



C-533-862

POI: 01/01/2014-12/31/2014

**Public Document**

E&C AD/CVD OVI: JC

March 4, 2016

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**RE:** Issues and Decision Memorandum for the Final Affirmative  
Determination in the Countervailing Duty Investigation of Certain  
Polyethylene Terephthalate Resin from India

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## I. SUMMARY

The Department of Commerce (Department) determines that countervailable subsidies are being provided to producers and exporters of certain polyethylene terephthalate (PET) resin in India, as provided in section 705 of the Tariff Act of 1930, as amended (the Act).

## II. BACKGROUND

### A. Case History

On August 14, 2015, the Department published the *Preliminary Determination* in this investigation.<sup>1</sup> We preliminarily calculated a rate for Dhunseri Petrochem and Tea Ltd. (Dhunseri), a cooperative mandatory respondent.<sup>2</sup> The rate calculated for Dhunseri was applied to all-other producers/exporters. For JBF Industries Limited (JBF), a non-cooperative mandatory respondent, we preliminarily applied a rate based on adverse facts available (AFA).

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<sup>1</sup> See *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin From India: Preliminary Affirmative Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 48819 (August 14, 2015) (*Preliminary Determination*).

<sup>2</sup> As noted in the *Preliminary Determination*, we note that the company name Dhunseri Petrochem and Tea Ltd. was changed to Dhunseri Petrochem Ltd. after a structural reorganization that occurred during the POI. Thus, we refer to Dhunseri Petrochem Ltd. throughout this document and proceeding. See *Preliminary Determination* at 2.



On June 29, 2015, Petitioners DAK Americas, LLC; M&G Chemicals; and Nan Ya Plastics Corporation, America (collectively, Petitioners) submitted new subsidy allegations regarding three additional programs. The Department initiated on these programs on July 24, 2015, and placed its Post-Preliminary Memorandum addressing them on the record on November 13, 2015.<sup>3</sup>

On October 22, 2015, Petitioners submitted pre-verification comments on the record of this investigation.<sup>4</sup> Between November 16, 2015, and November 21, 2015, we conducted verifications of the questionnaire responses submitted by the Government of India (GOI) and Dhunseri. We released verification reports for the GOI and Dhunseri on December 9, 2015, and December 14, 2015, respectively.<sup>5</sup>

On December 21, 2015, mandatory respondent Dhunseri submitted a case brief.<sup>6</sup> On December 28, 2015, Petitioners submitted a rebuttal brief to address certain issues raised in Dhunseri's case brief.<sup>7</sup>

## **B. Period of Investigation**

The period of investigation (POI) is January 1, 2014, through December 31, 2014.

## **III. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART**

The Department preliminarily determined that critical circumstances existed for all exporters of PET resin from India, other than Dhunseri.<sup>8</sup> Based on examinations of monthly shipment data placed on the record by Dhunseri after the *Preliminary Determination*, as requested by the Department,<sup>9</sup> and of the most recent available monthly shipment data from Global Trade Atlas (GTA), we are not changing our critical circumstances determination. We continue to determine that critical circumstances do not exist for Dhunseri, but do exist for all-other producers/exporters of PET resin from India.

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<sup>3</sup> See Memorandum to Scot Fullerton, Director, AD/CVD Operations, Office VI, "RE: Countervailing Duty Investigation: Certain Polyethylene Terephthalate Resin from India," date July 24, 2015 (New Subsidy Allegations Memorandum); see also Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "RE: Countervailing Duty (CVD) Investigation on Certain Polyethylene Terephthalate Resin from India – New Subsidy Allegations," dated November 13, 2015 (Post-Preliminary Memorandum).

<sup>4</sup> See submission from Petitioners dated October 22, 2015.

<sup>5</sup> See Memorandum to the File, "RE: Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Verification of Information Submitted by the Government of India," dated December 7, 2015 (GOI Verification Report); see also Memorandum to the File, "RE: Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Verification of Information Submitted by Dhunseri Petrochem Ltd.," dated December 14, 2015 (Dhunseri Verification Report).

<sup>6</sup> See Letter to the Secretary, "RE: Polyethylene Terephthalate Resin from India: Case Brief of Dhunseri Petrochem Ltd.," dated December 21, 2015 (Dhunseri's Case Brief).

<sup>7</sup> See submission from Petitioners dated December 28, 2015 (Petitioners' Rebuttal Brief).

<sup>8</sup> See Preliminary Determination at 10 – 13.

<sup>9</sup> See Letter from Dhunseri to the Secretary, "Polyethylene Terephthalate Resin from India: July 2015 Shipment Data," dated August 20, 2015 and Letter from Dhunseri to the Secretary, "Polyethylene Terephthalate Resin from India: August 2015 Shipment Data," dated September 15, 2015.

Consistent with the *Preliminary Determination*, we continue to find evidence of countervailable subsidies that are inconsistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures (Subsidies Agreement). For this final determination, in accordance with 19 CFR 351.206(i), we analyzed monthly shipment data from Global Trade Atlas (GTA) for the period December 2014, through August 2015. We adjusted the data to reflect the additional three months of sales data provided by Dhunseri following the *Preliminary Determination*.<sup>10</sup> These data do not indicate a massive increase in exports existed for Dhunseri relative to the six-month period preceding the filing of the petition.<sup>11</sup> However, the data indicated there was a massive increase (*i.e.*, greater than 15 percent) in shipments, as defined by 19 CFR 351.206(h), for all-other producer/exporters.<sup>12</sup>

We, therefore, maintain our negative finding of critical circumstances with respect to Dhunseri. We continue to find that critical circumstances exist with respect to all-other producers/exporters. As discussed in the “Use of Facts Otherwise Available and Adverse Inferences” section below, JBF did not cooperate at any stage of this investigation. Thus, we continue to base our critical circumstances determination with respect to JBF on AFA, in accordance with sections 776(a) and (b) of the Act, and 19 CFR 351.308(c). We find that exports of subject merchandise from JBF were massive over a relatively short period of time and that JBF received subsidies that are inconsistent with the Subsidies Agreement. We therefore continue to find that critical circumstances exist with respect to JBF.

#### IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is polyethylene terephthalate (PET) resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The scope includes blends of virgin PET resin and recycled PET resin containing 50 percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process.

The merchandise subject to this investigation is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

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<sup>10</sup> See, *e.g.*, *Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances*, 77 FR 73430, 73432 (December 10, 2012), unchanged in *Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 75973, 75974 (December 26, 2012); see also *Certain Oil Country Tubular Goods From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210, 47212 (September 15, 2009), unchanged in *Certain Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination: Final Negative Critical Circumstances Determination*, 74 FR 64045, 64047 (December 7, 2009).

<sup>11</sup> See Memorandum, “Critical Circumstances Shipment Data Analysis for Final Determination,” dated concurrently with this memorandum (Final Critical Circumstances Memorandum).

<sup>12</sup> See *Preliminary Determination* at 10 – 13.

## V. LIST OF ISSUES

The “Subsidies Valuation” and “Analysis of Programs” sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Additionally, we have analyzed the comments submitted by interested parties in their case briefs and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s responses to the issues raised in these briefs. Based on the comments received, and our verification findings, we have made certain modifications to the *Preliminary Determination*, which are discussed below under each relevant program. We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this investigation for which we have received comments from the parties.

### Income Tax Exemption Scheme

Comment 1: Whether Dhunseri Used the Income Tax Exemption Scheme Tax Credit

Comment 2: Whether the Department Improperly Calculated the Benefit Received Under the Income Tax Exemption Scheme

### Focus Product Scheme

Comment 3: Whether There Was a Program-Wide Change in the Focus Product Scheme

## VI. SUBSIDIES VALUATION

### A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 9.5 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System.<sup>13</sup> The Department notified the respondents of the 9.5-year AUL in the initial questionnaire and requested data accordingly.<sup>14</sup> No party in this proceeding has disputed the allocation period.

Furthermore, for non-recurring subsidies, we have applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

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<sup>13</sup> See U.S. Internal Revenue Service Publication 946 (2008), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

<sup>14</sup> We note that consistent with past practice, in order to appropriately measure any allocated subsidies, the Department requested and used a 10-year AUL in this investigation. See CVD Questionnaire at II-2; see also *Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom*, 70 FR 40000 (July 12, 2005) and accompanying Issues and Decision Memorandum at Comment 4. Although the POI is a recent period, we are investigating alleged subsidies received over a time period corresponding to the AUL.

## B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.<sup>15</sup>

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>16</sup>

To determine whether firms are cross-owned, we turn to the definition of cross-ownership as provided under 19 CFR 351.525(b)(6)(vi). The regulation states that cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.

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<sup>15</sup> See *Countervailing Duty Regulations*, 63 FR 65348, 65401 (November 25, 1998) (*Countervailing Duties*).

<sup>16</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

Dhunseri identified one cross-owned Indian company that produced subject merchandise during the AUL and received subsidies, through its shareholding (and later merger) of South Asian Petrochem Limited (SAPL).<sup>17</sup> Therefore, for purposes of this final determination, we are only examining subsidies provided to Dhunseri and to SAPL.

