



C-533-884

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MEMORANDUM TO: Christian Marsh
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of the First
Countervailing Duty Administrative Review of Glycine from India

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on glycine from India. The period of review (POR) is September 4, 2018, through December 31, 2019. The review covers two mandatory respondents, Kumar Industries (India) (Kumar) and Avid Organics Private Limited (Avid), as well as four companies not selected for individual examination. We preliminarily determine that countervailable subsidies are being provided to producers and exporters of glycine from India.

II. BACKGROUND

On June 21, 2019, Commerce published in the *Federal Register* the CVD order on glycine from India.¹ On June 2, 2020, Commerce published the notice of opportunity to request an administrative review of the *Order* for the period September 4, 2018, through December 31, 2019.² On August 6, 2020, Commerce initiated an administrative review of the *Order* with respect to seven companies.³ In addition, we released U.S. Customs and Border Protection (CBP) data to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection. On August 17, 2020, Commerce

¹ See *Glycine from India and the People's Republic of China: Countervailing Duty Orders*, 84 FR 29173, dated June 21, 2019 (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 33628 (June 2, 2020).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 47731 (August 6, 2020).



received comments from GEO Specialty Chemicals, Inc. (the petitioner).⁴ On September 24, 2020, we selected Avid and Kumar, the two largest producers/exporters based on CBP data, for individual examination in this administrative review.⁵

On October 8, 2020, we issued the initial questionnaire to the Government of India (GOI), in which we instructed the GOI to forward the questionnaire to the selected mandatory respondents.⁶ On October 21, 2020, November 11, 2020, and November 30, 2020, we received timely responses to the affiliation questions in Commerce's Initial Questionnaire and to subsequent supplemental questionnaires.⁷ On October 22, 2020, Paras Intermediates Private Limited (Paras) submitted an unsolicited voluntary response to Commerce's Initial Questionnaire.⁸ On November 25, 2020, the GOI, Avid, Kumar, and Paras submitted responses to Commerce's Initial Questionnaire.⁹ From November 4, 2020, through December 9, 2020, the petitioner submitted comments on questionnaire responses submitted by Avid and Kumar.¹⁰ On February 4, 2021, Commerce determined not to select Paras as a voluntary respondent in this ongoing administrative review.¹¹

On December 15, 2020, the petitioner submitted new subsidy allegations (NSAs) to Commerce.¹² On April 7, 2021, Commerce requested additional information from the petitioner

⁴ See Petitioner's Letter, "Glycine from India (C-533-884): Affirmative Comments on CBP Data," dated August 17, 2020.

⁵ See Memorandum, "Respondent Selection for the Countervailing Duty Administrative Review of Glycine from India," dated September 24, 2020 and posted to ACCESS on September 29, 2020.

⁶ See Commerce's Letter, "2018/2019 Administrative Review of Glycine from India: Countervailing Duty Questionnaire," dated October 8, 2020 (Commerce's Initial Questionnaire).

⁷ See Avid's Letter, "Glycine from India: Response to Section III of Initial Questionnaire Identification of affiliation Companies," dated October 21, 2020; *see also* Kumar's Letter, "Certain Glycine from India (C-533-884) Kumar Industries, India submission of Affiliated Companies Questionnaire response, dated October 21, 2020," dated October 21, 2020; Avid's Letter, "Glycine from India: Response to Affiliation Supplemental Questionnaire," dated November 11, 2020; Kumar's Letter, "Certain Glycine from India (C-533-884) Kumar Industries, India submission of Affiliated Companies Supplemental Questionnaire Response, dated November 30, 2020," dated November 30, 2020.

⁸ See Paras' Letter, "Voluntary Initial Response to Section III of Initial Questionnaire – Identification of Affiliated Companies," dated October 22, 2020.

⁹ See GOI's Letter, "Countervailing Duty Administrative Review of Glycine from India: Response to Section II of the CVD Questionnaire," dated November 25, 2020 (GOI Initial Response); Avid's Letter, "Glycine from India: Initial Questionnaire Response," dated November 25, 2020 (Avid Initial Response); Kumar's Letter, "Certain Glycine from India (C-533-884) Kumar Industries, India submission of Program Specific Questionnaire Response, dated November 25, 2020," dated November 25, 2020 (Kumar Initial Response); Kumar's Letter, "Certain Glycine from India (C-533-884) Kumar Industries, India submission of Program Specific Questionnaire response," dated March 2, 2021 (containing data in Excel format); and Paras' Letter, "Voluntary Initial Response to Section III of Countervailing Duty Questionnaire," dated November 25, 2020.

¹⁰ See Petitioner's Letters, "Glycine from India: Comments on Kumar Industries, India's October 21, 2020 Questionnaire Response," dated November 4, 2020; "Glycine from India (C-533-884): Comments on Avid Organics Private Limited's November 11, 2020 Affiliation Supplemental Questionnaire Response," November 20, 2020; and "Glycine from India: Comments on Avid Organics Private Limited's November 25, 2020 Initial Section III Questionnaire Response," dated December 9, 2020.

