

July 19, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Edward C. Yang
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Certain Hot-Rolled Carbon Steel Flat Products from India

SUBJECT: Issues and Decision Memorandum: Final Results and Partial
Rescission of Countervailing Duty Administrative Review

Summary

We have analyzed the comments and rebuttal comments of interested parties in the administrative review of the countervailing duty (CVD) order on certain hot-rolled carbon steel flat products (HRS) from India for the period of review (POR) January 1, 2008, through December 31, 2008. After analyzing the comments the Government of India (GOI), Tata Steel Limited (Tata), and petitioners, we have made certain modifications to the Preliminary Results.¹ See Certain Hot-Rolled Carbon Steel Flat Products from India: Preliminary Results of Countervailing Duty Administrative Review, 75 FR 1496 (January 11, 2010) (Preliminary Results). The “Subsidies Valuation Information” and “Analysis of Programs” sections below describe the methodology followed in this review with respect to Tata, the producer/exporter of subject merchandise covered by this review. Also below is the “Analysis of Comments” section, which contains the Department of Commerce’s (the Department) response to the issues raised in the briefs.

Below is a complete list of the issues in this review for which we received comments and rebuttal comments from parties:

Comment 1: Whether the State Government of Jharkhand (SGOJ) Cooperated to the Best of Its Ability and Should Not Be Subject to the AFA Rate that the Department Preliminarily Applied to the SGOJ Programs

Comment 2: Whether the Programs Covered in the Review Have Provided Countervailable Benefits to Indian Exporters

¹ Petitioners are the United States Steel Corporation and the Nucor Corporation.

- Comment 3:** Whether the United States Department of Commerce Should Have Held Consultations with the GOI Before Including Many of the Programs in Its Administrative Review
- Comment 4:** Whether the Application of the Adverse Facts Available (AFA) Standard Is Inconsistent with Article 12/7 of WTO:ASCM
- Comment 5:** Whether the AFA Rates Arrived at for the SGOJ Programs Have No Rational Connection to Tata's Operations and Are Improper
- Comment 6:** Whether the Application of AFA Rates to Programs Administered by the State Governments Contradicts the Department's Prior Determinations in This Proceeding
- Comment 7:** Whether the Department's Calculation Methodology Is Incorrect As It Improperly Summed the Total of the GOI and State-Government AFA Rates Without Properly Accounting for the Percentage of Tata's Total Turnover that the State Programs Could Have Applied To
- Comment 8:** Whether the Department Made a Clerical Error in the Calculation of the AFA Rate for SGOJ Programs
- Comment 9:** Whether the Department's Discretion in Selecting AFA Margins Is Limited by the Requirement that Margins Be Reasonable, Reasonably Accurate Estimates of Actual Margins, and Rationally Related to Practices in the Industry
- Comment 10:** Whether the 586.43% AFA Margin Proposed in the Preliminary Results Is an Abuse of the Department's Discretion Because It Is Unreasonable, Anomalous, and Unrelated to the Country, the Industry, or the Company
- Comment 11:** Whether the 586.43 Percent Preliminary Net Subsidy Rate is Unlawful Because It is Excessively Punitive
- Comment 12:** Whether the Department Improperly Applied to Tata Numerous State Programs Relating to States Where Tata Steel Is Not Located

I. Adverse Facts Available (AFA)

A. The GOI

On February 6, 2009, the Department issued the initial questionnaire to Tata and the GOI.² The GOI filed a response to the Department's initial questionnaire on April 23, 2009

² The GOI questionnaire included programs which are administered by the following state level governments: State Government of Gujarat, State Government of Maharashtra, State Government of Andhra Pradesh, State Government of Chhattisgarh, State Government of Jharkhand, and State Government of Karnataka.

(April QR). However, the GOI failed to provide responses with regard to certain programs administered by the state governments of Gujarat, Maharashtra, Andhra Pradesh, Chhattisgarh and Karnataka. On July 30, 2009, the Department issued a supplemental questionnaire to the GOI and again requested responses with regard to the state government programs. The GOI submitted a response on August 10, 2009, but again failed to provide responses with regard to the programs administered by the state governments. On August 21, 2009, the Department issued another supplemental questionnaire to the GOI requesting additional information from the state governments mentioned above, as well as additional and clarifying information from the state government of Jharkhand (SGOJ) concerning its responses in the April QR. In its response, the GOI again failed to submit responses with regard to the programs administered by the state governments. On September 10, 2009, the Department issued to the GOI a final supplemental questionnaire in which we requested a second time the same information from the August 21, 2009, supplemental questionnaire on the state programs administered by the SGOJ. In its response, the GOI submitted incomplete information on the programs administered by the SGOJ. Specifically, in the September 24, 2009, questionnaire response, the government of Jharkhand submitted a brief letter from the Department of Industries restating that Tata had not received any benefits during the POR. No other information or documentation requested by the Department to demonstrate this claim was provided.

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act), provide that the Department shall use the “facts otherwise available” if, inter alia, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent possible, provide that party the 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) of the Act, disregard all or part of the original and subsequent responses. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party has demonstrated that it has acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Because the GOI failed to provide the requested information by the established deadlines, the Department does not have the necessary information on the record to determine whether the subsidies received by Tata under the state-administered programs constitute financial contributions and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. Therefore, the Department must base its determination on the facts otherwise available in accordance with section 776(a)(2)(B) of the Act.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also

authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. In a countervailing duty proceeding, the Department requires information from both the government of the country whose merchandise is under the order and the foreign domestic producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. See, e.g., Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 11397, 11399 (March 7, 2006) (unchanged in the Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 71 FR 38861 (CTL Plate from Korea) (July 10, 2006) (in which the Department relied on adverse inferences in determining that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of sections 771(5)(D) and 771(5A)(D)(iii) of the Act, respectively). However, the Department will normally rely on the foreign producer's or exporter's records to determine the existence and amount of the benefit. Consistent with its past practice, because the GOI failed to provide information concerning certain subsidies, the Department, as AFA, determines that those programs confer a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act, respectively. The analysis of the extent of the benefit, if any, is discussed under the sections below entitled "Programs Administered by the GOI", "Programs Administered by the State Government of Gujarat," "Programs Administered by the State Government of Maharashtra," "Programs Administered by the State Government of Andhra Pradesh," "Programs Administered by the SGOJ," "Programs Administered by the State Government of Chhattisgarh," and "Programs Administered by the State Government of Karnataka."

B. Tata

With respect to Tata, although the company maintains that it had no sales of commercial quantities during the POR, it provided data concerning sales of subject merchandise during the POR on March 19 and March 23, 2009. After considering the information on the record, the Department decided that Tata did have sales during the POR and requested on March 27, 2009, that Tata submit a questionnaire response. See Memorandum to the File regarding "Sales by Tata during the POR," dated March 27, 2009, which is on file in the Central Records Unit (CRU) of the main Commerce Building.

The Department extended Tata's deadline to respond to the initial questionnaire. Specifically, on March 27, 2009, the Department extended the March 15, 2009, original deadline until April 17, 2009. Id. However, Tata failed to provide a response to the initial questionnaire. On April 23, 2009, Department officials contacted Tata regarding its failure to respond to the Department's February 6, 2009 questionnaire, which was due on April 17, 2009. See Memorandum to the File regarding "Phone Conversation with Counsel for Tata Steel Limited," dated April 23, 2009, which is on file in the CRU of the main Commerce Building. Tata indicated that it would not participate in this administrative review. Id. No further response has been filed by Tata in this segment of the proceeding.

Sections 776(a)(1) and (2) of the Act, provide that the Department shall apply "facts otherwise available" if, inter alia, necessary information is not on the record or an interested

party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Because Tata failed to provide the requested information by the established deadlines, the Department does not have the necessary information to determine the net subsidies received by Tata under the GOI administered programs as well as those programs administered by the state governments. Therefore, the Department must base its determination on the facts otherwise available in accordance with section 776(a)(2)(B) of the Act with respect to the GOI and state government programs covered in this review.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the fact otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Because Tata did not provide the requested information on any of the programs covered by this review, we find that Tata did not act to the best of its ability and, therefore, pursuant to section 776(b) of the Act, we are employing adverse inferences in selecting from among the facts otherwise available. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the original determination, a previous administrative review, or other information placed on the record.

As explained above, due to the GOI's failure to submit a timely response to certain subsidy programs, we find that certain programs administered by the GOI and the state governments continued to operate during the POR, and that these programs provided financial contributions and were specific within the meanings of sections 771(5)(D) and 771(5A) of the Act, respectively.

Moreover, because Tata failed to provide the requested information with respect to the GOI and state government programs by the established deadlines, despite the extensions of time granted by the Department, we do not have the necessary information to determine the net subsidies Tata received from these programs. Therefore, as AFA, we find that Tata received a benefit from all these programs within the meaning of section 771(5)(E) of the Act.

In assigning net subsidy rates for each of the programs for which specific information was required from Tata, we were guided by the Department's approach in the prior reviews as well as recent CVD investigations involving the People's Republic of China (PRC). See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 20923 (May 6, 2009) (Final Results of Fifth HRS Review), and accompanying Issues and Decision Memorandum (Final Results of Fifth HRS Decision Memorandum) at "SGOC Industrial Policy 2004-2009" section; see also Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 4936 (January 28, 2009) (CWASPP from the PRC), and accompanying Issues and Decision Memorandum (CWASPP from the PRC Decision Memorandum) at "Application of Facts Available and Use of Adverse Inferences" section. In these final results, as AFA, we first sought to apply, where available, the highest, above de minimis subsidy rate calculated for an identical program from any segment of this proceeding. Absent such a rate, we applied, where available, the highest, above de minimis subsidy rate calculated for a similar program from any segment of this proceeding. Under our AFA approach, absent a subsidy rate calculated for the same or similar program, the Department

applies the highest above de minimis, calculated subsidy rate for any program from any CVD proceeding involving the country in which the subject merchandise is produced, so long as the producer of the subject merchandise or the industry to which it belongs could have used the program for which the rates were calculated. In the instant review, it was not necessary to rely on this third prong in the hierarchy of our AFA methodology because above de minimis subsidy rates for identical and/or similar programs were available within the proceeding. In accordance with this methodology, we applied AFA rates and assigned these rates to Tata for all the subsidy programs as discussed further below.

We received comments regarding our decision to rely on adverse inferences as a result of the failure of the GOI and state governments to respond to the Department's questionnaires as well as comments concerning our calculation methodology and selection of AFA rates. See Comments 1 through 7 and 9 through 12. However, our decision to apply AFA in the manner described above remains unchanged from the Preliminary Results. Therefore, the rates assigned in the Preliminary Results are the same in these final results. However, we did receive a comment on a clerical error in our calculations that did result in a change in the total net subsidy rate. See Comment 8.

II. Analysis of Programs

A. Programs Administered by the Government of India

The following are programs for which the GOI provided a questionnaire response.

1. Pre- and Post-Shipment Export Financing

The Department of Banking Operations & Development, Directives Division of the Reserve Bank of India (RBI) provides short-term pre-shipment export financing, or "packing credits," to exporters through commercial banks. Upon presentation of a confirmed export order or letter of credit to a bank, companies receive 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. For post-shipment export financing, exporters are eligible to receive post-shipment short-term credit in the form of discounted trade bills or advances by commercial banks at preferential interest rates to finance the transit period between the date of shipment of exported merchandise and payment from export customers.

In the Preliminary Results, based on a previous determination, we found that the GOI's issuance of financing at preferential rates constituted a financial contribution pursuant to section 771(5)(D)(i) of the Act and that the interest savings under this program conferred a benefit pursuant to section 771(5)(E)(ii) of the Act. See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 72 FR 6530 (February 12, 2007), and accompanying Issues and Decision Memorandum (Final Results of 3rd PET Film Review Decision Memorandum) at "Pre-Shipment and Post-Shipment Export Financing" section. We also found this program, to be contingent upon exports and therefore, specific within the meaning of section 771(5A)(B) of the Act. Id. No new information or

evidence of changed circumstances has been presented in this review to warrant a reconsideration of the Department's finding.

The GOI reported that RBI does not maintain company-specific accounting records. Therefore, the GOI was unable to provide information as to whether Tata applied for, accrued, or received benefits under the program during the POR. Id. As discussed under the "Adverse Facts Available" section above, Tata did not submit a response to any of the Department's questionnaires. Therefore, in the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from pre-and post-export financing during the POR within the meaning of section 771(5)(E) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 1.32 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the same program in another segment of this proceeding. See Preliminary Results, 75 FR at 1499. The assigned rate is unchanged in these final results.

2. Export Promotion of Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption for excise taxes on imports of capital goods. Under this program, producers may import capital equipment at a reduced customs duty, subject to an export obligation equal to eight times the duty saved to be fulfilled over a period of eight years (12 years where the CIF value is Rs. 100 crore³) from the date the license was issued. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest.

In the Preliminary Results, based on a previous determination, the Department found that under the EPCGS program the GOI provides a financial contribution under section 771(5)(D) of the Act. The Department also found this program to be specific under section 771(5A)(B) of the Act because it is contingent upon export performance. See e.g., Final Results of 3rd PET Film Review Decision Memorandum at "Export Promotion Capital Goods Scheme" section. No new information or evidence of changed circumstances has been provided with respect to this program. Therefore, we continue to find that import duty reductions provided under the EPCGS are countervailable export subsidies. As discussed under the "Adverse Facts Available" section above, Tata did not submit a response to any of the Department's questionnaires. Therefore, in the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefited from the EPCGS during the POR within the meaning of section 771(5)(E) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we are assigned a net subsidy rate of 16.63 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the same program in another segment of this proceeding. See Preliminary Results, 75 FR at 1500. The assigned rate is unchanged in these final results.

³ A crore is equal to 10,000,000 rupees.

3. Advance License Program (ALP)

Under the ALP exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported. The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled their export requirement. The quantities of imported materials and exported finished products are linked through standard input/output norms (SIONs) established by the GOI.

In the Preliminary Results, based on previous determinations, we found that the ALP provides a financial contribution, as defined under section 771(5)(D)(ii) of the Act, the GOI does not have in place, and does not apply, a system that is reasonable and effective, within the meaning of 19 CFR 351.519(a)(4), to confirm which inputs and in what amounts are consumed in the production of the exported products. See, e.g., Final Results of Countervailing Duty Administrative Review; Polyethylene Terephthalate Film, Sheet, and Strip from India, 71 FR 7534 (February 13, 2006) (Final Results of 2nd PET Film Review), and accompanying Issues and Decision Memorandum (Final Results of 2nd PET Film Review Decision Memorandum) at “Advance License Program” section and “Comment 1.” See also Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2006) (Final Determination of Lined Paper Investigation), and accompanying Issues and Decision Memorandum (Final Determination of Lined Paper Investigation Decision Memorandum) at “Advance License Program” section. Moreover, we previously determined that this program is contingent upon export and, therefore is specific under section 771(5A)(B) of the Act. See Final Determination of Lined Paper Investigation Decision Memorandum at “Advance License Program” section. As discussed under the “Adverse Facts Available” section above, Tata did not submit a response to any of the Department’s questionnaires. Therefore, in the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from the ALP program during the POR within the meaning of section 771(5)(E) of the Act. Id. Therefore, the entire amount of the import duty deferral or exemption earned by the respondent constitutes a benefit under section 771(5)(E) of the Act. Id. No new information has been submitted on the record in this review to warrant a reconsideration of the Department’s findings.

In the Preliminary Results, pursuant to the AFA methodology described above, we assigned a net subsidy rate of 0.50 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the same program in another segment of this proceeding. See Preliminary Results, 75 FR at 1500. The assigned rate is unchanged in these final results.

4. Duty Entitlement Passbook Scheme (DEPS)

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

In the Preliminary Results, based on a previous determination, the Department found that DEPS is a countervailable program, which provides a financial contribution and is specific as an export contingent subsidy within the meaning of sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively. See, e.g., Final Determination of Lined Paper Investigation Decision Memorandum at “Duty Entitlement Passbook Scheme” section. The Department further found that the benefit under section 771(5)(E) of the Act is the entire amount of import duty exempted, because the GOI does not have in place, and does not apply, a system that is within the meaning of 19 CFR 351.519(a)(4), reasonable and effective for determining what imports are consumed in the production of the exported product and in what amounts. Id. No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of the Department’s finding.

In the Preliminary Results, we also found that this program provides a recurring benefit under 19 CFR 351.519(c). See 75 FR at 1500. Pursuant to 19 CFR 351.519(b)(2), we found that benefits from the DEPS program were conferred as of the date of exportation to the shipment for which the DEPS credits are earned. Id. As discussed under the “Adverse Facts Available” section above, Tata did not submit a response to any of the Department’s questionnaires. Therefore, in the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from the ALP program during the POR within the meaning of section 771(5)(E) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we are assigned a net subsidy rate of 13.98 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the same program in another segment of this proceeding. See Preliminary Results, 75 FR at 1500. The assigned rate is unchanged in these final results.

5. Status Certificate Program

India’s Status Certificate Program is detailed under paragraph 3.5 of its Foreign Trade Policy Handbook. This program details the following privileges to exporters, depending on their export performance for the current year, plus the preceding three years:

- i). Authorizations and Customs clearances for both imports and exports on self-declaration basis;
- ii). Fixation of Input-Output norms on priority within 60 days;
- iii). Exemption from compulsory negotiation of documents through banks. The remittance, however, would continue to be received through banking channels;
- iv). 100 percent retention of foreign exchange in EEEEC account;
- v). Enhancement in normal repatriation period from 180 days to 360 days;
- vi). (Deleted);
- vii). Exemption from furnishing of Bank Guarantee in Schemes under this Policy.

See 75 FR at 1500. In the Final Results of Fourth HRS Review, the Department examined this program in which certain respondents participated during that POR. See Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008) (Final Results of Fourth HRS Review), and the accompanying Issues and Decision Memorandum (Final Results of Fourth HRS Review

Decision Memorandum) at “Programs Determined Not to Be Used” section. In particular, we inquired about the extent to which the respondents used the provision related to foreign currency retention under the Status Certificate Program during the POR. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined to Be Not Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we preliminarily found that Tata used and benefitted from this program during the POR. See 75 FR 1501. Furthermore, based on AFA, we found that this program constitutes a financial contribution in the form of a foreign currency loan, and a benefit within the meaning of 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also find that this program is contingent upon export and, therefore, is specific under section 771 (5A) (B) of the Act.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 1.32 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Preliminary Results, 75 FR at 1501. The assigned rate is unchanged in these final results.

6. Loan Guarantees from the GOI

In the underlying investigation, we found that the GOI, through the State Bank of India (SBI) provides loan guarantees on a case-by-case basis to particular industrial sectors. See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Determination With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Products from India, 66 FR 20240, 20249 (April 20, 2001) (Preliminary Determination of HRS Investigation), unchanged in Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 49635 (September 28, 2001) (Final Determination of HRS Investigation), and accompanying Issues and Decision Memorandum. In the Preliminary Results, we found, as AFA, that the GOI’s loan guarantees under this program provide a financial contribution in the form of a potential direct transfer of funds or liabilities and are specific to a limited number of industries within the meaning of sections 771(5)(D)(i) and 771(5A)(D)(iii)(I) of the Act, respectively. See 75 FR at 1501. Moreover, we found, as AFA, pursuant to section 776(b) of the Act, Tata used and benefitted from this program, within the meaning of 771(5)(E)(iii) of the Act, in the form of the difference in the amount the firm paid on the guaranteed loan and the amount the firm would pay for a comparable loan if there were no government guarantee. Id. In accordance with section 771(5)(E)(iii) of the Act, the loan guarantees provide a benefit to the recipient in the amount of the difference between the amount the recipient pays on the guaranteed loan and the amount the recipient would pay for a comparable commercial loan if there were no government guarantee. No new information or evidence of changed circumstances has been presented to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 1.32 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Preliminary Results, 75 FR at 1501. The assigned rate is unchanged in these final results.

