



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-533-839

Administrative Review
POR: 01/01/2017-12/31/2017
Public Document
E&C/OVII: GHC

January 31, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Enforcement and Compliance

SUBJECT: Decision Memorandum for the Preliminary Results of the
Countervailing Duty Administrative Review of Carbazole
Violet Pigment 23 from the Republic of India

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on carbazole violet pigment 23 (CVP 23) from the Republic of India (India) in response to a request from an interested party. The period of review (POR) is January 1, 2017 through December 31, 2017. We preliminarily determine that Pidilite Industries Limited (Pidilite), the sole company respondent in this review, benefitted from countervailable subsidies during the POR.

II. BACKGROUND

On December 29, 2004, we published the CVD order on CVP 23 from India in the *Federal Register*.¹ On December 3, 2018, we published a notice of opportunity to request an administrative review of the *CVD Order*.² In response, On December 23, 2018, Pidilite requested a review of its own entries covering the POR.³ No other interested party requested a review of the *CVD Order* for the POR. On March 14, 2019, we initiated the instant administrative review of the *CVD Order* for the POR with respect to Pidilite.⁴ Between July 12, 2019, and December 19, 2019, the Government of India (the GOI) and Pidilite submitted timely

¹ See *Notice of Countervailing Duty Order: Carbazole Violet Pigment 23 from India*, 69 FR 77995 (December 29, 2004) (*CVD Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 62293 (December 3, 2018).

³ See Pidilite's Letter, "Carbazole Violet Pigment 23 from India – Request for Administrative Review," dated December 21, 2018.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 9297 (March 14, 2019).



responses to our questionnaires. On October 1, 2019, we extended the deadline for these preliminary results to January 16, 2020.⁵ On January 15, 2020, we further extended the deadline until January 31, 2020.⁶

III. SCOPE OF THE ORDER

The merchandise covered by the scope of the order is CVP 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358-30-1, with the chemical name of *diindolo* [3,2-*b*:3',2'-*m*] triphenodioxazine, 8,18-dichloro-5,15-diethy-5,15-dihydro-, and molecular formula of C₃₄H₂₂Cl₂N₄O₂.⁷ The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.*, pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the order.

The merchandise subject to this order is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise covered by the scope of the order is dispositive.

IV. PERIOD OF REVIEW

The POR is January 1, 2017 through December 31, 2017.

V. SUBSIDIES VALUATION INFORMATION

Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. Commerce finds the AUL in this proceeding to be 11 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's Class Life Asset Depreciation Range System. No interested party has challenged the use of a 11-year AUL.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

⁵ See Memorandum, "Carbazole Violet Pigment 23 from India: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated October 1, 2019.

⁶ See Memorandum, "Carbazole Violet Pigment 23 from India: Second Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated January 15, 2020.

⁷ The bracketed section of the product description, [3,2-*b*:3',2'-*m*], is not business proprietary information; the brackets are simply part of the chemical nomenclature.

Attribution of Subsidies

Pidilite, which produces subject merchandise in Vapi, Gujarat, India, is a producer and exporter of subject merchandise, and reported affiliations with certain companies during the POR.⁸ Based on our review of the information provided in its questionnaire responses, we find that these companies are not cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). As such, pursuant to 19 CFR 351.525(b)(6)(i), we have attributed all subsidies received by Pidilite to its own sales.

Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators we used to calculate the countervailable subsidy rate for the various subsidy programs are described below and are explained in further detail in the Preliminary Calculations Memoranda prepared for these preliminary results.⁹

Loan Benchmark and Interest Rates and Discount Rates

Section 771(5)(E)(ii) of the Tariff Act of 1930, as amended (the Act) provides that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market," indicating that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient "could actually obtain on the market," Commerce will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans during the period, Commerce "may use a national average interest rate for comparable commercial loans," pursuant to 19 CFR 351.505(a)(3)(ii). In addition, 19 CFR 351.505(a)(2)(ii) states that Commerce will not consider a loan provided by a government-owned special-purpose bank for purposes of calculating benchmark rates.

Based on Pidilite's responses, we preliminarily find that Pidilite did not receive comparable rupee-denominated short-term or long-term loans from commercial banks for certain years for which we must calculate benchmark and discount rates. Thus, we do not have loan information from Pidilite for the year(s) subsidies were provided. As such loan rates are not available, we are preliminarily relying on national average interest rates, pursuant to 19 CFR 351.505(a)(3)(ii). Specifically, we are relying on national average interest rates from the International Monetary Fund's International Financial Statistics (IFS) as benchmarks for rupee-denominated short-term

⁸ See Pidilite's Letter, "Carbazole Violet Pigment 23 from India – Pidilite Affiliation Response," dated July 12, 2019, at Appendix 1.

