Background

On July 1, 2005, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on SSSSC from Japan for the period July 1, 2004 to June 30, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 38099. In accordance with 19 CFR 351.213(b)(1), on July 29, 2005, the petitioners (*i.e.*, Allegheny Ludlum Corporation, United Auto Workers Local 3303, Zanesville Armco Independent Organization, Inc. and the United Steelworkers) requested a review of this order with respect to Kawasaki Steel Corporation (Kawasaki) and its alleged successor–in-interest, JFE Steel Corporation (JFE).[6] The Department initiated an administrative review and issued a questionnaire to Kawasaki and JFE on August 29, 2005. *See Initiation Notice*. On October 5, 2005, JFE notified the Department that it had not made sales or exported subject merchandise during the POR and requested that the Department rescind the review. However, information obtained from the U.S. Customs and Border Protection (CBP) import database indicated the possibility of an entry of merchandise subject to this review. On November 17, 2005, we issued a letter to JFE inquiring about this particular entry.[7] Also on this date, we released, subject to an administrative protective order (APO), the entry documentation obtained from CBP to counsel for JFE and counsel for the petitioners. JFE responded to our request for information on December 5, 2005. In this submission, JFE claimed that the record contained no evidence that JFE either knew or should have known of the U.S. destination of the SSSSC at issue at the time of the sale to the first unaffiliated customer.

[6] While the Department initiated this administrative review with respect to merchandise manufactured and/or exported by Kawasaki as well as its alleged successor-in-interest, JFE, due to Kawasaki/JFE's no-shipment claim, the Department did not have the opportunity to conduct a successor-in-interest analysis in order to confirm whether, for antidumping purposes, JFE is the successor-in-interest to Kawasaki with respect to the subject merchandise. However, both the petitioners and respondent have consistently referred to JFE as the successor-in-interest to Kawasaki in their submissions to the Department with respect to this and the previous review. *See Stainless Steel Sheet and Strip in Coils from Japan: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 18369 (April 11, 2005).

[7] The results of the data query showed no entries of subject merchandise by Kawasaki.

Analysis

After analyzing the data contained in the CBP–provided customs entry documentation and JFE's comments, we find that there is no evidence on the record that the entry in question was shipped to the United States with JFE's knowledge at the time of sale. Although APO restrictions on the CBP entry documents prevented JFE's counsel from sharing the information with his client, the arguments and supporting documentation JFE placed on the record support the contention that JFE had no knowledge that the entry in question was destined for the United States. Specifically, a production document contained in the CBP entry documentation indicates the name of the customer to whom JFE sold the SSSSC in question, and JFE's name does not appear on any of the other entry documents. Furthermore, the record includes documentation submitted for prior segments of the proceeding that support counsel's contention that the distribution channel for the sale appears to be contrary to JFE's normal selling practices. For further discussion, *see* Memorandum to Irene Darzenta Tzafolias, Acting Director, Office 2, from Kate Johnson and Rebecca Trainor, Case Analysts, regarding Stainless Steel Sheet and Strip in Coils from Japan: Rescission Analysis Memorandum. We find that there is no evidence on the record that JFE had knowledge of the U.S. destination of the SSSSC shipment in question, and therefore, had no sales/shipments to the United States during this POR. *See*, *e.g.*, *Final Results of Antidumping Duty Administrative Review: Certain In–Shell Raw Pistachios from Iran*, 70 FR 7470 (February 14, 2005), and accompanying Issues and Decision Memorandum, at Comment 1.

Preliminary Rescission of Review

Because neither Kawasaki nor JFE made shipments to the United States of subject merchandise during the POR, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are preliminarily rescinding this review of the antidumping duty order on SSSSC from Japan for the period of July 1, 2004, through June 30, 2005. If the recission is confirmed in our final results, we will instruct CBP to liquidate the entry in question at the All–Others rate, 40.18 percent, as it was made by an intermediary company (*e.g.*, a reseller) not covered in this review, a prior review, or the less–than-fair–value investigation. *See*, *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). The cash deposit rate for Kawasaki and JFE will continue to be the rate established in the most recently completed segment of this proceeding.

Interested parties may submit comments for consideration in the Department's final results not later than 30 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on interested parties on the Department's service list in accordance with 19 CFR 351.303(f). The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of the preliminary results, and will publish these results in the **Federal Register**. This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: February 7, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–1986 Filed 2–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–819]

Notice of Preliminary Affirmative Countervailing Duty Determination: Certain Lined Paper Products from Indonesia

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

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain lined paper products from Indonesia. For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: February 13, 2006.

FOR FURTHER INFORMATION CONTACT: David Layton or David Neubacher, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0371 or (202) 482–5823, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The petitioner in this investigation is the Association of American School Paper Suppliers and its individual members (petitioner). The following events have occurred since the publication of the Department of Commerce's (the Department) notice of initiation in the **Federal Register**. *See Notice of Initiation of Countervailing Duty Investigations: Certain Lined Paper Products from India (C–533–844) and Indonesia (C–560–819)*, 70 FR 58690 (October 7, 2005) (*Initiation Notice*).

On October 20, 2005, we issued the countervailing duty (CVD) questionnaire to the Government of Indonesia (GOI). The questionnaire informed the GOI that it was responsible for forwarding the questionnaire to producers/exporters of certain lined paper products (CLLP). The Department also provided courtesy copies of the questionnaire to PT. Pabrik Kertas Tjiwi Kimia Tbk (TK), an Indonesian company that entered an appearance at the Department and the International Trade Commission (ITC), on the same day.

On November 8, 2005, we published a postponement of the preliminary determination of this investigation until February 6, 2006. *See Certain Lined Paper Products from India and Indonesia: Extension of Time Limit for Preliminary Determinations in the Countervailing Duty Investigations*, 70 FR 67668 (November 8, 2005).

