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Investigation
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VI: DSM/SC/AC-E

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey A. May
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum: Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 (CVP-23) from India

Summary

On April 27, 2004, the Department of Commerce (the Department) issued the Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Carbazole Violet Pigment-23 from India, 68 FR 22763 (Preliminary Determination). Since the issuance of the Preliminary Determination, the Department conducted verification of the responses provided by the Government of India (GOI) and the two participating respondents, Alpanil Industries, Ltd. (Alpanil) and Pidilite Industries (Pidilite). The third producer/exporter to which the Department sent a questionnaire was AMI Pigments Pvt. Ltd. (AMI). This company did not respond to any of the Department's requests for information.

The Department received comments and rebuttal comments on the Preliminary Determination and verification from Nation Ford Chemical Company and Sun Chemical Company (petitioners), Clariant Corporation, a domestic producer which supports petitioners, and all responding parties. We have analyzed the results of verification and all of the comments submitted by interested parties. As a result of our analysis, we have made changes to our Preliminary Determination which are fully discussed below. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum.

I. List of Issues

Below is the complete list of issues raised by interested parties in their comments.

Comment 1: Alpanil and Meghmani are Affiliated Parties;

Comment 2: The Department Should Continue to Determine that the Following Programs are Countervailable: Pre-Shipment Export Financing Program, Duty Entitlement Passbook Scheme (DEPS), Section 80HHC Income Tax Exemption Scheme, and the State of Gujarat Sales Tax Incentive Scheme;

Comment 3: Alpanil Did Not Use the Pre-shipment Export Financing Loans Program for U.S. Exports of CVP-23;

Comment 4: Alpanil Did Not Receive Any Benefits from the State of Gujarat Sales Tax Incentive Scheme;

Comment 5: Pidilite's State Sales Tax Deferrals are Countervailable;

Comment 6: CENVAT Credits are Countervailable;

Comment 7: The Department Should Use Adverse Facts Available to Calculate the Subsidy Rate for AMI under Additional Programs;

Comment 8: The Estimated Countervailing Duty Cash Deposit Rates Should be Adjusted to Account for Program-Wide Changes in the DEPS and Section 80HHC Programs

II. **Subsidies Valuation Information**

A. Loan Benchmarks

In accordance with section 351.505(a)(3)(ii) of the Department's regulations, for those programs requiring the application of a benchmark interest rate, and where company-specific interest rates on comparable commercial loans are not available, we may use a national average interest rate for comparable commercial loans. With respect to the rupee-denominated, long-term benchmark used in calculating the benefit for the State of Gujarat (SOG) and State of Maharashtra (SOM) Sales Tax Incentive Schemes, we used a national average interest rate since Pidilite, the only producer/exporter of CVP-23 which reported to have received sales tax deferrals under these programs, did not have any comparable, long-term commercial loans denominated in rupees. We relied on a rupee-denominated, short to medium-term benchmark interest rate using information from the International Monetary Fund's (IMF) publication International Financial Statistics (January 2004 and March 2004), that is not company-specific, but still provides a reasonable representation of long term, rupee-denominated financing from private creditors.

In order to determine the amount of unpaid interest on Pidilite's SOG sales taxes, we used the IMF national average, long-term benchmark interest rate for 1997, the year in which the terms of Pidilite's SOG sales tax deferrals were established. See Memorandum to the File from Addilyn P. Chams Eddine through Dana Mermelstein to Barbara E. Tillman, Countervailing Duty Investigation of Carbazole Violet Pigment 23 from India: Verification of Pidilite Industries Ltd., located in Mumbai, India (September 29, 2004) (Pidilite Verification Report) at 10.

In the case of the SOM tax deferrals noted in schedule 4 of Pidilite's financial statement, we verified that these sales tax deferrals included both the 1993 SOM Package Scheme of Incentives (PSI) and

the 1998 SOM Power Generation Promotion Policy. See Pidilite Verification Report at 11-12. We verified that Pidilite was approved to use the 1993 PSI in 1996. However, there is no information on the record as to when Pidilite became eligible to use sales tax deferrals under the 1998 SOM Power Generation Promotion Policy. For purposes of this final determination, we consider 1998, the date on which these sales tax deferrals became available under the SOM Power Generation Promotion Policy, as the date on which Pidilite was approved for these sales tax deferrals. Accordingly, we are averaging the IMF national average, long-term benchmark interest rates for 1996 and 1998, in order to determine our long-term benchmark interest rate for SOM sales tax deferrals.

B. Cross-Ownership and Attribution of Subsidies

As noted in the Department's Position on Comment 1 below, the Department determines that cross-ownership exists between Alpanil and Meghmani through common owners and common corporate officers, which allows Meghmani to direct the activities of Alpanil. See section 351.525(b)(6)(vi) of the Department's regulations. However, we verified that Meghmani only acted as a trading company since it does not produce or supply inputs needed in the production of CVP-23. See Memorandum to the File from Sean Carey and Addilyn Chams Eddine to Dana Mermelstein, Countervailing Duty Investigation of Carbazole Violet Pigment 23 from India: Verification of Alpanil Industries Ltd. (October 6, 2004) (Alpanil Verification Report) at 2. Consequently, the Department is calculating a single subsidy rate for Alpanil that accounts for Meghmani's benefits from subsidies relating to its trading company activities involving subject merchandise produced by Alpanil, in accordance with section 351.525(c) of the Department's regulations.

III. **Use of Adverse Facts Available**

As discussed in the Preliminary Determination, one exporter of CVP-23 during the POI, AMI Pigments Pvt., Ltd. (AMI), did not participate in this countervailing duty investigation. In questionnaire responses provided before the Preliminary Determination, the GOI reported that AMI used the Duty Entitlement Passbook Scheme (DEPS). The GOI provided no information regarding the extent to which AMI actually received benefits under this program. The GOI was unable to report that AMI did not use the SOG Sales Tax Incentive Scheme. Thus, for purposes of the Preliminary Determination, we determined countervailable subsidy rates for AMI under these two programs by applying facts available in accordance with section 776(a) of the Tariff Act of 1930, as amended (the Act). In applying facts available, we made an adverse inference pursuant to section 776(b), since AMI had not cooperated to the best of its ability to respond to the Department's request for information by virtue of its complete lack of participation in this investigation. See Preliminary Determination at 68 FR 22766, 22768. The GOI reported that AMI did not use the remaining programs under investigation. We relied on the GOI's responses and preliminarily determined that AMI did not use the remaining programs.

We were able to verify, through the examination of the GOI's records, AMI's non-use of Section 80HHC, Export Processing Zones/Export-Oriented Units Program, Section 10A and 10B of the

Income Tax Act, Special Imprest Licenses, Duty-Free Replenishment Certificate, Advanced License Scheme, Market Development Assistance Program, and the SOG Sales Tax Incentive Scheme.[1] Thus, for these programs, we are not assigning countervailable subsidy rates to AMI. For the remaining programs under investigation (the Pre-Shipment Export Financing Program, DEPS, and the Export Promotion Capital Goods Scheme (EPCGS)), we were unable to establish AMI's non-receipt of benefits through an examination of GOI records. See GOI Verification Report at 2, 4, 8 and 10. Therefore, for each of these programs we are assigning a countervailable subsidy rate to AMI based entirely on adverse facts available in accordance with section 776(b), since AMI had not cooperated to the best of its ability to respond to the Department's request for information by virtue of its complete lack of participation in this investigation. Such rates are the highest company-specific program rates calculated by the Department in a past Indian proceeding. See the "Analysis of Programs" section below for a discussion of these program-specific rates.