¹¹ See Memorandum, "Glycine from India Administrative Review: Voluntary Respondent Memorandum," dated February 24, 2021.

¹² See Petitioner's Letter, "Glycine from India: New Subsidy Allegation," dated December 15, 2020.

regarding the NSAs.¹³ On April 15, 2020, the petitioner submitted its response to Commerce's NSA Supplemental Questionnaire.¹⁴ On June 11, 2021, we initiated an investigation of 10 of the 11 new subsidy programs alleged by the petitioner.¹⁵

On March 2, 2021, Commerce extended the deadline for issuing the preliminary results of this review by 120 days to June 30, 2021, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).¹⁶ From April 8, through June 9, 2021, Commerce issued supplemental questionnaires to the GOI, Avid, and Kumar.¹⁷ From May 10, through June 18, 2021, the GOI, Avid, and Kumar submitted responses to Commerce's supplemental questionnaires.¹⁸

On May 20 and 27, 2021, the petitioner submitted pre-preliminary comments regarding the preliminary results of review.¹⁹ On June 9, 2021, Avid submitted comments rebutting the petitioner's pre-preliminary comments.²⁰ On June 22, 2021, Commerce issued NSA questionnaires to the GOI, Avid and Kumar related to each of the programs on which it initiated

¹³ See Commerce's Letter, "Countervailing Duty Administrative Review of Glycine from India: New Subsidy Allegations Questionnaire," dated April 7, 2020 (Commerce's NSA Supplemental Questionnaire).

¹⁴ See Petitioner's Letter, "Glycine from India (C-533-884): GEO's New Subsidy Allegations Questionnaire Responses," dated April 15, 2020.

¹⁵ See Memorandum, "Administrative Review of the Countervailing Duty Order on Glycine from India; 2018-2019, New Subsidy Allegations," dated June 11, 2021.

¹⁶ See Memorandum, "Glycine from India: Extension of Time Limit for Preliminary Results," dated March 2, 2021.

¹⁷ See Commerce's Letters, "Glycine from India: Government of India Supplemental Questionnaire – Section II Glycine from India," dated April 21, 2021; "Kumar Industries (India) Supplemental Questionnaire – Section III," dated April 7, 2021; "Glycine from India: Avid Organics Private Limited Supplemental Questionnaire – Section III," dated April 15, 2021; "Glycine from India: Government of India Supplemental Questionnaire – Section II," dated May 12, 2021; "Glycine from India: Avid Organics Private Limited Supplemental Questionnaire – Section III," dated May 27, 2021; "Glycine from India: Kumar Industries (India) Second Supplemental Questionnaire – Section III," dated May 27, 2021; "Glycine from India: Avid Organics Private Limited Supplemental Questionnaire – Section III – Addendum," dated May 27, 2021; and "Glycine from India: Kumar Industries (India) Second Supplemental Questionnaire – Section III – Addendum," dated May 27, 2021.

¹⁸ See GOI's Letters, "Glycine from India – Government of India Supplemental Questionnaire," dated May 24, 2021; "Glycine from India: Government of India Supplemental Questionnaire – Section II, Question 4 Letter from the GOI, dated May 28, 2021; and "Glycine from India – Government of India Second Supplemental Questionnaire – Section II," dated June 2, 2021 (GOI Second Supplemental Response); *see also* Avid's Letters, "Glycine from India: Response to Section III of Supplemental Questionnaire – Section III," dated May 10, 2021 (Avid Supplemental Response); and "Glycine from India: Response to Second Supplemental Questionnaire," dated June 18, 2021; *see also* Kumar's Letters, "Certain Glycine from India (C-533-884) Kumar Industries, India submission of Supplemental Questionnaire response, dated May 10, 2021," dated May 10, 2021; "Certain Glycine from India (C-533-884) Submission of 2nd Supplemental Questionnaire response, dated June 9, 2021 - Kumar Industries, India," dated June 9, 2021; and "Certain Glycine from India (C-533-884) Submission of 2nd Supplemental Questionnaire Response (Land Details), dated June 17, 2021 - Kumar Industries, India," dated June 17, 2021 (Kumar Second Supplemental Response – Land).

¹⁹ See Petitioner's Letters, "Glycine from India: Pre-Preliminary Results Comments Concerning Kumar Industries, India," dated May 20, 2021; and "Glycine from India: Pre-Preliminary Results Comments Concerning Avid Organics Pvt. Ltd.," dated May 27, 2021.

²⁰ See Avid's Letter, "Glycine from India: Rebuttal to GEO's Pre-preliminary Results Comments Concerning Avid Organics Pvt. Ltd.," dated June 9, 2021.

a review.²¹ Because the NSA questionnaire responses are due after issuance of these preliminary results of review, we intend to address the NSA programs in a post-preliminary analysis.

