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December 5, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum in the Final Results of the Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India

I. Summary

We have analyzed the case and rebuttal briefs submitted by interested parties in response to the preliminary results of this review. See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Countervailing Duty Administrative Review, 73 FR 45956 (August 7, 2008) (Preliminary Results). The "Subsidies Valuation Information" and the "Analysis of Programs" sections below set forth our determinations with respect to the programs under review as well as the methodologies applied in analyzing these programs. These sections are followed by the "Analysis of Comments" section, which contains the Department of Commerce's (the Department) response to the issues raised in the briefs. We recommend that you approve the positions described in this memorandum.

Comments were submitted by Dupont Teijin Films, Mitsubishi Polyester Film of America, and Toray Plastics (America), Inc. (collectively, Petitioners), as well as respondent, MTZ Polyfilms, Ltd. (MTZ). Below is a complete list of issues raised by interested parties in their case and rebuttal briefs:

Pre-Shipment and Post-Shipment Export Financing Program
Comment 1: MTZ's Participation in the Pre-Shipment and Post-Shipment Export Financing Program
Benefit Calculation Under the Export Promotion Capital Goods Scheme (EPCGS)
Comment 2: Education Cess
Comment 3: Special Additional Duty
Comment 4: Unpaid Import Duty Liabilities (Benefit Earned and Denominator)

II. Subsidies Valuation Information

Allocation Period

Under 19 CFR 351.524(d)(2)(i), we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) prescribed by the Internal Revenue Service (IRS) for renewable physical assets of the industry under consideration (as listed in the IRS's 1977 Class Life Asset Depreciation Range System, and as updated by the Department of the Treasury). This presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. Specifically, the party must establish that the difference between the AUL from the tables and the company-specific AUL or country-wide AUL for the industry under investigation is significant, pursuant to 19 CFR 351.524(d)(2)(i) and (ii). For assets used to manufacture plastic film, such as PET film, the IRS tables prescribe an AUL of 9.5 years.[1] In the previous segment of this proceeding, the Department determined that MTZ had rebutted the presumption and applied a company-specific AUL of 20 years. See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 7708 (February 11, 2008), and accompanying Issues and Decision Memorandum, at "Allocation Period" (PET Film Final Results of 2005 Review). Therefore, the Department will continue to use an AUL of 20 years for MTZ in allocating non-recurring subsidies.

Benchmark Interest Rates and Discount Rates

For programs requiring the application of a benchmark interest rate or discount rate, 19 CFR 351.505(a)(1) states a preference for using an interest rate that the company could have obtained on a comparable commercial loan in the commercial market. Also, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient "could actually obtain on the market" the Department will normally rely on actual

[1] For purposes of calculating the benefit from countervailable subsidy programs, the 9.5 year AUL is rounded up to 10 years.

short-term and long-term loans obtained by the firm. However, when there are no comparable commercial loans, the Department 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 the Department will not consider a loan provided by a government-owned special purpose bank to be a commercial loan for purposes of selecting a loan to compare with a government provided loan. The Department has previously determined that the Industrial Development Bank of India (IDBI) is a government-owned special purpose bank. See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 71 FR 7534 (February 13, 2006), and accompanying Issues and Decision Memorandum, at Comment 3. Further, in the PET Film Final Results of 2005 Review, at "Benchmark Interest Rates and Discount Rates," the Department determined that the Industrial Finance Corporation of India (IFCI) and the Export-Import Bank of India (EXIM) are government-owned special purpose banks. As such, the Department does not use loans from the IDBI, IFCI, or EXIM, if reported by respondents, as a basis for a commercial loan benchmark.

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a government-provided, short-term loan program, the Department normally uses the company-specific annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. For this review, the Department needed rupee-denominated and U.S. dollar-denominated short-term loan benchmark rates to determine benefits received under the Pre-Shipment Export Financing and Post-Shipment Export Financing programs. For further information regarding this program, see the "Pre-Shipment and Post-Shipment Export Financing Program" section below.

We requested from MTZ information on rupee-denominated and U.S. dollar-denominated short-term commercial loans outstanding during the period of review (POR) on three separate occasions: in the original questionnaire, the first supplemental questionnaire, and in the second supplemental questionnaire. MTZ reported that it did not receive rupee-denominated and U.S. dollar-denominated short-term commercial loans. MTZ further stated that it was unable to provide loan information in the form requested by the Department. Specifically, MTZ stated that it does not maintain the information in a form permitting extraction of the data as requested by the Department. In response to the Department's fourth supplemental questionnaire, MTZ provided the Department with information on its short-term rupee-denominated loans during the POR. See MTZ's Fourth Supplemental Questionnaire Response, at S4-1 and Exhibits S3-1(a) (July 22, 2008). However, in the Preliminary Results, the Department preliminarily found MTZ's information to be incomplete. In its fifth supplemental response, received after the Preliminary Results, MTZ still was unable to reconcile its short-term benchmark loans reported in Exhibit S3-1(a) to its 2006/2007 financial statements. See MTZ's Fifth Supplemental Questionnaire Response, at Exhibit S4-3 (September 9, 2008). For further discussion, see the "Pre-Shipment and Post-Shipment Export Financing Program" section below. Because MTZ provided the Department with incomplete information regarding its short-term rupee-denominated loans for purposes of establishing a company-specific benchmark loan interest rate, and was unable to provide us with the information requested to allow for the calculation of long-term rupee and U.S. dollar denominated benchmark rates, we are using a national average dollar-denominated short-term and long-term interest rate, as reported in the International Monetary Fund's publication "International Financial Statistics" (IMF Statistics), in accordance with 19 CFR 351.505(a)(3)(ii). Further, for those programs requiring a rupee-denominated discount rate or the application of a rupee-denominated long-term benchmark rate, we also used national average interest rates from the IMF Statistics, pursuant to 19 CFR 351.505(a)(3)(ii). In accordance with 19 CFR 351.524(d)(3), the Department also required discount rates to determine benefits received under the EPCGS program, which involve long-term loans and grants allocated over time. As stated above, MTZ was unable to report comparable commercial long-term rupee-denominated loans for all required years.[2] Therefore, we relied on the IMF Statistics as the appropriate discount rates in the years for which MTZ was unable to report comparable commercial long-term rupee-denominated loans.

III. Analysis of Programs

A. Programs Determined to be Countervailable

1. Pre- and Post-Shipment Program

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or "packing credits," to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes (i.e., purchasing raw materials, warehousing, packing, transportation, etc.) for merchandise destined for exportation. Companies may also establish pre-shipment credit lines upon which they can draw as needed. Limits on credit lines are established by commercial banks and are based on a company's creditworthiness and past export performance. Credit lines may be denominated either in Indian rupees or in a foreign currency. Commercial banks extending export credit to Indian companies must, by law, charge interest at rates determined by the RBI.

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[2] MTZ provided the Department with limited information regarding its long-term loans for purposes of establishing a company-specific benchmark. In its original questionnaire response, MTZ stated that it did not receive any packing credits in 2006 and, thus, did not respond to the benchmark questions. In the same response MTZ did not address the Benchmark Appendix for long-term loans with respect to programs such as EPCGS. See MTZ's Original Questionnaire Response, at 12 (December 5, 2007). In its first supplemental response, MTZ provided bank ledger accounts including postings dating back to 1999. See MTZ's First Supplemental Questionnaire Response, at 4-5, and Exhibit S1-4(a) (May 7, 2008). MTZ further provided loan agreements for three banks, but MTZ did not clearly identify which supporting information pertained to its short-term loan and long-term loans. In its second supplemental questionnaire, the Department requested that MTZ fill out the prepared spreadsheet to allow, among other information, for the calculation of benchmarks. MTZ, in its second supplemental response, stated that it was unable to extract the loan data in the form requested by the Department, as the information is not maintained, if at all, in that form. See MTZ's Second Supplemental Questionnaire Response, at S2-1-2, (June 23, 2008).

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to the lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of the proceeds from the sale to the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize proceeds from their export sales within 180 days of shipment. Post-shipment financing is, therefore, a working capital program used to finance export receivables. In general, post-shipment loans are granted for a period of not more than 180 days.

In the original investigation, the Department determined that the pre-shipment and post-shipment export financing programs conferred countervailable subsidies on the subject merchandise because: (1) the provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Tariff Act of 1930, as amended (Act) as a direct transfer of funds in the form of loans; (2) the provision of the export financing confers benefits on the respondents under section 771(5)(E)(ii) of the Act inasmuch as the interest rates provided under these programs are lower than commercially available interest rates; and (3) these programs are specific under section 771(5A)(B) of the Act because they are contingent upon export performance. See 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 Issues and Decision Memorandum (PET Film Final Determination), at "Pre-Shipment and Post-Shipment Financing." There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. Therefore, for these final results, we continue to find this program countervailable.

In this administrative review, MTZ reported in its original response that, in 2005, it obtained packing credits based on its ability to present its export orders to its banks and to receive, as a loan, a portion of the funds to be paid by the customer in advance. As these payments are to be made in foreign currency and against firm sales, MTZ states, it pays a lower rate of interest on those foreign currency short-term loans than for other short term borrowing. According to MTZ, these short-term loans were not given under the Pre- and Post-Shipment Programs because MTZ did not borrow from the Reserve Bank of India. MTZ further stated that it did not receive any packing credits in 2006, and therefore, provided no other information with respect to this program. See MTZ's Original Questionnaire Response, at 12.

In its first supplemental response, MTZ reiterated these points. Furthermore, MTZ maintained that the Department had defined the term "packing credit" as credit provided by the RBI. In addition, contrary to its claim that it did not receive any packing credits, MTZ included supporting documentation for one such pre-shipment credit obtained during the POR. See MTZ's First Supplemental Questionnaire Response, at 5-6, and Exhibit S1-5.

In response to the Department's second supplemental questionnaire, requesting that MTZ provide information regarding all short-term loans outstanding during the POR, MTZ referred to Exhibit S2-1. However, this exhibit was neither included in the paper copy of the response nor in the electronic submission of the spreadsheets. See MTZ's Second Supplemental Questionnaire Response, at Exhibit S2-1 (June 23, 2008).

The Government of India (GOI), in its first supplemental response, confirmed that, under the pre- and post-shipment export financing program, commercial banks extend working capital loans to exporters to purchase raw materials and other goods, and that those exporters:

> generally qualify for export financing under the program by presenting to a bank a confirmed export order or letter of credit issued by a foreign importer. The bank then establishes pre-shipment credit limits upon which the exporter may draw loans as needed.

See GOI's First Supplemental Questionnaire Response, at 13-14 (March 28, 2008).

The GOI further reported that the RBI sets a ceiling on the interest rates banks may charge to borrowers under the program. Within this ceiling rate, banks are free to fix the interest rates for exporters on the basis of their actual cost of funds, operating expenses, etc. Also, in the same response, the GOI states that the "RBI has not prescribed any application process or application form for Export Credit program. Commercial banks directly administer the program in accordance with their own procedures." Id. at 15.

In the Preliminary Results the Department determined that MTZ's description of the process and conditions for obtaining these "packing credits" for export is consistent with the GOI's own description of its pre-shipment and post-shipment program, and the Department's description above. The Department has not, in this administrative review or any prior segment under this order defined pre-shipment and post-shipment loans under this program as short-term loans obtained by a respondent from the RBI. On the contrary, the Department specifically stated that the "RBI, through commercial banks, provides short-term pre-shipment financing, or packing credits, to exporters. . . . Commercial banks extending export credit to Indian companies must, by law, charge interest at rates determined by the RBI." See PET Film Final Results of 2005 Review, at "Pre-and Post-Shipment Program" (emphasis added).

