

With respect to Rummo, petitioners alleged that the Department made a clerical error in its narrative characterization of Rummo's margin rate as *de minimis*. We agree with petitioners that this characterization was incorrect, and have ensured that the correct margin rate of 0.94 percent is applied in liquidation and cash deposit instructions.

As a result of our corrections, for the period July 1, 2001, through June 30, 2002, Garofalo's antidumping duty margin increased from 2.55 percent to 2.57 percent *ad valorem*.

The Department will instruct the U.S. Customs and Border Protection (CBP) to assess antidumping duties, as indicated above, on all appropriate entries. The Department will issue liquidation instructions directly to the CBP. The amended cash deposit requirement is effective for all shipments of subject merchandise from Garofalo entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

These amended final results are issued and published in accordance with section 751(h) of the Act and 19 CFR 351.224.

Dated: April 19, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-583-816]

#### **Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* April 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** Joe Welton, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482-0165.

#### **Background**

On June 2, 2003, the Department of Commerce ("Department") published a

notice of opportunity to request an administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Taiwan for the period June 1, 2002, through May 31, 2003. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 68 FR 32727 (June 2, 2003). On June 30, 2003, Markovitz Enterprises, Inc. (Flowline Division), Shaw Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc. ("petitioners") requested an antidumping duty administrative review for the following companies: Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), Liang Feng Stainless Steel Fitting Co., Ltd. ("Liang Feng"), and Tru-Flow Industrial Co., Ltd. ("Tru-Flow"), and PFP Taiwan Co., Ltd., ("PFP") for the period June 1, 2002, through May 31, 2003. On June 30, 2003, Ta Chen requested an administrative review of its sales to the United States during the period of review ("POR"). On July 29, 2003, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period June 1, 2002, through May 31, 2003. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part*, 68 FR 44524 (July 29, 2003). On March 3, 2004, the Department extended the deadline for the preliminary results in this administrative review by 90 days until May 30, 2004. *See Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review* 69 FR 9997, (March 3, 2004).

#### **Extension of Time Limit for Preliminary Results**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), states that the administering authority shall make a preliminary determination within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under paragraph (1) is requested. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245 day period to 365 days. On March 3, 2004, we extended the due date of the preliminary results in this administrative review by 90 days until 335 days after the last day of the month in which occurs the anniversary of the date of publication of the order. *See*

*Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review* 69 FR 9997, dated March 3, 2004. Completion of the preliminary results within the 335 day period is impracticable because this review involves complex affiliation issues which have continued to emerge as the review progressed, requiring additional time for analysis.

Because it is not practicable to complete this review within the time specified in our previous extension notice, we are extending the due date for the preliminary results for an additional 30 days until June 29, 2004. Thus, the preliminary results are now being fully extended until 365 days after the last day of the month in which occurs the anniversary of the date of publication of the order, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: April 16, 2004.

**Barbara E. Tillman,**

*Acting Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 04-9478 Filed 4-26-04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-839]

#### **Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Carbazole Violet Pigment 23 from India**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** April 27, 2004.

#### **PRELIMINARY DETERMINATION:**

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of Carbazole Violet Pigment 23 (CVP - 23) from India. For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Sean Carey or Addilyn Chams-Eddine, Office of AD/CVD Enforcement VII, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone

(202) 482-3964 and (202) 482-0648 respectively.

#### SUPPLEMENTARY INFORMATION:

##### Case History

The petition in this investigation was filed on November 21, 2003, by Nation Ford Chemical Company and Sun Chemical Company (petitioners). This investigation was initiated on December 11, 2003. *See Notice of Initiation of Countervailing Duty Investigation: Carbazole Violet Pigment 23 (CVP - 23) from India*, 68 FR 70778 (December 19, 2003). On December 19, 2003, we issued a questionnaire to the Government of India (GOI) and requested that the GOI forward the relevant sections of the questionnaire to Indian producers/exporters of CVP-23.

On January 16, 2004, petitioners timely requested a 65-day postponement of the preliminary determination for this investigation. On January 22, 2004, the Department extended the deadline for the preliminary determination to April 19, 2004 in accordance with section 703(c)(1)(A) of the Tariff Act of 1930 (the Act). *See Postponement of Preliminary Countervailing Duty Determination: Carbazole Violet Pigment 23 from India*, 69 FR 4291 (January 29, 2004).