IV. Analysis of Programs

A. Programs Determined to Confer Subsidies

1. GOI Programs

a. Pre-Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment export financing, or "packing credits," to exporters in the form of pre-shipment loans or credit lines. Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates capped by the RBI.

In the Preliminary Determination, we determined that this export financing is countervailable to the extent that the interest rates are set by the GOI and are lower than the rates exporters would have paid on comparable commercial loans. No new information or evidence of changed circumstances have been presented to warrant reconsideration of this finding.

At verification, Alpanil established that its use of this program was limited to loans for shipments to countries other than the United States. See Alpanil Verification Report at 7. Thus, for this final

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[1] See Memorandum to the File from Sean Carey to Dana Mermelstein, Countervailing Duty Investigation of Carbazole Violet Pigment 23 (CVP-23) from India: Verification of the Government of India's (GOI) Subsidy Programs (September 29, 2004) (GOI Verification Report) at 2-3 and 7-9. For a complete discussion on the use of the DEPS program to the exclusion of the Advance License Scheme and its related programs (Special Imprest Licenses and Duty Free Replenishment Certificates), see Department's Position at Comment 7, below.

determination, we find that Alpanil has not used this program. Similarly, Pidilite established at verification that it did not use this program by demonstrating that all of its outstanding loans during the POI were from commercial banks. See Pidilite Verification Report at 6.

For AMI, for purposes of the Preliminary Determination, we relied on the GOI's questionnaire responses which reported that AMI did not use this program. However, we were unable to confirm, solely through the examination of GOI records, that AMI did not use this program during the POI. See GOI Verification Report at 4. Therefore, we are applying facts available in accordance with section 776(a) of the Act. In applying facts available, we have made an adverse inference pursuant to section 776(b), since AMI has not cooperated to the best of its ability to respond to the Department's request for information by virtue of its complete lack of participation in this investigation.

Consistent with our practice, we have used, as adverse facts available, the highest company-specific Pre-Shipment Export Financing program rate calculated in an Indian proceeding, 2.05 percent *ad valorem*. This is the highest company-specific program rate calculated in Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film), 67 FR 34905 (May 16, 2002) (PET Film from India) and accompanying Issues and Decision Memorandum at II.A.1. ("Pre-Shipment and Post-Shipment Export Financing"). We believe this information is reliable and relevant because this company-specific rate was calculated for pre-shipment financing at similar terms and rates of interest as those reported during the POI. No new information was presented by the GOI to indicate that this financing for pre-shipment, rupee-denominated export loans up to 180 days is no longer capped by the Reserve Bank of India at similar discounts to the Indian Prime Lending Rate. Accordingly, the countervailing duty subsidy rate for this program is 2.05 percent *ad valorem* for AMI, and zero for Alpanil and Pidilite.

b. Duty Entitlement Passbook Scheme (DEPS)

India's DEPS was enacted on April 1, 1997, as a successor to the Passbook Scheme (PBS). As with PBS, the DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post-export basis, provided that the GOI has established a standard input/output norm (SION) for the exported product. DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an exported product. DEPS credits are valid for twelve months and are transferable after the foreign exchange is realized from the export sales on which the DEPS credits are earned. With respect to subject merchandise, the GOI has established a SION. Therefore, CVP-23 exporters were eligible to earn credits equal to 15 percent of the FOB value of their export shipments during the fiscal year ending March 31, 2003.

In the Preliminary Determination of this investigation, the Department found that DEPS is countervailable. No new information or evidence of changed circumstances have been presented since the Preliminary Determination to warrant reconsideration of this finding. We calculated the DEPS

program rate using the value of the post-export credits that the respondents earned for their export shipments of subject merchandise to the United States during the POI by multiplying the FOB value of each export shipment by the relevant percentage of DEPS credit allowed under the program for exports of subject merchandise. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6) of the Act. Finally, we took this sum (the total value of the licenses net of application fees paid) and divided it by each respondent's exports of subject merchandise to the United States during the POI.

On this basis, we determine Pidilite's net countervailable subsidy from the DEPS program to be 14.93 percent *ad valorem*. For Alpanil, we determine the net countervailable subsidy from this program to be 14.93 percent *ad valorem* which is inclusive of DEPS credits earned by Meghmani that were transferred to Alpanil during the POI. See "Cross-Ownership and Attribution of Subsidies" section of this notice, noted above; see also Alpanil Verification Report at 6.

For AMI, we have no new information since the Preliminary Determination which warrants a departure from the use of adverse facts available in accordance with section 776(b) of the Act. Consistent with our practice, we have used, as adverse facts available, the highest company-specific DEPS program rate calculated in an Indian proceeding. The rates we have calculated for the purposes of this final determination for both Alpanil and Pidilite are 14.93 percent *ad* valorem, the highest company-specific DEPS program rate calculated in any other completed Indian proceeding. Accordingly, we used this rate to determine an *ad valorem* rate of 14.93 percent *ad valorem* for AMI during the POI. We believe this information is reliable and relevant because this company-specific DEPS rate was calculated using information in the record of this investigation (for a company in the same industry during the same period).

The GOI reported that, prior to the Preliminary Determination, the DEPS credit was reduced from 15 percent during the POI to 9 percent currently. We determine that this change does not constitute a program-wide change in accordance with section 351.526 of the Department's regulations, and thus we have not adjusted the cash deposit rate of estimated countervailing duties for the DEPS program. See the Department's Position at Comment 8, below. Accordingly, the cash deposit rate for the DEPS program is 14.93 percent *ad valorem* for AMI, Alpanil and Pidilite.

c. Income Tax Exemption Scheme, Section 80HHC

In the Preliminary Determination, the Department determined that deductions of profit derived from exports under section 80HHC of India's Income Tax Act are countervailable. No new information or evidence of changed circumstances has been submitted to warrant reconsideration of this finding. Alpanil and Pidilite used this program during the POI. Verification confirmed that AMI did not use this program. See GOI Verification Report at 3.

To calculate the benefit for each responding company, we subtracted the total amount of income tax the company actually paid during the POI from the amount of tax the company would have otherwise paid had it not claimed the deduction under Section 80 HHC. We then divided this difference by the FOB value of the company's total exports during the POI. We thus determine the countervailable subsidy to be 2.10 percent *ad valorem* for Pidilite and 2.64 percent *ad valorem* for Alpanil. This subsidy rate reflects the Section 80HHC benefits claimed by Alpanil as a "supporting manufacturer" for Meghmani's exports of subject merchandise produced by Alpanil. See Alpanil Verification Report at 6 and Comment 1, below.

The GOI reported that the rate at which Indian exporters can deduct export profits from taxable income was reduced, from 70 percent to 30 percent, prior to the Preliminary Determination. We determine that this change does not constitute a program-wide change in accordance with section 351.526 of the Department's regulations, and thus, have not adjusted the cash deposit rate of estimated countervailing duties for the Section 80 HHC program. See the Department's Position at Comment 8, below.

d. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to eight times the CIF value of capital goods to be fulfilled over a period of time. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest. Neither Alpanil nor Pidilite used this program during the POI.

Due to AMI's complete lack of participation in this investigation and the fact that the GOI did not provide documentation at verification which establishes AMI's non-use of this program, we are using an adverse inference in accordance with section 776(b) of the Act to determine that AMI used this program. See GOI Verification Report at 10. In PET Film from India and accompanying Issues and Decision Memorandum at II.A.4 ("EPCGS"), we determined that import duty reductions provided under the EPCGS constituted a countervailable export subsidy. Specifically, the Department found that under the EPCGS program, the GOI provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue foregone that otherwise would be due, that a benefit is thereby conferred, as defined by section 771(5)(E) of the Act, and that this program is specific under section 771(5A)(B) of the Act because it is contingent upon export performance. No new information or evidence of changed circumstances has been provided to warrant a reconsideration of this determination. Therefore, we find that import duty reductions provided under the EPCGS are countervailable export subsidies.

