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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

SUBJECT: Issues and Decision Memorandum: Final Results of Countervailing Duty Administrative Review: Certain Lined Paper Products from India

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Summary

We have analyzed the comments submitted by petitioners[1] and respondent, Navneet Publications (India) Limited (Navneet) in the administrative review of the countervailing duty (CVD) order on certain lined paper products from India for the period February 15, 2006, through December 31, 2006.[2] On November 13, 2008, petitioners filed a case brief. On November 21, 2008, Navneet filed a rebuttal brief. Below, the "Subsidies Valuation Information" and "Analysis of Programs" sections describe methodology followed in this review with respect to Navneet. The "Analysis of Comments" section contains the Department of Commerce's (Department) response to the issues raised in the petitioners' case brief and addressed in Navneet's rebuttal brief. We recommend that you approve the position described in

[1] Petitioners are the Association of American School Paper Suppliers and its members Mead Westvaco Corporation, Top Flight Inc., and Norcom Inc.

[2] Pursuant to 19 CFR 351.213(e)(2)(ii), because the Department received Navneet's request during the first anniversary month after publication of the order, this administrative review covers entries from February 15, 2006, the date of suspension of liquidation through December 31, 2006, the end of the most recently completed calendar year. The date of suspension of liquidation corresponds to the publication in the Federal Register of the Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 7916 (February 15, 2006) (Preliminary Determination of Lined Paper Investigation). However, for purposes of this administrative review, we will analyze data corresponding to calendar year 2006 (January 1, 2006, through December 31, 2006) to determine the subsidy rate for exports of subject merchandise made during the period in which liquidation of entries was suspended.

this memorandum. Below is a complete list of the issues in this review for which we received comments from petitioners and Navneet.

Comment 1: Whether the Department Should Apply Total Adverse Facts Available to Navneet

Comment 2: In the Alternative, Whether the Department Should Apply Partial Adverse Facts Available in Calculating Navneet's Duty Entitlement Passbook Scheme (DEPS) Subsidy

Comment 3: Whether the Department Erred in Calculating the Benefit on the 80IB Tax Program

I. SUBSIDIES VALUATION INFORMATION

A. Benchmarks for Long Term Loans and Discount Rates

In these final results, we are using rupee-denominated long-term loans for purposes of our benchmark discount rate and long-term benchmark rate. Pursuant to 19 CFR 351.524(d)(3)(i), the Department may use, when available, the company-specific cost of long-term, fixed-rate loans (excluding loans deemed to be countervailable subsidies) as a discount rate for allocating non-recurring benefits over time. Similarly, pursuant to 19 CFR 351.505(a), the Department will normally use the actual cost of comparable commercial borrowing by a company as a loan benchmark, when available. According to 19 CFR 351.505(a)(2)(i), a comparable commercial loan is defined as one that, when compared to the loan being examined, has similarities in the structure of the loan (e.g., fixed interest rate vs. variable interest rate), the maturity of the loan (e.g., short-term vs. long-term), and the currency in which the loan is denominated.

However, when there are no comparable commercial loans, the Department may use a national average interest rate as a benchmark discount rate and long-term benchmark rate, pursuant to 19 CFR 351.524(d)(3)(i)(B) and 19 CFR 351.505(a)(3)(ii), respectively. 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 selecting a benchmark rate.

Navneet reported rupee-denominated and dollar-denominated commercial short-term loans that were outstanding during the period of review (POR).[3] However, Navneet did not report any comparable long-term loans from commercial banks during the years under consideration (2000-2004) that the Department could use for our benchmark discount rate and long-term benchmark rate. Therefore, in accordance with 19 CFR 351.524(d)(3)(i)(B) and 19 CFR 351.505(a)(3)(ii), we used India's prime lending rate (PLR) as published by the Reserve Bank of India (RBI), as our average, long-term benchmark interest rate. The use of the PLR is consistent with the Department's practice in prior Indian proceedings. See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008) (HRC Review), and accompanying Issues and Decision Memorandum (HRC Review Decision Memorandum) at "Long-Term Benchmarks

[3] In this segment of the proceeding, we are examining a countervailable program, Export Promotion Capital Goods Scheme (EPCGS), which requires the use of long-term benchmarks.

and Discount Rates" section.

B. Allocation Period

Under 19 CFR 351.524(d)(2)(i), we presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS tables), as updated by the U.S. Department of the Treasury. This presumption will apply unless a party claims and establishes that the IRS tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under review, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under review is significant, pursuant to 19 CFR 351.524(d)(2)(i).

