




C-533-870
Investigation
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DATE: June 13, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination: Countervailing Duty Investigation of Certain New
Pneumatic Off-the-Road Tires from India

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to exporters and producers of certain new pneumatic off-the-road tires (off road tires) from India, as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On January 8, 2016, Titan Tire Corporation (Titan) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (USW) (collectively, Petitioners) filed the countervailing duty (CVD) petition regarding on off road tires from India.¹ Supplements to the CVD Petition and our consultations with the Government of India (the GOI) are described in the Initiation Checklist.² On February

¹ See Letter from Petitioners, "Petitions for the Imposition of Antidumping Duties on Imports of Certain New Pneumatic Off-the-Road Tires from India and the People's Republic of China and Countervailing Duties on Imports of Certain New Pneumatic Off-the-Road Tires from India, the People's Republic of China, and Sri Lanka," January 8, 2016 (alleging countervailable subsidies at Volume V (CVD Petition)).

² See *Certain New Pneumatic Off-the-Road Tires From India, the People's Republic of China, and Sri Lanka: Initiation of Countervailing Duty Investigations: Initiation of Countervailing Duty Investigation*, 81 FR 7067 (February 10, 2016) (*Initiation Notice*), and accompanying Countervailing Duty Investigation Initiation Checklist (Initiation Checklist).

3, 2016, the Department initiated a CVD investigation of certain off road tires from India.³ On February 18, 2016, the Department postponed its preliminary determination until June 13, 2016.⁴

We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁵ We released the CBP entry data under administrative protective order (APO) on February 3, 2016.⁶ We received comments from Petitioners,⁷ and from ATC Tires Private Limited (ATC).⁸ Section 777A(e)(1) of the Act directs the Department to determine an individual countervailable subsidy rate for each known exporter/producer of subject merchandise. The Department, however, may limit its examination to a reasonable number of exporters/producers under section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2) if it determines that it is not practicable to determine individual countervailable subsidy rates because of the large number of exporters/ producers involved in the investigation.

After careful consideration, the Department determined that, in this investigation, it was not practicable to examine all of the exporters/producers of off road tires from India because of the large number of identified exporters and producers relative to the resources available at the Department to conduct this investigation.⁹ Based upon CBP entry data, the Department selected the two largest exporters/producers accounting for the largest volume of subject merchandise exported to the United States from India during the POI: ATC and Balkrishna Industries Limited (BKT).¹⁰

On February 24, 2016, we selected ATC and BKT as mandatory respondents.¹¹ On March 2, 2016, we issued the CVD questionnaire to the GOI, requesting that it forward this questionnaire to the selected mandatory respondents.¹²

On April 8, 2016, TVS Srichakra Ltd. (TVS) submitted voluntary responses to our CVD questionnaire.¹³ However, on May 4, 2016, we determined that we did not have the resources to

³ See *Initiation Notice*, 81 FR at 7067.

⁴ See *Certain New Pneumatic Off-The-Road Tires From India, the People's Republic of China, and Sri Lanka: Postponement of Preliminary Determinations of Countervailing Duty Investigations*, 81 FR 9426 (February 25, 2016).

⁵ See *Initiation Notice*, 81 FR at 7070-7071.

⁶ See Department Memorandum, "Release of Customs Entry Data for Respondent Selection in the Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India," February 03, 2016.

⁷ See Letter from Petitioners, "Certain New Pneumatic Off-The-Road Tires from India – Petitioners' Respondent Selection Comments," February 12, 2016.

⁸ See Letter from ATC, "Certain New Pneumatic Off-the-Road Tires from India: Comments Regarding Respondent Selection," February 12, 2016.

⁹ See Memorandum, "Countervailing Duty Investigation of Certain New Pneumatic Off the-Road Tires from India: Respondent Selection," February 24, 2016 (Respondent Selection Memorandum) at 3-4.

¹⁰ *Id.*, at 4.

¹¹ *Id.*

¹² See Letter from the Department, "Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Countervailing Duty Questionnaire," March 02, 2016.

¹³ See Letter from TVS, "Countervailing Duty Investigation on imports of Certain New Pneumatic Off-the-Road Tires from India Questionnaire Response," April 8, 2016.

select to select TVS as a voluntary respondent because to do so would be unduly burdensome and would inhibit the timely completion of this investigation.¹⁴ Consequently, we are not conducting an individual examination of TVS.

Between March 23, 2016, and May 31, 2016, we received timely questionnaire responses from the GOI and the company respondents regarding our supplemental questionnaires.

On May 12, 2016, we initiated an investigation of four new subsidy programs based on timely allegations by Petitioners.¹⁵ On that same day, we issued questionnaires to the GOI and to the respondent companies regarding these new subsidy allegations, for which we received timely responses on May 31, 2016 and June 1, 2016.

Petitioners filed information regarding benchmarks for calculating subsidy benefits on May 16, 2016,¹⁶ to which ATC timely filed rebuttal comments and new factual information on May 26, 2016.¹⁷ On May 24, 2016, Petitioners timely filed allegations that critical circumstances exist with respect to imports of subject merchandise from India.¹⁸

Between June 2, 2016, and June 9, 2016, interested parties filed comments in advance of this preliminary determination.¹⁹ To the extent practicable, we have considered these comments in making this preliminary determination.

B. Postponement of Preliminary Determination

On February 25, 2016, based on a request from Petitioners, the Department postponed the deadline for the preliminary determination until no later than 130 days after the initiation of the investigation. The Department postponed the preliminary determination until June 13, 2016, in accordance with sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).²⁰

¹⁴ See section 782(a) of the Act; *see also* Department Memorandum, “Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Selection of an Additional Respondent,” May 4, 2016.

¹⁵ See Department Memorandum, “Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Analysis of May 4, 2016, New Subsidy Allegations,” May 12, 2016; *see also* Letter from Petitioners, “Certain New Pneumatic Off-The-Road Tires from India – Petitioners’ New Subsidy Allegations,” May 4, 2016 (New Subsidy Allegations).

¹⁶ See Letter from Petitioners, “Petitioners’ Benchmark Information,” May 16, 2016 (Petitioners’ Benchmark Submission).

¹⁷ See Letter from ATC, “Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Information to Rebut, Clarify or Correct New Factual Information,” May 26, 2016.

¹⁸ See Letter from Petitioners, “Certain New Pneumatic Off-The-Road Tires from India – Petitioners’ Critical Circumstances Allegation,” May 24, 2016 (Critical Circumstances Allegation).

¹⁹ See Letter from BKT, “Certain New Pneumatic Off-The-Road tires from India: Balkrishna Industries Limited’s Pre-Preliminary Comments,” (June 2, 2016); Letter from Petitioners, “Certain New Pneumatic Off-the-Road Tires from India and Sri Lanka (A-533-869, C-533-870, C-542-801): Petitioners’ Pre-Preliminary Scope Comments,” June 6, 2016; and Letter From Petitioners, “Certain New Pneumatic Off-The-Road Tires from India – Petitioner’s Pre-Preliminary Comments,” June 9, 2016.

²⁰ See *Countervailing Duty Investigations of Certain Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations*, 80 FR 48499 (August 13, 2015).

C. Period of Investigation

The period of investigation (POI) is January 1, 2015, through December 31, 2015. This period corresponds to the most recently completed calendar year in accordance with 19 CFR 351.204(b)(2).

III. SCOPE COMMENTS

As noted in the Initiation Notice, we set aside a period of time for parties to raise issues regarding product coverage, and we stated that all such comments must be filed within 20 calendar days of publication of the Initiation Notice.²¹

On February 23, 2016, we received scope comments from ATC and Alliance, requesting that the Department clarify the scope to be consistent with the scope of the existing orders on off road tires from the People's Republic of China (PRC).²² Alliance notes that, in a supplement to the Petition, Petitioners indicated that the scope of this investigation is intended to cover the exact same merchandise covered by the existing orders on off road tires from the PRC.²³ According to Alliance, the scopes described in *OTR Tires from the PRC Orders* do not contain a limitation on the exclusions for solid tires, aircraft tires, turn, lawn, and garden tires, golf and trailer tires, and other similar tire types. Therefore, Alliance argues that the Department should add the following phrase to the scope (*italics added to identify proposed additional language*):

All tires marked with any of the prefixes or suffixes listed above in their sidewall markings are covered by the scope regardless of their intended use, *unless the tire falls within one of the specific exclusions set forth below.*

Alliance argues that this phrase is already included in the scope (regarding those products not marked with one of the 14 prefixes or suffixes listed in the scope) and, therefore, this proposed language neither changes the meaning of the scope nor is in conflict with the intent of the Petition. Finally, Alliance requests that, if the Department does not revise the language of the scope, it issue a clarification memorandum that importers can present to CBP explicitly stating that all exclusions in the latter part of the scope apply even if tires are marked with one of the 14 prefixes or suffixes listed in the scope.

On March 4, 2016, Petitioners submitted rebuttal scope comments, opposing Alliance's proposed addition to the language of the scope. According to Petitioners, the Alliance proposal would

²¹ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*.

