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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the 2001-2002 Countervailing Duty
Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip
from India: Final Results

Summary

We have analyzed the comments submitted by interested parties in the 2001-2002 countervailing duty administrative review of polyethylene terephthalate film, sheet, and strip (PET film) from India. As a result of our analysis, we have made changes to the preliminary results. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum for these final results.

I. List of Issues

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

- Comment 1: The Period of Review
- Comment 2: Allocation of Benefits From the 80 HHC Tax Exemption
- Comment 3: The Benchmark Used in Assessing Benefits of Pre-shipment Export Financing
- Comment 4: Benefits From Post-shipment Export Financing
- Comment 5: Partial Fulfillment of Export Obligations Under the EPCGS Program
- Comment 6: Program-wide Change – 80 HHC Tax Exemption
- Comment 7: Consideration of Deemed Exports Under the EPCGS Program
- Comment 8: EPCGS Licenses Related to Non-Subject Merchandise
- Comment 9: Calculating the Amount of Benefits Under the DEPS Program
- Comment 10: Sales Used to Calculate the Subsidy Associated With the 80 HHC Tax Exemption

II. Background

This review covers PET film exported to the United States by Polyplex Corporation Ltd. (Polyplex). The period of review is October 22, 2001, through December 31, 2002, (hereinafter referred to as the POR). The Department of Commerce (the Department) issued its preliminary results on April 8, 2004. See Notice of Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 69 FR 18542 (April 8, 2004) (Preliminary Results). In response to the Department's invitation to comment on the Preliminary Results of this review, Polyplex filed a case brief on May 10, 2004 (Polyplex Brief). Dupont Teijin Films, Mitsubishi Polyester Film of America, Toray Plastics (America) and SKC America, Inc. (collectively, the petitioners) filed a rebuttal brief on May 18, 2004.

III. Subsidies Valuation Information

A. Allocation Period

In the Preliminary Results, we based the allocation period for Polyplex on the company-specific average useful life (AUL) of eighteen years. No party contested the Department's use of this company-specific AUL. Therefore, in accordance with 19 C.F.R. § 351.524(d)(2), we have allocated all non-recurring subsidies for Polyplex over eighteen years.

B. Benchmarks for Loans and Discount Rate

In accordance with 19 C.F.R. §351.505(a)(3)(i), and consistent with the underlying investigation, for those programs requiring the application of a short-term benchmark interest rate, we used, as the benchmark, company-specific, short-term interest rates on commercial loans as reported by Polyplex. In calculating the benefit for rupee-denominated, pre-shipment export financing, we used, as the rupee-denominated, short-term benchmark, the weighted-average interest rate paid by the company on its inland bill discounting. Although, the Department used the weighted-average interest rate paid by the company on its cash credit loans as the benchmark in the Preliminary Results, the Department has reexamined its position and found inland bill discounting to be more comparable to pre-shipment financing than other types of short-term loans. See Comment 3 in the "Analysis of Comments" section of this memorandum. We also continued to use, where available, the weighted-average interest rate paid by Polyplex for its inland bill discounting loans in calculating the benefit for rupee-denominated, post-shipment export financing.

In accordance with 19 C.F.R. §351.505, our policy is to use a benchmark denominated in the same currency as the loan. See, e.g., Certain Pasta From Turkey: Final Results of Countervailing Duty Administrative Review, 66 FR 64398 (December 13, 2001) and accompanying Issues and Decision Memorandum in the section entitled "Benchmark Interest Rates for Short-term Loans." Because some of Polyplex's pre-shipment export financing loans are denominated in U.S. dollars and working capital demand loans are Polyplex's only other short-term U.S. dollar-denominated loans, we used the interest rate on these loans as the benchmark for Polyplex's pre-shipment export financing loans denominated in U.S. dollars.

C. Basis for Reporting Consignment Sales

The Department required Polyplex to report its sales of consigned merchandise based on the date the merchandise was shipped from its factory to the United States in order for the reported sales to correspond more closely to the entries on which U.S. Customs and Border Protection (CBP) assesses countervailing duties. See Comment 10 in the “Analysis of Comments” section of this memorandum. Notwithstanding Polyplex’s comments on this issue, for these final results of review, the Department has continued to require it to report consignment sales as noted above.