On February 10, 2004, the GOI submitted its questionnaire response. In its questionnaire response, the GOI identified four Indian companies that produced and/or exported CVP-23 to the United States during the period of investigation (POI), and indicated which programs had been used by these companies. These four companies were Alpanil Industries, Ltd. (Alpanil), AMI Pigments Pvt. Ltd. (AMI), Meghmani Organics Ltd. (Meghmani), and Pidilite Industries Ltd. (Pidilite). In addition, two of the four companies identified by the GOI, Alpanil and Pidilite, also submitted questionnaire responses to the Department on February 10, 2004.

The GOI provided additional information on February 18, 2004, in response to the Department's request, indicating the non-use of two additional programs identified by the GOI in its February 10, 2004 response: the Duty Free Replenishment Certificate (DFRC) and the Advance License Scheme. In addition, the GOI indicated that AMI, one of the producer/exporters of CVP-23 during the POI, that is not participating in this investigation and has not responded to any of the Department's questionnaires, utilized the Duty Entitlement Passbook Scheme (DEPS). The GOI provided the Department the amount of DEPS credits

utilized by AMI during the POI. Finally, the GOI also noted that Alpanil's affiliated company, Meghmani Organics Ltd. (Meghmani), exported a small amount of subject merchandise to the United States during the POI. Other than the information provided through the GOI and Alpanil, Meghmani has not responded to the Department's questionnaire.

On February 25, 2004, petitioners submitted a timely allegation, in accordance with section 351.301(d)(4)(i)(A) of the Department's regulations, of additional countervailable subsidies and requested that the Department initiate an investigation for sales tax incentive programs in the states of Gujarat and Maharashtra. On March 9, 2004, the Department issued supplemental questionnaires to the GOI, Alpanil, and Pidilite. On March 12, 2004, the Department initiated an investigation on these two new alleged subsidy programs and issued questionnaires to the GOI and the Indian producers/exporters of CVP-23. *See Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, through Barbara E. Tillman, Office of AD/CVD Enforcement VII; Countervailing Duty Investigation of Carbazole Violet Pigment 23 (CVP-23) from India*, dated March 12, 2004.

The GOI, Alpanil, and Pidilite submitted their responses to our supplemental questionnaires on March 24, 2004. We received the GOI's questionnaire response for the two new subsidy programs on March 26, 2004. Alpanil and Pidilite filed their respective responses to this questionnaire on March 29, 2004. On April 2, 2004, the Department contacted the GOI and requested further clarification concerning the identification of Indian producers/exporters that used the sales tax incentive program in the state of Maharashtra. *See Memorandum to the File from Sean Carey, Trade Analyst, Office VII; Clarification on Usage of the State of Maharashtra's Sales Tax Incentive Program by Indian Producers/Exporters of Carbazole Violet Pigment 23 (CVP-23)*, dated April 6, 2004. This information was submitted to the Department on April 8, 2004.

On April 5, 2004, Alpanil submitted additional information that was requested by the Department. On April 6, 2004, the Department requested additional information from Alpanil concerning Meghmani's overall use of the CVD programs under investigation. As of the date of this preliminary determination, we have not received a response.

##### Scope of the Investigation

The merchandise covered by this investigation is carbazole violet 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358-30-1, with the chemical name of *diindolo [3,2-b:3',2'-m]triphenodioxazine, 8,18-dichloro-5, 15 5,15-diethy-5,15-dihydro-*, and molecular formula of  $C_{34}H_{22}C_{12}N_4O_2$ .<sup>1</sup> The subject merchandise includes the crude pigment in any form (e.g., dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (e.g. pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the investigation.

The merchandise subject to this investigation is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

##### Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury, to a U.S. industry. On January 13, 2004, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and India of subject merchandise. *See Carbazole Violet Pigment 23 From China and India*, 69 FR 20021 (January 13, 2004).

##### Alignment With Final Antidumping Duty Determination

On January 16, 2004, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the antidumping duty investigation of CVP-23 from India.

<sup>1</sup> The bracketed section of the product description, [3,2-b:3',2'-m], is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature. *See* December 4, 2003, amendment to petition (supplemental petition) at 8.

### Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is April 1, 2002, through March 31, 2003, which corresponds to the most recently completed fiscal year for the respondent companies.

### Subsidies Valuation Information

#### *Benchmarks for Loans and Discount Rate*

In accordance with section 351.505(a)(3)(ii) of the Department's regulations, for those programs requiring the application of a benchmark interest rate, and where company-specific interest rates on comparable commercial loans are not available, we may use a national average interest rate for comparable commercial loans. With respect to the rupee-denominated, short-term benchmark used in calculating the benefit for post-shipment export financing, we used a national average interest rate since Alpanil, the only producer/exporter of CVP-23 which reported to have used this program, stated that it did not have any comparable short-term commercial loans. We calculated a national average short-term interest rate using information from the International Monetary Fund's publication *International Financial Statistics* (March 2004), which shows the average short- and medium-term, rupee-denominated financing from private creditors for the fiscal quarters which correspond to our POI.

#### *Cross-Ownership and Attribution of Subsidies*

Because Alpanil reported that it is affiliated with Meghmani, an exporter of subject merchandise and producer of non-subject merchandise, by virtue of common owners, we must examine whether cross-ownership exists between the two companies within the meaning of section 351.525(b)(6) of our regulations. Section 351.525(b)(6)(vi) of the regulations defines cross-ownership as existing "where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations."

The record indicates that Alpanil and Meghmani have three common owners that account for 55 percent and 50 percent, respectively, of the ownership interest in each company. See Exhibit CVD-1 of Alpanil's February 10, 2004

questionnaire response. Although we requested that the GOI and Alpanil obtain or provide a complete questionnaire response for Meghmani in order to further evaluate the issue of cross-ownership and the role these individual owners play in administering and directing Alpanil and Meghmani, this information was not provided. See Alpanil's March 24, 2004 supplemental questionnaire response at 2 and the GOI's March 24, 2004 supplemental questionnaire response at 1.

Since we have received incomplete information from the GOI, Alpanil, and Meghmani with regard to the issue of cross-ownership, we have preliminarily resorted to facts otherwise available pursuant to section 776(a) of the Act. Therefore, we preliminarily determine that cross-ownership exists between Alpanil and Meghmani since the facts available indicate that three mutual owners of both companies have the capacity to control, influence, and direct the operations of Alpanil and Meghmani through their combined majority voting ownership interest. Accordingly, we have attributed Meghmani's subsidies to the products sold by Alpanil during the POI in accordance with section 351.525(b)(6)(v) of the Department's regulations, in determining a combined Alpanil/Meghmani *ad valorem* rate. In instances where Meghmani acted as Alpanil's trading company during the POI, we have preliminarily calculated Alpanil/Meghmani's subsidy rate for each export subsidy program by cumulating Meghmani's export subsidies with Alpanil's export subsidies in accordance with section 351.525(c) of the Department's regulations. See "Duty Entitlement Passbook Scheme" and "Income Tax Exemption Scheme" sections of this notice, below.

### I. Programs Preliminarily Determined to be Countervailable

#### *A. GOI Programs*

##### *1. Pre-Shipment Export Financing*

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment export 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. Exporters may also establish pre-shipment credit lines upon which they may draw as needed. Credit line limits are established by commercial banks based upon a company's creditworthiness and past export performance, and may be denominated either in Indian rupees or in foreign

currency. Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates capped by the RBI.

The Department has previously determined that this export financing is countervailable to the extent that the interest rates are set by the GOI and are lower than the rates exporters would have paid on comparable commercial loans. See *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip from India (PET Film from India)*, 67 FR 34905 (May 16, 2002). Specifically, the Department determined that the GOI's issuance of financing at preferential rates constituted a financial contribution pursuant to section 771(5)(D)(i) of the Act. See the "Pre-Shipment and Post-Shipment Export Financing" section of the *PET Film from India Issues and Decision Memorandum* on file in the Department's Central Records Unit (CRU) and available online at <http://www.ia.ita.doc.gov>. The Department further determined that the interest savings under this program conferred a benefit pursuant to section 771(5)(E)(ii) of the Act. In addition, the Department determined this program, which is contingent upon exports, to be specific within the meaning of section 771(5A)(B) of the Act. No new information or evidence of changed circumstances have been presented in this investigation to warrant reconsideration of this finding.