### **C. Denominators**

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Final Calculation Memorandum" prepared for this investigation.<sup>18</sup>

### **D. Benchmarks and Discount Rates**

We investigated unfulfilled export obligations under the Export Promotion Capital Goods program that the Department treats as loans, and non-recurring, allocable duty waivers under the same program (*see* 19 CFR 351.524(b)(1)). In the section below, we discuss the derivation of the benchmarks and discount rates for measuring the benefit from the loans and non-recurring, allocable grants.

For programs requiring the application of a benchmark interest rate or a discount rate, 19 CFR 351.505(a)(1) states a preference for using an interest rate that the company could have obtained on a comparable loan in the commercial market. Also, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient could actually obtain on the market, the Department will normally rely on actual short-term and long-term loans obtained by the firm. However, when there are no comparable commercial loans, the Department may use a national average interest rate, pursuant to 19 CFR 351.505(a)(3)(ii).

In addition, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government-owned special purpose bank for purposes of calculating benchmark rates.<sup>19</sup>

### **Short-Term and Long-Term Rupee Denominated Loans**

Based on Dhunseri's responses, we determined that Dhunseri took out comparable rupee-denominated short-term or long-term loans from commercial banks in the years for which we must calculate benchmark and discount rates.<sup>20</sup> However, we did not use these long-term rates for loans, as such loans did not originate in the year the subsidy was provided. As such loan

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<sup>17</sup> See Dhunseri Affiliates response at 3 to 4.

<sup>18</sup> See "Countervailing Duty Investigation of Certain Polyethylene Terephthalate from India: Dhunseri Petrochem Ltd. Final Calculation Memorandum," dated concurrently with this memorandum (Dhunseri Final Calculation Memorandum).

<sup>19</sup> See, *e.g.*, *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India*), and accompanying Issues and Decision Memorandum, at "Benchmark and Discount Rates" section.

<sup>20</sup> See Dhunseri's Second Supplemental Response dated July 21, 2015 at Revised Exhibit 8.

rates were not available, we used national average interest rates pursuant to 19 CFR 351.505(a)(3)(ii). Specifically, we used national average interest rates from the International Monetary Fund's International Financial Statistics (IFS) as benchmark rates for rupee-denominated short-term and long-term loans. We find that the IFS rates provide a reasonable representation of both short-term and long-term interest rates for rupee-denominated loans.

## **Discount Rates**

For allocating the benefit from non-recurring grants under the Export Promotion Capital Goods program, we used the long-term rupee-denominated interest rates described above for the year in which the government agreed to provide the subsidy, consistent with 19 CFR 351.524(d)(3)(i)(A).<sup>21</sup>

## **VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES**

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.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. 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 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.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.<sup>22</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.<sup>23</sup>

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<sup>21</sup> See “Countervailing Duty Investigation of Certain Polyethylene Terephthalate from India: Dhunseri Petrochem Ltd. Preliminary Calculation Memorandum,” dated August 7, 2015 (Dhunseri Preliminary Calculation Memorandum).

<sup>22</sup> See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. See Dates of Application

Section 776(b) of the Act further provides that the Department may use an adverse inference in relying on the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>24</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.<sup>25</sup>

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>26</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>27</sup> Further, and under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.<sup>28</sup> Finally, under section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.<sup>29</sup> The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>30</sup>

For the reasons explained below, the Department determined in its preliminary and post-preliminary determinations that application of facts otherwise available with an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to our requests for information, JBF and the GOI failed to cooperate by not acting to the best of their ability. The Department makes no changes to these findings for the final determination.

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of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice). The text of the TPEA may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

<sup>23</sup> See Applicability Notice, 80 FR at 46794-95.

<sup>24</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

<sup>25</sup> See also 19 CFR 351.308(c).

<sup>26</sup> See also 19 CFR 351.308(d).

<sup>27</sup> See SAA, at 870 (1994).

<sup>28</sup> See section 776(c)(2) of the Act; TPEA, section 502(2).

<sup>29</sup> See section 776(d)(1) of the Act; TPEA, section 502(3).

<sup>30</sup> See section 776(d)(3) of the Act; TPEA, section 502(3).



## **JBF**

JBF did not respond to the Department's April 28, 2015 CVD Questionnaire.<sup>31</sup> As a result, we had no information or the data necessary to calculate a subsidy rate for JBF. Accordingly, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we based JBF's CVD rate on facts otherwise available.

In its New Subsidy Questionnaire Response, the GOI claimed non-use of the three new subsidy programs on behalf of JBF Industries: the Duty Free Import Authorization Scheme, the State Government of Gujarat's Provision of Land for LTAR, and the State Government of Gujarat's Financial Assistance to Industrial Parks. In a supplemental questionnaire, we asked the GOI to provide copies of source documentation to support this assertion.<sup>32</sup> In its October 19, 2015 response, the GOI did not provide the requested evidence of program non-use by JBF Industries. Instead, the GOI reiterated that, "{t}he company has not applied for or availed any financial assistance/subsidy through the AUL period."<sup>33</sup>

The GOI did submit the following documents in regards to JBF Industries: JBF Industries' Audited Financial Statements for 2014-15; 2013-14; and 2012-13; JBF Industries' Quarterly Financial Statement for the period ending June 30, 2015; JBF Industries' Income Tax Return for 2013-14; Business Registration Certificates; Excise Registration Certificate; Factory License; and Certificate of Registration.<sup>34</sup> These documents, however, could not be verified by JBF Industries because JBF Industries is not participating in this investigation and, furthermore, they do not provide evidence of program non-use for the three subsidies alleged by Petitioners for JBF Industries and its cross-owned affiliates. Normally the lack of participation by the respondent company would be a sufficient basis for applying AFA to determine that the respondent company used a program. In exceptional instances where the government can demonstrate non-use for a non-cooperating mandatory respondent (including all facilities and cross-owned affiliates) definitively through its own complete and verifiable source documents, we will consider that evidence, but here the GOI did not provide such evidence.

As a result, the Department found that it did not have the information necessary to determine whether JBF Industries used these programs, or the information to calculate a subsidy rate for JBF Industries. Accordingly, pursuant to sections 776(a)(2)(A) and (C) of the Act, we based JBF Industries' CVD rate for the three additional subsidy programs, as with the other programs, on facts otherwise available.

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<sup>31</sup> See Letter from the Department to the GOI, "Countervailing Duty Investigation of Polyethylene Terephthalate Resin From India: Countervailing Duty Questionnaire," dated April 28, 2015 (CVD Questionnaire). See also the Department's Memorandum to the File, "Countervailing Duty Questionnaire Delivery to Mandatory Respondent JBF Industries Limited," dated May 5, 2015 in which the Department placed record evidence showing that the questionnaire was delivered to and received by JBF.

<sup>32</sup> See Letter from the GOI, "Countervailing Duty Investigation of Polyethylene Terephthalate Resin from India: Response to New Subsidy Allegations Questionnaire by Government of India," dated August 17, 2015 (New Subsidy Questionnaire Response) at 3, 4, 7 and 8.

<sup>33</sup> See Letter from the GOI, "Countervailing Duty Investigation of Polyethylene Terephthalate Resin from India: Response to Third Supplemental Questionnaire by Government of India," dated October 19, 2015 (October 19 Supplemental Questionnaire Response) at question 9 (pages unnumbered).

<sup>34</sup> *Id.*

The Department also determined that an adverse inference is warranted for these three additional allegations, pursuant to section 776(b) of the Act, because by not responding to our CVD questionnaire, JBF failed to cooperate by not acting to the best of its ability.<sup>35</sup> Accordingly, our final determination for JBF is based on AFA, remains unchanged from the *Preliminary Determination*, and includes an adverse inference with respect to the three additional subsidy programs as discussed in the Post-Preliminary Memorandum.<sup>36</sup>

## GOI

In its New Subsidy Questionnaire Response, the GOI failed to answer the questions posed by the Department and did not provide requested supporting documentation relating to program specificity, as follows:

For the State Government of Gujarat's (SGOG) Provision of Land for LTAR, the GOI's response was limited an assertion that this program is part of overall infrastructure development, "which cannot be considered as a subsidy under the ASCM."<sup>37</sup> The GOI also asserted that respondent JBF paid a standard rate charged by the SGOG to all enterprises leasing similar land and that, "the lease contained the same terms as all other similar lease agreements signed with enterprises in the Sarigam, Gujarat Industrial Development Corporation (GIDC) and hence no benefit in terms of Article 1.1. of the ASCM has accrued to the company."<sup>38</sup> The GOI provided no source documents to support these assertions.

In the October 9, 2015 Supplemental Questionnaire, the Department notified the GOI that these statements were not responsive to our request for program information. Specifically, we asked that the GOI provide a complete response to all of the questions asked for this program and to provide translated copies of source documentation as support. In its October 19, 2015 Supplemental Questionnaire Response, the GOI stated that JBF Industries had received a land allotment from the SGOG. However, for the second time, the GOI failed to provide the requested copies of the laws and regulations that govern the land allotment procedures by the SGOG.