Further, on July 11, 2008, prior to the Preliminary Results, the Department issued a fourth supplemental questionnaire to provide MTZ with an additional opportunity to submit the information that it claimed to have provided in MTZ's Second Supplemental Questionnaire Response. In its response, MTZ stated that the missing Exhibit S2-1 from MTZ's Second Supplemental Questionnaire Response related to the pre- and post-shipment loans. Instead of providing a copy of the missing Exhibit S2-1, MTZ provided two spreadsheets in response to the Department's renewed request to report all short-term loans outstanding during the POR: "Short-Term Interest Bench Mark" and "Pre- and Post-Shipment Financing." The written response to the Department's request did not provide any descriptions or explanation of the loan data MTZ reported in the spreadsheets. See MTZ's Fourth Supplemental Questionnaire Response, at S4-1 and Exhibits S3-1(a) and S3-1(A)(ii) (July 22, 2008). Furthermore, upon review of MTZ's new information, the Department was unable to reconcile the information provided by MTZ in this response with the information in MTZ's First Supplemental Questionnaire Response, at Exhibit S1-5 (May 7, 2008). Specifically, the short-term loan information submitted in Exhibit S1-5 of MTZ's First Supplemental Questionnaire Response was neither reflected in the spreadsheet termed "Short-Term Interest Bench Mark" {sic} nor in the spreadsheet termed "Pre- and Post-Shipment Financing." See MTZ's Fourth Supplemental Questionnaire Response, at Exhibit S3-1(a) and S3-1(a)(ii). Based on this analysis, in the Preliminary Results, the Department determined that, despite repeated requests for complete information, the short-term loan information provided by MTZ remained incomplete, and was thus unreliable and unuseable.

On August 15, 2008, the Department issued a fifth supplemental questionnaire, asking MTZ once more to report all short-term loans outstanding during the POR in the format requested by the Department, and to reconcile these loans to MTZ's 2005-2006 and 2006-2007 financial statements. Instead, MTZ provided a reconciliation of type of loan totals by bank to a listing of schedule totals that form part of MTZ's balance sheet. See MTZ's Fifth Supplemental Questionnaire Response, at 1-2, and Exhibits S4-1 and S4-3 (September 9, 2008). In addition, in the same supplemental questionnaire the Department requested that MTZ, for the loan identified in Exhibit S1-5 of MTZ's First Supplemental Questionnaire Response, "{p}rovide all loan information and documentation, and ledger pages (MTZ's bank ledger pages, receivables, receipt of payment for the purchase order, etc.), and tie those to MTZ's financial statements." See MTZ's First Supplemental Questionnaire Response, at 5-6, and Exhibit S1-5. However, MTZ provided the Department with customer specific ledger vouchers for various bank transactions with various banks, which were not reconciled with Exhibits S4-1 and S4-3. See MTZ's Fifth Supplemental Questionnaire Response, at Exhibits S4-1, S4-2, and S4-3.[3] Furthermore, in its response, MTZ did not provide the complete loan information for the loan reported in Exhibit S1-5 of MTZ's First Supplemental Questionnaire Response, nor did MTZ reconcile that loan to a short-term loan listing in the format as requested by the Department in its fifth supplemental questionnaire. In addition, in the analysis of the customer specific ledger voucher for the customer identified in Exhibit S1-5, the Department was still unable to reconcile the loan information from Exhibit S1-5 to that specific customer's ledger page in Exhibit S4-2.

[3] With respect to Exhibit S4-2 of MTZ's Fifth Supplemental Questionnaire Response, see "Memorandum To File From Elfi Blum: MTZ Polyfilms, Ltd.'s (MTZ) Request Not to Reject MTZ's Late Filing of Exhibit S4-2 of the Fifth Supplemental Response, Received September 9, 2008; and MTZ's Request of September 25, 2008, to Reject Petitioners' Rebuttal Brief" (October 3, 2008).

For these final results, the Department determines that MTZ obtained pre-shipment and post-shipment export financing loans under the GOI's Pre-Shipment and Post-Shipment Export Financing program. As explained above, the application process and requirements described by MTZ to obtain short-term loans from commercial banks for pre-shipment and post-shipment export financing (see MTZ's First Supplemental Questionnaire Response, at 5-6), are consistent with the description of the program provided by the GOI in this and previous segments of this proceeding (see GOI's First Supplemental Response, at 13-15). See also PET Film Final Results of 2005 Review, at "Pre-and Post Shipment Program." Further, as discussed above, the Department repeatedly requested that MTZ provide all short-term loans outstanding during the POR and even after the Preliminary Results, MTZ continued in its failure to provide the Department with reliable and useable information regarding its short-term export financing loans. As a result, the Department does not have the information necessary to calculate a rate for MTZ based on its own information under the pre-shipment and post-shipment program for these final results. Therefore the Department must rely on facts available as detailed below.

Application of Facts Available

Section 776 of the Act, governs the use of facts available and adverse facts available (AFA). Section 776(a) provides that if an interested party or any other person: (1) withholds information that has been requested by the Department; (2) fails to provide such information by deadlines or in the form and manner requested; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching its determination. The statute requires that certain conditions be met before the Department may resort to facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or to explain the deficiency.

If the party fails to remedy the deficiency within the applicable timelines, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) of the Act if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

For these final results, we continue to find that the application of facts available is warranted with respect to MTZ for the pre-shipment and post-shipment export financing program. As noted above, we asked MTZ on three occasions before the Preliminary Results to provide the Department with its short-term loan information, and another time after the Preliminary Results. MTZ first failed to provide the requested loan information because it did not believe it participated in the program (i.e., it did not obtain loans from the RBI), and because it did not receive any packing credits in 2006. See MTZ's Original Questionnaire Response, at 12. However, in its original questionnaire, the Department explained that "{t}he Reserve Bank of India (RBI), through commercial banks, provides pre-shipment financing or 'packing credits,' to exporters" (emphasis added). The Department, from the onset of this administrative review, clearly identified the pre-shipment and post-shipment export financing loans under this program as loans obtained from commercial banks, and not through the RBI. This language is consistent with the language used to describe the program in prior segments of this proceeding.

In its first supplemental response, MTZ again failed to supply any loan data and reiterated the application process it had described in the original response, and that it believed that the loans it obtained are not part of the pre- and post shipment export financing program identified by the Department, as it does not borrow from the RBI. In the same response, MTZ asserted that the Department had defined "packing" credits "as being those credits which were expressly provided by the Reserve Bank of India." See MTZ's First Supplemental Questionnaire Response, at 5-6. Exhibit S1-5 of the same response provided sample documentation for export financing obtained by MTZ during the POR. This exhibit served as sample documentation supporting the application process for export financing, as described in MTZ's response, and was issued during the POR. Not only did MTZ's description of the application process coincide with the Department's and the GOI's description of the program, but it also evidenced that MTZ obtained export financing through this GOI program during the POR. See Memorandum To File from Elfi Blum: Preliminary Results of the 2006 Countervailing Duty Administrative Review of the Order on Polyethylene Terephthalate Film, Sheet and Strip (PET film) from India; Calculations for the Preliminary Results: MTZ Polyfilms, Ltd. (MTZ), at "Pre-Shipment and Post-Shipment Export Financing" (July 30, 2008).

As discussed above, the Department asked MTZ to provide the requested pre-shipment and post-shipment export financing loan information on four separate occasions prior to the Preliminary Results, and another time after the Preliminary Results yet, the information on the record remains incomplete. Not only did MTZ fail to reconcile its individual short-term loans reported as benchmarks and those obtained for the pre-shipment and post-shipment export financing (see MTZ's Fourth Supplemental Questionnaire Response, at Exhibits S3-1(a) and S3-1(a)(ii)), but it also failed to reconcile the short-term loan reported in Exhibit S1-5. See MTZ's First Supplemental Questionnaire Response, at Exhibit S1-5. Thus, without this reconciliation, the extent to which the reported data is incomplete remains unclear. Because MTZ failed to provide all the information requested by the Department, and MTZ's failure to provide this loan information within the established deadlines impeded our review, we find that the application of facts otherwise available is warranted under sections 776(a)(2)(A), (B), and (C) of the Act.

Application of Facts Available With an Adverse Inference

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See also, Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1, 870 (1994) (SAA) at 869. The statute provides, in addition, that in selecting from among facts available the Department may, subject to the corroboration requirements of section 776(c) of the Act, rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 of the Act (or section 753 for countervailing duty (CVD) cases), or any other information on the record. See Section 776(b) of the Act.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior experience, selecting the highest prior rate "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." See Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (emphasis omitted).

Because MTZ failed to cooperate to the best of its ability to comply with the Department's requests for the loan information, the Department has determined that an adverse inference, in accordance with section 776(b) of the Act, is warranted. Accordingly, the Department is making an adverse inference that MTZ benefitted from this program during the POR pursuant to section 782(e)(3) of the Act.

The Department normally determines the benefit conferred by the pre-shipment and post-shipment loans as the difference between the amount of interest the company paid on the loan and the amount of interest it would have paid on a comparable commercial loan during the POR. However, because MTZ failed to provide us with complete loan information, this calculation is not possible. Therefore, as AFA, for purposes of these final results, the Department selected the highest calculated rate for the same program in this proceeding, 2.90 percent ad valorem. See PET Film Final Determination, at "Pre-Shipment and Post-Shipment Export Financing."

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. See SAA, at 869.

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. The rate being used as AFA was calculated in the final determination of the investigation in this proceeding. No information has been presented that calls into question the reliability of this calculated rate. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it. See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996). The rate being used is relevant because it was calculated for the same program (Pre-Shipment and Post-Shipment Export Financing) and in the same proceeding, PET film from India.

On this basis, we preliminarily determine the countervailable subsidy for the pre-shipment and post-export shipment financing to be 2.9 percent ad valorem for MTZ.

2. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS 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 pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to four to five times the value of the capital goods within a period of eight years. Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a 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, plus penalty interest.

In the investigation, the Department determined that import duty reductions provided under the EPCGS are a countervailable export subsidy because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue forgone for not collecting import duties; (2) respondents received benefits under section 771(5)(E) of the Act in two ways by participating in this program; and (3) the program is contingent upon export performance, and is therefore specific under section 771(5A)(B) of the Act. Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 72 FR 6530 (February 12, 2007), and accompanying Issues and Decision Memorandum, (PET Film Final Results of 2004 Review), at "Export Promotion Capital Goods Scheme." There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these final results, we continue to find this program countervailable.

The first benefit is the amount of unpaid import duties that would have to be paid to the GOI if accompanying export obligations are not met. The repayment of this liability is contingent on subsequent events and, in such instances, it is the Department's practice to treat any balance on an unpaid liability as an interest-free loan. Id. The second benefit is the waiver of duty on imports of capital equipment covered by those EPCGS licenses for which the export requirement has already been met. For those licenses for which companies demonstrate that they have completed their export obligations, 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.

