C-533-839
Administrative Review
POR: 01/01/2017-12/31/2017
Public Document
E&C/VII: GHC

September 28, 2020

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

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Carbazole Violet Pigment 23 from the Republic of India; 2017

I. SUMMARY

The Department of Commerce (Commerce) has completed its administrative review of the countervailing duty (CVD) order on carbazole violet pigment 23 (CVP 23) from the Republic of India (India) for the period January 1, 2017 through December 31, 2017. After analyzing comments raised by the Government of India (GOI) (the only interested party that submitted either a case or rebuttal brief), we made no changes to the *Preliminary Results*.[1] Below is the complete list of the issues in this administrative review for which we received comments from interested parties:

Comment 1: Whether Commerce Should Countervail the Duty Drawback Program
Comment 2: Whether Commerce Should Countervail the Export Promotion of Capital Goods Scheme
Comment 3: Whether Commerce Should Countervail the Income Tax Deduction for Research and Development Expenses Program Under Section 35 (2AB) of the Income Tax Act of 1961

[1] *See Carbazole Violet Pigment 23 from the Republic of India: Preliminary Results of Countervailing Duty Administrative Review; 2017*, 85 FR 7730 (February 11, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

A. Case History

On February 11, 2020, we published the *Preliminary Results* of this administrative review in the *Federal Register*. The sole mandatory respondent is Pidilite Industries Limited (Pidilite). On March 9, 2020, we received a timely case brief from the GOI.[2] No other interested party submitted case or rebuttal briefs or requested a hearing in this administrative review.

On April 24, 2020, Commerce exercised its discretion to toll all deadlines in administrative reviews by 50 days.[3] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[4] The deadline for the final results of this review is now September 28, 2020.

B. Period of Review

The period of review (POR) is January 1, 2017 through December 31, 2017.

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 $C_{34}H_{22}Cl_2N_4O_2$.[5] 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. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

[2] *See* GOI's Letter, "Administrative Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from the Republic of India," dated March 9, 2020 (GOI's Case Brief).
[3] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.
[4] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.
[5] 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.

We made no changes to the allocation period or to the allocation methodology used in the *Preliminary Results*. No issues were raised by interested parties in their briefs regarding this issue. For a description of the allocation period and the methodology used for the final results, *see* the *Preliminary Results*.[6]

B. Attribution of Subsidies

We made no changes to our cross-ownership and attribution analysis as discussed in the *Preliminary Results*. No issues were raised by interested parties in their briefs regarding this issue. For a description of the cross-ownership methodology applicable to these final results, *see* the *Preliminary Results*.[7]

C. Denominators

We made no changes to the sales denominators used in the *Preliminary Results*. No issues were raised by interested parties in their briefs regarding this issue. For a discussion of the sales denominators used in these final results, *see* the *Preliminary Results*.[8]

D. Loan Benchmarks and Discount Rates

We made no changes to the loan benchmarks or discount rates used in the *Preliminary Results*. No issues were raised by interested parties in their briefs regarding this issue. For a discussion of the loan benchmarks and discount rates used in these final results, *see* the *Preliminary Results*.[9]

V. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Merchandise Export Incentive Scheme (MEIS)

We received no comments from interested parties regarding this program. Commerce has not modified its analysis or calculation of this subsidy rate for this program from the *Preliminary Results*.[10]

Pidilite: 1.68 percent *ad valorem*

2. Duty Drawback Program

The GOI submitted comments in its case brief on this program, which are discussed in Comment 1. No other interested party submitted comments in either case or rebuttal briefs on this program.

[6] *See Preliminary Results* PDM at 2.
[7] *Id*. at 3.
[8] *Id*.
[9] *Id* at 3-4.
[10] *Id*. at 4-5.