IV. Analysis of Programs

A. Programs Found to Confer Subsidies

1. Pre-shipment and Post-shipment Export Financing

In the Preliminary Results, we found that pre-and post-shipment export financing conferred countervailing benefits on the subject merchandise. Interested parties had comments regarding the Preliminary Results. See Comments 3 and 4 in the “Analysis of Comments” section of this memorandum. For these final results of review, we have continued to find that these programs conferred subsidies on the subject merchandise and determined the following net countervailing subsidy rates: for the pre-shipment export financing program the rate for Polyplex is 0.17 percent ad valorem in 2001, and 0.10 percent ad valorem in 2002; the net subsidy rate for Polyplex under the post-shipment export financing program is 0.37 percent ad valorem in 2001, and 0.05 percent ad valorem in 2002.

2. Duty Entitlement Passbook Scheme (DEPS)

In the Preliminary Results, we found that this program conferred countervailing benefits on the subject merchandise. However, in the Preliminary Results, we erroneously based the subsidy calculation on the amount of DEPS benefits generated by exports to all countries whose name begins with the letter “U”, rather than only using the amount of benefits associated with exports to the United States. See Comment 9 in the “Analysis of Comments” section of this memorandum. For the final results of review, we corrected this error by including in our calculation only DEPS benefits generated by exports to the United States. For the final results of review, we have determined that the net countervailable subsidy rate for Polyplex under the DEPS is 14.03 percent ad valorem in 2001, and 10.34 percent ad valorem in 2002.

3. Export Promotion Capital Goods Scheme (EPCGS)

In the Preliminary Results, we found that this program conferred countervailing benefits on the subject merchandise. However, in calculating the subsidy rate for this program in the Preliminary Results, we failed to include the value of sales of deemed exports in the denominator of our calculation. Deemed exports are sales of products which were shipped to export processing zones within India,

which are outside of the customs territory of India, and subsequently exported out of the physical boundaries of India after undergoing further manufacturing. Consistent with the underlying investigation, deemed exports should be included in the denominator in calculating the subsidy rate for the EPCGS. See Comment 8 in the “Analysis of Comments” section of this memorandum. We have also omitted the benefits calculated in the Preliminary Results for one capital good imported under the EPCGS as this good can only be used in producing non-subject merchandise. See Comment 7. Interested parties had additional comments regarding the Preliminary Results. See Comment 5. For the final results of review, we have determined that the net countervailable subsidy rate for Polyplex under the EPCGS program is 4.78 percent ad valorem in 2001, and 4.81 percent ad valorem in 2002.

4. Income Tax Exemption Scheme 80 HHC

In the Preliminary Results, we found that this program conferred countervailing benefits on subject merchandise. Interested parties had comments regarding the Preliminary Results. See Comments 2 and 6 in the “Analysis of Comments” section of this memorandum. For the final results of review, we have determined that the net countervailable subsidy for Polyplex under this program is 1.25 percent ad valorem in 2001, and 4.31 percent ad valorem in 2002.

5. Capital Subsidy

In the Preliminary Results, we found that this program conferred countervailing benefits on the subject merchandise. No parties commented on this subsidy program. For the final results of review, we determined the net countervailable subsidy for Polyplex under this program is 0.02 percent ad valorem in 2001, and 0.02 percent ad valorem in 2002.

Program Determined not to Confer a Benefit

6. Sales Tax Incentives

In the Preliminary Results, we found that this program conferred no countervailing benefits on the subject merchandise. No parties commented on this program. For the final results of review, we have continued to find that Polyplex did not receive a benefit from this program.

B. Programs Determined Not To Be Used

2. The Sale and Use of Special Import Licenses (SILs) for Quality and SILs for Export Houses, Trading Houses, Star Trading Houses, or Superstar Trading Houses (GOI Program)
3. Exemption of Export Credit from Interest Taxes
4. Loan Guarantees from the GOI
5. Benefits for Export Processing Zones /Export Oriented Units
6. Electricity Duty Exemption Scheme (State of Maharashtra)
7. Capital Incentive Schemes (State of Maharashtra and State of Uttaranchal Program)

8. Waiving of Interest on Loan by SICOM Limited (State of Maharashtra Program)
9. Infrastructure Assistance Schemes (State of Gujarat Program)

V. Analysis of Comments

Comment 1: The Period of Review

In the Preliminary Results, the Department determined that the POR extended from October 22, 2001, to December 31, 2002. The Department calculated one countervailing duty rate for Polyplex based on a full-year of data from calendar year 2001, and applied this rate to all of Polyplex's sales during 2001 (specifically from October 22, 2001, to December 31, 2001). The Department then calculated a separate countervailing duty rate for Polyplex based on a full-year of data from calendar year 2002 and applied this rate to all of Polyplex's sales during 2002.