III. PERIOD OF REVIEW

The POR is September 4, 2018, through December 31, 2019. Because this is the first administrative review of the *Order* and the POR includes a partial-year period for calendar year 2018, we have analyzed data for two periods. Specifically, our analyses cover the period January 1, 2018, through December 31, 2018, as well as the period January 1, 2019, through December 31, 2019, to determine the countervailable subsidy rates for the POR.

IV. RATE FOR NON-EXAMINED COMPANIES

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation.

Section 705(c)(5)(A)(i) of the Act instructs Commerce, as a general rule, to calculate an all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* rates, or rates based entirely on facts available. In this review, for the 2019 calendar year, Commerce calculated weighted-average countervailable subsidy rates for Avid and Kumar that are not zero, *de minimis*, or based entirely on facts available.²² For 2018, we preliminarily assigned to the companies not individually examined a subsidy rate of 3.58 percent, which is the 2018 subsidy rate calculated for Avid for these preliminary results of review.²³

²¹ See Commerce's Letters to the GOI, Avid, and Kumar, "Administrative review of the Countervailing Duty Order on Glycine from India: New Subsidy Allegation Questionnaire," dated June 22, 2021 (NSA Questionnaire).

²² With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010); see also *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*; 2017, 85 FR 14463 (March 12, 2020). As complete publicly ranged sales data was available, where appropriate, Commerce based the subsidy rate for non-selected companies on publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, see Memorandum, "All-Others Rate Calculation Memorandum," dated June 30, 2021.

²³ See Memorandum, "Preliminary Results of the First Administrative Review of Glycine from India: Calculation of Derivative Rate for Non-Selected Companies," dated June 30, 2021.

V. SUBSIDIES VALUATION

A. 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.²⁴

Commerce notified the respondents that it finds the AUL for the glycine industry to be 9.5 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.²⁵ Consistent with past practice, Commerce rounded the 9.5 years up to 10 years for purposes of setting the AUL in this administrative review.²⁶ No parties submitted comments challenging the proposed AUL period, and we therefore preliminarily determine that a 10-year period is appropriate to allocate benefits from non-recurring subsidies.

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of the subsidy approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidy is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. The standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.²⁷ The *CVD Preamble* to Commerce's regulations

²⁴ See 19 CFR 351.524(b).

²⁵ See Memorandum, "Clarification of AUL Period for Glycine," dated May 9, 2018.

²⁶ See *Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom*, 70 FR 40000 (July 12, 2005), and accompanying Issues and Decision Memorandum (IDM) at Comment 4.

²⁷ See, *e.g.*, *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

further clarifies the cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.²⁸

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.²⁹

Avid

Avid is both a producer and exporter of subject merchandise. Avid provided information that may support a determination that Avid Intermediates is cross owned with Avid. However, because Avid also reported that Avid Intermediates does not meet any of the criteria under 19 CFR 351.525(b)(6)(iii)-(v), there would be no basis for attributing to Avid any subsidies that may have been received by Avid Intermediates.³⁰ Therefore, for these preliminary results of review, we are attributing subsidies received by Avid to its own sales in accordance with 19 CFR 351.525(b)(6)(i).

Kumar

Kumar is both a producer and exporter of subject merchandise.³¹ During the AUL, Kumar sold subject merchandise to the United States through a trading company, Rudraa International (Rudraa).³² Because Rudraa acted as a trading company for Kumar, *i.e.*, it exported subject merchandise produced by Kumar during the AUL period, we are cumulating subsidies received by Rudraa with the subsidies received by Kumar under 19 CFR 351.525(c).

In addition, Advance Chemical Corporation (Advance Chemical) supplied certain inputs to Kumar that were used in the production of downstream products during the AUL period. Kumar

²⁸ *Id.*

²⁹ See *Fabrique de Fer de Charleroi S.A. v. United States*, 166 F. Supp. 2d 593, 603 (CIT 2001).

³⁰ See Avid Initial Response at 2 and Exhibit I; Avid’s Letter, “Glycine from India: Response to Affiliation Supplemental Questionnaire,” dated November 12, 2020, at Adobe pages 7-8.

³¹ See Kumar Initial Response at Adobe pages 7-8.

³² See Kumar Initial Response at Adobe page 9; and Kumar’s Affiliation Response at Exhibit CVD-1A; see also Memorandum, “Preliminary Calculation Memorandum – Kumar Industries (India),” dated June 30, 2021 (Kumar’s Preliminary Calculation Memorandum).

provided information that indicates that Kumar and Advance Chemical may be cross owned. Kumar also reported that Advance Chemicals did not receive assistance under any of the programs under review that would be attributable to Kumar. As such, we are not making a finding regarding cross-ownership for these preliminary results. However, we are awaiting additional information from Advance Chemical regarding its possible receipt of assistance under any “other” subsidies during the POR or over the AUL period.³³

Because certain information related to this discussion is business proprietary in nature, a complete description regarding the cross-ownership between Kumar and these companies is provided in Kumar’s Preliminary Calculation Memorandum.