Commerce has not modified its analysis or calculation of the subsidy rate for this program from the *Preliminary Results*.[11]

Pidilite: 1.20 percent *ad valorem*

3. Export Promotion of Capital Goods Scheme (EPCGS)

The GOI submitted comments in its case brief on this program, which are discussed in Comment 2. No other interested party submitted comments in either case or rebuttal briefs on this program. Commerce has not modified its analysis or calculation of the subsidy rate for this program from the *Preliminary Results*.[12]

Pidilite: 0.08 percent *ad valorem*

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

The GOI submitted comments in its case brief on this program, which are discussed in Comment 3. No other interested party submitted comments in either case or rebuttal briefs on this program. Commerce has not modified its analysis or calculation of the subsidy rate for this program from the *Preliminary Results*.[13]

Pidilite: 0.17 percent *ad valorem*

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

We received no comments from interested parties regarding the following programs. Commerce has not modified its analysis of these programs from the *Preliminary Results*.[14]

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

[11] *Id*. at 5-8.
[12] *Id*. at 8-11.
[13] *Id*. at 11.
[14] *Id*. at 11-12.

14. Income Tax Benefits – Backward Area Tax Benefits
15. Income Tax Benefits – Section 80-IA
16. State Level Capital and Insurance Incentives

VI. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce Should Countervail the Duty Drawback Program

GOI's Case Brief

- The GOI considers that the Duty Drawback (DDB) Program is not countervailable per the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement) unless it can be shown that in any particular case, the drawback of indirect taxes or import charges are in excess of the amount of such taxes or charges actually levied on inputs that are consumed in the production of the exported product.[15]
- According to the GOI, Footnote 1 to Article 1 of the SCM Agreement provides that a program/scheme can only be considered a subsidy if the amount of remission of such duties or taxes is in excess of what has been accrued.[16]
- The GOI states that pursuant to paragraph (i) of Annex I to the SCM Agreement (*i.e.*, the Illustrative List of Export Subsidies), drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on inputs that are consumed in the production of the exported product.[17]
- The GOI contends that it has maintained an effective verification system to ensure that the quantity of inputs for which drawback is claimed by exporters does not exceed the quantity of similar goods that are exported.[18] The GOI notes that its rules empower Commissioners to conduct special checks/audits to ensure there is no drawback of import charges in excess of those originally levied on the imported inputs in question and excessive drawback (if any) is recovered.[19]
- The GOI argues that in the instant case, there are no rebates in excess of the amount paid to the relevant exporters. The GOI determines the "All Industry Rate" of drawback based on taking averages of values duties on materials used for a class of export goods produced/manufactured and taking into the account the extent to which these duties may not have been paid or already rebated or refunded.[20]
- The GOI states that even if the Committee/Commissioners has/have not visited Pidilite, this does not in itself imply that the All Industry Rates used in the DDB Program exceeds the actual amount of such taxes or charges actually levied on inputs that are consumed in the production of the exported product.[21]
- According to the GOI, in the context of DDB schemes, the financial contribution element of the subsidy (*i.e.*, the revenue forgone that is otherwise due to the government) is limited to the excess remission or drawback of import charges and does not encompass the entire amount of

[15] *See* GOI's Case Brief at 9.
[16] *Id*. at 9-10.
[17] *Id*. at 10.
[18] *Id*. at 12.
[19] *Id*.
[20] *Id*.
[21] *Id*. at 13.

the remission or drawback of import charges.[22] The GOI argues that Commerce has incorrectly considered the entire amount of the duty drawback, as earned during the POR, as Pidilite's benefit.

- The GOI also argues that Commerce has taken the duty drawback rebates received by Pidilite for all of Pidilite's total POR exports sales and divided this value by Pidilite's export sales to the United States during the POR, irrespective of the destination of the export sale.[23] Because this proceeding only pertains to "PUC," a determination of the subsidy margin on total export sales of Pidilite would exceed the scope of this current case.

No interested party commented on the GOI's arguments regarding this issue.

Commerce's Position: We disagree with the GOI's arguments that the DDB Program is not countervailable and that the GOI has a mechanism in place to account for the type and the amount of inputs used in the production of subject merchandise that is exported to the United States.