We received responses from the GOI and TK on December 5, 2005. On December 13, 2005, the petitioner submitted comments regarding these questionnaire responses. We issued supplemental questionnaires to the GOI and TK on December 23, 2005. We received responses to the supplemental questionnaires on January 12, 2006. We issued a second supplemental questionnaire to TK on January 23, 2006, and received a response to the questionnaire on January 30, 2006. As stated in the Department's January 23rd letter[1] to TK, due to time constraints, we were unable to use the response to our 2nd supplemental in our analysis for the preliminary determination. However, we will consider TK's submitted information for the final determination.

On October 20, 2005, the petitioner submitted several new subsidy allegations. The GOI filed comments on these new allegations on October 28, 2005. We addressed these subsidy allegations in a November 17, 2005, memorandum to Susan Kuhbach, Office Director, *New Subsidy Allegation* (''*November 17th New Subsidy Allegations Memo*''), which is on file in the Department's Central Records Unit in Room B–099 of the main Department building (''CRU''). Because we decided to include one of these newly–alleged programs, a loan guarantee, in our investigation (as discussed in the *November 17th New Subsidy Allegations Memo*), we issued a questionnaire to each of the respondents with respect to the new program on November 28, 2005. We received a response to these questionnaires on December 28, 2005. We issued a supplemental questionnaire to the GOI and TK and received a response to the supplemental questionnaires on January 20, 2006.

On November 28, 2005, the petitioner in the above–referenced investigation requested that the Department make an expedited finding that critical circumstances exist with respect to imports of certain lined paper products from India, Indonesia, and the People's Republic of China (PRC). On February 1, 2006, the Department found that the petitioner's allegation does not in itself provide a sufficient factual basis for making an affirmative finding. *See* Memorandum from Susan H. Kubach, Melissa Skinner and Wendy Frankel to Stephen J. Claeys: Whether Critical Circumstances Exist with Respect to Imports of Certain Lined Paper Products (February 1, 2006). The Department determined that it will monitor imports of subject merchandise from all countries under investigation and will request that U.S. Customs and Border Protection (CBP) compile information on an expedited basis regarding entries of subject merchandise to determine at the earliest possible date whether the criteria for a finding of critical circumstances exist. As we found no indication that the respondent in the Indonesian case has received subsidies inconsistent with the WTO Subsidies Agreement, we stated in the memorandum that we would issue a negative preliminary determination of critical circumstances as part of this preliminary determination.

On December 23, 2005, the petitioner submitted additional new subsidy allegations. The GOI and TK did not comment on these new allegations. The Department is continuing to analyze these allegations. Finally, the petitioner submitted comments for consideration in the preliminary determination on January 26 and 27, 2006, and the GOI submitted a letter on February 1, 2006, in response to the petitioner's above submissions.

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation (POI), is calendar year 2004.

Scope of the Investigation

The scope of this investigation includes certain lined paper products, typically school supplies,[2] composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets,[3] including but not limited to such products as single- and multi–subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8–3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear–out'' size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this petition whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated , included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this petition are:

[1] *See* Letter from Constance Handley, Program Manager to TK, Re: Countervailing Duty Investigation: Certain Lined Paper Products from Indonesia (January 23, 2006).

[2] For purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic.

[3] There shall be no minimum page requirement for looseleaf filler paper.

- unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole–punched or drilled filler paper;
- three–ring or multiple–ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;
- desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- telephone logs;
- address books;
- columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- lined business or office forms, including but not limited to: preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper, '' and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled,[4] measuring 6 inches by 9 inches;

Also excluded from the scope of these investigations are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen–top computer. The product must bear the valid trademark Fly™.[5]
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially–developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™.[6]
- FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1'' wide elastic fabric band. This band is located 2–3/8'' from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™.[7]
- FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3–ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™.[8]

Merchandise subject to this investigation is typically imported under headings 4820.10.2050, 4810.22.5044, 4811.90.9090 of the Harmonized Tariff Schedule of the United States (HTSUS).[9] The tariff classifications are provided for convenience and CBP purposes; however, the written description of the scope of the investigation is dispositive.

Injury Test

Because Indonesia is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Tariff Act of 1930, as amended, (the Act), section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Indonesia materially injure, or threaten material injury to, a U.S. industry. On October 31, 2005, 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, India, and Indonesia. *See Certain Lined Paper School Supplies From China, India and*

[4] ''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.

[5] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[6] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[7] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[8] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[9] During the investigation additional HTS codes may be identified.

Indonesia, 70 FR 62329 (October 31, 2005).

Critical Circumstances

On November 28, 2005, the petitioner in the above–referenced investigations requested the Department make an expedited finding that critical circumstances exist with respect to imports of certain lined paper products from India, Indonesia, and the PRC. Section 703(e)(1) of the Act states that if the petitioner alleges critical circumstances, the Department will determine, on the basis of information available to it at the time, if there is a reason to believe or suspect the alleged countervailable subsidy is inconsistent with the Subsidies Agreement. We find no indication that the respondent in the Indonesian case has received subsidies inconsistent with the WTO Subsidies Agreement, *i.e.* export subsidies, and therefore, in accordance with section 703(e)(1) of the Act, we preliminarily determine that critical circumstances do not exist with respect to imports of CLPP from Indonesia.

Subsidies Valuation Information

Allocation Period

The average useful life (''AUL'') period in this proceeding as described in 19 CFR 351.524(d)(2) is 13 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross–ownership exists between the companies, and (2) the cross–owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross–owned company.

According to 19 CFR 351.525(b)(6)(vi), cross–ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to the Department's regulations further clarifies the Department's cross–ownership standard. (*See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).) According to the *Preamble*, relationships captured by the cross–ownership definition include those where

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) * * * Cross–ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross–ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a ''golden share'' may also result in cross–ownership.

See Preamble 63 FR at 65401. Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross–ownership exists.

The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi v. United States*, 166 F.Supp 2d, 593, 603 (CIT 2001).

Our preliminary findings regarding cross–ownership and attribution follow.