The GOI reported that only Alpanil used this program during the POI. Pidilite reported its non-use of this program in its February 10, 2004 questionnaire response. Alpanil reported that it used the pre-shipment export financing program during the POI by way of a credit line established through a commercial bank. According to Alpanil, this pre-shipment financing operates on a running account where interest is calculated on the daily outstanding amount and paid quarterly. Alpanil stated that in cases where the pre-shipment financing exceeded 180 days, there is no actual repayment schedule; however, the amount outstanding is recoverable on demand at a commercial rate of interest applied to the outstanding balances. See Alpanil's February 10, 2004 questionnaire response at pages 29-31.

To calculate the benefit conferred by the pre-shipment export financing, we compared the actual interest paid on the credit line with the amount of interest that would have been paid at the benchmark interest rate for short- to medium-term loans. See "Benchmarks for Loans and Discount Rate" section, above. Since the benchmark rate

exceeded the actual interest rate paid quarterly on Alpanil's credit line, a benefit is conferred. We then divided the total amount of the benefit by Alpanil's total direct exports during the POI. Accordingly, we preliminarily determine the net countervailable subsidy under the pre-shipment export financing program to be

0.17 percent *ad valorem* for Alpanil/Meghmani (see "Cross-Ownership and Attribution of Subsidies" section above), and zero for AMI and Pidilite.

## 2. Duty Entitlement Passbook Scheme (DEPS)

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 standard input/output norm (SION) for the exported product. DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. DEPS credits are valid for twelve months and are transferable after the foreign exchange is realized from the export sales on which the DEPS credits are earned. With respect to subject merchandise, the GOI has established a SION. Therefore, CVP-23 exporters were eligible to earn credits equal to 15 percent of the FOB value of their export shipments during the fiscal year ending March 31, 2003.

The Department has previously determined that the DEPS is countervailable. In *PET Film From India*, the Department determined that under the DEPS, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because (1) the GOI provides credits for the future payment of import duties; and (2), 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. Therefore, under section 351.519(a)(4) of the Department's regulations and section 771(5)(E) of the Act, the entire amount of import duty exemption earned during the POI constitutes a benefit. Finally, this program can only be used by exporters and, therefore, it is specific under section 771(5A)(B) of the Act. See the "DEPS" section of the *PET Film from India Issues and Decision Memorandum* on file in the CRU and available online at <http://www.ia.ita.doc.gov>. No new information

or evidence of changed circumstances have been presented in this investigation to warrant reconsideration of this finding. Therefore, we continue to find that the DEPS is countervailable.

Under section 351.524(c) of the Department's regulations, this program provides a recurring benefit because DEPS credits provide exemption from import duties. Benefits from the DEPS program are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned. See comment 4, "Timing and Calculation of DEPS Benefits," *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India*, 64 FR 73131, 73140, (December 29, 1999).

The GOI reported that Alpanil, AMI, and Pidilite used this program during the POI. Alpanil indicated in its response that Meghmani transferred its DEPS credits to Alpanil during the POI. See Alpanil's March 24, 2004 supplemental questionnaire response at 3. We calculated the DEPS program rate using the value of the post-export credits that the respondents earned for their export shipments of subject merchandise to the United States during the POI by multiplying the FOB value of each export shipment by the relevant percentage of DEPS credit allowed under the program for exports of subject merchandise. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6) of the Act. Finally, we took this sum (the total value of the licenses net of application fees paid) and divided it by each respondent's total respective exports of subject merchandise to the United States during the POI.

On this basis, we preliminarily determine Pidilite's net countervailable subsidy from the DEPS program to be 14.93 percent *ad valorem*. For Alpanil/Meghmani, we preliminarily determine the net countervailable subsidy from this program to be 14.93 percent *ad valorem* which is inclusive of DEPS credits earned by Meghmani that were transferred to Alpanil during the POI. See "Cross-Ownership and Attribution of Subsidies" section of this notice, noted above.

For AMI, we have information from the GOI's February 10, 2004, questionnaire response showing that AMI utilized this program during the POI. Since AMI has not participated in this investigation and necessary information is not available on the record, we have applied facts available in accordance with section 776(a). In applying facts available, we have made

an adverse inference pursuant to section 776(b), since AMI has not cooperated to the best of its ability to respond to the Department's request for information by virtue of its complete lack of participation in this investigation.