Pursuant to 19 CFR 351.519(a)(1)(ii), import duty exemptions on inputs for exported products are not countervailable, so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste. 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.[24] The system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.[25] If such a system does not exist, or if it is 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.[26]

According to the GOI, the DDB Program provides rebates for duties or taxes chargeable on any imported or excisable materials used to manufacture exported goods.[27] Regarding its establishment of DDB rates, the GOI explained that the All Industry Rate of drawback is based on taking essentially averages of values of duties on materials used for a class of export goods produced or manufactured, and taking into account the extent to which these duties may not have been paid or already rebated or refunded.[28] A committee is established to review this data and

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[22] *Id*. (citing WTO Appellate Body Report, WT/DS486/AB/R, paragraph 5.134).
[23] *Id*. 13-14.
[24] *See*, *e.g.*, *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at 12-14; *see also Certain Quartz Surface Products from India: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, In Part*, 85 FR 25398 (May 1, 2020) (*Surface Quartz from India*), and accompanying IDM at 27-30.
[25] *See Shrimp from India Final Determination* IDM at 12-14.
[26] *See* 19 CFR 351.519(a)(4)(i)-(ii).
[27] *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 Government of India," dated August 5, 2019 (GOI August 5, 2019 QR), at 60.
[28] *Id*.

then recommends DDB rates.[29] 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).[30] 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 the 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 manufacture exporter units for first-hand knowledge of the manufacturing process and observe{s} {the} nature of inputs ordinarily used and wastage . . .[31]

However, the GOI did not provide documentation to support its claim, even though we specifically requested such documentation in the questionnaire.[32] Further, 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's facilities specifically, during the POR (or to provide information on the most recent audits/visits to these producers prior to the POR) for which the GOI has reporting data.[33] The GOI reported that "{t}he Committee has not visited manufacture unit in this case."[34]

While the GOI contends that the DDB Program provides for a verification procedure to observe what inputs are ordinarily used in the production of exported products and the wastage of these inputs, the GOI provided no record evidence that it has conducted such verifications. Indeed, the GOI stated that it has not audited or had an on-site visit with respect to Pidilite, the respondent in this administrative review.[35]

To merely state that an effective system exists is not enough to demonstrate that such a system actually exists in practice and is effective; that system must also be implemented and supported with documentation.[36] Thus, contrary to the GOI's claim, and based on our examination and

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[29] *Id*.
[30] *See* Commerce's Letter, "Supplemental Questionnaire Regarding the 2017 Administrative Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India," dated December 4, 2019 (GOI's December 4, 2019 SQ).
[31] *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.
[32] *See* GOI's December 4, 2019 SQ.
[33] *Id*.
[34] *See* GOI's December 11, 2019 SQR at 4-5.
[35] *Id*.
[36] *See, e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 10789 (March 22, 2019) (*India Film, Sheet, and Strip 2016 AR*), and accompanying IDM at Comment 4; *see also Surface Quartz from India* IDM at Comment 6.

analysis of record evidence, we find that the GOI has not demonstrated that it has a reasonable or effective system in place that implements the monitoring of the inputs consumed in the production of the exported product. Specifically, the GOI has not provided the documentation that we requested to support its claim and the record evidence demonstrates that the Committee has not visited Pidilite's manufacturing facilities despite the GOI's claim that the Committee "visits manufacture exporter units for first-hand knowledge of the manufacturing process and observe{s}{the} nature of inputs ordinarily used and wastage . . ."[37]

Accordingly, and consistent with our previous findings in cases such as *Surface Quartz from India*, we determine that the DDB Program confers a countervailable subsidy.[38] We find that a financial contribution, pursuant to section 771(5)(D)(ii) of the Act, is provided under this program because rebated duties represent revenue forgone by the GOI. As the GOI has not supported its claim that India's DDB system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported product, we determine that the entire amount of the import duty rebate earned during the POR constitutes a benefit under 19 CFR 351.519(a)(4).[39] Because the program is only available to exporters, we determine that the DDB Program is specific under section 771(5A)(B) of the Act.

While the GOI contends that the DDB Program is not countervailable under the SCM Agreement, we have conducted this administrative review in accordance with U.S. CVD laws under the Act and Commerce's regulations, which are consistent with our international obligations. We disagree with the GOI that certain WTO panel and Appellate Body reports are relevant to this administrative review. DS486, the WTO report cited by the GOI, concerned a dispute between Pakistan and the European Union, not the United States. Even if the United States were a defending party to that dispute, which it was not, findings of the WTO dispute panels and the Appellate Body are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme," established in the Uruguay Round Agreements Act (URAA).[40] The Act and the legislative history of the URAA indicate that Congress did not intend for WTO dispute panel and Appellate Body reports to undermine the exercise of Commerce's discretion in applying the antidumping duty (AD) and CVD laws, and even in the cases in which those challenges applied to agency determinations, do not apply automatically.[41] In other words, WTO dispute panel reports "do not have any power to change U.S. law or to order such a change."[42]