In the Preliminary Results, we inadvertently stated that for assets used to manufacture products such as lined paper products, the IRS tables prescribe an AUL of 15 years. See Certain Lined Paper Products from India: Notice of Preliminary Results of Countervailing Duty Administrative Review, 73 FR 58121, 58124 (October 6, 2008) (Preliminary Results). In fact, the IRS tables prescribe an AUL of 13 years for assets used to manufacture products like lined paper products.[4] We note that the Department assigned an AUL of 13 years in the underlying investigation. See Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 7916, 7918 (February 15, 2006) (Preliminary Determination of Lined Paper Investigation) (unchanged in Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2006) (Final Determination of Lined Paper Investigation) and accompanying Issues and Decision Memorandum (Final Determination of Lined Paper Investigation Decision Memorandum). Interested parties in this segment of the proceeding did not rebut the regulatory presumption of employing an AUL based on the IRS tables. Therefore, we have employed an AUL of 13 years, as prescribed by the IRS tables, to allocate any non-recurring subsidies for purposes of these final results.

Further, for non-recurring subsidies, we have applied the "0.5 percent test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period. If the amount of the subsidies is greater than 0.5 percent of the relevant sales, we allocate the subsidies under 19 CFR 351.524(d)(1).

II. ANALYSIS OF PROGRAMS

[4] The Department informed Navneet that it intended to continue to use an AUL of 13 years in the instant review. See page 5, section III of the Department's November 6, 2007, initial questionnaire (Initial Questionnaire).

A. Programs Determined To Confer Subsidies

1. Duty Entitlement Passbook Scheme (DEPS)

India's DEPS was enacted on April 1, 1997, as a successor program to the Passbook Scheme (PBS). DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post-export basis, provided that the Government of India (GOI) has established a standard input/output norm (SION) for the exported product. DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. DEPS credits are valid for 12 months and are transferable after the foreign exchange is realized from the export sales on which the DEPS credits are earned. With respect to subject merchandise, the GOI has established a SION for the lined paper industry.

The Department has previously determined that DEPS is a countervailable program. See, e.g., Final Determination of Lined Paper Investigation Decision Memorandum at IV. A3. "Duty Entitlement Passbook Scheme." In the Preliminary Results we therefore determined that under DEPS, a financial contribution, as defined under section 771(5)(D)(ii) of the Tariff Act of 1930, as amended (the Act), is provided because the GOI provides credits for the future payment of import duties. Additionally, under section 771(5)(E) of the Act and 19 CFR 351.519(a)(4), we determined that the entire amount of import duty exemption earned during the POR constitutes a benefit because the GOI does not have in place and does not apply a system that is reasonable and effective for determining what imports are consumed in the production of the exported product and in what amounts. See Preliminary Results, 73 FR at 58124. We also found DEPS to be specific under section 771(5A)(A) of the Act because the program is limited to exporters. Id. No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of the Department's finding.

We have previously determined that this program provides a recurring benefit under 19 CFR 351.519(c). See, e.g., Preliminary Determination of Lined Paper Investigation, 71 FR 7916, 7920 (unchanged in Final Determination of Lined Paper Investigation); see also 19 CFR 351.524(c). In accordance with past practice and pursuant to 19 CFR 351.519(b)(2), in the Preliminary Results, we found that benefits from the DEPS program are conferred as of the date of exportation of the shipment for which the DEPS credits are earned. See Preliminary Results, 73 FR at 58124; see also Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India, 64 FR 73131 (December 29, 1999) (Final Determination of CTL Plate Investigation), at Comment 4 (explaining that for programs such as the DEPS, "We calculate the benefit on an 'earned' basis (that is upon export) where it is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis and the exact amount of the exemption is known"). To calculate the benefit, we summed the credits that Navneet earned during the POR on each export shipment to the United States during the POR. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6) of the Act.

Because DEPS credits are earned on a shipment-by-shipment basis, in calculating the net subsidy rate under the DEPS program, we normally divide the DEPS credits, or benefits, earned on exports of subject merchandise to the United States during the POR by the total sales of

subject merchandise to the United States during the POR. However, in the case of Navneet, the U.S. sales on which the company earned the DEPS credits during the POR pertained to both subject and non-subject merchandise. Therefore, as we did in the Preliminary Results, 73 FR at 58124, in these final results, we calculated the net subsidy rate by dividing the benefit by Navneet's total export sales to the United States during the POR. This approach is consistent with the Department's treatment of this program in other proceedings. See Final Determination of Lined Paper Investigation Decision Memorandum at IV.A.3. "Duty Entitlement Passbook Scheme." Interested parties submitted comments regarding the manner in which we attributed subsidies under this program. However, based on the information on the record, we find no reason to change our calculation methodology in this review. See Comment 2.