Polyplex argues that the POR for this segment of the proceeding should be based on the fiscal year used in India (April through March), rather than a calendar year (Polyplex initially requested that the POR extend from April 1, 2001, to March 31, 2003, but seems to later assert that the Department cannot use data prior to October 22, 2001 (the publication date of the preliminary determination in the investigation in this proceeding). Thus, Polyplex now appears to argue that the POR should extend from October 22, 2001, through March 31, 2003).

According to Polyplex, the Department's regulations actually require the Department to align the POR with the fiscal year. Polyplex quotes 19 C.F.R. § 351.213(e)(2)(ii) which states that for the first countervailing duty administrative review, the end of the POR will extend until the "most recently completed calendar or fiscal year." Polyplex argues that 19 C.F.R. § 351.213(e)(2)(i) defines fiscal year as that of the government in question, which in India is April 1 through March 31. As the most recently completed calendar year prior to the end of the July anniversary month of the countervailing duty order is India's fiscal year ending on March 31, 2003, Polyplex concludes that the Department is required to conduct a review ending on March 31, 2003.

Furthermore, Polyplex maintains that the Department has the authority to change the POR when it creates a hardship on parties or causes inaccurate results that are inconsistent with its obligations under the World Trade Organization (WTO). Polyplex points out that 19 C.F.R. § 351.213(e)(2)(i) provides that the CVD POR will "normally cover entries or exports of the subject merchandise during the most recently completed year." Polyplex concludes that the use of the word "normally" provides the Department with flexibility to change the POR. Polyplex also notes that in the case of a new shipper review where maintaining a review on a calendar year basis may not capture a new shipper's first shipment, 19 C.F.R. § 351.213(e)(2) provides the Department with sufficient flexibility to resolve any problems that may arise by modifying the standard POR. See Antidumping Duties; Countervailing Duties, 62 Fed. Reg. 27296, 27320 (May 19, 1997). Polyplex believes that this demonstrates the Department's flexibility to select the POR, be it calendar or fiscal year.

Additionally, Polyplex contends that the Department should not calculate countervailing duties

for entries from October 22, 2001, to December 31, 2001, using data from January 1, 2001, to December 31, 2001, as nearly 10 months of these data are from a period prior to the POR. Further, Polyplex notes that three of these months - January through March 2001 - were used to calculate the countervailing duty in the underlying investigation in this proceeding. Polyplex asserts that Article 19.4 of the Subsidies and Countervailing Measures Agreement (SCM) Agreement prohibits WTO members from levying countervailing duties “on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.” According to Polyplex, based on the SCM Agreement, the Department cannot levy countervailing duties on exports prior to October 22, 2001, and the countervailing duties cannot exceed the subsidies received on the exports from October 22, 2001, to December 31, 2001. Polyplex determined that the countervailing duty rate on sales from January 1, 2001, to October 21, 2001, is higher than that on sales from October 22, 2001, to December 31, 2001. Thus, Polyplex concludes that the Department is assessing countervailing duties in excess of those received on the exports subject to those duties, in violation of the WTO agreement.

Finally, Polyplex claims that if the Department continues to base the POR on a calendar year, the revised countervailing duty cash deposit rate will not be based on timely data and thus, the margin calculated in a companion antidumping duty administrative review (which includes calculations that utilize export subsidy rate information) will be inaccurate.

