBH2.⁷⁴ When a customer claims it received defective or damaged goods and the customer does not return the goods, or when a customer claims that it received a short delivery, Navneet cannot identify the quantity of the disputed goods. As a result, Navneet is not able to issue a quantity credit note, and instead, the company issues a credit note for the value of the claimed defective, damaged, or missing goods that are not returned.⁷⁵ Navneet consolidated such credit notes, allocated them on a per-customer basis, and reported them in the field OTHREBH2.⁷⁶ If Navneet recovers products from a customer, it issues a debit note to the customer; therefore, the OTHREBH2 field for certain customers is a negative value.⁷⁷

⁶⁶ *Id.* (citing to Petitioners’ Case Brief at 23-24).

⁶⁷ *See* Navneet’s Rebuttal Brief at 10.

⁶⁸ *Id.* (citing to Navneet’s BQR at 49-50).

⁶⁹ *Id.* at 9-10 (citing to Navneet’s BQR at 39).

⁷⁰ *Id.* at 10 (citing to Navneet’s BQR at Exhibit B-6).

⁷¹ *Id.* (citing to Navneet’s SQR at 13-14, Exhibit B-16, and Exhibit B-17).

⁷² *Id.* at 10-11.

⁷³ *Id.*

⁷⁴ *See* Navneet’s BQR at 38.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *See* Navneet’s SQR at 14.

We determine that Navneet's rebate claim for defective or damaged products is a legitimate rebate that is substantiated by supporting documentation.⁷⁸ Given the nature of this rebate, we have information only on the value of the rebated goods, and not the quantity of the rebated goods; therefore, we are treating this rebate as a price adjustment, which is consistent with our past practice in the 2011-12 and 2014-15 administrative reviews.⁷⁹

Comment 4: Treatment of Navneet's Excise Tax and Local Body Tax in Home Market Price and Cost Calculation

Navneet's Case Brief Arguments

- In the *Preliminary Results*, Commerce erroneously added two expense fields - excise tax (reported in field EXCISEH) and local body tax (reported in field LBTAXH) - to the net HM price and the net price for the cost test in the SAS HM program.⁸⁰
- Navneet incurs an unreimbursed excise tax for selling in the HM but does not incur this expense on sales in the U.S. market.⁸¹
- The State of Maharashtra imposes an unreimbursed "local body tax" on goods that a seller brings into the State of Maharashtra for consumption. The additional cost of this tax is included in the sales price and is similar in nature to a movement or a logistics expense that is applicable only to sales made in the State of Maharashtra.⁸²
- The excise tax and the local body tax are both direct selling expenses and both expenses should be deducted from the gross unit HM price to yield the net HM price.⁸³ Navneet notes that Commerce has properly deducted these expenses from the HM gross unit price in prior reviews.⁸⁴

Petitioners' Rebuttal Brief Arguments

- Navneet claims that the excise tax should be subtracted from HM prices because Navneet is not reimbursed for excise taxes on sales made in India; however, Navneet is reimbursed for the excise tax on all sales to the United States under the Indian duty drawback scheme.⁸⁵
- To the extent that Commerce determines to accept Navneet's duty drawback claim by granting an upward adjustment to the U.S. price, granting a downward adjustment to the HM price for unreimbursed excise taxes would result in double counting. As Navneet explains,

⁷⁸ See Navneet's SQR at 13-14, Exhibit B-16, and B-16a.

⁷⁹ See *9th AR Preliminary Results* at 11 and 17, unchanged in the *9th AR Final Results*; see also *Certain Lined Paper Products from India: Notice of Partial Rescission and Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 63162 (October 23, 2013) (*6th AR Preliminary Results*), and accompanying Preliminary Decision Memorandum at 14, unchanged in *Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26205 (May 7, 2014) (*6th AR Final Results*).

⁸⁰ See Navneet Case Brief at 1-2; see also Memorandum to the File, "Preliminary Sales and Cost of Production Calculation Memorandum for Navneet Education Ltd.," dated October 3, 2017 (Navneet Preliminary Calculation Memorandum) at 7-8; see also Navneet's Preliminary HM Program at Part 4-B-ii.

⁸¹ *Id.* at 2 (citing to Navneet's BQR at 51-52).

⁸² *Id.* at 3 (citing to Navneet's BQR at 52).

⁸³ *Id.* at 1-3 (citing to Navneet's BQR at 51-52).

⁸⁴ *Id.* at 3.

⁸⁵ See Petitioners' Rebuttal Brief at 2 (citing to Navneet's SQR at 7).