To determine the countervailable subsidy rate for AMI for the EPCGS, we are relying on adverse facts available. Section 776(b) of the Act indicates that the Department may use publicly available information to determine the adverse facts available rates. However, there are typically no independent

sources for data on company-specific benefits resulting from countervailable subsidy programs. The only source for such information normally is administrative determinations. Therefore, consistent with our practice, we have used, as adverse facts available, the highest company-specific program rate in an Indian proceeding for the EPCGS program. Accordingly, AMI's countervailable subsidy rate for the EPCGS rate is 16.63 percent *ad valorem*, which is the highest company-specific program rate calculated in Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India, 66 FR 49635 (September 28, 2001).

2. State Programs

a. State of Gujarat (SOG) Sales Tax Incentive Scheme

In the Preliminary Determination, we resorted to the use of facts available in accordance with section 776(a) of the Act and used adverse inferences in accordance with section 776(b) to determine that AMI and Alpanil used the SOG Sales Tax Incentives Scheme during the POI. We preliminarily determined that the program is countervailable because it is limited to companies located in designated geographical areas; that the SOG provides a financial contribution in the form of revenue foregone; and there is a benefit in the amount of the sales tax exemptions. There is no new information or evidence of changed circumstances which would warrant reconsideration of the preliminary determination. At verification, we were able to establish, through the review of SOG records, that AMI did not receive benefits under this program. See GOI Verification Report at 7. Verification of Alpanil also established that Alpanil did not receive benefits under this program. See Alpanil Verification Report at 7-8. However, after the Preliminary Determination and prior to verification, Pidilite reported that it had outstanding SOG sales tax deferrals which had been granted to Pidilite prior to the POI.

In PET Film from India, the Department determined that sales tax deferrals on sales between affiliated companies resulted in less state sales taxes being paid on the sales from each other and thus provide a financial contribution and benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act. See "Programs Found to Confer Subsidies" section of the accompanying Issues and Decision Memorandum, dated May 16, 2002. Likewise, we find that the SOG sales tax deferments on Pidilite's inter-company sales provide a financial contribution via the interest not collected on the amount of the deferred sales taxes otherwise owed to the SOG. At verification, Pidilite demonstrated that it is repaying the SOG sales tax deferments it received from these inter-company sales. See Pidilite Verification Report at 10.

We are treating the SOG sales tax deferrals as a domestic subsidy that is specific to industries located within designated geographical regions under section 771(5A)(D)(iv) of the Act. As a domestic subsidy, we are attributing these incentives to all products sold by a firm in accordance with section 351.525(b)(3) of the Department's regulations. See Department's Position at Comment 5, below.

Consistent with PET Film from India, we are treating deferred sales taxes as interest-free government loans, and calculating the benefit as the amount of interest that would have been paid on the amount of

these outstanding deferred sales taxes at the end of the POI. Pursuant to section 351.505(a)(2)(iii), we multiplied the outstanding amount of sales tax deferrals under the SOG program by the appropriate long-term benchmark interest rate in order to determine the benefit in the form of unpaid interest on the deferred sales taxes during the POI. See Pidilite Verification Report at 10. We then divided the resulting benefits by Pidilite's total sales during the POI. The resulting countervailable subsidy rate for Pidilite is less than 0.005 percent *ad valorem*.

b. State of Maharashtra (SOM) Sales Tax Incentive Scheme

In the Preliminary Determination, we found the SOM Sales Tax Incentives Scheme not used. However, after the Preliminary Determination and prior to verification, Pidilite reported that it had received benefits under the SOM program, in the form of tax deferrals granted prior to the POI, which remained outstanding during the POI.

The SOM grants sales tax incentives for manufacturers to invest in designated geographical areas of Maharashtra. The incentives take the form of either an exemption or deferral of state sales taxes. Through this incentive, companies are exempted from paying state sales taxes on purchases, and collecting sales taxes on sales; or, as an alternative, are allowed to defer submitting sales taxes collected on sales to the SOM. After the deferral period expires, the companies are required to submit the deferred sales taxes to the SOM in equal installments over five to six years. No interest is charged on the deferred taxes. The total amount of the sales tax incentive either exempted or deferred is based on the size of the capital investment, and the area in which the capital is invested.

We find that SOM Sales tax deferrals are specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits are limited to industries located in designated areas. The SOM provides a financial contribution under section 771(5)(D)(ii) of the Act by foregoing the collection of interest on deferred sales taxes. Finally, there is a benefit in the amount of the interest which would otherwise be payable under section 771(5)(E) of the Act.

Consistent with PET Film from India, we are calculating the benefit as the amount of interest that would have been paid on the amount of these outstanding deferred sales taxes at the end of the POI. Pursuant to section 351.505(a)(2)(iii), we multiplied the outstanding amount of SOM sales tax deferrals reported in Exhibit CVD-3 of Pidilite's February 10, 2004 questionnaire response under Schedule 4 "Unsecured Loans" of Pidilite's 2002-2003 Financial Statement, by the appropriate long-term benchmark interest rate in order to determine the benefit in the form of unpaid interest on the deferred sales taxes during the POI. As a domestic subsidy, we are attributing these incentives to all products sold by a firm in accordance with section 351.525(b)(3) of the Department's regulations. Thus, we divided the resulting benefits by Pidilite's total sales during the POI. See Department's Position at Comment 5, below. The resulting countervailable subsidy rate for Pidilite is 0.31 percent *ad valorem*.

B. Program Determined Not To Confer Subsidies

GOI Program: Central Value Added Tax (CENVAT) Credits

In the Preliminary Determination, the Department was unable to determine whether either CENVAT credits for domestic consumption or CENVAT credits and/or refunds for exporters provide countervailable benefits. Based on information developed on the record since the Preliminary Determination, and the results of verification, on October 8, 2004, the Department issued its preliminary analysis that the CENVAT program is not countervailable. See Memorandum to the File from Barbara E. Tillman, Director, Office of AD/CVD Enforcement VI, to Jeffrey A. May, Deputy Assistant Secretary, Import Administration, Countervailing Duty Investigation of Carbazole Violet Pigment-23 from India: Preliminary Analysis of the Central Value Added Tax (CENVAT) Program (CENVAT Memorandum). No new information or evidence of changed circumstances has been provided which would warrant a reconsideration of this finding. Our analysis of the parties' comments regarding CENVAT is presented in Comment 6, below.

C. Programs Determined To Be Not Used

GOI Programs

a. Export Processing Zones (EPZs) / Export Oriented Units (EOUs) Programs
b. Income Tax Exemption Scheme (Sections 10A and 10B)
c. Market Development Assistance (MDA)
d. Special Imprest Licenses
e. Duty Free Replenishment Certificate
f. Advance License Scheme

D. Program Determined To Be Terminated

GOI Program: Exemption of Export Credit from Interest Taxes

Under the Exemption of Export Credit from Interest Taxes program, the GOI allowed Indian commercial banks to be exempted from paying a tax on interest accrued from borrowers, for all interest accruing on export-related loans. The Department had previously found this tax exemption to be countervailable as an export subsidy but in our Preliminary Determination, we found that the GOI eliminated this tax on interest on any category of loan prior to the POI, and preliminarily determined that this program has been terminated. At verification, the Department was able to confirm that the subject interest-tax was last collected in the 1999-2000 fiscal year, and that no other program has taken its place. Accordingly, the Department finds that there are no residual benefits accruing to exporters under this program, and that the GOI has not implemented a replacement program. Therefore, in accordance

with section 351.526 (d) of the Department's regulations, the Department determines that this program has been terminated.