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents’ receipt of benefits under each program at issue. Where the program has been found to be countervailable as a domestic subsidy, we used the recipient’s total sales as the denominator. Similarly, for those programs tied to export performance, we used as the denominator for our calculations export sales or export sales of subject merchandise to the United States. Also, where the respondent was able to tie exports of subject merchandise to the United States, we used the recipient’s total export sales of subject merchandise as the denominator in accordance with 19 CFR 351.525(b)(1)-(5). In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.

VI. LOAN BENCHMARKS AND DISCOUNT RATES

Section 771(5)(E)(ii) of 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. Commerce has previously determined that the Industrial Development Bank of India (IDBI), the Industrial Finance Corporation of India (IFCI), and the Export-Import Bank of India (EXIM) are government-owned special-purpose banks. As such, Commerce does not use loans from the IDBI, the IFCI, or the EXIM as a basis for a commercial loan benchmark.³⁴ Also, in the absence

³³ See Kumar’s Letter, “Administrative review of the Countervailing Duty Order on Glycine from India: New Subsidy Allegation Questionnaire,” dated June 22, 2021.

³⁴ See *Final Results of the Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet and Strip from India*, 71 FR 7534 (February 13, 2006), and accompanying IDM at Comment 3; see also *Polyethylene*

of reported long-term loan interest rates, we use the above-discussed interest rates as discount rates for purposes of allocating non-recurring benefits over time pursuant to 19 CFR 351.524(d)(3)(i)(B).

Avid received conditional exemptions from import duties under the Export Promotion of Capital Goods Scheme, which, as discussed below, we have treated as an interest-free contingent liability loan that remained outstanding during the POR. Because we do not have company-specific loan information on the record of this review, we are preliminarily using national average interest rates, pursuant to 19 CFR 351.505(a)(3)(ii). Specifically, we used the yearly average long-term lending rate from the International Monetary Fund's International Financial Statistics (IFS) as the benchmark rate(s) for rupee-denominated short-term and long-term loans.³⁵ We preliminarily find that the IFS rates provide a reasonable representation of both short-term and long-term interest rates for rupee-denominated loans.

VII. ANALYSIS OF PROGRAMS

Based upon our analysis and the responses to our questionnaires, we preliminarily determine the following:

A. Programs Preliminarily Determined to be Countervailable

1. Duty Drawback (DDB) Program

Commerce determined in the investigation of this order that this program is countervailable.³⁶ Specifically, we found that the rebated duties provided through the DDB Program constitute a financial contribution, as defined under section 771(5)(D)(ii) of the Act, in the form of revenue forgone by the GOI.³⁷ We also determined that the program was available only to exporters and on this basis, it is specific under section 771(5A)(B) of the Act.³⁸ In addition, we found that the GOI had not supported its claim that the DDB system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported products, for purposes of ensuring that the amount granted as a duty drawback does not exceed the amount of import charges on imported inputs that are used in the production of the exported product, making normal allowance for waste.³⁹

Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 7708 (February 11, 2018), and accompanying IDM at Benchmark Interest Rates and Discount Rates.

³⁵ See Memorandum, "Preliminary Results of the First Administrative Review of Glycine from India: Preliminary Calculation Memorandum for Avid Organics Private Limited," dated June 30, 2021 (Avid's Preliminary Calculation Memorandum).

³⁶ See *Glycine From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 44859 (September 4, 2018) (*Glycine India Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM) at 13, unchanged in *Countervailing Duty Investigation of Glycine from India: Affirmative Final Determination*, 84 FR 18482 (May 1, 2019) (*Glycine India Final Determination*), and accompanying IDM.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*; see also 19 CFR 351.519(a)(i).

In this review, the GOI did not submit any new information or evidence of changed circumstances that warrants reconsideration of Commerce's prior determination in the investigation concerning the countervailability of the program.⁴⁰ Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, and absent the presentation of new facts or evidence, we preliminarily continue to find that this program confers a financial contribution, as provided under section 771(5)(D)(ii) of the Act and is specific under section 771(5A)(B) of the Act.⁴¹

Import duty exemptions on inputs for exported products are generally not countervailable, provided that the exemption extends only to the import duties on inputs consumed in the production of the exported product, making normal allowances for waste.⁴² 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.⁴³ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁴⁴ 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 of drawback is countervailable.⁴⁵ Commerce has determined, in numerous proceedings, that the DDB scheme does not have in place an adequate system for determining the quantity of inputs used in production.⁴⁶

Consistent with these prior proceedings and with our determination in the investigation of this order, we preliminarily determine that the GOI did not submit any new information or argument regarding its claim that the DDB system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported products. Accordingly, we preliminarily continue to find that GOI has not supported its claim. Therefore, under 19 CFR 351.519(a)(4), the entire amount of import duty rebate earned during the POR constitutes a benefit.⁴⁷

⁴⁰ See GOI Initial Response at 31; see also GOI Second Supplemental Response at 2.

⁴¹ See *Magnola Metallurgy, Inc. v. United States*, 508 F. 3d 1349, 1353-1356 (CAFC 2007) (*Magnola*).

⁴² See 19 CFR 351.519(a)(1)(ii).