The petitioners interpret 19 C.F.R. § 351.213(e)(2)(i) as setting forth the general rule that the POR is to be the calendar year, and note that the exception that allows for the use of a fiscal year only applies in situations where the countervailing duty review is conducted on an aggregate basis. Moreover, the petitioners find Polyplex’s reliance on 19 C.F.R. § 351.213(e)(2)(ii) to be misguided. The petitioners argue that in the instant review, where the Department is conducting a company-specific review rather than a review on an aggregate basis, this regulation only provides that the first POR will start on the date that the preliminary determination was published rather than providing the Department with a choice of whether to conduct the review on a calendar or fiscal year basis. The petitioners note that the Department will deviate from its regulatory guidelines “only in very unusual circumstances.” See Antidumping Duties; Countervailing Duties, 62 Fed. Reg. 27296, 27317 (May 19, 1997). Further, the petitioners point out that the Department has already explained to Polyplex that in countervailing duty reviews, the Department’s practice is not to deviate from the POR dictated by its regulations. Thus, the petitioners believe both Polyplex and the Government of India (GOI) have failed to provide adequate justification for the Department to disturb its well-established practice of basing the POR on a calendar year.

Additionally, the petitioners contend that the Department’s practice is consistent with U.S. obligations under the WTO. The petitioners argue that the Department has the discretion to calculate subsidies using data for a period that is not identical to the time period for which the assessed duties will apply. The petitioners assert that using data from calendar year 2001 to calculate countervailing duties for the period from October 22, 2001, to December 31, 2001, is reasonable and does not result in duties being assessed on entries prior to October 22, 2001.

The Department's Position:

We disagree with Polyplex. The Department has consistently interpreted 19 C.F.R. § 351.213(e)(2)(i) as providing for a calendar year POR in countervailing duty reviews, except where the countervailing duty review is conducted on an aggregate basis (in which case the POR is the fiscal year). Further, the Department is not aware of a company-specific countervailing duty review of products from India that was conducted using a fiscal year POR. See, e.g., Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 69 FR 26549 (May 13, 2004) (Hot-Rolled from India). Moreover, the evidence does not demonstrate that using a calendar year POR in the instant review has created an unfair burden on respondents or the GOI given that, in past company-specific countervailing reviews of products from India, the Department has consistently used a calendar year POR. Thus, the Department finds no compelling reason in this review to consider changing its practice.

Furthermore, Polyplex maintains that the Department should not calculate countervailing duties for entries from October 22, 2001, to December 31, 2001, using nearly 10 months of data prior to October 22, 2001. Yet, in its September 4, 2003, submission to the Department, it suggested using data from April 1, 2001, to March 31, 2002, if the Department did not restrict its analysis to only 2002 data. Polyplex's proposal would have resulted in using data from most of the 10 months at issue and thus contradicts its argument that "the Department cannot, consistent with the SCM Agreement, impose CVD duties based on data for January 1, 2001, through October 21, 2001." See Polyplex Brief at 8. We note that the Department's governing statute and regulations are in accordance with its obligations under the SCM Agreement.

In arguing against the Department's approach, Polyplex seems to imply that the Department should: (1) calculate the amount of benefits from October 22, 2001, to December 31, 2001, and apply the amount of these benefits to sales during the same time period; or (2) calculate the amount of benefits from October 22, 2001, to December 31, 2001, and apply the amount of these benefits to sales during the full year. The Department disagrees with the first approach as this would ignore benefits of one complete year. It is the Department's normal practice to calculate countervailing duty rates based on data from a 12-month period. The Department does so in order to take into account the fact that subsidies provided by a government are sometimes provided only once a year, such as tax breaks, provided at only certain times, or provided unevenly during a year. Accordingly, the Department's regulations allocate most types of subsidies over a 12-month period. See 19 C.F.R. § 351.504 and 19 CFR § 351.524(d)(2). Thus, in order to calculate the proper per-unit amount of subsidy for a particular POR, it is necessary that both the numerator (the amount of subsidies) and denominator (sales value) include data for a full 12-month time period. Under Polyplex's second approach, it is impossible to calculate an accurate countervailing duty rate when the numerator contains data regarding subsidies for a little more than two months, and the denominator contains sales data for 12 months. This approach would result in a countervailing duty rate that underestimates the impact of the benefits provided by countervailable programs in India.

The instant administrative review is the first review of the order and the Department's regulations require this POR to begin on October 22, 2001, the date of suspension of liquidation of entries. In keeping with the Department's practice of calculating countervailing duty rates using data from a 12-month period, the Department calculated the subsidies relating to the period October 22, 2001, through December 31, 2001 using data from calendar year 2001. As stated above, due to the nature of subsidies, countervailing duties should be calculated using data from a 12-month period. Thus, the countervailing duties levied on entries during the period October 22, 2001, to December 31, 2001, are not excessive, but are based on the subsidy found to exist for that period.