²² See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 73 FR 51624 (September 4, 2008); *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Countervailing Duty Order*, 73 FR 51627 (September 4, 2008) (*OTR Tires from the PRC Orders*).

²³ See Letter from Petitioners, "Scope Supplement to the Petitions for the Imposition of Antidumping Duties on Imports of Certain New Pneumatic Off-the-Road Tires from India and the People's Republic of China and Countervailing Duties on Imports of Certain New Pneumatic Off-the-Road Tires from India, the People's Republic of China, and Sri Lanka," January 14, 2016, at 2.

exclude tires from the scope that may be used for “turf, lawn and garden, and golf” applications and also bear one of the 14 prefix or suffix designations listed in the scope. Petitioners state that their intention (both in *OTR Tires from the PRC Orders* and in this investigation) is that the scope exclusion for “turf, lawn and garden, and golf tires” apply only to tires solely used on vehicles exclusively employed in these applications. As a result, Petitioners assert that they intended to include in the scope any tire with an application other than on a vehicle exclusively used for turf, lawn and garden, and golf applications. Petitioners point out that there are numerous vehicles that may be used in turf, lawn and garden, and golf applications that may also be used in agricultural applications (*e.g.*, compact and sub-compact tractors). Consequently, Petitioners maintain that the Department must deny Alliance’s proposed scope amendment.

We have considered the request noted above, as well as Petitioners’ responsive comments. While the Department does have the authority to define or clarify the scope of an investigation, the Department must exercise this authority in a manner which reflects the intent of the Petition and the Department generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the Petition.²⁴ Thus, absent an overarching reason to modify the scope in the Petition, the Department accepts the scope as it is currently written.²⁵ Consequently, we have made no change to the scope with respect to Alliance’s request because Petitioners intended that their scope exclusion language cover only certain products and modifying the language of the scope in the manner Alliance requests would not reflect the intent of the Petition.

IV. SCOPE OF THE INVESTIGATION

The product covered by this investigation is certain new pneumatic off-the-road tires from India. For a full description of the scope of this investigation, see Appendix I to the *Preliminary Determination*.

V. CRITICAL CIRCUMSTANCES

As noted above, on May 24, 2016, Petitioners, pursuant to 19 CFR 351.206(c)(1), alleged that critical circumstances exist with respect to imports of the subject merchandise.²⁶

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the

²⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products From Canada*, 67 FR 15539 (April 2, 2002), and accompanying Issues and Decision Memorandum (IDM) under Scope Issues (after Comment 49).

²⁵ *Id.*; see also *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 51788, 51789 (September 5, 2008), unchanged in *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 4913 (January 28, 2009); *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation*, 66 FR 49347 (September 27, 2001), and accompanying IDM at Comment 12; and *Mitsubishi Heavy Industries, Ltd. v. U.S.*, 986 F. Supp. 1428 (CIT 1997).

²⁶ See Critical Circumstances Allegation.

Department must issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist by no later than the date of the preliminary determination.

Legal Framework

Section 703(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A) the alleged countervailing subsidy is inconsistent with the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement), and (B) there have been massive imports of the subject merchandise over a relatively short period.

Critical Circumstances Allegation

In support of its allegation, Petitioners contend that subsidy programs that are contingent upon export performance are inconsistent with the Subsidies Agreement and, if such programs have been alleged, the first prong of section 703(e)(1) of the Act is satisfied.²⁷ Petitioners state that in this investigation, the Department initiated on a number of programs that are contingent upon export performance, many of which have been found to be countervailable in previous CVD proceedings.²⁸ These programs include: (1) Advance Authorization Scheme; (2) Duty Drawback Scheme; (3) Duty Free Import Authorization Scheme; (4) Tax and Duty Incentives Under the Special Economic Zones Program; (5) Tax and Duty Incentives Under the Export-Oriented Units Program; (6) Market Development Assistance Scheme; (7) Focus Product Scheme; (8) Market Access Initiative; (9) Export Promotion of Capital Goods Scheme; (10) Status Certificate Program; (11) Rupee-Denominated Pre- and Post-Shipment Credits; (12) Export Credit Insurance; and (13) Assistance to States for Infrastructure Development for Exports and Allied Activities.²⁹

Petitioners also claim that there have been massive imports of off road tires from India over a relatively short period.³⁰ Petitioners provide U.S. Census Bureau data, which demonstrates that the volume and value of imports of off road tires from India between January and March 2016 increased by over 40 percent relative to the proceeding October through December 2015 three-month period.³¹ Petitioners contend that this increase in imports of off road tires from India is greater than 15 percent and is, therefore, “massive,” under 19 CFR 351.206(h)(2).³²

²⁷ *Id.*, at 3.

²⁸ *Id.*

²⁹ *Id.*, at 3-4.

³⁰ *Id.*, at 4-6.

³¹ *Id.*, at 6 and Exhibit 1.

³² *Id.*, at 6.

Analysis

Section 703(e)(1) of the Act: Whether the Alleged Countervailable Subsidy is Inconsistent With the Subsidies Agreement

To determine whether an alleged countervailable subsidy is inconsistent with the Subsidies Agreement, in accordance with section 703(e)(1)(A) of the Act and 19 CFR 351.206(i), the Department considered the evidence currently on the record of this investigation. Specifically, and as discussed below in the section, “Analysis of Programs,” the Department finds that the respondent companies (*i.e.*, ATC and BKT) received countervailable benefits under the following export subsidy programs: (1) Advance Authorization Scheme; (2) Export Promotion of Capital Goods Scheme; (3) Tax and Duty Incentives Under the Export-Oriented Units Program; (4) Tax and Duty Incentives Under the Special Economic Zones Program; (5) Maharashtra Package Scheme of Incentives, 2013; and (6) Merchandise Export Incentive Scheme.

Based on the record evidence available to the Department at this time, the Department has a reasonable basis to believe or suspect that the subsidy programs identified above are inconsistent with the Subsidies Agreement.

Section 703(e)(1)(B) of the Act: Whether There Have Been Massive Imports of the Subject Merchandise Over a Relatively Short Period

In determining whether there have been “massive imports” over a “relatively short period,” pursuant to section 703(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, comparison period). 19 CFR 351.206(h)(1) provides that the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, the Department will not consider imports to be massive unless imports during the “relatively short period” (*i.e.*, comparison period) have increased by at least 15 percent compared to imports during an “immediately preceding period of comparable duration” (*i.e.*, base period).³³ Section 351.206(i) of the Department’s regulations defines “relatively short period” as normally being the period beginning on the date the proceeding commences (*i.e.*, the date the petition is filed) and ending at least three months later. For consideration of this allegation, we relied on a four-month comparison period (*i.e.*, January through April 2016) and a four-month base period (*i.e.*, September through December 2015).

³³ See 19 CFR 351.206(h)(2).

ATC and BKT

On May 24, 2016, we issued a questionnaire to ATC and to BKT regarding Petitioners' Critical Circumstances Allegations.³⁴ In determining whether there were massive imports from ATC and BKT, we analyzed their reported shipment date for the period September 2015 through April 2016. Because of the nature of this shipment data, our analysis may be found in a BPI memorandum issued concurrently with these preliminary results.³⁵ Our analysis of the shipment data submitted by both ATC and BKT leads us to conclude that there was not a massive increase in shipments of subject merchandise to the United States by the respondents during the three-month period immediately following the filing of the Petition in January 2016. As a result, we do not find that critical circumstances exist with respect to ATC and to BKT.

All Other Exporters

With regard to whether imports of subject merchandise by the "all other" producers/exporters of subject merchandise from India were massive, we preliminarily determine that because there is evidence of countervailable subsidies that are inconsistent with the Subsidies Agreement, an analysis is warranted as to whether there was a massive increase of shipments by all other companies, in accordance with section 703(e)(1)(B) of the Act and 19 CFR 351.206(h). Therefore, we analyzed, in accordance with 351.206(i), monthly shipment data for the period September 2015 through April 2016, using shipment data from the U.S. Census Bureau, adjusted to remove shipments reported by ATC and BKT. Because of the proprietary nature of this shipment data, our analysis may be found in the Preliminary Critical Circumstances Memorandum issued concurrently with these preliminary results. Our analysis of this adjusted shipment data leads us to conclude that there was a massive increase in shipments by the "all other" companies, in accordance with section 703(e)(1)(B) of the Act and 19 CFR 351.206(h).³⁶ Accordingly, we find that critical circumstances exist with regard to imports of subject merchandise from "all other" producers/exporters of subject merchandise from India.

As a result of an affirmative preliminary determination of critical circumstances, in part, in accordance with section 703(e)(2)(A) of the Act, we are directing CBP to suspend liquidation, with regard to "all other" producers/exporters of any unliquidated entries of subject merchandise from India entered, or withdrawn from warehouse for consumption 90 days prior to the date of publication of this preliminary determination in the *Federal Register*.

VI. INJURY TEST

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of

³⁴ See Department Letters to ATC and BKT, "Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Request for Quantity and Value Shipment Data," May 24, 2016.

