

February 4, 2008

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

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

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

I. Summary

We have analyzed the case and rebuttal briefs submitted by interested parties in response to the preliminary results of review. See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review, 72 FR 43607 (August 6, 2007) (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 respondents Garware Polyester Ltd. (Garware) and MTZ Polyfilms, Ltd. (MTZ). Below is a complete list of issues raised by the interested parties in their case and rebuttal briefs:

- Comment 1: Countervailability Determination and Cash-Deposit Adjustment for Target Plus Scheme
- Comment 2: Countervailing the Total Subsidy Provided by the Pre- and Post-Shipment Program
- Comment 3: The Countervailability of the Advance License Program (ALP)
- Comment 4: The Denominator in the Benefit Calculation for Export Promotion Capital Goods Scheme (EPCGS)

Comment 5: Calculation Methodology for EPCGS
Comment 6: Partial Fulfillment of the EPCGS Export Obligation
Comment 7: The Interest Rate Used to Calculate the EPCGS Benefit
Comment 8: EPCGS Benefits for Machinery Not Used to Produce Subject Merchandise
Comment 9: The Treatment of Countervailing Duties in the Benefit Calculation for EPCGS
Comment 10: Company Specific Average Useful Life (AUL) for MTZ
Comment 11: Purchases From a Union Territory
Comment 12: Adjustments to Cash Deposit Rates to Account for Program-Wide Changes
Comment 13: State of Maharashtra (SOM) Sales Tax Exemption
Comment 14: Timetable for the Department to Consider Arguments

II. Subsidies Valuation Information

Allocation Period

Under 19 CFR 351.524(d)(2)(i), the Department 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 at least one year, pursuant to 19 CFR 351.524(d)(2)(ii). For assets used to manufacture plastic film, such as polyethylene terephthalate film, sheet, and strip (PET film), the IRS tables prescribe an AUL of 9.5 years.

In the investigative segment of this proceeding, the Department determined that Garware had rebutted the presumption and applied a company-specific AUL of 19 years. See Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film), 67 FR 34905 (May 16, 2002), and accompanying Issues and Decision Memorandum, at "Allocation Period" (PET Film Final Determination). Therefore, the Department is using an AUL of 19 years for Garware in allocating non-recurring subsidies. In the Preliminary Results, the Department found there was no new evidence on the record that would cause the Department to reconsider its decision on Garware and continued to use an AUL of 19 years for Garware in allocating non-recurring subsidies. See Preliminary Results, 72 FR at 43608. No parties submitted comments concerning this issue with respect to Garware. Therefore, the Department continues to use Garware's AUL in these final results.

MTZ was not a respondent in the original investigation, nor was the company a respondent in any prior segment of this proceeding. In response to the Department's original questionnaire and its first supplemental questionnaire, MTZ rebutted the presumption and proposed a company-specific AUL of 19.9 years for its plant and machinery, based on information MTZ provided

regarding its depreciation schedule over the past 10 years, including a detailed list of assets for plant and machinery, respectively. However, for purposes of the preliminary results, we found that MTZ had not demonstrated how the detailed list was tied to its depreciation schedule through the period of review (POR), or how the depreciation schedule was ultimately tied to MTZ's 2005-2006 financial statements. Furthermore, MTZ did not provide an explanation of how it derived its depreciation schedule. Therefore, for the preliminary results, we relied on the AUL prescribed by the IRS tables. See Preliminary Results, 72 FR at 43608.

Prior to verification, the Department requested information on how MTZ determined the AUL of the plant and equipment used in producing PET film. MTZ submitted additional AUL information in its August 22, 2007 submission. As indicated in 19 CFR 351.524(d)(2)(ii) and (iii), MTZ provided information since its creation, i.e., the last nine years, including the POR, on the record of this review to demonstrate that MTZ's company-specific AUL differs significantly by more than one year from the IRS tables. The information provided by MTZ indicates that it uses the estimated useful life of its assets in its books and records and that it uses straight-line depreciation. The information provided shows no anomalies in the valuation of assets or significantly irregular or uneven additions to the asset pool. Therefore, for purposes of these final results, the Department determines that MTZ has rebutted the presumption and thus, it is appropriate to apply a company-specific AUL of 20 years for MTZ.

Benchmark Interest Rates 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. The Department has previously determined that the Industrial Development Bank of India (IDBI) is a government-owned special purpose bank. 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, (Second PET Film Review - Final Results). As such, the Department did not use loans from the IDBI reported by Garware as the basis for a benchmark. Further, the Department determined in the preliminary results that the Industrial Finance Corporation of India (IFCI) and

the Export-Import Bank of India (EXIM)¹ are government-owned special purpose banks. As such, the Department continues to disregard loans from IFCI and EXIM reported by Garware in the benchmark calculations for this administrative review.

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 review, the Department required a rupee-denominated short-term loan benchmark rate to determine benefits received by Garware under the Pre-Shipment Export Financing and Post-Shipment Export Financing programs. MTZ reported that it did not receive any loans under the GOI Pre-Shipment and Post-Shipment Export Financing programs.

Garware provided information on its rupee-denominated and U.S. dollar-denominated short-term commercial loans outstanding during the POR. Garware reported that it received the rupee-denominated short-term commercial loans in the form of Supplier Bill Discounting (SBD); Local Bill Discounting (LBD); Working Capital Development Loans (WCDL); and Cash Credit (CC).

In previous reviews of this order, the Department has determined that Inland Bill Discounting (IBD) loans are more comparable to pre-shipment and post-shipment export financing loans than other types of rupee-denominated short-term loans. See 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) (Second PET Film Review - Preliminary Results) (unchanged in the final results, 71 FR 7534), see also Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 69 FR 51063 (August 17, 2004), and accompanying Issues and Decision memorandum at “Benchmarks for Loans and Discount Rate” and Comment 3 (Issues Memorandum - First Review). There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. Further, Garware reported LBD loans that fall into the same category as IBD.² Therefore, for these final results, we continue to use IBD/LBD loans as the basis for the short-term rupee-denominated benchmark for all applicable programs for Garware.

Garware provided information on U.S. dollar-denominated working capital trade loans (WCTL) received during the POR to use as the basis for dollar-denominated short-term benchmark rates. However, these loans were obtained from government-owned special purpose banks. In the alternative, the Department is using a national average dollar-denominated short-term interest

¹Preliminary Results, 72 FR at 43609. This is based on information we obtained from the internet indicating this bank functions “as the principal financial institution for coordinating the working of institutions engaged in financing export and import of goods and services”

²Bill discounting is a short tenure financing instrument for companies willing to discount their purchase / sales bills to procure short-term funds. Thus, IBD and LBD are like instruments of payment.

rate, as reported in the International Monetary Fund's publication "International Financial Statistics" (IMF Statistics) for Garware, in accordance with 19 CFR 351.505(a)(3)(ii). See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 72 FR 6530 (February 12, 2007) (Third PET Film Review - Final Results), and accompanying Issues and Decisions Memorandum, at "Benchmark Interest Rates and Discount Rates." The selection of short-term benchmark interest rates is discussed further in Comment 2, below.

For those programs requiring a rupee-denominated discount rate or the application of a rupee-denominated long-term benchmark rate, we used national average interest rates from the IMF Statistics, pursuant to 19 CFR 351.505(a)(3)(ii). Id. The Department required benchmarks and discount rates to determine benefits received under the Export Promotion Capital Goods Scheme (EPCGS) program. None of the respondents reported comparable commercial long-term rupee-denominated loans for all required years. Normally, for those years for which we did not have company-specific information, the Department would rely on comparable long-term rupee-denominated benchmark interest rates from the immediately preceding year as directed by 19 CFR 351.505(a)(2)(iii). When there are no comparable company-specific, 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). Id. Since neither Garware nor MTZ had long-term rupee-denominated benchmark loans for any of the relevant years, we relied on the IMF statistics for benchmarks and discount rates for the required years.

Cross-Ownership and Attribution of Subsidies

In the investigation, the Department determined that Garware and Garware Chemicals, Ltd. (Garware Chemicals) are cross-owned, in accordance with 19 CFR 351.525(b)(6)(vi). See PET Film Final Determination - Decision Memorandum, at Comment 15. In the Preliminary Results, we found that Garware Chemicals is an affiliated producer of Di-methyl Terephthalate (DMT), which is a primary input into the production of PET film, and is cross-owned with Garware in accordance with 19 CFR 351.525(b)(6)(vi). See Preliminary Results, 72 FR at 43610. The Department did not receive any comments on this finding.

In the Preliminary Results, we did not have complete information of the benefits received by Garware Chemicals or complete sales information. Since the Preliminary Results, Garware has provided the information requested (see Garware's Third Supplemental Response of August 27, 2007), and we have verified this information. See Verification of the Questionnaire Responses Submitted by Garware Polyester, Ltd. (Garware) (December 7, 2007) (Garware Verification Report). Accordingly, for these final results, we will attribute the subsidies received by Garware Chemicals to the total sales of Garware and Garware Chemicals, net of inter-company sales. We will attribute the subsidies received by Garware to Garware's total sales.

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 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 payment by 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 previous determinations and in the Preliminary Results, we found these loans to be 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 in as much as the interest rates given 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, e.g., 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) (Lined Paper - Final Determination), and accompanying Issues and Decision Memorandum, at “Pre- and Post Shipment Export Financing.” There is no new information or evidence of changed circumstances that warrants reconsidering this finding. Therefore, for these final results, we continue to find this program countervailable.

Garware is the only respondent that received benefits under this program during the POR. The benefit conferred by the pre-shipment and post-shipment loans is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan during the POR. Because pre-shipment loans are not tied to exports of subject merchandise, or to exports to particular markets, we calculated the

subsidy rate for these loans by dividing the total benefit by the value of Garware's total exports during the POR, in accordance with 19 CFR 351.525(b)(2). Because post-shipment loans are normally tied to specific shipments of a particular product to a particular country, 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 POR. See 19 CFR 351.525(b)(4). However, since Garware did not demonstrate that its post-shipment loans were tied to a particular market, we continue to calculate the subsidy rate for these loans by dividing the benefit from all loans by the value of Garware's total exports to all markets during the POR. See 19 CFR 351.525(b)(2). On this basis, we determine the countervailable subsidy from pre-shipment export financing to be 0.16 percent ad valorem for Garware. We determine the countervailable subsidy provided to Garware from post-shipment export financing to be 0.02 percent ad valorem.