For the SGOG's Financial Assistance to Industrial Parks program, the Department's New Subsidy Allegation Questionnaire requested that the GOI provide information pertaining to the possible specificity of this program. In its New Subsidy Questionnaire Response, the GOI did not provide complete information. For instance, instead of submitting translated copies of the laws and regulations relating to the program and any internal or external reports pertaining to the program that were applicable during the POI, the GOI provided an addendum to the regulation that governed the program.<sup>39</sup> Also, instead of providing the requested information regarding the number of recipient companies and industries and the amount of assistance approved under this program for the year in which any mandatory respondent company was approved for assistance,

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<sup>35</sup> See *Steel Threaded Rod From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 78 FR 76815 (December 19, 2013) (*Steel Threaded Rod from India Prelim*) and accompanying Issues and Decision Memorandum at 8-11 (unchanged in Final).

<sup>36</sup> See Post-Preliminary Memorandum at 5.

<sup>37</sup> See New Subsidy Questionnaire Response at 9.

<sup>38</sup> *Id.*

<sup>39</sup> See New Subsidy Questionnaire Response at Exhibit-NSA-1.

as well as each of the preceding three years, the GOI stated, “The benefit under the scheme was available to the developer and not to the unit setting up production unit in the park. The scheme falls in the category of general infrastructure.”<sup>40</sup>

In the October 9, 2015 Supplemental Questionnaire, the Department requested that the GOI answer fully the questions pertaining to the specificity of this program, including, but not limited to, the requested information about *de facto* specificity for this program. In its response, the GOI stated, “Kindly refer to earlier response, GOI has already provided all the information in respect of NSA questionnaire for the SGOG’s Scheme for Financial Assistance to Industrial Parks program its earlier response” and “It is reiterated that the scheme of financial assistance to Industrial Park is not applicable to the company. The scheme definitely falls in the category of general infrastructure.”<sup>41</sup> The Department also asked the GOI to submit a translated copy of the regulations for this program that were referenced by the program addendum submitted by the GOI in the NSA Questionnaire Response at Exhibit-NSA-1. In its October 19 Supplemental Questionnaire Response, the GOI stated, “Since the desired documents pertains to State Government of Gujarat are in Gujarati. The GOI does not have readily translation of documents from various languages to English. The document is required to be translated and vetted, which shall require some time.”<sup>42</sup>

As described above and discussed in further detail below, the GOI failed to submit necessary information. As a result, the Department did not have the information or the data necessary to determine the countervailability of this program. In reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we based our determination on facts otherwise available. Further, the Department determined that an adverse inference is warranted, pursuant to section 776(b) of the Act because, by not responding to our requests for information with respect to these programs despite multiple requests, the GOI failed to cooperate by not acting to the best of its ability. Accordingly, as AFA, we determined that the SGOG’s Provision of Land for LTAR and Financial Assistance to Industrial Parks programs were specific within the meaning of 771(5A) of the Act. For further details with respect to these programs, *see* the “Analysis of Programs” section, below.

### **Selection of the Adverse Facts Available Rate**

In deciding on which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse “as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.”<sup>43</sup> The Department’s

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<sup>40</sup> See New Subsidy Questionnaire Response at 16.

<sup>41</sup> See October 19 Supplemental Questionnaire Response at last page (unnumbered).

<sup>42</sup> *Id.*

<sup>43</sup> See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>44</sup>

Because JBF failed to act to the best of its ability in this investigation, as discussed above, we made an adverse inference with respect to the programs on which the Department initiated in this investigation, descriptions of which are contained in Attachment I.<sup>45</sup> A complete list of the programs we countervailed is included below at “D. Final AFA Rates Determined for Programs Used by JBF.” In assigning net subsidy rates for each of the programs for which specific information was required from JBF, we were guided by the Department’s approach in prior India CVD proceedings as well as recent CVD investigations involving the People’s Republic of China.<sup>46</sup>

It is the Department’s practice in CVD proceedings to select, as AFA, the highest calculated program-specific rates determined in the instant investigation, or if not available, rates calculated in prior CVD cases involving the same country.<sup>47</sup>

For the alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we have applied an adverse inference that the respondents paid no income tax during the POI.<sup>48</sup> The standard income tax rate for corporations in India is 30 percent.<sup>49</sup> Therefore, the highest possible benefit for the income tax rate programs is 30 percent. We are applying the 30 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 30 percent benefit).

For programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another India CVD proceeding. Absent an above-*de minimis* subsidy rate calculated for the same or

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<sup>44</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994) (SAA), at 870.

<sup>45</sup> See Attachment 1, *i.e.*, the Initiation Checklist and New Subsidy Allegations Memorandum.

<sup>46</sup> See, *e.g.*, *Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012), and accompanying Issues and Decision Memorandum at “Use of Facts Otherwise Available and Adverse Facts Available” section; see also *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), and accompanying Issues and 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.

<sup>47</sup> See, *e.g.*, *Laminated Woven Sacks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008), and accompanying Issues and Decision Memorandum at “Selection of the Adverse Facts Available.”

<sup>48</sup> See *Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468, (October 22, 2012) and accompanying Issues and Decision Memorandum at 11

<sup>49</sup> See Letter from the GOI, “Countervailing Duty Investigation of Polyethylene Terephthalate Resin From India: Response to Supplemental Questionnaire by Government of India,” dated July 14, 2015 and July 27, 2015 (GOI Sup Responses) at 15 and SQ-4.

similar program, the Department applies the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies.<sup>50</sup>

### **Corroboration of Secondary Information**

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>51</sup> The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.<sup>52</sup> The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.<sup>53</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. Moreover, as stated above, we are applying subsidy rates which were calculated in previous CVD investigations or reviews. Additionally, no information has been presented which calls into question the reliability of these previously calculated subsidy rates. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>54</sup>

In the absence of record evidence concerning the alleged programs, the Department reviewed for the preliminary determination the information concerning Indian subsidy programs in other cases. Where we have a program-type match, we found that, because these are the same or similar programs, they are relevant to the programs in this case. Additionally, the relevance of these rates is that they are actual calculated CVD rates for Indian programs from which the non-cooperative respondent could actually receive a benefit. We affirm this analysis for the final determination. Thus, due to the lack of cooperation of JBF and the GOI described above, and the resulting lack of record information from the GOI concerning these programs, the Department has corroborated the rates it selected to use as AFA to the extent practicable for the final determination.

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<sup>50</sup> See, e.g., *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying Issues and Decision Memorandum at “Selection of the Adverse Facts Available Rate.”

<sup>51</sup> See SAA at 870.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*, at 869-870.

<sup>54</sup> See, e.g., *Fresh Cut Flowers From Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

## VIII. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, including parties' comments addressed below, we determine that certain revisions from our preliminary and post-preliminary determinations are required. Specifically, we determine that Dhunseri did not receive countervailable benefit under the Income Tax Exemption Scheme during the POI, and are revising the Duty Drawback and Focus Product Scheme rates applied to Dhunseri based on minor corrections submitted during verification.

### A. Programs Determined to Be Countervailable

#### A. *Export Promotion of Capital Goods Scheme (EPCG)*

The EPCG program provides for a reduction of or exemption from customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to six times the duty saved within a period of six years.<sup>55</sup> Once a company has met its export obligations, the GOI will formally waive the exempted duties on the imported goods.<sup>56</sup>

The Department has previously determined that import duty reductions or exemptions provided under the EPCG program are countervailable export subsidies because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act; (2) provides two different benefits under section 771(5)(E) of the Act; and (3) is specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is contingent upon export performance.<sup>57</sup> Because the above-cited evidence with respect to this program is consistent with the findings in, *inter alia*, *PET Film Final Determination* and *Shrimp from India*, we determine that this program is countervailable.

Under the EPCG program, the exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. It is the Department's practice to treat any balance on an unpaid liability that may be waived in the future as a contingent-liability interest-free loan pursuant to 19 CFR 351.505(d)(1).<sup>58</sup> Since the unpaid duties are a liability contingent on subsequent events, these interest-free contingent-liability loans constitute the first benefit under the EPCG program. The second benefit arises when the GOI waives the duty on imports of capital equipment covered by those EPCG licenses for which the export requirement has already been met. For those licenses for which the GOI has acknowledged that the company has completed its export obligation, we treat the import duty savings as grants received in the year in

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<sup>55</sup> See Letter from the GOI, "Countervailing Duty Investigation of Polyethylene Terephthalate Resin From India; Response to Questionnaire by Government of India," dated June 15, 2015 (GOI Response) at 22 – 25.

<sup>56</sup> *Id.*

<sup>57</sup> See, e.g., *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 Final Determination*), and accompanying Issues and Decision Memorandum at "EPCGS" section; see also *Shrimp from India*, and accompanying Issues and Decision Memorandum at 14.

<sup>58</sup> *Id.*

which the GOI waived the contingent liability on the import duty exemption pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are approved for the purchase of capital equipment. The preamble of the Department's regulations states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring..."<sup>59</sup> In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.<sup>60</sup>

Dhunseri reported that it imported capital goods at reduced import duty rates under the EPCG program. Information provided by Dhunseri indicates that their EPCG licenses were issued for the purchase of capital goods used for the production of subject and non-subject merchandise.<sup>61</sup> Therefore, we are attributing the EPCG benefits received by Dhunseri to its total exports consistent with 19 CFR 351.525(b)(5).