The relationships that exist between the responding company in this investigation, TK, who is the producer of the subject merchandise, and its affiliated suppliers present the Department with a novel situation. TK is the only known Indonesian producer/exporter of subject merchandise. *See* Letter from Arnold & Porter to Secretary of Commerce, the GOI's Response to the Department's October 20, 2005 Questionnaire, at 15 (December 5, 2005) (*GOI's December 5th Response*). Based on information submitted by TK and the GOI, TK is part of a group of pulp and paper and forestry companies linked by varying degrees of common ownership involving the Widjaja family. These companies and others are commonly referred to as the Sinar Mas Group (SMG).

TK has responded to the Department's questionnaire on behalf of itself and its subsidiaries, and its parent company, PT. Purinusa Ekapersada (Purinusa). TK acknowledges that it is cross–owned with its pulp suppliers, PT. Indah Kiat Pulp & Paper Tbk (IK) and Lontar Papyrus Pulp & Paper Industry (Lontar). However, TK has not responded on behalf of these cross–owned pulp suppliers because TK maintains that neither supplies an input which is primarily dedicated to the production of the subject merchandise (*see* 19 CFR 525(b)(6)(iv)). TK's position is explained more fully below.

In response to further questions from the Department, TK has provided certain information regarding IK, Lontar, Asia Pulp & Paper Company Ltd. (APP, the parent of Purinusa), PT. Ekamas Fortuna (Ekamas, another input supplier), PT. Pindo Deli Pulp and Paper Mills (Pindo Deli, Lontar's Parent), ''to be as comprehensive as possible.'' *See* Letter from Arnold & Porter to Secretary of Commerce, TK's Response to the Department's December 23, 2005 Questionnaire, at 2 (January 12, 2006) (*TK's January 12th Response*). TK has acknowledged its affiliation with two forestry companies in Indonesia, PT. Arara Abadi (AA) and PT. Wirakarya Sakti (WKS). These companies harvest Indonesian timber and are the suppliers of logs to IK and Lontar. *See TK's January 12th Response* at 3.

The GOI has indicated on behalf of TK that the affiliated forestry companies, AA and WKS, supply all of the logs used by TK's two pulp suppliers, IK and Lontar, and the two pulp producers only produce pulp from the hardwood logs they purchase from these two logging companies. *See GOI's January 12 Response* at 1. The GOI reports that a third forestry company, PT. Satria Perkasa Agung (SPA), has a concession to cut public timber and sells logs to WKS.

Input Products

Both TK and the GOI have argued that TK does not have to report on behalf of IK, Lontar, AA, WKS or SPA because none of these companies produces an input product that is primarily dedicated to the production of the downstream product, as specified under 19 CFR 351.525(b)(6)(iv). Specifically, respondents argue that neither the logs produced by the forestry companies nor the pulp produced from those logs by IK and Lontar can be considered ''primarily dedicated'' to the production of downstream product, which TK

defines specifically as the subject merchandise, CLPP. TK maintains that the affiliates' pulp production is not primarily dedicated to the production of CLPP because it is also used for most of TK's other paper production as well as other paper production and pulp sales by the pulp producers.[10] Respondents additionally claim that the logs that IK and Lontar use to produce the pulp are not an input to CLPP at all because they are used to make pulp and not paper, and TK also states that TK never buys logs.

We preliminarily determine that the pulp logs harvested by AA, WKS, and SPA, and the pulp produced by IK and Lontar are input products whose production ''is primarily dedicated to the production of the downstream product'' within the meanings of 19 CFR 325(b)(6)(iv). Contrary to TK's claim, the issue is not whether the potentially subsidized inputs are used exclusively or nearly exclusively for the production of the subject merchandise. Rather, it is a question of whether the inputs are primarily dedicated to the production of the downstream product. In this case, pulp logs harvested by AA, WKS, and SPA, are turned into pulp by IK and Lontar. The pulp, in turn, is used by TK to make paper and paper products, including the subject merchandise. Because pulpwood is primarily dedicated to the production of pulp, and pulp is primarily dedicated to the production of paper, it is reasonable to conclude that a subsidy to pulpwood production also subsidizes pulp production and, in turn, paper production where the producers in this chain are cross–owned. (The cross–ownership between TK, IK, Lontar, AA, WKS, and SPA is discussed further below.)

Furthermore, although we have characterized our analysis above along these lines, it is important to note that the ''primarily dedicated'' regulation does not *require* that the ''input'' and the ''downstream product'' be directly connected or sequentially linked in the production process. In other words, in looking at the production process as a whole, it is reasonable to find that pulpwood is primarily dedicated to the production of paper, even though that primary input must be further processed through various intermediate steps (*e.g.*, turned into pulp) before it can ultimately be made into paper. Clearly, pulpwood is used primarily to make paper in a paper–making process which includes pulp–making as an intermediate step. Moreover, it is irrelevant to this ''primarily dedicated'' analysis that this overall paper–making production process may be segmented among separately–incorporated entities, as the analysis of the corporate structure is addressed under the cross–ownership prong of the regulation.

TK has pointed to prior determinations by the Department to argue that the input must be primarily dedicated to production of the subject merchandise, *i.e.*, that pulp must be primarily dedicated to the production of CLPP. While we acknowledge that the Department has referred to subject merchandise in prior cases, we believe such references merely described the facts of those particular cases. TK's reading of our practice is overly narrow and would inappropriately constrain our ability to take action against subsidies that benefit a limited group of products, such as paper products. (These precedents are discussed further below.) We note further that 19 CFR 351.525(b)(6)(iv) specifically refers to an input being primarily dedicated to a ''downstream product.'' Thus, the regulation does not limit the Department to ''the subject merchandise.'' Nor are we limited in our analysis to just those subsidies, received by the respondent, that are tied solely to the subject merchandise. The Department's regulations at 351.525(b)(3) indicate that normally the Department will attribute domestic subsidies received by the firm to all the products sold by the firm. We only attribute a firm's subsidy to a particular product produced by that firm if the subsidy is shown to be tied to that product alone. In this instance, as the respondent itself has noted, any subsidy from the subsidized pulpwood is not tied to the production of subject merchandise alone but, rather, would benefit all of the paper products that respondent produces.