2. 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, both Garware and MTZ used advance licenses to import certain materials duty free.

The Department previously reviewed the revised 2002-2007 Export/Import Policy Guidelines underlying the ALP and found the entire amount of the duty exemption to confer a benefit 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 are consumed in the production of the exported products and in what amounts, in accordance with 19 CFR 351.519(a)(4). See Third PET Film Review - Final Results, 72 FR 6530, and accompanying Issues and Decision Memorandum, at "Advance License Program" and Comment 3. The Department identified a number of systemic deficiencies in Second PET Film Review - Final Results that led to this determination, specifically: (1) the lack of information related to verification or implementation of penalties and the failure to identify the number of companies during the POR that either did not meet export commitments under the ALP, were penalized for not meeting the export requirements under the ALP, or were penalized for claiming excessive credits; (2) the availability of ALP benefits for a broad category of "deemed" exports; and (3) the GOI's inability to provide the SION calculations for the PET film industry or any documentation demonstrating that the process outlined in its regulations was actually applied in calculating the PET film SION.

In Lined Paper - Final Determination, at Comment 10, the Department stated that it had examined certain monitoring procedures with respect to the GOI's tracking of inputs and exports through the Directorate General for Foreign Trade (DGFT), and the tracking of inputs imported duty-free under the ALP through a customs database. Id. However, the Department ultimately determined that, in spite of these procedures, systemic issues continued to exist that demonstrate that the GOI lacks a system or procedure that meets the requirements of 19 CFR 351.519, i.e.,

that the system confirms which inputs are consumed in the production of the exported products and in what amounts, making normal allowance for waste, and the system is reasonable and effective for the purposes intended. Id.

In this administrative review, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the ALP during the POR. In the Preliminary Results, 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, we preliminarily found that systemic issues continued to exist in the ALP system during the POR, all of which were enumerated in the Third PET Film Review - Final Results, 72 FR 6530, Issues and Decision Memorandum, at Comment 3 and in the Lined Paper - Final Determination, 71 FR 45034, Issues and Decision Memorandum, at Comment 10. See Preliminary Results, 72 FR, at 43610-43612. Subsequent to the issuance of the Preliminary Results, we conducted an on-site verification of the information submitted by the GOI, including the revisions made to Foreign Trade Policy and Handbook of Procedures for the ALP, and the mechanism to review a SION. Based on the information submitted by the GOI and examined at verification, we note that the systemic issues previously identified by the Department in Third PET Film Review - Final Results continue to exist. Therefore, we continue to find that the import duty exemptions provided under the ALP are countervailable in their entirety. For a complete discussion of these issues, see Comment 3, “The Countervailability of the Advance License Program,” below.

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 on inputs consumed in production of an exported product normally provides a recurring benefit. Under this program, for 2005, Garware and MTZ did not have to pay certain import duties for inputs that were used in the production of subject merchandise. Thus, we treated 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 for each company. 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 last administrative

review,³ “deemed export” sales should be included in the export sales denominator for the ALP program only when the respondents applied for and were bestowed licenses during the POR based on both physical exports and deemed exports. However, both Garware and MTZ stated that their ALP licences were granted for physical exports only; therefore, we have only used physical export sales in the denominator.⁴ On this basis, we determine the countervailable subsidy provided under the ALP to be 0.12 percent ad valorem for Garware and 0.21 percent ad valorem for MTZ.

3. 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 export shortfall, plus penalty interest.

In the investigation, the Department determined that import duty reductions provided under the EPCGS are a countervailable export subsidy. See PET Film Final Determination - Decision Memorandum, at “EPCGS.” In the Preliminary Results, we found that there was no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable, and found that Garware and MTZ had received EPCGS benefits during the POR. See Preliminary Results, 72 FR at 43612.

The first benefit provided under the EPCGS is the amount of unpaid import duties that would have to be paid to the GOI if the 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, in accordance with 19 CFR 351.505(d). This is also consistent with our practice in prior determinations. See, e.g., Final - Indian PET Resin, and accompanying Issues and Decision Memorandum, at “Export Promotion Capital Goods Scheme (EPCGS);” see also Third PET Film Review - Final Results, and accompanying Issues and Decision Memorandum, at “Export Promotion Capital Goods Scheme (EPCGS).”

The second benefit is the final and full waiver of duty on imports of capital equipment covered by those EPCGS licenses when the export requirement has been fully met. For those licenses for which companies demonstrate that they have completed their export obligations, we treat the

³See Third PET Film Review - Final Results), and accompanying Issues Memorandum - Third Review, at Comment 1.

⁴See Garware’s Second Supplemental Response, at 4 (July 2, 2007); and, MTZ’s Second Supplemental Response, at 13 (July 6, 2007).

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 states that if a government provides an import duty exemption tied to major equipment purchases, “it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring. . .” See Countervailing Duties; Final Rule, 63 FR 65348, 65393 (November 25, 1998). In accordance with 19 CFR 351.524(c)(2)(iii), we are treating these exemptions as non-recurring benefits.

Garware and MTZ reported that they imported capital goods under the EPCGS in years prior to the POR. Garware reported in its second supplemental response dated July 2, 2007, that Garware Chemicals, an affiliated supplier of inputs used to produce subject merchandise, also imported capital goods under the EPCGS. However, at the time of the Preliminary Results, the information on the record of this review was incomplete and we were not able to discern the amount of the benefits provided to Garware Chemicals under the EPCGS and only used information provided by Garware and MTZ in the subsidy calculations. This missing information has since been provided and verified, showing that the benefits received by Garware Chemicals were already included in Garware’s previously reported information.⁵ According to this information, Garware, Garware Chemicals, and MTZ received various EPCGS licenses for the importation of equipment involved in the production of both subject and non-subject merchandise. None of these companies have demonstrated that their 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 each company’s EPCGS licenses benefit all of the company’s exports.

Garware and MTZ reported meeting the export requirements for certain EPCGS licenses prior to December 31, 2005. Therefore, the GOI formally waived all the relevant import duties associated with these EPCGS licenses, fully eliminating the outstanding contingent liabilities on the corresponding duty exemptions. For their remaining EPCGS licenses, Garware and MTZ have yet to fully meet their total export obligations, as required under this program. Therefore, although Garware and MTZ received a deferral from paying import duties at the time the capital goods were imported, a complete and final waiver on the obligation to pay all outstanding duties has not yet been granted for many of these imports.

In the instant review, we found that the GOI provided MTZ partial fulfillment of its export obligation for certain EPCGS licenses. MTZ argues that in cases where the export obligation has been partially met for certain EPCGS licenses, the Department should recalculate the amount of the first benefit by reducing the amount of unpaid import duties to take into account the amount of export obligation that has been partially fulfilled. For the reasons enumerated in Comment 6, below, we find that such a recalculation is unwarranted.

⁵See Garware’s Third Supplemental Response, at 5-7 (August 27, 2007).

For both Garware's and MTZ's imports for which the GOI has formally waived the entire amount of duties for specific EPCGS licenses, we treat the full amount of the waived duty as a grant received in the year in which the GOI officially granted the full waiver. To calculate the benefit received from the GOI's formal waiver of all import duties associated with a specific license on Garware's and MTZ's capital equipment imports prior to December 31, 2005, we considered the total amount of outstanding 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 consider the year in which the GOI formally waived Garware's and MTZ's outstanding import duties to be the year of receipt of the benefit. See PET Film Final Determination-Decision Memorandum, at Comment 5. Next, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), using either the company's total exports in the year in which the waiver was granted, or the company's total exports during the POR (if we do not have the company's export data for the relevant year). Where the duties finally waived were greater than 0.5 percent of the exports, we are treating the benefit as a non-recurring grant and allocating it over the company's AUL. See "Allocation Period" section, above. Where the duties finally waived were less than 0.5 percent of the company's total exports, we allocated the benefits to the year of receipt (the year in which the final waiver was granted).

As noted above, import duty reductions that Garware and MTZ received on the imports of capital equipment for which they have not yet met the full export obligations for their respective EPCGS licenses 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, in accordance with 19 CFR 351.505(d)(1). 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 - Indian PET Resin), at "Export Promotion Capital Goods Scheme (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 granted under the EPCGS license in question, and which, as of the end of the POR, the GOI had not formally waived the export obligation in full. Accordingly, we find the benefit to be the interest that Garware and MTZ would have paid during the POR had they borrowed the full amount of the duty reduction or exemption at the time of importation. See, e.g., Second PET Film Review - Final Results, and accompanying Issues and Decision Memorandum, at Comment 6; see also Final - Indian PET Resin, and accompanying Issues and Decision Memorandum, at "Export Promotion Capital Goods Scheme (EPGGS)."

As stated above, under the EPCGS program, 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 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), we measure the benefit using a long-term interest rate benchmark 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 goods. As the benchmark interest rate for each company, we used the weighted-average interest rate from all comparable commercial, long-term, rupee-denominated loans received in the year in which the capital good was imported. See the “Benchmarks 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 formally waived duties for imports of capital equipment for which respondents met the full export requirements of that license during the POR, and/or (2) interest that should have been paid on the deferred import duties for imports of capital equipment for which the company has not yet met the export requirements. To calculate the benefit from the formally waived duties for all imports of capital equipment made under the respective EPCGS license for which the total export requirements had been fulfilled, we took the total amount of the waived duties associated with that license and treated it as a non-recurring grant received in the year in which the GOI waived the outstanding contingent liability on the import duty exemptions. 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.