Dhunseri met the export requirements for certain EPCG licenses prior to December 31, 2014 (the last day of the POI), and the GOI has formally waived the relevant import duties. For a number of their licenses, however, Dhunseri had not yet met its export obligation as required under the program. Therefore, although Dhunseri received a deferral from paying import duties for the capital goods that were imported, the final waiver of the obligation to pay the duties was not demonstrated for a number of these imports.<sup>62</sup>

Dhunseri reported that although SAPL was originally established as an Export Oriented Unit (EOU), it "de-bonded" from being an EOU unit on October 15, 2009 and opted for conversion to the EPCG program. Dhunseri claims that all exempted import duty liability on capital goods from the EOU program (calculated after taking into account the rate of depreciation set by the Indian government) ended up being transferred and therefore exempted under the EPCG license. Dhunseri reported these exempted import duties under the EPCG section.<sup>63</sup> Dhunseri later confirmed that the export obligation for all imports of capital goods under this scheme was fulfilled.<sup>64</sup>

To calculate the benefit received from the GOI's formal waiver of import duties on Dhunseri's capital equipment where the export obligations were met prior to December 31, 2014 (the last

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<sup>59</sup> See *Countervailing Duties*, 63 FR 65348, 65393 (November 25, 1998).

<sup>60</sup> See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 6634 (February 10, 2010), and accompanying Issues and Decision Memorandum at Comment 9; see also *Shrimp from India Prelim* and accompanying Decision Memorandum at "Duty Incentives under the Export Promotion Capital Goods Program," unchanged in *Shrimp from India*.

<sup>61</sup> See Dhunseri 2<sup>nd</sup> Section III Response at 1.

<sup>62</sup> *Id.*, at 5-6.

<sup>63</sup> See Letter from Dhunseri, "Polyethylene Terephthalate Resin from India: Questionnaire Response to Section III," dated June 15, 2015 (Dhunseri Section III Response) at 35 to 35; see also Letter from Dhunseri, "Polyethylene Terephthalate Resin from India: Questionnaire Response to Section III Regarding the Export Promotion of Capital Goods and West Bengal Programs," dated June 22, 2015 (Dhunseri 2<sup>nd</sup> Section III Response) at 5-6.

<sup>64</sup> See Letter from Dhunseri, "Polyethylene Terephthalate Resin from India: Response to Supplemental Section III Questionnaire," dated July 14, 2015 (First Supplemental Response) at 6.

day of the POI), we used the total amounts of duties waived. We treated these amounts as grants pursuant to 19 CFR 351.504. Further, consistent with the approach followed in the *PET Film Final Determination*, we determined the year of receipt of the benefit to be the year in which the GOI formally waived the respondents' outstanding import duties.<sup>65</sup> Next, we performed the "0.5 percent" test," as prescribed under 19 CFR 351.524(b)(2), for the total value of duties waived, for each year in which the GOI granted Dhunseri an import duty waiver. For any years in which the value of the waived import duties was less than 0.5 percent of the respondent's total export sales, we expensed the amount of the waived duties to the year of receipt. For years in which the value of the waivers exceeded 0.5 percent of the respondent's total export sales in that year, we allocated the waived duty amount using the allocation period of 10 years for nonrecurring subsidies, in accordance with 19 CFR 351.524(d)(2). See the "Allocation Period" section, above. For purposes of allocating the value of the waived duties over time, we used the appropriate discount rate for the year in which the GOI officially waived the import duties. See "Benchmarks and Discount Rates" section, above.

As noted above, import duty reductions or exemptions that the respondents received on the imports of capital equipment for which they had not yet met export obligations may have to be repaid to the GOI if the obligations under the licenses are not met. Consistent with our practice and prior determinations, we are treating the unpaid import duty liability as an interest-free loan.<sup>66</sup>

The amount of the unpaid duty liabilities to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the respondent applied, but had not been officially waived by the GOI, as of the end of the POI. Accordingly, we find the benefit to be the interest that the respondent would have paid during the POI had it borrowed the full amount of the duty reduction or exemption at the time of importation.<sup>67</sup>

As stated above, the time period for fulfilling the export requirement expires six years after importation of the capital good. As such, pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment), occurs at a point in time that is more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the long-term interest rates as discussed in the "Benchmarks and Discount Rates" section, above. We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the capital good was imported and summed these amounts to determine the total benefit from these contingent liability loans.

The benefit received under the EPCG program is the sum of: (1) the benefit attributable to the POI from the formally waived duties for imports of capital equipment for which the respondents met export requirements by the end of the POI; and (2) interest due on the contingent-liability loans for imports of capital equipment that have unmet export requirements during the POI. We

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<sup>65</sup> See *PET Film Final Determination*, and accompanying Issues and Decision Memorandum at Comment 5.

<sup>66</sup> See 19 CFR 351.505(d)(1); see also *Shrimp India Prelim*, and accompanying Decision Memorandum at EPCG Program (unchanged in *Shrimp from India*).

<sup>67</sup> *Id.*



then divided the total benefit received by the respondent under the EPCG program by Dhunseri's total exports of subject merchandise during the POI.

On this basis, we determine a countervailable subsidy of 0.16 percent *ad valorem* for Dhunseri.

### *B. Duty Drawback (DDB)*

Dhunseri reported receiving duty rebates under this program.<sup>68</sup> The GOI explained that the DDB program provides rebates for duty or tax chargeable on any (a) imported or excisable materials and (b) input services used in the manufacture of export goods.<sup>69</sup> Specifically, the duties and tax “neutralized” under the program are the (i) Customs and Union Excise Duties in respect of inputs and (ii) Service Tax in respect of input services.<sup>70</sup> The duty drawback is generally fixed as a percentage of the FOB price of the exported product.<sup>71</sup>

Import duty exemptions on inputs for exported products are not countervailable so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.<sup>72</sup> However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products, and in what amounts.<sup>73</sup> This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.<sup>74</sup> If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission or drawback is countervailable.<sup>75</sup>

Regarding its establishment of applicable duty drawback rates, the GOI stated the following:

The rates are determined following a specified procedure that is undertaken by an independent committee by the GOI. The committee makes its recommendations after discussions with all stake holder{s} including Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which may include data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products. Corroborating data may also be collected from Central Excise and Customs field formations. This data is analyzed and this information is used to form the basis for the rate of Duty Drawback.<sup>76</sup>

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<sup>68</sup> See Dhunseri Section III Response at 20.

<sup>69</sup> See GOI Response at 35.

<sup>70</sup> *Id.*, at 35 – 36.

<sup>71</sup> *Id.*, at 36.

<sup>72</sup> See 19 CFR 351.519(a)(1)(ii).

<sup>73</sup> See *Shrimp from India*, and accompanying Issues and Decision Memorandum at “Duty Drawback (DDB).”

<sup>74</sup> *Id.*

<sup>75</sup> See 19 CFR 351.519(a)(4)(i)-(ii).

<sup>76</sup> See GOI Response at 51 – 52.

We requested that the GOI provide a copy of the recommendations and supporting documents for the drawback rates in effect during the POI;<sup>77</sup> the GOI did not provide the requested documentation.<sup>78</sup> Thus, consistent with *Shrimp from India*, based on the GOI's questionnaire response that lacks the documentation to support that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products, and in what amounts, we conclude that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended.<sup>79</sup>

Accordingly, we determine that the DDB confers a countervailable subsidy. Under the DDB, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because rebated duties represent revenue forgone by the GOI. Moreover, as explained above, the GOI has not supported its claim that the DDB system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported product. Therefore, under 19 CFR 351.519(a)(4), the entire amount of the import duty rebate earned during the POI constitutes a benefit. Finally, this program is only available to exporters; therefore, it is specific under sections 771(5A)(A) and (B) of the Act.

Pursuant to 19 CFR 351.519(b)(1), we find that benefits from the DDB program are conferred as of the date of exportation of the shipment for which the pertinent drawbacks are earned. We calculated the benefit on an as-earned basis upon export because drawback under the program is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, it is at this point that recipients know the exact amount of the benefit (*i.e.*, the value of the drawback).

We calculated the subsidy rate using the value of all DDB duty rebates that Dhunseri earned on U.S. sales during the POI. We divided the total amount of the benefit received by Dhunseri by the company's total sales of U.S. exports during the POI.

On this basis, we determine a countervailable subsidy rate of 2.95 percent *ad valorem* for Dhunseri.<sup>80</sup>

### *C. Focus Product Scheme (FPS)*

Dhunseri reported receiving an incentive from the GOI under the FPS.<sup>81</sup> The FPS is an incentive on select export of products.<sup>82</sup> The incentives are paid to offset infrastructure inefficiencies and other associated costs involved in the marketing of these products.<sup>83</sup> The FPS incentive rate for PET resin is two percent of the FOB value of the export and provides for duty-free imports of inputs and capital goods.

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<sup>77</sup> See Letter from the Department to the GOI, "Countervailing Duty Investigation of Polyethylene Terephthalate Resin From India: Countervailing Duty Supplemental Questionnaire," dated July 1, 2015 (GOI Supplemental) at 2.

<sup>78</sup> *Id.*, at 3-10.