In *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) and the accompanying Issues and Decision Memorandum at Comment 15 (*PET Film from India*) and in *Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review*, 69 FR 70657 (December 7, 2004), we described inputs covered by 19 CFR 351.525(b)(6)(iv) as inputs that were primarily dedicated to the production of the ''subject merchandise.'' However, in neither case was the Department addressing the issue of whether subsidies on the production of the input product may have benefitted downstream products other than the subject merchandise. Instead, it appears that pasta and PET film were the downstream products as well as the subject merchandise.

In the case of this investigation, based on the information on the record, we preliminarily determine that the logs harvested by AA, WKS and SPA and sold to the pulp producers, IK and Lontar, are primarily dedicated to the production of pulp, and thus to the production of the TK's downstream product, paper, which includes CLPP. Therefore, we find the condition outlined in 19 CFR 351.525(b)(6)(iv) that the production of the input product is primarily dedicated to production of the downstream product is satisfied, and we now turn to the question of whether the input suppliers are cross–owned.

Cross–Ownership

Based on information currently on the record, we preliminarily find that cross–ownership exists between TK and Purinusa, IK, Lontar, APP, Pindo Deli, Ekamas, and SPA, in accordance with 19 CFR 351.525(b)(6)(vi). For the other two pulp log suppliers, AA and WKS, TK has failed to submit information that would allow the Department to determine whether these companies satisfy the criteria for cross–ownership outlined in 19 CFR 351.525(b)(6)(vi).

Section 776(a)(2) of the Act, provides that

> * * * if an interested party or any other person – (A) withholds information that has been requested by the administering authority * * *; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested subject to subsections (c)(1) and (e) of section 782 * * *; (C) significantly impedes a proceeding under this subtitle; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this subtitle.

The statute requires that certain conditions be met before the Department may resort to the facts available (FA). Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an

[10] Letter from Arnold & Porter to Secretary of Commerce, TK's Response to the Department's October 20, 2005 Questionnaire, at Exhibit TK-A-2 (*TK's December 5th Response*).

opportunity to remedy or explain the deficiency.

If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

As described below, TK has withheld certain information, failed to respond to portions of the Department's requests for information by the deadlines established or provide the complete information required, and has impeded the investigation of allegations regarding subsidized inputs. Pursuant to section 782(d) of the Act, the Department advised TK of its deficiencies, but TK and its affiliates failed to respond to the Department's request that they report certain company- specific information on the forestry companies. By not providing the Department with the requested company–specific information, TK and its affiliates prevented the Department from conducting the analysis necessary to determine whether AA and WKS meet the criteria for establishing cross–ownership as outlined in 19 CFR 351.525(b)(6)(vi).

In the original October 20, 2005, questionnaire, we requested financial statements as well as information on their respective owners, boards of directors, and managers of companies that produced and supplied inputs for the production of CLPP. TK, on the basis of the position that such information was not relevant to the investigation because these inputs were not primarily dedicated to CLPP, declined to provide the requested information in its first response. In our supplemental questionnaire dated December 23, 2005, we specifically requested financial statements and background information on the owners, board members and managers for the affiliated pulp producers and forestry companies including AA, WKS and SPA. We also stated that if TK failed to cooperate, the Department might use information that is adverse to TK's interest. TK still declined to provide the information necessary to analyze the cross–ownership criteria.

We issued a second supplemental questionnaire regarding affiliation and stumpage on January 23, 2006, in which we repeated our request for specific information on AA and WKS, again warning that if TK failed to cooperate, the Department would consider the use of adverse information.[11]

The limited information on the record shows that the respondent has acknowledged some common ownership among TK, the pulp producers, and the forestry companies. Indeed, the IK and Lontar financial statements demonstrate that pulp producers IK and Lontar have long–term pulpwood purchase agreements with AA and WKS, which suggest a very close supplier relationship, including some financing commitments on the part of IK in AA's forestry operations. While this information indicates that cross–ownership is likely to exist, the information that TK has failed to provide, despite our repeated requests, is necessary to make a definitive finding. Therefore, section 776(a)(2) of the Act requires the use of FA.

Use of an Adverse Inference

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also Statement of Administrative Action (SAA)* accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994). The statute provides, in addition, that in selecting from among the FA the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

We find that the application of an adverse inference in this determination is appropriate, pursuant to section 776(b) of the Act. As discussed above, TK has failed to cooperate by failing to comply with repeated requests for company–specific information necessary to analyze the extent of affiliation and ascertain the costs of certain input suppliers. For the reasons described above, we believe that TK did not act to the best of its ability in responding to the Department's requests for information and that, consequently, an adverse inference is warranted under section 776(b) of the Act.[12]

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As adverse facts available, we have drawn an adverse inference from the information supplied by TK in its questionnaire responses. To determine whether AA and WKS meet the definition of cross–owned companies in accordance 19 CFR 351.525(b)(6)(vi), we have considered a combination of facts available on the record, including proprietary information on common ownership,[13] the fact that the forestry companies are the exclusive suppliers of pulp logs to IK and Lontar, TK's conceded cross–ownership with IK and Lontar, and public information regarding the pulpwood purchase agreements between IK and AA and Lontar and WKS. As discussed above, these facts, taken on their face, may not be sufficient to establish that one or more of the corporations involved can manipulate the assets of the others. However, pursuant to section 776(b) of the Act, we preliminarily determine that cross–ownership exists between TK and AA and WKS.

Because information to which we apply the adverse inference is from the current segment of the proceeding, is provided by the respondent, and is, in part, from publicly–available audited financial statements, we find that there is no further need to corroborate this information pursuant to section 776(c) of the Act.

Consequently, because we have primarily determined that TK is cross–owned with the forestry companies AA and WKS, and that pulp logs harvested by these companies are primarily dedicated to pulp and paper, subsidies

[11] In the January 23, 2006 letter, we indicated that due to the proximity of the preliminary determination deadline, we may not have time to consider any information that TK provided in its response to the January 23, 2006, supplemental questionnaire in the preliminary determination analysis, the response to which was due only one week before this preliminary determination. This preliminary determination is based in information on the record prior to January 30, 2006.