⁹ See Memorandum, "Countervailing Duty Administrative Review of Carbazole Violet Pigment 23 from India: Pidilite Industries Limited Preliminary Calculations Memorandum," dated concurrently with this memorandum (Pidilite Preliminary Calculations Memorandum).

and long-term loans.¹⁰ We preliminarily find that the IFS loan rates provide a reasonable representation of both short-term and long-term interest rates for rupee-denominated loans. Consistent with 19 CFR 351.524(d)(3)(i)(C), we used national average discount rates from the IFS for the year in which the government provided-non-recurring subsidies.¹¹

VI. ANALYSIS OF PROGRAMS

Based on our analysis of the record and responses to our questionnaires, we preliminarily determine the following:

A. Programs Preliminarily Determined to be Countervailable

1. *Merchandise Export Incentive Scheme (MEIS)*

Pidilite reported participating in the MEIS during the POR.¹² The MEIS was introduced in India's Foreign Trade Policy (FTP) covering 2015-2020. According to the GOI, the purpose of this program is to offset infrastructural inefficiencies and associated costs involved in the export of goods and products that are manufactured in India, especially those that have high export intensity, employment potential and, thereby, enhance India's export competitiveness.¹³ Eligibility is also dependent on the products and the foreign markets to which the products are exported.¹⁴ Under this program, the GOI issues a scrip worth either two, three, or five percent of the FOB value of the export.¹⁵ To receive the scrip, a recipient must file an electronic application and supporting shipping documentation for each port of export with the Director General of Foreign Trade (DGFT).¹⁶ Each application can cover only up to 50 shipping bills each.¹⁷ The DGFT reviews the data on the application and shipment and will issue the MEIS scrip.¹⁸ Pidilite reported that it can use the issued scrip for payment of customs duties for importation of goods, payment of taxes for purchases of domestically sourced inputs, or it can transfer or sell the scrip to another company.¹⁹ We have examined the MEIS in other CVD cases involving India,²⁰ and record evidence provided by the GOI in this review does not demonstrate that changes have been made to this program.

¹⁰ See Pidilite Preliminary Calculations Memorandum.

¹¹ *Id.*

¹² See Pidilite's Letter, "Carbazole Violet Pigment 23 from India – Pidilite Section III Questionnaire Response," dated August 9, 2019 (Pidilite's August 9, 2019 QR), at 33.

¹³ See GOI's Letter, "Administrative Review of Countervailing Duty Order on Carbazole Violet Pigment 23 from the Republic of India: Questionnaire Response on behalf of the Government of India," dated August 5, 2019 (GOI's August 5, 2019 QR), at 72.

¹⁴ *Id.* at 73.

¹⁵ See GOI's August 5, 2019 QR at Exhibit P.

¹⁶ See Pidilite's August 9, 2019 QR at 35-36.

¹⁷ See Pidilite's August 9, 2019 QR at 36.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See, e.g., *Certain New Pneumatic Off-the-Road Tires from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 39903 (June 20, 2016), and accompanying Preliminary Decision Memorandum (PDM) at 16, unchanged in *Countervailing Duty Investigation of Certain New*

Accordingly, we determine that the MEIS program confers a countervailable subsidy.²¹ The MEIS program is specific within sections 771(5A)(A) and (B) of the Act because eligibility to receive scrips from this program is contingent upon export performance. This program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, because the scrips provide exemptions of paying duties associated with the import of goods, which represents revenue forgone by the GOI.

This program provides a recurring benefit, as the scrips from this program are not tied to capital assets. Furthermore, recipients can expect to receive additional subsidies under this same program on an ongoing basis from year to year under 19 CFR 351.524(c)(2)(i). We calculated the benefit to Pidilite to be the total value of the scrips received during the POR. Normally, in cases where the benefits are granted based on a percentage value of the shipment, Commerce calculates the benefit as having been received as of the date of exportation.²² However, because the benefit (the scrip) amount is not automatic and is not known to the exporter until well after the exports are made, the MEIS licenses, which contain the date of validity and the duty exemption amount as issued by the GOI, are the best method to determine and account for when the benefit is received.²³ Therefore, for our subsidy rate calculation, we divided the value of the scrips Pidilite received during the POR by its total export sales. On this basis, we preliminarily determine the countervailable subsidy rate of 1.68 percent *ad valorem*.