V. Analysis of Comments

Comment 1: Alpanil and Meghmani are Affiliated Parties

Respondents request that the Department calculate a single net subsidy rate and a single cash deposit rate to be applied equally to Alpanil and Meghmani, and other affiliated companies operating under the Meghmani banner. Respondents state that Alpanil and Meghmani are affiliated parties through common directors and cross-ownership. According to respondents, the Department verified that Meghmani did not produce subject merchandise and had only one sale of CVP-23 to the United States during the POI. Moreover, respondents contend that Meghmani's CVP-23 shipment to the United States was produced by Alpanil, and that the countervailable benefits attributable to the sale were transferred to Alpanil. See Alpanil Verification Report at 6.

With respect to the 80HHC program, respondents state that the Department verified that Alpanil claimed all benefits under this program as a supporting manufacturer, and that the Indian income tax regulations permit only one company to claim 80HHC benefits. Id. at 6. Respondents also state that the Department found at verification that neither Alpanil nor Meghmani were eligible to receive SOG benefits because they were not located in an eligible zone. See GOI Verification Report at 6-7; also Alpanil Verification Report at 7-8. Finally, respondents state that Meghmani did not take out any pre-shipment export loans from the GOI.

Clariant Corporation (Clariant), in support of petitioners, contends that the Department should use adverse facts available to determine both Meghmani's and Alpanil's subsidy rates since Meghmani failed to provide the Department with a questionnaire response despite the Department's request that it do so. According to Clariant, the Department should not rely on the partial and selective information provided by Alpanil, nor accept Alpanil's insufficient justification that Meghmani's extrinsic circumstances led to Alpanil's failure to supply Meghmani the Department's questionnaires.

In addition, Clariant argues that adverse inferences should also be extended to Alpanil since the reporting obligation rested with Alpanil as much as with Meghmani, given their cross-ownership. Clariant notes that the purpose of the statute in this case is to "encourage compliance while determining current margins as accurately as possible." See National Steel Corp. v. United States, 913 F. Supp. 593 (CIT 1996). Furthermore, Clariant argues that while the Department is required to provide "a reasonably accurate estimate of the respondent's actual rate," it must also consider whether it is deterring non-compliance. See F.LII De Cecco di Filippo Fara S. Martino S.p.A. v. United States, 216 F. 3d 1027 (Fed. Cir. 2000). According to Clariant, Alpanil deliberately withheld information from the Department, and the repercussions for non-cooperation should fall directly on Alpanil in order to encourage cooperation by respondents.

Department's Position:

According to section 351.525(b)(5)(vi) of the Department's regulations, "cross-ownership exists between two or more corporations where one corporation can use or direct the assets of the other corporations(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations." The Department established at verification that Alpanil and Meghmani shared three common owners who collectively held fifty percent or more ownership interest in both companies. In addition, the Department also found that Meghmani can direct the activities of Alpanil through common corporate officers. See Alpanil Verification Report at 2. Therefore, the Department finds that cross-ownership does exist.

Alpanil reported its trading relationship with Meghmani and Meghmani's use and non-use of the subsidy programs under investigation, which we analyzed and incorporated in the Preliminary Determination. While we would have preferred to obtain a complete questionnaire response from Meghmani, we were able to establish at verification that Meghmani only acted as a trading company for some of Alpanil's indirect exports of subject merchandise made during the POI. We were also able to confirm that Meghmani does not produce subject merchandise, nor does it produce inputs used in the production of subject merchandise. See Alpanil Verification Report at 2-3. Where the Department is able to satisfactorily verify the receipt of subsidies and to calculate the appropriate benefit, we need not resort to adverse facts available. In this case, we are satisfied that we have captured all subsidies attributable to subject merchandise produced by Alpanil and exported by Meghmani during the POI.

The Department found no information at verification to indicate that any domestic subsidies attributable to Meghmani's production of non-subject merchandise were transferred to Alpanil during the POI. See section 351.525(b)(6)(v) of the Department's regulations. In addition, the Department found that Alpanil adequately informed the Department of Meghmani's relationship with Alpanil and of Meghmani's use and non-use of the relevant export programs under investigation. The Department was able to verify this information. Therefore, we find the use of adverse facts available to be unwarranted. However, in future reviews, if such reviews are requested, the Department will continue to examine Meghmani's transactions with Alpanil to ensure that no domestic subsidies attributable to non-subject merchandise are transferred to Alpanil.

In this final determination, the Department is cumulating Meghmani's benefits from subsidies relating to its trading company activities involving subject merchandise produced by Alpanil, with the benefits Alpanil received from subsidies during the POI in accordance with section 351.525(c) of the Department's regulations. Specifically, the Department verified (1) that Alpanil claimed all of the benefits as a "supporting manufacturer" under the Section 80HHC program for Meghmani's export of

subject merchandise produced by Alpanil and, (2) that the DEPS benefits from Meghmani's one export sale of subject merchandise to the United States were wholly transferred to Alpanil. See Alpanil Verification Report at 6. Accordingly, the Department will calculate a single countervailable subsidy rate for Alpanil that will reflect any trading company benefits received by Meghmani and transferred to Alpanil during the POI.

Comment 2: The Department Should Continue to Determine that the Following Programs are Countervailable: Pre-Shipment Export Financing Program, Duty Entitlement Passbook Scheme (DEPS), Section 80HHC Income Tax Exemption Scheme, and the State of Gujarat (SOG) Sales Tax Incentive Scheme

Clariant argues that the Department should continue to follow past precedent and find these programs countervailable. Clariant notes that in Polyethylene Terephthalate Film, Sheet and Strip from India, 67 FR 34905 (May 16, 2002) ("PET Film from India"), the Department found the Pre-Shipment Export Financing program and the DEPS countervailable. Similarly, Clariant notes that in Certain Iron-Metal Castings from India, 63 FR 31515 (May 18, 2000), and in Prestressed Concrete Steel Wire Strand from India, 68 FR 68356 (December 8, 2003), the Department found both the Section 80HHC and the SOG Sales Tax Incentive Scheme, respectively, to be countervailable.

Department's Position:

Based on the information in the record of this investigation, we continue to find, as in the Preliminary Determination, that the Pre-Shipment Export Financing, DEPS, Section 80HHC, and the SOG Sales Tax Incentive Scheme, are countervailable. No new information or evidence of changed circumstances has been submitted or verified to warrant reconsideration of these determinations. See Comment 8 below for a discussion of program-wide changes for the DEPS and Section 80HHC programs.

Comment 3: Alpanil Did Not Use the Pre-Shipment Export Financing Loans Program for U.S. Exports of CVP-23

Respondents argue that the Department should find that Alpanil did not receive benefits on U.S. exports of CVP-23 under the Pre-Shipment Export Loan program. According to respondents, the Department reviewed each of the purchase orders and invoices corresponding to those loans and determined that the Pre-Shipment loans used by Alpanil during the POI were for exports made to countries other than the United States. See Alpanil Verification Report at 7.