“{t}he Duty Draw Back Scheme gives a manufacturer/exporter relief from customs and central excise duties that would otherwise be imposed on inputs used in the manufacture products that it exports.”⁸⁶

- Drawback adjustments are intended to prevent margins that would otherwise have been calculated solely on the basis of a duty drawback program where the HM sales include a duty on inputs but the U.S. sales do not.⁸⁷ Commerce adds the amount of the duties to the U.S. price so that it is equal to the duties in the HM sales, thus the duty drawback adjustment assumes that the HM price already includes the input duties. Granting an additional downward adjustment to HM prices for excise duties would provide a double benefit to Navneet; therefore, Commerce should not allow an excise tax adjustment for Navneet’s HM sales.⁸⁸
- Navneet claims an excise tax adjustment because HM sales incur an excise tax and are thus more expensive to produce than U.S. sales of the same good, which are reimbursed for excise tax. However, this is only true when U.S. sales are compared to sales of the same product in the HM, and to the extent that Commerce does grant an excise tax adjustment, it should limit the adjustment only to those HM sales which are identical matches to U.S. sales.⁸⁹
- Since all excise taxes are reported in the cost database, when U.S. sales are matched to similar, rather than identical products, excise tax differences are accounted for with the DIFMER adjustment, and it would be inappropriate to grant a further excise tax adjustment for matches of similar products.⁹⁰
- Regardless of Commerce’s decision on excise taxes, Commerce’s practice is to include taxes on inputs in the cost database; therefore, the excise duties Navneet paid but was not reimbursed must be included in costs.⁹¹
- Regarding the local body tax, Navneet made no specific claim that this tax is rebated on U.S. sales and, as a local state tax, it does not appear to be covered by India’s duty drawback program.⁹²
- Navneet’s purchases of inputs for HM sales and U.S. sales both appear to incur the local body tax, and Navneet has not demonstrated that it is reimbursed for these taxes when it sells subject merchandise to the U.S.; therefore, Commerce has no basis to grant an adjustment for the local body tax.⁹³

Commerce’s Position: In its Section B questionnaire response, Navneet stated that its reported HM gross unit price (GRSUPRH) is net of value added taxes and other excise taxes.⁹⁴ In its HM sales database, Navneet also reported the excise tax and local body tax in separate fields

⁸⁶ *Id.* at 2-3 (citing to Navneet’s SQR at 7).

⁸⁷ *Id.* at 3 (citing to *Allied Tube & Conduit Corp., et al. v United States*, 29 CIT 502, 506 (CIT 2005)).

⁸⁸ *Id.*

⁸⁹ *Id.* at 4

⁹⁰ *Id.*

⁹¹ *Id.* at 4-5.

⁹² *Id.* at 4.

⁹³ *Id.*

⁹⁴ See Navneet’s BQR at 33 and Navneet’s SQR at Exhibit HM Database (NAVTHM02).

(EXCISEH) and (LBTAXH), respectively.⁹⁵ Similarly, in its Section D questionnaire response, Navneet stated that it reported all material costs net of taxes and duties on materials purchased for which Navneet does not carry the cost, such as value added taxes.⁹⁶

School supplies that Navneet produces and sells are included in a class of products for which the Indian government does not allow the collection of the excise tax upon sale.⁹⁷ Similarly, Navneet is unable to recover the “local body tax” on sales of goods that Navneet brought into the State of Maharashtra for consumption.⁹⁸ As a result, Navneet increases its HM sales price to include the excise tax and local body tax it incurs for selling school supplies in the HM, which it does not incur on sales to the U.S. market.⁹⁹

In determining whether to adjust Navneet’s HM sales price for the excise tax and local body tax, we relied on the guidance provided in section 773(a)(6)(B)(iii) of the Act, which directs Commerce to adjust for the amounts of any taxes imposed directly upon the foreign like product to the extent that such taxes are added to or included in the price of the foreign like product. We also relied on 19 CFR 351.410(b), which states that Commerce “will make circumstances of sale adjustments under section 773(a)(6)(C)(iii) of the Act only for direct selling expenses and assumed expenses.” “Direct” selling expenses are expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, the particular sale in question, and ‘assumed expenses’ are selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses.”¹⁰⁰

In the *Preliminary Results*, pursuant to section 773(a)(6)(B)(iii) of the Act and 19 CFR 351.410(b), we intended to adjust Navneet’s HM sales price for the amounts of excise tax and local body tax that Navneet paid on the purchase of raw material inputs. However, in our preliminary SAS HM program, instead of applying Navneet’s reported GRSUPRH (which is net of the excise tax and local body tax), we inadvertently added these two taxes to the reported GRSUPRH. As a result, in the *Preliminary Results*, we did not utilize a GRSUPRH net of the excise tax and local body tax as intended.