2. *Duty Drawback Program*

Pidilite reported receiving duty rebates during the POR for exports of subject and non-subject products to several countries, including the United States, under this program.²⁴ The GOI explained that this program provides rebates for duties or tax chargeable on (a) imported or excisable materials used in the manufacture of export goods.²⁵ Pidilite further explained that for specified products, the GOI has fixed the duty drawback rate to be applied on the FOB value of exports.²⁶ According to Pidilite, the duty drawback amount (based on product-specified duty

Pneumatic Off-the-Road Tires from India: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part, 82 FR 2946 (January 10, 2017) (*OTR Tires from India Final Determination*), and accompanying IDM.

²¹ Commerce has found this program to be countervailable in prior CVD proceedings involving India. *See, e.g., Polyester Textured Yarn from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 19036 (May 3, 2019), and accompanying PDM at 21, unchanged in *Polyester Textured Yarn from India: Final Affirmative Countervailing Duty Determination*, 84 FR 63848 (November 19, 2019) (*Textured Yarn from India*), and accompanying Issues and Decision Memorandum (IDM) at Comment 4.

²² *See* 19 CFR 351.519(b)(1).

²³ *See, e.g., Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014), and accompanying IDM at VI.A.5., page 17.

²⁴ *See* Pidilite's August 9, 2019 QR at 27-32.

²⁵ *See* GOI's August 5, 2019 QR at 60.

²⁶ *See* Pidilite's August 9, 2019 QR at 28.

drawback rates) is paid to exporters by direct transfer of the drawback amount to the nominated bank of the exporter.²⁷

Import duty exemptions on inputs for exported products are not countervailable, as long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.²⁸ However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products and in what amounts.²⁹ The system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.³⁰ If such a system does not exist, or if it not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission or drawback is countervailable.³¹

Regarding its establishment of applicable duty drawback rates, the GOI explained that a committee is established to review data and recommend duty drawback rates.³² We asked the GOI to discuss the Committee's monitoring procedures, specifically the procedures it applies to confirm which inputs are consumed in the production of exported CVP 23 and in what amounts, including waste, for which duty drawback was earned, and to provide documentation to support its claim, *e.g.*, guidelines, audit procedures, and/or standards the Committee uses to conduct its site visits.³³ The GOI reported:

The All Industry Rates are notified in the form of a Schedule every year after a Committee appointed for the purpose has reviewed the data and recommended the rates . . . The Committee undertakes analysis of data which includes the data on the procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values export products, submitted on {a} representative basis by export promotion councils/commodity boards/trade bodies. . . The Committee also visits manufacturer exporter units for first-hand knowledge of the manufacturing process and observe{s} nature of inputs ordinarily used and wastage . . .³⁴

²⁷ *Id.*

²⁸ See 19 CFR 351.519(a)(1)(ii).

²⁹ See, *e.g.*, *Certain Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India*), and accompanying IDM at 12-14.

³⁰ *Id.*

³¹ See 19 CFR 351.519(a)(4)(i)-(ii).

³² See GOI's August 5, 2019 QR at 60.

³³ See Commerce's Letter to the GOI, "Supplemental Questionnaire Regarding the 2017 Administrative Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India," dated December 4, 2019 (GOI December 4, 2019 SQ).

³⁴ See GOI's Letter, "Administrative Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from the Republic of India: Supplemental Questionnaire Response on behalf of the Government of India," dated December 11, 2019 (GOI's December 11, 2019 SQR), at 4.

However, the GOI did not provide documentation to support its claim, even though we specifically requested such documentation in the questionnaire.³⁵ Additionally, we asked the GOI to provide information on the number of audits and site visits that were conducted by the Committee to the facilities of India's producers of CVP 23 generally, and to Pidilite specifically, during the POR (or information on the most recent audits/visits to these producers prior to the POR) for which the GOI has reporting data.³⁶ The GOI reported that the "Committee has not visited manufacture unit in this case."³⁷ Thus, consistent with our previous findings in cases such as *Shrimp from India* and *Textured Yarn from India*, we are determining that the GOI's response lacks the documentation to support a finding that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products, and in what amounts. Therefore, we preliminarily determine that the GOI has not supported its claim that its system is reasonable or effective for the purposes indicated.³⁸ We note that record evidence provided by the GOI in this review shows no changes have been made to this program since our previous examinations in other CVD cases involving India.³⁹