7. Steel Development Fund (SDF) Loans

The Steel Development Fund (SDF) was established in 1978, to which India's integrated steel producers, including Tata, contributed the proceeds from GOI-mandated price increases (i.e., levies). In turn, these producers were eligible to take out long-term loans from the SDF at advantageous rates. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 49635 (September 28, 2001) (Final Determination of HRS Investigation), and accompanying Issues and Decision Memorandum (Final Determination of HRS Investigation Decision Memorandum) at "Loans from the Steel Development Fund" section. We also determined that the GOI exercises control over the way in which funding is disbursed under this program. Id. Therefore, in the Preliminary Results, we found, as AFA, that the GOI's provision of SDF loans under this program provide a financial contribution in the form of a potential direct transfer of funds and are specific to a limited number of industries within the meaning of sections 771(5)(D)(i) and 771(5A)(D)(iii)(I) of the Act, respectively. Id. Furthermore, we found, as AFA, pursuant to section 776(b) of the Act, Tata used and benefitted from this program, within the meaning of 771(5)(E) of the Act. Id. No new information or evidence of changed circumstances has been presented to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 0.99 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the same program in another segment of this proceeding. See Preliminary Results, 75 FR at 1501. The assigned rate is unchanged in these final results.

8. Captive Mining of Iron Ore

Under the Mines and Minerals Development and Regulation Act of 1957, as amended, (MMDR) and the Mineral Concession Rules of 1960, as amended, the GOI grants captive mining rights for minerals, including iron ore, to eligible applicants. The MMDR includes a schedule that lists minerals for which mining rights are controlled by the GOI. Iron ore is included on this schedule. See 75 FR at 1501.

In the Preliminary Results, based on a previous determination, we found that the GOI's provision of iron ore for LTAR under this program provides a financial contribution in the form of a provision of a good and is specific to a limited number of industries within the meaning of sections 771(5)(D)(iii) and 771(5A)(D)(iii)(I) of the Act, respectively. See Preliminary Results of Fourth HRS Review, 73 FR at 1591 (unchanged in Final Results of Fourth HRS Review). Furthermore, we found, as AFA, pursuant to section 776(b) of the Act, Tata used and benefitted from this program, within the meaning of 771(5)(E)(iv) of the Act. See 75 FR at 1501. No new information or evidence of changed circumstances has been presented to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 18.08 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the same program in another segment of this proceeding. See Preliminary Results, 75 FR at 1502. The assigned rate is unchanged in these final results.

9. Captive Mining Rights of Coal

In 1973, the GOI nationalized coal mining under the Coal Mines Nationalization Act. The legislation initially reserved coal mining for public companies. However, pursuant to the Coal Mines Nationalization Amendment Act of 1976, the law was revised to allow iron and steel companies to mine for coal for captive use (*i.e.*, the right of selected companies to extract coal from government-owned land for use in their production processes). In 1993 through 1996, the GOI amended the Act to also allow power companies and the cement industry to mine coal for captive use. *See* 75 FR at 1502.

In the Preliminary Results, based on a previous determination, we found that the GOI's provision of coal under this program provides a financial contribution in the form of a provision of a good and is specific to a limited number of industries within the meaning of sections 771(5)(D)(iii) and 771(5A)(D)(iii)(I) of the Act, respectively. *See Preliminary Results of Fourth HRS Review*, 73 FR at 1592 (unchanged in Final Results of Fourth HRS Review). Furthermore, we found, as AFA, pursuant to section 776(b) of the Act, Tata used and benefitted from this program, within the meaning of 771(5)(E)(iv) of the Act. *See* 75 FR at 1502. No new information or evidence of changed circumstances has been presented to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program we assigned a net subsidy rate of 3.09 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for the same program in another segment of this proceeding. *See Preliminary Results*, 75 FR at 1502. The assigned rate is unchanged in these final results.

10. Export Oriented Units (EOU) Program: Duty-Free Import of Capital Goods and Raw Materials

Under this program EOUs are entitled to import capital goods and raw materials duty-free. *See Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India*, 70 FR 13460 (March 21, 2005) (Final Determination of PET Resin), and accompanying Issues and Decision Memorandum (Final Determination of PET Resin Decision Memorandum) at "Export Oriented Units (EOU) Program: Duty-Free Import of Capital Goods and Raw Materials" section. In the Preliminary Results, based on this previous determination, we found the GOI's provision of assistance under this program provides a financial contribution in the form of revenue forgone and is specific as an export subsidy within the meaning of sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively. *See* 75 FR at 1502. Furthermore, we found, as AFA, pursuant to section 776(b) of the Act, Tata used and benefitted from this program, within the meaning of 771(5)(E) of the Act. *Id.* No new information or evidence of changed circumstances has been presented to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 13.98 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in another segment of this proceeding. *See HRS Investigation Decision Memorandum* at "Duty Entitlement Passbook Scheme (DEPS)" section. The assigned rate is unchanged in these final results.

11. EOU Program: Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically

Under this program, EOUs are entitled to reimbursements of the CST paid on materials procured domestically, applicable to purchases of both raw materials and capital goods. See Final Determination of PET Resin Decision Memorandum at “EOU Program: Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically” section. In the Preliminary Results, based on this previous determination, we continued to find the GOI’s provision of assistance under this program provides a financial contribution in the form of revenue forgone and is specific as an export subsidy within the meaning of sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively. See 75 FR at 1502. Furthermore, we found, as AFA, pursuant to section 776(b) of the Act, Tata used and benefitted from this program, within the meaning of 771(5)(E) of the Act. Id. No new information or evidence of changed circumstances has been presented to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat Tax Incentives” section. The assigned rate is unchanged in these final results.

12. Sale of High-Grade Iron Ore for Less Than Adequate Remuneration

The Department has previously determined that the GOI provides high-grade iron ore to steel producers for LTAR through the government-owned National Mineral Development Corporation (NMDC). See Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 71 FR 28665 (May 17, 2006), (Final Results of Second HRS Review), and accompanying issues and decision memorandum (Final Results of Second HRS Review Decision Memorandum) at “Sale of High-Grade Iron Ore for Less Than Adequate Remuneration” section. The NMDC is governed by the Ministry of Steel and the GOI holds the vast majority of its shares. Therefore in this review, as in past reviews, we find the NMDC to be a government authority. Id.

Therefore, in the Preliminary Results, we found that, through NMDC, the GOI continues to provide a direct financial contribution in the form of a provision of a good as defined under section 771(5)(D)(iii) of the Act, which is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited to industries that use iron ore, including the steel industry. See 73 FR at 1503. The Department also found pursuant to section 771(5)(E)(iv) of the Act that a benefit is conferred, because the government provides the good or service for LTAR. Id.

In the Preliminary Results, we found that, although the GOI’s list of companies that purchased high-grade iron ore from NMDC during the POR did not include Tata, without Tata’s cooperation, this list does not constitute complete and verifiable evidence, within the meaning of sections 782(c)(3) and (2) of the Act, respectively, that Tata or any of its affiliates did not purchase iron ore from NMDC during the POR. See 75 FR at 1503. Therefore, we found that Tata benefitted from this program within the meaning of section 771(5)(E) of the Act. Id. No

new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 16.14 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the same program in another segment of this proceeding. See Preliminary Results, 75 FR at 1503. The assigned rate is unchanged in these final results.

13. Market Development Assistance (MDA)

In the 1985 Review of Castings from India, the Department found that the Federation of Indian Export Organization administers grants under the MDA program, subject to approval by the Ministry of Commerce. See Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review, 55 FR 50747 (December 10, 1990) (1985 Review of Casting from India). The purpose of the programs is to provide grants-in-aid to approved organizations (i.e., export houses) to promote the development of markets for Indian goods abroad. Such development projects may include market research, export publicity, and participation in trade fairs and exhibitions. Id.

The Department has found that the MDA grants were countervailable. Id. The program provides a direct financial contribution and confers a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, and is specific as an export subsidy within the meaning of section 771(5A)(B) of the Act. Id.

In the Preliminary Results, we found that, although the GOI stated that Tata had not “availed {itself of} any benefits under this program,” and submitted a certificate from the administering authority attesting to the same, absent the cooperation of Tata, these submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that Tata or any of its affiliates did not benefit from this program. See 75 FR at 1503-1504. Therefore, as AFA, we found that Tata benefitted from this program within the meaning of section 771(5)(E) of the Act. Id. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “The GOI’s Forgiveness of SDF Loans Issued to SAIL” section. The assigned rate is unchanged in these final results.

14. Market Access Initiative (MAI)

According to section 3.2 of the GOI’s Foreign Trade Policy 2004-2009:

The Market Access Initiative (MAI) scheme is intended to provide financial assistance for medium term export promotion efforts with a sharp focus on a country/product, and is administered by the Department of Commerce (DoC). Financial assistance is available for Export Promotion Councils, Industry and Trade Associations, Agencies of State Governments, Indian Commercial Missions abroad and other eligible entities as may be

notified. A whole range of activities can be funded under the MAI scheme. These include, amongst others, (i) market studies, . . . (iii) sales promotion campaigns, . . . (v) publicity campaigns . . .

See 75 FR at 1504.

In past proceedings, the Department has investigated this program to the extent that it provides financial assistance from the GOI to approved organizations which promote exports by offsetting the expense of foreign market analysis and promotional publications. See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2010) (Lined Paper from India), and accompanying issues and decision memorandum (Lined Paper from India Decision Memorandum) at “Programs Determined Not To Be Used” section.

In the Preliminary Results, we found that, although the GOI stated that the respondent company had not “availed any benefits under this program,” and submitted a certificate from the administering authority attesting to the same, absent the cooperation of Tata, we determined that these submissions did not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that Tata or any of its affiliates did not benefit from this program during the POR. See 75 FR at 1504. Therefore, as AFA we found that Tata benefitted from this program within the meaning of section 771(5)(E) of the Act. Id. Furthermore, as AFA, we found that the MAI program provides a financial contribution in the form of a grant under and confers a benefit as a grant within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. The Department also found, as AFA, that the program is specific as an export subsidy within the meaning of section 771(5A)(B) of the Act. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “The GOI’s Forgiveness of SDF Loans Issued to SAIL.” The assigned rate is unchanged in these final results.

15. Special Economic Zone Act of 2005 (SEZ Act): Duty Free Import/Domestic Procurement of Goods and Services for Development, Operation, and Maintenance of SEZ Units Program

In the Final Results of Fifth HRS Review, we found that, under this program, companies with SEZ units may import from overseas or procure domestically duty-free goods and services. See Final Results of Fifth HRS Review Decision Memorandum at “SEZ Act” section. The Department found, based on AFA, the company’s use of the programs under the 2005 SEZ Act constitutes a financial contribution that is specific within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act, respectively. Id. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In the Preliminary Results, we determined that, although the GOI stated that Tata was not covered by this program, absent cooperation by Tata, this statement did not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, demonstrating that Tata or any of its affiliates did not benefit from this program. See 75 FR at

1504. Therefore, we found, as AFA, pursuant to section 776(b) of the Act, that Tata used and benefitted from this program within the meaning of section 771(5)(E) of the Act. Moreover, we found, as AFA, the 2005 SEZ Act constitutes a financial contribution in the form of revenue forgone and is specific as an export subsidy within the meaning of sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 1.66 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the same program in another segment of this proceeding. See Preliminary Results, 75 FR at 1504. The assigned rate is unchanged in these final results.

16. SEZ Act: Exemption From Excise Duties on Goods Machinery and Capital Goods Brought from the Domestic Tariff Area for Use by an Enterprise in the SEZ

In the Final Results of Fifth HRS Review, we found that, under this program, companies with SEZ units may be eligible for exemption from excise duties on goods machinery and capital goods brought from the Domestic Tariff Area for use by an enterprise in the SEZ. See Final Results of HRS Review Decision Memorandum at “SEZ Act” section. The Department found, based on AFA, the company’s use of the programs under the 2005 SEZ Act constitutes a financial contribution that is specific within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act, respectively. Id.

In the Preliminary Results, we determined that, although the GOI stated that Tata was not covered by this program, absent cooperation by Tata, this statement did not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, demonstrating that Tata or any of its affiliates did not benefit from this program during the POR. See 75 FR at 1504-1505. Therefore, we found, as AFA, pursuant to section 776(b) of the Act, that Tata used and benefitted from this program within the meaning of section 771(5)(E) of the Act. Id. Moreover, we found, as AFA, the 2005 SEZ Act constitutes a financial contribution in the form of revenue forgone and is specific as an export subsidy within the meaning of sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively. Id. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 2.57 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for this program in another segment of this proceeding. See Preliminary Results, 75 FR at 1505. The assigned rate is unchanged in these final results.

17. SEZ Act: Drawback on Goods Brought or Services Provided From the Domestic Tariff Area Into a SEZ, or Services Provided in a SEZ by Service Providers Located Outside India

In the Final Results of Fifth HRS Review, we found that under this program companies that are suppliers are eligible to claim drawback or Duty Entitlement Pass Book (DEPB) on goods or services provided from the Domestic Tariff area or from outside India into a SEZ.

However, we found the program was not used. See Final Results of Fifth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section.

In the Preliminary Results, we determined that, although the GOI stated that Tata was not covered by this program, absent cooperation by Tata, this statement does not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, demonstrating that Tata or any of its affiliates did not benefit from this program during the POR. See 75 FR at 1505. Therefore, we found, as AFA, pursuant to section 776(b) of the Act, that Tata used and benefitted from this program within the meaning of section 771(5)(E) of the Act. Id. Furthermore, as AFA, we found that the SEZ Act constitutes a financial contribution in the form of duty exemption that is specific within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act. Id. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 13.98 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRC Investigation Decision Memorandum at “Duty Entitlement Passbook Scheme (DEPS)” section. The assigned rate is unchanged in these final results.

18. SEZ Act: 100 Percent Exemption From Income Taxes on Export Income From the First 5 Years of Operation, 50 Percent for the Next 5 Years, and a Further 50 Percent Exemption on Export Income Reinvested in India for an Additional 5 Years

In the Final Results of Fifth HRS Review, we found that under this program benefits are provided on sales made from the SEZ. However, the program was not used. See Final Results of Fifth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section.

In the Preliminary Results, we determined that, although the GOI stated that the Tata was not covered by this program, absent cooperation by Tata, this statement did not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, demonstrating that Tata or any of its affiliates did not benefit from this program during the POR. See 75 FR at 1505. Therefore, we found, as AFA, pursuant to section 776(b) of the Act, that Tata used and benefitted from this program within the meaning of section 771(5)(E) of the Act. Id. Furthermore, as AFA, we found that the SEZ Act constitutes a financial contribution in the form of revenue forgone that is specific within the meaning of sections 771(5)(D)(ii) and 771(5A)(B) of the Act. Id. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives section.” The assigned rate is unchanged in these final results.

19. SEZ Act: Exemption from the Central Sales Tax (CST)

In the Final Results of Fifth HRS Review, we found that under this program companies may be eligible for exemption from the 2 percent CST on inter-state purchases made by the SEZ unit. See Final Results of Fifth HRS Review Decision Memorandum at “SEZ Act” section. The Department found, based on AFA, the company’s use of the programs under the 2005 SEZ Act constitutes a financial contribution that is specific within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act, respectively. Id.

In the Preliminary Results, we determined that, although the GOI stated that Tata was not covered by this program, absent cooperation by Tata, this statement did not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, demonstrating that Tata or any of its affiliates did not benefit from this program during the POR. See 75 FR 1505. Therefore, we found, as AFA, pursuant to section 776(b) of the Act, that Tata used and benefitted from this program within the meaning of section 771(5)(E) of the Act. Id. Moreover, we found, as AFA, the 2005 SEZ Act constitutes a financial contribution in the form of revenue forgone and is specific as an export subsidy within the meaning of sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively. Id. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in any segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

20. SEZ Act: Exemption from National Service Tax

In the Final Results of Fifth HRS Review, we found that under this program SEZ units are exempt from paying the national service tax of 12.36 percent. Therefore, a service provider to an SEZ unit is not required to pay the 12.36 percent service tax on invoices issued to SEZ units. See Final Results of Fifth HRS Review Decision Memorandum at “SEZ Act” section. The Department found, based on AFA, the company’s use of the programs under the 2005 SEZ Act constitutes a financial contribution that is specific within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act, respectively. Id.

In the Preliminary Results, we determined that, although the GOI stated that Tata was not covered by this program, absent cooperation by Tata, this statement did not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, demonstrating that Tata or any of its affiliates did not benefit from this program during the POR. See FR at 1505-1506. Therefore, we found, as AFA, pursuant to section 776(b) of the Act, that Tata used and benefitted from this program within the meaning of section 771(5)(E) of the Act. Id. Moreover, we preliminarily found, as AFA, the 2005 SEZ Act constitutes a financial contribution in the form of revenue forgone and is specific as an export subsidy within the meaning of sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively. Id. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in any segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

21. Duty Free Replenishment Certificate (DFRC) Scheme

The DFRC scheme was introduced by the GOI in 2001 and was administered by the Directorate General for Foreign Trade. The DFRC was a duty replenishment scheme that was available to exporters for the subsequent import of inputs used in the manufacture of goods without payment of basic customs duty. In order to receive a license, which entitled the recipient subsequently to import duty free certain inputs used in the production of the exported product, as identified in a SION, within the following 24 months, a company had to: (1) export manufactured products listed in the GOI’s export policy book and against which there is a SION for inputs required in the manufacture of the export product based on quantity; and (2) have realized the payment of export proceeds in the form of convertible foreign currency. The application was to be filed within six months of the realization of the profits. DFRC licenses were transferrable, yet the transferee was limited to importing only those products and in the quantities specified on the license.

In the past, the Department has found that in order to receive a DFRC license, firms must demonstrate that they made an export sale by submitting proof of payment to the GOI in the form of a bank realization certificate. As such, we found that duty exemptions provided under the DFRC program were earned on a shipment-by-shipment basis and, therefore, were tied to particular products and markets within the meaning of 19 CFR 351.525(b)(4) and (5). Moreover, we determined that the sale of DFRC licenses and the sales proceeds conferred a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. We also determined that because the receipt of DFRC licenses are contingent upon exports, the DFRC program was specific within the meaning of section 771(5A)(B) of the Act. See Lined Paper from India Decision Memorandum at “Duty Free Replenishment Certificate (DFRC) Scheme” section.

In the Preliminary Results, the GOI claimed that the DFRC program was terminated as of May 1, 2006, in accordance with paragraph 4.2.8 of Foreign Trade Policy (FTP) for the year 2006-07. Moreover, the GOI claimed that no benefits accrued under this program during the POR. See 75 FR at 1506. Furthermore, with respect to residual benefits from this program, the GOI, citing to paragraph 4.2.8 of the FTP for the period September 1, 2004-March 31, 2009, stated that any export made after April 30, 2006, is not eligible for benefits under the DFRC. Id. In the Preliminary Results, we found that because we previously determined that DFRC licenses can be used 24 months after they were issued, firms that had qualifying exports on April 30, 2006, would have been eligible to use benefits under this program through at least April 30, 2008, which is covered by the POR. Id. Therefore, we found that without Tata’s cooperation, the documentation provided by the GOI did not constitute complete and verifiable evidence, within the meaning of sections 782(c)(3)(2) of the Act, respectively, that Tata or any of its affiliates did not use DFRC licenses to import duty free inputs under this program during the period covered by this administrative review. Therefore, we continue to find that the duty

exemptions provided under the DFRC licenses provided countervailable subsidies during the POR. Id. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 13.98 percent ad valorem, which corresponds to the highest above de minimis rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Duty Entitlement Passbook Scheme (DEPS)” section. The assigned rate is unchanged in these final results.