On this basis, we calculated a net countervailable subsidy rate of 6.93 percent ad valorem for Navneet under the DEPS program.

2. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital equipment at a reduced customs duty, subject to an export obligation equal to eight times the duty saved to be fulfilled over a period of eight years (12 years where the CIF value is Rs. 100 Crore)[5] from the date the license was issued. For failure to meet the export obligation, a company is subject to payment of all or part of the custom duty reduction and the excise tax exemptions they received under the program, depending on the extent of the export shortfall, plus penalty interest.

The Department has previously determined that the import duty reductions provided under the EPCGS constitute a countervailable export subsidy. See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 72 FR 6530 (February 12, 2007) (Final Results of 3rd PET Film Review), and accompanying Issues and Decision Memorandum (Final Results of 3rd PET Film Review Decision Memorandum) at "Export Promotion Capital Good Scheme;" see also Final Determination of Lined Paper Investigation Decision Memorandum at IV.A.2 "Export Promotion Capital Goods Scheme."

In the Preliminary Results, the Department found that under the EPCGS program, the GOI provides a financial contribution under section 771(5)(D)(ii) of Act, in the form of revenue foregone that otherwise would be due. See Preliminary Results, 73 FR at 58125. In the Preliminary Results, we also found this program to be specific under section 771(5A)(A) of the Act because it is contingent upon export performance. Id. We further found that the EPCGS conferred a benefit under section 771(5)(E) of the Act in the form of a grant and/or contingent liability because the program provides import duty exemptions that otherwise would be due.

No new information or evidence of changed circumstances has been provided with respect to this program. Therefore, we continue to find that import duty reductions provided under the EPCGS are countervailable export subsidies.

Navneet reported that it received import duty exemptions under the EPCGS program. We have determined the benefit for Navneet in accordance with our findings and treatment of

[5] A crore is equal to 10,000,000 rupees.

this program in other Indian CVD proceedings. See, e.g., Final Results of 3rd PET Film Review Decision Memorandum at "Export Promotion Capital Good Scheme;" see also Final Determination of Lined Paper Investigation Decision Memorandum at IV.A.2. "Export Promotion Capital Goods Scheme." Under the Department's approach, there are two types of benefits under the EPCGS program. The first benefit is the amount of unpaid duties that would have to be paid to the GOI if the export requirements 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. See 19 CFR 351.505(d)(1).

Further, consistent with our policy, absent acknowledgment in the form of an official letter from the GOI that the liability has been eliminated, we treat benefits from these licenses as contingent liabilities. See, e.g., Final Results of 3rd PET Film Review Decision Memorandum at "Export Promotion Capital Goods Scheme;" see also Final Determination of Lined Paper Investigation Decision Memorandum at IV.A.2. "Export Promotion Capital Goods Scheme."

For those EPCGS licenses for which Navneet has not yet met the export obligations specified in the licenses by the end of the POR, we find that the company had outstanding contingent liabilities during the POR. We further determine that the amount of the contingent liability will be treated as an interest-free loan in the amount of the import duty reduction or exemption.

Accordingly, for those unpaid duties for which Navneet has yet to fulfill their export obligations, we find the benefit to be the interest that Navneet would have paid during the POR had it borrowed the full amount of the duty reduction at the time of import. Pursuant to 19 CFR 351.505(d)(1), we used a long-term interest rate as our benchmark to calculate the benefit of a contingent liability interest-free loan because the event upon which repayment of the duties depends (i.e., the date of expiration of the time period for the company to fulfill its export commitments) occurs at a point in time more than one year after the date the capital goods were imported. Specifically, we used the long-term benchmark interest rates as described in the "Subsidies Valuation" section, supra. The rate used corresponds to the year in which Navneet imported the items under the program.

The second benefit is the waiver of duty on imports of capital equipment covered by those EPCGS licenses for which the export requirement has been met. For certain licenses, Navneet reported that it had completed its export obligation under the EPCGS program, thereby eliminating the outstanding contingent liabilities on the corresponding duty exemptions. However, as explained above, in keeping with our practice, we have only accepted those claims that are accompanied by official letters from the GOI indicating that the company met its export obligation. Thus, for purposes of calculating the benefit, we treated licenses without accompanying letters from the GOI demonstrating satisfaction of the company's export obligations as contingent liabilities.