Finally, we assume that Polyplex's comment that the use of a calendar year POR in a countervailing duty administrative review will result in inaccurate dumping duties in a companion antidumping duty review is referring to the fact that the POR for antidumping duty administrative reviews of PET film from India normally will extend from July to June, while the Department will be using a January through December POR in the countervailing duty reviews of PET film from India. However, the Department notes that, in almost all cases where a company is subject to both antidumping and countervailing duty reviews, the PORs are different. Section 772(c) of the Tariff Act of 1930, as amended (the Act), states that the price used to establish export price and constructed export price shall be increased by the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy. In practice, this means that the Department will adjust the U.S. price used to calculate the dumping margin by the export subsidy rate calculated in the most recently completed and published final results of a countervailing duty review.

Comment 2: Allocation of Benefits From the 80 HHC Tax Exemption

Polyplex argues that the 80 HHC tax exemption benefit was calculated for a fiscal year and thus the Department should not have allocated this benefit over the value of Polyplex's sales during the calendar year. Polyplex states that, in the case of direct taxes, the Department's regulations require the benefit to be allocated or expensed to the year in which it was received. According to Polyplex, the Department's approach results in inaccurate cash deposit rates and countervailing duty rates.

The petitioners believe that the Department correctly calculated the amount of benefits conferred by the 80 HHC tax exemption. The petitioners note that according to 19 C.F.R. § 351.509(b)-(c): "The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission, or deferral of a direct tax to the year in which the benefit is considered to be received." The petitioners conclude that the Department followed its regulations and properly allocated the amount of Polyplex's 80 HHC benefits to the POR.

The Department's Position:

We agree with the petitioners. Pursuant to 19 C.F.R. § 351.509(b), the Department will normally consider a tax benefit as having been received on the date on which the firm filed its tax return. Further, 19 C.F.R. § 351.509(c) provides that the Department will normally allocate the benefit of a tax exemption to the year in which the benefit is considered to have been received. As explained in

Comment 1 above, the Department is basing the POR on calendar years. Therefore, the Department allocated the amount of benefits from tax returns filed in 2001 to calendar year 2001 and allocated the amount of benefits from tax returns filed in 2002 to calendar year 2002. Thus, the Department correctly applied 19 C.F.R. § 351.509(b) and (c) and has not changed its calculations for these final results of review.

Comment 3: The Benchmark Used in Assessing Benefits of Pre-shipment Export Financing

Polyplex contends that the Department erred by selecting cash credit financing as the benchmark for pre-shipment export financing because it has commercial paper and working capital demand loans that are more similar to pre-shipment export financing than other types of loans. Polyplex notes that during the investigative phase of this proceeding, the Department used the interest rate on inland bill discounting, rather than cash credit financing, as the benchmark for post-shipment export financing because inland bill discounting loans were “short-term, fixed-rate rupee-denominated loans taken out against receivables such as invoices.” See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film), 67 FR 34905 (May 16, 2002) (PET Film Final Determination) and accompanying Issues and Decision Memorandum at II.A.2 (Benchmark for Loans and Discount Rates) (PET Film Investigation Issues and Decision Memorandum). Similarly, Polyplex points out that commercial paper is rupee denominated, issued at a market rate, used to finance both inventories and receivables, and, during the POR, its commercial paper had a maturity of either 90 or 180 days (although maturities for commercial paper could vary from 30 to 364 days). Also, Polyplex asserts that its working capital demand loans are more similar to pre-shipment export financing in both purpose and duration than is cash credit financing because its working capital demand loans are used to finance both inventories and receivables and have a maturity from 15 days to 12 months (Polyplex did not obtain financing through commercial paper in 2001 and thus it argues that the Department should use the interest rate on working capital demand loans as the benchmark for 2001).

In contrast, Polyplex argues that cash credit financing is basically an overdraft mechanism to manage its daily cash requirements, an account for the deposit and transfer of funds, and a check writing facility. Polyplex argues that it is not possible to write checks or deposit and transfer funds on a daily basis with pre-shipment export financing and thus it concludes that pre-shipment export financing is a vastly different method of financing than is cash credit financing.