Accordingly, we preliminarily determine that the Duty Drawback program confers a countervailable subsidy. Under this program, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because rebated duties represent revenue forgone by the GOI. Moreover, as explained above, the GOI has not supported its claim that the Duty Drawback program system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported product. Therefore, under 19 CFR 351.519(a)(4), the entire amount of the import duty rebate earned during the POR constitutes a benefit. Finally, this program is only available to exporters; therefore, it is specific under sections 771(5A)(A) and (B) of the Act.

Pursuant to 19 CFR 351.519(b)(1), we find that the benefits from the Duty Drawback program are conferred on the date of exportation of the shipment for which the pertinent drawbacks are earned. We calculated the benefit on an as-earned basis upon export because drawback under the program is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, it is at the time of exportation that recipients know the amount of the benefit (*i.e.*, the value of the drawback).

Pidilite reported the benefits it earned on exports of subject and non-subject merchandise (*e.g.*, epoxies, adhesives, and resins) to multiple countries, including the United States, during the POR. Although Pidilite reported the benefits it received on a shipment-by-shipment basis, and provided detailed information on the destination of these exports, we cannot reliably determine that these exports were specifically subject merchandise.⁴⁰ However, the information provided allows us to tie the duty drawback rebates (*i.e.*, the benefit) to specific markets, in accordance with 19 CFR 351.525(b)(4). Therefore, we divided the amount of the duty drawback rebates

³⁵ *Id.*

³⁶ See GOI December 4, 2019 SQ.

³⁷ See GOI's December 11, 2019 SQR at 4-5.

³⁸ See *Shrimp from India* IDM at 12-14; see also *Textured Yarn from India* IDM at 12-16.

³⁹ See, *e.g.*, *Shrimp from India*; see also *Textured Yarn from India*.

⁴⁰ See Pidilite August 9, 2019 QR at Exhibit DDB-1.

Pidilite received on all of its exports to the United States during the POR by Pidilite's POR total exports sales to the United States.

On this basis, we preliminarily determine a countervailable subsidy rate of 1.20 percent *ad valorem*.

3. *Export Promotion of Capital Goods Scheme (EPCGS)*

The GOI reported that the EPCGS provides for the import of capital goods without the payment of customs duties.⁴¹ The objective of this program is to facilitate the import of capital goods for producing goods and services to enhance India's manufacturing competitiveness. Manufacturer exporters, merchant exporters tied to a supporting manufacturer, and service providers may use this program. Eligibility is not limited to a particular sector or geographic region.⁴²

Administered by the Directorate General of Foreign Trade (DGFT), the EPCGS exempts producers from paying customs duties on imports of capital goods, subject to satisfying an export obligation.⁴³ This export obligation has varied over the AUL. For example, from 2004 through 2009, an exporter had to export an FOB value eight times the value of the customs duty saved under this program within eight years to qualify for the concession duty rate of five percent. During the 2017 POR, an exporter had to export an FOB value of six times the value of the customs duty saved under the EPGCS within six years to qualify for a concessional customs duty rate of zero percent.⁴⁴

Commerce has previously determined that the import duty reductions or exemptions provided under the EPCGS are countervailable export subsidies because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue forgone; (2) provides two different benefits, as described below, under section 771(5)(E) of the Act; and (3) is specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is contingent upon export performance.⁴⁵ Because the evidence on the instant record with respect to this program is consistent with Commerce's previous findings,⁴⁶ and the record does not demonstrate that the GOC has made changes to this program, we preliminarily determine that this program is countervailable.

Under the EPCGS, the exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. Commerce's practice is to treat any balance on an unpaid liability that may be waived in the future as an interest-free contingent-liability loan pursuant to 19 CFR 351.505(d)(1).⁴⁷ Because the unpaid duties constitute a liability contingent

⁴¹ See GOI's August 5, 2019 QR at 23.

⁴² *Id.* at 30.

⁴³ See GOI August 5, 2019 QR at 29.

⁴⁴ *Id.* at 29.

⁴⁵ See, e.g., *OTR Tires from India Final Determination*; see also *Textured Yarn from India*, and accompanying IDM at 12.