Consistent with our practice, we have used, as adverse facts available, the highest company-specific DEPS program rate calculated in an Indian proceeding. The rate we have calculated for the purposes of this preliminary determination for Alpanil/Meghmani, 14.93 percent *ad valorem*, is the highest company-specific DEPS program rate calculated. This rate is higher than the company-specific DEPS program rate calculated in any other completed Indian proceeding. See e.g., *PET Film from India Issues and Decision Memorandum* on file in the CRU and available online at <http://www.ia.ita.doc.gov>. Accordingly, we used this rate to preliminarily determine an *ad valorem* rate of 14.93 percent for AMI during the POI. We believe this information is reliable and relevant because this company-specific DEPS rate was calculated using information in the record of this investigation (for a company in the same industry during the same period).

## 3. Income Tax Exemption Scheme (Section 80 HHC)

In *Certain Iron-Metal Castings From India: Final Results of Countervailing Duty Administrative Review (Iron-Metal Castings from India)*, 65 FR 31515 (May 18, 2000), the Department determined that deductions of profit derived from exports under section 80HHC of India's Income Tax Act are countervailable. No new information or evidence of changed circumstances has been submitted in this investigation to warrant reconsideration of this finding. Therefore, we continue to find this program countervailable because it is contingent upon export performance and, therefore, is specific in accordance with section 771(5A)(B) of the Act. Pursuant to section 771(5)(D)(ii) of the Act, the GOI provides a financial contribution in the form of tax revenue not collected. Finally, a benefit is conferred in the amount of tax savings in accordance with section 771(5)(E) of the Act.

The GOI reported that only Alpanil and Pidilite used this program during the POI. However, according to Alpanil, Meghmani also received 80 HHC tax benefits during the POI. See Alpanil's March 24, 2004 supplemental questionnaire response. To calculate the benefit each responding company received under this program, we subtracted the total amount of income tax the company actually paid during

the POI from the amount of tax the company otherwise would have paid had it not claimed a deduction under section 80 HHC. Since the Department has previously found section 80 HHC to be an "untied" export subsidy program where the benefits provided are attributable to all products exported by the company, we then divided this difference by the FOB value of the company's total exports during the POI. See e.g., *Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey*, 61 FR 30366, 30370 (June 14, 1996). For Pidilite, we preliminarily determine the net countervailable subsidy from this program to be 3.00 percent *ad valorem*.

According to Alpanil, Alpanil and Meghmani received tax benefits under this program during the POI. See Alpanil's March 24, 2004 supplemental questionnaire response at 3. Meghmani did not file a questionnaire response with the necessary information to cumulate Meghmani's export subsidies with Alpanil's under this program. Similarly, Meghmani's affiliate, Alpanil, did not provide such information. Therefore, we have resorted to facts available pursuant to section 776(a) of the Act. Furthermore, by virtue of their complete failure to respond to questions on Meghmani's utilization of this program, Meghmani and Alpanil did not act to the best of their abilities in providing the information we requested concerning Meghmani's use of the programs under investigation (see "Case History" section, above). Therefore, we have resorted to adverse facts available in accordance with section 776(b) of the Act. As noted above in the "Cross-Ownership and Attribution of Subsidies" section of this notice, we are cumulating Meghmani's export subsidies with Alpanil's export subsidies in accordance with section 351.525(c) of the Department's regulations.

The record indicates that Alpanil received 80 HHC deductions for its direct export sales, as well as for its indirect export sales to Meghmani as a "supporting manufacturer." See exhibit CVD-4 of Alpanil's February 10, 2004 questionnaire response. According to Alpanil, "where a supporting manufacturer supplies to an Export or Trading House, the deduction<sub>s</sub> he receives under section 80 HHC are to the extent of profits derived from the sale of goods to the Export or Trading House. Similarly, the deductions that an Export or Trading House is entitled to on profits from the export of goods are reduced by the profits attributable to the sales made by the supporting manufacturer to the Export or Trading

House." See Alpanil's supplemental questionnaire response at pages 8 through 9. We have complete information that can be used in the calculation of Alpanil's portion of the 80 HHC benefits that can be attributed to the *ad valorem* rate for Alpanil/Meghmani during the POI. See "Cross-Ownership and Attribution of Subsidies" section, above.