22. Target Plus Scheme (TPS)

In the Final Results of Fourth HRS Review, the Department found that import duty exemptions under the TPS were countervailable. Specifically, the Department determined that a financial contribution, in the form of revenue forgone, as defined under section 771(5)(D)(ii) of the Act, was provided under program because the GOI provides credits for the future payment of import duties. In addition, we found that the TPS program provides a benefit because the GOI did not have in place and did not apply a system that was reasonable and effective for the purposes intended to confirm which inputs, and in what amounts, were consumed in the production of the exported products. See Final Results of Fourth HRS Review Decision Memorandum at “Target Plus Scheme” section and Comment 30. Therefore, in accordance with 19 CFR 351.519(a)(4) and section 771(5)(E) of the Act, we determined that the entire amount of import duty exemption earned during the POR constitutes a benefit. Id. Moreover, we determined that the program was specific under section 771(5A)(B) of the Act because the program could only be used by exporters. Id.

In the Preliminary Results, the GOI claimed that the TPS was terminated as of April 1, 2006, and reported that no benefits accrued under this program during the POR. See 75 FR at 1506 and 1507. The GOI provided Notification No. 57 dated March 31, 2009, from the Directorate General for Foreign Trade and, citing to this document, claimed that this document shows that the Target Plus Scheme has been abolished effective April 1, 2006. Id. The GOI further claimed that this notice clearly states that the TPS has been abolished for exports from April 1, 2006, forward and that any export made after this date is not entitled to the benefits under this program. Id. However, based on previous findings on this program that benefits are provided based on an increase in exports from a previous year, the termination of the program in 2006 does not indicate whether residual benefits earned prior to the termination may have been received during the POR. See Final Results of Fourth HRS Review Decision Memorandum at “Target Plus Scheme” section and Comment 30. We have insufficient information concerning the time period for which benefits may carry forward under this program. Furthermore, without Tata’s cooperation, we found that the documentation provided by the GOI does not constitute complete and verifiable evidence, within the meaning of sections 782(c)(3)(2) of the Act, respectively, that Tata or any of its affiliates did not use TPS credits to pay customs duty on imports of any inputs under this program during the POR. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 13.98 percent ad valorem, which corresponds to the highest above de minimis rate calculated for a similar program in another segment of this

proceeding. See HRS Investigation Decision Memorandum at “Duty Entitlement Passbook Scheme (DEPS)” section. The assigned rate is unchanged in these final results.

B. Programs Administered by the State Government of Gujarat (SGOG)

For the following programs neither the SGOG nor Tata provided questionnaire responses.

1. State Government of Gujarat Tax Incentives: Sales Tax Exemptions of Purchases of Goods During the POR

Pursuant to a 1995 Industrial Policy of Gujarat and an Incentive Policy of 1995-2000 (1995 IP), the SGOG offered incentives, such as sales tax exemptions and deferrals, to companies that locate or invest in certain disadvantaged or rural areas in the State of Gujarat. A company could be eligible to claim exemptions or deferrals valued up to 90 percent of the total eligible capital investment. These policies exempt companies from paying sales tax on the purchases of raw materials, consumable stores, packing materials, and processing materials. Other available benefits include exemption from or deferment of sales tax and turnover tax on the sale of intermediate products, by-products, and scrap. The Pioneer and Prestigious programs are the two programs that are available under this policy. To be eligible for the incentives, companies must have made a fixed capital investment of over five crores (Pioneer Scheme) or 300 crores (Prestigious Scheme) in a qualified under-developed area in the State of Gujarat. See Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 71 FR 28665 (May 17, 2006) (Final Results of Second HRC Review), and accompany issues and decision memorandum (Final Results of Second HRS Review Decision Memorandum) at “State Government of Gujarat (SGOG) Tax Incentives” section.

The amount of the eligible capital investment is linked to the amount of the incentives received over a period of eight to 14 years, depending on the category of participation. For the Pioneer Scheme, which initially began in 1986, companies making a capital investment during 1986 and 1991 were allowed to utilize this program. For the Prestigious Scheme, tax incentives were offered only for investment units which started production between 1990 and 1995. See Final Results of Second HRC Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section.

The Department determined in Final Results of Fourth HRS Review that this program was countervailable because it is limited to only those companies that make an investment in a specified disadvantaged area and is therefore specific under section 771(5A)(D)(iv) of the Act. See Final Results of Fourth HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. We also found that the SGOG provides a financial contribution under section 771(5)(D)(ii) of the Act by foregoing the collection of sales tax revenue and that a company receives a benefit under section 771(5)(E) of the Act in the amount of sales tax that it does not pay. *Id.*

In the Preliminary Results, as AFA, we continued to find the tax savings to the company under this program provides a financial contribution in the form of revenue forgone and is specific because it is limited to eligible companies investing in specified disadvantaged area within the meaning of sections 771(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively. See Preliminary Results, 75 FR at 1507. Furthermore, we found, as AFA, pursuant to section 776(b) of the Act, Tata used and benefitted from this program, within the meaning of section 771(5)(E)

of the Act. Id. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for this program in another segment of this proceeding. See Preliminary Results, 75 FR at 1507. The assigned rate is unchanged in these final results.

2. State Government of Gujarat Tax Incentives: Deferrals on Purchases of Goods from Prior Years (As Well as Deferrals Granted During the POR)

As noted above, under the 1995 IP, the SGOG offered incentives, such as sales tax deferrals, to companies that locate or invest in certain disadvantaged or rural areas in the State of Gujarat. As explained above, the Department found this program countervailable under section 771(5A)(D)(iv) of the Act because it was regionally specific. The Department also found that the SGOG provides a financial contribution under section 771(5)(D)(ii) of the Act by foregoing the collection of sales tax revenue and that a company receives a benefit under section 771(5)(E) of the Act in the amount of sales tax that it does not pay. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section). In the Preliminary Results, as AFA, we continued to find the tax savings to the company under this program provides a financial contribution in the form of revenue forgone and is specific because it is limited to eligible companies investing in specified disadvantaged area within the meaning of sections 771(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively. See Preliminary Results, 75 FR at 1507. Furthermore, we found, as AFA, pursuant to section 776(b) of the Act, Tata used and benefitted from this program, within the meaning of section 771(5)(E) of the Act. Id. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for this program in another segment of this proceeding. See Preliminary Results, 75 FR 1507-1508. The assigned rate is unchanged in these final results.

3. State Government of Gujarat Tax Incentives: Value Added Tax (VAT) Program Established on April 1, 2006

In the Final Results of Fourth HRS Review, we found that the SGOG had established a VAT remission system on April 1, 2006 that remits VAT to eligible firms using the balance of tax incentives under the Prestigious Scheme another tax incentive program. This system remits VAT to eligible firms using the balance of tax incentives under the Prestigious Scheme that remained unutilized after the end of the 8- to 14-year time window allowed under the Prestigious Scheme. See Final Results of Fourth HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section.

The VAT remission system operates differently with respect to purchases and sales. For purchases within the State of Gujarat, eligible firms (i.e. firms with existing balances under the Prestigious Scheme) must pay full tax to the vendor. However, the tax paid is credited to the

company in the form of an input tax credit to be refunded by the State Government. The SGOG then debits the refund received by the firm against the firm's remaining balance of tax credits leftover from the Prestigious System. Id.

With respect to sales, a company is required to charge sales tax from its customers (both local VAT and central sales tax). However, the tax collected by the seller does not have to be paid to the SGOG, but instead can be retained through a remission order provided by the state's sales tax authorities. In such instances, the amount of sales tax retained by the firm is credited against the firm's remaining balance of tax credits leftover from the Prestigious Scheme. Id.

In the Final Results of Fourth HRS Review, we determined that this VAT remission system was linked to the Prestigious Scheme, a countervailable program. Id. Moreover, because the source of the tax remissions received under the system comes from participating firms' unused tax credits under the Prestigious Scheme, we determined that these indirect tax remissions constituted a financial contribution, in the form of revenue forgone, under section 771(5)(D)(ii) of the Act and are regionally specific under section 771(5A)(D)(iv) of the Act. Id. We further determined that these indirect tax remissions conferred a benefit under section 771(5)(E) of the Act and 19 CFR 351.510(a)(1) because they enabled participating firms to pay less indirect taxes than they would have to pay absent the system. Id.

In the Preliminary Results, as AFA, we continued to find the tax savings to the company under this program provides a financial contribution in the form of revenue forgone and is specific because it is limited to eligible companies investing in specified disadvantaged area within the meaning of sections 771(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively. See Preliminary Results 75 FR at 1508. Furthermore, we found, as AFA, pursuant to section 776(b) of the Act, Tata used and benefitted from this program, within the meaning of section 771(5)(E) of the Act. Id. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned to the VAT remission scheme program, a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the same program in another segment of this proceeding. See Preliminary Results, 75 FR at 1508. The assigned rate is unchanged in these final results.

4. Gujarat Special Economic Zone Act (SGOG SEZ Act): Stamp Duty and Registration Fees for Land Transfers, Loan Agreements, Credit Deeds, and Mortgages

In the Final Results of Fifth HRS Review, the Department found that under the SGOG SEZ act, the respondent firm was not required to pay the registration charge on leased land from the SEZ Developer nor the stamp duty on the lease rental. See Final Results of Fifth Review Decision Memorandum at the "SGOG Special Economic Zone Act (SEZ) Act" section. The Department found, based on AFA, the company's use of the programs under the 2005 SEZ Act constitutes a financial contribution that is specific within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act, respectively. Id. Furthermore, we found that the exemption on registration charges and stamp duties confer a benefit under section 771(5)(E) of the Act. Id. In the instant review, we found, as AFA, pursuant to section 776(b) of the Act, that Tata used and benefitted from this program within the meaning of section 771(5)(E) of the Act. See 75 FR at 1508. Moreover, we found, as AFA, the company's use of this program under the 2005 SEZ Act constitutes a financial contribution in the form of revenue forgone and is specific as an export

subsidy within the meaning of sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

5. Gujarat Special Economic Zone Act (SGOG SEZ Act): Sales Tax, Purchase Tax, and Other Taxes Payable on Sales and Transactions

In the Final Results of Fifth HRS Review, the Department found that under the SGOG SEZ Act, inputs purchased by SEZ units from within the State of Gujarat are exempted from payment of sales tax. See Final Results of Fifth Review Decision Memorandum at “SGOG Special Economic Zone Act (SEZ Act)” section. The Department found, based on AFA, the company’s use of the programs under the 2005 SEZ Act constitutes a financial contribution that is specific within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act, respectively. Id. Furthermore, we found that sales tax exemptions received by the company confer a benefit under section 771(5)(E) of the Act. Id. In the instant review, we found, as AFA, pursuant to section 776(b) of the Act, that Tata used and benefitted from this program within the meaning of section 771(5)(E) of the Act. See 75 FR at 1508. Moreover, we found, as AFA, the company’s use of this program under the 2005 SEZ Act constitutes a financial contribution in the form of revenue forgone and is specific as an export subsidy within the meaning of sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in any segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

6. Gujarat Special Economic Zone Act (SGOG SEZ Act): Sales and Other State Taxes on Purchases of Inputs (Both Goods and Services) for the SEZ or a Unit Within the SEZ

In the Final Results of Fifth HRS Review, the Department found that under the SGOG SEZ act, the 2 percent CST charged on goods and services procured by SEZ units from states other than Gujarat is exempted when those goods and services are supplied to SEZ units. See Final Results of Fifth Review Decision Memorandum at “SGOG Special Economic Zone Act (SEZ Act)” section. The Department found, based on AFA, the company’s use of the programs under the 2005 SEZ Act constitutes a financial contribution that is specific within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act, respectively. Furthermore, we found that the company’s receipt of sales tax exemptions on inter-state purchases confer a benefit under section 771(5)(E) of the Act. Id. In the instant review, we found, as AFA, pursuant to section 776(b) of the Act, that Tata used and benefitted from this program within the meaning of section 771(5)(E) of the Act. See 75 FR at 1509. Moreover, we found, as AFA, the company’s use of this

program under the 2005 SEZ Act constitutes a financial contribution in the form of revenue forgone and is specific as an export subsidy within the meaning of sections 771(5)(D)(ii) and 771(5A)(B) of the Act, respectively. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

C. Programs Administered by the State Government of Maharashtra Programs (SGOM)

For the following programs neither the SGOM nor Tata provided questionnaire responses.

1. Sales Tax Program

In the Final Results of Fourth HRS Review, the Department found that sales tax exemptions, deferrals, and sales tax loans, in the form of interest-free loans, were provided under the SGOM’s sales tax program. See Final Results of Fourth HRC Review Decision Memorandum at “State Government of Maharashtra Programs (SGOM)” section. The Department found that the benefits provided under the program are specific under section 771(5A)(D)(iv) of the Act because they are limited to only those companies that make an investment in a specified developing area. Id. We further found that the program constitutes a financial contribution under section 771(D)(ii) of the Act by foregoing the collection of sales taxes and, in the case of sales tax deferrals, in the form of uncollected interest on the deferred sales taxes. Id. We also found that the sales tax program confers a benefit under section 771(5)(E) of the Act: (1) in the amount of sales tax that it does not pay; (2) in the case of sales tax deferrals, in the amount of interest otherwise due; and (3) in the case of sales tax loans, in the form of interest-free loans. Id. In the instant review, as AFA, we continued to find the tax savings to the company under this program provides a financial contribution in the form of revenue forgone and is specific because it is limited to only those companies investing in a specified developing area within the meaning of sections 771(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively. See 75 FR at 1509. Furthermore, we found, as AFA, pursuant to section 776(b) of the Act, Tata used and benefitted from this program, within the meaning of 771(5)(E) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 0.59 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for the same program in another segment of this proceeding. Id. The assigned rate is unchanged in these final results.

2. VAT Tax Refunds Under the SGOM Package Scheme of Incentives and the Maharashtra New Package Scheme of Incentives

In the Final Results of Fourth HRS Review, the Department found that under the Maharashtra Package Scheme of Incentives and the Maharashtra New Package Scheme of

Incentives, the SGOM offered tax incentives including VAT tax refunds to companies that located or invested in certain developing areas in the State of Maharashtra. See Final Results of Fourth HRC Review Decision Memorandum at “State Government of Maharashtra Programs (SGOM)” section. The Department found that the benefits provided under the program are specific under section 771(5A)(D)(iv) of the Act because they are limited to only those companies that make an investment in a specified developing area. We further found that the program constitutes a financial contribution under section 771(5)(D)(ii) of the Act by forgoing the collection of sales taxes. Id. In the Final Results of Fourth HRS Review, the Department found that the amount of refunds claimed by the company were not excessive during the POR and did not constitute a benefit. Id. However, the Department stated that it would continue to examine this program in future reviews. See Final Results of Fourth HRS Review Decision Memorandum at “State Government of Maharashtra Program” section.

In the Preliminary Results, as AFA, we continued to find the tax savings to the company under this program provide a financial contribution in the form of revenue forgone and are specific because they are limited to only those companies investing in a specified developing area within the meaning of sections 771(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively. See 75 FR at 1509. Furthermore, as explained above, as AFA, pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR under section 771(5)(E) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

3. Electricity Duty Exemption Under the Package Scheme of Incentives for 1993

In the Final Results of Fourth HRS Review, the Department determined that electricity duty exemptions received under the Package Scheme of Incentives of 1993 are countervailable. Specifically, we determined that the exemptions are regionally specific under section 771(5A)(D)(iv) of the Act because they are limited to companies that make investments in a specified development area. See Final Results of Fourth HRC Review Decision Memorandum at “State Government of Maharashtra Programs (SGOM)” section. We further determined that the exemptions constitute a financial contribution, in the form of revenue forgone, and a benefit equal to the amount of unpaid duties within the meaning of sections 771(5)(D)(iii) and 771(5)(E) of the Act, respectively. Id. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in the Preliminary Results, we continued to find the electricity duty exemptions to the company under this program provide a financial contribution in the form of revenue forgone and are regionally specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D)(iv) of the Act, respectively. See 75 FR at 1509. Furthermore, as explained above, we found, as AFA, pursuant to section 776(b) of the Act, Tata used and benefitted from this program, within the meaning of 771(5)(E) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we are assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the

highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

4. Refunds of Octroi Under the PSI of 1993, Maharashtra Industrial Policy (MIP of 2001), and Maharashtra Industrial Policy (MIP of 2006)

In PET Film from India, the Department found that the Octroi Refund Scheme is a program under the SGOM’s package of incentives, in which industrial establishments that make capital investments in specific regions of Maharashtra are entitled to the refund of Octroi duty, a tax levied by local authorities on goods that enter a town or district. See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India, 67 FR 34905 (May 16, 2002) (PET Film from India), and accompanying Issues and Decision Memorandum (PET Film from India Decision Memorandum) Investigation Decision Memorandum at “Octroi Refund Scheme” section). In PET Film from India, the Department further found that the Octroi Refund Scheme is specific within the meaning of 771(5A)(D)(i) because it is limited to certain privately-owned industries located within designated geographical regions. Id. We also found that a financial contribution was provided under section 771(5)(D)(i) of the Act. Id. In the Preliminary Results, we continued to find the indirect tax savings to the company under this program provide a financial contribution in the form of revenue forgone and are regionally specific within the meaning of sections 771(5)(D)(i) and 771(5A)(D)(iv) of the Act, respectively. See 75 FR at 1510. Furthermore, we found, as AFA, pursuant to section 776(b) of the Act, Tata used and benefitted from this program, within the meaning of 771(5)(E) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

5. Loan Guarantees Based on Octroi Refunds by SGOM

In the PET Film from India, the Department found that certain long-term loans had been secured on the future payment of the Octroi refund due to the respondent company. See PET Film from India Decision Memorandum at “Octroi Refund Scheme” section. We found that the loan guarantee was specific within the meaning of section 771(5A)(D)(i) and (iv) of the Act because the company was only to receive the loan guarantee because of its eligibility for the Octroi Refund Scheme, which is limited to certain privately-owned industries located within designated geographical regions. See PET Film from India Decision Memorandum at “Octroi Refund Scheme” section). Id. We also found that the SGOM and the administering authority the State Industrial and Investment Corporation of Maharashtra Limited (SICOM) provided a financial contribution under section 771(5)(D)(i) of the Act through the potential direct transfer of the Octroi refund to pay the company’s loans. Id. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this

finding. In the instant review, as AFA, we continued to find, that the SGOM's loan guarantees under this program provide a financial contribution within the meaning of sections 771(5)(D)(i) through a potential direct transfer of the Octroi refund to pay off loans. See 75 FR at 1510. We also found, as AFA, these loan guarantees are specific within the meaning of 771(5A)(D)(iii)(I) of the Act because only companies eligible for the Octroi scheme can receive these loan guarantees. Id. Moreover, we found, as AFA, pursuant to section 776(b) of the Act, Tata used and benefitted from this program, within the meaning of section 771(5)(E)(iii) of the Act, in the form of the difference in the amount the firm paid on the guaranteed loan and the amount the firm would pay for a comparable loan if there were no government guarantee. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 1.32 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at "Pre- and Post-Shipment Export Financing" section. The assigned rate is unchanged in these final results.