Finally, we disagree with the GOI that we incorrectly calculated Pidilite's benefit and program margin for this program. As we stated in the *Preliminary Results*, Pidilite reported the benefits it

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[37] *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.
[38] *See Surface Quartz from India* IDM at Comment 6.
[39] *Id*.
[40] *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103-316, vol. 1 (1994) at 873; *see also Corus Staal BV v. United States*, 395 F. 3d 1343, 1347-49 (Fed. Cir. 2005), accord *Corus Staal BV v. United States*, 502 F. 3d 1370, 1375 (Fed. Cir. 2007); and *NSK Ltd. v. United States*, 510 F. 3d 1375, 1379-80 (Fed. Cir. 2007).
[41] *See* 19 U.S.C. 3583(b)(4) (implementation of WTO reports is discretionary).
[42] *See* SAA at 659.

earned on exports of subject and non-subject merchandise (*e.g.*, epoxies, adhesives, resins, *etc.*) to multiple countries (including the United States) during the POR.[43] We stated that although Pidilite reported these benefits on a shipment-by-shipment basis and provided information on the destination of these exports, we cannot reliably determine that these exports were specifically subject merchandise.[44] However, the information Pidilite provided allows us to tie the DDB rebates (*i.e.*, the benefit) to specific markets, in accordance with 19 CFR 351.525(b)(4). Therefore, and contrary to the GOI's argument, to calculate Pidilite's subsidy rate for this program, we divided the amount of the DDB rebates Pidilite received on its exports to the United States during the POR by Pidilite's export sales to the United States during the POR.[45]

Comment 2: Whether Commerce Should Countervail the Export Promotion of Capital Goods Scheme

GOI's Case Brief

- The GOI argues that exemptions and remissions under the Export Promotion of Capital Goods Scheme (EPCGS) in their entirety are not countervailable within the meaning of the SCM Agreement.[46]
- The GOI submits that the EPCGS ensures that imports of inputs as capital goods used for pre-production, production, and post-production of the products are further exported within the quantum of consumption of those imported inputs.[47]
- According to the GOI, Footnote 1 of the SCM Agreement states that the exemption of an exported product from duties or taxes born by the like product when destined for domestic consumption, or the remission of such duties or taxes not in excess of those which have been accrued, shall not be deemed to be a subsidy.[48]
- The GOI contends that only the excess exemption or remission of duties and taxes accrued on an exported product constitutes a subsidy and is liable to be countervailed under the WTO subsidies framework.[49]
- The GOI submits that the EPCGS allows for partial exemption from payment of customs duties upon importation of capital goods. As there are no restrictions on the goods manufactured by imported machines and/or parts to be sold in the domestic market, this program is not specific as defined under Article 2 of the SCM Agreement.[50]
- The GOI argues that if the EPCGS provides a financial contribution, it does not provide a benefit to a license-holder.[51]

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[43] *See Preliminary Results* PDM at 7.
[44] *Id*.
[45] *Id*. at 7-8; *see also* Memorandum, "Countervailing Duty Administrative Review of Carbazole Violet Pigment 23 from the Republic of India: Pidilite Industries Limited Preliminary Calculations Memorandum," at 3 (Duty Drawback) and the accompanying Excel spreadsheet at the worksheets, "DDBReported" and "DBBUSA."
[46] *See* GOI's Case Brief at 15.
[47] *Id*.
[48] *Id*.
[49] *Id*.
[50] *Id*. at 16.
[51] *Id*.

- The GOI states that capital goods fall within the meaning of paragraph (g) of the Annex to the SCM Agreement because capital goods are critical to the production of exported products, particularly in the case of developing countries.[52]
- According to the GOI, Commerce is required to calculate the benefit from this program (if any) to the extent that the duty exempted on imports is in excess of the inputs consumed in the production of the exported product.[53]

No interested party commented on the GOI's arguments regarding this issue.