⁴³ See *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India Final Determination*), and accompanying IDM at "Duty Drawback (DDB)."

⁴⁴ *Id.*

⁴⁵ See 19 CFR 351.519(a)(4)(i)-(ii).

⁴⁶ See, e.g., *Shrimp from India Final Determination* IDM at "Duty Drawback (DDB)"; see also *Certain Quartz Surface Products Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, In Part*, 85 FR 25398 (May 1, 2020), and accompanying IDM at Comment 6 (noting that "the GOI has not demonstrated on the record of this investigation that it has a system that is reasonable or effective or how the DDB rates are derived"); and *Polyester Textured Yarn from India: Final Affirmative Countervailing Duty Determination*, 84 FR 63848 (November 19, 2019), and accompanying IDM at Comment 3 (finding the DDB program countervailable because "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").

⁴⁷ See 19 CFR 351.519(a)(4); see also, e.g., *Glycine from India Final Determination* IDM at Comment 4.

Kumar and its trading company, Rudraa, reported receiving duty rebates under this program. Avid also reported receiving duty rebates under this program. The GOI explained that the DDB Program provides rebates for duty or tax chargeable on any imported materials or excisable materials and input services used in the manufacture of such goods for export. Further, drawback is available only to: (1) re-exported goods; (2) import duties on raw materials used in the manufacture of export products; (3) service tax paid on input services used in the manufacture of export products; (4) certain supplies that have been deemed export; and (5) the reimbursement of excise duty paid on fuels by way of drawback notified by the Directorate General of Foreign Trade (DGFT).⁴⁸ Duty drawback is generally fixed according to an All Industry Rate (AIR) or a Brand Rate. The AIRs are generally fixed as a percentage of the free-on-board (FOB) price of the exported product or as specific rates. The Brand Rate may apply in cases where, for instance, the exported product does not have an AIR or the AIR is less than 80 percent of the duty or taxes paid on materials or components used in the manufacture of export goods.⁴⁹

Pursuant to 19 CFR 351.519(b)(1), we find that benefits from the DDB Program are conferred as of the date of exportation of the shipment for which the drawback amounts are earned. We calculated the benefit on an as-earned basis upon export of subject merchandise 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 this point that recipients know the exact amount of the benefit (*i.e.*, the value of the drawback).⁵⁰

Because we are able to tie the benefits received to shipments to specific markets and of specific products, in accordance with 19 CFR 351.525(b)(4) and (5), we calculated the subsidy rate for each company using the value of all DDB Program duty rebates earned by Kumar, Rudraa, and Avid on U.S. sales of subject merchandise during the POR. We divided the total amount of rebates received by each company's total export sales of subject merchandise to the United States during the POR. In accordance with 19 CFR 351.525(c), we cumulated benefits received by Kumar and Rudraa. On this basis, we preliminarily determine the following countervailable subsidy rates:⁵¹

Avid

2018: 1.90 percent *ad valorem*

2019: 1.86 percent *ad valorem*

Kumar

2018: 0.00 percent *ad valorem*

2019: 1.52 percent *ad valorem*

⁴⁸ See GOI Initial Response at Exhibit DDB-1.

⁴⁹ *Id.* at 12.

⁵⁰ See Kumar Initial Response at Adobe page 18 and Exhibit DDB-1; Avid Initial Response at 8 and QR Exhibit 7(a).

⁵¹ See Avid's Preliminary Calculation Memorandum and Kumar's Preliminary Calculation Memorandum.

2. Export Promotion Capital Goods Scheme (EPCGS)

Commerce determined in the investigation of this order that this program is countervailable.⁵² Specifically, we found that the EPCGS program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOI for not collecting import duties.⁵³ We further determined that the program was only available to exporters, and therefore it is specific under section 771(5A)(B) of the Act because it is contingent upon export performance.⁵⁴

In this review, the GOI did not submit any new information or evidence of changed circumstances that warrants reconsideration of Commerce's prior determination in the investigation concerning the countervailability of the program.⁵⁵ Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence, we preliminarily continue to find that this program confers a financial contribution as provided under section 771(5)(D)(ii) of the Act and is specific, under section 771(5A)(B) of the Act.⁵⁶ Our findings are consistent with prior India CVD proceedings.⁵⁷

Avid reported that it received benefits under this program during the AUL period.⁵⁸ The GOI reported that the EPCGS program provides for a reduction or exemption of customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers must commit to export, over a specific period of time, goods manufactured in relation to the imported capital goods for a value equal to a multiple of the duty value saved on such capital goods.⁵⁹ If the company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, in addition to an interest penalty. When the company meets the export obligation, it is granted a final waiver of the duties.⁶⁰

⁵² See *Glycine India Preliminary Determination* PDM at 7; unchanged in *Glycine India Final Determination*; see also *Carbon Steel Flanges from India Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016) (*Steel Flanges India Preliminary Determination*), and accompanying PDM at 12, unchanged in *Finished Carbon Steel Flanges From India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM.