Import duty exemptions under this program are provided for the purchase of capital equipment. The preamble to our regulations explains 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 . . ." See Countervailing Duties; Final Rule, 63 FR 65348, 65393 (November 25, 1998). As such, in accordance with 19 CFR 351.524(c)(2)(iii), we are treating these exemptions as non-recurring benefits.

MTZ reported that it imported capital goods under the EPCGS in the years prior to the POR. According to the information provided in its responses, MTZ received various EPCGS licenses for equipment involved in the production of subject merchandise. Further, we note that MTZ did not demonstrate that its respective EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we find that MTZ's respective EPCGS licenses benefit all of the company's exports.

MTZ met the export requirements for certain EPCGS licenses, and the GOI formally waived the relevant import duties for those licenses, prior to the current POR. For other licenses, however, MTZ has not yet met its export obligation as required under the program. Therefore, although MTZ has received a deferral from paying import duties when the capital goods were imported, the final waiver on the obligation to pay the duties has not yet been granted for these imports.

For MTZ's EPCGS licenses for which the GOI has formally waived the duties, we treat the full amount of the waived duty as a grant received in the year in which the GOI officially granted the waiver. To calculate the benefit received from the GOI's formal waiver of import duties on MTZ's capital equipment imports, we considered the total amount of duties waived (net of any required application fees paid) to be the benefit. See Section 771(6) of the Act. Further, consistent with the approach followed in the investigation, we determine the year of receipt of the benefit to be the year in which the GOI formally waived MTZ's outstanding import duties. See PET Film Final Determination, Issues and Decision Memorandum, at Comment 5. Next, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for each year in which the GOI granted MTZ an import duty waiver. For all years in which MTZ received the final waiver of duties deferred under EPCGS licenses, the value of the duties waived exceeded 0.5 percent of MTZ's total export sales. Thus, in accordance with 19 CFR 351.524(b), we allocated the resulting benefits over MTZ's company-specific AUL. See "Allocation Period" section, above.

As noted above, import duty reductions or exemptions that MTZ received on the imports of capital equipment for which it has not yet met export obligations may have to be repaid to the GOI if the obligations under the licenses are not met. Consistent with our practice and prior determinations, we will treat the unpaid import duty liability as an interest-free loan. See 19 CFR 351.505(d)(1); and see, e.g., Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India, 70 FR 13460 (March 21, 2005), and accompanying Issues and Decision Memorandum, (Final Determination Indian PET Resin), at "Export Promotion Capital Goods Scheme."

The amount of the unpaid duty liabilities to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the respondent applied, but, as of the end of the POR, had not been formally waived by the GOI. Accordingly, we find the benefit to be the interest that MTZ would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation. See, e.g., Notice of Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 70 FR 46483, 46485 (August 10, 2005) (unchanged in the final results, 71 FR 7534 (February 13, 2006)).

As stated above, the time period for fulfilling the export commitment expires eight years after importation of the capital good. Consequently, the date of expiration of the time period to fulfill the export commitment occurs more than one year after the date of importation of the capital goods. Pursuant to 19 CFR 351.505(d)(1), the appropriate benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (i.e., the date of expiration of the time period to fulfill the export commitment) occurs more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the national average interest rate from the IMF Statistics for the year in which the capital good was imported and the duty reduction or exemption was originally granted. See the "Benchmark Interest Rates and Discount Rates" section above.

The benefit received under the EPCGS is the total amount of: (1) the benefit attributable to the POR from the grant of formally waived duties for imports of capital equipment for which respondents met the export obligation by December 31, 2005; and/or (2) the interest that should have been paid on the contingent liability loans for imports of capital equipment for which MTZ has not met its export obligation. To calculate the benefit from the formally waived duties for imports of capital equipment for which MTZ has met its export requirements, we treated each year's waived amount as a non-recurring grant. We applied the grant methodology set forth in 19 CFR 351.524(d), using the discount rates discussed in the "Benchmark Interest Rates and Discount Rates" section above to determine the benefit amounts attributable to the POR. See, also, Comments 2-6, below.

To calculate the benefit from the contingent liability loans for MTZ, we multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the license was approved.[4] We summed this amount with the allocated benefits discussed above to determine the total benefit for this program. We then divided the benefit under the EPGCS by MTZ's total exports to determine a subsidy of 50.86 percent ad valorem for MTZ.

3. Advance License Program (ALP)

Under the ALP, exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported. The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled their export requirement. The quantities of imported materials and exported finished products are linked through standard input-output norms (SIONs) established by the GOI. During the POR, MTZ used an advance license to import certain materials duty-free.

In the 2005 administrative review of this proceeding, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the ALP during that POR. The Department analyzed the changes introduced by the GOI to the ALP during 2005 and acknowledged that certain improvements to the ALP system were made. However, the Department found that systemic issues continued to exist in the ALP system during the POR. See PET Film Final Results of 2004 Review, Issues and Decision Memorandum, at Comment 3; and Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034

[4] MTZ stated, in MTZ's Second Supplemental Questionnaire Response, at 8-9, that it was not liable for certain other duties during the year. However, MTZ did not provide any supporting documentation regarding these duties. Thus, in the Preliminary Results, we included these duties in our calculations. In its response to the Department's fifth supplemental questionnaire, MTZ provided evidence on the record of this review that the Education CESS was not in effect at the time of import of the capital goods by MTZ. See MTZ's Fifth Supplemental Questionnaire Response, at 5 and Exhibit S4-4(e). Therefore, for these final results, we did not include an amount for the Education CESS in our benefit calculations. See, also, Comment 2, below.

(August 8, 2006), and accompanying Issues and Decision Memorandum, at Comment 10 (Lined Paper - Final Determination). Based on the information submitted by the GOI and examined at verification of the 2004 and 2005 PORs, the Department noted that the systemic issues previously identified by the Department in PET Film Final Results of 2004 Review continued to exist. See PET Film Final Results of 2004 Review, Issues and Decision Memorandum, at Comment 3. See also PET Film Final Results of 2005 Review, at "Advance License Program (ALP)." Interested parties commented on this issue. See Comment 7.

There is no new information on the record of this review for the Department to reconsider its determination that the ALP is countervailable. Accordingly, the Department continues to find that the ALP confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from the payment of import duties that would otherwise be due; (2) the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products; thus, the entire amount of the import duty deferral or exemption earned by the respondent constitutes a benefit under section 771(5)(E) of the Act; and, (3) this program is specific under section 771(5A)(B) of the Act because it is contingent upon exportation.

Pursuant to 19 CFR 351.524(c)(1), the exemption of import duties normally provides a recurring benefit. Under this program, MTZ did not have to pay certain import duties for inputs that were used in the production of subject merchandise during the POR. Thus, we are treating the benefit provided under the ALP as a recurring benefit. To calculate the subsidy, we first determined the total value of import duties exempted during the POR. From this amount, we subtracted the required application fees paid for each license during the POR as an allowable offset in accordance with section 771(6) of the Act. We then divided the resulting net benefit by the appropriate value of export sales. Consistent with our calculations in the final results of the 2004 administrative review, "deemed export" sales are included in the export sales denominator for the ALP only when the respondent applied for and was bestowed licenses during the POR based on both physical exports and deemed exports. However, MTZ stated that it had applied under this program based on physical exports only;[5] therefore, we only used physical export sales in the denominator. On this basis, we determine the countervailable subsidy provided under the ALP to be 5.03 percent ad valorem for MTZ.

4. Duty Entitlement Passbook Scheme (DEPS/DEPB)

India's DEPS program was enacted on April 1, 1997, as a successor to the Passbook Scheme (PBS). As with the PBS, the DEPS program 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 SION for the

5 See MTZ's Original Questionnaire Response, at 10.

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.

The Department has previously determined that the DEPS program is countervailable. See, e.g., PET Film Final Determination, at "DEPS." In the investigation, the Department determined that under DEPS, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because the GOI provides credits for the future payment of import duties. Moreover, the GOI does not have in place and does not apply a system that is reasonable and effective to confirm which inputs, and in what amounts, are consumed in the production of the exported products. Id. Therefore, under 19 CFR 351.519(a)(4), the entire amount of import duty exemption earned during the period of investigation (POI) constitutes a benefit and a benefit is conferred in accordance with 771(5)(E) of the Act. Finally, this program can only be used by exporters and, therefore, it is specific under section 771(5A)(B) of the Act. Id. No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of this finding. Therefore, we continue to find that the DEPS program is countervailable.

In accordance with past practice and pursuant to 19 CFR 351.519(b)(2), we find that benefits from the DEPS are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned. See, e.g., Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India, 64 FR 73131, 73134 (December 29, 1999), and accompanying Issues and Decision Memorandum, at Comment 4. We calculated the benefit on an "as-earned" basis upon export because DEPS credits are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis and, as such, it is at this point that recipients know the exact amount of the benefit (e.g., the duty exemption).

MTZ reported that it received post-export credits on PET film under the DEPS program during the POR. Because DEPS credits are earned on a shipment-by-shipment basis, we normally calculate the subsidy rate by dividing the benefit earned on subject merchandise exported to the United States by total exports of subject merchandise to the United States during the POR. See, e.g., id., 64 FR at 73134. The DEPS licenses and supporting documentation provided by MTZ indicate that benefits were earned on both subject and non-subject merchandise. Although MTZ was able to separate the DEPS credits earned on exports to the United States in the data provided to the Department, it did not provide the supporting documentation establishing the destination of the shipments on which the DEPS credits were earned. However, MTZ provided supporting documentation for each DEPS license, indicating whether the DEPS credit was earned on subject or non-subject merchandise. Therefore, we calculated the DEPS program rate using the value of total post-export credits that MTZ earned for its export shipments of subject merchandise during the POR. We divided the total amount of the benefit by MTZ's total exports of subject merchandise during the POR. On this basis, we determine MTZ's countervailable subsidy from the DEPS program to be 3.4 percent ad valorem.

5. Union Territories Central Sales Tax (CST) Program

In the previous review, MTZ reported that a supplier located in a Union Territory did not collect any tax on MTZ's purchases because companies located in that Union Territory are exempt from charging CST. Based on an analysis of the information on the record of that review, the Department determined that a financial contribution, in the form of revenue forgone, as defined under section 771(5)(D)(ii) of the Act, is provided by the GOI under the Union Territories CST exemption program. The benefit equals the amount of sales taxes not paid by MTZ on its purchases, in accordance with section 771(5)(E) of the Act. Pursuant to section 771(5A)(D)(iv) of the Act, this program is de jure specific because it is administered by the central government and is limited by law to certain geographical regions (i.e., Union Territories) within India. See PET Film Final Results of 2005 Review, at "Union Territories Central Sales Tax (CST) Program." The CST program also provides a recurring benefit under 19 CFR 351.510(c) and 19 CFR 351.524(c). No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of this finding. Therefore, we continue to find that this program is countervailable. However, interested parties commented on this program. See Comments 8-9.

During the current POR MTZ purchased from a supplier located in a Union Territory. To calculate the benefit for MTZ under this program, we first calculated the total amount of CST that MTZ would have paid on its purchases from suppliers located in a Union Territory during the POR absent this program. We then divided this amount by MTZ's total sales during the POR. On this basis, we determine the subsidy rate under this program to be 1.57 percent ad valorem for MTZ.