³⁵ See Department Memorandum, "Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Preliminary Analysis of Critical Circumstances," dated concurrently with this memorandum (Preliminary Critical Circumstances Memorandum).

³⁶ *Id.*

the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On February 19, 2016, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by imports of off road tires from India.³⁷

VII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the AUL of renewable physical assets used in the production of subject merchandise.³⁸ The Department finds the AUL in this proceeding to be 14 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.³⁹ The Department notified the respondents of the 14-year AUL in the Initial Questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

Furthermore, for non-recurring subsidies, we 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 year in which the assistance was approved. 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 over 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) provide 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:

³⁷ See *Certain New Pneumatic Off-the-Road Tires from China, India, and Sri Lanka*, 81 FR 10663 (March 1, 2016).

³⁸ See 19 CFR 351.524(b).

³⁹ See U.S. Internal Revenue Service Publication 946 (2015), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

{T}he 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.⁴⁰

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 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.⁴¹

ATC

ATC reported that it is directly wholly owned by Turgco Ltd., a holding company located in Cyprus, and is indirectly wholly owned by Alliance Tire Group B.V.⁴² ATC also reported that it is affiliated with various entities that make up the Alliance Tire Group.⁴³ All of these entities are located outside of India, except for Yogesh Agencies & Investments Private Ltd. (YAIPL), a holding company and minority shareholder of Alliance Tire Group B.V.⁴⁴ To determine whether the GOI provided any government assistance to YAIPL, we asked ATC to provide questionnaire responses on behalf of YAIPL. Our examination of the questionnaire responses regarding YAIPL leads us to conclude that it did not apply for or receive any assistance from the GOI during the AUL that could be attributed to ATC. Therefore, there is no need to examine whether the relationship between ATC and YAIPL meets the Department’s definition of cross-ownership pursuant to 19 CFR 351.565(b)(6). As a result, we are attributing any subsidy received by ATC to its own sales.

⁴⁰ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

⁴¹ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁴² See Letter from ATC, “Certain New Pneumatic Off-the-Road Tires from India: Initial Response to Section III of Initial Questionnaire – Identification of Affiliated Companies,” March 23, 2016 (ATC’s Affiliate Questionnaire Response) at 5 and at Exhibit 1.

⁴³ *Id.*, at 1 and at Exhibit 1.

⁴⁴ *Id.*

BKT

BKT and affiliates Govind Rubber Limited, GRL Offhighway, and GRL International (collectively, GRL) belong to a large company “group” named Siyaram Poddar Group (SPG).⁴⁵ BKT explained that SPG is a non-legal, informal entity which is held together through familial links, specifically, the links between brothers, Arvind Poddar and Vinod Poddar.⁴⁶ A majority of BKT is owned by its director Arvind Poddar and his descendants while a majority of GRL is owned by its director Vinod Poddar and his descendants.⁴⁷ BKT and Govind Rubber Limited are both publicly listed companies.⁴⁸ GRL Offhighway and GRL International are privately held. Over the years, the Arvind Poddar family held small shares of GRL never exceeding five percent.⁴⁹ Vinod Poddar never owned a percentage of BKT.⁵⁰ BKT held 2.28 percent of the shares of GRL until December 2015, when it sold off all of its shares of GRL.⁵¹ No member of the Arvind Poddar family has sat on the board or held key managerial positions in GRL and no member of the Vinod Poddar family has sat on the board or held key managerial positions in BKT.⁵²

In this case, record evidence shows that cross-ownership between GRL and BKT does not exist. First, there is no common control via ownership between GRL and BKT as evident by the small percentages of common ownership.⁵³ Second, BKT and GRL do not coordinate with each other’s daily business operations and are not involved in each other’s managerial decisions.⁵⁴ Third, despite the fact that BKT’s and GRL’s owners/directors are brothers, their familial relationship is not alone sufficient to rise to the standard of cross-ownership. With regards to cross-ownership by virtue of SPG, there is no common control via SPG because SPG is not a legal entity and is not involved in the managerial or day to day business decisions of BKT or GRL.⁵⁵ As explained by BKT, SPG is an informal entity which was created to differentiate the branches of the family from other persons in India having the same surname.⁵⁶ In *OCTG from India*, we determined that certain companies owned by two brothers belonging to informal

⁴⁵ See Letter from BKT, “Certain New Pneumatic Off-The-Road Tires from India; Balkrishna Industries Limited’s Second Supplemental CVD Questionnaire Response,” May 17, 2016 (BKT’s Supplemental Questionnaire Response) at 1-2 and Exhibit 1.

⁴⁶ *Id.*

⁴⁷ See Letter from BKT, “Certain New Pneumatic Off-The-Road Tires from India; Balkrishna Industries Limited’s Questionnaire Response to Section III Identifying Affiliated Companies,” March 23, 2016 (BKT’s Affiliate Questionnaire Response) at 4-5; See Letter to BKT, Countervailing Duty Investigation of Certain New Pneumatic Off-The-Road Tires from India; Supplemental Questionnaire,” April 5, 2016 (BKT’s Affiliate Supplemental).

⁴⁸ See BKT’s Affiliate Questionnaire Response at 4 and Exhibit 12.

⁴⁹ See Letter from BKT, “Certain New Pneumatic Off-The-Road Tires from India; Balkrishna Industries Limited’s First Supplemental CVD Questionnaire Response,” April 12, 2016 (BKT’s Affiliate Supplemental Questionnaire Response) at 3.

⁵⁰ See BKT’s Supplemental Questionnaire Response at Exhibit 2.

⁵¹ See BKT’s Affiliate Questionnaire Response at 5.

⁵² *Id.*, at 4, 7.

⁵³ Neither family owns a “golden share” of the other’s company, *i.e.*, the Vinod Poddar family does not own a “golden share” of BKT and the Arvind Poddar family does not own a “golden share” of GRL.

⁵⁴ See BKT’s Supplemental Questionnaire Response at 2-3.

⁵⁵ *Id.*

⁵⁶ *Id.*, at 5.

company “groups” were not cross-owned as they did not share common ownership.⁵⁷ In that case, no single family member owned more than five percent of two or more companies in two or more groups. Based on information in BKT’s questionnaire responses we preliminarily determine, in accordance with 19 CFR 351.525(b)(6)(vi), that level of ownership between GRL and BKT did not exist to the extent that BKT could control, use or direct the individual assets of GRL in essentially the same ways it can use its own assets. Therefore cross-ownership does not exist between BKT and GRL.

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 rate for the various subsidy programs described below are explained further detail in the preliminary calculations memoranda prepared for this preliminary determination.⁵⁸

VIII. LOAN BENCHMARKS AND INTEREST RATES

Section 771(5)(E)(ii) of the Act provides that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,” indicating that a benchmark must be a market-based rate. In addition, 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 loans obtained by the firm. However, when there are no comparable commercial loans during the period, the Department “may use a national average interest rate for comparable commercial loans,” 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. Also, in the absence of reported long-term loan interest rates, we use the above-discussed interest rates as discount rates for purposes of allocating non-recurring benefits over time pursuant to 19 CFR 351.524(d)(3)(i)(B).

A. Short-Term and Long-Term Rupee-Denominated Loans

Based on the responses from ATC and BKT, we preliminarily determine that neither received

⁵⁷ See *Certain Oil Country Tubular Goods From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 78 FR 77421 (December 23, 2013) (*OCTG India Prelim*) and accompanying IDM at 10-11; *unchanged in Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) (*OCTG India Final*).

⁵⁸ See Department Memorandum, “Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Balkrishna Industries Limited Preliminary Calculation Memorandum,” dated concurrently with this memorandum (BKT’s Preliminary Calculation Memorandum); *see also*, Memorandum, “Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited Preliminary Calculation Memorandum,” dated concurrently with this memorandum (ATC’s Preliminary Calculation Memorandum).

comparable rupee-denominated short-term or long-term loans from commercial banks for certain years for which we must calculate benchmark and discount rates. Thus, we do not have loan information from the respondents in the year subsidies were provided. As such loan rates were not available, we are preliminarily using 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.⁵⁹ We preliminarily find that the IFS rates provide a reasonable representation of both short-term and long-term interest rates for rupee-denominated loans.

B. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i), we used, as our discount rates, the long-term interest rates calculated according to the methodology described above for the year in which the government provided non-recurring subsidies. The interest-rate benchmarks and discount rates used in our preliminary calculations are provided in the preliminary calculation memoranda.⁶⁰

IX. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined to be Countervailable

1. Advance Authorization Scheme (AAP)

Under the AAP, aka Advance Licensing Program (ALP), exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported.⁶¹ The quantities of imported materials and exported finished products are linked through standard input-output norms (SIONs) established by the GOI or on the basis of *ad hoc* norms using an applicant's detailed calculations.⁶² During the POI, BKT used advance licenses to import certain materials duty free.⁶³

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.⁶⁴ 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,

⁵⁹ See Letter from Petitioners, "Certain New Pneumatic Off-The-Road Tires from India-Petitioners' Benchmark Information," May 16, 2016 (Petitioners' Benchmark Submission) at Exhibit 6.