6. Infrastructure Assistance for Mega Projects

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the Maharashtra Industrial Policy (MIP) of 2006, firms investing in what the SGOM deems are Mega Projects are eligible to receive infrastructure subsidies. See Fourth Results of Fourth HRS Review Decision Memorandum at "Programs Determined Not To Be Used" section. The Department also investigated whether the SGOM has been providing infrastructure subsidies in the form of tax programs and grants to firms investing in Mega Projects in years prior to the enactment of the MIP of 2006. Id. In the Preliminary Results, as AFA, pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1510. Furthermore, based on AFA, we determined that Tata's use of this program constitutes a financial contribution in the form of a direct transfer of funds and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. Id. We also found based on AFA that the program is limited to firms investing in Mega-Projects and, therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned net subsidy rates of 3.09 percent ad valorem for indirect tax and 6.06 for grants percent ad valorem, which correspond to the highest above de minimis subsidy rates calculated for similar programs in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at "State Government of Gujarat (SGOG) Tax Incentives" section and HRS Investigation Decision Memorandum at "The GOI's Forgiveness of SDF Loans to SAIL" section. The assigned rate is unchanged in these final results.

7. Land for Less than Adequate Remuneration

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether the SGOM encourages development outside of the Bombay and Pune metropolitan areas by offering low-cost land. See Final Results of Fourth HRS Review Decision Memorandum at "Programs Determined Not To Be Used" section. In the Preliminary Results, as AFA, pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1511. Furthermore, based on AFA, we determined that Tata's use of this

program constitutes a financial contribution in the form of land sold for LTAR and confers a benefit within the meaning of sections 771(5)(D)(iii) and 771(5)(E)(iv) of the Act, respectively. Id. We also found, based on AFA, that the program is limited to enterprises purchasing land outside of the Bombay and Pune area, and therefore, is specific within the meaning of section 771(5A)(D)(iv) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 18.08 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Fourth HRS Review Decision Memorandum at “Captive Mining Rights of Iron Ore” section. The assigned rate is unchanged in these final results.

8. Investment Subsidy

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether the SGOM provided investment subsidies to firms in the state of Maharashtra. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1511. Furthermore, based on AFA, we determined that Tata’s use of this program constitutes a financial contribution in the form of a direct transfer of funds and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the program is limited to firms operating outside of the Bombay and Pune metropolitan areas and thus, is specific within the meaning of section 771(5A)(D)(iv) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

D. Programs Administered by the State Government of Andhra Pradesh (SGAP)

For the following programs neither the SGAP nor Tata provided questionnaire responses.

1. Grant Under the Industrial Investment Promotion Policy of 2005-2010 (Andhra Pradesh IP): 25 percent reimbursement of cost of land in industrial estates and industrial development areas

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the Andhra Pradesh IP, companies from eligible industries which construct new facilities or substantially expand existing facilities and begin commercial production on or after April 1, 2005, may receive certain subsidies from the SGAP. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1511. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the

Act, respectively. Id. We also found, based on AFA, that the SGAP limits the grants under its Industrial Policy program to a limited number of industries operating mega projects and therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

2. Grant Under the Industrial Investment Promotion Policy of 2005-2010 (Andhra Pradesh IP): Reimbursement of power at the rate of Rs. 0.75 per unit for the period beginning April 1, 2005, through March 31, 2006 and for the four years thereafter to be determined by SGAP

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the Andhra Pradesh IP, companies from eligible industries which construct new facilities or substantially expand existing facilities and begin commercial production on or after April 1, 2005, may receive certain subsidies from the SGAP. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR 1511. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGAP limits the grants under its Industrial Policy program to a limited number of industries operating mega projects and therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

3. Grant Under the Industrial Investment Promotion Policy of 2005-2010 (Andhra Pradesh IP): 50 percent subsidy for expenses incurred for quality certification up to Rs. 100 lakhs

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the Andhra Pradesh IP, companies from eligible industries which construct new facilities or substantially expand existing facilities and begin commercial production on or after April 1, 2005, may receive certain subsidies from the SGAP. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1512. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGAP limits the grants under its

Industrial Policy program to a limited number of industries operating mega projects and therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

4. Grant Under the Industrial Investment Promotion Policy of 2005-2010 (Andhra Pradesh IP): A 25 percent subsidy on cleaner production measures up to Rs. 5 lakhs

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the Andhra Pradesh IP, companies from eligible industries which construct new facilities or substantially expand existing facilities and begin commercial production on or after April 1, 2005, may receive certain subsidies from the SGAP. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1512. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGAP limits the grants under its Industrial Policy program to a limited number of industries operating mega projects and therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. Id. The assigned rate is unchanged in these final results.

5. Grant Under the Industrial Investment Promotion Policy of 2005-2010 (Andhra Pradesh IP): A 50 percent subsidy on expenses incurred in patent registration, up to Rs. 5 lakhs.

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the Andhra Pradesh IP, companies from eligible industries which construct new facilities or substantially expand existing facilities and begin commercial production on or after April 1, 2005, may receive certain subsidies from the SGAP. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1512. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGAP limits the grants under its Industrial Policy program to a limited number of industries operating mega projects and therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we are assigning a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of

this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

6. Tax Incentives Under the Industrial Investment Promotion Policy of 2005-2010 (Andhra Pradesh IP): 100 percent reimbursement of stamp duty and transfer duty paid for the purchase of land and buildings and the obtaining of financial deeds and mortgages

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the Andhra Pradesh IP, companies from eligible industries which construct new facilities or substantially expand existing facilities and begin commercial production on or after April 1, 2005, may receive certain subsidies from the SGAP. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1512. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGAP limits the indirect tax benefits under its Industrial Policy program to a limited number of industries operating mega projects and therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for this program in another segment of this proceeding. See Preliminary Results, 75 FR at 1513. The assigned rate is unchanged in these final results.

7. Tax Incentives Under the Industrial Investment Promotion Policy of 2005-2010 (Andhra Pradesh IP): A grant of 25 percent of the tax paid to SGAP, which is applied as a credit against the tax owed the following year, for a period of five years from the date of commencement of production

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the Andhra Pradesh IP, companies from eligible industries which construct new facilities or substantially expand existing facilities and begin commercial production on or after April 1, 2005, may receive certain subsidies from the SGAP. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 57 FR 1513. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGAP limits the indirect tax benefits under its Industrial Policy program to a limited number of industries operating mega projects and therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State

Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

8. Tax Incentives Under the Industrial Investment Promotion Policy of 2005-2010 (Andhra Pradesh IP): Exemption from the SGAP Non-agricultural Land Assessment (NALA)

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the Andhra Pradesh IP, companies from eligible industries which construct new facilities or substantially expand existing facilities and begin commercial production on or after April 1, 2005, may receive certain subsidies from the SGAP. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1513. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGAP limits the indirect tax benefits under its Industrial Policy program to a limited number of industries operating mega projects and therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for this program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

9. Provision of Goods/Services for Less Than Adequate Remuneration Under the Industrial Investment Promotion Policy of 2005-2010 (Andhra Pradesh IP): Provision of infrastructure for industries located more than 10 kilometers from existing industrial estates or industrial development areas

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the Andhra Pradesh IP, companies from eligible industries which construct new facilities or substantially expand existing facilities and begin commercial production on or after April 1, 2005, may receive certain subsidies from the SGAP. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See Preliminary Results, 75 FR at 1513. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a provision of a good, and a benefit within the meaning of sections 771(5)(D)(iii) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGAP limits the provision of infrastructure under this program to a limited number of industries operating mega projects, and therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 18.08 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of

this proceeding. See Final Results of Fourth HRS Review Decision Memorandum at “Captive Mining of Iron Ore” section. The assigned rate is unchanged in these final results.

10. Provision of Goods/Services for Less Than Adequate Remuneration Under the Industrial Investment Promotion Policy of 2005-2010 (Andhra Pradesh IP): Guaranteed stable prices of municipal water for 3 years for industrial use and reservation of 10% of water for industrial use for existing and future projects

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the Andhra Pradesh IP, companies from eligible industries which construct new facilities or substantially expand existing facilities and begin commercial production on or after April 1, 2005, may receive certain subsidies from the SGAP. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1513-1514. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a provision of a good, and a benefit within the meaning of sections 771(5)(D)(iii) and 771(5)(E) of the Act, respectively. See 75 FR at 1514. We also found, based on AFA, that the SGAP limits the provision of municipal water at guaranteed stable prices under its Industrial Policy program to a limited number of industries operating mega projects and therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 18.08 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Fourth HRS Review Decision Memorandum at “Captive Mining of Iron Ore” section. The assigned rate is unchanged in these final results.

E. Programs Administered by the State Government of Chhattisgarh (SGOC)

For the following programs neither the SGOC nor Tata provided questionnaire responses.

1. Grant Under the Industrial Policy 2004-2009 (Chhattisgarh Industrial Policy): A direct subsidy of 35 percent of total capital cost for the project, up to a maximum amount equivalent to the amount of commercial tax/central sales tax paid in a seven year period

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the Chhattisgarh Industrial Policy (CIP), companies from eligible industries which construct new facilities or substantially expand existing facilities in most backward scheduled tribe dominated areas and begin commercial production between November 1, 2004, and October 31, 2009, may receive certain subsidies from the SGOC. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1514. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGOC limits eligibility under its

Industrial Policy program to certain industries located in certain areas of Chhattisgarh, and therefore, is specific within the meaning of section 771(5A)(D)(i) and (iv) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

2. Grant Under the Industrial Policy 2004-2009 (Chhattisgarh Industrial Policy): A direct subsidy of 40 percent toward total interest paid for a period of 5 years (up to Rs. Lakh per year) on loans and working capital for upgrades in technology

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the CIP, companies from eligible industries which construct new facilities or substantially expand existing facilities in most backward scheduled tribe dominated areas and begin commercial production between November 1, 2004, and October 31, 2009, may receive certain subsidies from the SGOC. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1514. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGOC limits eligibility under its Industrial Policy program to certain industries located in certain areas of Chhattisgarh, and therefore, is specific within the meaning of section 771(5A)(D)(i) and (iv) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

3. Grant Under the Industrial Policy 2004-2009 (Chhattisgarh Industrial Policy): Reimbursement of 50 percent of expenses (up to Rs. 75,000) incurred for quality certification

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the CIP, companies from eligible industries which construct new facilities or substantially expand existing facilities in most backward scheduled tribe dominated areas and begin commercial production between November 1, 2004, and October 31, 2009, may receive certain subsidies from the SGOC. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1514. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGOC limits eligibility under its Industrial Policy

program to certain industries located in certain areas of Chhattisgarh, and therefore, is specific within the meaning of section 771(5A)(D)(i) and (iv) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

4. Grant Under the Industrial Policy 2004-2009 (Chhattisgarh Industrial Policy):
Reimbursement of 50 percent of expenses (up to Rs. 5 lakh) for obtaining patents

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the CIP, companies from eligible industries which construct new facilities or substantially expand existing facilities in most backward scheduled tribe dominated areas and begin commercial production between November 1, 2004, and October 31, 2009, may receive certain subsidies from the SGOC. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1515. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGOC limits eligibility under its Industrial Policy program to certain industries located in certain areas of Chhattisgarh, and therefore, is specific within the meaning of section 771(5A)(D)(i) and (iv) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

5. Tax Incentives Under the Industrial Policy 2004-2009 (Chhattisgarh Industrial Policy):
Total exemption from electricity duties for a period of 15 years from the date of
commencement of commercial production

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the CIP, companies from eligible industries which construct new facilities or substantially expand existing facilities in most backward scheduled tribe dominated areas and begin commercial production between November 1, 2004, and October 31, 2009, may receive certain subsidies from the SGOC. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1515. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGOC limits eligibility under its Industrial Policy program to

certain industries located in certain areas of Chhattisgarh, and therefore, is specific within the meaning of section 771(5A)(D)(i) and (iv) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

6. Tax Incentives Under the Industrial Policy 2004-2009 (Chhattisgarh Industrial Policy): Exemption from stamp duty on deeds executed for purchase or lease of land and buildings and deeds relating to loans and advances to be taken by the company for a period of three years from the date of registration

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the CIP, companies from eligible industries which construct new facilities or substantially expand existing facilities in most backward scheduled tribe dominated areas and begin commercial production between November 1, 2004, and October 31, 2009, may receive certain subsidies from the SGOC. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1515. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGOC limits eligibility under its Industrial Policy program to certain industries located in certain areas of Chhattisgarh, and therefore, is specific within the meaning of section 771(5A)(D)(i) and (iv) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

7. Tax Incentives Under the Industrial Policy 2004-2009 (Chhattisgarh Industrial Policy): Exemption from payment of entry tax for 7 years (excluding minerals obtained from mining in the state)

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the CIP, companies from eligible industries which construct new facilities or substantially expand existing facilities in most backward scheduled tribe dominated areas and begin commercial production between November 1, 2004, and October 31, 2009, may receive certain subsidies from the SGOC. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1515. Furthermore, based on AFA, we determined that

this program constitutes a financial contribution in the form of a revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGOC limits eligibility under its Industrial Policy program to certain industries located in certain areas of Chhattisgarh, and therefore, is specific within the meaning of section 771(5A)(D)(i) and (iv) of the Act. See 75 FR at 1515-1516.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program we are assigning a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

8. Tax Incentives Under the Industrial Policy 2004-2009 (Chhattisgarh Industrial Policy): A 50 percent reduction of the service charges for acquisition of private land by Chhattisgarh Industrial Development Corporation for use by the company

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the CIP, companies from eligible industries which construct new facilities or substantially expand existing facilities in most backward scheduled tribe dominated areas and begin commercial production between November 1, 2004, and October 31, 2009, may receive certain subsidies from the SGOC. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1516. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGOC limits eligibility under its Industrial Policy program to certain industries located in certain areas of Chhattisgarh, and therefore, is specific within the meaning of section 771(5A)(D)(i) and (iv) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

9. Land for Less Than Adequate Remuneration (LTAR) Under the Industrial Policy 2004-2009 (Chhattisgarh Industrial Policy)

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the CIP, companies from eligible industries which construct new facilities or substantially expand existing facilities in most backward scheduled tribe dominated areas and begin commercial production between November 1, 2004, and October 31, 2009, may receive certain subsidies from the SGOC. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this

program during the POR. See 75 FR at 1516. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a provision of a good, and a benefit within the meaning of sections 771(5)(D)(iii) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the SGOC limits eligibility under its Industrial Policy program to certain industries located in certain areas of Chhattisgarh, and therefore, is specific within the meaning of section 771(5A)(D)(i) and (iv) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 18.08 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for this program in another segment of this proceeding. See Final Results of Fourth HRS Review Decision Memorandum at “Captive Mining of Iron Ore” section. The assigned rate is unchanged in these final results.

F. Programs Administered by the SGOJ

For the following programs, the SGOJ provided questionnaire responses, but Tata provided no questionnaire response.

1. Tax Incentives Under the Jharkhand State Industrial Policy (JSIP) of 2001: Exemption of Electricity Duty

Under clause 15.2.2 of the Jharkhand State Industrial Policy (JSIP) of 2001, the SGOJ encourages the private sector in setting up of Captive Power Generation Plants. This program allows large industrial unit, consortium of industrial enterprises in growth centers, or industrial areas to set up power generating units as well as take over distribution of power in such industrial complexes. This captive power generation and purchase is exempted from electricity duty for a period of ten years from the date of commercial production. See 75 FR at 1516.

In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. Id. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the program is limited to certain industries and, therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id. In the Preliminary Results, pursuant to the AFA methodology described above, for this program we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

2. Tax Incentives Under the Jharkhand State Industrial Policy (JSIP) of 2001: Offset of Jharkhand Sales Tax (JST)

Under clause 28 of the JSIP of 2001, new industrial units, as well as existing units which are not using any facility of tax-deferment, tax-free purchases or tax-free sales under any earlier notification, are allowed to opt for an offset of Jharkhand Sales Tax (JST) paid on the purchases of raw materials, within the State of Jharkhand only against transfer or consignment sale outside

the state, of finished products made out from such raw materials subject to a limitation of six months or the same financial year from the date of purchase of such raw materials. See 75 FR at 1516.

In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. Id. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. See 75 FR at 1516-1517. We also found, based on AFA, that the program is limited to certain industries and, therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. See 75 FR at 1517.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

3. Grants Under the Jharkhand State Industrial Policy (JSIP) of 2001: Capital Investment Incentive

Under clause 29.3 of the JSIP of 2001, a capital investment incentive may be provided only to small and medium scale industries. According to Annexure 1, Entry No. 19 and 11 of the JSIP states that small and medium industries would be defined by the GOI. Pursuant to the terms of S.O. 1642(E) dated September 29, 2006, issued by the GOI, a small industry is one where the investment in plant and machinery is more than Rs. 2.5 million but does not exceed Rs. 50 million; a medium industry is one where the investment in plant and machinery is more than Rs. 50 million but does not exceed Rs. 100 million. See 75 FR at 1517.

In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. Id. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the program is limited to certain industries and, therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

4. Grants Under the Jharkhand State Industrial Policy (JSIP) of 2001: Capital Power Generating Subsidy

Under clause 29.4 of the JSIP of 2001, a capital power generating subsidy may be provided to new industries. According to Annexure 1, Entry No. 4 of the JSIP, a new industrial unit is a unit that has come into commercial production after November 15, 2000. See 75 FR at 1517.

In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. Id. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the program is limited to certain industries and, therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

5. Grants Under the Jharkhand State Industrial Policy (JSIP) of 2001: Interest Subsidy

Under clause 29.5 of the JSIP of 2001, an interest subsidy may be provided to new industries. According to Annexure 1, Entry No. 4 of the JSIP, a new industrial unit is a unit that has come into commercial production after November 15, 2000. See 75 FR at 1517.

In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. Id. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the program is limited to certain industries and, therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

6. Tax Incentives Under the Jharkhand State Industrial Policy (JSIP) of 2001: Stamp Duty and Registration

Under clause 29.6 of the JSIP program of 2001, exemption from payment of 50 percent of stamp duty and registration fees upon registration of documents within the State of Jharkhand relating to the purchase or acquisition of land and buildings are provided for setting up a new unit. See 75 FR at 1517.

In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. Id. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the program is limited to certain industries and, therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State

Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

7. Grants Under the Jharkhand State Industrial Policy (JSIP) of 2001: Feasibility Study and Project Report Cost Reimbursement

Under clause 29.8 of the JSIP of 2001, 50 percent of the feasibility study and project report cost incurred by industrial units will be reimbursed subject to a maximum of Rs. 50,000 provided the report is prepared by a recognized consultant drawn from duly approved panel by the Industries Department. This reimbursement will be admissible after the commencement of commercial production. See 75 FR at 1517.

In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1517-1518. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. See 75 FR at 1518. We also found, based on AFA, that the program is limited to certain industries and, therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

8. Grants Under the Jharkhand State Industrial Policy (JSIP) of 2001: Pollution Control Equipment Subsidy

Under clause 29.9 of the JSIP of 2001, new and existing industrial units are entitled to a subsidy of 20 percent of the cost of pollution control and monitoring equipment subject to a maximum of Rs. 2 million upon installation of pollution control and monitoring equipment allowed on the certificate of the State Pollution Control Board about the necessity for such installation. See 75 FR at 1518.

In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. Id. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the program is limited to certain industries and, therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results. The GOI commented on our calculations regarding this programs as explained in Comment 8.

9. Grants Under the Jharkhand State Industrial Policy (JSIP) of 2001: Incentive for Quality Certification

Under clause 29.10 of the JSIP of 2001, small scale/ancillary industries would be encouraged to seek ISI/ISO certification. In accordance with 29.10, the state government shall facilitate for reimbursement of charges for acquiring ISO-900 (or its equivalent) certification to the extent of 75 percent of the cost subject to a maximum of Rs. 75,000 million from the central government. See 75 FR at 1518.