In the case of Meghmani, we do not have the necessary sales and tax information needed to calculate Meghmani's portion of the 80 HHC's benefits in question. Section 776(b) of the Act indicates that the Department may use publicly available information from other proceedings for purposes of determining the adverse facts available rate for a program in which there is no information on record. Therefore, as adverse facts available, we have calculated the benefit to Meghmani by first using the highest company-specific program rate of 14.90 percent *ad valorem* from *Iron-Metal Castings from India*, 65 FR 31515 (May 18, 2000).

Section 776(c) of the Act provides that the Department shall, "to the extent practicable," corroborate secondary information using independent sources reasonably at its disposal. The Statement of Administrative Action accompanying the URAA (SAA) further provides that to corroborate secondary information means that the Department will satisfy itself that the secondary information to be used has probative value. SAA at 870; *also*, section 351.308(d) of the Department's regulations. However, unlike other types of information, such as publicly available data on national inflation rates or national average interest rates, there are typically no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. The only source for such information normally is administrative determinations.

While we find the information from *Iron-Metal Castings from India* to be reliable as the 80 HHC program has not changed since that determination made, it may not be completely relevant to the extent that differences exist in the profit margins of the two types of products (steel and chemicals). However, the fact that corroboration may not be practicable in a given case does not prevent the Department from applying an adverse inference as appropriate, and does not prevent the Department from using secondary information. See section 351.308(d) of the Department's regulations. Accordingly, we find it reasonable to use this highest company-specific program rate from *Iron-Metal Castings from India* in order to draw the

appropriate adverse inference in this case, and to adequately account for Meghmani's failure to respond to any of the Department's questionnaires.

Finally, using the only export information available on record for both companies, we weight-averaged Alpanil's calculated rate and Meghmani's adverse facts available rate by Alpanil's direct exports of subject merchandise to the United States and Alpanil's indirect exports of subject merchandise to the United States through Meghmani. By using a weighted-average program rate for Meghmani, we find that we can capture any potential 80 HHC benefits from Meghmani's direct exports and indirect exports from producers other than Alpanil. We preliminarily determine the net countervailable subsidy for Alpanil/Meghmani under this program to be 2.81 percent *ad valorem*.

#### B. State of Gujarat (SOG) Program:

##### Sales Tax Incentive Scheme

Under the 1995 Industrial Policy of Gujarat, companies located in specific areas of Gujarat are exempted from payment of sales tax on the purchase of raw materials, consumable stores, packing materials, and processing materials. See Exhibit 2 of the GOI's March 26, 2004 questionnaire response. Other available benefits include exemption or deferment from sales tax and turnover tax on the sale of intermediate products, by-products, and scrap. After the deferral period expires, the companies are required to submit the deferred sales taxes to the SOG in equal installments over six years. *Id.* at pages 9 and 10.

According to Section 87 of Gujarat Sales Tax Act of 1969, sales made outside of Gujarat are already exempt from this sales tax. See Alpanil's March 29, 2004 Additional Allegations response at 2. Accordingly, the sales tax exemption covered by the SOG's sale tax incentive scheme only applies to sales within the state of Gujarat that would normally be assessed this sales tax.

The Department preliminarily determines that this program is specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits are limited to industries located within designated geographical areas. We also preliminarily find that the SOG provided a financial contribution under section 771(5)(D)(ii) of the Act by foregoing the collection of sales tax revenue, and that the Indian companies benefitted under section 771(5)(E) of the Act, in the amount of sales tax exempted on purchases noted above.

Although Alpanil reported receiving exemptions under the SOG's sales tax incentive scheme, and Pidilite claimed that it did not use this program during the POI, we do not have definitive information from the GOI concerning whether AMI and Meghmani used this program during the POI. On April 2, 2004, we sought further clarification from the GOI regarding AMI's and Meghmani's use of this program. On April 8, 2004, the GOI subsequently filed a response indicating that (1) Alpanil would provide the requisite information on the use of this program by Meghmani; and, (2) the GOI had no details concerning AMI's use of the program. As noted above in the "Case History" section, we also sent a letter to Alpanil on April 6, 2004 seeking information on Meghmani's use of this and the other programs under investigation for the POI. As of the date of this preliminary determination, we have not received a response.