Department's Position:

As noted above and in the verification report, the Department confirmed that Alpanil's Pre-Shipment Export Loans on which principal or interest was outstanding during the POI were for exports of CVP-23 to countries other than the United States. See Alpanil Verification Report

at 7. In the Preliminary Determination, the Department found that Alpanil had used this program. For purposes of the final determination, we now find that no benefits under this program were attributable to Alpanil's U.S. exports of CVP-23. As such, we are not calculating a countervailable subsidy rate for Alpanil under this program.

Comment 4: Alpanil Did Not Receive Any Benefits from SOG Sales Tax Incentive Scheme

Respondents state that in the Preliminary Determination, the Department erroneously determined that Alpanil received benefits from the SOG Sales Tax Incentive Scheme. According to respondents, the Department verified that Alpanil did not receive deferrals of SOG sales tax; rather, Alpanil's questionnaire responses showed SOG sales taxes paid during the POI. Furthermore, respondents note that the Department found at verification that Alpanil is not eligible to receive benefits under this state program since Alpanil is not located in an eligible zone. See Alpanil Verification Report at 7-8. Consequently, respondents contend that the Department should find in the final determination that this program was not used by Alpanil.

Department's Position:

The Department found at verification that Alpanil was not eligible for sales tax incentives offered by the SOG since it was located within an urban "banned area" of Gujarat that was within the city limits of Ahmedabad. See GOI Verification Report at 7. Furthermore, the Department also verified Alpanil's accounting records and found that Alpanil paid SOG sales tax to its suppliers, and collected SOG sales tax on its sales during the POI. See Alpanil Verification Report at 8. For purposes of the final determination, we find that Alpanil was not eligible to receive benefits under this program and as such, determine that this program was not used by Alpanil during the POI.

Comment 5: Pidilite's State Sales Tax Deferrals are Countervailable

Petitioners note that the Department found the SOG and SOM Sales Tax Incentive Schemes countervailable in the Preliminary Determination, but a rate was not calculated for Pidilite since Pidilite reported not using either program during the POI. At verification, however, petitioners state that the Department found that Pidilite used both programs and continued to have deferred sales tax amounts outstanding under each program during the POI. Pidilite Verification Report at 10-12.

Petitioners contend that all amounts of unpaid taxes still outstanding during the POI for both the SOM and SOG sales tax deferrals, should be countervailed as interest-free loans. According to petitioners, there is no question that Pidilite owed these taxes and that it benefits by not paying them.

Petitioners state that they are aware that the Department determined in PET Film from India that certain deferred taxes under the SOM program were for capital investment in production facilities for non-subject merchandise which were not countervailed. See "Programs Found to Confer Subsidies"

section of the Department's Issues and Decision Memorandum for PET Film from India. In addition, petitioners note that they are also aware that the Pidilite Verification Report reflects that some of the SOG deferred taxes and all of the SOM deferred taxes were incurred on non-subject merchandise. Petitioners nevertheless, contend that the Department should countervail the entire amounts of deferred taxes still owed by Pidilite under both state programs.

Petitioners disagree with the Department's determination in PET Film from India because once taxes are deferred and become a debt owed by Pidilite, they no longer are "tied to the production of a particular product" within the meaning of section 351.525(b)(5)(I) of the Department's regulations. Rather, according to petitioners, these amounts are like any other company debt, and this debt is therefore, more appropriately "classified" as a basic domestic subsidy, and the full amounts of the deferred taxes outstanding in the POI should be countervailed.

Finally, petitioners argue that if the Department elects not to revise its position in PET Film from India, then the Department should countervail the SOG deferred taxes tied to CVP-23. According to petitioners, the Department should use adverse facts available to determine the subsidy rate for this program since Pidilite was not forthcoming in providing all the relevant data on the SOG program prior to verification.

Clariant notes that Pidilite received sales tax deferments for CVP-23 from October 1997 through January 2000, and was repaying these sales taxes during the POI. Clariant agrees with petitioners that these sales tax deferments constitute a domestic subsidy and the full amounts of the deferred taxes should be countervailed. Alternatively, Clariant contends that the Department should follow the practice in PET Film from India (69 FR 52872) and treat the amount of outstanding sales taxes deferred on sales of subject merchandise as an interest-free loan received in the year in which the deferral was granted, and calculate the benefits conferred in the form of unpaid interest on the deferred sales taxes.

Respondents argue that Pidilite did report the benefits it had received under the SOG Sales Tax Incentive Scheme in years prior to the POI. See Pidilite's second supplemental questionnaire response dated June 7, 2004. Respondents note that the Department confirmed at verification that Pidilite did not receive additional benefits during the POI, and that Pidilite's financial statements show Pidilite's incentives under the SOM sales tax scheme received prior to the POI. See Pidilite Verification Report at 10.

Respondents contend that the Department should reject petitioners' argument that the deferral of state sales taxes on sales of non-subject merchandise is countervailable. According to respondents, the deferral of taxes on sales of non-subject merchandise is by definition directly linked to the production of non-subject merchandise, contrary to petitioners' assertion. Respondents state that the benefits from these sales tax deferrals were conferred to Pidilite based on the production of a particular product. Therefore, respondents argue that petitioners' theory is illogical and would lead to the conclusion that

many subsidies, even those tied to the production of particular products, could be applied as the company deems fit since it involves money which is fungible. Respondents contend that the Department has never applied such a broad interpretation as to assign benefits to subject merchandise that have been realized solely on the sales of non-subject merchandise.

Department's Position:

Pidilite reported outstanding sales tax deferments under both the SOG and SOM Sales Tax Incentive Scheme from years prior to the POI, in its June 7, 2004 second supplemental questionnaire response prior to verification. Therefore, we do not find that the application of adverse facts available is warranted because Pidilite did provide the information requested by the Department.

At verification, the Department found that Pidilite was granted an eligibility certificate for SOG sales tax deferrals for Pidilite's facility located in an eligible area of Gujarat. Similarly, Pidilite was granted SOM sales tax deferrals for two facilities located in eligible areas of Maharashtra, and for the construction of windmills under the SOM Power Generation Promotion Policy 1998. Under the SOG program, Pidilite received sales tax deferrals for sales of CVP-23 and for intercompany sales of non-subject merchandise. With respect to the SOM program, Pidilite's facilities in Maharashtra do not produce subject merchandise. See Pidilite Verification Report at 11-12. We agree with petitioners that these sales tax incentives should not be tied to the production of a particular product but rather, to all products since these incentives are provided with the objective to promote development in designated regions through investments in either plant and machinery or alternative energy equipment, and eligibility is not based on or tied to the merchandise that the manufacturer produces within these regions. See section 351.525(b)(3) of the Department's regulations.

As a sales tax deferral, both the SOG and SOM benefits are realized at the time of the sale of a final product. However, Pidilite was approved for these benefits based on the location of Pidilite's facilities in designated areas, not based on what Pidilite intended to produce in or sell from those facilities. The Department's analysis of whether benefits are tied to a particular product must necessarily focus on the basis for granting assistance, not the mechanism for delivering that assistance.

Both the SOG and SOM Sales Tax Incentive Schemes are aimed at encouraging companies to locate their operations in less developed areas of the states. There is no indication that either program aims to encourage the manufacture of particular products. Therefore, we find that the benefits under these programs are not tied to particular products as provided in section 351.525(b)(4) of the Department's regulations. As "untied" subsidies, it is inappropriate for the Department to isolate the SOG sales tax deferrals realized on sales of CVP-23 under the SOG program, as well as to disregard the SOG intercompany sales tax deferrals and the SOM sales tax deferrals on non-subject merchandise. Rather, these sales tax deferrals constitute domestic subsidies, and as such, their benefits are attributable to Pidilite's total sales, in accordance with section 351.525(b)(3) of the Department's regulations.