⁶⁰ See BKT's Preliminary Calculation Memorandum.

⁶¹ See Letter from the GOI, "Countervailing Duty investigation of Certain New Pneumatic Off-the-Road Tires from India," April 28, 2016 (the GOI's Initial Questionnaire Response) at 5-27.

⁶² See Letter from BKT "Certain New Pneumatic Off-The-Road Tires from India; Balkrishna Industries Limited's Questionnaire Response to Section III," April 21, 2016 (BKT's Initial Questionnaire Response) at 9-14, Exhibit 9.

⁶³ *Id.*

⁶⁴ See 19 CFR 351.519(a)(1)(ii).

and in what amounts.⁶⁵ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁶⁶ 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.⁶⁷

In the 2005 administrative review of countervailing duties on polyethylene terephthalate film, sheet, and strip (*PET Film*) from India, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the AAP during 2005.⁶⁸ The Department acknowledged that certain improvements to the AAP system were made. However, the Department found that, based on the information submitted by the GOI and examined during previous reviews of that proceeding, and no information having been submitted for that review demonstrating that the GOI had revised its laws or procedures governing this program since those earlier reviews, systemic issues continued to exist in the AAP system during that POR.⁶⁹ Specifically, in the 2005 review, the Department stated that it continued to find the AAP/ALP countervailable based on:

the GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. Specifically, we still have concerns with regard to several aspects of the ALP including (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET Film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports.⁷⁰

Since that 2005 PET Film review, the Department has in several other proceedings made determinations consistent with this treatment of the AAP.⁷¹ In the current investigation, record

⁶⁵ See *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 (IDM) at "Duty Drawback (DDB).

⁶⁶ *Id.*

⁶⁷ See 19 CFR 351.519(a)(4)(i)-(ii).

⁶⁸ See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006), and accompanying IDM at 3-5.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See, e.g., *Countervailing Duty Investigation of Welded Stainless Pressure Pipe From India: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 12871 (March 11, 2016) (*Welded Stainless Pipe from India*) and accompanying IDM at 8-11. *OCTG India Final*, and accompanying IDM at 18-19; see also *Certain Lined Paper Products from India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 79 FR 60447 (October 7, 2014), *unchanged in Certain Lined Paper Products From India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 80 FR 19637 (April 13, 2015), and accompanying IDM at 5; see also *Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative*

evidence shows there has been no change to the AAP program⁷² and therefore we preliminarily find that the program confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from payment of import duties that would otherwise be due; (2) the GOI does not have in place, and does not apply, a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste, nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act; and (3) this program is specific under section 771(5A)(A) and (B) of the Act because it is contingent upon exportation.

Pursuant to 19 CFR 351.524(c)(1), the exemption of import duties on raw material inputs normally provides a recurring benefit.⁷³ Under this program, during the POI, BKT did not have to pay certain import duties for inputs that were used in the production of subject merchandise.⁷⁴ Thus, we are treating the benefit provided under the AAP as a recurring benefit.

BKT imported inputs under the AAP for the production of subject merchandise and non-subject merchandise duty free during the POI. In response to the Department's questionnaire BKT provided supporting documentation regarding their AAP licenses.⁷⁵ Although BKT provided a sample license,⁷⁶ the single license alone was insufficient to determine which export licenses applied to the export of the subject merchandise or to determine which export licenses applied to the export of merchandise to the United States. As such, the information provided demonstrates that the licenses provided to BKT were tied to the BKT's total exports within the meaning of 19 CFR 351.525(b)(2).

To calculate the subsidy rate for BKT, we first determined the total value of import duties exempted during the POI for BKT under AAP licenses. We then divided the resulting benefit by the total value of BKT's export sales. On this basis we determine the countervailable subsidy provided to BKT under the AAP to be 4.09 percent *ad valorem*.⁷⁷ ATC reported that it did not apply for or use this program during the POI.⁷⁸

2. Export Promotion of Capital Goods Scheme (EPCGS Program)

Review; 2013, 80 FR 46956 (August 6, 2015) (*PET Film from India 2013 Preliminary Results*), and accompanying IDM at 19-20, *unchanged in PET Film from India 2013 Final Results*.

⁷² See the GOI's Initial Questionnaire Response at 5-27 and Exhibits 1-7.

⁷³ See, e.g., *OCTG India Final*, and accompanying IDM.

⁷⁴ See BKT's Initial Questionnaire Response at 19 and Exhibits 10-13.

⁷⁵ *Id.*, at Exhibits 10-11.

⁷⁶ *Id.*, at Exhibit 10.

⁷⁷ See BKT's Preliminary Calculation Memorandum.

⁷⁸ See Letter from ATC, "Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Response to Initial Countervailing Duty Questionnaire," April 21, 2015 (ATC's Initial Questionnaire Response) at 15.

The EPCGS 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 a multiple of the duty saved within a period of a certain number of years.

The Department has previously determined that import duty reductions or exemptions provided under the EPCGS program are countervailable export subsidies because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone; (2) provides two different benefits, as described below, 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.⁷⁹ Because the evidence on the record with respect to this program is consistent with previous findings, we preliminarily determine that this program is countervailable.

Under the EPCGS 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).⁸⁰ Since the unpaid duties are a liability contingent on subsequent events, we treat the amount of unpaid duty liabilities as an interest-free contingent-liability loans. We find the amount respondents would have paid during the POI had it borrowed the full amount of the duty reduction or exemption at the time of importation to constitute the first benefit under the EPCGS program. The second benefit arises based on the amount of duty waived by the GOI waives on imports of capital equipment covered by those EPCGS licenses for which the export requirement has already been met. With regard to 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 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...." 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.

⁷⁹ 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 IDM at "Pre-Shipment and Post-Shipment Export Financing," *Shrimp from India*, and accompanying IDM at 14-17; see also *Welded Stainless Pipe from India*, and accompanying IDM at 12-13.

⁸⁰ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11163 (March 2, 2015), and accompanying Issues and Decision Memorandum at 7-10; see also *Welded Stainless Pipe from India*, and accompanying IDM at 12-13.

BKT reported that it imported capital goods with waived duties import-duty rates under the EPCGS program. Information provided by BKT indicates that its EPCGS licenses were not tied to the production of any type of merchandise, so we are attributing the EPCGS benefits received to their total exports consistent with 19 CFR 351.525(b)(5). BKT reported that it met several export requirements for EPCG since December 31, 2015 (the last day of the POI). BKT also reported that it did not meet the export requirements for many EPCGS licenses prior to the last day of the POI. Therefore, BKT received final waivers of the obligation to pay duties for some imports of capital goods while receiving deferrals from paying import duties for other imports of capital goods. For those deferrals, the final waiver of the obligation to pay the duties has not yet been granted.

To calculate the benefit received from BKT's formal waiver of import duties on capital equipment imports where its export obligation was met prior to the end of the POI, we considered the total amount of duties waived, *i.e.*, the calculated duties payable less the duties actually paid in the year, net of required application fees, in accordance with section 771(6) of the Act, to be the benefit and treated these amounts as grants pursuant to 19 CFR 351.504. Further, consistent with the approach followed in previous investigations, we determine the year of receipt of the benefit to be the year in which the GOI formally waived Respondent's outstanding import duties.⁸¹ 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 Respondents an import duty waiver. For any years in which the value of the waived import duties was less than 0.5 percent of Respondent's total export sales, we expensed the value of the duty waived to the year of receipt. For years in which the value of the waivers exceeded 0.5 percent of Respondent's total export sales in that year, we allocated the value of the waivers using Respondent's company-specific allocation period of 14 years for nonrecurring subsidies, in accordance with 19 CFR 351.524(d)(2).⁸² For purposes of allocating the value of the waivers over time, we used the appropriate discount rate for the year in which the GOI officially waived the import duties.⁸³

As noted above, import duty reductions that BKT received on the imports of capital equipment for which it 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.

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.

As noted above, the time period for fulfilling the export requirement expires a certain number of years after importation of the capital good. As such, pursuant to 19 CFR 351.505(d)(1), the

⁸¹ See *PET Film Final Determination*, and accompanying IDM at Comment 5.

⁸² See "Allocation Period" section, above.

⁸³ See "Benchmark Interest Rates and Discount Rates" section, above.

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 “Loan Benchmarks and Interest 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. For EPCGS licenses with duty free imports made during the POI, we calculated a daily interest rate based on a long-term interest rate and the number of days the loan was outstanding during the POI, to arrive at a prorated contingent liability for those imports.