To calculate the benefit from the contingent liability import duties for both Garware and MTZ, we multiplied the total amount of unpaid import duties under each license by the long-term benchmark interest rate for the year in which the import was made. For each company, we then summed the benefit arising from the contingent liability import duties with the benefit from the waived licenses allocated to the POR to determine the total benefit for each company. We then divided the total benefit for each company under the EPGCS by its respective total exports to determine a subsidy of 3.17 percent ad valorem for Garware and 13.39 percent ad valorem for MTZ.

Finally, since the Preliminary Results, Garware reported that it had erroneously reported certain EPCGS licenses that were outside the POR, and requested the Department to exclude those licenses from the benefit calculations. We have verified this information for these final results, and we have excluded from the benefit calculations the benefits from those licenses that were received outside the POR.

4. Duty Entitlement Passbook Scheme (DEPS/DEPB)

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

The Department has previously determined that the DEPS program is countervailable. See, e.g., PET Film Final Determination - Decision Memorandum, at “DEPS.” In the investigation, 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 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, in accordance with 19 CFR 351.519(a)(4). Finally, because this program is contingent upon export, it is specific under section 771(5A)(B) of the Act. Id. We continued to find this program countervailable in the Preliminary Results, 72 FR at 43613-14. No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of this finding.

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. We calculated the benefit on an “as-earned” basis upon export because the 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). 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) (Carbon Steel Plate From India) and accompanying Issues and Decision Memorandum (Carbon Steel Plate From India - Decision Memo), at Comment 4.

Both Garware and MTZ reported that they 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 net countervailable subsidy rate by dividing the benefit earned on subject merchandise exported to the United States by exports of subject merchandise to the United States during the POR. See, e.g., Carbon Steel Plate From India, 64 FR at 73134. However, the sample licenses provided by Garware do not indicate whether the benefit was earned on subject merchandise. MTZ reported that its sales were only of subject merchandise.⁶ Therefore, we calculated the DEPS program subsidy rate using the value of all post-export credits that Garware and MTZ earned for all export shipments, regardless of product or market, during the POR. We subtracted as an allowable offset the actual amount of required application fees paid for each license in accordance with section 771(6) of the Act. We divided the resulting amounts by Garware’s and MTZ’s total exports (all products to all markets), respectively, during the POR. On this basis, we determine Garware’s and MTZ’s countervailable subsidy from the DEPS program to be 5.81 percent ad valorem and 12.78 percent ad valorem, respectively.

⁶See Garware’s First Questionnaire Response, at Exhibit 8 (January 5, 2007); and MTZ’s First Supplemental Response, at Exhibit S-11 (April 18, 2007). Garware confirmed in its second supplemental response that its DEPS licenses are not product specific. Garware’s Second Supplemental Response, at 5 (July 2, 2007). See MTZ’s First Questionnaire Response, at III-8-9 (January 17, 2007).

5. Union Territories Central Sales Tax (CST) Program

MTZ reported that a supplier located in a Union Territory did not charge any tax on MTZ's purchases because companies located in that Union Territory are exempt from charging CST. In the Preliminary Results, we treated this exemption of CST in the Union Territory as a State Sales Tax Incentive program, and we calculated MTZ's subsidy rate for this program accordingly. We also stated our intent to further examine this issue for the final results. Since the preliminary results, MTZ has provided additional information regarding its inter-state purchases. MTZ explained that the GOI exempts MTZ's supplier in a Union Territory from levying the CST based on its location. MTZ further stated that MTZ, located in the state of Gujarat, could not pay the CST to the supplier as the supplier would have no legal authority to collect the CST. With respect to Union Territories, the GOI explained that, in order for a purchaser to benefit from a State Sales Tax Program, the company has to obtain a so-called C-Form from the state from which it wants to obtain the sales tax exemption. See GOI Verification Report, at 10. The invoices of MTZ's supplier in the Union Territory indicate that MTZ does not pay CST on its purchases from this supplier. See MTZ Verification Report, at Verification Exhibit 10. Based on this additional information and the verification of MTZ's and the GOI's responses, we find the exemption of CST for the Union Territories is a separate program, and we must analyze its countervailability separately.

Based on the information above, we determine that 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 is limited by law to certain geographical regions (Union Territories) within India. Therefore, we find the CST program countervailable. We also determine that the CST program provides a recurring benefit under 19 CFR 351.510(c).

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 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 3.57 percent ad valorem for MTZ.

6. State Sales Tax Incentive Programs

In the previous countervailing duty administrative review, the Department determined that various state governments in India grant exemptions to, or deferrals from, sales taxes in order to encourage regional development. See Issues Memorandum - Third Review, at "State Sales Tax Incentive Programs." These incentives allow "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. As a result of these programs, the respondents did not pay state sales taxes on their purchases from eligible suppliers located in certain states. During the POR, Garware and its affiliated supplier, Garware Chemicals, and MTZ did not pay sales taxes on certain purchases made from the states of Maharashtra (SOM) and Gujarat, respectively.

The financial contribution under this program 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 Garware and Garware Chemicals, and 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. See Preliminary Results, 72 FR at 43614. There is no new information or evidence of changed circumstances that would warrant reconsidering this finding.

To calculate the benefit for MTZ, we first calculated the total amount of state sales taxes MTZ would have paid on their purchases during the POR absent these programs. We then divided this amount by MTZ's total sales during the POR. To calculate the benefit for Garware, we calculated the total amount of state sales tax that Garware and Garware Chemicals would have paid on their purchases during the POR absent this program. We then divided these amounts by the appropriate sales denominator as described in the "Cross-Ownership" section, above. On this basis, we determine the subsidy rate under this program to be 0.76 percent ad valorem for Garware and 3.99 percent ad valorem for MTZ.

In its case brief, MTZ argued that the Department verified that the state sales tax for Gujarat had been repealed and replaced with a value added tax (VAT),⁷ effective April 1, 2006, and that this is a significant post-POR change to the program. MTZ argued that the termination of the State of Gujarat state sales tax program should be reflected in any calculated cash deposit rate. However, the requirements of 19 CFR 351.526(d) regarding program-wide changes have not been met, because residual benefits continue to be bestowed under the terminated program through April 1, 2006. This issue is discussed in further detail below under Comment 12.

7. State of Maharashtra (SOM) Electricity Duty Exemption

This state incentive program provides an exemption from the payment of tax on electricity charges. This program is available to manufacturers located in certain regions of Maharashtra. Garware reported that it and its affiliated supplier, Garware Chemicals Ltd., received an exemption from the payment of tax on electricity charges through this program. In the investigation, we determined that the electricity duty exemption scheme at issue is separate from the refund of electricity duty scheme under the 1993 SOM package scheme of incentives. See PET Film Final Determination, at "Electricity Duty Exemption Scheme."

⁷See MTZ's Fourth Supplemental Response, at Exhibit 5C (August 23, 2007) (providing the GOI White Paper stating that states should to start implementing the phase out of the sales tax and replace it with the VAT).

In the Preliminary Results, the Department found that the electricity duty scheme is countervailable because: (1) SOM has forgone or not collected revenue otherwise due; therefore, the tax exemption provided through this program constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act; (2) the benefit consists of the amount of tax exempted on electricity charges through this program during the POI, pursuant to section 771(5)(E) of the Act; and (3) this program is specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits of this program are limited to industries located within designated geographical regions within the SOM. Id., at 72 FR 43615. There is no new information or evidence of changed circumstances that warrants reconsidering this finding. Therefore, for these final results, we continue to find this program countervailable.

To calculate the benefit for Garware, we first calculated the total amount of SOM electricity duty exemptions received by Garware and Garware Chemicals. We then divided these amounts by the appropriate sales denominators, as described in the “Cross-Ownership” section, above. On this basis, we determine the subsidy rate under this program to be 0.33 percent ad valorem for Garware.

Programs Determined to be Not Used

Based on the questionnaire responses and the results of verification, we determined that the producers/exporters of PET film products did not apply for or receive benefits during the POR under the programs listed below:

1. Duty Free Replenishment Certificate (DFRC)
2. Export Oriented Units (EOU)
3. Target Plus Scheme⁸
4. Capital Subsidy
5. Waiving of Interest on Loan by SICOM Ltd.
6. State Sales Tax Incentives-Section 4-A of the Uttar Pradesh Trade Tax Act
7. State Sales Tax Incentive of Uttaranchel
8. Exemption of Export Credit from Interest Taxes
9. Loan Guarantees from the GOI
10. State of Uttar Pradesh Capital Incentive
11. State of Gujarat Infrastructure Assistance Schemes
12. Capital Incentive Scheme of Uttaranchel

13. State of Maharashtra (SOM) Capital Incentive Scheme

In the investigation, the Department determined that Garware received grants under this program through the SOM 1988 package scheme of incentives. See PET Film Final Determination, at “State of Maharashtra Programs: Capital Incentive Scheme.” Grants of up to 3,000,000 rupees are available under this program to certain privately owned (i.e., not one hundred percent owned by the GOI) companies that make capital investments in specific regions of Maharashtra.

⁸For a detailed discussion, see Comment 1 below.

The Department also found that the SOM Capital Incentive Scheme provided a financial contribution under section 771(5)(D)(i) of the Act in the form of a grant, and that Garware benefitted under section 771(5)(E) of the Act, in the amount of the capital incentive grants received by Garware from the SOM. The Department also found this program to be specific within the meaning of sections 771(5A)(D)(i) and (iv) of the Act because the benefits of this program are limited to certain privately-owned (*i.e.*, not one hundred percent owned by the GOI) industries located within designated geographical regions.

Under 19 CFR 351.524(c) the Department treats the grants provided by this program as non-recurring subsidies. In the investigation, to determine the subsidy for this program, the Department first performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), for the year in which the SOM approved Garware’s grants. Because the grants did not exceed 0.5 percent of Garware’s total sales in that year, the Department allocated the total amount of the grants to the year in which the grants were received.