In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. Id. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, that the program is limited to certain industries and, therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

10. Infrastructure Subsidies to Mega Projects: Tax Incentives

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the JSIP of 2001, the firms investing in what the SGOJ deems are Mega Projects are eligible to receive infrastructure subsidies. See Preliminary Results of Fourth HRS Review, 73 FR at 1598 (unchanged in Final Results of Fourth HRS Review and Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined Not To Be Used” section). The Department further investigated whether the SGOJ has a policy to provide qualifying companies additional subsidies when making capital investment totaling more than Rs. 50 crore as a Mega Project. See September 27, 2007 Tata New Subsidies Memorandum at “Subsidies for Mega Projects under the JSIP of 2001” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1518. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, the SGOJ limits eligibility under this program to firms involved in “Mega Projects” on a case-by-case basis through direct negotiations with prospective investors and therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

11. Infrastructure Subsidies to Mega Projects: Grants

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the JSIP of 2001, the firms investing in what the SGOJ deems are Mega Projects are eligible to receive infrastructure subsidies. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined to be Not Used” section. The Department further investigated whether the SGOJ has a policy to provide qualifying companies additional subsidies when making capital investment totaling more than Rs. 50 crore as a Mega Project. See Tata’s New Subsidies Memorandum at “Subsidies for Mega Projects under the JSIP of 2001” section. Id. In the Preliminary Results, as explained above, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1518. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, the SGOJ limits eligibility under this program to firms involved in “Mega Projects” on a case-by-case basis through direct negotiations with prospective investors and therefore, is specific within the meaning of section 771(5A)(D)(i) of the Act. See 75 FR at 1518-1519.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

12. Infrastructure Subsidies to Mega Projects: Loans

In the Final Results of Fourth HRS Review, the Department initiated an investigation into whether under the JSIP of 2001, the firms investing in what the SGOJ deems are Mega Projects are eligible to receive infrastructure subsidies. See Final Results of Fourth HRS Review Decision Memorandum at “Programs Determined to be Not Used” section. The Department further investigated whether the SGOJ has a policy to provide qualifying companies additional subsidies when making capital investment totaling more than Rs. 50 crore as a Mega Project. See Tata’s New Subsidies Memorandum at “Subsidies for Mega Projects under the JSIP of 2001” section. In the Preliminary Results, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1519. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, the SGOJ limits eligibility under this program to firms involved in “Mega Projects” on a case-by-case basis through direct negotiations with prospective investors and therefore, is specific within

the meaning of section 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 1.32 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Pre- and Post-Shipment Export Financing” section. The assigned rate is unchanged in these final results.

13. Employment Incentives Under the Jharkhand State Industrial Policy (JSIP) of 2001

Under clause 29.7 of the JSIP of 2001, the employment generation based incentives provided are available to a limited number of industries. See 75 FR at 1519. Specifically, the SGOJ pays, for each worker in qualifying industries, 50 percent of the premium paid by the employer under the Contributory Group Insurance Scheme (CGIS). As explained above, as AFA pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. Id. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also found, based on AFA, the SGOJ limits eligibility under this program to firms in certain industries and therefore, is specific within the meaning of 771(5A)(D)(i) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

F. State Government of Karnataka (SGOK)

For the following programs, neither the SGOK nor Tata provided any questionnaire responses.

1. SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1993 (1993 KIP): Tax Incentives

In the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the assistance provided under the New Industrial Policy and Package of Incentives and Concessions for the period 1993-1998 (1993 KIP), were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth HRC Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1993 (1993 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1519. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

2. 1993 KIP: Land at Less Than Adequate Remuneration

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the 1993 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1993 (1993 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1519. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of provision of a good, and a benefit within the meaning of sections 771(5)(D)(iii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program we assigned a net subsidy rate of 18.08 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Fourth HRS Review Decision Memorandum at “Captive Mining of Iron Ore” section. The assigned rate is unchanged in these final results.

3. 1993 KIP: Iron Ore, Limestone, and Dolomite at Less Than Adequate Remuneration

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the 1993 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1993 (1993 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1520. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(iii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program we assigned a net subsidy rate of 18.08 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Fourth HRS Review Decision Memorandum at “Captive Mining of Iron Ore” section. The assigned rate is unchanged in these final results.

4. 1993 KIP: Power/Electricity at Less Than Adequate Remuneration

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the 1993 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1993 (1993 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1520. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a provision of a good, and a benefit within the meaning of sections 771(5)(D)(iii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 18.08 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Fourth HRS Review Decision Memorandum at “Captive Mining of Iron Ore” section. The assigned rate is unchanged in these final results.

5. 1993 KIP: Water at Less Than Adequate Remuneration

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the 1993 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1993 (1993 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1520. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a provision of a good, and a benefit within the meaning of sections 771(5)(D)(iii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 18.08 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Fourth HRS Review Decision Memorandum at “Captive Mining of Iron Ore” section. The assigned rate is unchanged in these final results.

6. 1993 KIP: Roads and other infrastructure at Less Than Adequate Remuneration

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b)

of the Act, that all newly alleged subsidy programs, including the 1993 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1993 (1993 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1520. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a provision of a good, and a benefit within the meaning of sections 771(5)(D)(iii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 18.08 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Fourth HRS Review Decision Memorandum at “Captive Mining of Iron Ore” section. The assigned rate is unchanged in these final results.

7. 1993 KIP: Port Facilities at Less Than Adequate Remuneration

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the 1993 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1993 (1993 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1520. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a provision of a good, and a benefit within the meaning of sections 771(5)(D)(iii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 18.08 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Fourth HRS Review Decision Memorandum at “Captive Mining of Iron Ore” section. The assigned rate is unchanged in these final results.

8. 1993 KIP: Grants

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the 1993 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1993 (1993 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1521.

Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, as AFA we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

9. 1993 KIP: Loans

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the 1993 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1993 (1993 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1521. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program we assigned a net subsidy rate of 1.32 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

10. 1993 KIP: Tax Incentives

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the 1993 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1993 (1993 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1521. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

11. SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1996 (1996 KIP): Tax Incentives

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1996 (1996 KIP), were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1996 (1996 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1521. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program as AFA we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results.

12. 1996 KIP: Loans

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the 1996 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1996 (1996 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1521. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 1.32 percent ad valorem, which corresponds to the

highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Pre- and Post-Shipment Export Financing” section. The assigned rate is unchanged in these final results.

13. 1996 KIP: Grants

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the 1996 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1996 (1996 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1522. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

14. 1996 KIP: Provision of Goods and Services at Less Than Adequate Remuneration (LTAR)

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the 1996 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 1996 (1996 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1522. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a provision of a good or service, and a benefit within the meaning of sections 771(5)(D)(iii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program we are assigning a net subsidy rate of 18.08 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in any segment of this proceeding. See Final Results of Fourth HRS Review Decision Memorandum at “Captive Mining of Iron Ore” section. The assigned rate is unchanged in these final results.

15. SGOK's New Industrial Policy and Package of Incentives and Concessions of 2001 (2001 KIP): Tax Incentives

As noted above in the "1993 KIP: Tax Incentives" section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act that all newly alleged subsidy programs, including the SGOK's New Industrial Policy and Package of Incentives and Concessions of 2001 (2001 KIP), were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at "SGOK's New Industrial Policy and Package of Incentives and Concessions of 2001 (2001 KIP)" section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1522. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at "State Government of Gujarat (SGOG) Tax Incentives" section. The assigned rate is unchanged in these final results

16. 2001 KIP: Loans

As noted above in the "1993 KIP: Tax Incentives" section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the 2001 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at "SGOK's New Industrial Policy and Package of Incentives and Concessions of 2001 (2001 KIP)" section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1522. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program we assigned a net subsidy rate of 1.32 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at "Pre- and Post-Shipment Export Financing" section. The assigned rate is unchanged in these final results.

17. 2001 KIP: Grants

As noted above in the "1993 KIP: Tax Incentives" section, in the Final Results of Fourth

HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the 2001 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 2001 (2001 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1522. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

18. 2001 KIP: Provision of Goods and Services at Less Than Adequate Remuneration (LTAR)

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act, that all newly alleged subsidy programs, including the 2001 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 2001 (2001 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1523. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a provision of a good or service, and a benefit within the meaning of sections 771(5)(D)(iii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 18.08 percent ad valorem which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Fourth HRS Review Decision Memorandum at “Captive Mining of Iron Ore” section. The assigned rate is unchanged in these final results.

19. SGOK's New Industrial Policy and Package of Incentives and Concession of 2006 (2006 KIP): Loans

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act that all newly alleged subsidy programs, including the SGOK’s New Industrial Policy and Package of Incentives and Concessions of 2006 (2006 KIP), were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act.

See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 2006 (2006 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1523. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 1.32 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Pre- and Post-Shipment Export Financing” section. The assigned rate is unchanged in these final results.

20. 2006 KIP: Tax Incentives

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act that all newly alleged subsidy programs, including the 2006 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 2006 (2006 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1523. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of revenue forgone, and a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 3.09 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Second HRS Review Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives” section. The assigned rate is unchanged in these final results

21. 2006 KIP: Provision of Goods and Services for Less Than Adequate Remuneration (LTAR)

As noted above in the “1993 KIP: Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act that all newly alleged subsidy programs, including the 2006 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 2006 (2006 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1523.

Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a provision of a good or service, and a benefit within the meaning of sections 771(5)(D)(iii) and 771(5)(E) of the Act, respectively. Id. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. Id.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 18.08 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See Final Results of Fourth HRS Review Decision Memorandum at “Captive Mining of Iron Ore” section. The assigned rate is unchanged in these final results.

22. 2006 KIP: Grants

As noted above in the “1993 KIP” Tax Incentives” section, in the Final Results of Fourth HRS Review, the Department determined, based on AFA, and in accordance with section 776(b) of the Act that all newly alleged subsidy programs, including the 2006 KIP, were used and constitute a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act. See Final Results of Fourth Review Decision Memorandum at “SGOK’s New Industrial Policy and Package of Incentives and Concessions of 2006 (2006 KIP)” section.

In the Preliminary Results, based on AFA, and pursuant to section 776(b) of the Act, we found that Tata used and benefitted from this program during the POR. See 75 FR at 1523. Furthermore, based on AFA, we determined that this program constitutes a financial contribution in the form of a direct transfer of funds, and a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. See 75 FR at 1523-1524. We also determined, as AFA, that this program is specific pursuant to section 771(5A) of the Act. See 75 FR at 1524.

In the Preliminary Results, pursuant to the AFA methodology described above, for this program, we assigned a net subsidy rate of 6.06 percent ad valorem, which corresponds to the highest above de minimis subsidy rate calculated for a similar program in another segment of this proceeding. See HRS Investigation Decision Memorandum at “Forgiveness of SDF Loans to SAIL” section. The assigned rate is unchanged in these final results.

Programs Determined to be Terminated

1. 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 advanced 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).

In the instant review, the GOI reported in its April QR that pursuant to the Finance Act of 2000, the GOI has abolished the Interest Tax. See April QR at 68. The GOI provided a copy of circular DBOD.No.BP.BC.187/21/02/007/2000 dated June 29, 2000, which gives notice to

commercial banks that the interest tax has been discontinued regarding chargeable interest accruing after March 31, 2000. See 75 FR at 1524. In the Carbazole Violet Pigment from India, the Department found that this program has been terminated in accordance with section 351.526(d). See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Carbazole Violet Pigment 23 from India, 69 FR 22763, 22768 (April 27, 2004) and Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 from India, 69 FR 67321 (November 17, 2004) (Carbazole Violet Pigment from India), and accompanying Issues and Decision Memorandum (Carbazole Violet Pigment from India Decision Memorandum) at “Program Determined To Be Terminated” section. Because we have already found that this program has been terminated effective March 31, 2000, there were no benefits during the POR.

2. Income Tax Exemption Scheme under Section (80 HHC)

Under section 80HHC of the Income Tax Act, the GOI allows exporters to deduct profits derived from the export of merchandise from taxable income. See, e.g., Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review, 65 FR 31515 (May 18, 2000) (1997 Review of Castings from India), and the accompanying Issues and Decision Memorandum (1997 Review of Castings from India Decision Memorandum) at “Income Tax Deductions Under Section 80 HHC” section. In prior CVD proceedings, the Department has found this program to be an export subsidy within the meaning of section 771(5A)(B) of the Act, and thus countervailable. Id. This program provides a financial contribution in the form of revenue foregone and confers a benefit in the form of tax savings to the company within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively.

In the 2004 Review of PET Film from India, the Department found that this program had been terminated effective March 31, 1994, and that the exemption could not be claimed on any tax return filed after March 1, 2005. See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 72 FR 6530 (February 12, 2007) (2004 Review of PET Film from India), and accompanying Issues and Decision memorandum (2004 Review of PET Film from India Decision Memorandum) at “Income Tax Exemption Scheme 80 HHC (80HHC)” section. Because we have already found that this program has been terminated effective March 31, 1994, there were no benefits during the POR.

In the Preliminary Results, we inadvertently included this program in our subsidy rate calculation. However, in these final results, we are not including this program in Tata’s subsidy rate, because this program had been terminated and there were no benefits during the POR.

III. Analysis of Comments

Comment 1: Whether the State SGOJ Cooperated to the Best of Its Ability and Should Not Be Subject to the AFA Rate that the Department Preliminarily Applied to the SGOJ Programs

The GOI argues that the Department has found in more than one occasion during the proceeding that Tata or any other respondent did not avail themselves of the subsidy programs administered by the SGOJ. The GOI argues that until the Department’s decision to apply AFA to Tata in the Preliminary Results, the Department had never found that the subsidy programs

administered by the SGOJ were even used. Moreover, the GOI asserts, the SGOJ, as in the prior findings of the proceeding, provided a statement in the instant review that Tata did not avail itself of any benefits under the JSIP of 2001 during the POR. See GOI's February 10, 2010, submission at 1.

The GOI further asserts that despite past determinations and the SGOJ's statement that no benefits under its programs were conferred upon Tata, the Department found that the GOI and the SGOJ did not cooperate to the best of their ability in replying to the Department's questions concerning the SGOJ programs. Id. The GOI argues that because benefits were not conferred upon Tata under the JSIP 2001 during the POR, there is no documentation to provide to the Department to demonstrate the same. Id. at 1-2. The GOI further argues that the only documentation that it could provide was the statement from the Department of Industries. Id. at 2. The GOI argues that the Department's claim that the SGOJ was not acting to the best of its ability in providing this statement is requesting that the SGOJ compile documentation that it did not have in order to prove the negative. Id. The GOI argues that this request is unreasonable. Id.

The GOI argues that the non-cooperative behavior that resulted in the application of AFA to the SGOJ programs cannot provide the Department with the discretion to contradict its findings in the two most recent final results of this proceeding that these programs were not used. Id. Moreover, the GOI argues, this purported non-cooperative behavior does not give the Department the discretion to disregard the fact that no documentation existed that would enable the SGOJ to prove the negative. Id. The GOI argues that the GOI and SGOJ should be treated as having cooperated with the Department in this administrative review. Id.

In rebuttal, United States Steel Corporation (U.S. Steel) argues that the GOI provided certain limited responses to the Department's questionnaire. See U.S. Steel's Rebuttal brief at 2, February 19, 2010. According to U.S. Steel, none of those responses provided the information and documentation needed to determine whether or not Tata used and benefitted from the countervailable subsidies at issue during the POR. Id. Moreover, U.S. Steel argues that despite multiple extensions of time and repeated requests by the Department, the GOI and the Indian State Governments again failed to provide the necessary responses. Id.

According to U.S. Steel, in the Preliminary Results, the Department found that Tata, the GOI, and the Indian State Governments had each failed to respond to the best of their abilities to the Department's repeated requests for information, warranting the application of AFA pursuant to sections 776(a) and 776(b) of the Act. Id. at 3. U.S. Steel argues that the Department applied AFA with respect to each of the subsidy programs under review based on its practice in prior countervailing duty proceedings involving India. Id.

U.S. Steel argues that in countervailing duty investigations and administrative reviews, the Department requires information from both the government of the country whose merchandise is under investigation and the company respondents. Id. at 3-4. According to U.S. Steel, when the foreign government fails to provide the requested information, the Department will normally find that a financial contribution exists under section 771(5)(D) of the Act and that the alleged program is specific within the meaning of section 771(5A) of the Act. Id. at 4. U.S. Steel argues that with respect to whether a company respondent used a subsidy and therefore received a benefit within the meaning of section 771(5)(E) of the Act, the Department will normally rely on the respondent company's records to determine the existence and amount of the benefit. Id.

According to U.S. Steel, in the instant review, Tata failed to respond to the questionnaire and failed to provide any information and documentation requested by the Department concerning its use of and benefit from any subsidies. Id. Moreover, U.S. Steel argues, that the GOI and Indian State Governments failed to provide this information and documentation despite multiple requests by the Department. Id. Therefore, U.S. Steel argues that the Department has no way of knowing which, if any, of the subsidies at issue conferred a countervailable benefit during the POR. Id. According to U.S. Steel, given the complete failure of the respondents to provide the information and documentation that the Department needed to determine whether or not Tata received countervailable subsidies during the POR, the Department properly determined Tata's adverse facts available rate in accordance with the statute and its prior practice. Id. In conclusion, U.S. Steel asserts that the GOI's argument that the respondents cooperated to the best of their ability and should not be subject to an AFA rate is without merit and should be rejected. Id. U.S. Steel maintains that the Department should continue to apply AFA as in the Preliminary Results. Id.

Department's Position: With respect to the Department's determination that the GOI and the SGOJ did not act to the best of their ability resulting in the use of AFA, we note that although the SGOJ provided partial information concerning the SGOJ programs in question, they did not submit complete answers concerning these programs or provide documentation in support of their claim that Tata had not received any benefits from SGOJ programs during the POR. See Preliminary Results, 75 at 1497.

As U.S. Steel points out, in countervailing duty investigations and administrative reviews, government information as well as company information is required. In the instant review, the SGOJ did not provide complete information concerning the state government programs that it administers because it claimed that Tata had not availed itself of any benefits under these programs. See Preliminary Results, 75 at 1497 and April QR at 91, 92, and 95. Therefore, the GOI and the SGOJ have not fully explained the many aspects of how the programs in question operate (e.g., administration, application procedures, and provision of assistance) in the instant review. As a result, the GOI and the SGOJ have not provided information that the Department requires to make a determination concerning whether the programs in question provided a financial contribution under the meaning of section 771 (5)(D) of the Act and whether the program is specific within the meaning of section 771(5A) of the Act. Moreover, although the Department requested information from the GOI and SGOJ to substantiate their claims that Tata did not receive any benefits under the SGOJ programs in question, no further information or documentation was provided. See Preliminary Results, 75 at 1497. Therefore, we continue to find that the GOI and the SGOJ did not cooperate to the best of their ability, because they failed to provide complete information on the SGOJ programs and fully answer the questions, including appendices, that would have provided the Department with the necessary information to make a determination concerning whether these programs provided a financial contribution and were specific. With respect to the Department's determination that the GOI as well as the SGOJ did not cooperate by not submitting the requested information, this finding is in accordance with the Department's practice that we do not distinguish between the central government and the state governments with respect to government participation in countervailing duty proceedings. See Final Results of Fourth HRC Review Decision Memorandum at "Adverse Facts Available" section.

Furthermore, as U.S. Steel correctly points out, with respect to whether a company used a

subsidy and received a benefit, the Department relies on the company's records. As noted above, Tata did not participate in the 2008 administrative review. Therefore, the company has not provided any information in the instant review, including whether or not it applied for or received benefits under the SGOJ programs. Therefore, the Department is unable to confirm, as the SGOJ suggests in the April QR, by "the response filed by Tata", whether or not the company received any benefits. See April QR at 95. Furthermore, we find unpersuasive the argument that the Department should accept SGOJ's unsubstantiated claims of Tata's non-use of subsidy programs. In the prior review of the HRS proceeding in which the Department found that Tata did not use the SGOJ programs in question, Tata fully participated and was verified. See Final Results of Fourth HRS Review, 73 FR at 40296. Therefore, the Department continues to find in these final results that the non-cooperative behavior by all respondents in the instant review warrants the application of AFA in these final results.