Comment 6: CENVAT Credits are Countervailable

Clariant argues that the GOI has not acted to the best of its ability to provide information on the use of the CENVAT program needed to determine whether a subsidy is specific as a matter of fact in accordance with section 771(5A)(D)(iii) of the Act. According to Clariant, the GOI appears to be claiming that a variety of industries use the program, although at verification, the GOI did not provide information on which specific industries used the program. Clariant notes that the GOI requires a manufacturer to submit a monthly return documenting its CENVAT credits which would presumably include information on the amounts claimed as well as the nature of the manufacturer's industry. According to Clariant, the GOI has this information in its possession and failed to cooperate to the best of its ability in providing it to the Department. Therefore, Clariant argues that the Department should make an adverse inference that this program is specific.

In addition, Clariant contends that the CENVAT program provides additional countervailable benefits to companies that export. Specifically, Clariant notes that Rule 5 of the CENVAT Credit Rules not only allows for exemptions of indirect taxes and duties upon export, but also allows for a cash refund which in effect, multiplies the benefit of the exemption. Clariant disagrees with the Department's preliminary finding on this issue which states that "the refunds available to exporters are identical to the credits available to non-exporters, and cannot exceed the amount of excise tax exporters pay on purchases." See Memorandum on Preliminary Analysis of the Central Value Added Tax (CENVAT) Program, dated October 8, 2004, at 4 (CENVAT Memo). Clariant argues that the provision of cash is qualitatively different from the provision of credit due to the unrestricted ability to use a cash refund in a variety of ways. Therefore, according to Clariant, an additional benefit is provided to exporters that is not available to non-exporters who can only take a credit against current or future tax liabilities. Clariant further argues that the verification report does not support the GOI's assertion that CENVAT credit is not given for any antidumping or countervailing duties paid.

Clariant contends that the CENVAT scheme provides a benefit in accordance with section 351.518(a)(4) of the Department's regulations. Clariant notes that the Indian law places the responsibility on the manufacturer claiming the credit, to establish that the taxes have been paid and the inputs have been consumed in production. Clariant states that it is unclear whether the monthly returns filed by the manufacturers and scrutinized by Central Excise Officers, are sufficient to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on those inputs. Clariant contends that while the monthly return lists the inputs received and their value, it does not appear to require a list of those inputs used by the manufacturer. Accordingly, Clariant notes that it is possible to claim credit for purchases of products that are not actually consumed in production.

Finally, Clariant argues that it is unclear from the record whether "selective auditing" by the Revenue Department is actually taking place, the frequency of such audits, and whether those audits actually confirm that the inputs have been consumed in production. Furthermore, the GOI did not provide the

Department with any documentation at verification to demonstrate that there are penalties on manufacturers who do not comply with the rules.

Respondents argue that the Department should find CENVAT credits that are tied to excise taxes paid on raw material inputs, and which offset CENVAT payments owed on the domestic sale of the finished product, are not countervailable. Respondents state the Department verified that the CENVAT is a central excise tax levied on all manufactured goods in India. See GOI Verification Report at 10.

In order to receive CENVAT credits, respondents note that an entity must be a manufacturer that pays excise duties on inputs, and is registered with the Central Excise Department. See GOI Verification Report at 10-11. According to respondents, the obligation is on the manufacturer to pay the taxes on its purchase of inputs before it can claim a credit. The credits can then be used against the amount of excise taxes that are collected and paid to the GOI upon the domestic sale of the final product. Id. Respondents state that if a company has paid more on CENVAT for purchased raw materials inputs than CENVAT collected on the domestic sale of manufactured goods, a CENVAT refund can be received from the GOI. Respondents cite to the GOI Verification Report at 9 which explains how the GOI ties the excise duties paid on inputs to the excise duties received on the sale of the final product through the RG 23 forms.

Respondents explain that in order for exporters to avoid paying CENVAT on their exported finished goods, an Application for the Removal of Excisable Goods for Export by Air/Sea/Post/Land (A.R.E.-1) must be filed. This form is duly certified by Indian Customs once it receives proper documentation from the exporter demonstrating that the export sale has been completed. See Pidilite Verification Report at 11. Respondents note that the Department examined each company's earned CENVAT credits and the amount of CENVAT owed to the GOI on the domestic sales of the finished product. See Pidilite Verification Report at 9-10; also Alpanil Verification Report at 11-12.

Finally, respondents argue that the earning of CENVAT credits does not constitute a countervailable benefit because the earning of CENVAT credits reflects the amount of excise taxes already paid. Furthermore, respondents state that these CENVAT credits and refunds offset the amount of CENVAT owed to the GOI. Therefore, respondents contend that no benefit is received since the CENVAT credits are tied to excise taxes paid on raw materials, and can only be used to offset the CENVAT owed on the domestic sale of manufactured merchandise.

The GOI argues that CENVAT credits are not specific and therefore, cannot be countervailed. The GOI agrees with the Department's statement in CENVAT Memo at 3 that the excise taxes paid by a manufacturer for the acquisition of inputs used in the production process are netted out of the excise duty that the manufacturer pays on the sale of the final product.

The GOI disagrees with Clariant's argument that CENVAT is a countervailable subsidy because it is specific to an enterprise or industry. According to the GOI, Rule 9 of the Central Excise

Rules requires that every manufacturer of excisable goods with a turnover of over 1 crore (Rs. 10,000,000) must be registered for payment of excise and thereby, is eligible to claim CENVAT credits. The GOI states that the record shows, and the Department verified, that CENVAT rules apply to every manufacturer in every industry. See GOI Verification Report at Exhibit 9. Therefore, the GOI contends that Clariant's argument is invalidated by the incontrovertible record evidence showing that CENVAT is used by all industries. Furthermore, the GOI maintains that it does not track industry-specific payments of excise taxes through the monthly returns as suggested by Clariant.

The GOI contends that Clariant is incorrect in suggesting that exporters receive double benefits via the cash refund of CENVAT credits. The GOI explains that, in accordance with Rule 5 of the CENVAT credit rules, CENVAT refunds can only be claimed if accumulated CENVAT credits cannot be used to pay excise duty incident on any final product cleared for home consumption. The GOI agrees with the Department's own explanation that it is not possible for an exporter to claim or receive CENVAT credits over and above that which a non-exporter receives on its domestic sales. See CENVAT Memo at 4.

The GOI disputes Clariant's claim that the GOI does not have a system in place to monitor excise taxes paid and credits received. First, the GOI notes that CENVAT credits can only be taken on the basis of an invoice presented by the manufacturer of inputs (supplier) to the manufacturer of the final product (manufacturer). According to the GOI, the law mandates that all excisable goods are removed on invoice. The GOI states that the supplier's invoice tracks the amount and value of inputs being used in the final manufactured product, and the burden is on the manufacturer taking the CENVAT credit to take all reasonable steps to ensure that the inputs from the supplier are goods on which the appropriate duty of excise has been paid. In addition, steps are also taken to identify the name and address of the supplier who is issuing the necessary documents, which are evidence of the duty paid. In addition, as was noted in the Department's verification reports, the RG 23 Register on manufactured goods is used to track the corresponding CENVAT credits with the excise duty paid on inputs. See Pidilite Verification Report at 9; also Alpanil Verification Report at 10 -11.

In explaining how the GOI monitors the CENVAT credits, the GOI stated that, depending on the amount of excise duty a manufacturer pays annually, all manufacturers are audited either annually or biannually. Furthermore, the GOI noted that there are severe penalties for non-compliance under Rule 25 of the CENVAT credit rules, which the Department reviewed at verification.