For those licenses for which Navneet demonstrated that it had fulfilled the export obligations, we followed our methodology set forth in the Final Determination of Lined Paper Investigation and treated the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemptions. See, e.g., Final Determination of Lined Paper Investigation Decision Memorandum at IV.A.2. "Export Promotion Capital Goods Scheme." In accordance with 19 CFR 351.524(b)(2), for each of the grant amounts related to the particular license, we performed the "0.5 percent test" to determine whether the benefit should be fully expensed in the year of receipt or allocated over the AUL used in this proceeding

pursuant to the grant allocation methodology set forth in 19 CFR 351.524(d)(1). In all cases, the grant amounts of the licenses exceeded 0.5 percent of Navneet's relevant sales. Therefore, we allocated the grant amounts over time using the methodology set forth under 19 CFR 351.524(d)(i).

To calculate the subsidy rate for this program, we summed the benefits from the waived licenses, which we determined confer a benefit in the form of a grant, and from those licenses that have yet to be waived, which we determined confer a benefit in the form of contingent liability loans. We then divided the total benefits received by Navneet's total export sales for the POR. On this basis, we calculated a net subsidy rate of 1.36 percent ad valorem for Navneet under the EPCGS program.

3. The Government of India's Income Deduction Program (80IB Tax Program)

Pursuant to the Income Tax Act of 1961, as amended by the Finance Act 2007, Chapter VIA, 80IB(4) (India) (2007), the GOI has implemented a tax policy to foster economic development of certain "industrially backward" regions in India. The tax exemptions allowed under the 80IB Tax Program are only available to companies located in designated geographical areas (referred to as "backward areas" by the GOI) within India.[6] Under the 80IB Tax Program, the GOI allows domestic companies that invest in economically less developed areas of India to reduce their corporate taxable income by up to 100 percent of profit gained at production facilities located in designated geographical areas for a period of five years and by up to 30 percent for the next five years. The benefit is applied to the gross total income of the tax payer and is claimed when a company files its income tax return at the end of every financial year.

In the Preliminary Results, we determined that the 80IB Tax Program is a countervailable program. See Preliminary Results, 73 FR at 58125-26. Specifically, we determined that a financial contribution is provided under this program, in the form of foregone tax revenue, within the meaning of section 771(5)(D)(ii) of the Act. See Preliminary Results, 73 FR at 58126. We further determined that the GOI provided a benefit under this program in an amount equal to the tax savings under section 771(5)(E) of the Act. Id. In addition, we determined that the program is limited to enterprises in geographically limited areas and, therefore, is specific within the meaning of section 771(5A)(D)(iv) of the Act. Id. No new information or evidence of changed circumstances has been provided with respect to this program. Therefore, we continue to find that tax deductions provided under this program are countervailable.

One of Navneet's manufacturing plants operates in a region that is designated by the GOI as an "industrially backward" territory of India and, therefore, the company is eligible for the tax incentives described above. Navneet reported that it received tax deductions under this program during the POR on its 2006 corporate income tax return, which was the return filed by the company during the POR. The Department typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1). Under 19 CFR 351.509(a), the benefit is equal to the difference between the income tax that the company would have paid absent the program and the income tax the company paid under the program. Therefore, to calculate the benefit, we subtracted the amount of 2006 income tax Navneet paid under the program from the amount of

[6] "Industrially backward" states are states and union territories specified in the Eight Schedule of the Indian tax code.

income tax Navneet would have paid absent the program.

Because this program is an untied domestic subsidy, we divided the benefit by Navneet's total sales for the POR. See 19 CFR 351.525(b)(3). On this basis, we calculated an ad valorem rate of 0.47 percent for Navneet under the program.