In the current review, Garware reported receiving a capital subsidy in 1998. Based on the information provided by Garware, we were unable to confirm that this capital subsidy was the same capital subsidy examined in the investigation.⁹ At verification, Garware did not have any additional information on the reported capital subsidy. In the Preliminary Results, we did not have the information necessary to perform the 0.5 percent test for the year in which the grant was received. Therefore, as facts available, we performed the 0.5 percent test based on sales information from the investigation. Since the Preliminary Results, we have obtained and verified the necessary sales information to perform the 0.5 percent test for the year in which the grant was received. Because this grant did not exceed 0.5 percent of Garware’s total sales, the entire amount of the grant is attributable to the year in which it was received (*i.e.*, 1998). As such, we determine that there is no countervailable benefit from this program allocable to the POR.

IV. Analysis of Comments

Comment 1: Countervailability Determination and Cash-Deposit Adjustment for the Target Plus Scheme

According to petitioners, the Department must increase Garware’s cash deposit rate to include benefits earned under the TPS and received after the POR, as verified by the Department, particularly because Garware is not subject to the administrative review for the 2006 POR. Petitioners maintain that they did not request an administrative review of Garware for the 2006 POR because the information concerning Garware’s use of the TPS was not on the record of this administrative review until the Department’s release of Garware’s verification report. See Garware Verification Report.

⁹In response to a request by the Department, Garware stated in its first supplemental response of April 13, 2007, that Garware received capital subsidies in 1998. Exhibit S-5B indicates that it was a “Disbursement of Special Capital Incentive Under the 1988 Package Scheme of Incentives.” Garware was unable to provide any additional information on this capital subsidy.

Petitioners argue that the Department verified that the Target Plus Scheme (TPS) meets the criteria established in sections 771(5), and 771(5A) of the Act, and 19 C.F.R. 351.514 as a countervailable subsidy because: (1) the program provides a “financial contribution” in the form of “foregoing or not collecting revenue that is otherwise due;” (2) there is a “benefit to the recipient” in the amount of the revenue foregone; and (3) the subsidy is specific as an export subsidy because it is “contingent upon export performance.” See Garware Verification Report. Therefore, petitioners propose adjusting the cash deposit rate because the Department has already determined the TPS is countervailable.

Garware argues that there should be no increase in Garware’s cash deposit rate to include TPS benefits because any potential benefits to Garware from the program were provided outside the POR. Garware states that petitioners are relying on Garware’s balance sheet, dated March 31, 2007, 15 months after the end of the POR. As such, petitioners’ contention regarding such benefits during the POR is “pure speculation.” Garware notes that petitioners did not request a review of Garware for the 2006 administrative review, and argues that the Department is not responsible for petitioners’ failure to request a review of Garware for the 2006 POR. Garware rejects petitioners’ suggestion that any benefits Garware may have received after the 2005 POR should be recognized by the Department in the current 2005 administrative review. Garware applied for benefits under the TPS after the POR, which the Department confirmed at verification. Therefore, Garware argues, the Department has no reason to derive a TPS rate for purposes of including it in the cash deposit rate.

MTZ made no arguments with respect to TPS’ countervailability.

Department Position:

The Department verified the workings of the program with the GOI and confirmed that Garware applied for and received benefits under this program subsequent to the POR. Accordingly, we find that this program was not used during the POR. As shown in Verification Exhibit 17, at 9, 14, and 15, Garware applied for its license under the TPS after the POR, and received its license late in 2006. See Garware Verification Report, at 4, 7 and 8. Since the TPS did not provide benefits to Garware during the POR, the Department need not address the countervailability of the program. As such, there is no basis to calculate a rate for cash deposit purposes for allegedly countervailable benefits received after the POR.

Comment 2: Countervailing the Total Subsidy Provided by the Pre- and Post-Shipment Program

Garware states that in calculating the benefit under the pre- and post-shipment program, the Department should either use as its loan benchmark an aggregate interest rate of all the banks, or provide a credit to Garware for interest paid above the benchmark rate, rather than calculating a benefit based on interest paid below the benchmark rate. In addition, Garware clarifies that not all loans for which the Department calculated countervailable benefits were provided by government-owned banks. As such, Garware argues that the Department’s calculation of benefits should not include loans from private banks. Garware also argues that the processing

charges and commissions to insurers on pre- and post shipment loans should be recognized by the Department as allowable offsets in the calculation of the benefits from these loans.

Petitioners argue that the Department should not offset the countervailable benefits provided by pre- and post-shipment loans by either using an aggregate rate from all the banks or by providing a credit for interest paid above the benchmark rate. Petitioners note that the Department has explained in a prior administrative review that it selects the most comparable commercial loans to the pre- and post-shipment short-term loans as required under 19 CFR 351.505(a)(2). According to petitioners, because no new information has been placed on the record of this review to change the prior determination that inland bill discounting loans are the most comparable commercial benchmark loans, the Department should affirm its preliminary results in the final results of this review. In addition, petitioners argue that the Department should reject Garware's argument to offset the benefits with interest paid above the benchmark rate because it is not one of the three permissible offsets identified under section 771(6)(A-C) of the Act.

Petitioners also rebut Garware's argument that the Department should not include the pre- and post-shipment loans from private banks when calculating the benefit provided under the pre- and post-shipment program, stating that the Department has determined that the RBI, a GOI-controlled entity, requires commercial banks to provide the pre- and post-shipment loans at interest rates set by the RBI. See 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), at 7918-9 (unchanged in the final determination, 71 FR 45034 (August 8, 2006)). According to petitioners, the fact that a private bank provides the subsidized loan at the direction of the GOI does not extinguish the countervailability of the loan. Petitioner argues that the Department has properly found these pre- and post-shipment loans to be countervailable because these loans provide a financial contribution and a benefit when the interest rates are lower than the comparable commercial benchmark rate.

Finally, petitioners argue that the Department should not deduct from the countervailable benefit the processing charges and commission that are paid by Garware to insurers. Petitioners state that these charges are a normal part of all loans and are not specific to the pre- and post-shipment loans. Finally, petitioners contend, even if the Department were to make such adjustments, it does not have the information on the record to adjust such charges on the comparable commercial loans.

Department Position:

We disagree with Garware that the Department should either use as its benchmark interest rate the aggregate interest rate of all bank loans or grant Garware a credit for those loans where the company paid interest above the benchmark. As provided in 19 CFR 351.505(a)(1), "{in} the

case of a loan a benefit exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan(s) that the firm could actually obtain on the market.” Further, the statute, at section 771(5)(E)(ii) state that:

{a} benefit shall normally be treated as conferred where there is a benefit to the recipient, including (ii) in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.

The Department must select an interest rate that is comparable with a commercial loan as a benchmark. See 19 CFR 351.505(a)(2). It is not appropriate to offset countervailable loan benefits with the amount of interest paid above the benchmark rate. This is not one of the three permissible offsets identified under section 771(6)(A-C) of the Act, because it is neither an application fee, a deposit to qualify or receive the benefit, a loss in the value of the countervailable subsidy resulting from its deferred receipt, nor export taxes or duties levied on the export of merchandise to the United States to specifically offset the countervailable subsidy received. Further, the Reserve Bank of India (RBI) requires commercial banks to provide pre- and post-shipment loans at interest rates set by the RBI. As set forth under sections 771(6)(A-C) of the Act, the processing charges and commissions to insurers on pre- and post-shipment loans are fees associated with obtaining any loan from any bank, and not fees incurred to participate in the program. Thus, we will not grant the offsets requested by Garware. See, e.g., Certain Iron-Metal Castings From India; Final Results and Partial Rescission of Countervailing Duty Administrative Review, 63 FR 64050, 64057 (November 18, 1998), at 64056-7, Comment 6 (explaining that penalty interest does not fall within the list of allowable offsets); see also, Royal Thai Government v. United States, 441 F. Supp. 2d 1350, 1363 (CIT 2006) (explaining that Commerce may only make deductions enumerated in section 771(6) of the Act); and Geneva Steel v. United States, 914 F. Supp. 563, 609-610 (CIT 1996 (explaining that Congress intended for the scope of this offset provision to be read and applied narrowly).

Further, the Department will continue to include the loans obtained from private banks in its benefit calculation for this program. As stated in the GOI Verification Reports, at 9, “the RBI regulates all export credits and dictates ceilings on the short-term interest rates, as well as the rules that are applicable to all government-owned and commercial banks.” Therefore, we measure the benefit from all loans obtained under the pre- and post-shipment program, whether provided by private or government-owned banks, as the loans are made at the direction of the RBI, and thus provide countervailable benefits. See Notice of Preliminary Affirmative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 7916, 7919-20 (February 15, 2006) (unchanged in the final determination).

Comment 3: The Countervailability of the Advance License Program (ALP)

Petitioners state that the Department should continue to find the ALP to be a countervailable export subsidy because the GOI does not have an effective system in place for the purposes intended under 19 CFR 351.519(a)(4) to confirm which inputs and in what amounts, are consumed in the production of subject merchandise. First, petitioners argue that, because the GOI can reduce the amount of export obligation of finished goods, there is no link between the imported inputs and the exported finished products to show that the GOI has properly tracked the inputs that are used in the exported product. According to petitioners, the GOI can determine that a company's export obligation has been satisfied even if the actual amount of exports is not equal to the exports required by the export obligation. Petitioners cite to the Department's verification finding, which indicates that the export obligation can be adjusted under the EPCGS, and argue that the GOI can similarly adjust the export obligation downward for the ALP. In addition, petitioners note that under paragraph 5.12 of the GOI's Handbook for Procedures regarding the EPCGS, a company's export obligation is fulfilled if it completes at least 95 percent of its export obligation. According to petitioners, any adjustment to the export obligation without making a comparable adjustment to the amount of duty-free imported inputs shows that the GOI has not properly calculated the inputs that are used in the exported product, and does not meet the non-countervailable criteria in 19 CFR 351.519(a)(4).