Information from the GOI indicates that AMI and Meghmani are both located in the state of Gujarat. See GOI's February 10, 2004 questionnaire response at pages 2–3. Because AMI and Meghmani did not respond to the Department's questionnaires, and the GOI did not indicate in its response whether AMI or Meghmani utilized this program during the POI, the record does not contain any information demonstrating that AMI and Meghmani do not participate in the SOG's sales tax incentive scheme. Therefore, we must resort to facts available under section 776(a) of the Act. Furthermore, AMI and Meghmani failed to cooperate to the best of their abilities by failing to respond to the Department's questionnaires. As such, pursuant to section 776(b) of the Act, we have made the adverse inference that both companies benefitted from this program during the POI. See e.g., *Certain Cold-Rolled Carbon Steel Flat Products from Korea; Final Affirmative CVD Determination*, 67 FR 62102 (October 3, 2002).

Because a company-specific rate for this program has never been previously determined by the Department, we relied on the information provided in Alpanil's response to determine the adverse facts available rate to apply to Alpanil/Meghmani and to AMI. Accordingly, we divided Alpanil's reported sales tax exemption for the POI, by the relevant in-state sales that would normally be assessed this tax. Based on this calculation, we preliminarily determine the net countervailable subsidy for Alpanil/Meghmani to be 4.38 percent *ad valorem*, and 4.38 percent *ad valorem* for AMI. Furthermore, the rate is based

on actual information reported by a respondent in this investigation, and is thereby reliable and relevant to this investigation.

## II. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the producers/exporters of CVP–23 did not apply for or receive benefits under the programs listed below. For purposes of this preliminary determination, we have relied on the GOI's response to preliminarily determine non-use of the programs listed below for AMI and Meghmani. During the course of verification, if we are unable to establish through the information provided by the GOI that each of these non-responding companies did not utilize each of these programs (or any of the programs listed above for which non-use by an individual company was reported), we may resort to adverse facts available in determining the program rate for the final determination for the relevant program and company in question.

### A. GOI Programs

1. Export Promotion Capital Goods Scheme (EPCGS)
2. Export Processing Zones (EPZs) / Export Oriented Units (EOUs) Programs
3. Income Tax Exemption Scheme (Sections 10A and 10B)
4. Market Development Assistance
5. Special Imprest Licenses
6. Duty Free Replenishment Certificate
7. Advance License Scheme
8. CENVAT Refund for Exports

### B. State Program

State of Maharastra (SOM) Program: Sales Tax Incentives

## III. Program Preliminarily Determined To Be Terminated

### GOI Program: Exemption of Export Credit from Interest Taxes

Indian commercial banks were required to pay a tax on all interest accrued from borrowers. The banks passed along this interest tax to borrowers in its entirety. As of April 1, 1993, the GOI exempted from the interest tax all interest accruing to a commercial bank on export-related loans. The Department has previously found this tax exemption to be an export subsidy, and thus countervailable, because only interest accruing on loans and advances made to exporters in the form of export credit was exempt from interest tax. See e.g., *Final Results of Countervailing Duty Administrative Review: Certain Iron–Metal Castings from India*, 61 FR 64676, 64686 (December 6, 1996).

The GOI reported that the tax on interest on any category of loan was eliminated prior to the POI. Specifically, the GOI submitted Section 4(3) of the Interest Tax Act which provides that "no interest tax shall be charged in respect of any chargeable interest accruing or arising after the 31st day of March, 2000." See Appendix 6 of the GOI's February 10, 2004 questionnaire response. In addition, the information reported by the responding companies indicates that they are no longer required to pay tax on any interest on any loans. Therefore, in accordance with section 351.526(d) of the Department's regulations, we preliminarily determine that this program has been terminated. If, however, we are unable to establish at verification that there are no residual benefits accruing to exporters of CVP–23 from India from this program, and that the GOI has not implemented a replacement program, we will not find, for purposes of the final determination that this program has been terminated in accordance with section 351.526(d) of the regulations.