⁵³ See *Glycine India Preliminary Determination* PDM at 7, unchanged in *Glycine India Final Determination*.

⁵⁴ *Id.*

⁵⁵ See GOI November 25, 2020 Questionnaire Response at 22-33.

⁵⁶ *Id.*

⁵⁷ See, e.g., *Glycine India Preliminary Determination* PDM at 7; unchanged in *Glycine India Final Determination*; see also *Finished Carbon Steel Flanges from India: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind, in Part, 2018*, 89 FR 79466 (December 10, 2020) (*Steel Flanges India 2018 Prelim*), and accompanying PDM at 12-15, unchanged in *Finished Carbon Steel Flanges From India: Final Results of Countervailing Duty Administrative Review and Partial Rescission, 2018*, 86 FR 222143 (April 27, 2021) (*Steel Flanges India 2018 Final*), and accompanying IDM; and *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002), and accompanying IDM at EPCGS.

⁵⁸ See Avid Initial Response at 14 (Avid was the only respondent in this investigation that reportedly availed benefits under this program.).

⁵⁹ See GOI November 25, 2020 Questionnaire Response at 22-33 and Exhibit EPCG-1.

⁶⁰ *Id.*

Under the EPCGS program, exempted import duties must be paid to the GOI if the accompanying export obligations are not met. It is Commerce's practice to treat any balance on an unpaid liability that may be waived or may be payable in the future as a contingent-liability interest-free loan, pursuant to 19 CFR 351.505(d)(1).⁶¹ We find that the amount in interest 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 constitutes the first benefit under the EPCGS program. The second benefit arises when a respondent is granted, by the GOI, the final waiver of duty on imports of capital goods covered by the EPCG license(s) for which the export requirement has been met. With regard to the license(s) for which the GOI has acknowledged that the company has completed its export obligation, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption pursuant to 19 CFR 351.505(d)(2). Further, in accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we treat import duty exemptions on capital equipment as non-recurring benefits.

Import duty exemptions under this program are provided for the purchase of capital equipment. The *Preamble* to our regulations 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."⁶² In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating the benefits that arise from the final waiver of duties as non-recurring benefits.

Avid reported that it imported capital goods during the AUL period under EPCG license(s). Avid also reported that while it met the export obligation under the EPCG license(s), it has yet to receive the export obligation discharge certificate (EODC) from the DGFT.⁶³ Absent any official certification by the GOI, and specifically by the DGFT, which administers this program, and consistent with our past practice, we find that it is not appropriate to consider that the duty exemptions granted in association with a particular EPCG license have been finally waived. Therefore, we continue to treat these outstanding and contingent import duty liabilities as an interest-free loan during the POR.⁶⁴

Based on the above, for the EPCG license(s) for which Avid has not yet received a complete and final waiver of the import duties, we are treating the import duty reductions that Avid received on imports of capital equipment as a contingent import duty liability in the form of an interest-free loan. The amount of the unpaid duty liabilities to be treated as an interest-free loan is the full value of the original duties owed against that license. Thus, we find the benefit under the EPCGS program to be the interest that the respondent would have paid during the POR had it

⁶¹ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*; 2012, 80 FR 11163 (March 2015), and accompanying IDM at 7-10.

⁶² See *Countervailing Duties; Final Rule*, 63 FR 65348, 65393 (November 25, 1998) (*Preamble*).

⁶³ See Avid Initial Response at 16; see also Avid Supplemental Response at 10.

⁶⁴ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination*, 81 FR 49932 (July 29, 2016), and accompanying IDM at 11; *Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) (*Steel Threaded Rod India Final Determination*), and accompanying IDM at 14-16; and *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008), and accompanying IDM at 28.

borrowed the full amount of the duty reduction or exemption at the time of importation for imports of capital equipment for which the duties have not yet been finally waived because Avid has not yet met the export obligations.

The time period for fulfilling the export requirement expires 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 (*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. For the benchmark interest, we used the long-term interest rates, as discussed in the section above entitled, “Loan Benchmarks and Discount Rates.” 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 we summed the resulting amounts to determine the total benefit in the POR. Avid reported that during the AUL it imported capital goods under EPCG license(s) covering both subject and non-subject merchandise.⁶⁵ In accordance with 19 CFR 351.525(b)(2), we divided the total benefits received by Avid under the EPCGS program by Avid’s total export sales. On this basis, we preliminarily determine the following countervailable subsidy rates:⁶⁶

Avid

2018: 0.04 percent *ad valorem*

2019: 0.01 percent *ad valorem*

3. Merchandise Export from India Scheme (MEIS)

Commerce determined in the investigation of this order that this program is countervailable and both Kumar and Avid reported participating in the MEIS during the POR.⁶⁷ Specifically, we found that the program is specific within the meaning of section 771(5A)(B) of the Act, as the GOI, Kumar, and Avid reported that eligibility to receive the scrips is contingent upon export.⁶⁸ Commerce also determined 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 for paying duties associated with the import of goods which represents revenue forgone by the GOI.⁶⁹ Finally, Commerce found that the MEIS scheme provided a benefit pursuant to section 771(5)(E) of the Act and 19 CFR 351.519 in the amount of exempted duties on imported inputs or capital equipment.