B. Programs Determined Not to Be Used

Programs Administered by the Government of India

1. Duty Replenishment Certificate Scheme
2. Advance License Program
3. Export Processing Zones and Export Oriented Units
4. Target Plus Scheme
5. Export Processing Zones
6. Income Tax Exemption Scheme (Sections 10A, 10B, and 80HHC)
7. Market Development Assistance
8. Status Certificate Program
9. Market Access Initiative
10. Loan guarantees from the GOI
11. Exemption of Export Credit from Interest Taxes
12. Pre- and Post-shipment Export Financing

Programs Administered by the State Governments

State Government of Gujarat Programs:

1. State Government of Gujarat Provided Tax Incentives

State Government of Maharashtra Programs:

2. Sales Tax Program from Maharashtra
3. Electricity Duty Exemptions Under the State Government of Mahatrashtra's (SGM) Package Scheme of Incentives of 1993
4. Refunds of Octroi Under the Package Scheme of Incentives of 1993 (PSI of 1993)
5. Maharashtra Industrial Policy (MIP of 2001) and Maharashtra Industrial Policy (MIP of 2006)
5. Infrastructure Subsidies to Mega Projects
6. Land for Less than Adequate Remuneration (for firms operating in areas outside of the Bombay and Pune metropolitan areas)
7. Loan Guarantees Based on Octroi Refunds by the SGM

III. **Total *Ad Valorem* Rate**

The total net countervailable subsidy rate for Navneet in this review is 8.76 percent ad valorem.

Analysis of Comments

Comment 1: Whether the Department Should Apply Total Adverse Facts Available to Navneet

Petitioners argue that for the final results, the Department should assign Navneet a total net subsidy rate based upon adverse facts available (AFA) because, according to petitioners, Navneet failed to act to the best of its ability to provide the Department with requested information. Specifically, petitioners claim that Navneet did not act to the best of its ability to provide information regarding its affiliated parties, corporate history and unreported subsidies. Petitioners contend that the Department's practice is to use total AFA in cases in which the absence of reliable data makes it difficult for the Department to calculate properly the subsidy rate for Navneet.

First, petitioners argue that the use of AFA is warranted because Navneet either failed to report information regarding its affiliated companies or reported information that is contradicted by Navneet's 2006 financial statements. In particular, petitioners claim that there is a discrepancy between the number of affiliated companies listed in Navneet's December 8, 2007, questionnaire response and Navneet's 2006 audited financial statements. See Navneet's December 8, 2007, questionnaire response (Initial Response) at Exhibit 1 and Exhibit 4A at 67. Second, petitioners point out that Navneet failed to provide an adequate explanation pertaining to Navneet's history of corporate mergers and therefore, did not provide adequate information about possible unknown subsidies that could have been received by previous entities and "passed through" to Navneet after the merger. See petitioners' comments at 3. Third, petitioners note that Navneet failed to provide a sufficient explanation regarding certain line items in Navneet's 2006 financial statements (e.g., line items referencing lending as well as transactions involving "public bodies"), which is interpreted by petitioners as Navneet's failure to provide adequate information for unreported subsidies.

In support of their argument for the use of AFA, petitioners point out that section 776(a) of the Act permits the use of facts available and the Department may use an AFA rate if "an interested party has failed to cooperate to the best of its ability to comply with a request for information." See 19 U.S.C. 1677(e)(b). Petitioners also reference Nippon Steel in support of their contention that Navneet's failure to act to the best of its ability warrants the application of total AFA. See Nippon Steel Corp v. United States, 337 F. 3d 1373, 1282 (Fed. Cir. 2003) (Nippon Steel).

Navneet disputes petitioners' argument that the Department should use AFA in the final results and claims to have cooperated to the best of its ability with every request for information made by the Department. According to Navneet, petitioners' assertion that Navneet failed to cooperate to the best of its ability is not supported by record evidence. In particular, as evidence of its cooperation, Navneet notes that it provided full information regarding its affiliated companies. Also, Navneet argues that the facts surrounding its corporate structure and affiliations have not changed since the underlying investigation and that such information was verified by the Department during the investigation. Further, Navneet argues that in the instant review it provided the necessary information regarding its corporate history including information on the merger of its subsidiary "Navneet Edutainment Limited," which was included in Navneet's 2006 annual report. Further, referencing Navneet's April 8, 2008, supplemental questionnaire response, Navneet disputes petitioners' claim that it did not provide an adequate explanation regarding certain transactions listed in Navneet's 2006 Annual Report and claims

that it responded to all information requests from the Department. In summary, Navneet contends that since it acted to the best of its ability, adverse inferences may not be applied in calculating its net subsidy rate.

The Department's Position: We disagree with petitioners' assertion that for the final results the Department should apply AFA with respect to Navneet. In this instance, we do not find that the evidence on the record establishes Navneet's failure to report requested information.

In reaching a determination using facts available, sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, inter alia, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

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 the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information.