[12] *See, e.g., Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 30710, (June 8, 1999) and accompanying Issues and Decision Memorandum at Comment 3 (sustained *Grupp Thyssen Nirosta Gmbh v. United States*, 24 CIT 666 (2000)), *see also Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002) and accompanying Issues and Decision Memorandum at Comment 24.

[13] *See TK's December 5th Response* at Exhibit TK–A

received are properly attributed to the sales of AA, WKS, IK, Lontar, and TK.

Based on record information and, in the case of AA and WKS, the application of adverse inferences regarding record information, we have a preliminarily determined that TK and the input suppliers AA, WKS, SPA, IK and Lontar meet the criteria of cross–ownership in accordance with 19 CFR 351.525(b)(6)(iv) and (vi).

Benchmark for Interest Rates

Pursuant to 19 CFR 351.505(a), the Department will use the actual cost of comparable borrowing by a company as a loan benchmark, when available. According to 19 CFR 351.505(a)(2), a comparable commercial loan is defined as one that, when compared to the government–provided loan in question, has similarities in the structure of the loan (*e.g.*, fixed interest rate v. variable interest rate), the maturity of the loan (*e.g.*, short–term v. long–term), and the currency in which the loan is denominated. In instances where no applicable company–specific comparable commercial loans are available, 19 CFR 351.505(a)(3)(ii) permits the Department to use a national average interest rate for comparable commercial loans.

In the 1990's, the GOI set–up a joint venture forest plantation, PT. Riau Abadi Lestari (RAL), with AA, a cross–owned company of TK under the Hutan Tanaman Industria (HTI) Program, described in the ''Analysis of Programs'' sections below. Under the terms of the program, RAL was able to secure an interest–free loan from the GOI. Information on the record stated that RAL would begin repaying the loan ten years after the initial agreement, when the plantation started to have substantial harvest.

We have no information indicating whether RAL obtained loans from any other sources in the year it received the loan. Therefore, pursuant to 19 CFR 351.505(a)(3)(ii), we used a national average interest rate for comparable commercial loans, *i.e.*, the 1994/1995 national average interest rate on investment loans, taken from the Bank of Indonesia 1994/95 Annual Report.

Benchmark for Stumpage

Section 771(5)(E)(iv) of the Act and section 351.511(a) of the CVD regulations govern the determination of whether a benefit has been conferred from subsidies involving the provision of a good or service. Pursuant to section 771(5)(E)(iv) of the Act, a benefit is conferred when the government provides a good or service for less than adequate remuneration. Section 771(5)(E) further states that the adequacy of remuneration:

> shall be determined in relation to prevailing market conditions for the good or service being provided * * * in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of sale.

Section 351.511(a)(2) of the regulations sets forth three categories of comparison benchmarks for determining whether a government good or service is provided for less than adequate remuneration. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. This hierarchy reflects a logical preference for achieving the objectives of the statute.

The most direct means of determining whether the government required adequate remuneration is by comparison with private transactions for a comparable good or service in the country. Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country, or outside the country (the latter transaction would be in the form of an import). This is because such prices generally would be expected to reflect most closely the commercial environment of the purchaser under investigation.

The Department has preliminarily found that there were no market–determined prices in Indonesia upon which to base a ''first tier'' benchmark. According to the GOI, it owns all harvestable forest land. The GOI controls and administers 57 million hectares of public harvestable forest land while only 1.6 million hectares of Indonesia forest land is reported to be in private hands. We have not identified any private sales of standing timber in Indonesia.

The ''second tier'' benchmark relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving that particular producer. In selecting a world market price under this second approach, the Department will examine the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in–country purchaser. As discussed in the Preamble to the regulations, the Department will

> consider whether the market conditions in the country are such that it is reasonable to conclude that a purchaser in the country could obtain the good or service on the world market. For example, a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America. However, as another example, the world market price for commodity products, such as certain metals and ores, or for certain industrial and electronic goods commonly traded across borders, could be an acceptable comparison price for a government–provided good, provided that it is reasonable to conclude from record evidence that the purchaser would have access to such internationally traded goods.

See ''Explanation of the Final Rules'' of *Countervailing Duties, Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*Preamble*).

We note that we have insufficient evidence of world market prices for standing timber on the record of the investigation. Consequently, we are not able to conduct our analysis under tier two of the regulations and, consistent with the hierarchy, and are preliminarily measuring the adequacy of remuneration by assessing whether the government price is consistent with market principles.

This approach is set forth in section 351.511(a)(2)(iii) of the regulations, which is explained further in the Preamble:

> Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price–setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination.

63 FR at 65378.

The regulations do not specify how the Department is to conduct such a market principle analysis. By its nature

the analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case–by-case basis.

The information submitted by the parties regarding potential benchmarks consists of Malaysian log market prices for red meranti and some other species from a report published by the International Tropical Timber Association and an Australian stumpage price. We have also examined the GOI–calculated ''reference prices'' for logs which the GOI states represent an average of Indonesian and international market prices. Because these reference prices are at least in part based on domestic Indonesian prices in a market where the GOI has direct influence over the supply and pricing of almost all stumpage, we do not consider them to be market–determined. Regarding the Australian stumpage price, there is insufficient information about what the stumpage price represents.

It is generally accepted that the market value of timber is derivative of the value of the downstream products. The species, dimension and growing condition of a tree largely determine the downstream products that can be produced from a tree; the value of a standing tree is derived from the demand for logs produced from that tree and the demand for logs is in turn derived from the demand for the products produced from these logs.[14]

As a result of the similarities of forest conditions, climate, geographic position and tree species in Indonesia and Malaysia, we have selected Malaysian log prices as the most appropriate basis for evaluating whether Indonesian pulp logs are priced consistent with market principles. *See* 19 CFR 351.511(a)(2)(iii). The petitioner proposed that we use red meranti log prices in Malaysia as our benchmark. Based on our understanding that red meranti is more commonly used in the production of flooring, paneling, furniture, joinery, mouldings, plywood, turnery and carving,[15] we have instead used as an alternative, the value of pulp log exports from Malaysia during the POI, as reported in the World Trade Atlas. Malaysian pulp log export prices provide the best available measure of consistency with market principles in this instance because the prices are from private transactions between Malaysian pulp log sellers and pulp log buyers in the international market and are, thus, market–determined prices.