We agree with Navneet that we erred in the preliminary SAS HM program by adding the two expense fields, EXCISEH and LBTAXH, to the net HM price and the net price for the cost test. Therefore, in these final results, we have revised our preliminary SAS HM program so it utilizes a GRSUPRH that is net of the excise tax and local body tax.¹⁰¹

⁹⁵ See Navneet’s BQR at 52 and Navneet’s SQR at Exhibit HM Database (NAVTHM02).

⁹⁶ See Navneet’s March 3, 2017 Section D Questionnaire Response (Navneet’s DQR) at page 24, and its cost of production (COP) database.

⁹⁷ *Id.*

⁹⁸ The local body tax is applicable only to sales made in the State of Maharashtra. *Id.*

⁹⁹ *Id.*

¹⁰⁰ See 19 CFR 351.410(c).

¹⁰¹ See Memorandum titled “Certain Lined Paper Products from India (2015-2016): Sales and Cost of Production Calculation Memorandum for the Final Results of Navneet Education Ltd. (Navneet)” dated April 9, 2018 (10th AR Sales and Cost Calc. Memo). See also Navneet’s final SAS HM program at Part 4-B-ii.

We disagree with the petitioners' argument that failure to include the excise tax in the GRSUPRH calculation would provide a double benefit to Navneet. We note that the petitioners' argument is based on the assumption that Commerce has added the amount of the duties (*i.e.*, duty drawback adjustment) to the U.S. price so that it is equal to the duties in the HM sales.¹⁰² As noted above, we have declined to grant Navneet a duty drawback adjustment in this review. However, notwithstanding our decision, we find that the excise tax is distinct from the import duties levied on imported materials; therefore, even if Navneet were granted a duty drawback adjustment in these final results, we find no relationship or connection exists between the drawback on export sales and Navneet's excise tax on HM sales.¹⁰³ As stated above, calculating a GRSUPRH net of excise tax and local body tax is necessary under section 773(a)(6)(B)(iii) of the Act and 19 CFR 351.410(b) because Commerce adjusts for the amount of any taxes imposed directly upon the foreign like product, which have been rebated or not collected on subject merchandise, to the extent that such taxes are added to or included in the price of the foreign like product.

With respect to the petitioners' argument that we should make an adjustment to HM price for the excise taxes only where U.S. sales are matched to identical rather than similar products, we disagree. Commerce uses the DIFMER adjustment to account for similar products, as opposed to identical products, that are being compared in the home and U.S. market. The DIFMER adjustment itself is a function of the respondent firm's cost data. As explained below, we have determined not to include the excise tax in Navneet's cost of manufacturing. Thus, the petitioners' arguments that the use of a GRSUPRH that is net of the excise tax would result in double counting when combined with a DIFMER adjustment (that also incorporates excise taxes) is unfounded.

We also disagree with the petitioners that these excise taxes should be included in the cost of manufacturing. In the instant case, we find the excise and local body taxes akin to an indirect tax (*e.g.*, value added tax) as described in 19 CFR 351.102(b)(28). Because there is no record evidence to demonstrate that Navneet did not recover these indirect taxes paid on its material input purchases, we have not included these taxes in Navneet's cost of manufacturing.¹⁰⁴

Comment 5: Whether Commerce Should Correct the Miscoded PRIMEU Field

The Petitioners' Case Brief Arguments

- The PRIMEU variable is coded as a numerical variable in Navneet's U.S. sales database, whereas the PRIMEH field is coded as a character variable in Navneet's HM sales database. As a result, the margin calculation program does not match U.S. sales of prime merchandise with HM sales of prime merchandise.¹⁰⁵

¹⁰² *Id.*

¹⁰³ See 9th AR Final Results and accompanying Issues and Decision Memorandum at Comment 3.

¹⁰⁴ See *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 67 FR 77225 (December 17, 2002), and accompanying Issues and Decision Memorandum at Comment 10.

¹⁰⁵ See Petitioners' Case Brief at 24-25.

- Commerce should revise the prime merchandise field in the margin calculation program as follows and to use the revised field for matching:

PRIMEU = '01';

Navneet did not comment on this issue.