The benefit received under the EPCGS 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 respondent met export requirements by the end of the POI; and (2) the interest that would have been due had the respondent borrowed the full amount of the duty reduction or exemption at the time of importation for imports of capital equipment that have unmet export requirements during the POI. We then divided the total benefit received by BKT under the EPCGS program by the each company’s total exports during the POI. On this basis, we preliminarily determine a countervailable subsidy rate of 0.32 percent *ad valorem* for BKT.⁸⁴ ATC reported that it did not apply for or use this program during the POI.⁸⁵

3. Tax and Duty Incentives Under the Export-Oriented Units (EOUs) Program

Established in 1981, the purpose of India’s EOU program is to boost exports by creating additional production capacity by promoting procedural simplification and reduced documentation requirements.⁸⁶ Governed by the Foreign Trade Policy,⁸⁷ the EOU program was introduced complementary to the Special Economic Zone Scheme, and adopts the same production regime with wider options with reference to factors such as raw materials, port of exporter, and hinter land facilities, *inter alia*.⁸⁸ EOUs can be set up by any entrepreneur for manufacturing good and for providing services, however, trading activity is not allowed. EOU units are required to achieve positive net foreign exchange earnings (NFE) over a period of five years.⁸⁹

Because eligibility for the EOU program is contingent upon export performance, we find that the assistance provided under this program is specific within the meaning of sections 771(5A)(A) and (B) of the Act.

The GOI states that some of the features provided under the EOU program include (but are not limited to): 1) exemption from central excise duty in procurement of capital goods, raw-

⁸⁴ See BKT’s Preliminary Calculation Memorandum.

⁸⁵ See ATC’s Initial Questionnaire Response at 27.

⁸⁶ See the GOI’s Initial Questionnaire Response at 77.

⁸⁷ *Id.*, at 80.

⁸⁸ *Id.*, at 77.

⁸⁹ *Id.*

materials, consumables, and spare parts from the domestic market; 2) exemption from customs duties on import of capital goods, raw materials, consumables, and spare parts; 3) reimbursement of Central Sales Tax (CST) paid on domestic purchases; supplies from the Domestic Tariff Area (DTA) (*i.e.*, all of India except for Special Economic Zones) treated as deemed exports; and 4) reimbursement of duty paid on furnace oil procured from domestic oil companies per the rate of drawback established by the Directorate General of Foreign Trade.

i. Import Duty and Local Duty Exemption

ATC reported that its Gujarat facility has EOU status and received benefits from this program during the POI.⁹⁰ To receive benefits under this program, ATC set up an EOU in Gujarat. According to ATC, an EOU needs to satisfy the positive NFE requirements over a five year period, beginning from the date of commencement of commercial production. ATC stated that it received an exemption of import duties it purchases of capital goods and raw materials as a result of this program.⁹¹

We preliminarily determine that the duty-free importation of capital goods, raw materials, components, consumables, intermediates, spare parts, and packing material provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act through the forgoing of duty payments. India's EOU program confers benefits in the amounts of exemptions of customs duties not collected in accordance with section 771(5)(E) of the Act. Because eligibility for the EOU program is contingent upon export performance, we find that the assistance provided under this program is specific within the meaning of sections 771(5A)(A) and (B) of the Act.

To maintain eligibility, EOU's must achieve and maintain positive NFE,⁹² which implies that a duty obligation is incurred when goods are imported by units designated as EOUs. During the POI, ATC's Gujarat facility operated in its first five-year period of its EOU eligibility,⁹³ and has not met its export requirement under this program. Therefore, consistent with 19 CFR 351.505(d)(1), we consider the unpaid duties to be an interest-free loan made to ATC at the time of importation. We determine the benefit to be the interest that ATC would have paid during the POI had it borrowed the full amount of the duty reduction or exemption at the time of importation.

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 (*i.e.*, under the EOU program, the time period for fulfilling the export commitment is more than one year after importation of the capital goods or raw materials). We used the long-term, rupee-denominated benchmark interest rate discussed in the "Benchmark Interest Rates" section above for each year in which capital goods were imported as the benchmark.

⁹⁰ See ATC's Initial Questionnaire Response at 23 and Exhibit 24.

⁹¹ *Id.*, at Exhibit 24.

⁹² See the GOI's Initial Questionnaire Response at 77 and Exhibit 5.

⁹³ See ATC's Initial Questionnaire Response at Exhibit 24.

We calculated the benefit from these exemptions by multiplying the amount exempted from customs duties and taxes, and multiplied these amounts by the appropriate interest rate. We then summed the results, and divided that total by ATC's export sales to determine the countervailable subsidy of 0.24 percent *ad valorem*.⁹⁴

i. Central Service Tax Reimbursement

ATC reported that its EOU in Dahej is entitled to full reimbursement of CST paid by it on purchases made from the DTA.⁹⁵ According to ATC, this entitlement is provided under the EOU program pursuant to India's Foreign Trade Policy. To be eligible for this benefit, ATC stated that EOU programs require that the unit should satisfy a positive NFE over a period of five years. During the POI, ATC reported that its Gujarat EOU facility was operating in its first five-year period of its EOU eligibility.⁹⁶ ATC claimed that the reimbursement of CST is available on inputs, such as raw materials, components, consumables, packing materials, capital goods, *etc.*, that are used in the production of goods.

We determine that the reimbursement of CST on inputs capital goods through this program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act through the foregoing of CST payments. This EOU program confers benefits in the amount of CST not collected, in accordance with section 771(5)(E) of the Act. Specifically, the benefit associated with domestically purchased materials is the amount of CST that was reimbursed on those purchases by ATC during that period. Because eligibility for the EOU program is contingent upon export performance, we find that the assistance provided under this program is specific within the meaning of sections 771(5A)(A) and (B) of the Act.

To calculate the benefit, we summed the total value of CST exemptions attributable to the POI and divided by ATC's export sales during the POI to determine the countervailable subsidy rate for ATC for CST exemptions of 0.22 percent *ad valorem*.⁹⁷ To determine the amount of exemptions attributable to the POI, we first determined whether the amount of non-recurring exemptions should be allocated or expensed in accordance with 19 CFR 351.524.

4. Tax and Duty Incentives Under the Special Economic Zones (SEZs) Program

The establishment, development, and management of SEZs for the promotion of export are governed by the SEZ Act of 2005 (SEZ Act) and the SEZ Rules of 2006 (SEZ Rules).⁹⁸ Article 53 of the SEZ Act states that SEZs are deemed to be a territory outside of the customs territory of India.⁹⁹ The main objectives of the SEZs are to: 1) generate additional economic activity; 2) promote exports of goods and services; 3) promote employment opportunities; and 4) develop

⁹⁴ See ATC's Preliminary Calculation Memorandum.

⁹⁵ See ATC's Initial questionnaire response at Exhibit 25.

⁹⁶ *Id.*

⁹⁷ See ATC's Preliminary Calculation Memorandum.

⁹⁸ See the GOI's Initial Questionnaire Response at 57.

⁹⁹ *Id.*, at Exhibit 17.

infrastructural facilities.¹⁰⁰ Companies located in SEZs may seek to benefit from the following: 1) duty free import/domestic procurement of goods for development, operation, and maintenance of SEZ units; 2) external commercial borrowing up to USD 500 million in a year without any maturity restriction through recognized banking channels; and 3) the exemption of certain other indirect taxes such as CST, service tax, and State sales taxes and other levies such as VAT exemptions.¹⁰¹ For a company to operate as an SEZ unit, it needs to achieve NFE in five years from the date of commencement of commercial production.¹⁰² According to the SEZ Rules, companies that fail to achieve positive NFE are liable for penal action, and companies operating in SEZs must repay an amount equal to the exemptions, taxes, drawback, and other benefits received on goods that are not used in exported products.¹⁰³

ATC reported that its Tamil Nadu plant is located in an SEZ, which is governed by the SEZ Act.¹⁰⁴ ATC stated that its Tamil Nadu plant satisfied the positive NFE requirement for its first five-year period, which ended in November 2014. During the POI, this plant operated in the first year of its second five-year period of SEZ eligibility.¹⁰⁵ Specifically, ATC reported using the SEZ program during the POI to obtain the following benefits: 1) import and local duty exemptions on capital goods and raw materials; 2) exemption from CST; 3) exemption from VAT; 4) exemption from service tax; 5) exemption from electricity duties; 6) exemption from stamp duties; 7) and exemption from income taxes.¹⁰⁶

In its response, ATC argues that, consistent with prior precedent concerning programs it asserts are similar to India's SEZ program, the Department should conclude that India's SEZ program is not countervailable because it does not provide a financial contribution, nor does it confer any benefit to companies operating within the SEZ.¹⁰⁷ ATC contends that the SEZ Act makes clear that SEZs are outside the customs territory of India, and, as such, sales of goods to the SEZ from the DTA (*i.e.*, all of India except the SEZs) are deemed exports.¹⁰⁸ Likewise, ATC continues, SEZ units are not required to pay taxes or duties or when entering raw materials or capital goods into an SEZ from outside of India.¹⁰⁹ ATC states that the GOI maintains tight controls on the shipment of merchandise from an SEZ to the DTA and that any merchandise sold from the SEZ to the DTA is subject to normal Indian duties. ATC argues that in prior cases where a government has established a duty free zone, such as *Circular Welded Carbon-Quality Steel Pipe from Vietnam*,¹¹⁰ the Department has concluded that this type of program does not constitute a countervailable subsidy.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*, at 57 and 61.