<sup>79</sup> See *Shrimp from India*, and accompanying Issues and Decision Memorandum at 12-14.

<sup>80</sup> This rate is changed from the *Preliminary Determination* based on minor corrections submitted during verification. See Dhunseri Final Calculation Memorandum at 3-4.

<sup>81</sup> See Dhunseri Section III Response at 30.

<sup>82</sup> See GOI Response at 88, and Exhibits 23, 24, and 27.

<sup>83</sup> *Id.*

We determine that this program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act. Further, we determine that the FPS program is specific under sections 771(5A)(A) and (B) of the Act because it is limited to exporters. Furthermore, the entire amount of the FPS constitutes a benefit under section 771(5)(E) of the Act.

Consistent with 19 CFR 351.519(b)(2), we find that the benefits from the FPS program are conferred as of the date of exportation of the shipment for which the FPS is earned. This is because the FPS credits are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, the recipients know the exact amount of the benefit when exportation occurs. We calculated the subsidy rate thus by summing the reported benefit provided to Dhunseri and by dividing the total benefit incurred on U.S. sales by the total value of exports to the United States.

On this basis, we determine a countervailable subsidy rate of 1.99 percent *ad valorem* for Dhunseri for this program.<sup>84</sup>

#### *D. Incentive Under The West Bengal State Support for Industries Scheme*

The objective of this scheme is to assist in the growth of large and medium-scale units through Industrial Projects.<sup>85</sup> It came into effect on and from the April 1, 2008 in the whole West Bengal and remains valid for the period ending on March 31, 2013.<sup>86</sup> Dhunseri also reported earlier schemes such as the West Bengal Incentive Scheme, 1999, the Bengal Incentive Scheme, 2004 and the West Bengal State Support for Industries Scheme, 2008.

The programs offer various incentives and tax concessions to industrial units to assist them in the construction of new units or expansion of existing units, and the building of infrastructure in the least developed areas of West Bengal. The amount of financial assistance an industrial unit is eligible to receive is determined by its location in West Bengal. Under the scheme, West Bengal is divided into four regions: Group A, *i.e.*, Calcutta, is classified as developed, while Groups B through D are categorized as less developed, with Group D deemed the least developed. Industrial units located in the least developed areas receive greater monetary assistance than those units located in the more developed areas.

Dhunseri claims that upon a review of its participation in all three schemes, Dhunseri found it did not receive a benefit from almost all of the incentives provided by these “schemes.”<sup>87</sup> In particular, Dhunseri claims that the only program it received a benefit from was remission of sales tax on the sale of finished goods. Dhunseri claims, and reported a benefit for, the program with regard to sales within West Bengal, for which Dhunseri collected VAT on its sales during the POI, but was not required to pay VAT to tax authorities under WBIS 1999.<sup>88</sup> Dhunseri claims it did not receive any benefit from any of the other programs.

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<sup>84</sup> This rate is changed from the *Preliminary Determination* based on minor corrections submitted during verification. See Dhunseri Final Calculation Memorandum at 4.

<sup>85</sup> See GOI Response at 117.

<sup>86</sup> *Id.*

<sup>87</sup> See Dhunseri Response dated June 22, 2015 at 14.

<sup>88</sup> *Id.*, at 15.

We find that the assistance granted to Dhunseri under Scheme 1993 is specific within the meaning of section 771(5A)(D)(iv) of the Act, because the benefits are limited to companies located in specific regions within West Bengal.<sup>89</sup> The sales tax exemption which Dhunseri received is revenue foregone, and therefore a financial contribution in accordance with section 771(5)(D)(ii) of the Act. Both forms of assistance provide benefits in accordance with section 771(5)(E) of the Act.

To calculate the countervailable subsidy for Dhunseri we divided the total sales (VAT) tax exemptions received by Dhunseri during the POI by Dhunseri's total sales.

On this basis, we determine the countervailable subsidy to be 0.02 percent *ad valorem* for Dhunseri.

## **B. Programs Determined To Be Not Used by Dhunseri or Not to Confer a Benefit During the POI**

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

During the POI, the GOI provided pre- and post-export financing to make short-term working capital available to exporters at internationally comparable interest rates.<sup>90</sup> The financing was denominated in rupees and in foreign currencies.<sup>91</sup>

With respect to the rupee-denominated export financing, the Reserve Bank of India (RBI) previously capped the interest rate that commercial banks could charge on these loans. However, beginning on July 1, 2010, the RBI eliminated the interest rate cap and allowed participating commercial banks to set the interest rates for these export loans based on the bank's own operating and lending costs.<sup>92</sup> The RBI also instituted an interest subvention program for certain exporting sectors and companies, and for small and medium sized companies, valid up to March 31, 2014.<sup>93</sup> However, Dhunseri states that it did not qualify for these programs.<sup>94</sup> We determine that rupee-denominated pre- and post- shipment export loans that were eligible for the interest rate subvention confer countervailable subsidies on the subject merchandise because: (1) the provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act, as a direct transfer of funds in the form of loans; (2) these loans would give rise to a benefit, as described further below, to the extent that the interest rates are lower than the interest rates on comparable commercial loans (*see* section 771(5)(E)(ii) of the Act); and (3) these loans are specific under sections 771(5A)(A) and (B) of the Act because they are contingent upon export performance. However, because Dhunseri reported not utilizing this program, we determine that it was not used.

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<sup>89</sup> See Dhunseri June 22, 2015 response at 14.

<sup>90</sup> See GOI Response at 5.

<sup>91</sup> *Id.*, at 6 – 9 and Exhibit 1.

<sup>92</sup> *Id.*, at 6.

<sup>93</sup> *Id.*, at 8 – 9 and Exhibit 2.

<sup>94</sup> See First Supplemental Response at 4 to 5.

With respect to export financing denominated in foreign currencies, Dhunseri reported it did not receive any pre- and post-shipment export financing during the POI.<sup>95</sup> The GOI explained that the RBI required banks up to May 4, 2012, to fix the rates of interest with reference to ruling LIBOR, EURO LIBOR or EURIBOR, and these rates were subject to caps, with the size of the cap varying depending on the duration of the loan. However, the government changed the manner in which the foreign currency-denominated export loan program operated and effective May 5, 2012, banks were free to determine the interest rate on export loans provided in foreign currencies and now provide export credit to exporters at internationally competitive rates under the programs of “Pre-shipment Credit in Foreign Currency” and “Rediscounting of Export Bills Abroad.”<sup>96</sup> As a result, we have previously found that the GOI terminated the foreign currency export financing program on May 5, 2012.<sup>97</sup>

In *Shrimp from India*, the GOI supported its claim with a copy of the “Master Circular - Rupee / Foreign Currency Export Credit & Customer Service To Exporters,” issued by RBI, which was included also as part of Dhunseri’s response in the instant investigation.<sup>98</sup>

As explained below, 19 CFR 351.526(a) permits the Department to take account of program-wide changes in setting the countervailing duty deposit rate in certain circumstances. When a subsidy program is terminated, 19 CFR 351.526(d) requires that there be no residual benefits under the program and that if a replacement program has been implemented the benefits under the replacement program be calculable.

In *Shrimp from India*, as well as the instant investigation, the GOI reported that the maximum term for pre-shipment credits in foreign currencies was 360 days prior to shipment, and the maximum term for post-shipment credits in foreign currencies was six months from the date of shipment. Thus, the last day on which the respondents could have paid reduced interest on their foreign currency export financing was April 30, 2013 (360 days after May 5, 2012). Therefore, no residual benefits exist beyond that date. Moreover, the GOI has not implemented a replacement program.<sup>99</sup> Therefore, consistent with the Department’s determination in *Shrimp from India*, we are determining Dhunseri had no foreign currency denominated export loan benefit during the POI.

As noted above, Dhunseri reported that it also did not use this program during the POI or during the AUL period. Our examination of Dhunseri’s records and accounts at verification provided no evidence that the firm received assistance under this program.

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<sup>95</sup> See Dhunseri Section III Response at 16.

<sup>96</sup> See GOI Response at 9.

<sup>97</sup> *Id.*, at 8, 18, and 20 – 21. See also *Certain Frozen Warmwater Shrimp From India: Preliminary Countervailing Duty Determination*, 78 FR 33344 (June 4, 2013) (*Shrimp India Prelim*), and accompanying Decision Memorandum at “Pre and Post-Shipment Export Financing,” unchanged in *Shrimp from India*.

<sup>98</sup> *Id.* See also Dhunseri Section III Response at Exhibit 9.

<sup>99</sup> See *Shrimp from India* and accompanying Issues and Decision Memorandum at “Export Financing Program” section; see also GOI Response at 10, 18, and 20 – 21; and Dhunseri Section III Response at 16 – 17.

## *2. Duty Free Import Authorization Scheme (DFIA)*

The GOI reported that an exporter “allow duty free import of inputs, fuel, oil, energy sources, catalyst which are required for production of export product.”<sup>100</sup> Accordingly, we determine that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act.

The GOI also reported that “The scheme is applicable to a manufacturer exporter as well as the merchant exporter tied up with supporting manufacturer.”<sup>101</sup> Accordingly, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section 771(5A)(B) of the Act.