In this review, the GOI did not submit any new information or evidence of changed circumstances that warrants reconsideration of Commerce’s prior determination of countervailability of the program in the investigation of this proceeding.⁷⁰ Therefore, consistent

⁶⁵ See Avid Initial Response at QR-Exhibit 9.

⁶⁶ See Avid’s Preliminary Calculation Memorandum.

⁶⁷ See Kumar Initial Response at Adobe page 16, 28-33, and Exhibit 10 (Exhibits 10.1 through 10.3); and Avid Initial Response at 21-25, Exhibit QR-15 through QR-18.

⁶⁸ See GOI Initial Response at 34-47; *see also* Kumar Initial Response at Adobe page 16, 28-33, and Exhibit 10; and Avid Initial Response at 21-25 and QR Exhibits 17 and 18.

⁶⁹ *Id.*

⁷⁰ See GOI Initial Response at 42.

with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence, we preliminarily continue to find that this program confers a financial contribution as provided under section 771(5)(D)(ii) of the Act and is specific, under section 771(5A)(B) of the Act.⁷¹ Our findings are consistent with prior India CVD proceedings.⁷²

The GOI explained that the MEIS program, which was introduced on April 1, 2015, is covered in the GOI's Foreign Trade Policy (FTP) 2015-2020. According to the GOI, the purpose of this program is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity and employment potential, and thereby enhance India's export competitiveness.⁷³ Under this program, the GOI issues a scrip worth either two, three, or five percent of the FOB value of the exports in free foreign exchange realized or received, or on the "FOB value of exports in free foreign exchange, as given on the shipping bills in free foreign exchange, whichever is less." To receive the scrip, a recipient must file an electronic application and supporting shipping documentation for each port of export with the DGFT. After a recipient receives and registers the scrip, it may either use it for the payment of future customs duties for importing goods or transfer it to another company.⁷⁴

Kumar and Avid reported that they submitted applications and received approval under the MEIS program. According to each company, it met the requirements of this program and obtained the requisite scrips from the DGFT, which can be used for a company's own consumption or sold in the market.⁷⁵ This program provides a recurring benefit because the scrips provided under this program are not tied to capital assets.⁷⁶ 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 Kumar and Avid to be the total value of scrips granted during the POR. Normally, in cases where the benefits are granted based on a percentage value of a shipment, Commerce calculates the benefit as having been received as of the date of exportation;⁷⁷ however, because the MEIS benefit, *i.e.* the scrip, amount is not automatic and is not known to the exporter until after the exports are made, the MEIS licenses, which contain the date of validity and the scrip amount as issued by the GOI, are the best method to determine and account for when the benefit is received and the amount of benefit received.⁷⁸ To determine the benefit from this program, we summed Kumar's and Avid's reported total value of scrips granted (*i.e.*, the MEIS license value) during the POR, less application fees, in accordance with 771(6) of the Act, and divided these amounts by each respondent's export sales pursuant to 19 CFR

⁷¹ *Id.*

⁷² See, e.g., *Glycine India Preliminary Determination* PDM at 12; unchanged in *Glycine India Final Determination*; see also *Steel Flanges India 2018 Prelim* PDM at 14, unchanged in *Steel Flanges India 2018 Final*.

⁷³ *Id.* GOI Initial Response at 34-49 and Exhibit MEIS-1 and MEIS-2.

⁷⁴ *Id.*

⁷⁵ *Id.*; see also Kumar Initial Response at Exhibit CVD-10.

⁷⁶ 19 CFR 351.524(c)(2)(iii).

⁷⁷ See 19 CFR 351.519(b)(1).

⁷⁸ See, e.g., *Glycine India Preliminary Determination* PDM; unchanged in *Glycine India Final Determination*; and *Steel Threaded Rod India Final Determination* IDM at "Status Holder Incentive Scrip."

351.525(b)(2). On this basis we preliminarily determine the following countervailing subsidy rates:⁷⁹

Avid

2018: 1.47 percent *ad valorem*

2019: 1.87 percent *ad valorem*

Kumar

2018: 0.00 percent *ad valorem*

2019: 2.01 percent *ad valorem*

4. State Government of Gujarat (SGOG) Electricity Duty Exemption Program⁸⁰

Avid reported under the “Other Subsidies” section of Commerce’s initial questionnaire that it received subsidies for electricity usage from the SGOG under a program administered by SGOG’s Office of Collector of Electricity Duty.⁸¹ Under the Gujarat Electricity Duty Act of 1958, an entity that establishes a new or additional unit of an industrial undertaking within the State of Gujarat is entitled to an exemption from electricity duties, allowing for exemption of electricity payments for companies that consume energy for industrial purposes with exclusions for “...residence, commerce, sports club, library, canteen or other such purposes,” as determined by the SGOG.⁸²