As explained below, we find that in the instant review Navneet responded to the Department's original and supplemental questionnaires to the best of its ability. The Department determined that the information Navneet provided is sufficient to serve as a reliable basis for the Department's calculations. Based on the totality of Navneet's initial and supplemental questionnaire responses, we conclude that the use of AFA, as described under sections 776(a) and (b) of the Act, is not appropriate. We first address the issue of whether Navneet adequately responded to the Department's questions regarding its cross-owned affiliations and corporate structure/history.

When considering the impact of affiliation in countervailing duty cases, the Department focuses largely on cross-ownership. Pursuant to the CVD regulations, the Department will attribute a subsidy to the products produced by the corporation that received the subsidy. See 19 CFR 351.525(b)(6)(i). However, if the corporation under examination is a cross-owned affiliate with another corporation that produces subject merchandise, the Department will attribute the subsidies received by either or both corporations to the products produced by both corporations. See 19 CFR 351.525(b)(6)(ii). Similarly, if there is cross-ownership between an input producer and a downstream producer of subject merchandise, and production of the input is primarily dedicated to the production of subject merchandise, the Department will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding intra-company sales). See 19 CFR 351.525(b)(6)(iv). The regulations state that cross-ownership exists between two or more corporations where one

corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. See 19 CFR 351.525(b)(6)(vi).

Therefore in the initial questionnaire, the Department instructed Navneet to identify the companies with whom it was cross-owned and to provide complete questionnaire responses for any cross-owned affiliates that produced subject merchandise and/or supplied an input (i.e., pulp) to Navneet that was primarily dedicated to the production of subject merchandise. See Initial Questionnaire at page 2, Section III. Navneet responded that it had no cross-owned affiliates that met the criteria described in the Department's Initial Questionnaire. See Initial Response at page 9. Further, in our first supplemental questionnaire, we asked Navneet to confirm that certain of its manufacturing facilities listed in the Initial Response as producing subject merchandise were the only facilities among affiliates and cross-owned companies that produced the subject merchandise during the POR. See page 2 of the Department's March 31, 2008 supplemental questionnaire (First Supplemental Questionnaire). In addition, in order to further confirm that there were no other facilities in Navneet's corporate family that could conceivably meet the cross-ownership criteria enumerated under 19 CFR 351.525(b)(6)(ii) and (iv), we asked Navneet in the First Supplemental Questionnaire, to indicate the products produced at its other manufacturing facilities. Id. In its response, Navneet confirmed that the other manufacturing facilities did not produce subject merchandise. See page 7 of Navneet's April 8, 2008, supplemental questionnaire response (First Supplemental Response). In addition, Navneet's response indicates that its other production facilities do not produce inputs used in the production of lined paper (i.e., pulp). Id. at 8. Based on Navneet's responses, we find that Navneet identified all of its cross-owned facilities that produce subject merchandise and adequately responded to the Department's questions as they pertain to these facilities. We further find that Navneet has provided sufficient information to conclude that it has no other cross-owned affiliates that produce subject merchandise or supply Navneet's facilities with an input (i.e., pulp) that is primarily dedicated to the production of subject merchandise.

Regarding petitioners' arguments on Navneet's failure to provide information concerning the firm's purported merger, we note that the Department did not instruct Navneet in any of its supplemental questionnaires to supply this information. Therefore, in the absence of any follow up questions, it cannot be said that Navneet failed to cooperate to the best of its ability. Thus, with regard to the issue of cross-owned affiliations and corporate structure/history, the application of AFA is not warranted because we find that the necessary information is available on the record and that Navneet did not withhold or fail to provide information requested in a timely manner, or significantly impede this segment of the proceeding.

We also disagree with petitioners' argument that Navneet failed to provide a sufficient explanation regarding certain line items in Navneet's 2006 financial statements, thereby precluding the Department from adequately examining whether Navneet received additional subsidies. As instructed by the Department, Navneet provided information concerning certain line items in its financial statements. See First Supplemental Response at page 9 (providing explanations and details for line items pertaining to current assets: secured loans, work in progress, sundry debtors, loans and advances, and other income).[7] Navneet provided additional

[7] Details regarding these line items are business proprietary.

information concerning its financial statements in its second supplemental response. See page 8 of Navneet's July 17, 2008, supplemental questionnaire response (Second Supplemental Response) (describing the nature of references to such items as "deposits with public bodies" in its financial statement). Therefore, we find that Navneet adequately responded when asked by the Department to explain items contained in its financial statements. Further, based on the information provided by Navneet, we find that none of the line items described in Navneet's questionnaire responses relate to any countervailable program at issue in the instant review.