Dhunseri reported that it did not use this program during the POI, or during the AUL period. Our examination of Dhunseri’s records and accounts at verification provided no evidence that the firm received assistance under this program.

## *3. SGOG’s Provision of Land for Less Than Adequate Remuneration (LTAR)*

Petitioners allege that the Gujarat Industrial Development Corporation (GIDC) was created by the SGOG to secure “the orderly establishment and organization of industries in industrial areas and industrial estates” in Gujarat. Petitioners claim that companies are eligible for a variety of incentives through location in a GIDC industrial estate, including “reasonable allotment price with soft repayment options” and concessional rates” land and industrial sites and that the GIDC has developed a special economic zone for “Chemicals and Petrochemicals.” Citing to the record, Petitioners argue that JBF Industries’ productive facility is located in the Sarigam GIDC Industrial Area.

The GOI reported that “State Government of Gujarat, Sarigam, Gujarat Industrial Development Corporation (GIDC), has allotted land to JBF industries Ltd. in Sarigam Industrial Estate, Gujarat.”<sup>102</sup> Accordingly, we determine that this program provides a financial contribution in the form of the provision of a good within the meaning of section 771(5)(D)(iii) of the Act.

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that Land for LTAR given under this program is specific.

We acknowledge that Dhunseri could not have used this program, the Financial Assistance to Industrial Parks program described immediately below, or any of the other state government programs listed below during the POI or during the AUL period because neither the firm nor its cross-owned affiliates maintained operations in the states of Gujarat or Maharashtra. Our examination of Dhunseri’s records and accounts at verification provided no evidence that the firm received assistance under these programs.

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<sup>100</sup> See New Subsidy Questionnaire Response at 1.

<sup>101</sup> *Id.*, at 6.

<sup>102</sup> See October 19 Supplemental Questionnaire Response at question 10 (pages unnumbered).

#### 4. *Financial Assistance to Industrial Parks*

Petitioners allege that under the State of Gujarat's Industrial Policy 2003, the SGOG identified infrastructure development as a priority, with Industrial Parks playing a critical role for establishing the necessary infrastructure for industries. Petitioners allege that the SGOG extended direct payments to private sector companies based upon their location and that the SGOG would provide grants valued between 20 and 50 percent of the company's fixed capital investment in land, buildings and infrastructure for a period of five years. Petitioners argue that JBF Industries maintains operations in the "Sarigam GIDC Industrial Area," and thus, likely was eligible for this financial assistance.

The GOI reported that the administering agency or authority for this program is the "State Level Approval Committee, Government of Gujarat." Accordingly, we determine that this program provides a financial contribution in the form of direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act.

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that grants given under this program are specific.

With respect to Dhunseri, and as noted above, we acknowledge that Dhunseri could not have used this program because neither the firm nor its cross-owned affiliates maintained operations in the states of Gujarat or Maharashtra. Our examination of Dhunseri's records and accounts at verification provided no evidence that the firm received assistance under these programs.

#### 5. *Income Tax Exemption Scheme (ITES)*

According to the GOI, under Section 80-IA of the Income Tax Act, 1961, a company may deduct 100 percent of the profits derived from a specified eligible business undertaking from its taxable income.<sup>103</sup> The deduction may be claimed for any ten consecutive years out of a period of fifteen years from the first year of operation. Dhunseri explained that "[t]o receive the deduction in its tax return, a company identifies itself as having an 'undertaking' or 'infrastructure facility' and furnishes with its tax return an audited report of the 'undertaking' or 'infrastructure facility' on a Form 10CCB."<sup>104</sup> Furthermore, "Dhunseri's captive power plant at Haldia is an eligible 'undertaking' under Section 80 IA(4)(iv)(a) of the Income Tax Act. Thus, profits from this project are entitled to a deduction under Section 80 IA."<sup>105</sup>

A company claiming a benefit under section 80-IA is required to submit an audited return with supporting documents to an agency of the Ministry of Finance, which assesses the documents and approves or denies the claim.<sup>106</sup> The GOI did not provide data on program use by industrial classification and stated it does not maintain usage information at an aggregate level.<sup>107</sup>

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<sup>103</sup> *Id.*, at 100 – 101.

<sup>104</sup> *See* Dhunseri Section III Response at 42.

<sup>105</sup> *Id.*

<sup>106</sup> *See* GOI Response at 110.

<sup>107</sup> *Id.*, at 111.

Because information provided by the GOI indicates that financial assistance under this program is expressly limited by law to enterprises engaging in five specific activities, we find this program to be *de jure* specific under section 771(5A)(D)(i) of the Act. The tax deductions are financial contributions in the form of revenue foregone by the government under section 771(5)(D)(ii) of the Act. Under 19 CFR 351.509(a), the benefit is equal to the difference between the income tax actually paid and the income tax that would have paid absent the program.

We calculated a countervailable subsidy rate for Dhunseri under this program of 0.35 percent *ad valorem* using information available at the *Preliminary Determination*. Based in part on comments submitted in case and rebuttal briefs by both Dhunseri and Petitioners following the *Preliminary Determination*, and on Dhunseri's verified income tax return filed during the POI, we find for this final determination that Dhunseri did not receive benefits under this program during the POI. Summaries of Dhunseri's and Petitioners' comments and the Department's modified position appear in the "Analysis of Comments" section at "Comment 1: Whether Dhunseri Used the ITES Tax Credit."

#### 6. *Government of India Programs*

- a. Status Holder Incentive Scrip
- b. Advance Licenses Program
- c. Focus Market Scheme
- d. Special Economic Zones (SEZ) (6 programs)
- e. Export Oriented Units (EOUs Program: Duty Drawback on Furnace Oil Procured from Domestic Oil Companies
- f. GOI Loan Guarantees
- g. Market Development Assistance Program

#### 7. *State Government Programs*

- a. State and Union Territory Sales Tax Incentive Programs
- b. Maharashtra Market Development Assistance Program
- c. Maharashtra Industrial Promotion Subsidy
- d. Maharashtra Electricity Duty Exemption
- e. Maharashtra Waiver of Stamp Duty
- f. State Government of Maharashtra- Incentives to Strengthening Micro-, Small-, and Medium- Sized and Large Scale Industries
- g. State Government of Gujarat- Industrial Policy 2009 Scheme

### **C. Final AFA Rates Determined for Programs Used by JBF**

As explained above, we made the adverse inference that JBF received countervailable subsidies under each of the subsidy programs that the Department included in its initiation and Post-Preliminary Memorandum, other than those found to be terminated and not replaced. We also included programs self-identified by Dhunseri, as nothing in the description of the programs would limit them to Dhunseri; thus, we determine that JBF could benefit from the same



programs. Listed below are the AFA rates applicable to each program.

<b>Program</b>	<b>Ad Valorem Subsidy Rate (Percent)</b>
Pre-Shipment and Post-Shipment Financing <sup>108</sup>	2.90
Export Promotion of Capital Goods Scheme (EPCGS) <sup>109</sup>	0.16
Duty Drawback Scheme <sup>110</sup>	2.97
Status Holder Incentive Scrip Scheme <sup>111</sup>	0.23
Advance Licenses Program <sup>112</sup>	6.82
Focus Market Scheme <sup>113</sup>	16.63
Focus Product Scheme <sup>114</sup>	2.00
(SEZ-A) Duty-Free Importation of Capital Goods and Raw Materials, <i>etc.</i> <sup>115</sup>	1.23
(SEZ-B) Exemption from Payment of Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials <sup>116</sup>	0.53
(SEZ-C) Exemption from Stamp Duty <sup>117</sup>	3.09

<sup>108</sup> 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 Investigation*) and accompanying Issues and Decision Memorandum at the “Pre- and Post-Shipment Export Financing” section where the Department calculated a rate for an identical program.

<sup>109</sup> Calculated Rate from Dhunseri for identical program in this proceeding.

<sup>110</sup> *Id.*

<sup>111</sup> See *Steel Threaded Rod from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part; 2012-2013*, 79 FR 40714 (July 14, 2014) (*Steel Threaded Rod*) and accompanying Issues and Decision Memorandum at “Advance Licenses Program” where the Department calculated a rate for the identical program.

<sup>112</sup> See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006), and accompanying Issues and Decision Memorandum at “Status Holder Incentive Scrip (SHIS)” where the Department calculated a rate for the identical program.

<sup>113</sup> See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 49635 (September 28, 2001), (*HRS from India*) and accompanying Issues and Decision Memorandum (*HRS from India I&D Memorandum*) at Export Promotion Capital Goods Scheme where the Department calculated a subsidy rate for any program from any CVD proceeding involving India that JBF could have conceivably used.

<sup>114</sup> Calculated Rate from Dhunseri for identical program in this proceeding.

<sup>115</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11163 (March 2, 2015) and Memorandum at “Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Materials” where the Department calculated a rate for the identical program.

<sup>116</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty New Shipper Review*, 76 FR 30910 (May 27, 2011), and accompanying Issues and Decision Memorandum at “Exemption from Payment of Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material” where the Department calculated a rate for the identical program.