Commerce's Position: In the margin program for these final results, we have used the U.S. sales database and the HM sales database submitted by Navneet on August 1, 2017.¹⁰⁶ Both PRIMEU and PRIMEH are correctly coded as character variables in Navneet's U.S. and HM sales databases; however, PRIMEU is coded as a single digit (*i.e.*, "1") and PRIMEH is coded as two digits (*i.e.*, "01" or "02"). There is no non-prime merchandise in Navneet's U.S. sales database; therefore, we modified the HM calculation program to set PRIMEH as follows:

```
IF PRIMEH = '01' THEN PRIMEH = '1';
ELSE IF PRIMEH = '02' THEN PRIMEH = '2';
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COMMENTS CONCERNING SAB

Comment 6: Whether Certain Chain Stores Who May Be the Importer of Record Should Be Included in the Liquidation Instructions

SAB's Case Brief Arguments

- Paragraph 2 of Commerce's draft liquidation instructions states that, for all shipments of certain lined paper products from India produced by SAB International, entered, or withdrawn from warehouse, for consumption during the period September 1, 2015, through August 31, 2016, entered under case number A-533-843-017, and not covered by paragraph 1, Customs and Border Protection (CBP) shall assess antidumping duties at the all-others rate in effect on the date of entry. The all-others rate for certain lined paper products from India is 3.91 percent.¹⁰⁷
- Some of SAB's customers are traders who might have made further sales to chain stores. Because the names of these chain store are unknown to SAB, their names are not listed as the importer of record in paragraph 1 of the draft liquidation instructions, although they may be the actual importer of record. In such case, these chain stores' entries would be assessed at the all-other's rate of 3.91 percent instead of zero percent, the calculated antidumping duty margin for SAB.¹⁰⁸
- To ensure that merchandise produced by SAB and imported into the United States is assessed at zero percent antidumping duty, Commerce should revise the draft liquidation instructions to instruct zero percent import duty be assessed for all entries of subject merchandise entered,

¹⁰⁶ See Navneet's SQR at Exhibit HM Database and US Market Database.

¹⁰⁷ See SAB Case Brief at 2.

¹⁰⁸ *Id.*

or withdrawn from warehouse, for consumption during the period September 1, 2015, through August 31, 2016, entered under case number A-533-843-017.¹⁰⁹

The petitioners did not comment on this issue.

Commerce's Position: We disagree with SAB and have made no modifications to the liquidation instructions for this administrative review. Commerce's draft liquidation instructions specifically account for situations where an exporter may not be aware of the importer of record of its entries by instructing CBP to assess antidumping duties on all shipments of subject merchandise produced and/or exported by SAB and "imported by *or sold to (as indicated on the commercial invoice or Customs documentation)*" (emphasis added) specific importers *or customers*. Further, because the importer of record is "unknown," Commerce has listed SAB's customers under "Importer or Customer" in the draft liquidation instructions, which alleviates SAB's concerns and ensures that its customers' entries will be properly assessed even if those customers are not the actual importer of record.

Additionally, Commerce has not modified the language of its liquidation instructions to instruct CBP to liquidate all entries produced and/or exported by SAB that entered under its case number at SAB's assessment rate, as that would contravene Commerce's reseller practice.¹¹⁰ As stated in Commerce's draft cash deposit instructions, an exporter (or reseller) that does not have its own rate, but the producer has its own rate, the cash deposit rate will be the producer's rate if the producer knew, or should have known, that the merchandise it sold to a reseller was destined for the United States. However, as clarified in the *Assessment FR*, if Commerce determines in an administrative review that the producer did not know that the merchandise it sold to a reseller was destined for the United States, the reseller's merchandise will not be liquidated at the assessment rate Commerce determines for the producer or automatically at the rate required as a deposit at the time of entry. In that situation, the entries of merchandise from the reseller during the period of review will be liquidated at the all-others rate if there was no company-specific review of the reseller for that review period.¹¹¹ Hence, if Commerce were to modify the liquidation instructions as requested by SAB, potential resellers of SAB's merchandise could benefit from the zero percent rate to which they would not be entitled. Thus, we find that the modification proposed by SAB is inconsistent with Commerce's duty assessment practice with respect to resellers and that the draft liquidation instructions address SAB's concerns.

¹⁰⁹ *Id.*

¹¹⁰ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment FR*).

¹¹¹ *Id.*, 68 FR at 23954.

VI. Recommendation

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



Agree



Disagree

4/9/2018

X



Signed by: GARY TAVERMAN