Therefore, we find that the information Navneet provided is sufficient to serve as a reliable basis for reaching our determination in the final results and that the application of AFA is not required or appropriate.

Comment 2: In the Alternative, Whether the Department Should Apply Partial Adverse Facts Available in Calculating Navneet's Duty Entitlement Passbook Scheme Program (DEPS) Subsidy

Petitioners state that in the event that the Department decides not to apply total AFA with respect to Navneet, partial AFA should be applied when calculating the net subsidy rate under the DEPS program because Navneet failed to report the correct U.S. sales denominator for the subsidy calculation. Petitioners claim that Navneet did not act to the best of its ability to provide readily available information concerning DEPS scheme. In particular, petitioners note that while the Department directed Navneet to report sales of subject and non-subject merchandise separately during the POR, Navneet failed to do so. As a result, petitioners allege that Navneet's response is deficient and cannot be used to properly calculate the subsidy rate with respect to the DEPS program. Therefore, petitioners argue that the Department should in its final results apply partial AFA to Navneet with respect to this program and use the lowest sales denominator on the record in the net subsidy rate calculation for the DEPS program.

Petitioners explain that the Department's normal policy is to calculate the net subsidy rate by dividing the benefit earned on sales of subject merchandise to the United States by total exports of subject merchandise to the United States. Petitioners acknowledge that in the underlying investigation and in the Preliminary Results of this review the Department made an exception for Navneet and accepted its explanation. However, petitioners argue that for the final results the Department should reject Navneet's explanation because, according to petitioners, Navneet made no effort to separate sales of subject from non-subject merchandise.

Navneet disagrees with petitioners' argument that the Department should apply partial AFA with respect to the DEPS program and argues that the Department should continue its methodology from the Preliminary Results. Navneet claims that it acted to the best of its ability in furnishing the required information for DEPS. Navneet explains that its method of maintaining records does not allow it to track separately the benefits it earned under the DEPS program on sales of subject and non-subject merchandise. Navneet argues that it has informed the Department of its difficulty to report the data regarding benefits earned on sales of subject and non-subject merchandise during the POR in the manner requested in the Initial Questionnaire. In addition, Navneet notes that in the underlying investigation the Department accepted Navneet's explanation that the firm is not capable of providing information regarding benefits earned under the DEPS program on sales of subject and non-subject merchandise to the United States as well as to other countries. Thus, Navneet contends that it is inappropriate to

conclude that Navneet has not been fully cooperative with the Department's request for information. Therefore, Navneet argues that the Department should continue its methodology from the Preliminary Results for calculating the net subsidy Navneet received under the DEPS.

The Department's Position: We disagree with petitioners, and have determined not to apply partial AFA to Navneet with respect to the DEPS program for the final results. The use of partial AFA in the instant review is not warranted under sections 776(a) and (b) of the Act because we find that Navneet reported information to the best of its ability. Section 776(b) of the Act provides that the Department may apply AFA when it finds a respondent uncooperative. In this instance, however, we do not find that the evidence on the record establishes Navneet's failure to report requested information.

Because DEPS credits are earned on a shipment-by-shipment basis, we normally calculate the net 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. Navneet was unable to report only the benefits it received under the DEPS program on sales of subject merchandise to the United States. Navneet explained that the company was unable to provide the information because of the limitations of its current system of maintaining records. The Department is satisfied with Navneet's demonstration that "the company has no practical way of sorting the invoice numbers for sales of the subject merchandise as opposed to non-subject merchandise as one invoice may contain many items - some of which are part of the investigation and others outside the scope of the Department's investigation." See Initial Response at 21. Thus, due to the limitation of Navneet's current system of maintaining records, we found in the Preliminary Results that it was not feasible for Navneet to compile the separate data regarding its exports of subject merchandise to the United States during the POR. See Preliminary Results, 73 FR at 58124. Accordingly, in the Preliminary Results we calculated the net subsidy rate by dividing the benefit Navneet earned during the POR on subject and non-subject paper shipments to the United States by its total exports sales to the United States during the POR. Id. We continue to determine the benefit from this program based on all shipments to the U.S, which is consistent with the Department's treatment of this program in the investigation. See Final Determination of Lined Paper Investigation Decision Memorandum at "Duty Entitlement Passbook Scheme" section. Because the Department is satisfied that Navneet cannot segregate subject and non-subject merchandise, we find that Navneet cooperated to the best of its ability and the application of AFA with respect to the DEPS program is not warranted.