<sup>117</sup> See *Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India*, 71 FR 28665 (May 17, 2006) and accompanying Issues and Decision Memorandum at the “State Government of Gujarat (SGOG) Tax Incentives” section where the Department calculated a rate for a similar program.

(SEZ-D) Exemption from Electricity Duty and Cess <sup>118</sup>	0.21
(SEZ-E) Income Tax Exemptions (Section 10A) and Income Tax Exemption Scheme (80-IA) <sup>119</sup>	30.00
(SEZ-F) Discounted Land Fees in an SEZ <sup>120</sup>	0.04
Export Oriented Units (EOU) Program: Duty Drawback on Furnace Oil Procured from Domestic Oil Companies <sup>121</sup>	0.34
Government of India Loan Guarantees <sup>122</sup>	2.90
Market Development Assistance Program <sup>123</sup>	16.63
State and Union Territory Sales Tax Incentive Programs <sup>124</sup>	3.99
State Government of Maharashtra-Industrial Promotion Subsidy <sup>125</sup>	6.06
State Government of Maharashtra-Electricity Duty Exemption <sup>126</sup>	3.09
State Government of Maharashtra-Waiver of Stamp Duty <sup>127</sup>	3.09

<sup>118</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review 2012-2013*, 80 FR 11163 (March 2, 2015) (*PET Film 2012-2013*) and accompanying Issues and Decision Memorandum at “Exemption from Electricity Duty and Cess (a tax or levy) Thereon on the Sale or Supply to the SEZ Unit” where the Department calculated a rate for the identical program.

<sup>119</sup> See *Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination* 77FR 64468 (October 22, 2012) at 11.

<sup>120</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty New Shipper Review*, 76 FR 30910 (May 27, 2011) and accompanying Issues and Decision Memorandum at “Discounted Land Fees in an SEZ” where the Department calculated a rate for the identical program.

<sup>121</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India* 70 FR 13451, (March 21, 2005) and accompanying Issues and Decision Memorandum at the “Export-Oriented Unit (EOU) Program: Duty Drawback on Furnace Oil Procured from Domestic Oil Companies” where the Department calculated a rate for an identical program.

<sup>122</sup> See *PET Film; 2012–2013* at accompanying Issues and Decision Memorandum at “Government of India Loan Guarantees” where the Department calculated a rate for the identical program.

<sup>123</sup> See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India* 66 FR 49635 (September 28, 2001) (*HRS from India*), and accompanying Issues and Decision Memorandum (*HRS from India* I&D Memorandum) at Export Promotion Capital Goods Scheme, where the Department calculated a subsidy rate for any program from any CVD proceeding involving India that JBF could have conceivably used.

<sup>124</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008) and accompanying Issues and Decision Memorandum at “State Sales Tax Incentive Programs” where the Department calculated a rate for the identical program.

<sup>125</sup> See *HRS from India*, and accompanying Issues and Decision Memorandum at “GOI Forgiveness of SDF Loans Issued to SAIL” where the Department calculated a rate for a similar program.

<sup>126</sup> See *Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India*, 71 FR 28665 (May 17, 2006) and accompanying Issues and Decision Memorandum at “State Government of Gujarat (SGOG) Tax Incentives,” where the Department calculated a rate for a similar program.

<sup>127</sup> *Id.*

State Government of Maharashtra-Incentives to Strengthen Micro-, Small-, and Medium- Sized Manufacturing Enterprises <sup>128</sup>	6.06
Incentives Under the West Bengal State Support for Industries Scheme – 2008 <sup>129</sup>	0.02
Subsidy Programs in the State of Gujarat <sup>130</sup>	6.06
Duty Free Import Authorization Scheme <sup>131</sup>	14.61
State Government of Gujarat’s Provision of Land for LTAR <sup>132</sup>	18.08
Financial Assistance to Industrial Parks <sup>133</sup>	6.06
<b>Total AFA Subsidy Rate</b>	<b>153.80</b>

## IX. CALCULATION OF THE ALL-OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company’s exports of subject merchandise to the United States excluding rates that are zero or *de minimis* or any rates determined entirely on the facts available. In this investigation, the only rate that is not zero or *de minimis* or based entirely on facts available is the rate calculated for Dhunseri. Consequently, the rate calculated for Dhunseri is also assigned as the “all-others” rate.

## X. ANALYSIS OF COMMENTS

### Comment 1: Whether Dhunseri Used the ITES Tax Credit

#### Dhunseri’s Comments

- Dhunseri argues that in its *Preliminary Determination*, the Department did not follow its standard methodology of calculating benefit received under direct tax programs as the difference between what a firm paid in taxes while using a program relative to what it

<sup>128</sup> See *HRS from India*, and accompanying Issues and Decision Memorandum at “GOI Forgiveness of SDF Loans Issued to SAIL” where the Department calculated a rate for a similar program.

<sup>129</sup> Calculated Rate from Dhunseri for identical program in this proceeding.

<sup>130</sup> See *HRS from India*, and accompanying Issues and Decision Memorandum at “GOI Forgiveness of SDF Loans Issued to SAIL” where the Department calculated a rate for a similar program.

<sup>131</sup> See *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India*, 67 FR 34905 (May 16, 2002), and accompanying Issues and Decision Memorandum at “DEPS” section.

<sup>132</sup> See *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008), and accompanying Issues and Decision Memorandum at the “Captive Mining Rights of Iron Ore” section.

<sup>133</sup> See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 49635 (September 28, 2001) and accompanying Issues and Decision Memorandum at the “The GOI’s Forgiveness of SDF Loans to SAIL” section.

would have paid had it not used the program.<sup>134</sup>

- Dhunseri contends that the Department erred in calculating the benefit Dhunseri received from the ITES by instead calculating the benefit provided by the program as the deduction on taxable income taken under the ITES, rather than the actual difference Dhunseri paid under the program relative to what it would have paid under non-use.<sup>135</sup>
- Dhunseri confirms that it declared this deduction taken under the ITES. However, due to its obligations under the Minimum Alternative Tax Act (MAT), Dhunseri states that its use of the ITES “did not affect the income tax Dhunseri paid,” and that as a result the firm derived no countervailable benefit from the ITES.<sup>136</sup>
- Dhunseri states that Section 115 JB of the Income Tax Act requires firms paying less than 18.5 percent in income tax as a percentage of their book profit to pay income tax at a rate of 18.5 percent. This law effectively creates an income tax floor of 18.5 percent to which Dhunseri claims it was subject.<sup>137</sup>
- Dhunseri states that even though it took a deduction under the ITES, thereby reducing its income tax rate below 18.5 percent, that deduction triggered the MAT and thereby increased the firm’s income tax rate to 18.5 percent.<sup>138</sup>
- Dhunseri contends that had it not taken the ITES deduction, its calculated income tax rate would “...still have been” less than 18.5 percent of its book profits, triggered the MAT, and therefore set the firms’ tax rate at 18.5 percent.<sup>139</sup>
- Dhunseri adds that due to MAT obligations, the firm had to pay income tax at a higher rate than its income alone would dictate whether or not it used the ITES. Therefore, the firm argues that it received no countervailable benefit under the ITES.<sup>140</sup>

### **Petitioner Rebuttal Comments**

- Petitioners note that Dhunseri’s statements about its tax obligations are corroborated by information the Department verified following the preliminary determination. However, Petitioners argue that Dhunseri “seeks to downplay” income tax credits its tax receipts verify it received under Section 115 JAA of the Income Tax Act within the context of its argument that it did not receive a countervailable benefit under the ITES.<sup>141</sup>

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<sup>134</sup> See Letter to the Secretary from Dhunseri Regarding Case Brief in the Countervailing Duty Investigation on Certain Polyethylene Terephthalate Resin from India (Dhunseri’s Case Brief), dated December 21, 2015, at page 2.

<sup>135</sup> *Id.*, at 2 – 3.

<sup>136</sup> *Id.*, at 3.

<sup>137</sup> *Id.*, at 3 – 4.

<sup>138</sup> *Id.*, at 4.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*, at 4 – 5.

<sup>141</sup> See Letter from Petitioner Regarding Rebuttal Brief, dated December 28, 2015 (Petitioners’ Rebuttal Brief) at 3.

- Petitioners state that under Section 115 JAA, Dhunseri both paid the MAT and was granted a tax credit equal to the difference between the tax amount determined *via* the MAT and its tax liability calculated using the ITES on its actual tax return.<sup>142</sup>
- Petitioners point to Dhunseri's income tax return as evidence that the firm received this tax credit, which is equal to the difference between its MAT and calculated tax liability using the ITES.<sup>143</sup>
- Petitioners disagree with Dhunseri's argument that this tax credit is speculative, stating that the credit is itemized and carried forward in Dhunseri's annual tax return.<sup>144</sup>
- For these reasons, Petitioners argue that Dhunseri did in fact receive a countervailable benefit under the ITES during the POI, and that the Department should continue to include the ITES in its final determination calculations.<sup>145</sup>

### Department's Position

Petitioners and Dhunseri both state that Dhunseri's verified income tax statement indicates a deduction in income tax liability under the ITES.<sup>146</sup> Moreover, both Petitioners and Dhunseri recognize that Dhunseri was subject to the MAT during the POI.<sup>147</sup> We acknowledge Dhunseri's argument that the firm would have been subject to the MAT under both use and non-use of the ITES, because in both instances its calculated tax liability would have fallen below 18.5 percent of book profits and, thereby, triggered the MAT.<sup>148</sup> We further acknowledge, as do both Petitioners and Dhunseri, that during the POI the firm received a tax credit under Section 115 JAA equal to the difference between the MAT and Dhunseri's calculated tax liability under the ITES.<sup>149</sup>

Dhunseri describes the tax credit under Section 115 JAA as speculative and notes that it has technically received this credit since 2007, but has not been able to use it because its use is *de jure* unavailable within a given tax year to firms subject to the MAT.<sup>150</sup> At verification, we noted that Dhunseri's income tax statement indicates that no amount of this tax credit was realized during the POI. Rather, this credit was itemized and carried forward.<sup>151</sup>

Under 19 CFR 351.509(b)(1), the Department will consider the benefit of a tax exemption or remission as having been received:

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<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> See Dhunseri's Case Brief at 3 and Petitioners' Rebuttal Brief at 2 – 3.