MTZ reported that the GOI has repealed the CST and is phasing out the CST in four stages, reducing it to zero percent by April 1, 2010. However, MTZ did not provide any supporting documentation, such as a copy of the law promulgated by the GOI, to demonstrate that the CST is being phased out and that there is no replacement program or residual benefits. We asked the GOI to provide the pertinent laws and regulations phasing out the CST. Instead, in its third supplemental response, the GOI provided the Department with a one-page excerpt of its 2008-2009 Budget that indicated the anticipated decline in revenue, due to the projected phase out of the CST. See GOI Third Supplemental Questionnaire Response, at 5 and Exhibit 2 (May 28, 2008). We further asked the GOI and MTZ to clarify whether there were residual benefits from the Union Territories CST program, or whether there was any replacement program implemented for the Union Territories CST program, to which the GOI responded that the CST was being phased out. However, the GOI did not address whether there were any residual benefits remaining. MTZ simply responded that the CST "has been repealed and is being phased out in stages." See MTZ's First Supplemental Questionnaire Response, at 13; see also GOI Second Supplemental Questionnaire Response, at 11 (May 28, 2008), and GOI Third Supplemental Questionnaire Response, at 5 (May 30, 2008). Despite the Department's request, the GOI did not provide any further information on this issue in its fifth supplemental questionnaire response. See GOI Fifth Supplemental Questionnaire Response, at 7 (August 29, 2008).[6]

Pursuant to 19 CFR 351.526(b)(2), a program-wide change must be effectuated by an official act, such as the enactment of a statue, regulation, or decree, or contained in the schedule of an existing statue, regulation or decree. Although the GOI and MTZ reported that the CST is being phased out by April 1, 2010, neither the GOI nor MTZ provided the Department with the applicable statute, regulation or decree that enacted the alleged program-wide change. Therefore, there is no basis for the Department to determine that a program-wide change has occurred or to adjust the cash deposit rate pursuant to 19 CFR 351.526.

6. State Sales Tax Incentive Programs – State of Gujarat

In the 2004 CVD administrative review, the Department determined that various state governments in India, including Gujarat, grant exemptions or deferrals from sales taxes in order to encourage regional development. See PET Film Final Results of 2004 Review, Issues and Decision Memorandum, at “State Sales Tax Incentive Programs.” These incentives allow privately owned and partially privately owned (i.e., not 100 percent owned by the GOI) manufacturers in selected industries and located in the designated regions to sell goods without charging or collecting state sales taxes. The State of Gujarat (SOG) is one of the states offering these state sales tax incentive programs. As a result of this program, MTZ did not pay sales taxes on its purchases from suppliers located in the SOG during the POR. In the original CVD investigation, we determined that the operation of these types of state sales tax programs confer countervailable subsidies. See PET Film Final Determination, Issues and Decision Memorandum, at “State of Maharashtra Programs” and “State of Uttar Pradesh Programs:” Sales Tax Incentives;” and PET Film Final Results of 2005 Review, at “State Sales Tax Incentive Programs.” The financial contribution is the tax revenue foregone by the respective state governments pursuant to section 771(5)(D)(ii) of the Act, and the benefit equals the amount of sales taxes not paid by MTZ pursuant to section 771(5)(E) of the Act. Pursuant to section 771(5A)(D)(iv) of the Act, these programs are de jure specific because they are limited to certain geographical regions within the respective states administering the programs.

[6] These exemptions refer to diplomatic missions, etc.

To calculate the benefit, the Department normally calculates the total amount of state sales taxes respondent would have paid on its purchases during the POR absent these programs. The Department then divides this amount by the respondent's total sales during the POR. MTZ only reported the monthly total of taxes saved on purchases, and MTZ did not indicate whether these totals are net of the Gokul Gram Yojana (a development promotion scheme of the SOG, and a liability MTZ has to pay), or not. Thus, we have not included this tax in our calculations. In the Preliminary Results, we calculated MTZ's rate for this program by dividing the total amount of tax saved on purchases, as reported, by MTZ's total sales. We made no changes to our calculations. On this basis, we determine the subsidy rate under this program to be 1.83 percent ad valorem for MTZ.

In MTZ's Original Questionnaire Response, at 25, MTZ argued that this program had ended and therefore, should not be included in the calculation of the future CVD rate. Specifically, MTZ stated that the SOG sales tax incentive program was terminated effective April 1, 2006. However, MTZ reported taxes saved on purchases within the SOG for the entire POR. See MTZ's Original Questionnaire Response, at Exhibit 17; and MTZ's Third Supplemental Questionnaire Response, at Exhibit S3-1. Further, in response to the Department's request to identify which taxes the "Tax Saved On Purchases" column header refers to, MTZ identified those taxes as part of the Gujarat Sales Tax Program for "Items Purchased in Gujarat from Registered Dealers." See MTZ's First Supplemental Questionnaire Response, at Exhibit S1-15.

In the Preliminary Results, the Department determined that the record shows that the existing state sales tax incentive program is providing residual benefits. See Preliminary Results, 73 FR at 45964. There is no new information on the records that would warrant reconsideration of this issue. Therefore, for these final results, the Department determines that the conditions of 19 CFR 351.526 have not been met, and no adjustment to the rate for cash deposit purposes is warranted.

Programs Determined to be Not Used

Based on the questionnaire responses, we determined that MTZ, the producer/exporter of PET film products, did not apply for or receive benefits during the POR under the programs listed below:

1. Duty Free Replenishment Certificate (GOI)

2. Export Oriented Units (GOI)

3. Target Plus Scheme (GOI)

4. Capital Subsidy (GOI)

5. Exemption of Export Credit from Interest Taxes (GOI)

6. Loan Guarantees from the GOI

7. Income Tax Exemption Scheme (Sections 10A & 10B) (GOI)

8. State Sales Tax Incentive Programs other than SOG

9. State of Maharashtra (SOM) Electricity Duty Exemption

10. SOM Capital Incentive Scheme

11. Octroi Refund Scheme- SOM

12. Waiving of Interest on Loan by SICOM Limited (SOM)

13. State Sales Tax Incentives-Section 4-A of the Uttar Pradesh Trade Tax Act

14. State Sales Tax Incentive of Uttaranchel

15. State of Uttar Pradesh Capital Incentive

16. SOG Infrastructure Assistance Schemes

17. Capital Incentive Scheme of Uttaranchel

IV. Analysis of Comments

Pre-Shipment and Post-Shipment Export Financing Program

Comment 1: MTZ's Participation in the Pre-Shipment and Post-Shipment Export Financing Program

MTZ claims that the Department's determination that MTZ received benefits from the GOI pre-shipment and post-shipment export financing program, and its application of AFA, is without merit because MTZ did not receive any benefits from the RBI packing credit program. MTZ states that the Department should follow the determinations of prior reviews and find that MTZ did not receive any benefits under this program, as stated in the verification and calculation memoranda of the previous review.[7] As the facts have not changed from the previous review, the Department should not have found this program used by MTZ, such as in the previous review. The detailed calculations provided in MTZ's Fifth Supplemental Questionnaire

[7] See MTZ Polyfilms, Ltd. Case Brief, at 24, September 15, 2008 (MTZ Case Brief); see also PET Film Final Results 2005, at "Pre-Shipment and Post-Shipment Export Financing," and "Memorandum to Thomas Gilgunn, "Verification of the Questionnaire Responses Submitted by MTZ Polyfilms Ltd. (MTZ)," (December 7, 2007).

Response, at Exhibits S4-1, S4-2, and S4-3, show that the packing credits obtained by MTZ were obtained from independent banks and not from the RBI. Accordingly, MTZ claims it paid commercial interest rates.[8] Therefore, the Department must find that there was no benefit under this program for MTZ.

Petitioners argue that MTZ's claim that the Department erred in finding a benefit in this review because MTZ was found not to benefit from the pre-shipment and post-shipment export financing program in the prior review, and because the facts have not since changed, is irrelevant. Petitioners contend that MTZ failed to address, much less contradict, record evidence showing that it obtained a pre-shipment credit during the POR.[9]

Petitioners note that MTZ cites its own Exhibits S4-1 and S4-2 from its submission of September 8, 2008, and its late-filed submission of September 9, 2008, respectively, as evidence that "any of the 'packing credits' obtained by MTZ were obtained from Independent Banks and not from the Reserve Bank of India."[10] Petitioners point out that MTZ states that it paid commercial interest rates for these credits because the credits were not obtained from the RBI.[11] Petitioners argue that MTZ has made the erroneous presumption that a packing credit from a commercial bank cannot be a countervailable packing credit under the pre-shipment and post-shipment export financing program.

Department Position:
In this administrative review, record evidence clearly demonstrates that MTZ obtained short-term loans under the pre-shipment and post-shipment export financing program. See MTZ's First Supplemental Questionnaire Response, at Exhibit S1-5; see also, MTZ's Fourth Supplemental Questionnaire Response, at Exhibit S3-1(a); and MTZ's Fifth Supplemental Questionnaire Response, at Exhibits S4-1, S4-2, and S4-3.

The Department does not agree with MTZ's claim that, 1) short-term loans obtained under this program are received through the RBI and 2) it did not participate in this program solely because it did not receive loans from the RBI. As explained in the "Pre-Shipment and Post-Shipment Export Financing Program" section above, the RBI, through commercial banks, provides short-term pre-shipment financing, or "packing credits," to exporters. Further, MTZ's own description on how it obtains these loans coincides with the Department's description of the program and the information provided by the GOI on this program and on the record of this review. As such, the Department finds that MTZ has benefitted from this program during the POI.

For further more detailed information on this comment, see the "Pre-Shipment and Post-Shipment Export Financing Program" section above, under "Programs Determined to be Countervailable."

[8] See MTZ Case Brief, at 24-25 and MTZ's Fifth Supplemental Questionnaire Response, at Exhibit S4-3.
[9] See MTZ Case Brief, at 24.
[10] See MTZ Case Brief, at 24-25.
[11] See MTZ Case Brief, at 25.

Benefit Calculation Under the Export Promotion Capital Goods Scheme (EPCGS)

Comment 2: Education Cess

MTZ argues that the Department has no legal or factual basis to include an amount for the Education Cess in its benefit calculation for the EPCGS program. MTZ refers to MTZ's Fifth Supplemental Questionnaire Response, indicating that the Education Cess did not go into effect until 2004, i.e., after the date of imports under the program.[12] MTZ points out that, as a result, it did not report any Education Cess to the Department.[13] Furthermore, MTZ states that the GOI has calculated the amount of duty foregone, which is the amount of duty saved by MTZ, without including an amount for an Education Cess.

Petitioners did not comment on this issue.

Department Position:
We agree with MTZ that record evidence indicates that the Education Cess was not in effect until after MTZ's imports under the EPCGS program. For the Preliminary Results, based on information provided by the GOI and on the record of this review, the Department added an amount for Education Cess to its benefit calculation for MTZ. However, in its fifth supplemental questionnaire the Department asked MTZ about the applicability of these duties and to provide supporting documentation with its response. In MTZ's Fifth Supplemental Questionnaire Response, at 3-4, and Exhibit S4-4(e), MTZ provided a GOI Ministry of Finance directive indicating that the Education Cess would go into effect on July 9, 2004, i.e., after MTZ's importation of the goods. Therefore, we have corrected our calculations for MTZ and, for these final results, we did not include an amount for Education Cess in our calculations.