Second, petitioners contend that the Department should continue to find that the GOI has no system in place to revise SIONs for the ALP. Petitioners note that the Norms Committee (NC), which determines the SION to be used, is not a government-controlled entity but also includes industry members who must pay fees to join the NC. Petitioners state that these industry members are responsible for providing industry data that likely biases the NC's decisions. In addition, petitioners note that, except for the partial data related to the PET Film SION revision, the GOI did not provide any other documentation or evidence during verification to confirm that any of the three NCs performed the actual calculations using industry data for any of the other SION revisions done during the POR. With respect to the specific PET Film SION revision, petitioners argue that it is not representative of the industry as a whole because the NC examined only partial data from one company and only talked to a second company. Petitioners add that this revised SION relied only on the consumption register of one company, was not tied to any information in the company's financial statement, and was based on outdated production information.

Finally, petitioners note that in previous cases, the Department has found that the ALP allows for benefits from a broad category of "deemed" exports that are not limited to the actual exportation of subject merchandise. Accordingly, petitioners argue that the ALP is not a duty drawback scheme because it permits the subsidized import of certain goods mostly used in exports. Petitioners state that if the Department continues its practice of allocating the ALP benefit over both actual and deemed exports, the Department cannot conclude that the ALP provides duty-free imports only for exported PET Film.

MTZ argues that the benefits received under the ALP are not countervailable. MTZ notes that the program was found countervailable in the previous administrative review because the Department found that the GOI's program for confirming the accuracy of the SIONs was insufficient. MTZ argues that in this review, the GOI explained during verification how the SIONs in question were reviewed and verified by the GOI during the POR. MTZ further adds that the GOI modified a number of SIONs for PET film during the POR. Finally, MTZ notes that even though the specific SION related to the input used by MTZ was not modified during the POR, MTZ argues that it is a very simple SION and to the extent that the GOI monitoring program is now sufficient, MTZ's SION should be considered accurate as well.

Department's Position:

The Department continues to find that the ALP is countervailable because of the systemic deficiencies in the ALP identified in the Preliminary Results, 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. Specifically, we still have 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.

While the GOI was able to demonstrate at verification that some mechanisms for monitoring have been put in place, we still find that the GOI does not have 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. See 19 CFR 351.519(a)(1). For example, during verification, GOI officials stated that PET film producers "do not have to keep track of wastage since it is not recoverable for the production of PET film." See Verification of the Questionnaire Responses Submitted by the Government of India, at 7 (December 7, 2007) (GOI Verification Report). Accordingly, no allowance was made by the GOI to account for waste to ensure that the amount of duty deferred would not exceed the amount of import charges on imported inputs consumed in the production of the exported subject merchandise. Furthermore, the system that was used by the GOI that required respondent companies to use the new Appendix 23 (the form that the GOI developed to track inputs and exports), could not be reliably examined because the first filings covering the portion of the POR under the revised SIONs had not yet been filed to the DGFT at the time of verification. Id. at 3-4.

We also agree with petitioners that the requirements for a company to only export 95 percent of goods produced of imported inputs reflects a fundamental flaw in the system. Our review of the GOI's system of verifying inputs used to produce exports of subject merchandise for purposes of establishing SIONs also shows that it does not tie the relevant production numbers to a producer's accounting system or financial statement. During the POR, the GOI revised two

SIONs related to two distinct PET film production processes: one for the production process used by Jindal Polyfilms, Ltd. (Jindal) and the other for the production process used by Polyplex Corporation, Ltd. (Polyplex). During the POR, only Jindal's production process was verified by the DGFT based on inventory and consumption figures. The GOI, however, as part of this process, did not require Jindal to tie the inventory and consumption data to Jindal's accounting systems and financial statements in order to verify the accuracy of Jindal's data. Id. at 7. The second production process reviewed by the GOI during the POR merely involved a hearing held by the GOI in which Polyplex presented to the GOI unverified data. Id. Furthermore, during the Department's verification, we were unable to obtain any of the actual underlying data used by Polyplex to calculate, and the GOI to approve, this second SION. Finally, the SION for a third production process used by one of our respondent companies to produce PET film from PET chips was not reviewed during the POR. Accordingly, we determine that the GOI's present process for establishing and monitoring SIONs for the industry remain unreliable.

We continue to find that the GOI has not demonstrated that it has a process in place to ensure that SIONs are regularly reviewed. During verification, the GOI was unable to demonstrate that it maintained a statutory or regulatory requirement regarding the establishment and monitoring of SIONs that are reflective of the industry as a whole. The GOI officials noted during verification that there is no law or regulation that requires the producers subject to a SION review to be representative of the industry. Id. at 6. Although both Jindal and Polyplex had different production processes for PET film, which required the establishment of two separate SIONs, these processes are not necessarily representative of the industry as a whole.

We continue to find that the GOI has not yet implemented penalties for companies that do not meet the export requirements under the ALP or that claim excessive credits. During verification, the GOI provided evidence of monitoring these requirements only by providing a print-out that indicated that an exporter of non-subject merchandise participating in ALP was being placed on a delinquent list. However, even in this case, no penalties had been applied. Id. at 3-4. While the GOI reported provisions in the Handbook of Procedures that lay out the procedures for the granting of extensions and levying of penalties, the GOI did not provide any evidence of the enforcement of these deadlines by the application of the penalty provisions.

In the instant review, neither the GOI nor the respondents claimed that the laws and procedures underlying the ALP had changed with respect to "deemed exports." In its revisions, the GOI did not address the Department's concerns that it has no specific procedure in place to monitor that these finished products are ultimately exported. Specifically, our review of the new Appendix 23 shows that it does not differentiate and identify sales as being either physical exports, deemed exports, or sales to intermediate suppliers. The new Appendix 23, "Register for Accounting the Consumption and Stocks of Duty Free Imported or Domestically Procured Raw Materials," which the DGFT now uses to tie imported inputs to exports, does not appear to segregate imported inputs from domestically procured ones, nor does it differentiate the exported product produced from these inputs by separately identifying physical exports from deemed exports. See GOI's January 5, 2007 Questionnaire Response at Exhibit 11. The GOI has still not

demonstrated that it can link these deemed export sales to the actual exportation of merchandise. Accordingly, we find that the GOI has not demonstrated that it has implemented specific procedures for the ALP that can confirm whether all deemed exports are actually exported.

Therefore, despite the changes to the ALP noted by the GOI, the Department finds that systemic problems continue to exist. Consequently, we find 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.

Comment 4: The Denominator in the Benefit Calculation for Export Promotion Capital Goods Scheme (EPCGS)

Garware states that its total sales figures, as provided in its original response, should be used as the denominator when calculating the benefits of the EPCGS, instead of only its export sales. Further, according to Garware, the sales denominator upon which the benefit is calculated should include sales of both Garware and Garware Chemicals, which were reported and verified by the Department. Garware notes that in the preliminary results, the Department stated that it did not have information on Garware Chemicals' benefits under the EPCGS.

MTZ supports Garware's claim that the denominator should be all sales, arguing that machinery obtained under the EPCGS is not used only to produce merchandise for export. In fact, MTZ states that only a small percentage of the production using this machinery is dedicated to meeting its export obligation. Furthermore, MTZ argues that the license itself does not preclude a company from using the machinery for producing merchandise sold in the home market.

In rebutting this argument, petitioners note that the Department has examined this scheme in several administrative reviews of this order and in other countervailing duty orders on Indian products and has repeatedly determined that the subsidy is only provided to companies agreeing to "earn convertible foreign currency equal to four to five times the value of the capital goods within a period of eight years."¹⁰ Petitioners state that during verification, Garware and MTZ specifically showed how they account for their exports in order to meet their export obligation under a license. Petitioners reiterate that the verification reports state that the only reason the GOI allows the companies to import capital goods duty-free is because the companies must commit to exporting a certain portion of their sales over the next several years. Accordingly, petitioners argue that the EPCGS is a countervailable subsidy as described in section 771(5A)(B) of the Act and 19 CFR 351.514. Finally, petitioners reject Garware's claim that Garware Chemicals' sales should be included in the denominator because none of Garware Chemicals' export sales were used to fulfill Garware's export obligation.

¹⁰See, e.g., Final - Indian PET Resin, and accompanying Issues and Decision Memorandum, at "Export Promotion Capital Goods Scheme (EPCGS)."

Department Position:

The Department determined in the investigation and in subsequent administrative reviews of this countervailing duty 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--Decision Memorandum, and accompanying Issues and Decision Memorandum, at “Export Promotion Capital Goods Scheme (EPCGS);” see also Final - 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 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 and Garware during the POR. Because Garware Chemicals reported, and the verification report confirms, that it had no export sales during the POR, the appropriate denominator is only Garware’s export sales. See Garware Verification Report at 8-9 (December 7, 2007); see also Garware’s Third Supplemental Response, at 5-6 (August 27, 2007).

Comment 5: Calculation Methodology for EPCGS

MTZ argues that the Department’s benefit calculations, which first treat the entire amount of the benefit as a fully unpaid long-term loan until the entire export commitment has been fulfilled, and then treat the entire benefit as a non-recurring grant allocated over the AUL, result in a gross overstatement of the value of the benefit. According to MTZ, it does not carry the entire amount of the benefit as a long-term loan in its books until the entire export obligation has been fulfilled but instead, pursuant to standard Indian accounting practices, MTZ capitalizes the customs duties recorded under the EPCGS. MTZ further states that these unpaid customs duties were depreciated on a straight line basis for an 18-year period. Accordingly, MTZ argues that the Department should not treat the duty savings as a long-term loan but should instead calculate the benefit by capitalizing the duty savings beginning at the time of importation. MTZ explains that the numerator should be adjusted by spreading out the unpaid duties over a period that reflects the normal period of depreciation of the machinery.

Petitioners argue that there is no substantive information on the record of this review that would support a change in the Department’s methodology. Petitioners state that the Department, in accordance with the 19 CFR 351.524, allocates subsidies based on whether they are recurring or non-recurring benefits, and allocates a non-recurring benefit over a company’s AUL if the benefit received in a year is greater than 0.5 percent of relevant sales. Therefore, according to petitioners, it is irrelevant under the Department’s methodology whether MTZ carries those duty savings as long-term loans or capitalizes them as duty savings in its financial accounting system. Petitioners argue that subject merchandise produced on capital equipment for which the company conditionally does not have to pay import duties, receives benefits from the equivalent of a long-term loan in accordance with 771(5)(B) of the Act.