We find that the species used for pulp logs in Malaysia are representative of the species used in Indonesia. The GOI has indicated that acacia and eucalyptus are species commonly harvested from HTI plantations for pulp and paper production in Indonesia. *See*, *e.g.*, *GOI's January 12th Response* at 17–18. TK has also noted that AA, WKS and SPA harvest off of plantations. *See id.* at 15. The Malaysian export data we have used to calculate the benchmark covers the same two species specifically identified as providing plantation pulp logs in Indonesia, acacia and eucalyptus.

We adjusted the average unit value of the Malaysian pulp logs to reflect prevailing market conditions in Indonesia. We did this by deducting amounts for the Indonesian logging operation's extraction costs and profit. These amounts were taken from the petition, as the respondents did not provide information on their costs and profits. The result of these adjustments was a derived market stumpage price that is consistent with market principles.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined to Be Countervailable

A. GOI Provision of Logs at Less Than Adequate Remuneration

According to the GOI all harvestable forest land in Indonesia is owned by the GOI. *See GOI's January 12th Response* at 17. Numerous products, timber and non–timber, are harvested from this land. *See id.* at 2. Timber can be harvested from the GOI land under two main types of licenses: licenses to harvest timber in the natural forest and licenses to establish and harvest from plantations. The latter licenses are known as ''HTI licenses.'' *See GOI's January 12th Response* at 8.

TK and the GOI reported that AA, WKS and SPA, forestry companies that the Department preliminarily determines to be cross–owned with downstream producers TK, IK and Lontar, harvested pulp logs from public forest concessions under an HTI license. TK did not provide information on the charges and fees actually paid by these forestry companies during the POI or the costs of harvesting pulp logs. However, the GOI provided laws that outline the types of fees and royalties assessed for the harvest of public timber in Indonesia. The government also stated that HTI licenses require the holder of an HTI license to pay an initial license fee, cash stumpage fees and a tax for land use. *See GOI's December 12th Response* at 22.

Record information indicates that the license fee to which the GOI refers is the Forest Utilization Business Permit Fee or IIUPH, a one–time fee paid at the granting of each concession. *See*, *e.g.*, Letter form Wiley Rein & Fielding to Secretary of Commerce, Response to Request for Information by the U.S. Dept. of Commerce, at Exhibit VI (Indonesian Ministry of Forestry presentation on Forest Fiscal Reform (Ministry of Forestry presentation) (September 22, 2005) and GOI's *January 12th Response* at Exhibit GOI–S–2, GOI Regulations No. 34, 2002 Article 1, Item 20). The Ministry of Forestry presentation indicates that the IIUPH is calculated at U.S.$3–10 per hectare for the entire area of the concession granted. Based on the information submitted by the GOI regarding the land area and agreed duration of each of the three HTI concessions held by the cross–owned companies, we have calculated the IIUPH fee on these concessions during the POI. *See GOI's January 12 Response* at Exhibit GOI–S–5 for concession approval agreements. The cost per cubic meter was so small as to be immaterial. *See* Analysis Memo at Attachment 5.

The ''cash stumpage fees'' for the HTI licenses appear to be the PSDH royalty fee which is paid per unit of timber harvested and may include a per unit Rehabilitation Fee (Dana Reboisasi or DR) for the Ministry of Forestry Reforestation Fund. Alternatively, HTI license holders may incur the costs of reforestation. However, we are not able to quantify these costs using the evidence on the record. Based on the fee schedules provided by the GOI, we are able to calculate PSDH royalties and DR fees for specific types of timber. *See* GOI's *January 12th Response* at Exhibit GOI–S–2 (Government Regulation No. 59 1998 (PSDH Rates); Decree of the Ministry of Industry and Trade Republic of Indonesia No. 436/MPP/Kep/7/2004: The Reference Price Decision for PSDH (Forest Royalty) Calculation on Logs and Rattan (July 9, 2004), Government Regulation No. 92 1999 (DR Fees)).

We did not have sufficient information to estimate the land use tax.

[14] *See Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada*, 69 FR 75917 (December 20, 2004) and accompanying Issues and Decision memorandum (*Lumber First Review*) (Issues and Decision Memorandum at 16).

[15] *See* Memo from David Layton and David Neubacher, International Trade Compliance Analysts, through Constance Handley, Program Manager, to the File, Re: Calculations for the Preliminary Determination for PT. Pabrik Kertas Tjiwi Kimia Tbk (February 6, 2006) (Analysis Memo) at Attachment 7.

We preliminarily find that the GOI's provision of a good, pulp logs, to the input suppliers of the pulp and paper producers confers a countervailable subsidy on TK. The provision of the pulp logs provides a financial contribution as described in section 771(5)(D)(iii) of the Act (providing goods or services other than general infrastructure). Moreover, we preliminarily determine that this good was provided for less than adequate remuneration. *See* 771(5)(E)(iv) of the Act and section 771(5)(D)(iii) above. We also preliminarily determine that there is a *de facto* limitation of stumpage benefit to a group of industries, namely pulp and paper mills, saw mills and remanufacturers. Therefore, the subsidy is specific as a matter of fact to this group of industries as they are the predominant users of timber and receive a disproportionate amount of the subsidy. *See* sections 771(5A)(D)(iii) (II) and (III) of the Act.