⁴⁶ *Id.*

⁴⁷ See *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016), and accompanying PDM at 13, unchanged in *Finished Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017).

on subsequent events, we treat the amount of the unpaid duties as interest-free contingent-liability loans. We find the amount a respondent would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation to constitute the first benefit under the EPCGS. The second benefit arises based on the amount of duty waived by the GOI on imports of capital equipment covered by those EPCGS licenses for which the export requirement had already been met. With regard to licenses for which the GOI and a respondent acknowledged that the respondent has completed its export obligations, we treat the import duty savings as grants that were received in the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are approved for the purchase of capital equipment. The *CVD Preamble* states that, if a government provides an import duty exemption tied to major equipment purchases, “it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring. . . .”⁴⁸ In accordance with 19 CFR 351.524(c)(2)(ii) and our past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.⁴⁹

Pidilite reported that it imported capital goods under the EPCGS prior to and during the POR for use in the manufacture of subject and non-subject merchandise.⁵⁰ Record information submitted by the GOI indicates that certain of the licenses were issued for the purchase of capital goods and materials that could be used in the production of both subject and non-subject merchandise.⁵¹ Based on the information submitted by the GOI and Pidilite, we cannot reliably determine that the EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we find that all of Pidilite’s EPCGS licenses benefit all of the company’s exports.

Pidilite reported that it met the export requirements for certain EPCGS licenses prior to December 31, 2017 (the last day of the POR), and the GOI formally waived payments of the relevant import duties.⁵² For certain licenses, however, Pidilite has not yet met its export obligations as required under the program.⁵³ Therefore, although Pidilite received a deferral from paying import duties when the capital goods were imported, the final waiver of the obligation to pay the duties has not yet been granted for certain imports.

To calculate the benefit received from the GOI’s formal waiver of import duties on Pidilite’s capital equipment imports where the export obligation was met prior to the end of the POR, we considered the total amount of the duties waived, *i.e.*, the calculated duties payable less the duties actually paid in the year, net of required application fees, in accordance with section 771(6) of the Act, to be the benefit, and treated these amounts as grants pursuant to 19 CFR 351.504. Further, consistent with the approach followed in previous cases for the EPCGS, we

⁴⁸ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

⁴⁹ See, e.g., *OTR Tires from India Final Determination*.

⁵⁰ See Pidilite’s August 9, 2019 QR at 11 and Exhibits EPCGS-1 and EPCGS-2.

⁵¹ See GOI’s August 5, 2019 QR at Exhibit J.

⁵² See Pidilite’s August 9, 2019 QR at Exhibit EPCGS-2.

⁵³ See Pidilite’s August 9, 2019 QR at Exhibit EPCGS-3.

determined the year of receipt of the benefit to be the year in which the GOI formally waived Pidilite's outstanding import duties.⁵⁴ Next, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the total value of duties waived, for each year in which the GOI granted Pidilite an import waiver. For any years in which the value of the waived import duties was less than 0.5 percent of Pidilite's total export sales, we expensed the value of the duty waived to the year of receipt. For years in which the value of the waivers exceeded 0.5 percent of Pidilite's total export sales in that year, we allocated the value of the waivers over the 11-year AUL for nonrecurring subsidies, in accordance with 19 CFR 351.524(d)(2).⁵⁵ For purposes of allocating the value of the waivers over time, we used the appropriate discount rate for the year in which the GOI officially waived the import duties.

As noted above, import duty reductions that Pidilite received on the imports of capital equipment for which it had not met its export obligations may have to be repaid to the GOI if the obligations under the licenses are not met. Consistent with our practice and prior determinations, we are treating the balance of any unpaid import duty liability that may be waived in the future as a contingent-liability interest-free loan, pursuant to 19 CFR 351.505(d)(1).⁵⁶

The amount of the unpaid duty liabilities to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which Pidilite applied, but had not been officially waived by the GOI, as of the end of the POR. Accordingly, we find the benefit to be the interest that Pidilite would have paid during the POR if it had borrowed the full amount of the duty reduction or exemption at the time of importation.

The time period for fulfilling the export requirement expires after a certain number of years after importation of the capital good. As such, pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the long-term interest rate, as discussed in the "Loan Benchmark and Interest Rates and Discount Rates" section, above. We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the capital good was imported and summed these amounts to determine the benefit. For EPCGS licenses with duty-free imports made during the POR, we calculated a daily interest rate based on the long-term interest rate and the number of days the loan was outstanding during the POR to arrive at a prorated contingent liability for those imports.