Petitioners argue that in order to determine whether the GOI has formally waived the import duties, the Department has to rely on the GOI's official certification of the waiver. According to petitioners, only the government of a country or a territory, thereof, can confer a countervailable benefit. As such, petitioners state that this would require an official government document declaring the final receipt of an otherwise conditional benefit.

Department Position:

With regard to MTZ's claim that the Department should countervail unpaid duties over a period that reflects the normal period of depreciation, we find that this does not comport with the Department's regulations, which 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 specific import duty deferrals 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." Furthermore, 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 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. We do not find that MTZ's argument about the manner in which it records these import duty liabilities in its books and records is relevant to how such countervailable benefits are treated pursuant to our regulations.

The Department will 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 continue to identify the benefit as arising from the interest that Garware and MTZ would have paid during the POR had they 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 - Indian PET Resin, and accompanying Issues and Decision Memorandum, at "Export Promotion Capital Goods Scheme (EPCGS);" see also 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), and accompanying Issues and Decision Memorandum, at "Export Promotion Capital Goods Scheme (EPCGS);" and Comment 1.

Comment 6: Partial Fulfillment of the EPCGS Export Obligation

MTZ argues that the Department should treat a portion of the duties deferred under the EPCGS as being finally waived because a portion of the export obligation has been fulfilled. MTZ contends that satisfying a portion of the export obligation, as MTZ did during the POR, also

means that a portion of the benefit has been earned and cannot be recovered by the GOI. According to MTZ, the Department verified that MTZ fulfilled part of its export obligation for certain EPCGS licenses. Furthermore, MTZ rejects the Department's argument that the Department is not in a position to determine whether export commitments have been met and therefore, can only rely on official certifications issued by the GOI.

MTZ argues that the GOI's actions with respect to the partial fulfillment of export obligations should be viewed as a "pro-forma" ministerial action based on documents that have been previously prepared by MTZ and reviewed by third parties, such as those required for the preparation of audited financial statements or other documents sent to the bank that facilitates the export. MTZ claims that the Department has normally relied on such information in these proceedings. Furthermore, MTZ notes that the Department has verified MTZ's exports and therefore, can judge whether the respective exports have been made or whether the respective export obligations have been partially met. According to MTZ, when an export obligation has been partially met, the amount of the benefit has to be recalculated, taking into account the amount of export obligation that has been satisfied.

Should the Department decide not to recalculate the benefit based on this information, MTZ argues that the Department should at least recalculate the benefit by taking into account the amount of the export obligation that has been reset by official letters from the GOI. MTZ refers to two letters, the first issued by the GOI in June 2004, stating that MTZ has fulfilled a portion of its export obligation, which resulted in the refixing of the export obligation. MTZ also notes a second letter issued by the GOI in December 2006, confirming partial satisfaction of the export obligation. Although this second letter was issued after the POR, MTZ argues that it should alleviate the Department's concerns concerning the export obligations fulfilled during the POR, because the letter issued by the GOI confirms that MTZ's filings during 2005 have been accepted, and that the remaining export obligations, as submitted by MTZ to the Department, can be relied upon. According to MTZ, the portion of the import duties deferred that are tied to the export obligation that was partially satisfied and refixed, will never be recovered by the GOI should MTZ default. Therefore, the Department should treat this export obligation as if it were fulfilled and begin the grant allocation for the import duties for which the GOI granted the waiver.

Petitioners contend that the GOI's formal certification that import duty obligations are completed is not a simple "pro forma ministerial action," as MTZ claims. Rather, these formal GOI certifications are instead a legal action by the GOI that changes the status of the contingent import duty obligation by disposing of the export license in toto. The Department is correct in using this official document, i.e., the GOI certification, to determine when the entire license has been satisfied and that the import duties have been conclusively waived. Therefore, the Department cannot rely on letters written outside the POR that purport to refix the company's obligation vis-à-vis the GOI, and that still constitute a provisional exemption of import duties granted until MTZ has completely fulfilled its export obligation. Therefore, the Department must continue to calculate the amount of the EPCGS benefit by treating the entire amount of the

benefit as an unpaid long-term loan until the GOI certifies that MTZ has met its export obligation, and hence, treat it as a grant.

Department's Position:

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

The Department, on its own, is not in a position to pass judgement 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 - 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 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.

MTZ noted that the GOI can adjust this obligation downward to recognize partial fulfillment of an export obligation. The Department's review of the DGFT's letters confirming partial fulfillment of MTZ's export obligation in 2004 indicates that the GOI, in recognizing the partial fulfillment of MTZ's export obligation, also renegotiated the terms of the original EPCGS licenses by substantially lowering the remaining balance of the original export obligation. See MTZ's First Supplemental Response at Exhibit S-12 (April 18, 2007); see also MTZ's Fourth Supplemental Response at Exhibit SSSS-4(c) (August 23, 2007). The fact that the GOI can revise the terms of the original export obligation at any time is a concern for the Department.

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.

We also find that the GOI can increase a company's export obligation, as was demonstrated during verification by Garware's assumption of Garware Chemicals' export obligation because Garware Chemicals was not in a position to fulfill its export obligation. The DGFT agreed but substantially increased the export obligation for this EPCGS license. See Garware's Verification Report, at 19 and Exhibits VE-19G and VE-19D (December 7, 2007).

In light of the discretion the GOI has to adjust the export obligation for EPCGS licenses, we find 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. Because the Department cannot reliably measure the true value of the export obligation at a point in time, we will continue our practice of relying on only those official certifications that extinguish the export obligation, in full. Furthermore, none of the documents cited 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 Garware and MTZ have not yet received a complete and final waiver of their 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 7: The Interest Rate to Calculate the EPCGS Benefit

MTZ argues that the Department's use of a benchmark interest rate from the time of issuance of the license is incorrect. The appropriate rate, according to MTZ, is the rate from the date of the refixing of the export obligation by the GOI because it reflects a new agreement.

Specifically, for MTZ's license for which the export obligation was formally refixed, the appropriate rate should be the rate on the date of the refixing of this obligation as reflected in the letter from the GOI. MTZ states that this letter effectively terminates the prior obligation, thereby creating a new and lower export obligation. MTZ compares this to the cancellation of a loan as a result of a renegotiation and re-issuance of a new one.

In the alternative, MTZ argues that if the Department chooses not to adjust the rate using an interest rate from the time the export obligation is reset, then the Department should select a blended rate from the various rates placed on the record by the Department. According to MTZ, the Department must take into consideration the commercial reality that reflects whether a company would leave an entire loan outstanding for more than half the useful life of the underlying capital equipment. MTZ claims that the Department's benefit calculation assumes that a company would continue to carry a loan at a very high rate of interest even if the market rate had declined precipitously, and would not opt to renegotiate such a rate. As a result, MTZ argues, the Department's methodology greatly overstates the value of the benefit and ignores

commercial reality by not accounting for a reduction in the principal of a loan over an extended period of time, at least at the rate of depreciation of the underlying asset, and by assuming that a company would not renegotiate the rate for a loan even after interest rates have declined.

According to MTZ, the Department's methodology results in a significant overstatement of the benefit. Therefore, MTZ argues that the Department should revise its methodology and reduce the value of the deferred import duties by the amount of the depreciation rate of the underlying machinery, and by applying the interest rate for 2005, which reflects the lower rate of interest that a rational company would pay on any loan.

Petitioners reject MTZ's claim that the benchmark interest rate should be the commercial interest rate in effect at the time the export license and the accompanying export obligation was "refixed," or in lieu of this, to use a "blended rate," covering the years for which interest rates exist on the record. Petitioners argue that MTZ fails to take into account that the date on which MTZ imported the duty-free capital equipment is the date that the Department must use as the basis for determining when a countervailable subsidy was received, and is the basis for selecting the appropriate interest rate to calculate the benefit pursuant to 19 CFR 351.510(b). According to petitioners, the Department's regulations require that deferrals of import duties, such as those granted under the EPCGS program, constitute a countervailable subsidy to the extent that interest charges are not collected as of the date that the recipient would otherwise be required to pay the import charges, in accordance with 19 CFR 351.510(a)(2) and (b). Petitioners note that the fact that the GOI adjusted the export obligation for MTZ does not affect the date the subsidy was received. Petitioners add that the Department's regulations neither provide for such adjustments, nor do they contemplate what a "rational businessman" would do in the face of declining interest rates. According to petitioners, the Department must continue to follow its regulations and calculate the EPCGS benefit using the benchmark interest rates in effect at the time the import duties were originally deferred.

Department Position:

Our practice is not, as MTZ argues, to apply the interest rate at the time of issuance of the EPCGS license. Rather, our practice is to calculate the benefit from the 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 - Indian PET Resin, and accompanying Issues and Decision Memorandum, at “Export Promotion Capital Goods Scheme (EPCGS);” see also Third PET Film Review - Final Results, and accompanying Issues and Decision Memorandum, at “Export Promotion Capital Goods Scheme (EPCGS).” MTZ’s arguments that the Department should either select the rate at the time the export obligation is reset, or to use a blended rate from the various rates placed on the record in the instant review, is contrary to the Department’s regulations and practice.

Comment 8: EPCGS Benefits for Machinery Not Used to Produce Subject Merchandise
MTZ states that the Department incorrectly included its deferred duties under one of its EPCGS licenses in its benefit calculation for the import of machinery that was never commissioned or used to produce subject merchandise. MTZ notes that the machinery in question is clearly identified on the EPCGS license as one of two separate and distinct items, i.e., capital equipment to produce PET chips and PET film. According to MTZ, the particular production line for the production of PET chips has its own commercial market and uses, such as an input in the production of PET film. MTZ adds that it has never used this production line to produce subject merchandise or any input into the production of the subject merchandise, and any benefits imputed to this machine should not be countervailed.