Commerce's Position: The GOI's comments appear to argue that, in the *Preliminary Results*, we treated the EPCGS as an import duty remission or exemption program similar to our treatment of the DDB Program. Specifically, the GOI argues that the EPCGS (which is an import duty tax remission/exemption program) does not confer a benefit, because it ensures that "imports of inputs as capital goods used for pre-production, production, and post-production of the products are further exported within the quantum of consumption of those imported inputs." However, consistent with 19 CFR 351.519, we consider the entire amount of an exception, remission, deferral or duty drawback to confer a benefit, unless the government in question has in place and applies a system or procedure to confirm which inputs are consumed and in what amounts in the production of the exported product, and the system or procedure is reasonable, effective for the purposes intended and is based on generally accepted accounting principles in the country of export. In this proceeding, the GOI has not demonstrated that it has such a system in place for the EPCGS.

In its questionnaire response, the GOI stated that pursuant to India's Foreign Trade Policy and its associated Handbook of Procedures, upon submission of an EPCGS application, an "Independent Chartered Engineer" is required to certify the amount of any "reasonable wastage" that is anticipated at the time of the installation of the capital goods that are imported under an approved EPCGS license.[54] According to the GOI, the amount of this permitted wastage would be allowed to be sold on payment of the applicable duty on the sale of scrap and/or waste.[55] However, our review of the information on the instant record leads us to conclude that during the examination of Pidilite's EPCGS application, the Independent Chartered Engineer that examined Pidilite's EPCGS application neither examined nor certified the applicable amount of anticipated waste, even though the GOI asserts that such examination and certification is required by the GOI's laws and rules.[56] Further, the GOI has not provided any information on the instant record (*e.g.*, audit reports regarding its monitoring of the EPCGS with respect to Pidilite, reports with respect to site visits to Pidilite regarding its monitoring of the EPCGS, *etc*.) demonstrating that the GOI (or any of its relevant government agencies or authorized agents) has ever visited Pidilite to monitor which inputs are consumed in the production of the exported product and in what amounts, with respect to the EPCGS. As such, we find that the instant record does not demonstrate that the GOI maintains an adequate control or a verification system for the EPCGS such that this program

[52] *Id*. at 16-17.
[53] *Id*. at 17.
[54] *See* GOI August 5, 2019 QR at 28.
[55] *Id*.
[56] *Id.* at Exhibit E.3A, Page 2.

would not be found to provide a countervailable benefit within the meaning of 19 CFR 351.519(a)(4).

The GOI reported that under the EPCGS, imported capital equipment can be imported without the payment of customs duties,[57] subject to a company satisfying an export obligation.[58] Under this program, exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. To state this another way, an unpaid liability is created in instances where a company imports capital equipment duty-free but does not meet the accompanying export obligations as required by this program. We find that the financial contribution is revenue forgone (*i.e.*, the exemption or deferral of the payment of import duties) that confers a benefit either in the form of interest-free loans (for the balance on unpaid liabilities where export obligations are not met) or grants (where export obligations were met prior to the end of the POR). We stated in the *Preliminary Results* that Commerce's practice is to treat any balance on an unpaid duty liability that may be waived in the future as an interest-free contingent-liability loan, pursuant to 19 CFR 351.505(d)(1) (*i.e.*, the first benefit arising from this program).[59] We also stated that the second benefit from this program is based on the amount of the duty waived by the GOI on imports of capital equipment covered by EPCGS licenses for which the company had already met its export obligation.[60] For import duty exemptions that are associated with completed 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 exemptions, pursuant to 19 CFR 351.505(d)(2).[61] This is consistent with our prior practice with respect to this program.[62]

Pidilite reported that it received a deferral from paying import duties on imported capital goods for which it has not yet met its export obligations under the EPCGS,[63] which created an unpaid duty liability (the first benefit) arising from this program. As the GOI has presented no arguments or referenced any record information that would lead us to reconsider our determination in the *Preliminary Results* on the deferral of these import duties,[64] for these final results, we are continuing to treat the balance of the unpaid duty liability that the GOI may waive in the future with respect to Pidilite's relevant exempted import duties under this program as a contingent-liability interest free loan, pursuant to 19 CFR 351.505(d)(1). 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. We continue to find that the benefit to Pidilite is the interest the company would have