¹⁰² *Id.*, at 68.

¹⁰³ See the GOI's Initial Questionnaire Response at Exhibit 18, Rule 25 of the SEZ Rules.

¹⁰⁴ See ATC's Initial Questionnaire Response at 15-16 and at Exhibit 19.

¹⁰⁵ *Id.*, at Exhibit 19.

¹⁰⁶ See ATC's Initial Questionnaire Response at 16 and at Exhibit 19.

¹⁰⁷ *Id.*, at 16-17.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See *Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination*, 77 FR 64471 (October 22, 2012) (*Circular Welded Carbon-Quality Steel Pipe from Vietnam*).

We have previously examined SEZs in India and found that SEZ programs are countervailable.¹¹¹ With respect to ATC's argument regarding our previous finding of Vietnam's duty free zones to be not countervailable in *Circular Welded Carbon-Quality Steel Pipe from Vietnam*, that case is not analogous to the instant investigation. Specifically, the Department states in *Circular Welded Carbon-Quality Steel Pipe from Vietnam*:

There is no indication that the SEZs we analyzed there were outside the customs territory of India. Rather, we observed in that case that "until an SEZ demonstrates that it has fully met its export requirement, the company remains contingently liable for the import duties," which implies that a duty obligation is incurred when goods enter the SEZ. This is not the situation present in the investigated program in Vietnam.¹¹²

Moreover, the SEZ rules state a company must repay taxes and duties exempted on goods not used in exported products. The rules also indicate penalties will be applied when the company fails to achieve its NFE requirement.¹¹³ While it is unclear whether the "penalties" referred to include the exempted taxes and duties or something altogether separate, the facts on the record show that duties are applied when goods enter into the SEZs and companies are held liable for those duties unless the export requirement is met. Furthermore, the GOI itself refers to assistance under this program as "duties exempted/refunded,"¹¹⁴ suggesting the duties are provisionally applicable until the export requirements are met.¹¹⁵ If the SEZs operated outside the customs territory of India, there would be nothing to exempt or refund unless duties are applicable in the first place. However, evidence shows to the contrary. Furthermore, in the prior proceedings in which we have countervailed SEZ programs, we have found the exempted duties to be contingent, unpaid liabilities (*i.e.*, they are due until export requirements are met). Moreover, ATC states that "the EOU program operates exactly the same as the SEZ program." ATC's EOU agreement states that it will fulfill its export obligations and pay on demand taxes and duties leviable on goods the customs commissioner deems not to have been used in the manufacture of exported articles, as well as a penalty.¹¹⁶ The same agreement refers to the repayment of duties which have been "assessed on a provisional basis," suggesting the GOI considers duties to be due until ATC meets its export obligations. The zones themselves are governed by a three member board consisting of the Commissioner of Development, the relevant state government, and the *Customs Authority*. These facts all demonstrate that ATC becomes provisionally liable for taxes and duties as soon as it imports goods and materials into the SEZ and that its exemption from such taxes and duties (as well as its enjoyment of all other SEZ

¹¹¹ See *PET Film from India 2013 Preliminary Results*, unchanged in *PET Film from India 2013 Final Results*; see also *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty New Shipper Review*, 76 FR 30910 (May 27, 2011).

¹¹² See *Circular Welded Carbon-Quality Steel Pipe from Vietnam* and accompanying IDM at 14.

¹¹³ See the GOI's Initial Questionnaire Response at Exhibit 18.

¹¹⁴ *Id.*, at 68.

¹¹⁵ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 46956 (August 6, 2015) and accompanying IDM at 14, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 7753 (February 16, 2016).

¹¹⁶ See ATC's Initial Questionnaire Response at Exhibit 24A.

benefits) depends on its satisfaction of various export requirements, not on its location outside of Indian customs territory, contradicting Article 25's claim that the SEZs are outside Indian customs territory. Because the applicable taxes and duties would otherwise be due to the GOI if the export requirements are not met, regardless of ATC's location in an SEZ, there is a financial contribution in the form of revenue foregone.¹¹⁷ Furthermore, the Department has determined in prior proceedings that the SEZ program lacks an adequate system in place to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste.¹¹⁸ The GOI asserted that its system is in compliance with Annex I of the SCM agreement but provided no evidence in this investigation attempting to support this assertion or which otherwise contradicts our prior determination that the SEZ program has systemic record keeping problems.¹¹⁹ The Department intends to evaluate the GOI's system at verification to determine whether there is evidence that these systemic record-keeping problems are no longer present in the SEZ program.

Moreover, because eligibility for all SEZ benefits is contingent upon export performance, we find that the assistance provided under the SEZ program is specific within the meaning of sections 771(5A)(A) and (B) of the Act.

During the POI, ATC's Tamil Nadu plant operated in the first year of its second five-year period of SEZ eligibility, and has not yet met its export requirement; as explained above, the company remains contingently liable for duties. Thus, ATC may still be assessed currently unpaid duties in the future and the Department cannot now determine the final amount of exemptions. Therefore, consistent with 19 CFR 351.505(d)(1) and our prior determinations, we consider the unpaid duty exemptions on imported capital goods and raw materials to be an interest-free loan made to ATC at the time of importation. We determine the benefit to be the interest that ATC would have paid during the POI had it borrowed the full amount of the duty exemption at the time of importation.

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 taxes and 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 (*i.e.*, under the SEZ program, the time period for fulfilling the export commitment is more than one year after importation of the capital good). We used the long-term, rupee-denominated benchmark interest rate discussed in the "Benchmark Interest Rates" section above for each year in which capital goods were imported as the benchmark.

¹¹⁷ Even if the SEZs were outside Indian customs territory, that fact would only be pertinent to the question of whether a financial contribution exists from the exemption or refund of customs duties. The various other exempted or refunded taxes are not fees associated with importing or exporting goods and materials, but sales taxes, excise taxes, and VAT and other types of indirect taxes applicable to domestic sales and purchases.

¹¹⁸ 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 IDM at 14-15; see also *PET Film from India 2013AR Preliminary Results* and accompanying IDM at 13-18, *unchanged in PET Film from India 2013 AR Final Results* and accompanying IDM at 4

¹¹⁹ See the GOI's Initial Questionnaire Response at 72.

We calculated the benefit from these exemptions by multiplying for the amount of the exempted customs duties by the appropriate interest rate. We then summed the results, and divided that total by ATC's export sales to determine the countervailable subsidy rate.¹²⁰

For the remaining exemptions, from CST, VAT, service tax, electricity duties, stamp duties, and income taxes, following our prior determinations, we summed the total value of exemptions attributable to the POI and divided by ATC's export sales during the POI to determine the countervailable subsidy rate. To determine the amount of exemptions attributable to the POI, we first determined whether the amount of non-recurring exemptions should be allocated or expensed in accordance with 19 CFR 351.524.

We thus determined a countervailable subsidy rate for ATC for all SEZ programs of 4.33 percent *ad valorem*.

5. *Maharashtra Package Scheme of Incentives, 2013*

The Department is examining two separate programs administered by the State Government of Maharashtra (SGOM); an electricity duty exemption and a sales tax deferral scheme. We discuss each program below. BKT stated that the SGOM provides a Package Scheme of Incentives (PSI), which encourages investments in new units and/or the expansion of existing production capacity located in specified underdeveloped areas in accordance with the terms and conditions specified by SGOM. Although the GOI claimed that BKT did not use any of the programs administered by the SGOM, BKT stated that they utilized benefits under some of the programs.¹²¹

i. Electricity Duty Exemption

BKT reported that its manufacturing facilities were exempted from the payment of electricity duty (under different provisions) during all or part of the POI, thus conferring a benefit pursuant to section 771(5)(E) of the Act. The SGOM has exempted from electricity duties certain industries and enterprises in certain less developed industrial regions in the State of Maharashtra.¹²²

We preliminarily determine that this program constituted a financial contribution, the form of revenue forgone, and is regionally-specific, under sections 771(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively.

To calculate the subsidy rate, we divided the benefit by the total sales of each company during the POI. On this basis, we preliminarily determine a countervailable subsidy of 0.04 percent *ad valorem* for BKT.¹²³

ii. Sales Tax Deferral Scheme

¹²⁰ See ATC's Preliminary Calculation Memorandum.

¹²¹ See the GOI's Initial Questionnaire Response at 331-347.

¹²² See BKT's Initial Questionnaire Response at 46-51; the GOI's Initial Questionnaire Response at 347

¹²³ See BKT's Preliminary Calculation Memorandum.