The benefit received under the EPCGS is the sum of: (1) the benefit attributable to the POR from the formally-waived duties for imports of capital equipment for which Pidilite met its export requirement by the end of the POR; and (2) the interest that would have been due had Pidilite borrowed the full amount of the duty reduction or exemption at the time of the

⁵⁴ See, e.g., *OTR Tires from India Final Determination*.

⁵⁵ See the "Allocation Period" section, above.

⁵⁶ See, e.g., *OTR Tires from India Final Determination*; see also *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*; 2016, 83 FR 39677 (August 10, 2018), and accompanying PDM at 6-7, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 10789 (March 22, 2019).

importation for capital equipment for which it had not met the export requirements during the POR. We then divided the total benefit received by Pidilite under the EPCGS by the company's total export sales during the POR.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.08 percent *ad valorem* for Pidilite.

4. Income Tax Deduction for Research and Development (R&D) Expenses

According to the GOI, Section 35(2AB) of the Income Tax Act of 1961 provides deductions from taxable income regarding expenditures incurred on scientific research.⁵⁷ These income tax deductions are available to companies engaged in the biotechnology sector or in a business not involved in sectors listed in the Eleventh Schedule of the Income Tax Act of 1961.⁵⁸ According to the GOI, eligibility is not based on the export performance or the geographic location of companies claiming this deduction.⁵⁹ Pidilite and the GOI reported that Pidilite claimed an income tax deduction through this program during the POR.⁶⁰ Commerce has found these income tax deductions to be countervailable in prior CVD cases involving India,⁶¹ and the evidence provided by the GOI in this review does not demonstrate that changes have been made to this program.

We preliminarily determine that the income tax deductions provided under Section 35(2AB) of India's Income Tax Act of 1961 provide a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act. Further, we preliminarily determine that these income tax deductions are *de jure* specific under section 771(5A)(D)(i) of the Act, because the law expressly limits the receipt of the benefit to certain enterprises or industries, or to a certain group of enterprises or industries, *i.e.*, companies engaged in the biotechnology sector or in a business not involved in sectors listed in the Eleventh Schedule of the Income Tax Act of 1961.

Pidilite received a benefit within the meaning of section 771(5)(E) of the Act and 19 CFR 351.509 in the amount of the tax payments exempted. To determine the subsidy rate from this program, we divided the amount of the benefits provided to Pidilite during the POR and divided this amount by Pidilite's total POR sales. On this basis, we determine a countervailable subsidy rate of 0.17 percent *ad valorem* for Pidilite.

B. Programs Preliminarily Determined to be Not Used or Not to Confer a Countervailable Benefit During the POR

⁵⁷ See GOI's Letter, "Administrative Review of Countervailing Duty Order on Carbazole Violet Pigment 23 from the Republic of India: Supplemental Questionnaire Response on behalf of Government of India," dated December 19, 2019 (GOI's December 19, 2019 SQR), at 7.

⁵⁸ *Id.*

⁵⁹ *Id.* at 12-13.

⁶⁰ See Pidilite's August 9, 2019 QR at 72; *see also* Pidilite's Letter, "Carbazole Violet Pigment 23 from India – Pidilite Supplemental Questionnaire Response," dated December 19, 2019; and GOI's December 19, 2019 SQR at 8-9.

⁶¹ See *OTR Tires from India Final Determination* IDM at 38.

We preliminarily determine that Pidilite did not apply for or receive countervailable benefits during the POR under the following programs:

1. Duty Entitlement Passbook Scheme
2. State of Gujarat State Sales Tax Incentive Scheme
3. State of Maharashtra State Sales Tax Incentive Scheme
4. Export Processing Zones/Export-Oriented Units
5. Income Tax Exemption Scheme (Section 10A and 10B)
6. Market Development Assistance
7. Special Impress Licenses
8. Duty-Free Replenishment Certificate Program
9. Advance Authorization Scheme (Formerly Advance License Scheme)
10. Focus Product Scheme
11. Status Certificate Program
12. Special Economic Zones
13. Excise Exemptions and Refunds
14. Income Tax Benefits – Backward Area Tax Benefits
15. Income Tax Benefits – Section 80-IA
16. State Level Capital and Insurance Incentives

VII. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

☒
☐

Agree

Disagree

1/31/2020

X



Signed by: JEFFREY KESSLER
 Jeffrey I. Kessler
 Assistant Secretary
 for Enforcement and Compliance