To determine the existence and extent of the benefit, we compare the estimated stumpage price of Indonesian pulp logs to the stumpage benchmark derived from the average unit value of 2004 exports of acacia and eucalyptus pulp logs from Malaysia, as reported in the World Trade Atlas. We calculated an estimated cost of Indonesian pulp log stumpage relying on information reported by the GOI and facts available because respondents did not provide the actual company–specific costs of the cross–owned forestry companies. The GOI has stated that the ''small wood for chips and pulp that can be cultivated on HTI plantations is typically a particular type of acacia or eucalyptus.'' *See GOI's January 12th Response* at 18. As TK has informed us that the cross–owned forestry companies harvest their pulp logs from HTI plantations, we are using the published PSDH rate for acacia and eucalyptus from HTIs as our estimate of the unit stumpage price applicable to AA, WKS and SPA. *See* GOI's *January 12th Response* at Exhibit GOI–S–2 (Government Regulation No. 59 1998 (PSDH Rates); Decree of the Ministry of Industry and Trade Republic of Indonesia No. 436/MPP/Kep/7/2004: The Reference Price Decision for PSDH (Forest Royalty) Calculation on Logs and Rattan (July 9, 2004), Government Regulation No. 92 1999 (DR Fees)). Because the cross–owned forestry companies have not provided their actual costs for reforestation and other maintenance obligations in the HTI concessions, we are using as a surrogate, the published Rehabilitation Fee (DR) for chip wood (GOI defines chip wood as timber of any length whose diameter is less than 29 centimeters. *See GOI's January 12th Response* Exhibit GOI–LER–1) given that the GOI has indicated that this mix of species is also used as a pulp log source. *See GOI's January 12th Response* at 17 and Exhibit GOI–S–2 (Government Regulation No. 92 1999 (DR Fees)). We added the PSDH HTI royalty and the mixed tropical hardwood DR fee together to obtain the estimated unit cost of stumpage for the cross–owned input suppliers. We have not added the allocated cost of the one–time IIUPH fee for the forest utilization business permit because the cost is negligible.

To obtain an aggregate POI benefit for Indonesian stumpage, we multiplied the estimated unit stumpage cost times the estimated volume of the log harvest which we extrapolated from proprietary information on pulp production. We then multiplied the volume of the log harvest by the per unit benchmark to get an aggregate benchmark value. The difference between these aggregate values is the total benefit which we divided by the combined sales of the cross–owned corporations (excluding affiliated sales). This calculation yields an *ad valorem* rate of 33.30% for TK.

B. Government Ban on Log Exports

The GOI provided the Department with copies of the legislation concerning the log export ban and argued that the log export ban did not influence the price of pulp logs in Indonesia because wood fiber for paper production is more commonly shipped in chip form and the export of chips is allowed.

The information provided by the respondents and relied upon for this preliminary determination does not indicate whether TK's cross–owned forestry companies purchased logs from unaffiliated parties. However, for purpose of calculating any benefit for this preliminary determination the issue is moot. Because, in calculating the countervailable subsidy conferred by the GOI's provision of logs for a less than adequate remuneration, we were limited by the data on the record and necessarily treated all pulp used by TK as subsidized. Moreover, under the methodology proposed by the petitioner (*see* Letter from Wiley Rein & Fielding to Secretary of Commerce, Re: Response to the Request for Information by the U.S. Department of Commerce, at Table 3 (*petitioner's September 22nd submission*), the amount of the benefit to TK from stumpage and the log export ban is identical. Therefore, whether TK's cross–owned forestry companies harvested or purchased logs (or harvested and purchased logs), it would not change the benefit amount given the data available for this preliminary determination.[16]

If we determine that TK's cross–owned suppliers purchased Indonesian logs from other companies in Indonesia, we intend to issue an interim analysis of the log–export ban to allow parties an opportunity to comment before our final determination.

C. Subsidized Funding for Reforestation (HTI Program)

According to the GOI, in the 1990s the government decided to use money collected as reforestation charges to create public–private joint ventures with HTI holders. Through these joint ventures, the government could learn from the private sector and attract private companies into the business, while giving the government more direct control over operations. In addition, the government decided to start a policy of transmigration, moving populations from over–crowded cities in Java to less populated areas of Indonesia. The joint venture program was used to create jobs for these displaced people.

There were two types of participants in the joint venture program: private participants that chose to partner with the GOI, and other HTI holders that were required to shift a portion of their licensed area into a public–private joint venture. In the latter case, the private company was required to contribute 60 percent of the equity and the government was required to contribute 40 percent. Despite these ownership shares, control of the joint venture was not given to the private investor, according to the GOI. Instead, government officials were placed in key positions of the joint venture such as production director and president of the board of directors, and key decisions required government approval. The joint venture also had to provide monthly and annual reports to the government on its operations, and operational issues faced by the joint venture had to be resolved on a consensus basis between the government and the private partner. In addition to the government's equity contribution, the joint venture could also apply for interest–free loans from

[16] This is consistent with the Department's approach in the Canadian lumber investigation where we found that ''any conceivable benefit provided through a log ban would already be included in the denominator of the stumpage benefit based upon our selected market-based benchmark prices for stumpage.'' *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) and Issues and Decisions Memorandum at page 26, footnote 5.

the Reforestation Fund to establish the plantation.

In our *Initiation Notice*, we stated that we were investigating interest–free loans provided under this program. The GOI has responded that neither WKS nor SPA participated in this program, but that AA did and was a mandatory participant. The public/private joint venture they formed is called RAL. As discussed above in the ''Benchmark for Interest Rates'' section, the GOI provided an interest–free loan to RAL.

We preliminarily determine that this loans confers a countervailable subsidy on TK. The loan is a financial contribution as described in section 771(5)(D)(i) of the Act, which gives rise to a benefit in the amount of the difference between what the borrower paid and what the borrower would have paid on a comparable commercial loan (section 771(5)(E)(ii)). The loan program is specific because within the meaning of section 771(5A)(D)(i) because it is limited to public/private joint venture tree plantations.

To calculate the benefit, we applied the benchmark interest rate described above to the average loan balance outstanding during the POI. We divided this by the combined POI sales of the cross–owned corporations (excluding affiliated sales). This calculation yields an *ad valorem* rate of 0.01% for TK.

In its submission dated January 26, 2006, the petitioner has alleged additional subsidies in the form of the GOI–provided equity to RAL as well as the equity provided by AA.[17] Regarding the latter, the petitioner alleges that AA was entrusted or directed to provide equity that normally would have been provided by the GOI.