In another CVD proceeding involving India, the Department found that certain states in India (including the state of Maharashtra) provide a package of incentives to encourage the development of certain regions of those states.¹²⁴ These incentives are provided to privately-owned (as defined by the GOI to not be 100 percent government-owned) manufacturers in selected industries which are located in designated regions.¹²⁵ One incentive is the exemption or deferral of state sales taxes. Specifically, under these state programs, companies are exempted from paying state sales taxes on purchases, and from collecting state sales taxes on sales.¹²⁶

BKT reported that it utilized this program, which provides a tax deferral of payable VAT and CST that is collected but not paid.¹²⁷ Unpaid VATs and CSTs are deferred for a number of years after which the duty is required to be paid in five installments.¹²⁸ However, a company using this program also may elect to make an early payment of the duty owed by paying the Net Present Value (NPV) of the liability that would accrue after the set number of years. The GOI reported that the aforementioned companies did not avail themselves of the deferral program.¹²⁹

As we have found in other cases, we preliminarily determine that this program constituted a financial contribution, in the form of revenue forgone, and is regionally specific, under sections 771(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively.¹³⁰

Because the tax deferrals that the respondents received have to be repaid to the GOI, we are treating the unpaid tax liability as an interest-free loan,¹³¹ and thus find that the aforementioned companies benefited from this program, pursuant to section 771(5)(E) of the Act. Accordingly, we find the benefit to be the interest that the respondents would have paid during the POI had they borrowed the full amount of the tax deferrals.¹³² As noted above, the time period to repay the tax deferral is a certain number of years. 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 of repayment of the deferred taxes occurs at a point in time that is more than one year. As the benchmark interest rate, we used the long-term interest rates as discussed in the “Benchmarks and Discount Rates” section, above. On this basis, we preliminarily determine a countervailable subsidy of 0.02 percent *ad valorem* for BKT.¹³³

6. Merchandise Export Incentive Scheme (MEIS)

¹²⁴ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Preliminary Affirmative Determination* 80 FR 68854 (November 6, 2015) (*CORE Preliminary Determination*) and accompanying IDM at 17-18; *unchanged in Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Final Affirmative Determination*, (*CORE Final Determination*) and accompanying IDM.

¹²⁵ See BKT’s Initial Questionnaire Response at 46-51.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ See the GOI’s Initial Questionnaire Response at 331-347.

¹³⁰ See *CORE Preliminary Determination*, and accompanying IDM at 17-18; *CORE Final Determination*, and accompanying IDM.

¹³¹ See 19 CFR 351.505(d)(1).

¹³² *Id.*

¹³³ See BKT’s Preliminary Calculation Memorandum.

The MEIS was introduced in the Foreign Trade Policy (FTP) 2015-2020. Its purpose is to “offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced / manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India’s export competitiveness.”¹³⁴ BKT reported that they utilize the program.¹³⁵ For the program the GOI issues a script worth either two, three, or five percent of the FOB value of the of “exports in free foreign exchange, or on FOB value of exports as given in the shipping bills in free foreign exchange, whichever is less.”¹³⁶ To receive the script, a recipient must file an electronic application and supporting shipping documentation for each port of export with Director General of Foreign Trade (DGFT).¹³⁷ Each application can only comprise of a maximum of 50 shipping bills.¹³⁸ After a recipient receives and registers the script, it may use it for either the payment of future customs duties for importing goods or transfer it to another company.¹³⁹

The Department has found a similar program, the Status Holder Incentive Scheme (SHIS), to be countervailable. For that program, like this program, the GOI provides scripts to exporters worth a certain percentage of the FOB value of exports.¹⁴⁰ The script could be used as a credit for future import duties or could be transferred to other “Status Holders” to be used as credit for future import duties. The program is specific within sections 771(5A)(A) and (B) of the Act because, as BKT admits, its eligibility to receive the scripts is contingent upon export.¹⁴¹

As the Department determined for the SHIS program, this program provides a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act because the scripts provide exemptions for paying duties associated with the import of goods which represents revenue foregone by the GOI.¹⁴²

This program provides a recurring benefit, because, unlike the scripts in the SHIS scheme, the scripts provided under this program are not tied to capital assets. Furthermore, recipients can expect to receive additional subsidies under this same program on an ongoing basis from year to year under 19 CFR 351.524(c)(2)(i). We calculated the benefit to BKT, to be the total value of scripts granted during the POI. Normally, in cases where the benefits are granted based on a percentage value of a shipment, the department calculates benefit as having been received as of

¹³⁴ See Letter from the GOI, “Countervailing Duty investigation of Certain New Pneumatic Off-the-Road Tires from India,” May 23, 2016 (the GOI’s Supplemental Questionnaire Response) at 10 and Exhibit 1.

¹³⁵ See BKT’s Initial Questionnaire Response at 53-58 and Exhibits 31-32.

¹³⁶ See BKT’s Initial Questionnaire Response at 53-54; Letter from the GOI, “Countervailing Duty investigation of Certain New Pneumatic Off-the-Road Tires from India,” May 23, 2016 at 23.

¹³⁷ See the GOI’s Initial Questionnaire Response at 16.

¹³⁸ See BKT’s Initial Questionnaire Response at 55.

¹³⁹ *Id.*, at 56.

¹⁴⁰ *PET Film from India 2013 Preliminary Results*, and accompanying IDM at 11, *unchanged in PET Film from India 2013 Final Results*, and accompanying IDM; *Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) (*Steel Threaded Rod from India Final*), and accompanying IDM, at “Status Holder Incentive Scrip.”

¹⁴¹ *Id.*

¹⁴² *Id.*

the date of exportation,¹⁴³ however, because the MEIS benefit, *i.e.* the script, amount is not automatic and is not known to the exporter until well after the exports are made, the MEIS licenses, which contain the date of validity and the duty exemption amount as issued by the GOI, are the best method to determine and account for when the benefit is received.¹⁴⁴ On this basis we determine the countervailable subsidy provided to BKT under the MEIS to be 0.02 percent *ad valorem*.¹⁴⁵

7. *The Rajasthan Investment Promotion Scheme, 2003, 2010, and 2014*

The Government of Rajasthan (GOR) created various schemes in 2003, 2010, and 2014 to promote development and attract development.¹⁴⁶ BKT reported they built several plants in Rajasthan in 2002, 2006, and 2016.¹⁴⁷ These Investment Promotion Schemes provided certain benefits including a capital investment benefit, interest subsidies, exemptions for paying a stamp duty on land, exemption from paying of electricity duties, entry tax exemptions, and a wage and employment subsidy.¹⁴⁸ BKT reported use on several programs listed below.

i. Stamp Duty

BKT stated they benefited from a one-time stamp duty exemptions associated with the purchase of land in Rajasthan from 2004-2010.¹⁴⁹ Because these exemptions tied to the purchase of land, we applied the “0.5 percent test,” for non-recurring subsidies, as described in 19 CFR 351.524(b)(2). To determine whether to allocate these grants over the AUL we divided the total amount of the exemptions received during each respective year of the AUL by the total export sales values of each respective year of BKT. On this basis, because these benefits were received before the POI, and did not pass “0.5 percent test,” in each year they were received, we find that all of the benefits BKT received from this program were expensed prior to the POI.¹⁵⁰

ii. Local Sales Tax Exemption 75 Percent

The GOR grants exemptions to, or deferrals from, sales taxes in order to encourage regional development.¹⁵¹ These incentives allow privately-owned (*i.e.*, not one hundred percent owned by the GOI) manufacturers in selected industries and located in designated regions, to purchase from suppliers located in certain regions of certain states without paying sales taxes.¹⁵² To

¹⁴³ See 19 CFR 351.519(b)(1); *Welded Stainless Pipe from India* and accompanying IDM at 8-11.

¹⁴⁴ See *Polyethylene Terephthalate Film, Sheet and Strip From India: Preliminary Results And Partial Rescission of Countervailing Duty Administrative Review; 2012*, 79 FR 50616 (August 25, 2014) (*PET Film Preliminary Results 2012*), and accompanying Memorandum titled “Calculations for the Preliminary Results: Jindal Poly Films of India Limited (Jindal)” at 4-5, *unchanged in Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 40 (March 2, 2015).

¹⁴⁵ See BKT’s Preliminary Calculation Memorandum.

¹⁴⁶ See BKT’s Initial Questionnaire Response at 58-59; GOI’s Initial Questionnaire Response at 37-40.

¹⁴⁷ *Id.*

¹⁴⁸ See the GOI’s Initial Questionnaire Response at 37-40.

¹⁴⁹ See BKT’s Initial Questionnaire Response at 59-61; the GOI’s Initial Questionnaire Response at 37-40.

¹⁵⁰ See BKT’s Preliminary Calculation Memorandum.

¹⁵¹ See BKT’s Initial Questionnaire Response at 68-70.