[57] *See* GOI August 5, 2019 QR at 23.
[58] *Id*. at 23.
[59] *See Preliminary Results* PDM at 8-11.
[60] *Id*.
[61] *Id*.
[62] *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 Determination*, 81 FR 39903 (June 20, 2016) (*OTR Tires from India Preliminary Determination*), and accompanying PDM at 15-18, unchanged in *OTR Tires from India Final Determination* IDM at Comment 15.
[63] *See* Pidilite's Letter, "Carbazole Violet Pigment 23 from India – Pidilite Section III Questionnaire Response," dated August 9, 2019 (Pidilite August 9, 2019 QR), at Exhibit EPCGS-3.
[64] *See Preliminary Results* PDM at 8-11.

paid during the POR if Pidilite had borrowed the full amount of the duty reduction or exemption at the time of importation.[65]

Pidilite also reported that it met its export obligations for certain EPCGS licenses prior to December 31, 2017, (the last day of the POR) and that the GOI formally waived payments of the relevant import duties (the second benefit arising from this program).[66] As the GOI provided no arguments or pointed to any record information that would lead us to reconsider our preliminary determination on this issue, we are continuing to consider the total amount of the duties waived, *i.e.*, the calculated duties payable less the duties Pidilite actually paid in the year, net of required application fees, in accordance with section 771(6) of the Act, to be the benefit, and we are continuing to treat these amounts as grants pursuant to 19 CFR 351.504.[67] For these waived payments, we determined the year of receipt of the benefit to be the year in which the GOI formally waived Pidilite's import duties, and we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2) to determine the benefit attributable to the POR.[68]

Accordingly, as explained above, we determine that the EPCGS program is countervailable and provides a financial contribution. Further, as we stated in the *Preliminary Results*, we determine that this program provides a benefit to Pidilite under section 771(5)(E) of the Act in the amount of the sum of: (1) the interest that would have been due had Pidilite borrowed the full amount of the duty reduction or exemption at the time of the importation for capital equipment for which it had not met the export requirements during the POR; and (2) 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.[69] We also determine that the EPCGS program is specific pursuant to sections 771(5A)(A) and (B) of the Act because it is contingent upon export performance.

With respect to the GOI's arguments based on the SCM agreement, as we explained in greater detail in Comment 1, we have conducted this administrative review in accordance with U.S. CVD laws under the Act and Commerce's regulations, which are consistent with our international obligations.

Comment 3: Whether Commerce Should Countervail the Income Tax Deduction for Research and Development Expenses Program Under Section 35 (2AB) of the Income Tax Act of 1961

GOI's Case Brief

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[65] *Id*.
[66] *See* Pidilite August 9, 2019 QR at Exhibit EPCGS-2.
[67] *See Preliminary Results* PDM at 8-11.
[68] *Id*.
[69] *See Preliminary Results* PDM at 8-11; *see also, e.g.*, *OTR Tires from India Preliminary Determination* PDM at 15-18, unchanged in *OTR Tires from India Final Determination* at Comment 15; and *Finished Carbon Steel Flanges from India Preliminary Determination* PDM at 12-15, unchanged in *Finished Carbon Steel Flanges Final Determination* IDM at Comment 5.

- The GOI states that as provided in the GOI's December 19, 2019 SQR, Section 35 (2AB) of the Income Tax Act of 1961 (Income Tax Act) provides deductions from taxable income regarding the expenditures incurred on scientific research.[70]
- According to the GOI, this income tax deduction is not a subsidy under Article 1 of the SCM Agreement as the deduction is not in the nature of a financial contribution by way of revenue otherwise due but forgone, a direct transfer of funds, or the provision of goods and services other than general infrastructure.[71]
- The GOI contends that under the scheme of the Income Tax Act, only income earned by way of profits are taxable; however, expenditures on scientific research on in-house research and development facilities are not taxable. Thus, according to the GOI, no revenue is foregone on the government's account due to this provision.[72]
- The GOI states that in the *Preliminary Results*, Commerce determined that the income tax deductions under this program are *de jure* specific under section 771(5A)(D)(i) of the Act. The GOI submits that in this respect, Article 1 of the SCM Agreement states a subsidy is specific only in accordance with provisions of Article 2 of the SCM Agreement.[73]
- The GOI argues that the manner in which "enterprise specificity" has been expounded upon by the WTO panels and Appellate Body, "the term 'certain enterprises' refers to a single enterprise or industry or a class of enterprises or industries that are known and particularized."[74] The GOI states that, keeping this legal standard in mind, this income tax deduction program does not meet the standards of specificity.
- According to the GOI, the companies eligible for the income tax deduction under this program are: (1) engaged in the business of biotechnology or (2) manufacture or produce products that are not specified in the Eleventh Schedule of the Income Tax Act.[75]
- The GOI contends that Section 35 (2AB) of the Income Tax Act cannot be said to be enterprise or sector specific, and that Commerce's preliminary determination of *de jure* specificity is baseless.[76] The GOI argues that Commerce should reconsider its countervailability determination of this program for these final results.