The petitioners argue that the fundamental structure of cash credit financing continues to make it the most appropriate benchmark for pre-shipment financing pursuant to 19 C.F.R. § 351.505(a) (stating that “the Secretary normally will place primary emphasis on the structure of the loans”). According to the petitioners, Polyplex has contradicted its claim that cash credit is not used as a source for working capital by its admission that “companies may also choose to use the cash credit facility for financing their working capital.” See Polyplex’s October 9, 2003, questionnaire response at Annex 6-C, page 8.

Finally, both parties contend that the Department mistakenly stated, in the Preliminary Results, that commercial banks extending export credit to Indian companies must, by law, charge interest at rates *determined* by the Reserve Bank of India (RBI). Instead, both parties assert that commercial banks extending export credit to Indian companies must, by law, charge interest at rates *capped* by the RBI.

The Department's Position:

We disagree with both parties. Pursuant to 19 C.F.R. § 351.505(a)(2)(i), in selecting a loan that is comparable to government-provided loans, the Department normally places primary emphasis on similarities in the structure of the loans, the maturity of the loans, and the currency in which the loans are denominated. During the POR, Polyplex used four types of loans that were determined not to be countervailable: cash credit, working capital demand loans, inland bill discounting and commercial paper. The Department has determined that inland bill discounting is more similar to pre-shipment export financing than are the other types of loans.

Pre-shipment export financing is fixed-rate, short-term financing, that was secured by accounts receivable, inventories and other assets, and commonly used by Polyplex during the POR. Inland bill discounting also possesses each of these characteristics. In contrast, commercial paper is unsecured and was only rarely used by Polyplex in 2002. See Polyplex's October 9, 2003, questionnaire response at Annex 6-C, page 11. Also, working capital demand loans, which Polyplex infrequently used, and cash credit can be rolled over after one year and can have variable interest rates. Furthermore, the loan amount, loan period and due date of principal for both pre-shipment export financing and inland bill discounting are all tied to an invoice, purchase order, or letter of credit from an individual transaction. None of the other three loans are so structured. Therefore, for these final results of review, we have used the interest rate on inland bill discounting as the benchmark for pre-shipment export financing.

However, we agree with both parties that the Department incorrectly noted, in the Preliminary Results, that the RBI determined interest rates charged by commercial banks offering pre- and post-shipment export financing. Although the Department made this erroneous statement, its analysis in the Preliminary Results correctly reflected the fact that interest rates under pre-shipment and post-shipment financing are only capped by the RBI, rather than set by the RBI.

Comment 4: Benefits From Post-shipment Export Financing

Polyplex argues that it is untrue that interest rates under this program were lower than commercially available interest rates as the weighted-average interest rate for post-shipment export financing was greater than the Department's benchmark interest rate. Thus, Polyplex contends that no benefit was conferred by this program. With this argument, Polyplex implicitly disagrees with the Department's long-standing practice of assessing the amount of benefits on each individual loan and summing only positive benefit amounts in determining the total amount of benefits conferred.

According to the petitioners, Polyplex's proposal is contrary to U.S. law and the Department's practice. The petitioners argue that nothing in the countervailing duty statute supports Polyplex's claim that negative benefit amounts should offset positive benefit amounts. The petitioners cite numerous Department determinations contained in a brief to the North American Free Trade Agreement all supporting the Department's long-standing practice of not offsetting the calculated benefit amounts of preferential loans with the negative benefit of less favorable loans.

The Department's Position:

We agree with the petitioners. Section 771(6) of the Act specifically lists offsets to subsidies; individual loans with interest rates that exceed market interest rates do not fall within the list of allowable offsets to government loan subsidies listed under this section of the Act. Further, the calculation methodology used in the Preliminary Results, which involved examining each reviewed loan separately, calculating any benefit amounts, and then summing all benefit amounts, is a long-standing Department practice. Therefore, the Department has not changed its calculations for these final results of review.