For this preliminary determination, we find no benefit to the subject merchandise produced by TK from these alleged equity subsidies. First, petitioner's January 26th allegations relating to the equity investments are untimely filed (*see* 19 CFR 351.301(d)(4)(i)(A)). Second, while we recognize the Department's obligation to investigate subsidies discovered in the course of an investigation (*see* 19 CFR 351.311), the information on the record does not provide a basis for considering these investments to be subsidies. Specifically, there is no information indicating that the investments gave rise to a benefit as defined in 19 CFR 351.507(a)(1) and (4). For example, if the joint venture could be considered cross–owned with the respondents, the petitioner has not clearly articulated how an equity infusion by the respondent into the joint venture conferred a benefit on the respondent. Finally, the amounts would make no difference in the countervailing duty rate even if the entire amount of each were found to be a countervailable subsidy. (*See, e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Textile Mill Products From Mexico*, 50 FR 10824 (March 18, 1985) and *Live Swine From Canada; Final Results of Countervailing Duty Administrative Review*, 63 FR 2204 (January 14, 1998)).

II. Programs Preliminarily Determined to Be Not Countervailable

A. Accelerated Depreciation

The Indonesian tax code allows two options for calculating depreciation for tax purposes, straight line depreciation or double declining balance depreciation (DDBD). Companies elect which method to use. Also, according to the Indonesian tax code, all companies that have tangible capital assets with a useful life of more than one year are eligible for the DDBD. It is calculated using the GOI's issued tax depreciation schedule.

Two cross–owned companies, TK and Purinusa, used double declining balance depreciation on their 2004 tax returns.

With regard to the DDBD, we examined whether this program was specific within the meaning of section 771(5A) of the Act. Use of DDBD is not contingent upon exportation or import substitution (*see* sections 771(5A)(B) and (C) of the Act). Furthermore, as noted above, the DDBD was available to any company that had tangible capital assets with a useful life of one year or more. Therefore, there is no basis to find that the applied tax credit was *de jure* specific according to section 771(5A)(D)(i) of the Act.

We next examined whether the DDBD was *de facto* specific according to section 771(5A)(D)(iii) of the Act. The GOI stated that several industries (*e.g.*, oil and gas, mining, chemicals, cement, automobiles, textiles) used this standard provision. Accordingly, we preliminarily determine that the DDBD is also not *de facto* specific. We therefore find that this program is available to all Indonesian firms regardless of geographic location or type of industry. On this basis, and because we have no evidence that the GOI exercises discretion through an application and approval process in administering this program, we preliminary determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, is not countervailable during the POI.

B. Government of Indonesia Loan Guarantee to Sinar Mas/APP

In 1999, SMG/APP's affiliated bank, Bank Internasional Indonesia (BII), qualified for a GOI recapitalization program run by the Indonesian Bank Restructuring Agency (IBRA). As part of the agreement, IBRA took a majority ownership of BII and all SMG/APP debt owed to BII was restructured. A subsequent debt restructuring agreement was signed by SMG/APP, BII and IBRA the following year. In February 2001, SMG/APP negotiated a new restructuring agreement on its debt to BII. The terms of the agreement stated that BII would retain SMG/APP's debt on its books, but the GOI extended a loan guarantee on the debt. SMG/APP also agreed to put up assets equaling 145 percent of the value of the debt as collateral.

The petitioner alleges that the loan guarantee conferred a benefit on APP because the company was uncreditworthy at the time and SMG/APP would not have been able to secure similar financial terms on a commercial loan.

Based on record information, BII transferred SMG/APP's debt to IBRA in November 2001. When this occurred, the loan guarantee ceased to exist, as the guarantor became the creditor on the debt, according to TK. Therefore, the guarantee was not outstanding during the POI and conferred no benefit on TK during the POI. *See* 19 CFR 351.506(a).

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each exporter/manufacturer of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Exporter/Manufacturer	Net Subsidy Rate
PT. Pabrik Kertas Tjiwi Kimia Tbk.	33.31%
All Others	33.31%

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, we have set the ''all others'' rate as TK's rate because

[17] *See* Letter from Wiley Rein & Fielding to Secretary of Commerce, RE: Comments on Stumpage Programs, at pages 24 - 26 (January 26, 2006).

it is the only exporter/manufacturer investigated.

In accordance with section 703(d)(1)(B) and (2) of the Act, we are directing the CBP to suspend liquidation of all entries of certain lined paper products from Indonesia 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 bond for such entries of the merchandise in the amounts indicated above.

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 nonprivileged and nonproprietary 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

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: February 6, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–1993 Filed 2–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India

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

SUMMARY: On August 10, 2005, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on polyethylene terephthalate film, sheet, and strip from India for the period January 1, 2003, through December 31, 2003. *See Notice of Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 70 FR 46483 (August 10, 2005) (*Preliminary Results*). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the *Preliminary Results* and our analysis of the comments received, the Department has revised the net subsidy rates for Jindal Polyester Limited/Jindal Poly Films Limited of India (Jindal) and Polyplex Corporation Ltd. (Polyplex), as discussed in the ''Memorandum from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary for Import Administration concerning the Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India'' (Decision Memorandum) dated concurrently with this notice and hereby adopted by this notice. The final net subsidy rates for the reviewed company are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen at (202) 482–2769 or Drew Jackson at (202) 482–4406, AD/CVD Operations, Office 4, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2005, the Department published its *Preliminary Results* in the **Federal Register**. We invited interested parties to comment on the results. On September 12, 2005, Dupont Teijin Films, Mitsubishi Polyester Film of America, Toray Plastics (America) and SKC America, Inc. (collectively, the petitioners), the Government of India (the GOI), as well as Polyplex and Jindal, filed case briefs. Polyplex, Jindal, and the petitioners filed rebuttal briefs on September 19, 2005.

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Jindal and Polyplex, and evaluates sixteen programs. The period of review (''POR'') is January 1, 2003, through December 31, 2003.

Scope of the Order

The products covered by this order are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the Decision Memorandum. A list of the issues contained in the Decision Memorandum