We preliminarily determine that this program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act. Further, we preliminarily determine this program is *de jure* specific under section 771(5A)(D)(i) of the Act because it is limited to enterprises and industries that are involved with a certain type of undertaking, *i.e.*, manufacturing of goods, excluding other types of goods and consumers, such as residential consumers and premises intended for consumption of food and/or drink, among other exclusions.⁸³

Avid reported that it operates an industrial unit that consumes electricity for industrial purposes and that was exempted from the payment of electricity charges during the POR; thus, we preliminarily determine that it received a benefit pursuant to section 771(5)(E) of the Act in the amount of the exempted electricity duties.⁸⁴ To calculate the subsidy rate for this program, we divided the benefit received by Avid’s total sales during the POR pursuant to 19 CFR 351.525(b)(6)(i). On this basis, we preliminarily determine the following countervailable subsidy rates:⁸⁵

Avid

2018: 0.18 percent *ad valorem*

2019: 0.31 percent *ad valorem*

⁷⁹ See Avid’s Preliminary Calculation Memorandum and Kumar’s Preliminary Calculation Memorandum.

⁸⁰ See GOI Initial Response at 52 and Exhibit SGOG-1.

⁸¹ See Avid Initial Response at 30; GOI Initial Response at 53; and GOI’s Second Supplemental Response at 5.

⁸² See GOI Initial Response at 53 and Exhibits SGOG-1 and SGOG-2.

⁸³ *Id.*

⁸⁴ See Avid Initial Response at 31 and QR Exhibits 19-21.

⁸⁵ See Avid’s Preliminary Calculation Memorandum.

2. Programs Determined Not to Be Not Used or to Provide No Benefit During the POR

We preliminarily determine that Avid and Kumar did not apply for or receive benefits during the POR for the following programs:

GOI Programs:

Duty Free Import Authorization Scheme (DFIA Scheme)
Advance Authorization Scheme (AAS)
Special Economic Zones (SEZs) (formerly known as Export Processing Zones/Export Oriented Units) (EPZs/EOUs)
Duty-free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material Without the Payment of Central Sales Tax (CST)
Exemption from Service Tax for Services Consumed Within the SEZ
Exemption of Stamp Duty for All Transactions and Transfers of Immoveable Property, or Documents Related Thereto Within the SEZ
Exemption from Electricity Duty and Cess Thereon on the Sale or Supply to the SEZ Unit
Discounted Land in an SEZ
Income Tax Exemptions Under the Income Tax Exemption Scheme Section 10A
Provision of Water for Less Than Adequate Remuneration (LTAR)
Provision of Land for LTAR

State Programs:

State and Union Territory Sales Tax Incentive Programs in the States of Gujarat and Maharashtra
State Government of Gujarat (SGOG) Subsidies Under Industrial Policy 2015 and 2009
Financial Benefits for Mega Projects
Promotion of Cluster Development in States
Promotion of Non-Conventional Energy
Anchor Institutes
Market Development Assistance (MDA)
Upgrading Industrial Infrastructure
State Government of Maharashtra (SGOM) Subsidies Under the Package Scheme of Incentives 1993, 2007 and 2013
Financial Incentives for PSI-2013's MSMEs/LSIs
Industrial Promotion Subsidy for MSMEs and LSIs
Interest Subsidy
Exemption from Electricity Duty
Waiver of Stamp Duties
Power Tariff Subsidy
Subsidy Equal to Various Levels Related to VAT on Local Sales (Minus Input Tax Credit)
5% Subsidy on Capital Equipment

75% Subsidy on Expenses Incurred on Quality Certifications
75% Subsidy on Cost of Water Audit
75% Subsidy on Cost of Energy Audit
50% Subsidy on Cost of Capital Equipment Under Measures to Conserve/Recycle Water
50% Subsidy on Cost of Capital Equipment for Improving Energy Efficiency
25% Subsidy on Capital Equipment for Cleaner Production Measures
25% Subsidy on Patent Registration
Incentives for Strengthening MSMEs and LSIs
Incentives for Units Coming up in Naxalism Affecting Talukas
Incentives for Mega/Ultra Mega Projects
Provision of Land for Less Than Adequate Remuneration⁸⁶

IX. RECOMMENDATION

We recommend that you approve the preliminary findings described above. If these recommendations are accepted, we will publish the preliminary results of review in the *Federal Register*.



Agree

Disagree

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

⁸⁶ Based on information in Kumar's initial questionnaire response (*see* Kumar Initial Response at Adobe page 34 and Exhibit CVD-3), we requested additional information regarding Kumar's acquisition of a land lease deed at the time of the acquisition of the company from its prior owners. This information demonstrated that the land lease deed was acquired from the prior owners of Kumar, not from the GOI (*see* Kumar Second Supplemental Response – Land at 1-4 and Exhibit CVD-26), with no change in the terms. Because the land lease deed was originally issued to Kumar's prior owners prior to the AUL, any benefits that may have arisen from the provision of land are fully expensed prior to the POR, and the program is not used by Kumar.