Finally, the GOI states that Clariant is incorrect in its understanding of the Indian "CVD" duty. According to the GOI, the additional duty under section 3 of the Indian Customs Tariff Act is commonly referred to as "CVD." This duty is applied to all imported products at the same rate the Central Excise Tax is applied to domestic producers, and is distinct from the countervailing and antidumping duties defined under sections 9 and 9A of the Indian Customs Tariff Act. This "CVD"

does not offset subsidies on imported products, according to the GOI, and only those duties specified under Rule 3 are eligible for CENVAT credit.

Department's Position:

As reported by the GOI, and verified by the Department, every manufacturer of excisable goods is eligible to register under the CENVAT Scheme, and all manufacturers with turnover greater than 1 crore (about $US 225,000) must register with the excise tax authorities and must comply with the CENVAT requirements, as specified in Rule 9 of the Central Excise Rules. See GOI Verification Report at 11. Therefore, any company can claim CENVAT credits. There is no record evidence in this investigation to indicate than any company or industry is not eligible to receive CENVAT credits, other than the circumstance noted at verification where a manufacturer is exempt from paying excise taxes on inputs but cannot claim CENVAT credits arising from the sale of the finished product. Id. This exemption was not used by the companies under investigation. We found no evidence at verification that would call into question that every manufacturer with turnover greater than 1 crore must register. In this case, we do not find the turnover level to be an indicator of specificity because this turnover requirement is low enough that many, if not most companies, in all manufacturing industries in India, are required to register. Moreover, all companies with turnover less than 1 crore can register to receive CENVAT credits. Once registered, a manufacturer regardless of size can automatically claim these credits. We also saw no evidence at verification that, in the administration of this program, the GOI exercised its discretion to limit this program to any enterprise or industry, or group thereof. Therefore, in the operation of this program, we do not find any evidence that it is being specifically provided to an enterprise or industry, or group thereof, in accordance with section 771(5A)(D)(iii) of the Act. Accordingly, the Department does find that the GOI cooperated, and does not find this program to be specific as a domestic subsidy under section 771(5A)(D) of the Act.

The Department also established at verification that the "CVD" duties, which when paid upon import can be claimed as a credit against CENVAT on sales of final products, function as excise duties on imports and do not constitute and are not associated with antidumping or countervailing duties. Specifically, the Department examined an invoice for imported carbazole for which Alpanil paid a 16 percent "CVD" duty, and we confirmed it to be the excise tax applicable to imports. See Alpanil Verification Report at 11.

Clariant claims that the CENVAT program provides additional countervailable benefits to exporters in the form of cash refunds. We disagree. The Department noted in CENVAT Memo that a benefit exists, in accordance with section 351.517(a) of the Department's regulations, only to the extent that the amount remitted exceeds the amount levied with respect to the production and distribution of like products sold for domestic consumption. In the instant case, the CENVAT program provides both exporters and non-exporters the same amount of remission even though the form of remission is different, allowing for cash, credit, or a combination of both. Thus, the remission provided to exporters does not exceed the amount of excise taxes levied on inputs used in the production and distribution of

subject merchandise sold for domestic consumption. See GOI Verification Report at 11; also Alpanil Verification Report at 12.

We found no evidence at verification that the cash refunds received by exporters exceed the amount of CENVAT credits obtained by non-exporters for the excise taxes levied on input purchases. Id. at 11; see also Alpanil Verification Report at 11-12. Since the standard for determining whether there is a countervailable benefit under section 351.517(a) is whether the amount remitted exceeds the amount levied, the Department need not reach the requirements set forth under section 351.518(a)(4) of the Department's regulations, as argued by Clariant, with respect to which inputs are consumed in production of the exported products and in what amounts.

Finally, the Department has verified and confirmed that the GOI has a reasonable and effective system in place to monitor claims for CENVAT credits. The GOI can verify that excise taxes are paid on inputs through the manufacturer's use of the RG 23 Register which cross-references the CENVAT credits claimed with the excise duties paid on inputs. Further, the GOI conducts selective auditing of supplier invoices to confirm the excise duties paid by the manufacturer, and the amount and value of the inputs used in the production of the final product. See GOI Verification Report at 11; also Alpanil Verification Report at 11-12; also Pidilite Verification Report at 9.

Comment 7: The Department Should Use Adverse Facts Available to Calculate Subsidy Rates for AMI under Additional Programs

Clariant argues that the Department should continue to use adverse facts available rates for the SOG Sales Tax Incentive Scheme and the DEPS program as a result of AMI's nonparticipation in this investigation. In addition, Clariant argues that the Department should now determine to apply adverse facts available subsidy rates for AMI under the following additional programs: the Pre-Shipment Export Financing Program; the Advance License Scheme; and the Export Promotion Capital Goods Scheme. For these programs, the Department based its preliminarily determination of AMI's non-use on the GOI's claim that AMI had not used these programs.

Clariant notes that at verification, the GOI was unable to provide any evidence to demonstrate AMI's non-use of these programs. Specifically, the Department found at verification that the GOI did not maintain records on the Pre-Shipment Export Financing program and was unable to provide information on AMI's usage of either Advance Licenses or EPCGS. Furthermore, Clariant argues that even though the GOI claimed that the use of the DEPS program prohibits the use of the Advance License Scheme, there is no indication that this claim has been verified.

The GOI argues that, consistent with our Preliminary Determination, the Department should not calculate adverse facts available rates for AMI under the SOG Sales Tax Incentive Scheme as AMI is not located in any of the eligible areas of the SOG and did not use this program. In addition, the GOI

contends that an adverse facts available rate should not be used for AMI under the Advance License Scheme, since a company using the DEPS, is prohibited from using the Advance License Scheme.

Department's Position:

We agree with Clariant that the GOI has not established AMI's non-use of the Pre-Shipment Export Financing Program, DEPS, and the EPCGS. Since the Department could not verify information provided by the GOI regarding AMI's non-use of these programs, the Department is applying facts available pursuant to section 776(a)(2)(D), and is making adverse inferences in accordance with section 776(b) of the Act, since AMI and the GOI have not cooperated to the best of their abilities to address and establish AMI's non-use of the Pre-Shipment Export Financing Program, DEPS, and EPCGS programs after numerous requests in questionnaires and at verification.

With regard to the Advance License Scheme, Clariant argued that the Department has not verified the GOI claim that the use of the DEPS program prohibits the use of the Advance License Scheme. We disagree with Clariant. To the contrary, the Department did verify Alpanil's and Pidilite's use of the DEPS program and found that a company could not make a dual claim on the same export sale under both the DEPS and Advance License program. Specifically, the Department examined how both the shipping bill and customs forms filed by an exporter require that the exporter specify whether it is claiming post-export credits under the DEPS, or meeting an export obligation due on pre-shipment duty exemptions under an Advance License. The documents themselves prohibit claims under both programs. See Pidilite Verification Report at 8.

While it does appear, as in Pidilite's case, that a company could use both the DEPS and Advance License programs for different exported products, the Department finds that use of the DEPS in conjunction with the Advance License Scheme (or its related programs involving Special Imprest Licenses and Duty Free Replenishment Certificates) for a single exported product would provide redundant credits or exemptions on import duties already credited under the DEPS and tied to the same exported product. Accordingly, we will apply AFA to AMI's DEPS program rate in lieu of applying AFA to determine rates for the Advance License Scheme and its related programs noted above.

Finally, the Department confirmed AMI's non-use of Section 80HHC, MDA, and the SOG Sales Tax Incentive Scheme at the GOI verification. See GOI Verification Report at 3, 7, and 9. Therefore, we continue to find these programs not used by AMI during the POI.