Comment 3: Special Additional Duty

MTZ claims that the Special Additional Duty (SAD) should not be included in the Department's benefit calculation for the EPCGS program. Record evidence establishes that this duty did not apply to the importations made under this particular license, MTZ states, and was not part of the duty foregone by the GOI. MTZ contends that the GOI has set forth, as part of its regular course of operations, the amount of duty forgone in conjunction with EPCGS licenses, referring to Exhibit S4-4(a) of MTZ's Fifth Supplemental Questionnaire Response. MTZ contends that the GOI document included in the exhibit represents the formal calculation by the GOI of the amount of duty foregone under this program, and is based on the "Ordinary Duty and the Additional Duty (countervailing duty) rates," in effect at the time the goods were entered.[14] That amount, MTZ argues, coincides with the amount reported by MTZ to the GOI, referring, to

[12] See MTZ's Fifth Supplemental Questionnaire Response, at Exhibit S4-4(e).
[13] MTZ Case Brief, at 4.
[14] MTZ refers to the Department's treatment of the "Additional Duty" (i.e., the "countervailing duty") as an excise duty, which under the Department's practice are not countervailable. See MTZ's Case Brief, at 5, n. 1.

Exhibit S1-9 of MTZ's First Supplemental Questionnaire Response, and represents the amount which can be recovered by the GOI in case MTZ defaults on its obligations. In addition, MTZ contends that in the 2005 review the Department determined the duty forgone to be the basic duty payable, net of the Additional Duty (or CVD), and confirmed that amount of duty forgone by the GOI at verification.

Further, MTZ argues that, should the Department still determine to apply a benefit for this SAD, it must treat this benefit as "earned" on the date of importation.

Petitioners refute MTZ's claim that the record evidence shows that "this Special Additional Duty did not apply to the importations made under the license and were not part of the duty foregone by the Government of India, and thus the amount of duty savings for MTZ."[15] Petitioners contend that record evidence is consistent with the Department's findings with respect to the SAD.

Petitioners state that the GOI was asked by the Department to explain the nature and implementation of the SAD to which the GOI responded that "{a}ny article which was imported into India was liable to a special additional duty at a specified rate" under the Customs Tariff Act of 1975, which provided a default SAD of eight percent.[16] Petitioners continue that MTZ itself stated in its response to the Department's fifth supplemental questionnaire that, "{t}he 8% Special Additional Duty referenced by the Government of India was the default rate from the Customs Tariff Act of 1975."[17]

Petitioners note that, in its case brief, MTZ asserts that the "Special Additional Duty did not apply to the importations made under the license,"[18] but fails to cite GOI laws or regulations showing this to be the case, or, at a minimum, to explain how a duty applicable to "any article . . . at a specified rate"[19] did not apply to the capital goods MTZ imported under the license. Instead, Petitioners argue, MTZ asserts in its case brief that the document submitted as Exhibit SSSS-4(a) in MTZ's Fifth Supplemental Questionnaire Response provides the "formal calculation by the Government of India of duty foregone." [20] Petitioners contend that this document does not constitute an exhaustive description of the duties otherwise applicable to the capital goods imported under the license at issue, and thereby foregone by the GOI, within the meaning of section 771(5)(E) of the Act. Petitioners claim that, given the record evidence regarding the existence and application of the SAD, the Department properly included it in its benefit calculations for the EPCGS program.

Department Position:

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[15] MTZ Case Brief, at 3.
[16] See GOI First Supplemental Questionnaire Response at 8 (March 28, 2008).
[17] MTZ Fifth Supplemental Questionnaire Response, at 7.
[18] MTZ Case Brief, at 4.
[19] GOI First Supplemental Questionnaire Response, at 8 (emphasis added).
[20] MTZ Case Brief, at 5 and Exhibit BR-2.

We agree with Petitioners that the SAD is applicable to MTZ's imports of goods. The GOI, in its first supplemental response, clearly states that any article imported into India was liable to the SAD.[21] In light of the GOI's questionnaire response, the Department, in its fifth supplemental questionnaire, provided MTZ with the opportunity to explain why MTZ did not report any SAD. Referring to Exhibit S4-4(a), MTZ explained that it was subject to the Additional Duties for one license.[22] MTZ further claimed, however, that this exhibit constitutes the savings as calculated by the GOI, which represents the maximum basis for any repayment by MTZ, and demonstrates that such SAD was not due.[23] First, the exhibit cited by MTZ refers to the customs duty foregone only, and not to any other duties levied by the GOI on imports. Thus, the document issued by the GOI cannot be considered to be representative of all duties forgone by the GOI under this program. Second, in the same supplemental questionnaire, the Department asked MTZ to explain the differences between the SAD and the Additional Duty, and to describe the conditions under which MTZ has to pay either or both of these duties, as well as to provide supporting documentation for its response. MTZ responded that the SAD applies to certain importations of goods into India and is intended to be a substitute for the sales tax that would apply on like items sold in India. MTZ continues in this response that the SAD was not applicable at the time of importation for one license number.[24] However, MTZ did not explain in its response under what circumstances one, or the other, or both the SAD and the Additional Duty apply to imports to India; MTZ also did not explain or discuss the applicability of the SAD to any other EPCGS license it obtained. MTZ failed to provide any documentary evidence of its claim that it was not liable for these duties and made no application to be exempted from these duties as they did not apply. In fact, GOI statements contradict this claim by MTZ. The GOI Fifth Supplemental Questionnaire Response, at 4, states that "{a}ny article that is imported into India is liable to a special additional duty at a specified rate, having regard to the maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India, under section 3A of the customs Tariff Act." Further, section 3A(1) of the Customs Tariff Act states that "{p}rovided that until such rate is specified by the Central Government, the special additional duty shall be levied and collected at the rate of eight per cent of the value of the article imported into India." Therefore, in the absence of any documentary evidence to the contrary, we continue to determine that the SAD applied to all of MTZ's imports under the EPCGS program.

[21] See GOI First Supplemental Questionnaire Response, at 8.
[22] See MTZ's Fifth Supplemental Questionnaire Response, at 5-6.
[23] Id.
[24] Id., at 6-7.

Comment 4: Unpaid Import Duty Liabilities (Benefit Earned and Denominator)

Benefit Earned

MTZ contends that the Department, following Indian Generally Accepted Accounting Principles and the method of calculation adopted by the European Union, should treat the entire benefit under EPCGS as having been earned at the time of importation.[25] MTZ claims that the Department's benefit calculations, by first treating the entire amount of the benefit as a fully unpaid long-term loan until the entire export commitment has been fulfilled, and then by treating the entire benefit as a non-recurring grant allocated over the AUL, is inappropriate because MTZ does not carry the benefit separately on its books and records as a contingent liability until the entire export obligation (EO) has been fulfilled. Instead, the articles imported are treated as acquired at a lower price by MTZ. Treating the benefit as earned only after the whole EO is fulfilled, causes the benefit to be depreciated long after the useful service life of the asset has passed, according to MTZ. Furthermore, once the goods are imported under an EPCGS license, "the benefit cannot be stripped from the company at the discretion of the government," MTZ argues.[26] Claiming that the benefit foregone by the GOI "is a duty-free loan to the company simply does not comport with commercial reality and GAAP in India," MTZ argues. Thus, MTZ contends, the Department must follow Indian GAAP and the method of calculation adopted by the European Union, which treat the benefit as earned on importation.[27]

Petitioners take note of MTZ's attempts to support its argument by claiming that the benefit under this program is earned at importation and that its view is consistent with Indian accounting rules and the European Union's CVD methodology. However, Petitioners state that MTZ omits in its arguments the fact that the benefit received under EPCGS is subject to recapture by the GOI. Petitioners point out that MTZ fails to identify any reason why the Department should depart from its established methodology set forth in its regulations.

Petitioners refer to the final results of the previous 2005 administrative review where the Department considered and properly rejected this same argument made by MTZ.[28] Petitioners point out that in that review the Department noted that the deferral of indirect taxes under the EPCGS should be treated as a government-provided loan in the amount of the tax deferred under the statute.[29] Furthermore, Petitioners say, 19 CFR 351.505(d)(1) provides that specific import duty deferrals are to be treated as contingent liability loans when "the repayment obligation is contingent upon the company taking some future action or achieving some goal in fulfillment of the loan's requirements." Moreover, the Department's methodology here is consistent with its prior determinations,[30] Petitioners argue. Petitioners contend that the above considerations

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[25] MTZ Case Brief, at 7.
[26] Id., at 8.
[27] Id., at 8-9.
[28] See PET Film Final Results of 2005 Review, Issues and Decision Memorandum, at U.
[29] See id.
[30] Id. (citing Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India, 70 FR 13460 (March 21, 2005), and accompanying Issues and Decision Memorandum, at

render irrelevant MTZ's arguments regarding the time at which the contingent EPCGS benefit is received, Indian accounting methods, and European Union CVD practices.

Department Position:
We disagree with MTZ that the Department should treat the benefit as earned on the date of importation because MTZ, in accordance with the Indian GAAP, does not carry the benefit separately on its books and records as a contingent liability until the entire EO has been fulfilled. We also disagree with MTZ's claim that by treating the benefit as earned only after the whole EO is fulfilled, the benefit is depreciated long after the useful service life of the asset has passed. The Department's regulations provide the specific methodology to be employed with regard to how to treat import duty deferrals. In accordance with 19 CFR 351.510(a)(2), a program that provides for a deferral of indirect taxes provides a benefit that is treated as a government-provided loan in the amount of the tax deferred, according to the methodology described in 19 CFR 351.505. Furthermore, 19 CFR 351.505(d)(1) instructs the Department to treat contingent liability loans as an interest-free loan when the repayment obligation is contingent upon the company taking some future action or achieving some goal in fulfillment of the loan's requirements. Thus, the Department is instructed to treat the duties in this manner in accordance with 19 CFR 351.505(d)(2) until this liability is either met, or when the event upon which repayment depends is not a viable contingency, at which time the Department will treat the duties finally waived as a grant. How MTZ records these import duty liabilities in its books and records is not relevant to how such countervailable benefits are treated pursuant to our regulations. See PET Film Final Results of 2005 Review, Issues and Decision Memorandum, at Comment 5.

The Department will therefore continue to treat these unpaid import duty liabilities under the EPCGS as interest-free loans in the amount of the import duty reduction or exemption which, as of the end of the POR, had not been formally waived in full by the GOI. We will also continue to identify the benefit as arising from the interest that MTZ would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation. Once the export obligation is fulfilled and the contingent liability no longer exists, and all duties are waived, it is appropriate to treat the waived duties as a grant. This methodology is consistent with our regulations, as explained above, and with our practice and prior determinations. See 19 CFR 351.505(d); and see, e.g., Final Determination Indian Pet Resin, Issues and Decision Memorandum, at "Export Promotion Capital Goods Scheme (EPCGS)."

Denominator
MTZ argues that the denominator used in the Department's EPCGS benefit calculation should either be the simple average of the exports made by MTZ over the course of the license, or the total sales of PET film during the POR. MTZ contends that the high benefit assigned to MTZ is due to a decline in exports made by MTZ during the POR. This calculation method for deriving

"EPCGS" (Final Determination Indian PET Resin); Lined Paper - Final Determination, Issues and Decision Memorandum, at "EPCGS," and Comment 1.

the benefit is, according to MTZ, counterintuitive to the concept of the CVD laws, as it results in a lower rate for a company the more it exports. Therefore, MTZ proposes as a preferred method that the Department use a simple average of the exports made by MTZ over the course of the license, preventing those "peaks and valleys" over the period of a license.[31] Otherwise, the Department should use total sales for the POR, as the machinery is used to produce PET film for sales to all markets and because dividing the total benefit by export sales only does not reflect commercial reality, according to MTZ.[32]

Petitioners state that MTZ does not dispute that the EPCGS program is an export subsidy. For an export subsidy, Petitioners argue, 19 CFR 351.525 is clear with respect to the sales value that is to be used in the denominator of the ad valorem subsidy calculation: export sales during the POR.

Petitioners argue that, pursuant to 19 CFR 351.525(a), the amount of the benefit allocated to the POR is to be divided by "the sales value during the same period of the product or products to which the Secretary attributes the subsidy under paragraph (b) of this section." 19 CFR 51.525(b), in turn, provides that the Department is to attribute an export subsidy "only to products exported by a firm." The Department, Petitioners argue, is bound to follow these regulations in this review.[33] Thus, Petitioners claim, the Department properly used MTZ's export sales during the POR in the denominator of the EPCGS *ad valorem* subsidy calculation. Petitioners state that this method is also the same as that used by the Department in the 2005 review of this order, when it similarly rejected respondents' contention that the denominator should be all sales.[34]

Department Position:
It was appropriate for the Department, in accordance with 19 CFR 351.525(a) and (b), to calculate MTZ's rate under this program by dividing the benefits earned under this program by MTZ's total export sales during the POR. The Department determined in the investigation and in subsequent administrative reviews of this CVD order, as well as in other CVD proceedings in which the Department has investigated EPCGS, that import duty reductions provided under this program are a countervailable export subsidy because the program is contingent upon export performance and, therefore, is specific pursuant to section 771(5A)(B) of the Act. See, e.g., PET Film Final Determination, Issues and Decision Memorandum, at "Export Promotion Capital Goods Scheme (EPCGS);" see also Final Determination Indian PET Resin, and accompanying Issues and Decision Memorandum, at "Export Promotion Capital Goods Scheme (EPCGS)." There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that eligibility for and approval of benefits under this program is contingent upon export performance in accordance with 19 CFR 351.514(a). In accordance with

[31] See MTZ Case Brief, at 9.
[32] Id. at 10.
[33] See Kemira Fibres Oy v. United States, 61 F.3d 866, 871 (Fed. Cir. 1995) ("an agency is required to comply with its own regulations").
[34] See PET Film Final Results of 2005 Review, at Comment 4.

19 CFR 351.525(b)(2), we attribute export subsidies only to products exported by a firm. Accordingly, we will continue to include in the denominator total exports as reported by MTZ during the POR.

Comment 5: Partial Fulfillment of Export Obligation

MTZ argues that the benefit calculation for one of its EPCGS licenses should recognize the partial completion of the EO for that particular license. MTZ states that the Department should take into account the fact that MTZ has already earned a portion of the benefit through exports of the product under the license and should, thus, treat that portion of the EPCGS benefit as having been earned upon importation. MTZ contends that the Department based its previous decision on a misreading of the law and a misconstruction of the EO.[35] MTZ states that the EO is not a benefit but a condition that must be satisfied to earn the benefit. Thus, any changes to the conditions to fulfill the EO, whether in exchange for a greater amount of satisfaction of the EO or a reduction in the EO, has no impact on the benefit.[36]

Further, MTZ states that the law and regulations of India, placed on the record of this review,[37] demonstrate that partial satisfaction of the EO reduces the amount to be recovered at default (e.g., section 5.83 of the GOI Handbook of Procedure).[38] The law and regulations allow for an up or down adjustment of the EOs based on the amount of the duty saved, provides for an extension of the EO, and allows for the EO to be re-fixed under specific limited circumstances, which is reflected under sections 5.10, 5.10.1, 5.11, and 5.19 of the Handbook of Procedures.[39] None of these changes, MTZ points out, have an impact on benefit, only on the date on which the benefit is fully earned. The amount that has been earned, as in this case, cannot be recaptured, MTZ argues. Therefore, MTZ concludes, the Department's finding that the process by which EOs can be changed is "fluid," is without factual basis and ignores the law of India because it fails to focus on the underlying purpose of the EO and its relationship to the benefit, i.e., that to the extent that the EOs have been satisfied, the benefit has been earned.

In addition, MTZ contends that record evidence establishes that a portion of MTZ's EO has been met and, as such, MTZ has earned a portion of the benefits under that license. MTZ states that it submitted proof to the GOI that it had fulfilled a portion of its EO and that the GOI accepted this proof and issued a document stating that MTZ had fulfilled a portion its obligation.[40]

Petitioners disagree with MTZ's view that, even if the benefit under EPCGS is not treated as

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[35] See id., at Comment 6.
[36] MTZ Case Brief, at 11.
[37] See MTZ's First Supplemental Questionnaire Response, at Exhibit S1-11(b).
[38] See Ministry of Commerce and Industry: Handbook of Procedures-(Vol.I), at 5.83 (effective April 1, 2006) (Handbook of Procedures), and MTZ's First Supplemental Questionnaire Response, at Exhibit S1-11(B).
[38] MTZ Case Brief, at 14.
[39] See Handbook of Procedures, at 5.10, 5.10.1, 5.11, and 5.19.
[40] MTZ Case Brief, at 14.

having been earned upon importation, the Department should, at a minimum, treat portions of the EPCGS benefits as earned when a portion of a license's EO is satisfied.[41] Petitioners state that the Department properly rejected MTZ's argument in the 2005 administrative review[42] and contend that MTZ provides no additional, legitimate reason for the Department to deviate from its established approach of relying only on the GOI's formal certification that EOs have been entirely discharged.

Petitioners agree with MTZ that the EO is not the benefit, but argue that partial satisfaction of the EO does not mean that the EPCGS license holder has irrevocably "earned" a portion of the benefit under the license. Petitioners claim that, as in the 2005 review, the documents cited by MTZ in this review in an attempt to show partial satisfaction of the EO do not show that import duties have been officially waived.[43] Petitioners further point out that none of the documents, or any other evidence in the record, indicate that the GOI cannot increase or decrease the export obligation in the future.[44]

Petitioners also question MTZ's reference to Paragraph 5.8.3 of the Handbook of Procedures, with which MTZ attempts to demonstrate that "a partial satisfaction of the export obligation reduces the amount which could be recovered in the amount of the default."[45] Petitioners argue that it is not clear that Paragraph 5.8.3 applies to the MTZ EPCGS licenses at issue, because the following paragraph, Paragraph 5.8.4, provides that "However, the licenses issued under the scheme up to {sic} 31.3.2000 shall be governed by provisions laid down in paragraph 6.11 as given in Handbook (Vol.1) (RE-99)."[46]

Petitioners conclude that even if Paragraph 5.8.3 were applicable to MTZ's EPCGS licenses, it would not remedy the basic flaw in MTZ's argument, which is based on the assumption that once a portion of an EO is satisfied, the proportional amount of the benefit is "earned" and a proportional amount of benefit in the form of duties is irrevocably foregone by the GOI.[47]

Conclusively, Petitioners find that MTZ ignores the fact that the GOI can reduce or increase the export obligation, whereby any change would, by MTZ's own logic, alter the proportional amount of benefit supposedly earned by the license holder. Petitioners insist that, prior to official waiver, there is no reliable, practicable manner by which the Department could determine, at a given point in time, the benefit an EPCGS license holder has gained from partial satisfaction of export obligations,[48] and that MTZ has failed completely to show otherwise.

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[41] MTZ Case Brief, at 7, 10-15.
[42] See PET Film Final Results of 2005 Review, at Comment 6.
[43] Compare MTZ Case Brief, at Exhibit BR-8, with PET Film Final Results of 2005 Review, at Comment 6.
[44] MTZ Case Brief, at Exhibit BR-8.
[45] MTZ Case Brief at 12.
[46] Handbook of Procedures, para. 5.8.4, excerpted in MTZ Case Brief, at Exhibit BR-7.
[47] See MTZ Case Brief. at 12.
[48] PET Film Final Results of 2005 Review, at Comment 6.

Department Position:
We disagree with MTZ that the Department should deviate from its practice and treat a portion of the EPCGS benefit as having been earned when a portion of the scheme's EO is satisfied. The documentation provided by MTZ in Exhibits S1-9 and S1-12(b) of MTZ's First Supplemental Questionnaire Response does not demonstrate that partial satisfaction of the EO means that the EPCGS license holder has irrevocably "earned" a portion of the benefit under the license. In addition, the Department compiled all the information spread over the aforementioned exhibits with respect to the original license and the changes thereto concerning the EO attached to this license, and asked MTZ to complete the table and explain and reconcile all changes to that particular license. MTZ responded that the chart was difficult to complete because of numerous misreadings of the basic documents. Instead of explaining the differences and the bases for the values reported, MTZ addressed in its response the value of the license at the time of filing and its relationship to the exchange rates, the absence of exports at the time of issuance, the fact that the original license would not have been re-fixed at that time, and the process of re-fixing of the EO. See MTZ's Second Supplemental Questionnaire Response, at S2-10-13. In no way did MTZ explain or reconcile the changes to that specific license, as requested by the Department. The fact that changes can be made to a license at any point in time, which may encompass an increase of the EO over an extended period of time, or a change in the face value of a license, accompanied by an increase in the EO, makes it impossible for the Department to determine whether the EO is completely fulfilled and the duties under the license fully waived, until the GOI grants the official waiver of the duties under the license.

Further, we cannot determine that Paragraph 5.8.3 of the Handbook of Procedures, included in Exhibit S1-11(b) of MTZ's First Supplemental Questionnaire Response, is applicable to MTZ's licenses, since the subsequent paragraph 5.8.4 specifically states that licenses prior to March 31, 2000 shall be governed by provisions laid down in paragraph 6.11 in the Handbook of Procedures. Section 6.11 of the Handbook of Procedures has not been placed on the record of this review either by MTZ or by the GOI. In addition, section 5.8.3 of the Handbook of Procedures only discusses the costs to a company associated with failure to fulfill its EO under an EPCGS license; it does not explain or discuss the official waiver of duties by the GOI.

The Department's practice as it pertains to determining when a company meets its EO under the EPCGS program is to rely on an official certification of a formal waiver as evidence of verification and certification that a company has legally discharged its EO under the EPCGS license at issue. We addressed this issue in the investigation:

> The Department, on its own, is not in a position to pass judgment on whether an Indian company has met the requirements of Indian law and regulations relating to the fulfillment of an export obligation under the EPCGS. For example, the Department is not in a position to review the export commitments related to the multiple EPCGS licenses held by each respondent company, or establish whether each EPCGS license-holder has realized the foreign currency proceeds from its export sales, as required under the EPCGS. Rather the Department looks to the certification by the GOI (and specifically,

> the Director General of Foreign Trade of the GOI), the authority responsible for administering the EPCGS.

See PET Film Final Determination, Issues and Decision Memorandum, at Comment 5.

Therefore, absent any official certification by the GOI, and specifically by the Directorate General for Foreign Trade (DGFT), which administers this program, it is not appropriate for the Department to evaluate whether exports made during the POR constitute a partial or complete fulfillment of an export obligation associated with a particular EPCGS license.

The Department finds that the only practicable way that it can measure the contingent liability associated with a company's export obligation as it pertains to a specific EPCGS license, is to continue to rely only on the official certifications that legally discharge the entire export obligation. Given the discretion the GOI exercises in adjusting the export obligation of the original license both upward and downward, the Department cannot reliably determine where the export obligation actually stands at any given point in time and, therefore, cannot accurately measure the correct amount of the contingent liability that has been satisfied, and the related fraction of import duties finally waived.

In the previous review, MTZ noted that the GOI can adjust this obligation downward to recognize partial fulfillment of an export obligation, and the Department determined that the fact that the GOI can revise the terms of the original EO at any time is a concern for the Department. The Department found that this allows the GOI to assist a company that is failing to meet its original export obligation by reducing the amount of this original obligation. The Department also found that the GOI can increase a company's export obligation. See PET Film Final Results of 2005 Review, Issues and Decision Memorandum, at Comment 6.

In light of the discretion the GOI has to adjust the export obligation for EPCGS licenses, the Department found that there is no meaningful value for the export obligation that the Department can rely on; at any future point in time, the GOI can renegotiate and either increase or decrease these obligations. The Department concluded that it cannot reliably measure the true value of the export obligation at a point in time, and it determined to continue its practice of relying on only those official certifications that extinguish the export obligation, in full. PET Film Final Results of 2005 Review, Issues and Decision Memorandum, at Comment 6.

As in the previous review, none of the documents provided on the record in this review specify that import duties have been officially waived. Only the "Redemption of the EPCGS license" issued by the DGFT states that the import duties are waived because the EO has been fulfilled. As such, it is not until this "Redemption Letter" is issued by the DGFT that there is an actual waiver of duties under the licenses and a termination of the contingent liability. Therefore, for all EPCGS licenses for which MTZ has not yet received a complete and final waiver of its export obligations, we will continue to calculate the benefit as contingent liability loans at the full value of the original duties owed against that license.

Comment 6: Interest Rate Benchmark for Contingent Liabilities

MTZ argues that it is inappropriate to use the rate of interest at the time of importation, as used by the Department, to calculate the benefit from contingent liability loans under the EPCGS program because current interest rates have significantly declined in comparison. This, MTZ argues, greatly exaggerates the amount of the benefit and is not in accordance with rational business practices, as no company would continue to carry the full loan amount at this high interest rate. In addition, MTZ contends that it would only be required to incur interest if it had to pay back the benefit, and therefore had to borrow the money.

MTZ states that the Department should instead, for the one license at issue, use the rate of the interest in effect on the date of the re-fixing of MTZ's EO by the GOI, as this act essentially extinguished MTZ's old obligation and established a new obligation.

If the Department does not use the interest rate in effect at the date of re-fixing the EO, MTZ states it should use the interest rate in effect during the POR, because the benefit is not based on any actual sum of money being borrowed, but on a theoretical sum, for which the cost would be incurred during the POR for MTZ at the interest rate in effect during the POR.

Alternatively, the Department could use a simple average of interest rates from the date of the importation to the POR, which would reflect the changes in interest rates over the POR and the "real" interest rate that a company would pay through refinancing.

Petitioners contend that MTZ's argument that the benchmark interest rate used in calculating the contingent liability loan benefit under EPCGS should be either the benchmark interest rate in effect on the date of the "refixing of MTZ's EOs," the interest rate in effect during the POR, or a simple average of interest rates from the date of importation,[49] is contrary to the Department's regulations and practice.[50]

Petitioners note that MTZ, in asking for the use of different benchmark interest rates, does not contest the Department's treatment of the EPCGS deferred import charges as an interest-free loan with a contingent repayment obligation occurring more than one year after the date of importation of the capital goods.[51] Petitioners point out that, in accordance with the Department's regulations [52] in selecting the benchmark for benefits received under the EPCGS program,[53] and consistent with the Department's practice and prior determinations,[54] the Department acted in accordance with these regulations in selecting the benchmark for the

[49] See MTZ Case Brief, at 16-19.
[50] See PET Film Final Results of 2005 Review, at Comment 7.
[51] MTZ Case Brief, at 16.
[52] See 19 CFR 351.505.
[53] See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Countervailing Duty Administrative Review, 73 FR 45956, 45962 (August 7, 2008) (PET Film Preliminary Results of 2006 Review).
[54] See PET Film Final Results of 2005 Review, at Comment 7.

EPCGS.[55] Petitioners point out that MTZ is unable to cite any authority to support the benchmarking methods it favors. Accordingly, the Department should not change the EPCGS benchmark interest rate in the final results.

Department Position:
The Department's practice is to calculate the benefit from contingent liability import duties by multiplying the total amount of unpaid import duties under each license by the long-term benchmark interest rate for the year in which the import duties were deferred. This is consistent with the Department's regulations, which consider the benefit arising from deferrals on import charges, "as having been received at the time the recipient firm otherwise would be required to pay the indirect tax or import charge," in accordance with 19 CFR 351.510(b)(1).

In accordance with 19 CFR 351.510(a)(2), the Department treats the deferral of import charges as a government-provided loan and selects a long-term interest rate as the benchmark when the duty deferrals last for more than one year. For purposes of calculating the benefit and selecting a comparable benchmark interest rate, the Department's practice is to use a loan, "the terms of which were established during or immediately before, the year in which the terms of the government-provided loan were established." See 19 CFR 351.505(a)(2)(iii). This is consistent with our regulations, as explained above, and with our practice and prior determinations. See 19 CFR 351.505(d); and see, e.g., Final Determination - Indian PET Resin, and accompanying Issues and Decision Memorandum, at "Export Promotion Capital Goods Scheme"; see also PET Film Final Results 2005 Review, at "Export Promotion Capital Goods Scheme. MTZ's arguments that the Department should either select the rate at the time the EO is reset, or to use a simple average of interest rates from the date of the importation to the POR, are contrary to the Department's regulations and practice.

Advanced License Program (ALP)

Comment 7: Countervailability of the ALP

MTZ argues that the Department erred when it found that the ALP was countervailable. MTZ states that the Department was incorrect in its finding that the SION for PET film used in the ALP did not reflect the amount of the inputs that went into the products produced. They argue that the Department should defer to the determination by the GOI that these norms reflect the amount of the inputs that went into the product produced. MTZ notes that this determination has a direct impact on the revenue collected by the GOI. The GOI, MTZ argues, should be presumed to be acting in its own self-interest. Furthermore, SION H208, which applies to PET chips (MTZ's method of production of PET film), is a very simple SION. Unlike the more complicated PET film SIONs, the physical characteristics of the PET film ensure the accuracy of the SION. Because MTZ received only "the equivalent to drawback on importations of inputs used in the production of exports," MTZ argues that the Department should find the ALP is not

[55] See PET Film Preliminary Results of 2006 Review, 73 FR at 45962

countervailable.[56]

Petitioners disagree with MTZ that the Department erred in finding the ALP to be countervailable.[57] The Department's finding was based on the absence of new information to warrant reconsideration of its determination in the 2005 administrative review that the ALP was countervailable.[58] Furthermore, Petitioners argue that MTZ does not cite to any record evidence or new information that would lead the Department to reconsider this finding.[59] Further, they note that MTZ's assertion that the SION applicable to MTZ is a "very simple SION"[60] is not new information that would warrant reconsideration. As the Department considered this argument in the previous review and found the ALP countervailable, the Department should continue to find the ALP to be countervailable in the final results of this review.

Department Position:

There is no new information on the record of this review to warrant reconsideration of its determination in the 2005 CVD administrative review. The Department continues to find that the ALP is countervailable because of the systemic deficiencies in the ALP identified in the Preliminary Results, citing to the final results of the 2005 CVD administrative review, i.e., the GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. See PET Film Final Results of 2005 Review, at "Advanced License Program."

Specifically, in those final results, the Department stated that it still had concerns with regard to several aspects of the ALP including: (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports. Whether PET film SION H208 is a simple SION does not affect the systemic deficiencies identified in the previous review, and the Department's determination of countervailability of the ALP. Further, in the final results of the 2005 review, the Department found that the GOI lacks a system that is reasonable and effective for the purposes intended to confirm which inputs are consumed in the production of the exported products, and in what amounts, making normal allowances for waste, as required under 19 CFR 351.519. Id. For further discussion on MTZs arguments with regard to the principle of comity, see Comment 10, below.

[56] MTZ Case Brief, at 19-20.
[57] Id., at 19-20.
[58] See PET Film Preliminary Results of 2006 Review, at 45961.
[59] MTZ Case Brief, at 19-20.
[60] Id., at 19.

Union Territories Central Sales Tax Programs (CST)

Comment 8: The Benefits Received Under the Program

MTZ states that the Department's determination that MTZ received a benefit by not having to pay CST on the purchases from the Union Territory is wholly inconsistent with the law and the facts on the record of this case. A Union Territory, MTZ states, is governed by the national government. The absence of a local government and the control by national government shows the absence of the level of government that would impose state sales taxes, MTZ contends. Instead, the CST is a tax intended to substitute for the individual state sales taxes for purchases made by purchasers from outside of the state. MTZ concludes that the CST applies only where states have sales taxes. As Union Territories do not have a state sales tax, MTZ concludes that purchases from a supplier in the Union Territories by a purchaser from outside the Union Territories are not subject to the CST. Also, MTZ notes that neither it nor its supplier applied for an exemption from CST.

Petitioners contest MTZ's arguments with regard to the Union Territories CST Programs. Instead, Petitioners argue that the Department should continue to find a countervailable subsidy with respect to the CST. Petitioners refute MTZ's arguments by noting that they do not provide a legitimate basis for changing the Department's determinations with respect to the Union Territories CST program. Specifically, MTZ fails to cite any record evidence or legal authority to support its claim that the exemption of the Union Territories from the CST is not a countervailable subsidy.[61] Further, Petitioners state the Department's treatment of this issue is consistent with its findings in the 2005 countervailing duty administrative review,[62] and the Department should continue to treat the Union Territories CST program as countervailable.