<sup>147</sup> *Id.*

<sup>148</sup> See Dhunseri Verification Report at 9.

<sup>149</sup> See Dhunseri's Case Brief at 5 and Petitioners' Rebuttal Brief at 3.

<sup>150</sup> See Dhunseri's Case Brief at 5; see also Dhunseri Section III Response at III-45-III-46.

<sup>151</sup> See Dhunseri Verification Report at 9; see also Dhunseri Section III Response at Exhibit 5 (lines 5 and 6 at Schedule MATC).

normally ...on the date on which the firm would otherwise have had to pay the taxes associated with the exemption or remission. Normally, this date will be the date on which the firm filed its tax return.

Dhunseri's final tax liability during the POI was the MAT, as indicated on its verified tax return, and was not directly and immediately impacted by either the ITES or the credit received under Section 115 JAA.<sup>152</sup> Those two credits may potentially only be used at a later date outside the POI, a time period which is not an issue before the Department.<sup>153</sup> Accordingly, we disagree with Petitioners' argument that Dhunseri received a countervailable benefit under this program during the POI. Given Dhunseri did not apply tax credits granted under the ITES during the POI, we find that Dhunseri did not receive benefits under the ITES program during the POI.

## **Comment 2: Whether the Department Improperly Calculated the Benefit Received Under the ITES**

### **Dhunseri's Comments**

- Dhunseri adds that even if the Department were to continue to consider the ITES to provide a countervailable benefit to the firm, the Department erred in its calculation of the amount of that benefit.<sup>154</sup>
- Dhunseri states that to calculate that benefit, the Department used an aggregate deduction from income rather than its own standard practice of using the difference paid in income tax between use and non-use of an income tax program.<sup>155</sup>
- Dhunseri argues that the Department should have calculated the benefit conferred by the ITES as the difference in the amount of income tax paid between use and non-use of the program, in line with the Department's own stated approach, rather than the deduction from income.<sup>156</sup>
- The firm states that it was nonetheless ineligible to derive benefit from the ITES due to its MAT obligations.<sup>157</sup>

No other parties commented on this issue.

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<sup>152</sup> See Dhunseri Section III Response at Exhibit 5 (lines 1-3 at Schedule MATC).

<sup>153</sup> *Id.*, at lines 5 and 6 at Schedule MATC; see also *Certain Steel Nails From the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 80 FR 28958 (May 20, 2015) and accompanying Issues and Decision Memorandum at 31-32.

<sup>154</sup> See Dhunseri's Case Brief at 5.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

## Department's Position

As discussed at Comment 1 above, we determine that Dhunseri did not receive benefits under the ITES during the POI. Therefore, we find arguments regarding miscalculation of benefit received under the program moot for this final determination.

### **Comment 3: Whether There Was a Program-Wide Change in the FPS**

#### **Dhunseri's Comments**

- Dhunseri states that during the POI, it received a flat credit of two percent for exported subject merchandise, and that the Department found that the FPS provided a countervailable benefit to the firm.<sup>158</sup>
- Dhunseri reiterates that as stated in its June 15, 2015 response filed on the record, the FPS was terminated as of April 1, 2015 based on the program's exclusion from the GOI's Foreign Trade Policy 2015-2020 (*FTP 2015-2020*), which was effective from that date.<sup>159</sup>
- Dhunseri acknowledges that, "although there is no document that explicitly states that the FPS is terminated...", the GOI's periodic *Foreign Trade Policy* reports officially catalog all export programs in effect during specified time periods.<sup>160</sup>
- Dhunseri argues that the exclusion of the FPS from the *FTP 2015-2020* is sufficient to establish the termination of the program by the GOI, and that, therefore, the Department should adjust its cash deposit rate due to this program-wide change, pursuant to 19 CFR 351.526(a).<sup>161</sup>
- Dhunseri contends that the termination of the FPS constitutes a program-wide change, as the termination applied to all firms in India and was the result of an official act. Moreover, the firm notes that the termination occurred after the POI but prior to the preliminary determination, and that the resulting change in benefit to Dhunseri, *i.e.* a two-percent reduction in benefit, is easy for the Department to measure.<sup>162</sup>
- Dhunseri argues that it received no residual benefit, as the FPS applied to exports and not capital goods, and that the Department can verify that the FPS has not been replaced by the GOI.<sup>163</sup>

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<sup>158</sup> *Id.*, at 6.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*, at 7.

<sup>163</sup> *Id.*

## Petitioner Rebuttal Comments

- Petitioners argue that verified record evidence demonstrates that the FPS “does not meet the established conditions for a program-wide change adjustment, per 19 CFR 351.526,” and that the Department should reject Dhunseri’s request and not change the cash deposit rate.<sup>164</sup>
- Petitioners note that in addition to not explicitly terminating the FPS, the GOI stated that, “{n}o significant change has taken place in the program,” and that “{it} is still in force.”<sup>165</sup>
- Petitioners argue that the FPS fails to meet the standard for evidence of program termination consistent with Department practice pursuant to 19 CFR 251.526(b), which defines a program wide-change, in part, as effectuated by an official act, such as the enactment of a statute, regulation or decree.<sup>166</sup>
- Petitioners state that pursuant to 19 CFR 351.526(d)(1), the Department would not adjust the cash deposit rate if there are residual benefits under the program, even if the program has been terminated. Petitioners also contend that the GOI confirmed that Dhunseri would retain eligibility to accrue benefits under the FPS after the POI.<sup>167</sup>
- Petitioners add that Dhunseri retained the ability to pay future customs and excise duties with scrip issued under the FPS, as well as to sell that scrip to other firms, thereby receiving residual benefits under the FPS during the POI.<sup>168</sup>
- Petitioners state that the Department should therefore reject Dhunseri’s claim that the FPS qualifies for a program-wide adjustment and not change the two percent *ad valorem* benefit received under the program in the Department’s final determination.<sup>169</sup>

## Department’s Position

We agree with Petitioners that the record of this investigation for the FPS program does not meet the established conditions for a program-wide change adjustment, per 19 CFR 351.526. The mere exclusion of the FPS from the *FTP 2015-2020* and no accompanying public notification of termination does not constitute an “official act” pursuant to 19 CFR 351.526(b)(2).<sup>170</sup> The

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<sup>164</sup> See Petitioners’ Rebuttal Brief at page 4.

<sup>165</sup> See Letter to the Secretary from TPM, Solicitors & Consultants regarding Response to Questionnaire by the Government of India in the Countervailing Duty Investigation on Certain Polyethylene Terephthalate Resin from India, dated June 15, 2015, at page 94.

<sup>166</sup> See Petitioners’ Rebuttal Brief at page 4.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*, at 5.

<sup>169</sup> *Id.*

<sup>170</sup> Previously, where the Department has relied upon a policy circular to support a finding of program termination, the policy circular has established affirmative program termination and has been accompanied by public notice and additional supporting documentation from the GOI indicating an amendment to legislation. See, e.g., *Certain*




Department considers the FPS not to be terminated absent an official and explicit termination of the program, *via* a statute, regulation, or decree by the GOI.<sup>171</sup> We note that Dhunseri itself acknowledges that no such document exists.<sup>172</sup> Lastly, the GOI's statement during verification regarding program discontinuation is neither a statute nor a regulation, and is contradicted by the GOI's acknowledgement that there has been no program wide change in the FPS.<sup>173</sup> Accordingly, we do not find that the FPS has been terminated pursuant to the Department's regulations and case practice concerning program termination criteria.

As we consider the FPS not to be terminated, we find Petitioner's argument that Dhunseri could have received residual benefits to be moot.

## **XI. RECOMMENDATION**

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

  
\_\_\_\_\_  
Agree                      Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

4 MARCH 2016  
\_\_\_\_\_  
Date

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*Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>171</sup> See *Certain Pasta From Italy: Final Results of the Expedited Third Sunset Review of the Countervailing Duty Order*, 78 FR 693 (January 4, 2013), and accompanying Issues and Decision Memorandum at 9.

<sup>172</sup> See Dhunseri's Case Brief at page 6.

<sup>173</sup> See GOI Verification Report at 2; see also GOI Response at 94.