Comment 8: The Estimated Countervailing Duty Cash Deposit Rates Should be Adjusted to Account for Program-Wide Changes in the DEPS and the Section 80HHC Programs

Respondents contend that under section 351.526(a)(1) of the Department's regulations, program-wide changes may be taken into consideration when establishing the estimated countervailing duty cash

deposit rate if such a program-wide change occurred subsequent to the POI, but prior to the preliminary determination. Respondents cite to PET Film from India in arguing that the Department should adjust the estimated countervailing duty cash deposit rates to take into account program-wide changes in the DEPS and the Section 80HHC programs, which were effective prior to the date of the preliminary determination.

Respondents state that the Department verified that during the POI, the DEPS rate was equal to fifteen percent of the FOB export value, minus a 0.5 percent application fee. See Pidilite Verification Report at 4-5; Alpanil Verification Report at 5-6; and, GOI Verification Report at 2. Respondents also note that subsequent to the POI, and prior to the date of the preliminary determination, the GOI effectuated program-wide changes reducing the DEPS rate. Specifically, verification established that from April 1, 2003 through February 8, 2004, the DEPS rate was thirteen percent; and, effective February 9, 2004, the DEPS rate was reduced to nine percent, the rate currently in effect.

With respect to the Section 80HHC program, respondents note that during the POI, exporters were allowed to deduct 70 percent of export profits from taxable income. According to respondents, the Income Tax Act of 1961, as amended by the 2001 Finance Act, sets forth the declining percentage of export profits that may be deducted under section 80HHC, such that exporters may currently deduct thirty percent of export profits from taxable income.

Respondents contend that the Department should take into account the program-wide changes and adjust the cash deposit rates accordingly for both the DEPS and the Section 80HHC programs for the final determination. Specifically, respondents urge the Department to calculate the estimated countervailing duty cash deposit rate by multiplying the *ad valorem* rate for the DEPS program by nine fifteenths in order to reflect the decrease from fifteen percent to nine percent in the DEPS rate. Likewise, the Department should calculate the estimated CVD cash deposit rate for Section 80HHC by multiplying each company's *ad valorem* rate by thirty seventieths to account for the reduction in the income tax deduction allowed for export profits from seventy to thirty percent.

The GOI agrees with respondents that the Department should take into account the program-wide changes in the DEPS and Section 80HHC. The GOI contends that these changes have occurred between the POI and the date of the Department's preliminary determination and therefore meet the requirements provided for in section 351.526(a)(1) of the Department's regulations.

Petitioners argue that the Department should not adjust the estimated countervailing duty cash deposit rates as a result of alleged program-wide changes in the DEPS and Section 80HHC programs. According to petitioners, section 351.526 of the Department's regulations provides the Department discretion to make an adjustment if justified, but not a strict requirement to do

so. See Issues and Decision Memorandum: Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea at Comment 10.

In the case of the DEPS, petitioners contend that the changes noted by respondents are not permanent and are subject to retroactive changes by the GOI. Petitioners note that during the POI, the GOI retroactively increased the DEPS rate from twelve percent to fifteen percent. See Pidilite Verification Report at 4; also Alpanil Verification Report at 6. According to petitioners, verification confirmed that the GOI can increase the DEPS rate at will regardless of the alleged "official" published rates for a particular time period, and such an increase can be recaptured retroactively by the participating companies. For this reason, petitioners argue that respondents' reliance on PET Film from India is misplaced, since the Department was not aware at the time of the retroactive application of DEPS rate increases.

Petitioners contend that documents examined at verification provide evidence of a change in the DEPS rates, and demonstrate that the published schedule of DEPS rates is not permanently established. Furthermore, petitioners argue that verification showed that the GOI can increase the DEPS rate at any time, and make the increase retroactive by allowing companies to claim increased amounts. Accordingly, petitioners state that the adjustments provided for under section 351.526 are for confirmed, permanent program-wide changes, not for "moving targets." Since the verified information shows that no official program-wide change is reliable, the Department should not make any adjustments to the cash deposit rate for the DEPS program.

In the alternative, petitioners contend that the only possible "official act" that constitutes the requisite government decree to satisfy section 351.526(b)(2) of the Department's regulations is the GOI notification in Exhibit 10 of Alpanil's Verification Report, which documents the reduction of the DEPS rate to thirteen percent. Accordingly, petitioners argue that the only adjustment to the cash deposit rate that could be warranted is thirteen percent.

With respect to Section 80HHC, petitioners argue that a reduction in the Section 80HHC percentage is not necessarily a reduction in the actual amount of countervailable benefit a company might receive in the future under this program. Petitioners contend that the amount of the deduction is tied to a company's export profits. Therefore, the benefit can only be calculated by knowing both the Section 80HHC percentage and a company's total export profits during the same year. Petitioners explain that if a company's export profits are greater in subsequent years, and greater in proportion to overall income, the reduction in the Section 80HHC percentage rate may not mean a reduction in the amount of countervailable benefit received. Therefore, petitioners argue, the Department has no reliable means of measuring the effect on the countervailable subsidy rate within the meaning of section 351.526(a)(2) because the Department

cannot determine the amount of future export profits to which the change in the Section 80HHC percentage would be applied. As such, petitioners contend that the Department should exercise its discretion under section 351.526(a) and not make any adjustment to the cash deposit rate for the Section 80HHC program.

Department's Position:

With respect to the Section 80HHC program, we find that the effect of the change in the rate of Section 80HHC deductions on the countervailable subsidy rate is not measurable, because the basis for receipt of the Section 80HHC benefit is the realization of a company's export profits which the Department cannot estimate. Thus, the requirements for a program-wide change are not met pursuant to section 351.526(a)(2) of the Department's regulations. We reached the same conclusion in the Notice of Final Affirmative Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India (PET Film), 69 FR 51063
(August 17, 2004) and accompanying Issues and Decision Memorandum at Comment 6. Accordingly, we have not adjusted the countervailing duty cash deposit rate calculated for the Section 80HHC program.

For the changes noted above in the DEPS rate prior to the publication of our preliminary determination, we found at verification that the "official" published DEPS rate for a particular time period can be, and was, retroactively changed after its publication. See Alpanil Verification Report at 6; also Pidilite Verification Report at 4. The Department also verified that the DEPS rate is tied to customs duties on imported inputs. See GOI Verification Report at 2. Specifically, the retroactive change in the DEPS rate during the POI was associated with an increase in the special additional duty on imported inputs for CVP-23. See Pidilite Verification Report at 4.

In PET Film from India and accompanying Issues and Decision Memo at Comment 7, the Department found that the change in the DEPS rate constituted a program-wide change since it was effectuated by an official act. However, no information was on the record of that investigation to indicate that the GOI could retroactively change the DEPS rate and allow companies to claim these additional benefits for prior periods. Accordingly, the Department does not find that published DEPS rates in official notifications are reliable since the GOI can, at any time, adjust these rates to account for changes in the custom duties on imported inputs, as illustrated during the POI, and that these adjustments can be made retroactive. Thus, the nine percent DEPS rate currently in effect can be increased at anytime, retroactive to any date. Thus, the Department finds that the requirements of section 351.526(a)(2) of the Department's regulations have not been met and therefore, we will not make a downward adjustment to the countervailing duty cash deposit rate for the DEPS.

VI. **Recommendation**

Based on the results of verification and our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final determination in the Federal Register.

Agree_____ Disagree_____

_____
James J. Jochum
Assistant Secretary
for Import Administration

_____
Date