No interested party commented on the GOI's arguments regarding this issue.

Commerce's Position: Commerce has found this program to be countervailable in a prior CVD case involving India,[77] and the GOI has not identified any record information that would lead us to reconsider our findings in the *Preliminary Results*.[78] Thus, we continue to find that this program is countervailable.

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[70] *See* GOI's Case Brief at 17; *see also* GOI's Letter, "Administrative Review of Countervailing Duty Order on Carbazole Violet Pigment 23 from the Republic of India: Supplemental Questionnaire on Behalf of Government of India," dated December 19, 2019 (GOI's December 19, 2019 SQR).
[71] *See* GOI's Case Brief at 18.
[72] *Id*.
[73] *Id*.
[74] *Id*. at 19 (citing WTO Appellate Body Report, WT/DS437/AB).
[75] *See* GOI's Case Brief at 19.
[76] *Id*.
[77] *See*, *e.g.*, *OTR Tires from India Final Determination* IDM at Comment 9.
[78] *See Preliminary Results* PDM at 11.

The record demonstrates that Section 35 (2AB) of the Income Tax Act provides deductions from taxable income regarding expenditures incurred on scientific research.[79] In describing the benefit from this program, the GOI explained that "it is a deduction which can be claimed in the course of arriving at 'taxable income'."[80] Although the GOI argues that the income tax deductions from this program in and of themselves are not revenue foregone by the GOI, these income tax deductions reduce the taxable income for which a firm would apply its tax rate to calculate any taxes owed to the GOI which, thereby, reduces the amount of taxes the firm would pay to the GOI. Because the income tax deductions from this program reduce the amount of taxes a firm would otherwise pay to the GOI, we determine that this program provides a financial contribution in the form of revenue foregone by the GOI pursuant to section 771(5)(D)(ii) of the Act. We also determine that a benefit is provided to the recipient within the meaning of section 771(5)(E) of the Act and 19 CFR 351.509 in the amount of the income tax payments exempted that result from the deductions provided by this program.

With respect to specificity, 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 business sectors specifically listed in the Eleventh Schedule of the Income Tax Act).[81] Accordingly, we determine that the income tax deductions from this program are *de jure* specific under section 771(5A)(D)(i) of the Act.

Finally, as explained in Comment 1, we have conducted this administrative review in accordance with U.S. CVD laws under the Act and Commerce's regulations, which are consistent with our international obligations. As explained in greater detail in Comment 1, we disagree with the GOI that certain WTO panel and Appellate Body reports are relevant to this administrative review. The Act and the legislative history of the URAA clearly indicate that Congress did not intend for WTO dispute panel and Appellate Body reports to undermine the exercise of Commerce's discretion in applying the AD and CVD laws, and even in the cases in which those challenges applied to agency determinations, do not apply automatically.[82] In other words, WTO dispute panel reports "do not have any power to change U.S. law or to order such a change."[83]

VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If accepted, we will publish the final results in the *Federal Register*.

☒	☐
Agree	Disagree

[79] *See* GOI's December 19, 2019 SQR at 7.
[80] *Id*. at 20.
[81] *Id*. at 7.
[82] *See* 19 U.S.C. 3583(b)(4) (implementation of WTO reports is discretionary).
[83] *See* SAA at 659.

9/28/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance