

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

DATE: October 15, 2009

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Countervailing Duty Determination: Commodity Matchbooks
from India

I. Summary

On April 6, 2009, the Department published Commodity Matchbooks from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 74 FR 15444 (April 6, 2009) (Preliminary Determination). The interested parties in this proceeding are the petitioner, D.D. Bean & Sons Co., and the respondents, the Government of India (GOI), and the sole mandatory company respondent, Triveni Safety Matches Pvt. Ltd. (Triveni). We provided the interested parties an opportunity to comment on the Preliminary Determination. No comments were submitted. The “Analysis of Programs” and “Subsidies Valuation Information” sections below describe the subsidy programs and the methodologies used to calculate the benefits from the programs under investigation. For additional information regarding the methodologies used to calculate the subsidy rates for each countervailable program in this final determination, see “Calculations Memorandum for the Final Affirmative Countervailing Duty Determination: Commodity Matchbooks from India,” dated concurrently with this memorandum.

II. Background

As detailed fully in the “Case History” section of the Federal Register notice issued simultaneously with this Issues and Decision Memorandum, the Department conducted verification of the questionnaire responses submitted by the GOI and Triveni from May 4 through May 8, 2009. The Department issued verification reports on August 7, 2009. See Memorandum to Dana Mermelstein, Program Manager for AD/CVD Operations, Office 6, from Sean Carey, Case Analyst, AD/CVD Operations, Office 6, “Verification of the Questionnaire

Responses Submitted by the Government of India” (GOI Verification Report), dated August 7, 2009; see also Memorandum to Dana Mermelstein, Program Manager for AD/CVD Operations, Office 6, from Sean Carey, Case Analyst, AD/CVD Operations, Office 6, “Verification of the Questionnaire Responses Submitted by Triveni Safety Matches Pvt. Ltd.” (Triveni Verification Report), dated August 7, 2009. We did not receive case briefs from any of the interested parties in this proceeding. As a result, there are no comments for the Department to address in this final determination.

III. Subsidies Valuation

A. Allocation Period

In the Preliminary Determination, consistent with 19 CFR 351.524(d)(2), we used an average useful life (AUL) period as the allocation period for non-recurring subsidies. The AUL applicable to the commodity matchbook industry is 10 years according to the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System. No party in this proceeding has disputed this allocation period. Thus, we have continued to use a 10-year AUL in this final determination.

B. Attribution of Subsidies – Sales Denominator

When selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considered the basis for the respondent company’s receipt of benefit under each program at issue. For export-related subsidies, the Department attributed the subsidies only to products exported by the respondents and used export sales as the denominator. See 19 CFR 351.525(b)(2). The Department found that Triveni received only export subsidies during the POI. For the Post-Shipment Export Financing program and the Duty Entitlement Passbook Scheme (DEPS/DEPB), the Department was able to tie the benefits received by Triveni from these programs to total exports of subject merchandise to the United States. For the remaining programs, the benefits were attributed to total exports made during the POI.

C. Benchmarks and Discount Rates

For programs requiring the application of a benchmark interest rate or a 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 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 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, 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 for purposes of calculating benchmark rates. See, e.g., 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; also 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 “Benchmark Interest Rates and Discount Rates” section.

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a government- provided, short-term loan program, the preference would be to use a 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 investigation, the Department found that Triveni received only rupee-denominated short-term loans during the POI under the Pre-Shipment and Post-Shipment Export Financing programs. See Triveni Verification Report at page 1. For further information regarding this program, see the “Pre-Shipment and Post-Shipment Export Financing” section below.

Triveni reported and the Department confirmed at verification that all of its short-term financing was obtained from one bank and that some of this financing consisted of commercial loans provided under cash credit facilities. See Triveni Verification Report at page 2 and Exhibit 3, and Annexure VI of its March 16, 2009 supplemental questionnaire response (supplemental response). The Department has previously used the interest rate on cash credit loans as a comparable type of commercial short-term loan benchmark for the GOI’s pre- and post-shipment export financing programs. See e.g., 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, at “Benchmarks for Loans and Discount Rate” section. Therefore, the Department is using the interest rates from Triveni’s rupee-denominated short-term cash credit loans, in accordance with 19 CFR 351.505(a)(3), as the benchmark to determine benefits received under the Pre-Shipment and Post-Shipment Export Financing programs.

With respect to long-term loans and grants allocated over time, the Department required benchmarks and discount rates to determine benefits received under the Export Promotion Capital Goods Scheme (EPCGS) program. Normally, for years for which we do not have company-specific information, the Department relies on comparable long-term rupee-denominated loan interest rates from loans received by the company in the immediately preceding year, as directed by 19 CFR 351.505(a)(2)(iii). When the respondent has no comparable long-term, rupee-denominated loans from commercial banks during either the year under consideration or the preceding year, the Department uses national average interest rates from the IMF Statistics, pursuant to 19 CFR 351.505(a)(3)(ii). Triveni reported and we confirmed at verification that it was approved for a comparable commercial long-term rupee-denominated loan for one of the two years for which the Department required a long-term rupee-denominated benchmark interest rate. See Triveni Verification Report at page 3 and Exhibit 3, and Annexure VII of Triveni’s supplemental response. Therefore, we used this one commercial long-term loan as the benchmark interest rate for 2006. For the only other program for which the Department required a long-term benchmark interest rate, we relied on the IMF statistics for the national average long-term interest rate in 2005.

IV. Analysis of Programs

A. Programs Determined to Be Countervailable

1. 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 are allowed to pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to five or eight times the value of the capital goods within a period of eight years. We learned at verification that since 2003, the GOI's calculation of the export obligation changed and is now based on a multiple of the amount of duty saved on the imported equipment under this program, rather than being based on a multiple of the value of the imported equipment itself. This export obligation is currently eight times the duty saved on the imported capital goods for a period of eight years. See GOI Verification Report at page 3. 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. Id. at page 4.

In the Preliminary Determination, 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) in the form of revenue forgone for not collecting import duties; (2) as explained below, respondents benefit 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 specific under sections 771(5A)(A) and (B) of the Act. No new information or evidence of changed circumstances has been presented since our preliminary determination to warrant reconsideration of this finding. Therefore, we continue to find the EPCGS program countervailable.

The first benefit results from the provisional waiver of import duties that the exporter will have to pay if the accompanying export obligations are not met. The repayment of these duties is contingent on subsequent events, and in such instances, it is the Department's practice to treat the balance of provisionally waived duties as an interest-free loan. The second benefit results from the final waiver of duty on imports of capital equipment which the GOI grants when the exporter fulfills the export requirements of the EPCGS license. For those licenses for which companies demonstrate that they have completed their export obligations and have been granted the final exemption of duties, 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, which provide non-recurring benefits in accordance with 19 CFR 351.524(c)(2)(iii).

Triveni imported capital goods under the EPCGS in years prior to the POI, and received various EPCGS licenses to import equipment involved in the production of subject merchandise. Further, we note that Triveni did not demonstrate that its EPCGS licenses and the imported equipment are tied, within the meaning of 19 CFR 351.525(b)(5), to the production of a

particular product. As such, we find that Triveni's EPCGS licenses benefit all of the company's exports.

Triveni met the export requirements for two EPCGS licenses prior to the POI, and the GOI formally waived the relevant import duties in 2005 and 2006. For one other license, Triveni reported that it had met the export requirement; however, the final GOI waiver of the obligation to pay the duties for this license was received after the POI. See Triveni Verification Report at page 12. Therefore, although Triveni received a deferral from paying import duties when the capital goods were imported, the final waiver for this license was granted after the POI. For Triveni's imports for which the GOI has formally waived the duties prior to or during the POI, 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 Triveni's capital equipment imports prior to the POI, 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. As noted in the Preliminary Determination, we determine the year of receipt of the benefit to be the year in which the GOI formally waived Triveni's outstanding import duties. 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 Triveni an import duty waiver. In each year in which the GOI granted Triveni an import duty waiver, the total waivers Triveni received exceeded 0.5 percent of Triveni's total export sales; therefore we allocated the total waivers over the AUL period. See "Allocation Period" section, above.

As noted above, Triveni received import duty reductions on its imports of capital equipment for which it had not yet met its export obligations by the end of the POI. Consistent with our practice and our preliminary determination, we will treat the outstanding unpaid import duty liability in the POI as an interest-free loan. See 19 CFR 351.505(d)(1) and, 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, at "EPCGS." 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 POI, had not been formally waived by the GOI. Accordingly, we continue to find, as in the Preliminary Determination, the benefit to be the interest that Triveni would have paid during the POI had it borrowed the full amount of the duty reduction or exemption at the time of importation.

The time period, as stated above, for fulfilling the export commitment for Triveni's EPCGS licenses is eight years after importation of the capital good. Consequently, the date of expiration of the time period to fulfill the export commitment occurs at a point in time 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 at a point in time that is more than one year after the date of importation of the capital good. As the benchmark interest rate, we used a comparable commercial long-term loan and, for the relevant year in which such a loan was not available, we used the national average long-term interest rate from the IMF statistics for the year in which the capital good was imported. See the "Benchmarks and Discount Rates" section above.

The benefit received under the EPCGS is the total amount of: (1) the benefit attributable to the POI from the grant of formally waived duties for imports of capital equipment for which respondents met the export obligation by December 31, 2007, and/or (2) interest that should have been paid on the contingent liability loans for imports of capital equipment for which Triveni has not met its export obligation. To calculate the benefit from the formally waived duties for imports of capital equipment for which Triveni has met its export requirements, we took the total amount of the waived duties in each year and 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 “Benchmarks and Discount Rates” section above to determine the benefit amounts attributable to the POI.

To calculate the benefit from the contingent liability loans for Triveni, 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. This amount was then summed with the benefits from the final duty exemptions to determine the total benefit. We then divided the total benefit under the EPGCS by Triveni's total exports to determine a subsidy of 0.89 percent ad valorem for Triveni.

2. Duty Entitlement Passbook Scheme (DEPS/DEPB)

The DEPS/DEPB 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 Standard Input Output Norm for the exported product. DEPS credits can be used to pay import duties 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.

In the Preliminary Determination, the Department determined that, under the 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; and, that a benefit is conferred pursuant to section 771(5)(E) of the Act in the amount of the duty exemptions because the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended to confirm which inputs, and in what amounts, are consumed in the production of the exported products. See 19 CFR 351.519(a)(4). Finally, because this program is contingent upon export, it is specific under sections 771(5A)(A) and (B) of the Act. No new information or evidence of changed circumstances has been presented since our preliminary determination to warrant reconsideration of this finding. Therefore, we continue to find the DEPS/DEPB program countervailable.

Pursuant to 19 CFR 351.519(b)(2), we continue to 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. 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 available credits that amount to a duty exemption).

Triveni reported that it received post-export credits on shipments of subject merchandise under the DEPS program during the POI. Triveni also reported that it paid required application fees for each DEPS license associated with its export shipments made during the POI. We recognize that these fees provide an allowable offset to DEPS benefits in accordance with section 771(6)(A) of the Act. Because DEPS credits are earned on a shipment-by-shipment basis, we consider that the benefits are tied to particular products and markets, in accordance with 19 CFR 351.525(b)(5). As such, we measure the benefit by identifying all DEPS credits granted on exports of subject merchandise to the United States during the POI. We calculate the subsidy rate by dividing these benefits (net of application fees) by total exports of subject merchandise to the United States during the POI. On this basis, we determine Triveni's countervailable subsidy from the DEPS/DEPB program to be 6.52 percent ad valorem.

3. Pre-Shipment and Post-Shipment Export Financing

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 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.

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 Preliminary Determination, the Department determined that the pre-shipment and post-shipment export financing programs are countervailable because: (1) the provision of the export financing constitutes a financial contribution, pursuant to section 771(5)(D)(i) of the 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 to the extent that the interest rates provided under these programs are lower than commercially available interest rates; and (3) these programs are specific under sections 771(5A)(A) and (B) of the Act because they are contingent upon export performance. There is no new information or evidence of changed circumstances since our preliminary determination that would warrant reconsidering this finding. Therefore, we continue to find this program countervailable.

Triveni reported that under this program, it obtained packing credits for pre-shipment financing and discounted trade bills for post-shipment export financing, denominated in both Indian rupees and U.S. dollars. At verification, we learned and confirmed that the reported U.S. dollar denominated pre- and post-shipment loans under this program were actually the rupee denominated loans that had been converted into U.S. dollars and not different loans. See Triveni Verification Report at page 1. Therefore, for this final determination, we find that only rupee-denominated pre- and post-shipment loans under this program were received by Triveni during the POI.

As noted above in the “Benchmarks and Discount Rates” section, the Department is using Triveni’s rupee-denominated short-term interest rate from its cash credit facilities, in accordance with 19 CFR 351.505(a)(3), to determine benefits received under the Pre-Shipment and Post-Shipment Export Financing programs.

The benefit conferred by the packing credits for pre-shipment financing and discounted trade bills for post-shipment export financing, is the difference between the amount of interest the company paid on the government loans and the amount of interest it would have paid on comparable commercial loans. Because pre-shipment loans are not tied to exports of a particular product, or to particular markets, we calculated the subsidy rate for these loans by dividing the total benefit by the value of Triveni’s total exports during the POI, in accordance with 19 CFR 351.525(b)(2). On this basis, we determine the countervailable subsidy from pre-shipment export financing to be 2.15 percent ad valorem for Triveni.

Because post-shipment loans are normally tied to specific shipments of a particular product to a particular market, we normally divide the benefit from post-shipment loans tied to exports of subject merchandise to the United States by the value of total exports of subject merchandise to the United States during the POI. See 19 CFR 351.525(b)(4). Since the information on the record demonstrates that Triveni’s post-shipment loans were tied to a particular market, we have calculated the subsidy rate for the loans tied to the U.S. market by dividing the benefit from these post-shipment loans by the value of Triveni’s total exports to the United States during the POI. On this basis, we determine the countervailable subsidy provided to Triveni from post-shipment export financing to be 0.32 percent ad valorem.

B. Programs Determined to be Not Used

1. Export Oriented Unit Scheme
 - a. Duty-Free Import of Capital Goods and Raw Materials
 - b. Reimbursement of Central Sales Tax Paid on Goods Manufactured in India
 - c. Duty Drawback on Fuel Procured from Domestic Oil Companies
 - d. Exemption from Income Tax under Sections 10A and 10B of Income Tax Act

2. Advance License Program
3. Duty Free Import Authorisation Scheme

VII. Recommendation

Based on the results of verification, we recommend adopting all of the above subsidy findings. If these recommendations are accepted, we will publish this final determination in the Federal Register.

Agree_____

Disagree_____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

(Date)