Comment 2: Whether the Programs Covered in the Review Have Provided Countervailable Benefits to Indian Exporters

The GOI argues that the information that it has provided during this segment of the proceeding explains that none of the programs covered in this review provided countervailable benefits to Indian exporters. See GOI's February 10, 2010, submission at 2. The GOI asks that the Department reexamine the record for reconsideration of its decision. Id.

As explained in comment 1 above, U.S. Steel disagrees with the GOI that the information that it provided in the instant review explains that none of the programs in question provided countervailable benefits to Indian exporters during the POR. Therefore, U.S. Steel maintains that the Department should continue to apply AFA as in the Preliminary Results.

Department's Position: As explained above in comment 1, when examining whether or not a company received benefits during a countervailing duty proceeding the Department normally also, relies on the respondent company's records. Moreover, in the instant review, not only did Tata, the respondent company, not provide any information but the GOI's April QR appears to indicate that only Tata can confirm with certainty whether or not it received subsidies under certain programs. Furthermore, as explained in the Preliminary Results, the state governments of Gujarat, Maharashtra, Andhra Pradesh, Chhattisgarh and Karnataka have not responded to any of the Department's questionnaires in the instant review. See Preliminary Results, 75 FR at 1497. Therefore, we find that the respondents have not cooperated to the best of their ability in providing the information and documentation requested by the Department in the 2008 administrative review. Accordingly, we have continued to apply AFA in these final results.

Comment 3: Whether the Department Should Have Held Consultations with the GOI Before Including Many of the Programs in Its Administrative Review

The GOI argues that in the instant review, no consultations were held by the Department with the GOI before making a decision in the Preliminary Results regarding particular programs. See GOI's February 10, 2010, submission at 2. According to the GOI, pursuant to Article 13.1 of World Trade Organization: Agreement on Subsidies and Countervailing Measures (WTO's ASCM), the Department should have provided an opportunity for consultation to the GOI before

issuing its Preliminary Results. Id. The GOI cites to Article 13.1 of WTO's ASCM which states:

13.1 As soon as possible after an application under Article 11 is accepted, and in any event before the initiation of any investigation, Members the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in paragraph 2 of article 11 and arriving at a mutually agreed solution.

Id.

According to the GOI, pursuant to the Article 13.1 of WTO's ASCM, before initiation an investigation of an alleged subsidy program, the Department is obligated to invite the GOI to hold consultations with the aim of clarifying the situation with regard to the details of the program concerned (i.e. matters referred to in article 11.2). See GOI's February 10, 2010, submission at 3. The GOI argues that, although many SGOJ and a few other State Government programs have been covered in the instant review, the Department did not offer the SGOJ and the other State Governments with the opportunity for consultations. Id. According to the GOI, this action is inconsistent with the Department's obligations pursuant to Article 13.1. Id.

In rebuttal, Nucor Corporation (Nucor) argues that the GOI's assertion that, pursuant to Article 13.1 of the WTO's ASCM, the Department should have provided the GOI with an opportunity for consultation on particular programs before the Department decided to cover these programs in the instant review is flawed. See Nucor's February 19, 2010, rebuttal brief 3-4. Nucor argues that the Department is bound by the Act, and not by the WTO or its decisions. Id. at 4. According to Nucor, the Act does not impose a consultation requirement in the context of countervailing duty administrative reviews. Id. Moreover, Nucor argues that the Act specifically permits the application of AFA. Id. Nucor further argues that even if the WTO's ASCM was relevant, it neither imposes a consultation requirement in the context of administrative reviews nor does it specifically prohibit the application of AFA in trade cases. Id. Accordingly, Nucor asserts that the Department should reject this argument and continue to apply AFA to Tata in the final results. Id. at 4-5.

U.S. Steel also disagrees with the GOI that the Department is required to consult with the GOI before including programs in the instant review. Id. at 5. Therefore, U.S. Steel also maintains that the Department should continue to apply AFA as in the Preliminary Results. Id.

Department's Position: This proceeding is governed by the U.S. countervailing duty law. To the extent that parties are raising certain provisions of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) in these proceedings, the U.S. countervailing duty law, fully implements the United States' obligations under the ASCM.

The Department disagrees with the GOI's argument that we did not afford it due process throughout this investigation. In Barnhart the CIT stated that "{p}arties must be afforded notice and an opportunity to be heard throughout the course of an administrative proceeding of this nature. The requirements of due process are not met when one party to the adversarial proceeding is precluded from participation by lack of notice." See Barnhart at 303. James A. Barnhart v. United States Treasury Department (Barnhart), 588 F. Supp 1432, 1438 (Ct. Int'l Trade 1984). Throughout the instant review, the Department has provided the GOC, as well as

Tata, ample notice and ample time to respond to information on the record. We also granted several GOI requests for extensions of time to reply to our questionnaires.

With regard to the new subsidy allegations, we note that the procedures for alleging new subsidies are set forth in our regulations. Pursuant to 19 CFR 351.301(d)(4)(i)(B), petitioners and domestic interested parties normally may allege subsidies up to 20 days after all responses to the Department's initial questionnaire have been filed. There is no requirement in the Act or regulations for consultation with the foreign government when there are new subsidy allegations in an already initiated investigation or in an administrative review; the Act explicitly provides only for consultations after the Department receives a petition. Accordingly, the Department's decision to examine the alleged subsidies in the instant review is consistent with its regulatory procedures.

That said, in CVD proceedings, the Department stands ready to meet with any interested party that wishes to share its views or concerns during the course of the investigation, and that willingness has been amply demonstrated in this proceeding. In fact, in this segment of the proceeding, the Department met with officials from the GOI. See the February 5, 2010, Memorandum to the File from Gayle Longest, Analyst, Office 3, a public document on file in room 1117 of the Central Records Unit (CRU). Thus, we find that the GOI's argument that it was denied due process even though the Department followed its regulations is incorrect.

Comment 4: Whether the Application of the AFA Standard Is Inconsistent with Article 12.7 of WTO's ASCM

The GOI argues that the Department's decision to apply AFA to Tata is a penal application of the 'best information available' provisions of the WTO's ASCM. See GOI's February 10, 2010 submission at 3. The GOI cites to 12.7 of the WTO's ASCM which states:

12.7. In cases in which any interested Member or interest party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of facts available.

Id.

The GOI further argues that there is no concept of the AFA standard in the WTO's ASCM. Id. According to the GOI, no Member shall penalize another Member or an exporter from another Member on the ground that it did not provide necessary information. Id. The GOI argues that the concept of penalizing an exporter is alien to the WTO's ASCM. Id. Therefore, the GOI argues that the Department has acted inconsistently with the provisions of WTO's ASCM. Id. Moreover, the GOI argues that any United States provisions that confer rights on the Department to apply the AFA standard are also inconsistent with its obligations under WTO's ASCM. Id.

Nucor argues that the GOI's contention that the application of the AFA standard is inconsistent with Article 12.7 of the WTO's SCM Agreement is without merit. See Nucor's February 19, 2010, rebuttal brief 3-4. As explained in comment 3 above, both Nucor and U.S. Steel disagree that the GOI's argument that AFA is inconsistent with Article 12.7 of the ASCM.

Therefore, they maintain that the Department should continue to apply the AFA found in the Preliminary Results to Tata in these final results.

Department's Position: This proceeding is governed by the U.S. countervailing duty law. To the extent that parties are raising provisions of the WTO ASCM in these proceedings, the U.S. countervailing duty law fully implements United States' obligations under the ASCM.

As explained in the Preliminary Results, the GOI, including the Indian state governments, failed to provide information regarding several programs allegedly used by Tata during the POR, although they were given several opportunities to respond to the Department's questions concerning this program. See 75 FR at 1497 - 1499. As we explained in the Preliminary Results, in countervailing duty cases, we require information from both the government of the country whose merchandise is under the order and the foreign producers and exporters. See 75 FR at 1497 - 1499. As discussed above in the "Adverse Facts Available" section, when the government fails to provide requested information concerning alleged subsidy programs, as AFA, we find that a financial contribution exists under the alleged program and that the program is specific as described under sections 771(5)(D) and 771(5A) of the Act, respectively. See e.g., Preliminary Results of CTL Plate from Korea, 71 FR at 11399 (unchanged in CTL Plate from Korea). Further, where possible, the Department will normally rely on the foreign producer's or exporter's records to determine the existence and amount of the benefit. Id.

However, in the instant review the GOI, which includes the Indian State Governments and Tata both failed to respond to the Department's questionnaire. As a result, we find that Tata benefited from each of the alleged subsidy programs, as described under section 771(5)(E) of the Act.

Comment 5: Whether the AFA Rates Arrived at for the SGOJ Programs Have No Rational Connection to Tata's Operations and Are Improper

According to the GOI, in the instant review, the Department preliminarily determined that Tata availed itself of benefits under 13 SGOJ programs, none of which have been found to have been used in any of the prior reviews or the investigation by any of the respondents including Tata. See the GOI's February 10, 2010, submission at 3-4. The GOI argues that in its application of AFA, the Department contradicts its own prior findings in which it specifically found that no benefits were conferred by the state of Jharkhand under these programs. See the GOI's February 10, 2010, submission at 4.

According to the GOI, if one were to assume that neither the GOI nor the SGOJ cooperated to the best of their ability, and that AFA should have been applied to the programs administered by the SGOJ, a closer analysis of the rates derived for these programs shows that they have no relation whatsoever to the AFA rate arrived at for Tata. Id. For example, according to the GOI, the Department used an AFA rate of 6.06 percent for the feasibility study and cost reimbursement program. Id. The GOI argues that this program is capped at 50,000 rupees (or under \$1,000 USD). Id. The GOI argues that the size of this margin is not commensurate with the size of the benefit available under this program. Id. The GOI further argues that given the size of this program could never have reached 6.06% of Tata's turnover, the Department should not have preliminarily determined to apply this rate. Id. According to the GOI, this finding is but one of the Department's absurd applications in determining AFA rates for these programs. Id.

According to the GOI, the AFA rates assigned to the JSIP grants for pollution control study equipment and incentives for quality certification are similarly not commensurate with the hypothetical benefits these programs could have conferred on Tata. Id. According to the GOI, the quality certification program was capped at 75,000 rupees (or roughly \$1640 USD) and the pollution control equipment subsidy was capped at 2 million rupees (approximately \$40-45,000 USD). Id. The GOI argues that neither of these programs could have approached 6.06 percent of Tata's turnover, however, the Department has again assigned a rate that is not based in common sense or reality. Id.

Moreover, the GOI argues that in its April QR, it clearly states that the JSIP employment incentives are only applicable to the following: (a) Khadi and village industries, (b) farm based industries; and (c) forest based industries such as shellac bamboo, etc. and is not applicable to the steel industry. See GOI's February 10, 2010, submission at 4-5. The GOI argues that although the JSIP stated that these programs were not applicable to steel, the Department applied a punitive rate of 6.06 percent. See GOI's February 10, 2010, submission at 5.

According to the GOI, the Department then applied AFA rates of 6.06 percent for both (a) Grants under the JSIP of 2001: Capital Power Generating Subsidy and (b) Grants under the JSIP of 2001: Interest Subsidy. Id. The GOI argues that in its April QR it responded that the benefits under both of these programs are limited to new industries, i.e., new industrial units that come into commercial production after November 15, 2000. Id. The GOI argues that Tata is a global fortune 500 company established several decades ago with the main business unit located in Jharkhand. Id. The GOI argues that the JSIP of 2001 clearly states that these two programs are not meant for long established companies such as Tata. Id. Therefore, the GOI argues, the application of AFA in the context of these programs is inappropriate and an abuse of the Department's discretion. Id. The GOI further argues that the Department should not apply any rate for this program to Tata. Id.

The GOI further argues that in none of the earlier investigations in which Tata had cooperated, has the Department found a 155.03 percent rate with respect to central government programs. Id. Therefore, the GOI asserts, the Department has acted over zealously in arriving at a very high AFA rate in this case. Id.

According to the GOI, under US Law, the standard for applying AFA, as laid out in DeCecco V. United States (DeCecco), does not permit the Department's blindfolded application of AFA to the subsidy programs administered by the SGOJ. Id. Therefore, the GOI argues that Commerce's discretion in selecting from among facts to serve as AFA is subject to the requirements that the AFA rate it selects be "reasonably" related to the actual margin that would have accrued if complete information were available before the Department. See GOI's February 10, 2010, submission at 5.

In rebuttal U.S. Steel argues that although Tata contested that it should be subject to the administrative review because the sales in question were not in commercial quantities or had been produced by another manufacturer, on March 27, 2009, the Department issued a preliminary finding that Tata did have sales of subject merchandise during the POR. See U.S. Steel's February 19, 2010, Rebuttal Brief at 1-2. According to U.S. Steel the Department announced its intention to continue with the administrative review of Tata and to extend the deadline for Tata to respond to the Department's countervailing duty questionnaire. Id. U.S. Steel argues that the Department also granted extensions of time for the GOI and the Indian State Governments to respond to the Questionnaire. Id. However, U.S. Steel contends, that rather than participating in the administrative review, Tata withdrew. Id.

Moreover, U.S. Steel argues that the GOI provided certain limited responses to the Questionnaire, but none of those responses provided the information and documentation necessary for the Department to determine whether Tata used and benefited from the subsidies at issue. Id. U. S. Steel argues that, as a result, the Department had none of the information and documentation needed to determine whether or not Tata received countervailable subsidies during the POR. Id. According to U.S. Steel, the Department found that Tata, the GOI, and the Indian State Governments failed to respond to the best of their abilities to the Department's repeated requests for information, warranting the application of AFA pursuant to sections 776(a) and 776(b) of the Act. Id.

Department's Position: With respect to the GOI's argument that the Department's application of AFA in the instant review contradicts prior findings that SGOJ programs were not used, each segment of the proceeding is an independent review and is based upon the record of that segment of the proceeding. The Department does not automatically rely on a previous finding to make a determination in a subsequent review, as government programs may change as well as the respondent's use of the programs, and benefits level can and often do vary significantly from one administrative review to another. Moreover, the Department did not have complete information and supporting documentation concerning the JSIP employment incentives program and the grants under the JSIP of 2001 program to make a determination that Tata was not eligible for these programs. Thus, in the instant review, none of the respondents have provided the information or documentation that the Department requested and needed to make a determination concerning whether or not Tata received countervailable benefits during the 2008 POR and in what amounts. See 75 FR at 1497-1498.

Regarding the GOI's comments that the Department's AFA methodology produced absurd rates when applied to Tata that are not "reasonably" related to the actual margin it would have incurred, we do not agree. The Department's AFA methodology used in the instant review is based on net subsidy rates for identical or similar programs that were found in segments of the HRC proceeding, as explained in the Preliminary Results. See 75 FR at 1499; see also Comment 9 below. Therefore, these AFA rates have a direct relationship to the Indian steel industry, including Tata who has been a participating respondent in prior segments of the HRC proceeding. See Final Results of Fourth HRC Review, 75 FR at 40295. These rates reflect the actual subsidy practices of the Indian central and state governments. Moreover, the Federal Circuit has found that in cases where the respondents have failed to cooperate to the best of their ability. . . Commerce need not select as the AFA rate, a rate that represents the typical dumping margin for the industry in question." KYD Inc. v. United States, 607 F.3d 760 (Fed. Cir. 2010). Furthermore, in KYD, the Federal circuit upheld the Department's practice of assigning uncooperative respondents the highest rate previously calculated by the Department. See KYD at 11 citing to De Cecco, 216 F.3d 1027, 1029, 1033-34 (Fed.Cir. 2000) (an uncooperative party may be assigned the "highest verified margin" of the cooperating companies, even though it was "highly likely that the real dumping margin for (that company) would be well under " the AFA rate). Therefore, we continue to apply our AFA methodology in these final results.

Comment 6: Whether the Application of AFA Rates to Programs Administered by the State Governments Contradicts the Department's Prior Determinations in This Proceeding

The GOI argues that in two prior segments of this proceeding in which the Department calculated a rate for Tata, the Department found that Tata did not avail itself of any state-level subsidy programs. See GOI's February 10, 2010, submission at 6. In contrast to these prior determinations, the GOI argues that the Department chose to calculate an AFA rate based on the sum total of the AFA rates for all state-level administered programs plus those administered by the GOI. Id. According to the GOI, the Department violated the standard for the application of AFA rates as laid down by Congress when drafting 19 U.S.C. section 1677d(c), and as later elaborated by the CIT in DeCecco. Id.

In rebuttal, U.S. Steel argues that in the instant review Tata failed to respond to the initial questionnaire and failed to provide any of the information and documentation requested by the Department concerning its use of and benefits from any subsidies. See U.S. Steel's February 19, 2010 Rebuttal Brief at 4. Moreover, U.S. Steel asserts that the GOI and the state governments did not provide this information and documentation despite several requests by the Department. Id. As a result, U.S. Steel argues, the Department has no way of knowing which, if any, subsidies conferred a countervailable subsidy during the POR. Id. Therefore, U.S. Steel argues, in light of the fact that all respondents failed to submit the requested information, the Department properly determined Tata's AFA rate in accordance with the statute and its prior practice. Id.

Department's Position: The Department does not agree with the GOI's argument that the findings of Tata's non-use of state government subsidy programs in the two prior segments of the proceeding should be the basis of the AFA determination with respect to Tata in the instant review. As noted above in Comment 5, the Department does not automatically rely on the results of previous segments of the proceeding. Each administrative review is independent from the previous review. Moreover, in this administrative review, unlike the two prior segments of the proceeding in which Tata was involved, Tata failed to respond to the Questionnaire or provide the essential information and documentation that we had requested. Furthermore, the GOI and the state governments did not provide the requested information and documentation on Tata's receipt of benefits and program usage in the instant review despite several requests from the Department. Therefore, because none of the respondents fully cooperated and acted to the best of their ability in the instant review, the Department was precluded from obtaining the necessary information to determine Tata's actual net subsidy rate for the 2008 administrative review. Accordingly, pursuant to section 776(a) and (b) of the Act, we applied AFA. Furthermore, we agree with U.S. Steel that we have properly determined Tata's AFA rate in accordance with the statute and our prior practice. As explained in Comment 9 below, the Department's approach in the instant review follows prior reviews of the proceeding as well as other recent CVD investigations. See 75 FR 1499; see also e.g., Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 20923 (May 6, 2009) (Final Results of Fifth HRS Review), and accompanying Issues and Decision Memorandum (Final Results of HRS Decision Memorandum) at "SGOC Industrial Policy 2004-2009" section; see also Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 4936 (January 28, 2009), and accompanying Issues and Decision memorandum at "Application of Facts Available and Use of Adverse Inferences" section. Therefore, we continue to apply AFA in these final results using the Department's

established methodology as described in the Preliminary Results. See Preliminary Results at 1499.

Comment 7: Whether the Department's Calculation Methodology Is Incorrect As It Improperly Summed the Total of the GOI and State-Government AFA Rates Without Properly Accounting for the Percentage of Tata's Total Turnover that the State Programs Could Have Applied To

The GOI argues that even if Tata could have availed itself of benefits under the programs administered by all of the states referenced above, it is not correct for the Department to simply add up all of the state-specific AFA rates for purposes of calculating Tata's AFA rate which is based on Tata's total turnover. See GOI's February 10, 2010, submission at 6. The GOI argues that the error in this approach can be clearly understood when one realizes that one state (e.g., Gujarat) is not going to subsidize the production/sales in another state (e.g., Jharkhand). Id. The GOI argues that simply adding up the subsidy rates calculated for each state demonstrates a complete mindless application of AFA rates by the Department and an abuse of the Department's discretion in applying AFA. See GOI's February 10, 2010, submission at 7.