Comment 3: Whether the Department Erred in Calculating the Benefit on the 80IB Tax Program

Petitioners argue that the Department should modify its methodology for calculating the net subsidy rate under the 80IB tax program. Specifically, petitioners argue that the Department should divide the total benefit reported by Navneet by the sales of its Silvassa production facility on the ground that the Department should attribute the subsidy Navneet received to only those products which benefited from this subsidy. Citing to 19 CFR 351.525(b)(5)(i), petitioners argue that the Department's normal policy is to "attribute a subsidy to a particular product if the subsidy is tied to that product." See petitioners' November 13, 2008, case brief at 8. According to petitioners, the record evidence indicates that the 80IB Tax Program is tied to the merchandise produced only at Navneet's production facility, based in Silvassa. For the reasons stated above, petitioners argue that the Department should alter its preliminary finding and divide the total benefit reported by Navneet by the total sales from the Silvassa facility. Also, petitioners argue that the subsidy did not equally benefit all of Navneet's products or corporate entities and therefore, the subsidy should be attributable to the products produced at the Silvassa facility.

Moreover, in support of its argument, petitioners point out that Navneet is a vertically integrated company with employees throughout India and has an extensive range of subject and non-subject merchandise. In addition, petitioners argue that Navneet is a major player in India's lined paper industry and the only paper producer in India using this program.

Navneet argues that the Department should not find the 80IB program countervailable because the program is not specific. However, should the Department decline to find this program not countervailable, Navneet argues that we should continue to apply the same methodology employed in the Preliminary Results when calculating the net subsidy rate.

The Department's Position: We disagree with Navneet that the program is not specific. As explained above, the 80IB tax program is limited to firms with operations located in less economically developed regions inside India. Therefore, we properly concluded in the Preliminary Results that the program is regionally specific under section 771(5A)(D)(iv) of the Act. See Preliminary Results, 73 FR at 58126.

We also disagree with petitioners' claim that the Department should modify the methodology for calculating the net subsidy rate for the 80IB tax program. Attributing or "tying" a subsidy benefit to a particular product or market is a long-standing policy of the Department that is reflected in the CVD Regulations. See 19 CFR 351.525(b)(4) and (5). However, contrary to petitioners' assertion, we find that the benefit Navneet received from the 80IB tax program constitutes an untied domestic subsidy and, thus, the benefit is attributable to Navneet's total sales. See 19 CFR 351.525(b)(3),"The Secretary will attribute a domestic subsidy to all products sold by a firm, including products that are exported."

Further, we find that petitioners' arguments that the subsidy provided to Navneet is tied only to products produced at its Silvassa facility and that the use of the total sales from a large, vertically integrated firm improperly dilutes the denominator of the net subsidy rate calculation are flawed. Petitioners' tying argument rests upon the premise that a regional subsidy can be tied to only the subsidy recipient's production in that region. If the Department was to adopt this allocation methodology and the Department tied regional subsidies to production in a particular region, the Department would essentially be forced to calculate factory-specific subsidy rates. In

addition, if such a methodology were applied, then foreign companies could easily escape collection of CVD duties by selling the production of a subsidized region domestically, while exporting from a facility in an unsubsidized region. This allocation methodology has been clearly rejected by the Department. See, e.g., Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils From the Republic of Korea 64 FR 15530, 15548 (March 31, 1999); see also Final Negative Countervailing Duty Determination: Fresh Atlantic Salmon from Chile, 63 FR 31437, 31445-46 (June 9, 1998) (stating, "The Department does not tie the benefits of federally provided regional programs to the product produced in the specified regions"). Indeed, the Department has explicitly rejected this argument in the Preamble. See Countervailing Duties: Final Rule, 63 FR 65348, 65404 (November 25, 1998) (Preamble). Further, regarding petitioners' contention that the use of the total sales from a relatively large firm improperly dilutes the denominator of the net subsidy calculation, we note that the attribution of an untied benefit to a firm's total sales applies regardless of a firm's size or structure of its production facilities (i.e., vertically integrated operations). Indeed, 19 CFR 351.525(b)(3) does not consider a firm's size in the attribution of untied subsidies.

Therefore, we have continued the approach taken in the Preliminary Results and divided the benefit Navneet received under the 80IB tax program by Navneet's total sales for the POR.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of review and the final net subsidy rate for Navneet in the Federal Register.

_____ _____

Agree Disagree

_____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

_____

Date