Comment 5: Partial Fulfillment of Export Obligations Under the EPCGS Program

In calculating the benefit under the EPCGS program, the Department typically treats the company's unpaid customs duties as an interest-free loan prior to completion of its export obligation while it treats such unpaid duties as a grant after the company has completed its export obligation. Polyplex claims that the Department has also agreed, in principle, to treat a portion of the duty forgone as a grant, rather than an interest-free loan, once a company has partially fulfilled its export obligation. Specifically, Polyplex quotes the Department in the underlying investigation as saying,

“If we examine this program again in a subsequent proceeding, and respondent companies submit such official documentation certifying that they have met *partial* export obligations under the EPCGS, we will examine at that point whether such documentation is certification that a company has legally discharged part of its export obligations under the EPCGS, and whether the Department should treat the corresponding part of a company's unpaid Customs duties under the EPCGS as a grant pursuant to 19 C.F.R. §351.505(d)(2).”

See PET Film Final Determination and accompanying Issues and Decision Memorandum at Comment 5. Polyplex claims that it provided its partial completion certificates in the instant administrative review and these should be considered in the calculation of the benefit. See Polyplex questionnaire response at 2 and Annex 8 at 8-F (October 9, 2003).

The petitioners assert that Polyplex has failed to provide documentation supporting its claim that it received an official partial waiver from the GOI with respect to the license in question issued under the EPCGS program. Therefore, the petitioners conclude that the Department should continue to treat the EPCGS license in question as an interest-free loan.

The Department's Position:

We agree with the petitioners. Consistent with our approach in the Preliminary Results, the underlying investigation, and the final results in Hot-Rolled from India, we will only treat benefit amounts under the EPCGS program as a grant when the GOI has issued a formal waiver stating that the recipient has completed its export obligations and is therefore waived from paying the remaining outstanding import duties. Therefore, the date on which the Department changes its treatment of the EPCGS is the date of the waiver. See Hot-Rolled from India, 66 FR at 20247. The statement from the GOI included in both Annex 8-F of Polyplex's October 9, 2003, questionnaire response and Exhibit 9 of Polyplex's December 16, 2003, supplemental response is dated August 1, 2003. This date falls after the instant POR; therefore, the letter is not relevant in determining whether Polyplex met an export obligation during this POR. Further, we disagree with Polyplex's statement that the Department "agreed in principle that once an export obligation was partially met, a comparable portion of the duty forgone should be considered a grant." The Department only stated that it will examine and consider this question.

Comment 6: Program-wide Change - 80 HHC Tax Exemption

Polyplex notes that it placed on the record evidence indicating the GOI plans to reduce the HHC deduction to 30 percent for the assessment year beginning April 2004 and eliminate the deduction for the assessment year beginning April 2005. According to Polyplex, 19 C.F.R. § 351.526 allows the Department to take into consideration program-wide changes in establishing the estimated countervailing duty cash deposit rate if a program-wide change occurred subsequent to the POR but prior to the preliminary determination. Polyplex argues that since this program-wide change occurred subsequent to the POR but prior to the preliminary results in this administrative review, it should be taken into consideration when calculating the cash deposit rate.

The petitioners point out that pursuant to 19 C.F.R. § 351.526(a)(2), the Department may only adjust a countervailing duty cash deposit rate for program changes where, inter alia, the Department "is able to measure the change in the amount of countervailable subsidies provided under the program in question." The petitioners claim that in order to measure the actual change in benefits provided through the 80 HHC tax exemption, the Department would need to know Polyplex's future profits associated with its exports. However, because the basis for conferring 80 HHC benefits is unknown (*i.e.*, Polyplex's future profits are unknown), the petitioners conclude that the Department cannot reduce the countervailing duty cash deposit rate calculated for Polyplex in this administrative review.

The Department's Position:

We agree with the petitioners. Pursuant to 19 C.F.R. § 351.526(a)(2), the Department may only adjust the countervailing duty cash deposit rate for a program change when the effect of the change is measurable. The basis for receipt of the 80 HHC benefit is the realization of profit. The amount of Polyplex's future profits, or whether there will be any profits, is unknown and thus the effect of the change is not measurable. Therefore, we have not adjusted the countervailing duty cash deposit rate calculated for Polyplex in this administrative review.