MTZ argues that the Department has established precedent on this issue in the 2001-2002 administrative review of this order by finding that benefits for one of the licenses for capital goods used to produce non-subject merchandise should not be included in the benefits subject to countervailing duties. See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 69 FR 51063 (August 17, 2004) (First PET Film Review - Final Results), and accompanying Issues and Decision Memorandum, at Comment 8. In that case, MTZ states that the machinery at issue was a metallizer, the sole use of which was to use subject merchandise to produce a more advanced product, i.e., metalized PET film. MTZ contrasts this with its own machinery at issue, which is used to produce PET chips, a product that has its own commercial market and independent use, and does not have to be used in the production of PET film. MTZ reiterates that the production line at issue has never been used by MTZ to produce any input used in the production of PET film. Thus, the Department should follow its own precedent and exclude the machinery in this production line.

Petitioners argue that MTZ received a countervailable export subsidy in the form of reduced/exempted import duties for capital equipment that was imported in order to produce PET chips, an input used to produce subject merchandise. Thus, MTZ’s comparison of its own situation, in which the capital equipment produces PET chips, an input to produce PET film, to an earlier Department decision in a previous review of the order, to exclude subsidies for a metallizer, which further processes subject merchandise into non-subject merchandise, is

erroneous. Petitioners cite to 19 CFR 351.525(b)(5)(ii), which states that “{i}f a subsidy is tied to production of an input product, then the Secretary will attribute the subsidy to both the input and the downstream products produced by a corporation.” Because MTZ had no exports of PET chips during the POR, yet received this export subsidy, the Department must attribute all of MTZ’s EPCGS subsidies to MTZ’s exports of PET film.

Department’s Position:

In First PET Film Review - Final Results, 69 FR 51063, and accompanying Issues and Decision Memorandum, at Comment 8, the Department found that Polyplex held one EPCGS license that was specific “only to capital goods used to produce non-subject merchandise” and that this equipment could only be used in the production of non-subject merchandise that was downstream from the subject merchandise. In the instant case, MTZ holds a license that lists two separate types of capital equipment that can be used to produce both PET chips and PET film. Because this license lists capital equipment that can be used to make both subject merchandise and an input into subject merchandise, we correctly countervailed all import duty deferrals provided under this license because MTZ was not able to demonstrate that this license was tied solely to the production of non-subject merchandise within the meaning of 19 CFR 351.525(b)(5). Accordingly, we continue to find that import duty deferrals under this EPCGS license benefit all of MTZ’s exports.

Comment 9: The Treatment of Countervailing Duties in the Benefit Calculation for EPCGS

MTZ says that the Department included in its EPCGS benefit calculations both the customs duty and the countervailing duty at the time of entry. However, MTZ argues that, according to Department policy and practice, the countervailing duty, intended to be a substitute for the excise tax that would have been paid on articles purchased domestically and recovered by MTZ under the normal excise pass through, should not be included in the calculation of the benefit. MTZ cites Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India, 66 FR 49635 (September 28, 2001) (Final Determination Hot-Rolled from India), and accompanying Issues and Decision Memorandum, at Comment 24, and Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 from India, 69 FR 67321 (November 17, 2004) (Final Determination Carbazole Violet Pigment 23 from India), and accompanying Issues and Decision Memorandum, at Comment 6, in which the Department agreed with respondents that the countervailing duty is designed to “countervail” the competitive advantage that imported goods would otherwise have over domestically produced goods that are subject to an excise tax. MTZ further stated that the exemption from additional duties does not confer a countervailable benefit because a company would receive a credit in the amount of the additional duties paid. Accordingly, MTZ concludes that since the Preliminary Results, MTZ provided the data, inclusive of pre-verification corrections, and on the record of this review, that should be the basis for the Department’s calculations.

Petitioners contend that there is no evidence on the record that the Department verified MTZ's claims regarding what the "countervailing duty" charge covers. The MTZ Verification Report mentions the CVD only as a minor correction. Petitioners further see no mention of this in the Preliminary Results. According to petitioners, the Preliminary Results mention that the Customs Education Cess provides an additional countervailable benefit. This Cess must be included in the final results, petitioners argue, as there is no information on the record indicating that the Cess is not an additional countervailable benefit provided by the GOI in the EPCGS. According to petitioners, there is no verified evidence on the record of this proceeding, and thus, the Department cannot change its determination that MTZ paid neither the "CVD" nor the Education Cess.

Department Position:

We agree with MTZ that, according to Department policy and practice, the Indian countervailing duty, which is levied in lieu of the excise duty, should not be included in the calculation of the benefit. In the Final Determination Hot-Rolled From India, the Department determined that the excise duty portion of the EPCGS was similar to VAT, which is passed on to the customer, and therefore, its exemption does not confer a countervailable benefit.¹¹ In this case, there is no new information on the record of this review for the Department to change its position on this tax.

Further, MTZ reported in its data sheets for one license with an outstanding export obligation a total amount of duty saved per import of capital goods, based on which we calculated a benefit. We reviewed the information submitted by MTZ again, and determined that the amount used in our benefit calculations included the Indian CVD. We have revised our calculations for that license to include in our benefit calculation only the basic customs duty and an amount of education Cess. We calculated the benefit based on the CIF value and the percentage at which basic customs duty is charged, as reported by MTZ.

Comment 10: Company-Specific Average Useful Life (AUL) for MTZ

MTZ notes that in the Preliminary Results, the Department used the AUL provided by the IRS tables. MTZ argues that the information it submitted concerning its AUL has been verified by the Department. According to MTZ, the Department should use MTZ's company-specific AUL to allocate non-recurring benefits, because MTZ has established that this AUL differs materially from the IRS tables.

Petitioners did not comment on this issue.

Department Position:

Under 19 CFR 351.524(d)(2)(i), we will presume the allocation period for non-recurring subsidies to be the AUL prescribed by the 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

¹¹See Final Determination Hot-Rolled from India, Issues and Decision Memorandum, at Comment 24.

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). MTZ reported that the company-specific AUL would rebut the presumption, and subsequent to the Preliminary Results, submitted additional requested information that was subject to verification. This information demonstrates that the difference between the AUL from the IRS tables and the company-specific AUL or country-wide AUL for the industry is significant. We have confirmed that MTZ's company specific AUL is 19.9 years. Therefore, for these final results, we have used MTZ's company-specific AUL of 20 years for purposes of allocating its non-recurring benefits.

Comment 11: Purchases From a Union Territory

MTZ states that its purchases from a Union Territory that is exempt from sales tax do not result in a countervailable subsidy or grant. MTZ refers to the verification report and accompanying Exhibit 10, as evidence that entities located within the Union Territory are not required to charge a sales tax for purchases made from suppliers within the Union Territory. Furthermore, MTZ explained that the supplier raises its price to take into account that MTZ does not have to pay tax on purchases from that supplier, and thus, MTZ does not accrue any benefit. Further, MTZ states that the fact that those purchases were not subject to a sales tax does not create a benefit provided either to promote export or to benefit a specific targeted area.

Petitioners argue that MTZ receives a countervailable subsidy on its purchases from suppliers located in a Union Territory because the supplier is exempt from collecting the sales tax that MTZ would otherwise pay to the supplier. Therefore, petitioners state, the sales tax that its supplier did not collect on the government's behalf constitutes a financial contribution to MTZ. In addition, petitioners note that this program is specific because it is limited to companies located in a certain region in accordance with section 771(5A)(D)(iv) of the Act.

Department Position:

We have determined that MTZ receives a countervailable subsidy on its purchases from suppliers located in a Union Territory. In the Preliminary Results the Department reviewed purchases made by MTZ, located in the State of Gujarat, from a supplier located in a Union Territory. In the Preliminary Results, based on the information provided and from the previous review, we treated this sales tax exemption as part of the State Sales Tax Incentive program, and calculated MTZ's subsidy rate for this program accordingly, stating our intent to further examine this issue for the final results. See Preliminary Results, 72 FR at 43614. Based on verification of the responses submitted by the GOI and by MTZ, we determine that the Union Territories Central Sales Tax (CST)¹⁰ program is countervailable because a financial contribution, in the form of tax

¹⁰The GOI levies a CST on interstate commerce, including sales from Union Territories to other states.

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 fact that MTZ's supplier raises its prices is irrelevant. The exemption from sales tax represents revenue foregone by the GOI, under section 771(5)(D)(ii) of the Act. 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. We also determine that the CST program provides a recurring benefit under 19 CFR 351.510(c). See Section "5. Union Territories Central Sales Tax (CST) Program" above; see also GOI Verification Report, at 10-11, and MTZ Verification Report, at 11-12. 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 12: Adjustments to Cash Deposit Rates to Account for Program-Wide Changes

MTZ argues that both the State of Gujarat sales tax and all Union Territory sales taxes were repealed and replaced with a VAT-based Sales Tax Act, and that it has provided information regarding the repeals. MTZ further points out that in the VAT system, all taxes are passed on to the final purchaser. Further, the Department's practice and international standards recognize that any waiver under a VAT system is not countervailable. MTZ says that this is a significant post-POR change to the program, and should be reflected in any calculated cash deposit rate.

Petitioners state that the information provided at verification does not demonstrate that an official program-wide change occurred with respect to the repeal (effective April 1, 2006) of the sales tax exemption from the State of Gujarat in 2006 and the Union Territories. The information neither demonstrates that there were no residual benefits, nor that the sales tax was replaced with a VAT in the Union Territories. Accordingly, petitioners argue that the Department has no basis to recognize these changes as program-wide changes that affect the cash deposit rate.