The GOI argues that when a company has operations in many states, and it receives benefits from those states, every state would provide the benefit commensurate with the turnover in that state. Id. According to the GOI, the state would not provide a benefit commensurate with the aggregate turnover of the company in several states. Id. The GOI argues that if the AFA rate for one state is 10 percent and another state gives 20 percent, the rate for both the states put together could only be 15 percent and not 30 percent. Id. The GOI further argues that even the average rate of 15 percent may be higher if the turnover attributable to the state having 20 percent is lower than the turnover attributable to the state having 10 percent. Id. Therefore, the GOI argues that the Department erred in simply adding the AFA rates of all the states. Id. According to the GOI, the Department should have arrived at an average rate for all states. Id. The GOI argues that this approach would more closely account for state-specific programs that only benefitted the operations that took place in the particular state or states, and would avoid the unfair and improper result of assigning these state-specific rates to Tata's total turnover. Id. According to the GOI, this approach would lead to an average rate of 71.9 percent for all the state programs in this review which is also an unreasonably high rate by any standard. Id.

U.S. Steel argues that the respondents failed to provide the Department with the documentation and information necessary to determine whether or not Tata received countervailable benefits during the POR. See U.S. Steel's February 19, 2010, Rebuttal Brief at 4 and Comment 6 above. Therefore, U.S. Steel maintains that the Department has determined an AFA rate that is in accordance with the statute and its past practice. Id.

Department's Position: We agree with U.S. Steel that the respondents in the instant review failed to provide the Department with the documentation and information necessary to determine whether or not Tata received countervailable benefits during the POR. As explained in Comment 6 above, we agree with U.S. Steel that we have determined an AFA rate that is in accordance with the statute and our past practice. In addition, we disagree with the GOI that the Department erred in adding the AFA rates of all Indian states in which subsidy programs were alleged. The GOI's arguments appear to be premised on the idea that the Department necessarily

only attributes the benefits of programs received by operations in one state to the sales within that state. This is simply not the Department's normal practice, however. If, for example, a respondent had two factories producing subject merchandise and one factory was located in one state and the other in a different state. Under the Department's attribution rules, the Department would normally find that a subsidy from one of the state governments benefits and is attributable to the sales of both producers. See 19 CFR 351.525(b)(6)(ii). We further disagree with the GOI that the Department should have instead arrived at an average rate to apply to the subsidy programs administered by the Indian State Governments. Even if this were not a case in which we were applying total AFA for the failure of the respondent company to participate, the Department would not calculate separate rates for individual programs and then average such rates to arrive at a total subsidy rate. The GOI argument fails to recognize the Department's subsidy attribution rules, as spelled out in 19 CFR 351.525. In accordance with its standard practice, the Department calculates program-specific rates by attributing a domestic subsidy to all products sold by a firm. The Department would not, as the GOI appears to assume, calculate the subsidy from a state-provided program by allocating the benefit only to the production conducted within the state unless such production was the total production of the company. Further, as explained below in Comment 9, when faced with a situation requiring total AFA, the Department determines the net subsidy rate on a program-by-program basis and then calculates the total net subsidy rate by summing each of the program rates. See, e.g., Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 32902 (June 10, 2010) (Wire Decking from the PRC), and accompanying Issues and Decision Memorandum (Wire Decking from the PRC Decision Memorandum) at "Application of Adverse Inferences: Non-Cooperative Companies." Therefore, we have not changed our application of AFA in these final results.

Comment 8: Whether the Department Made a Clerical Error in the Calculation of the AFA Rate for SGOJ Programs

The GOI argues that the Preliminary Results lists 13 programs for SGOJ programs, in contrast to the Department's calculation spreadsheet sent to the GOI which includes 14 SGOJ programs. See GOI's February 10, 2010 submission at 7.

According to the GOI, the Department appears to have inadvertently double counted the "SGOJ SIP Pollution Control Equipment Subsidy" as contained in the calculation spreadsheet which accompanies its preliminary determination. Id. Therefore, the GOI argues that the Department should downwardly adjust the Total margin rate for the SGOJ to 62.16 percent. Id.

Department's Position: The Department has reexamined our preliminary results calculations. We discovered that the "SGOJ SIP Pollution Control Equipment Subsidy," as noted by the GOI, was inadvertently included in the preliminary results calculations twice. Accordingly, in these final results, we have adjusted our calculations to correct this error of double counting the net subsidy for this program.

Comment 9: Whether the Department's Discretion in Selecting AFA Margins Is Limited by the Requirement that Margins Be Reasonable, Reasonably Accurate Estimates of Actual Margins, and Rationally Related to Practices in the Industry

Tata argues that, although the Department has significant discretion under 19 U.S.C. section 1677e(b) when selecting among sources for adverse information, its discretion is not unlimited, and the courts have made clear that the Department's discretion is subject to settled principles that are intended to ensure that the overall margin must be 'reasonable.' See Tata's February 12, 2010, submission at 5. Tata points to several Federal Circuit decisions and argues that Congress did not give the Department unlimited discretion when it enacted section 1677e(b). Id. Tata argues that while the Department may use AFA "to provide an incentive to cooperate" it may not "overreach reality" or "impose punitive, aberrational, or uncorroborated margins." See Tata's February 12, 2010, submission at 6. Tata further argues that an AFA margin is intended 'to be a reasonably accurate estimate of the respondent's actual rate, with some built-in increase intended as a deterrent to non-compliance. Id. Tata argues that the Federal Circuit has repeatedly found that, "in selecting a reasonable adverse facts-available rate, Commerce must balance the statutory objectives of finding an accurate . . . margin and inducing compliance, rather than creating an overly punitive result". Id. Tata further argues that the Department may not jettison the objective of finding an accurate margin to "select a rate based solely on Commerce's interest in inducing foreign exporters to cooperate with Commerce's investigations. Rather, the rate must have some relationship to commercial practices in the particular industry." Id.

In addition, according to Tata, the CIT requires the Department to evaluate the overall AFA margin for reasonability, independent of the section 1677e(d) requirement to corroborate secondary information. Id. Tata points to the CIT's decision in Shandong Huarong Gen. Group Corp. V. United States, and argues that the CIT rejected the Department's contention that it was not required to corroborate the information upon which it relied for AFA. See Tata's February 12, 2010, submission at 7. Tata argues that the court insisted that "Commerce must nonetheless ensure that the rate chosen {is} a reasonably accurate estimate of {each company's} actual rate". Id.

According to Tata, the requirement of reasonableness as an independent requirement is in harmony with the Federal Circuit's precedent that margins based upon AFA cannot be "unreasonable," "punitive, aberrational, or uncorroborated," but must be a "reasonably accurate estimate of the respondent's actual rate." Id. Tata argues that in De Cecco, the Federal Circuit pointed to the corroboration requirement as evidence of Congressional intent that the Department's discretion not be unbounded. Moreover, Tata argues that the Federal Circuit's list of prohibited types of AFA margins ("punitive, aberrational, or uncorroborated") demonstrates that corroboration is not the sole limiting principle on the Department's discretion. Id. According to Tata, even if an AFA margin or individual elements of a partial AFA margin could be corroborated to some degree, the Department must ensure that the AFA margins it selects are not unreasonable, punitive, aberrational, or unrelated to the specific respondent and particular industry. Id. Tata further argues that it was not Congress's intent in enacting section 1677e(b) to give the Department "the ability to select unreasonably high rates with no relationship to the respondent's actual. . . margin." See Tata's February 12, 2010, submission at 7.

Tata argues that the Department must be vigilant of overreaching when applying AFA in countervailing duty cases where the calculation involves the summing of the benefit calculated for several subsidy programs. See Tata's February 12, 2010, submission at 8. Tata argues that the total duty imposed, and not only each individual component of the margin computation, must pass the "reasonableness" test. Id. Tata further argues that extra care is required because higher individual margins sum to larger overall margins and when there are many alleged subsidy

programs and sub-programs, the sum of individual AFA margins quickly bump up against the hard ceiling of reasonability. Id. In conclusion, Tata argues that the Department's discretion in selecting and applying AFA margins is limited to margins that represent "a reasonably accurate estimate of actual margins, are not punitive, aberrational, or uncorroborated," but are "reasonable" and have "some relationship to commercial practices in the particular industry." Id.

According to U.S. Steel, there is no merit to Tata's contention that the Department calculated an unreasonable and punitive AFA rate for the company. See U.S. Steel's February 19, 2010, Rebuttal Brief at 3. As noted above in Comment 6, U.S. Steel argues that when the foreign firm fails to provide the requested information, the Department finds that a financial contribution exists under section 771(5)(D) of the Act and that the alleged program is specific within section 771(5A) of the Act. Id. at 4. Moreover, U.S. Steel argues that the Department will normally rely on the company's records to determine the existence and amount of a benefit within the meaning of section 771(5)(E). Id. Furthermore, U.S. Steel maintains that none of the respondents, Tata, the GOI, or the Indian State Governments, provided the information and documentation that the Department requested. Id. Accordingly, U.S. Steel argues that the Department properly determined an AFA that is consistent with the statute and the Department's practice. Id.

Department's Position: We disagree that the Department exceeded its discretionary limits and applied a total net subsidy rate to Tata that was unreasonable and unrelated to the actual practices of Tata, the Indian steel industry, and the central and state governments of India. The GOI, various Indian State Governments, and Tata refused to fully participate in the review. For this reason, we lack information concerning the nature of the subsidy programs under investigation and the extent to which Tata used the subsidy programs at issue. Thus, it is due to respondents' refusal to fully cooperate in the review that the Department has had to resort to the use of AFA. The Department is in the position of having to determine subsidy rates for numerous subsidy programs based on an almost complete lack of record evidence which is the direct result of the decision of the GOI, the Indian State Governments, and Tata not to cooperate to the best of their ability. The application of AFA could have been avoided if the GOI, the Indian State Governments, and Tata had chosen to fully cooperate in the review and respond completely to the Department's questionnaires.

Contrary to Tata's claim, the total net subsidy rate applied to Tata in the Preliminary Results does, in fact, have a relationship to the GOI's industrial policies vis-à-vis the Indian steel industry. As explained in the Preliminary Results, because the GOI and various state governments failed to fully cooperate, the Department, pursuant to section 776(b) of the Act, applied AFA and determined that the programs under investigation each constitute a financial contribution and were specific under sections 771(5)(D) and 771(5A) of the Act. See 75 FR at 1498. In addition, because Tata chose not to participate in the review, the Department, pursuant to section 776(b) of the Act, applied AFA and found that Tata benefitted from the programs under investigation in the review within the meaning of section 771(5)(E) of the Act. See 75 FR at 1498 - 1499.

As explained in the Preliminary Results, when assigning a net subsidy to each of the programs at issue, we followed the Department's approach in the prior reviews of the proceeding as well as all other recent CVD investigations. See 75 FR 1499; see also Final Results of Fifth HRS Decision Memorandum at "SGOC Industrial Policy 2004-2009" section; and CWASPP from the PRC Decision Memorandum at "Application of Facts Available and Use of Adverse

Inferences” section. Specifically, in the Preliminary Results, as AFA, we first sought to apply, where available, the highest, above de minimis subsidy rate calculated for an identical program from any segment of this proceeding. See 75 FR at 1499. Absent such a rate, we applied, where available, the highest, above de minimis subsidy rate calculated for a similar program from any segment of this proceeding. Id. Under our AFA approach, absent a subsidy rate calculated for the same or similar program, the Department applies the highest above de minimis, calculated subsidy rate for any program from any CVD proceeding involving the country in which the subject merchandise is produced, so long as the producer of the subject merchandise or the industry to which it belongs could have used the program for which the rates were calculated.

Thus, contrary to Tata’s claims, the Department utilized calculated rates for the same or similar programs from prior CVD proceedings involving India as the basis for its AFA calculation and thereby derived AFA rates that have a direct relationship to the GOI’s subsidy practices and the experience of Indian industry. In fact, as explained in the Preliminary Results, it was not necessary to proceed to the third prong of the Department’s CVD AFA hierarchy because the Department was able to utilize calculated net subsidy rates from “same or similar” subsidy programs within the proceeding. See 75 FR at 1499. In other words, the Department was able to utilize previously calculated net subsidy rates from same or similar subsidy programs involving Indian producers of HRC. On this basis, we reject Tata’s argument that the AFA assigned to it in the Preliminary Results bears no relationship to GOI’s subsidy practices with respect to the Indian steel industry.

We further disagree with Tata’s claim that the AFA rate applied in the Preliminary Results is unreasonable and that the Department was obligated to assign an AFA that represents an accurate estimate of Tata’s actual subsidy rate. On this point, we reiterate that the decision of the GOI, the Indian State Governments, and Tata not to fully cooperate to the best of their ability in the administrative review precluded the Department from obtaining the necessary information that would have permitted the Department to calculate a net subsidy rate based on reported data for Tata. Furthermore, as the Federal Circuit has explained, when faced with respondents that have failed to cooperate to the best of their ability, “. . . Commerce need not select as the AFA rate, a rate that represents the typical dumping margin for the industry in question.” See KYD Inc. v. United States (KYD), 607 F.3d 760 (Fed. Cir. 2010) at 10. In KYD, the Federal Circuit further explains that it has upheld AFA margins in antidumping proceedings even though only a very small percentage of the respondent’s total sales were above the selected rate. Id. In addition, in KYD the Federal Circuit upheld the Department’s practice of assigning uncooperative respondents the highest rate previously calculated by the Department. See KYD at 11 citing to De Cecco, 216 F.3d 1027, 1029, 1033-34 (Fed. Cir. 2000) (an uncooperative party may be assigned the “highest verified margin” of the cooperating companies, even though it was “highly likely that the real dumping margin for (that company) would be well under” the AFA rate) and Shanghai Taoen Int’l Co. v. United States, 360 F. Supp. 2d 1339, 1345-48 (CIT 2005) (Shanghai Taoen) (upholding a 223.01 percent AFA dumping margin, the “highest rate determined in the current or any previous segment of the proceeding,” because “the rate reflects recent commercial activity” by a different exporter of the same goods from the same country, and because there was no prior dumping margin for that company on which Commerce could rely).

As in the proceedings discussed in KYD, De Cecco, and Shanghai Taoen, the Department assigned an AFA rate to an uncooperative respondent that consisted of the highest net subsidy

rates the Department had previously calculated for each of the subsidy programs at issue.⁴ In instances in which the Department had not previously calculated a net subsidy rate for the identical program at issue, the Department used the highest net subsidy rate calculated for a similar program type. Thus, the Department's AFA hierarchy is in accordance with the principal discussed by the Federal Circuit in KYD, namely that of basing the AFA rate on the highest net subsidy rates previously calculated by the Department.

We further disagree with Tata's argument that the Department must temper its AFA methodology in proceedings involving numerous alleged subsidy programs because higher individual program rates sum to larger overall subsidy rates which, in turn, result in unreasonable outcomes. The number of alleged subsidy programs at issue in a given segment of a proceeding is independent from respondent's decision to fully cooperate to the best of its ability. Furthermore, tempering the AFA rate to account for the fact that the Department is investigating numerous alleged programs in a given segment of a proceeding would introduce an arbitrary and highly subjective element into a total AFA calculation, thereby preventing parties from being able to form reasonable expectations about the consequences of not cooperating to a party's fullest ability. Moreover, it would not encourage future cooperation but rather incentivize respondents to choose to not cooperate in proceedings involving multiple subsidy programs. We further note that the Department's approach, in terms of its treatment of multiple subsidy programs, is the same regardless of whether the Department is calculating net subsidy rates using respondent's information or applying total AFA. Just as in a regular proceeding involving fully participating respondents, the Department, when faced with a situation requiring total AFA, determines the net subsidy rate on a program-by-program basis and then calculates the total net subsidy rate by summing each of the program rates. Thus, we find that Tata's argument in this regard stems more from its displeasure of facing multiple subsidy allegations rather than with the Department's actual application of AFA to each of the subsidy programs at issue. In this case, there were 92 programs at issue.

Comment 10: Whether the AFA Margin From the Preliminary Results Is an Abuse of the Department's Discretion Because It Is Claimed To Be Unreasonable, Anomalous, and Unrelated to the Country, the Industry, or the Company

According to Tata, the Department's proposed AFA rate in the Preliminary Results fails the reasonableness test. See Tata's February 12, 2010, submission at 9. Tata argues that the preliminary rate for Tata in this review has no rational relationship to Tata or the programs known to exist for the steel industry in India. Id. Tata argues that the Department's selection of this unreasonably high rate where there are more reasonable alternatives is an abuse of the Department's discretion and should be corrected in the final results. Id.

Tata argues that the failure of the AFA rate from the Preliminary Results to satisfy the reasonableness standard is highlighted by the large disparity between the 586.43 percent AFA rate assigned to Tata and the other rates that the Department has calculated or assigned to respondents in all other countervailing duty proceedings against imports from India over the last 20 years. Id. According to Tata the large disparity is a powerful indication of the impossibility of finding a reasonable and rational relationship between Tata and the 586.43 percent AFA rate. Id.

⁴ We use the term "calculated" in this context to mean CVD rates derived from information supplied by fully cooperating respondents.

According to Tata, there are better alternatives for a reasonable rate as noted in its October 14, 2009, letter (October 14 letter). Id. Tata argues that in its October 14 letter, Tata proposed a reasonable AFA rate, based on selecting the highest rate ever found for any program ever found to be applicable to Tata in a previous segment of this proceeding. Id. According to Tata, that calculation, which is was tied directly to actual experience with Indian steel producers in general, and Tata in particular, results in a proposed AFA rate of 52.87 percent. Id. Tata argues that this figure results from an application of the ‘highest rate for each subsidy in any segment’ methodology, and is nearly double the previous rate determined in a review with respect to Tata. Id. Tata claims that the resulting rate of 52.87 percent fits within the applicable legal standard set by the Federal Circuit in De Cecco and as an AFA rate should provide a “reasonably accurate estimate of the respondent’s actual rate, albeit with some built-in increase intended as a deterrent to non-compliance.” Id. at 9-10. Tata further argues that its proposed rate is also consistent with the judicial requirement that an AFA rate not be punitive or aberrational, and that it bear “a rational relationship to the respondent, not just the industry as a whole.” Id. at 10.

According to Tata, the Department ignored Tata’s proposal and chose an extreme and untenable alternative, the 586.43 percent AFA margin, which fails the reasonability evaluation. Id. Moreover, Tata argues that this rate is 100 percentage points over the rate assigned to JSW Steel in the Final Results of Fifth HRS Review, which according to Tata was a sharp aberration from the Department’s previous practice in this case. Id. Tata also points to Essar’s AFA rate of 76.88 percent in the sixth review and claims that rate was also the highest AFA rate under a countervailing duty order for any products from India in the last 20 years. Id. Tata argues that this rate looks minuscule compared to the enormity of the Department’s proposed preliminary rate against Tata. Id.

With respect to determining whether the Department’s 586.43 percent AFA rate is reasonably representative of the country and industry at issue, Tata argues that reference to actual calculated rate is more relevant than reference to other AFA rates, which already include an adverse component. Id. According to Tata, in other previous proceedings involving hot-rolled carbon steel flat products from India, the Department has calculated company-specific countervailing duty rates thirteen times. Id. Tata argues that beside the AFA rates mentioned above, the remaining rates calculated or assigned under the countervailing duty order for certain hot-rolled carbon steel flat products (HRCS CVD order) from India range from 1.69 percent to 31.89 percent. Id. at 11. Tata argues that the 586.43 percent AFA rate is 554.45 percentage points higher and more than 17 times greater than the 31.89 percent rate, which Tata claims is the highest fully-calculated rate ever imposed under the HRCS CVD order. Id. Tata argues that this rate is directly contrary to De Cecco, in which the court reprimanded the Department for improperly seeking to impose “an extremely high” margin that record evidence indicated was “many times higher” than the respondent’s actual margin. Id.