Comment 7: Consideration of Deemed Exports Under the EPCGS Program

Polyplex asserts that it demonstrated in Annex 8-C of its questionnaire response (paragraph 6.5 iv of the EPCGS) that deemed exports are eligible for use in fulfilling a company's export obligation under the EPCGS program. Hence, Polyplex concludes that the Department should include deemed exports in the denominator of its calculation of the amount of benefits conferred by the EPCGS program, as was done in the underlying investigation.

The petitioners had no comment on this issue.

The Department's Position:

We agree with Polyplex. The Department has determined that, in India, deemed exports, as a rule, are counted towards the fulfillment of the export obligation under the EPCGS program. See PET Film Investigation Issues and Decision Memorandum at Comment 8. Therefore, consistent with the underlying investigation, for the final results of review, we have included deemed exports in the denominator of our calculations of the subsidy rate under the EPCGS program.

Comment 8: EPCGS Licenses Related to Non-Subject Merchandise

Polyplex argues that one of its EPCGS licenses relates only to capital goods used to produce non-subject merchandise. Thus, Polyplex contends that the benefits associated with this license should not be considered when calculating subsidies in the final results of review.

The petitioners disagree and note that the Department's established calculation methodology is to determine the amount of all EPCGS benefits and divide the amount of those benefits by the total value of export sales, not the value of only export sales of subject merchandise. The petitioners contend that the Department's approach in the Preliminary Results is entirely consistent with the Department's attribution rules in 19 C.F.R. § 351.525, and generates a non-distortive result whereby the amount of the benefit in the numerator matches the corresponding value of export sales in the denominator.

The Department's Position:

We agree with Polyplex. The Department found nothing on the record to contradict Polyplex's contention that it imported a metallizer under a certain EPCGS license which is used only to produce non-subject merchandise. Because the metallizer in question exclusively relates to the production of non-subject merchandise, and the Department does not countervail benefits conferred on non-subject merchandise, the Department has not included the amount of the benefits related to this metallizer in its calculations for the final results of review.

Comment 9: Calculating the Amount of Benefits Under the DEPS Program

Polyplex states that when calculating the amount of benefits under the DEPS program, the Department included the amount of DEPS benefits generated by exports to all countries whose name begin with the letter “U”, rather than only using the amount of benefits associated with exports to the United States.

The petitioners had no comment on this issue.

The Department’s Position:

We agree with Polyplex and have corrected this ministerial error for the final results of review.

Comment 10: Sales Used to Calculate the Subsidy Associated With the 80 HHC Tax Exemption

Polyplex argues that the Department artificially increased the countervailing duty rate calculated for the 80 HHC tax exemption by omitting from its calculation consigned merchandise sold in calendar 2001 but shipped from its factory to the United States in calendar 2000. Polyplex claims that it is eligible for benefits from the 80 HHC tax exemption only when a sale is completed. Therefore, Polyplex concludes that the Department should include in its 2001 sales consigned merchandise sold in 2001 that was shipped to the United States in 2000.

The petitioners had no comment on this issue.

The Department’s Position:

We disagree with Polyplex. Under section 80HHC of the Income Tax Act, the GOI allows exporters to deduct from taxable income profits derived from export sales. Although Polyplex may have calculated the 80 HHC benefit using profits from exported consigned merchandise that it included in sales during the tax year (Polyplex considered consigned merchandise to have been sold when it was consumed by the customer), the Department’s regulations do not require it to allocate benefits derived from a reduction in a direct tax to the sales used to calculate the benefit. Rather, pursuant to 19 C.F.R. § 351.509(c), the Department will allocate the benefit to the year in which it is received (*i.e.*, normally the year in which the company filed its tax return, *see* 19 C.F.R. § 351.509(b)). Pursuant to 19 C.F.R. § 351.525, the Department calculated the *ad valorem* subsidy rate for the 80HHC tax exemption program by dividing the benefit contained in all tax returns filed during 2001 and then 2002 by the sales in the corresponding calendar year. The Department determined the sales of each calendar year based on the date of shipment from Polyplex’s factory. The Department used the shipment date to identify sales in order that the sales would correspond as closely as possible to the basis on which the CBP assesses countervailing duties. Polyplex’s argument does not provide a compelling reason to alter this methodology.

VI. Recommendation:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will calculate individual net subsidy rates for Polyplex for 2001 and 2002 in accordance with these positions and publish the final results and the final net subsidy rates in the Federal Register.

Agree

Disagree

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date