## IV. Program for Which Additional Information is Needed

### Central Value Added Tax (CENVAT) Credits for Domestic Consumption

According to the GOI, the Modified Value Added Tax (MODVAT) was established in 1986 in order to do away with the cascading effect of domestic commodity taxes paid on inputs used in the manufacture of the final product. The MODVAT was renamed the Central Value Added Tax (CENVAT) in 2000. Under the CENVAT Scheme, according to the GOI questionnaire responses, every manufacturer of excisable goods is required to register under the Central Excise Act. CENVAT credits are earned on the taxes or duties paid on inputs and capital goods received for the manufacture of any dutiable final product, including the Excise Duty, Special Excise Duty (SED), Additional Duty of Excise (AED), and Countervailing Duty (CVD). According to the GOI, CENVAT credits can be used to offset CENVAT owed on any final product cleared for domestic consumption. On final products cleared for export, no CENVAT is required to be paid. The GOI reported that every Indian manufacturer of excisable goods is eligible to use this program. All companies can claim these credits. See GOI's February 10, 2004 questionnaire response at pages 63–64. During the POI, Alpanil and Pidilite claimed CENVAT credits.

Based on the information on the record of this investigation, we are unable to determine whether CENVAT credits for domestic consumption are provided to a specific enterprise or industry, or group thereof. Although it appears that all manufacturers can use this program, we are unable to assess whether CENVAT credits are limited, in fact, to a specific enterprise or industry, or group thereof, in accordance with section 751(5A)(D)(iii) of the Act. Neither can we determine whether the provision of CENVAT credit against countervailing duties paid provides a benefit to a specific enterprise or industry, or group thereof in accordance with section 751(5A)(D)(iii) of Act. Therefore, for purposes of this preliminary determination, additional information is needed before making a decision with respect to this program. We will seek additional information from the GOI prior to our verification and final determination.

#### Verification

In accordance with section 782(i) of the Act, we will verify the information submitted prior to making our final determination.

#### Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have determined individual rates for Alpanil/Meghmani, Pidilite and AMI. To calculate the "all others" rate, we weight-averaged the individual rates of Alpanil/Meghmani and Pidilite by each company's respective sales of subject merchandise made to the United States during the POI. We did not include AMI's rate in the calculation of the "all others" rate because its rate was based on facts available. These rates are summarized in the table below:

Producer/Exporter	Net subsidy rate
Alpanil Industries/ Meghmani Organics Ltd .....	22.29 % ad valorem
Pidilite Industries Corporation Ltd .....	17.93 % ad valorem
AMI Pigments Pvt. Ltd. ....	19.31 % ad valorem
All Others .....	20.09 % ad valorem

In accordance with section 703(d)(1)(B) of the Act, we are directing U.S. Customs and Border Protection to suspend liquidation of all entries of the subject merchandise from India, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or the posting of a bond for such entries of the merchandise in

the amounts indicated above. This suspension will remain in effect until further notice.

#### ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

#### Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

In addition, unless otherwise notified, six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case briefs, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing

of the case briefs. An interested party may make an affirmative oral presentation at any hearing only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above. This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: April 19, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[I.D. 042004C]

##### Fisheries of the Exclusive Economic Zone Off Alaska; Public Workshop

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of workshop.

**SUMMARY:** NMFS will present a workshop on proposed catch-monitoring standards for shoreside processors and buyers that intend to take deliveries of crab species managed under the Fishery Management Plan for the Bering Sea and Aleutian Islands King and Tanner Crabs (Crab FMP).

**DATES:** Thursday, May 6, 2004, 10 a.m. - 4 p.m., Pacific local time (P.l.t.).

**ADDRESSES:** The workshop will be held at the Nordby Center, located in Fishermen's Terminal, 1711 W. Nickerson St., Seattle, WA.

**FOR FURTHER INFORMATION CONTACT:** Alan Kinsolving, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS and the State of Alaska Department of Fish and Game are developing proposed regulations to implement a quota-based program for the crab fisheries covered under the Crab FMP. One aspect of this process is the development of catch monitoring, weighing, and accounting standards for shoreside processors and other first-buyers of crab. NMFS is conducting a workshop on May 6, 2004, from 10 a.m. - 4 p.m., P.l.t., so that interested industry members may provide input to NMFS on the development and implementation of these standards.

This workshop is physically accessible to people with disabilities.