Department Position:

We disagree that MTZ's cash deposit rate should reflect a program-wide change for the sales tax programs for Gujarat and the Union Territory. We note that 19 CFR 351.526(d) provides that the Department will not adjust the cash deposit rate if the program-wide change consists of a terminated program and: (1) the Department determines that residual benefits may continue to be bestowed under the terminated program, or (2) the Department determines that a substitute program for the terminated program has been introduced and the Department is not able to measure the amount of countervailable subsidies provided under the substitute program. MTZ provided the new law, as published in the Gujarat Government Gazette, implementing the VAT. See MTZ's Fourth Supplemental Response, at Exhibit S4-5 (August 23, 2007). That law, at section 100, states with respect to the repeal of the Gujarat Sales Tax Act that:

Provided that such repeal shall not affect the previous operation of the said Acts or any right, title, obligation or liability already acquired, accrued or incurred thereunder and

subject thereto, anything done or any action taken including any appointment, notification, notice, order, rule form or certificate in exercise of any powers conferred by or under the said Act shall be deemed to have been done or taken in {exercise} of the powers, conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken, and all arrears of tax and other amount due at the commencement of this Act may be recovered as if they had accrued under this Act. . . all rules, regulations, orders, notifications, forms and notices issued under the said Act and in force immediately before the appointed day shall continue to have effect for the purpose of the levy, assessment, reassessment, collection, refund or set-off of any tax, or the granting of a drawback in respect thereof or the imposition of any penalty, which levy, assessment, reassessment, collection, refund, set-off drawback or penalty relates to any period before the appointed day or for any other purpose whatsoever connected with or incidental to any of the purposes aforesaid.

See id., at 69. Therefore, the VAT Act, published in the Gujarat Gazette, appears to provide for the continuation of residual benefits under the repealed State of Gujarat sales tax law.

MTZ states that the State of Gujarat sales tax law was repealed and the VAT implemented effective April 1, 2006. However, MTZ provided its eligibility certificate indicating its eligibility for benefits well beyond this POR. In addition, MTZ provided a certificate of entitlement, dated after the effective date of the VAT, demonstrating that residual benefits from the state sales tax exemptions continue to exist beyond this POR.¹¹ Therefore, consistent with the terms of the VAT law, MTZ will continue to be eligible to receive benefits under the state sales tax law. Based on the information provided on the record of this review by MTZ, we are unable to determine that benefits do not continue to exist for the Gujarat sales tax program, in accordance with 19 CFR 351.526(d)(1). Thus, it is not appropriate to make an adjustment to the cash deposit rate, pursuant to 19 CFR 351.526(a).

MTZ also argues that the Central Sales Tax (CST) (administered by the GOI throughout India and from the collection of which Garware Chemicals was exempt because of its location in the Union Territory) was replaced by the VAT. MTZ provided a GOI White Paper containing a recommendation that the sales tax systems (both the state sales taxes and the CST) be replaced by a VAT system. However, this White Paper does not give an indication of whether or when the VAT recommendation is to be adopted. Thus, there is no GOI-issued documentation on the record of this review that establishes the repeal of the CST. MTZ also provided an on-line business journal article discussing plans to phase out the CST, but it did not indicate that such a change had yet occurred. Therefore, MTZ did not establish that there was a program-wide change consistent with 19 CFR 351.526.

¹¹See First supplemental Response (April 19, 2007), at Exhibit S1-14B.

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 State of Gujarat Sales Tax exemptions and the CST exemptions in the Union Territory.

Comment 13: State of Maharashtra (SOM) Sales Tax Exemption

Garware contends that the Department should not countervail the total SOM sales tax exemption through purchases from Garware Chemicals but only the amount purchased with a BC form, which has to be obtained through the SOM for purchases under the sales tax exemption. As noted in the verification report, Garware states that the sales tax benefits were only available until March 31, 2005, after which the sales tax was replaced by a VAT system. Garware also points to its “Pre-Verification Report” (minor corrections), stating that Garware Chemicals did not charge a sales tax because at the time Garware Chemicals was exempt from doing so. Further, Garware says that the verification report describes the procedure used to verify how Garware Chemicals account for its SOM sales tax benefits, and that the Department noted no discrepancies; the GOI verification report also noted no discrepancies concerning how Garware and Garware Chemicals account for these benefits. See GOI Verification Report.

Garware notes that the verification report for Garware shows that Garware requested that the Department reduce the benefits Garware derived from the SOM sales tax exemption program by: (1) excluding the purchases Garware purchased from Garware Chemicals without a BC form,¹² as Garware Chemicals was exempted from collecting this tax; and (2) reducing the SOM sales tax exemption by the amount of retention for the reduced CST, which is levied by the GOI in the absence of any state sales tax.

Petitioners, in response to the Garware Verification Report, at 20, contend that the benefit received by Garware and Garware Chemicals from the SOM sales tax exemption should not be reduced by the amount of sales tax that Garware Chemicals was exempted from collecting (Garware’s purchases from Garware Chemicals without the BC form) because: (1) there is no legal basis to explain why the exemption was granted to Garware Chemicals; and (2) there is no information in the verification report that specifies why Garware should not have to pay the sales tax, and whether or not Garware Chemicals had to pay or collect the sales tax. Petitioners state that the Department cannot allow an impermissible offset for the sales tax retention, as requested by Garware and Garware Chemicals, because the two to three percent tax paid by Garware Chemicals does not fit the statutory criteria for allocable offsets outlined in section 771(6) of the Act. In addition, petitioners state that the terms by which Garware and Garware Chemicals receive the sales tax exemption remain unverified because Garware and Garware Chemicals did not provide any additional information on the basis of the referenced sales tax exemption of Garware Chemicals.

¹²The BC form is a document that the purchaser has to obtain from the SOM to be granted the sales tax exemption. The purchaser has to fill-out the BC form to the seller, who then files it with the SOM.

Garware argues that there is no merit to petitioners' claim that the state's retention of two percent of sales tax is not contemplated by governing law, and that the sales tax exemption benefit remains unverified. Garware says that Garware's Verification Report notes the state retention of two percent of sales tax under the Bombay Sales Tax Rules 1959,¹³ a general law such as the VAT, that provides that for goods used in manufacturing for sale are entitled to an offset of tax paid in excess of two percent. It is an integral part of the Indian statutory program, Garware states, designed to offset countervailable benefits to exporters to the United States. Thus, Garware claims, any countervailable subsidy that may have benefitted Garware should be adjusted by the two percent retention. Further, Garware states, that it has demonstrated that the SOM treatment of both Garware and Garware Chemicals was fully verified.

Department Position:

As stated above, cross-ownership continues to exist between Garware and Garware Chemicals. Garware Chemicals purchased certain materials without paying state sales tax. Accordingly, because Garware Chemicals did not pay the sales tax on its purchased materials, we continue to attribute the benefit of the sales tax exemption to the sales of both Garware Chemicals and Garware, pursuant to 19 CFR 351.525(b)(6)(iv) and (vi). We are not countervailing the purchases by Garware from Garware Chemicals, because these were not made tax-free pursuant to the program.

In addition, we disagree with Garware regarding its characterization of the two to three percent retention of sales tax as an allowable offset under the CVD law. Under section 771(6) of the Act, the Department may recognize an application fee, deposit or similar payment paid in order to qualify for or receive the subsidy; loss in the value of the subsidy due to deferred receipt; or export taxes, etc., specifically designed to offset the countervailable subsidy. This retention of sales tax does not meet any of the statutory provisions for an offset. See, e.g., Royal Thai Government v. United States, 441 F.Supp.2d at 1363; and Geneva Steel v. United States, 914 F.Supp. at 609-610. Moreover, the Department does not take into account secondary tax consequences, such as this. See Countervailing Duties; Final Rule, 63 FR 65348, 65362 (November 25, 1998). Therefore, we will continue to use the full benefit of the sales tax exemption in our calculations.

Comment 14: Time for the Department to Consider Arguments

MTZ believes that a shortened timetable in this review deprives MTZ, as well as the Department, of sufficient time for consideration of all issues. MTZ argues that for MTZ, a first-time respondent in a countervailing duty administrative review, a number of issues are being established for the first time, which, in the future, will be at least partially binding on both the Department and MTZ. MTZ says that only a few days were given for the preparation of its case brief after the release of the verification reports by the Department. MTZ contends that the

¹³Garware's Verification Report, at 3, refers specifically to the Trade Circular No. 16T of 24 (8/11/04) and Rule 41D of the Bombay Sales Tax Rules 1959.

preparation time was far less than the 30 days normally provided by regulation and customary Department practice, and that the short timeframe was accompanied by bad weather and the holiday period. This, combined with an unrequested post-preliminary results verification, resulted in the Department having 30 days or less from the date of any hearing to analyze the briefs and to complete these final results of review, MTZ states. For those reasons, MTZ asks the Department to issue a draft final determination no later than January 25, 2008 and allow parties the opportunity to provide comments and rebuttal comments limited to issues raised for the first time.

Petitioners state that all parties to a proceeding must adhere to the Department's statutory deadlines and that parties had over one year to provide information and make arguments. In addition, petitioners say that MTZ received the verification reports on December 6, 2007, whereas petitioners did not receive the reports until December 11, 2007, placing petitioners at a disadvantage. Thus, all parties to a proceeding must recognize the Department's statutory deadlines.

Department Position:

The Department must adhere to the statutory deadlines, as prescribed in section 751(a)(3) of the Act and 19 CFR 351.213(h). All parties had more than one year to present their information to the Department, and more than four months to review and prepare arguments regarding the Preliminary Results, significantly more time than contemplated by the Department's regulation at 19 CFR 351.309(c)(ii). Furthermore, all of the subsidy information is in the hands of the respondents and the Preliminary Results fully discussed the basis for the Department's determinations and the methodologies used in to calculate the benefits. In addition, the respondents participate in verification and are fully knowledgeable about what transpires at verification. Thus, the respondents, who are in complete control of their own information which is the basis for our subsidy analysis and calculations, had more than sufficient time to prepare their case briefs and they were given the usual amount of time, as contemplated in the regulations, for submitting rebuttal briefs. See 19 CFR 351.309(d). Furthermore, the hearing is limited to issues raised in the case and rebuttal briefs. See 19 CFR 351.310(c). Consequently, the Department has had ample time to fully analyze all subsidy programs and reach determinations on the subsidy programs for these final results within the statutory deadline. See section 751(a)(3)(A) of the Act.

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