Department Position:

The GOI's decision to exempt sellers in the Union Territory from collecting CST is a financial contribution in the form of revenue forgone, pursuant to section 771(5)(D)(ii) of the Act. Whether the particular Union Territory institutes and administers a sales tax for sales transactions within the Union Territory is irrelevant because CST for sales transactions between Union Territories and entities located outside of Union Territories is normally collected, as indicated by the Indian "Central Sales Tax Act."[63] The Central Sales Tax Act, 1956, Chapter III-Inter-State Sales Tax, Section 9(3), Levy and collection of tax and penalties, clearly states: "The proceeds in any financial year of any tax, including any interest or penalty, levied and collected under this Act in any State (other than a Union Territory) on behalf of the Government of India shall be assigned to that State and shall be retained by it; and the proceeds attributable to Union Territories shall form part of the Consolidated Fund of India."[64] This statement contradicts MTZ's statement that the CST does not apply to Union Territories. MTZ stated itself

[61] MTZ Case Brief, at 20-23.
[62] See PET Film Final Results of 2005 Review, at Comment 11.
[63] See GOI Fifth Supplemental Questionnaire Response, at Exhibit S5-4,
[64] See id., at Exhibit S5-4, pp. 215-216 (emphasis added).

in its response that "{s}ales made by an entity in the Union Territory to an entity outside the Union territory are also not subject to tax. At best, they were exempted from the Central State Sales Tax which applies for sales between states. The Central State Sales Tax has been repealed and is being phased out in stages."[65] MTZ continues that, for its purchases from the Union Territory, "{t}the only tax which could even theoretically apply which was not paid by MTZ would be the Central State Sales Tax. The rate of this tax was 4% during the POR."[66] Not collecting such taxes constitutes revenue forgone by the GOI. See "Union Territories Central Sales Tax (CST) Program" section III. A., above, regarding the Department's countervailability determination. In the PET Film Final Results of 2005 Review, at "Union Territories Central Sales Tax (CST) Program," the Department determined that MTZ receives a countervailable subsidy on its purchases from suppliers located in a Union Territory. In that review, the Department reviewed purchases made by MTZ, which is located in the SOG, from a supplier located in a Union Territory and determined that the Union Territories CST program is countervailable because a financial contribution, in the form of tax revenue forgone, as defined under section 771(5)(D)(ii) of the Act, is provided by the GOI under the Union Territories CST exemption program. The benefit equals the amount of sales taxes not paid by MTZ pursuant to section 771(5)(E) of the Act. Pursuant to section 771(5A)(D)(iv) of the Act, this program is de jure specific because it is administered by the central government and its availability is limited by law to certain geographical regions (Union Territories) within India. The Department also determined that the CST program provides a recurring benefit under 19 CFR 351.510(c). See "Union Territories Central Sales Tax (CST) Program" section III. A., above. There is no new evidence on the record for the Department to reconsider its countervailability determination. Therefore, for these final results, we determine that MTZ, as a result of its supplier's exemption from collecting the CST, received countervailable benefits under this program.

Comment 9: Adjustments to Cash Deposit Rates to Account for Program-Wide Changes

MTZ contends that, should the Department erroneously decide to assign a benefit to MTZ for the Union Territories CST Program, the Department should reduce the amount of the benefit by fifty percent to reflect the fact that the rate upon which the Department has based its erroneous calculation has recently been reduced by fifty percent.[67]

Petitioners did not comment on this issue.[68]

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[65] See MTZ's First Supplemental Questionnaire Response, at 13.
[66] Id., at 14.
[67] This comment is in reference to a schedule of anticipated reductions in the CST by the GOI, which MTZ placed on the record of this review. According to this schedule the CST will be reduced from four percent to three percent in 2007, but indicating that subsequent yearly one percent reductions are pending. See MTZ's First Supplemental Questionnaire Response, at 13; see also GOI Third Supplemental Questionnaire Response, at 5.
[68] On October 8, 2008, the Department requested that MTZ re-file their case brief redacting all information the Department determined to be untimely filed new factual information, in accordance with 19 CFR 351.302(d)(1)(i). On the same day, the Department asked Petitioners to re-file their rebuttal brief, redacting all references to MTZ's rejected new factual information. In the re-filed rebuttal brief, Petitioners redacted their comment with the rejected factual information.

Department Position:
We disagree that MTZ's cash deposit rate should reflect a program-wide change for the CST program for the Union Territories.

As noted above, 19 CFR 351.526(b)(2) provides that, among other requirements, a program-wide change must be effectuated by an official act, such as the enactment of a statute, regulation, or decree, or contained in the schedule of an existing statute, regulation or decree. Although MTZ and the GOI reported that the CST is being phased out by April 1, 2010, neither the GOI nor the MTZ provided the Department with the applicable statute, regulation or decree that enacted the alleged program-wide change.

Therefore, neither the GOI nor MTZ established that there was a program-wide change consistent with 19 CFR 351.526. For the foregoing reasons, it is not appropriate to make an adjustment to the cash deposit rate, pursuant to 19 CFR 351.526(a) for the CST exemptions in the Union Territory.

Comment 10: Principle of Comity

MTZ states in the context of three program specific comments, i.e., the EPCGS, the ALP, and the Union Territories CST, that the Department did not follow the principle of comity. With respect to the EPCGS, MTZ argues that the GOI has determined the procedures it deems adequate to enforce its laws, protect its revenue and ensure the companies meet their obligations. MTZ claims that, for the EPCGS, the GOI devised procedures that establish the amount of the duty forgone by the GOI and, thus, the duties saved by MTZ. MTZ further claims that the GOI has established procedures for partial satisfaction of the EO under the EPCGS program. Under the principle of comity, MTZ contends, the Department must defer to the "sovereign state of India to the construction of its own laws. The Department cannot substitute its judgment for that of another Sovereign State where, as here, it is a matter of the administration of the Sovereign state's own laws."[69] Thus, MTZ contends, the GOI's decision over the amount of duty foregone, and the GOI's determination to formally accept a portion of the EO has to be considered controlling.

In reference to the ALP and the SIONs associated with PET film, MTZ contends that the Department should defer to the determination by the GOI that these norms reflect the amount of the input that went into the product produced. Specifically, MTZ claims, the GOI's determination had a direct impact on the revenue collected by the GOI, and the GOI "should be presumed to be acting in its own self-interest."[70]

[69] See MTZ's Case Brief, at 15.
[70] See id., at 19.

Concerning the Union Territories CST, MTZ argues, the GOI's decision not to impose sales taxes does not constitute a countervailable duty. The Department's determination to expand the coverage of an extant tax to where it does not apply and to determine an exemption from it is an abuse of discretion, MTZ contends.

Petitioners did not comment on this issue.

Department Position:
As an initial matter, we note that the GOI has not stated that it views these laws and procedures as MTZ suggests. In any event, the Department has not disregarded the Indian laws and procedures on the record concerning the three programs at issue. These laws and procedures are evidence that the Department considered in its analysis under the U.S. CVD law to determine the existence and amount of the subsidies. However, the weight given to these laws and procedures under the CVD law depends on more than a simple analysis of the four corners of the laws and procedures. The Department must also examine the actual manner in which the programs are administered and make a determination as to the amount of benefits actually bestowed. As explained above in other sections of this notice for each of the programs at issue, the Department has made the appropriate determinations under the CVD law. To the extent these determinations differ from the MTZ's view of the Indian laws and procedures, it is because, in the Department's view, the record evidence supports the Department's interpretation.

The principle of comity does not apply in the context of a CVD case under U.S. law. The standard of review for a Department determination is that it must be supported by substantial evidence on the record and otherwise in accordance with U.S. law. The CVD statute does not require the Department to accept an interested party's interpretation of a foreign law if there is other record evidence which conflicts with that interpretation. The Department is charged by Congress to weigh the evidence on the record in light of the parameters of the CVD law and provide a reasoned determination based thereon for purposes of determining the amount of CVD duties on imports into the United States.

Due Process

Comment 11: Due Process Claims

MTZ argues that the Department did not request information in a timely manner by not raising issues with MTZ as they arise, thereby "creating issues that should not have arisen, and obscuring actual issues having an impact on MTZ.[71]" MTZ claims that "{t}his deprivation was serious and has worked substantial harm on MTZ."[72] To support its claim, MTZ states that the Department did not issue a supplemental questionnaire to MTZ's Original Questionnaire Response, filed on December 3, 2007, until April 11, 2008. Despite its multiple requests for the

[71] See MTZ Case Brief, at 26.
[72] See id., at 27.

prompt issuance of this questionnaire in light of the very compressed deadlines in the previous review, MTZ claims that the Department's inaction, again, created artificially short deadlines to respond, and caused the deadlines to fall during the monsoon season and the holiday period. MTZ also cites to certain benefits the Department applied to MTZ's EPCGS in the Preliminary Results, based on information obtained by the GOI late in March; however, the Department did not question MTZ about it until the fifth supplemental questionnaire was issued after the Preliminary Results of this review. According to MTZ, this deprivation was serious and has worked substantial harm on MTZ. At a minimum, MTZ contends, the Department should issue a pre-final determination.[73]

Further, MTZ disagrees with the Department's standards for establishing that certain information is factual. By requesting numerous documents, often in their totality for certain programs, the Department conducts a de facto verification without following the procedures for conducting a verification. This, MTZ contends, is highly burdensome for a small company like MTZ. This process, MTZ claims, results in MTZ having to establish impossible standards for the provision of information and the improper rejection of certain facts set forth by MTZ. This is contrary to the certification and verification procedures under which the Department is to assume that all facts provided are accurate. MTZ argues that it had to establish beyond any doubt that the information is correct, whereas the verification process is the primary check on the accuracy to save a small company like MTZ from having to undergo the time and expense of preparing and providing this extensive information. Because of this burdensome standard, it was impossible for a small company like MTZ to place all the information demanded by the Department on the record.[74]

Petitioners argue that MTZ's allegations of a denial of due process in this proceeding[75] are devoid of citations to any supporting authority, whether in the Department's procedural regulations or otherwise. Petitioners note that the Department has afforded MTZ numerous opportunities to provide it with an accurate and complete factual record.[76]

Department Position:
The Department provided MTZ all of the due process to which it was entitled under the CVD law. Under the CVD law, the Department is required to collect sufficient information from the respondent so that it understands the facts and circumstances surrounding the existing and alleged subsidy programs for the relevant period under review. See 19 CFR 351.221(b)(2).

The Department provided MTZ with many opportunities during this proceeding to submit factual information, as provided in the Department's regulations, by letting MTZ respond to five supplemental questionnaires issued subsequent to the original questionnaire. The Department also provided MTZ with an opportunity for written argument and a hearing upon request,

[73] See id., at 25-28.
[74] See MTZ Case Brief, at 28-30.
[75] See id., at 25-30.
[76] See Petitioners' Rebuttal Brief, at 16 (September 22, 2008).

pursuant to which the parties could present arguments for consideration in the Department's final results.

Throughout the proceeding, the Department granted MTZ extensions to respond to the Department's questionnaires for every request filed to the extent possible given the statutory deadlines within which the Department must make its determinations. The Department even accepted factual information filed past the due date.[77] We note that the Department issued the original questionnaire on October 5, 2007, with a due date of November 13, 2007. MTZ requested an extension of three weeks, and the Department granted an extension of two weeks, until November 27, 2007. Thereafter, MTZ requested a second extension of seven days, which the Department granted. The response was then due December 4, 2007. In all, the Department granted MTZ two extensions each to respond to the first, second, and fourth supplemental questionnaires, and one extension each to the third and the fifth supplemental responses. Also, MTZ failed to provide an exhibit referenced in MTZ's Third Supplemental Questionnaire Response, and the Department provided MTZ with an opportunity to provide the missing Exhibit S2-1 with MTZ's Fourth Supplemental Questionnaire Response, on July 22, 2008, eight days before the issuance of the Preliminary Results. MTZ filed Exhibit S4-2 to MTZ's Fifth Supplemental Questionnaire Response one day late, and the Department nevertheless accepted this exhibit. The Department even extended the hearing date to accommodate the schedule of MTZ's counsel.[78] Based on the above, the Department has taken several steps to ensure that MTZ has had sufficient opportunity to provide the Department with the information that is necessary to make its determination in this case.

[77] Due to the statutory deadlines the Department was not always able to grant the full amount of time requested; however, the Department always granted an extension to the time limit for MTZ to respond.
[78] See "Memorandum to All Interested Parties from Elfi Blum: Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film from India; Re-scheduled Hearing Date in the 2006 Countervailing Duty Administrative Review" (September 30, 2008).

Recommendation

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

____
Agree

____
Disagree

____
David M. Spooner
Assistant Secretary
for Import Administration

____
Date