Tata argues that the large disparities demonstrate that the 586.43 percent rate is aberrant and not related to commercial realities and is therefore, unreasonable. Id. According to Tata, the more than 500-plus percentage point disparity here is much greater than the 40 to 110 percentage point disparities that the CIT has previously found to be irrational and unacceptable. Id. Tata argues that the CIT, in past cases, has found “extreme divergence” from previous margins as aberrational where the divergence was much less than the present case. Id. Therefore, Tata argues that the 586.43 percent AFA rate is not in accordance with law. Id.

Tata argues that the large disparity further demonstrates that the Department has improperly “overreached reality” in order to maximize deterrence when imposing the 586.43 percent AFA margin. *Id.* According to Tata it strongly appears that the Department’s preliminary rate is seeking to maximize deterrence, regardless of reasonableness. *Id.* at 12. Tata argues that the Department, by multiplying the same previous program rates over and over again, has overreached and created an unreasonable and untenable margin. *Id.*

In conclusion, Tata claims that in view of the commercial practices reflected in the history of the HRCS CVD order, the Department has improperly overreached reality because the 586.43 percent AFA rate is not a rate that has “some relationship to commercial practices in the particular industry.” *Id.* Therefore, Tata claims that the Department’s determination to assign the 586.43 percent AFA rate to Tata is not in accordance with law because it represents ‘an unreasonable judgment.’ *Id.*

U.S. Steel rebuts that the Department properly determined an AFA rate that is in accordance with the statute and its prior practice. *See* U.S. Steel’s February 19, 2010 Rebuttal Brief at 4. For a full discussion of U.S. Steel’s position, see Comment 6 above.

Department’s Position: As explained above in Comment 9, we find that the AFA applied to Tata in the Preliminary Results reasonably reflects the GOI’s subsidy policies with respect to the Indian steel industry. Further, we disagree with the alternative AFA approach proposed by Tata. Tata argues that the Department should have applied an AFA rate of 52.87 percent ad valorem to Tata, which it explains is derived from the highest net subsidy rate ever found to be applicable to Tata in a previous segment of this proceeding. Tata’s proposed methodology somewhat mirrors one aspect of the AFA methodology already employed by the Department, that of applying, where available, the highest, above de minimis subsidy rate calculated for an identical program from any segment of this proceeding. However, Tata’s proposed approach fails to account for the additional subsidy programs (such as those programs administered by various Indian State Governments) at issue in the instant review, programs for which the Department has not previously derived a calculated net subsidy rate but, nonetheless, programs that could have provided recurring benefits to Tata during the POR. Moreover, Tata’s proposed methodology does not take into consideration that these prior calculated rates were based on significantly fewer programs under investigation. There are 92 programs under investigation in this review for which Commerce had to find an AFA rate. The prior rate from which Tata derives the 52.87 percent AFA rate was based on six programs.

Concerning Tata’s argument that the AFA rate applied in the Preliminary Results is unreasonable because it is several times higher than the calculated rates assigned to participating companies in prior reviews, we reiterate the points made in Comment 9 above. The total AFA rate assigned to Tata in the Preliminary Results consists solely of the sum of net subsidy rates that the Department has calculated in prior segments of the proceeding. Thus, the AFA rate assigned to Tata in the Preliminary Results was not comprised of previously applied AFA rates, but rather derived, on a program-by-program basis, using calculated net subsidy rates for identical programs within India or, in the absence of identical programs, using net subsidy rates for similar program types.

We find that Tata argument essentially boils down to an argument against calculating an AFA rate for each subsidy program alleged in the instant review. As explained above in Comment 9, the Department’s determines net subsidy rates on a program-by-program basis regardless of whether it is calculating net subsidy rates for a fully cooperating respondent or

applying total AFA. There is no reasoned basis for deviating from this approach in instances of complete lack of cooperation by responding parties. Further, we find that the number of subsidy programs alleged in a given segment of a proceeding is independent from a respondent's decision to cooperate to the best of its ability. Thus, given that it is the Department's long-standing practice to derive a net subsidy rate for each subsidy program at issue in a review, the derivation of total AFA rates that exceed the total net subsidy rates previously calculated for fully cooperating companies should be expected particularly when dealing with a substantial increase in the number of programs under investigation. In fact, Tata could have foreseen such an outcome upon receipt of the Department's initial CVD questionnaire, which listed and described each of the subsidy programs at issue in the review.

Regarding Tata's arguments that the AFA rate assigned to it is higher than the AFA assigned to JSW in the Final Results of Fifth HRS Review, we note that the number of subsidy programs allegedly available to Tata is larger than the number available to JSW in the previous review; hence, there is the potential for a total AFA rate in the instant review that is higher than the AFA rate applied in prior reviews.

As to Tata's argument that the AFA rate applied to Tata in the Preliminary Results is untenable because it is higher than 31.89 percent ad valorem, the highest calculated total net subsidy rate ever imposed in the proceeding, we note that the Department derived the 31.89 percent ad valorem net subsidy rate prior to the filing of the new subsidy allegations that resulted in the Department's investigation of additional central and state government programs in the instant review. Furthermore, as the Federal Circuit indicated in KYD, the Department is under no obligation to select at the AFA rate a rate that represents the typical rate for the industry in question. See KYD at 10.

Comment 11: Whether the 586.43 Percent Preliminary Net Subsidy Rate is Unlawful Because It is Excessively High and Therefore Punitive

Tata claims that the 586.43 percent preliminary rate is also not in accordance with law because it is excessively high and therefore punitive. Id. at 13. According to Tata, the Federal Circuit has defined a "punitive margin" as a demonstrably less probative rate that the Department uses while rejecting a lower rate. Id. Tata argues that under this definition, the Department's summation of program-specific rates to reach the 586.43 percent AFA rate is excessively punitive because the Department rejected all lower overall rates and lower program-specific rates that would have summed to an AFA rate in the range of what has been previously calculated for companies in India. Id.

Tata argues that it has previously demonstrated (i.e., see Comment 10) that the 586.43 percent AFA rate has no relationship to commercial practices in the particular industry in India, and therefore, has little, if any probative value. Id. With respect to lower overall AFA rates that have some relationship to commercial practices in India, Tata argues that the Department could have looked to the history of proceedings under the HRCS CVD Order and selected the highest prior calculated rate of 31.89 percent. Id. Tata argues that as another option, the Department could have accepted Tata's suggestion that the Department impose the highest program-specific rate ever found for each program previously found applicable to Tata, which would total 57.82 percent. Id. Tata points to two other cases and argues that as another possibility, the Department could also have assigned the highest program specific rate, 18.08 percent, to all subsidy sub-

programs collectively, instead of to each subprogram individually.⁵ Id. Tata argues another option would have been the AFA rate imposed on Essar of 76.88 percent. Id. at 14

According to Tata, the 586.43 percent AFA rate is also excessively punitive under the Court's additional definition of punitive, a rate that is a significant increase over other rates found in the case. Id. As an example, Tata points to the CIT's decision in Shandong Huarong Gen. Group, and claims the CIT criticized an AFA margin in that case where it found that 'The magnitude of the increase alone, suggests that Commerce's selection of the 139.31 percent margin may have been punitive'.⁶ Id. Tata also cites to Am. Silicon Techs. v. United States, and argues that, in that case, the CIT cautioned that a particular AFA margin "is so far removed from being 'a reasonably accurate estimate of the respondent's actual rate' that it is disproportionately punitive in nature."⁷

In conclusion, Tata argues that because AFA rates may not be punitive and because the 586.43 percent AFA rate is punitive and not rationally related to commercial practices in the industry, the preliminary rate cannot stand. Id. at 15. Tata further argues that the preliminary AFA rate is contrary to law and without the support of substantial evidence, and must be corrected to a more reasonable rate in the final results. Id.

U.S. Steel rebuts that the Department properly determined an AFA rate that is in accordance with the statute and acted in accordance with its prior practice. See U.S. Steel's February 19, 2010, Rebuttal Brief at 4. For a full discussion of U.S. Steel's position, see Comment 6 above.

Department's Position: As explained above in Comments 9 and 10, we find that the total AFA rate assigned to Tata in the Preliminary Results relates to the GOI's industrial policies vis-à-vis the Indian steel industry. In addition, as explained above in Comment 10 above, we find that Tata's proposed alternative total AFA rates of 31.89 and 52.87 percent ad valorem are not appropriate. We further reject Tata's additional proposed total AFA rate of 76.88 percent ad valorem, which is equal to the total AFA rate imposed on Essar in the 2007 Review of HRS from India. See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 20923, 20924 (May 6, 2009) (2007 Review of HRS from India), and accompanying issues and decision memorandum (2007 Review of HRS from India Decision Memorandum) at "Adverse Facts Available" section. As explained above in Comment 10, as with JSW, the total AFA rate assigned to Essar in the 2007 Review of HRS from India does not reflect all of the programs under investigation in the instant review and, for this reason, we find the use of the total AFA assigned to Essar rate is not suitable, nor relevant to Tata's final AFA rate in this instant review.

In addition, we disagree with Tata that the total AFA rate assigned to it in the Preliminary Results is punitive because it constitutes a significant increase over other net subsidy rates

⁵ See Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 35642, 35644 (June 24, 2008) (LWRP from the PRC), and accompanying issues and decision memorandum (LWRP from the PRC Decision Memorandum) at "Use of Adverse Facts Available" section, in which the Department applied a 33 percent program-specific margin to 6 tax programs "on a combined basis; see also Sodium Nitrite From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 38981, 38983 (July 8, 2008) (Sodium Nitrite from the PRC), in which the Department applied a 33 percent program-specific margin to 16 tax programs 'on an overall basis for the 16 income tax programs.

⁶ See Shandong Huarong Gen. Group, 28 CIT at 1632 n.9.

⁷ See Am. Silicon Techs. V. United States, 240 F. Supp. 2d 1306, 1312-13 (Ct. Int'l Trade 2002), see also Elkem Metals Co. v. United States 28 CIT 508, 516 (2004).

calculated in prior segments of the proceeding. On this point we note that in KYD the Federal Circuit upheld the principal that the Department is “. . . is permitted to use a ‘common sense inference that the highest prior margin is the most probative evidence of current margins . . .’” See KYD at 12, citing to Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (Rhone). In addition, in KYD the Federal Circuit further upheld the Department’s practice of presuming that “. . . the highest prior margin reflects the current margins . . .” in cases in which the respondent fails to cooperate to the best of its ability. See KYD at 12, citing to Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (Ta Chen). In the instant CVD review, the Department followed the practice upheld by the Court in KYD, in that the Department derived AFA rates for each subsidy program allegedly used by Tata during the POR using the highest previously calculated net subsidy rate for the identical or similar program. Thus, we find that the resulting total net subsidy rate is not punitive.

Comment 12: Whether the Department Improperly Applied to Tata Steel Numerous State Programs Relating to States Where Tata Steel Is Not Located

According to the GOI, Tata only produced subject merchandise in Jharkhand and not in any other state to which the Department assigned an AFA subsidy rate during the POR. See GOI’s February 10, 2010 submission at 6. The GOI argues that every state government program covers the investment, production or sales that take place within the State. Id. The GOI further argues that a State Government is not going to offer benefits for operations that take place outside of their borders. Id.

The GOI reiterates its argument that AFA rates are tempered by the requirements that the AFA rate selected be “reasonably” related to the actual rate for the company. Id. The GOI argues that there is no relationship between Tata’s operations that take place in Jharkhand and the subsidy programs administered by Gujarat, Maharashtra, Andhra Pradesh, Chhattisgarh and Karnataka, and that the Department cannot apply rates corresponding to these non-Jharkhand programs to Tata. Id.

Tata argues that even if the Department keeps its preliminary methodology, the Department must still correct the calculation by removing programs from states where Tata is not located and could not have received benefits. Id. According to Tata, besides the national government programs, the Preliminary Results considered numerous individual programs from the states of Jharkhand, Gujarat, Maharashtra, Andhra Pradesh, Chhattisgarh and Karnataka. Tata argues that in the preliminary calculation, the Department assumed that Tata received numerous benefits from all of these states. Id.

According to Tata, this assumption is not accurate and is contradicted by evidence available to the Department. Id. Tata argues that the Department committed a factual error, contrary to facts known to it, in making the assumption that Tata is present in, and could have received benefits from, all of the named states. Id. Tata argues that it is a matter of record evidence that Tata’s operations are located in Jharkhand state only.

Tata argues that its location is a matter of public record of which the Department can and should have taken notice. Id. at 16. Tata further argues that the Department recently completed antidumping and countervailing duty reviews, during which the location of the company’s facilities was verified. Id. According to Tata, in the instant review, although Tata did not submit questionnaire responses, evidence was nevertheless adduced that confirms Tata’s location. Id.

Tata argues that subsequent to the Preliminary Results, Tata submitted a letter on January 7, 2010 (January 7, 2010 letter) specifically confirming its location in Jharkhand, in order to correct the factual error inherent in the Preliminary Results. Id. According to Tata, that submission was returned to Tata. Id. Tata argues that the information as to its location was already on the record of this particular segment of the proceeding. Id. Tata argues that in its October 14, 2009 letter in which it discusses the appropriate AFA rate to apply to Tata, it listed the programs which it availed itself of during the instant POR, and specifically mentioned that other than those listed, it had not “availed itself of any other subsidy, either at the Indian national or Jharkhand state level. Id. Tata argues that the letter expressed the understanding that the GOI had submitted a statement to the Department in the instant review, confirming that Tata had received no other state-based subsidies. Id. Tata further argues that the Jharkhand State government submitted a statement to the Department in the instant review, referencing Tata and confirming that Tata had received no other state-based subsidies. Id. Tata cites to the response of SGOJ Department of Industries, September 24, 2009 and the GOI questionnaire responses dated April 23, 2009, August 10, 2009, and September 24, 2009, in support of its position. Id. According to Tata, although these questionnaire responses did not provide sufficient detail for the Department to fully analyze the programs at issue, they do make clear that Tata is located in Jharkhand. Id. at 16-17.

Therefore, Tata contends that the implication in the Preliminary Results, that the Department had no knowledge of Tata’s actual location is incorrect. Id. at 17. Tata argues that its location is well known to the Department from its past extensive dealings with Tata, and that information was confirmed on the record of this particular segment of the proceeding. Id. According to Tata, the final results must correct the erroneous assumption that Tata is located in any state other than Jharkhand. Id. Tata argues that making this correction will reduce the AFA rate from 586.43 percent to 223.25 percent. Tata claims that while this is still an anomalous and highly adverse rate found by the courts in past cases to be punitive and unreasonable, it is less objectionable than the unadjusted rate in the Preliminary Results.

With respect to the Department’s rejection of Tata’s January 7, 2010 letter, Tata argues that the letter is simply confirming a fact already on the record of this proceeding, and that the letter in question falls within the scope of permissible factual correction set forth by the Federal Circuit in Timken US Corporation v. United States (Timken). Id. According to Tata, in Timken, a respondent sought to correct the factual record after the preliminary results, but before the final. Id. Tata argues that the Department refused, stating that because the ‘record was closed’ errors could no longer be addressed or corrected. Id. Tata argues that the Federal Circuit stressed that the Department must not reject corrective information, even after the preliminary results. Id. Tata cites to Timken and argues that the court stated that the importer had:

responded in a timely manner to the preliminary determination, pointing out ITA’s clerical errors, as well as its own. . . Correction of {the importer’s} errors would neither have required beginning anew nor have delayed making the final determination. A straightforward mathematical adjustment was all that was required. Failure to make it resulted in the imposition of many millions of dollars in duties not justified under the statute.

Id. at 18.

Tata argues that this scenario describes the situation faced by the innocent U.S. importer in the present case, whose punitive countervailing duty rate will be more than doubled if the Department fails to recognize that Tata is located in Jharkhand state. Id.

Tata further argues that the court was careful not to limit the kind of error that can be corrected to mere “clerical” errors, holding that the Department may ‘correct any type of importer error—clerical, methodology, substantive, or one in judgement’ as long as it is timely. Id. Tata argues the court defined timely as where ‘the importer seeks correction before Commerce issues its final results and adequately proves the need for the requested corrections. Id.

Moreover, Tata argues that the court cautioned that the Department should not reject proffered new information simply “to save itself from having to evaluate corrective information,” and concluded: “This court . . . has never discouraged the corrections of errors at the preliminary result state.” Id. at 18-19. Therefore, Tata argues that the Department should reverse its rejection of the proffered corrective information provided as to the location of Tata’s operations in Jharkhand, and apply that information to confirm the information already on the record that demonstrates that Tata could potentially benefit only from Jharkhand states programs. Id. at 19. In conclusion, Tata asserts that the fact of Tata’s state location requires the removal of that part of the facts available margin that was based on the erroneous assumption that Tata is also located in other Indian states. Id.

U.S. Steel rebuts that the Department properly determined an AFA rate that is in accordance with the statute and its prior practice. See U.S. Steel’s February 19, 2010, Rebuttal Brief at 4. For a full discussion of U.S. Steel’s position, see Comment 6 above.

Department’s Position: We disagree with Tata and the GOI that the total AFA rate the Department assigned to it in the Preliminary Results is flawed because it reflects subsidy programs administered in regions where Tata is not located. The Department’s initial questionnaire required that the respondent indicate the nature and locations of its facilities during the POR. Tata chose not to respond to the Department’s initial questionnaire. Thus, the Department has no information on the record of the instant review concerning the location and nature of Tata’s facilities. Lacking this information from Tata, the Department, under AFA, properly assumed that Tata had facilities eligible for subsidies under each of the programs at issue in the instant review.

We disagree with Tata that the location of its facilities is a matter of public record. As stated above, Tata failed to respond to the Department’s initial questionnaire and, thus, the Department lacks information on the record of the instant review concerning the location and nature of Tata’s facilities during the POR. Although Tata may have submitted information concerning its facilities in prior segments of the review, that information is not on the record of the instant review and, moreover, does not reflect the current POR.

We further disagree with Tata that information in its January 7, 2010, letter demonstrates that Tata is not located in certain provinces in India. First, as Tata acknowledges, the Department rejected the January 7, 2010, letter on the basis that it constituted untimely new factual information as described under 19 CFR 351.302(d). See the Department’s January 27, 2010, letter to Tata in which it rejected Tata’s January 7, 2010, filing. As such, the information in the January 7, 2010, letter is not on the record of the instant review. However, even if the Department had permitted the January 7, 2010, letter to remain on the record, it would have no probative value due to the fact that Tata chose not to participate in the instant review, thereby

making all factual information submitted by Tata unverifiable. As explained under section 776(a) and (b) of the Act, the Department may resort to the use of AFA when it finds that an interested party has submitted information that is not verifiable.

With regard to the Timken case cited by Tata, that case is factually distinguishable from this case. The Timken case was concerned with an error made by a respondent who cooperated and provided full questionnaire responses. This case involves Tata which provided no questionnaire responses and the GOI which provided only some of the requested information. When parties fail to respond on such a grand scale they are not entitled to selectively provide only the few pieces of information that would benefit them. With a failure to respond on such a grand scale the few pieces of data they chose to provide are suspect and Commerce is not required to expend the resources to verify the small amount of data Tata chose to supply. Otherwise, the entire proceeding will be put at the mercy of respondents and what they choose to provide.

IV. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the review in the Federal Register.

Agree

Disagree

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date