¹⁵² *Id.*

receive the exemption, a recipient must export at least 75 percent of its total sales value in a particular year.¹⁵³ Because these exemptions were tied to the purchase of capital, we applied the “0.5 percent test,” for non-recurring subsidies, as described in 19 CFR 351.524(b)(2). To determine whether to allocate these grants over the AUL we divided the total amount of the exemptions received during each respective year of the AUL by the total export sales values of each respective year of BKT. On this basis, because these benefits were received before the POI, and did not exceed 0.5 percent of the total export sales values, in each year they were received, we find that all of the benefits BKT received from this program were expensed prior to the POI.¹⁵⁴

iii. Entry Tax Exemption 75 Percent

The GOR exempts 75 percent of “Entry Tax” liability payable for all new exporting units on imported raw material goods.¹⁵⁵ To receive the exemption, a recipient must be a “new unit” and export at least 75 percent of its total sales value in a particular year. BKT reported receiving benefits for two plants under this program.¹⁵⁶

This program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone. It is specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is contingent upon export performance. To determine the subsidy rate, we divided the amount of the benefits provided to BKT under section 771(5)(E) the Act during the POI and divided it by the BKT’s total export sales. On this basis, we determine a countervailable subsidy rate of 0.06 percent *ad valorem* for BKT.¹⁵⁷

8. Government Provision of Natural Rubber for Less Than Adequate Remuneration (LTAR)

BKT reported that it purchased natural rubber from domestic sources during the POI.¹⁵⁸ Under the Rubber Act of 1947 the GOI requires domestic buyers and sellers of rubber to have a general or special license issued by the “Rubber Board.”¹⁵⁹ The Kerala State Cooperative Marketing Federation Limited, or RubberMark, India’s largest natural rubber supplier, is a “government agency” in India that purchases natural rubber directly from the farmers, processes the rubber, and supplies it to the domestic tire industry.¹⁶⁰ RubberMark is located in the State of Kerala where over 90 percent of all rubber is produced in India. BKT and the GOI reported that BKT purchased natural rubber from RubberMark during the POI.¹⁶¹

¹⁵³ *Id.*

¹⁵⁴ See BKT’s Preliminary Calculation Memorandum.

¹⁵⁵ See BKT’s Initial Questionnaire Response at 69.

¹⁵⁶ *Id.*

¹⁵⁷ See BKT’s Preliminary Calculation Memorandum.

¹⁵⁸ See Letter from BKT, “Certain New Pneumatic Off-The-Road Tires from India; Balkrishna Industries Limited’s Response to New Subsidy Allegation Questionnaire,” June 1, 2016 (BKT’s NSA Questionnaire Response) at 5.

¹⁵⁹ See New Subsidy Allegations at 2.

¹⁶⁰ *Id.*, at 3 and Exhibit 2.

¹⁶¹ See Letter from the GOI, “Countervailing Duty investigation of Certain New Pneumatic Off-the-Road Tires from India,” May 31, 2016 (the GOI’s NSA Questionnaire Response) at 26.

With regard to whether the GOI provides a financial contribution through the sale of natural rubber by RubberMark, information on the record shows that RubberMark refers to itself as a “government agency.”¹⁶² Furthermore, the GOI considers RubberMark an important institution in Kerala, the largest Rubber producing state in India, when the it states RubberMark is an “apex institution of the primary Rubber Marketing Cooperatives in Kerala.”¹⁶³ As such, the program provides a financial contribution through the provision of goods from a government authority under section 771(5)(D)(iii) of the Act.

With regard to specificity, the GOI claimed natural rubber is consumed by a limited number of users in India. Specifically, the GOI claims the following seven industries measurably consume natural rubber: auto tires and tubes, cycle tires and tubes, foot wears, camel back, belts and hoses, dipped goods, and latex foam.¹⁶⁴ Moreover, that same information indicates the tire industry is the “predominant user” of natural rubber in India and benefits from a disproportionately large amount of the subsidy. Specifically, the GOI provided information showing the tire industry accounts for more than 66 percent of the consumption of natural rubber in India, far more than any other industry.¹⁶⁵ Thus, the provision of natural rubber at LTAR is specific under sections 771(5A)(D)(iii)(I)-(III) of the Act.

With regard to benefit, under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions of the good within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in the regulations, the preferred benchmark in the hierarchy is an observed market price for the good at issue from actual transactions within the country under investigation.¹⁶⁶ Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or in certain circumstances, a substantial portion, of the market for a good or service, prices for such goods and services in the country may be considered significantly distorted and not an appropriate basis of comparison for determining whether there is a benefit.¹⁶⁷ After being asked to provide the total volume and value of domestic sales that are accounted for by the government, including state invested enterprises (SIE’s) and RubberMark, the GOI provided information showing that “share{s} of

¹⁶² See New Subsidy Allegations at 3 and Exhibit 2.

¹⁶³ See the GOI’s NSA Questionnaire Response at 46.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ See, *e.g.*, *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying IDM at “Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark” (“Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier”).

¹⁶⁷ See *Preamble*, 63 FR at 65377.

cooperatives (in which government agencies have a stake or managed by a Board in which government representatives are there) in rubber trading was around {six percent} during 2012-13.”¹⁶⁸ Further, data shows that a substantial portion of natural rubber in India is imported, *i.e.*, domestic production accounts for 58 percent of domestic consumption.¹⁶⁹ The GOI also stated that the Rubber Board, as controlled by the Ministry of Commerce of the GOI, issues licenses for dealers, processors, and consumers, and assists the rubber industry in research, training, technical advice.¹⁷⁰ The GOI, however, states these licenses are issued solely for the purpose of generating reliable statistics on natural rubber natural rubber.¹⁷¹ Furthermore, the Rubber Board advises the Central Government on matters relevant to the rubber industry.¹⁷² Thus, there is no information on the record showing the Rubber Board sets price controls.

Consequently, because of the government’s limited involvement, *e.g.*, the government does not control a majority or a substantial portion of the market for natural rubber, we find that prices for natural rubber are not distorted. As such, for the natural rubber market, the use of private producer prices in India would be an appropriate basis of comparison for determining whether there is a benefit.

To calculate the program benefit, we compared the corresponding monthly benchmark unit prices to the unit prices that BKT paid RubberMark for natural rubber purchased from RubberMark during the POI. To calculate the benefit for BKT purchases from RubberMark, we used an average of the prices BKT paid for natural rubber from private sources, *i.e.*, sources other than RubberMark or SIEs, during the relevant month for the benchmark. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid for the product, including delivery charges and import duties. Where the benchmark unit price was greater than the price paid to RubberMark, we multiplied the difference by the quantity of natural rubber purchased from RubberMark to derive the benefit. We next summed these monthly amounts and divided the total by BKT’s total sales for the POI. On this basis, we preliminarily determine a subsidy rate for BKT of 0.01 percent *ad valorem*.¹⁷³ Record information indicates that all of ATC’s natural rubber was sourced from all non-domestic sources during the POI.¹⁷⁴ Therefore, we find that the GOI did not provide a financial contribution to ATC during the POI with respect to this program.

9. *Income Tax Deduction for Research and Development Expenditures*

Description: Section 35(2AB) of the Income Tax Act of 1961 provides a tax deduction to cover expenses related to scientific research for Indian companies engaged in the bio-technology sector or in a business not involved in sectors listed in the Eleventh Schedule of the Income Tax Act of

¹⁶⁸ See the GOI’s NSA Questionnaire Response at 37.

¹⁶⁹ *Id.*, at 36.

¹⁷⁰ *Id.*, at 10-41.

¹⁷¹ *Id.*

¹⁷² *Id.*, at 40-45.

¹⁷³ See BKT’s Preliminary Calculation Memorandum.

¹⁷⁴ See the GOI’s NSA Questionnaire Response at Exhibit 2.

1961.¹⁷⁵ BKT claimed a benefit under this program by disclosing a deduction under this program from 2013 through 2015.¹⁷⁶

The tax deductions provide a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act. Furthermore, under 771(5A)(D)(i) of the Act, the program is specific because it is limited to certain enterprises or industries or certain groups of enterprises or industries.

BKT received a benefit within the meaning of 771(5)(E) of the Act and 19 CFR 351.509 and 19 CFR 351.519 in the amount of tax payments that are exempted. To determine the subsidy rate, we divided the amount of the benefits provided to BKT under section 771(5)(E) of the Act during the POI and divided it by the BKT's total sales. On this basis, we determine a countervailable subsidy rate of 0.14 percent *ad valorem* for BKT.¹⁷⁷

10. Government Provision of Land for LTAR

The GOI reported that SEZs are established, developed, and maintained under India's SEZ Act and the SEZ Rules.¹⁷⁸ According to the GOI, the State Government of Tamil Nadu, through the State Industries Promotion Corporation of Tamil Nadu (SIPCOT), allotted land-use rights to ATC for its facilities that are located in the SIPCOT SEZ.¹⁷⁹ Record information submitted by the GOI states that SIPCOT "acts as a Nodal Agency of Government of Tamil Nadu in the sanction/disbursement of Structured Package of Assistance to large industrial units," and that it "strives to ensure that disbursement of financial incentives result in spurt of industrial growth in backward and hitherto under developed areas."¹⁸⁰ Indeed, information submitted by Petitioners in its allegation that land is provided by the GOI for LTAR indicates that SIPCOT provides a 50 percent subsidy rate for particular land allotments.¹⁸¹ SEZs are established and maintained by the government to generate economic activity and to promote the export of goods and services, *inter alia*,¹⁸² and companies located in SEZs must maintain positive NFE to maintain their SEZ eligibility. Because ATC's land-use rights were provided by the State Government of Tamil Nadu, we preliminarily determine that ATC's SEZ land-use rights are a provision of a good, and therefore provide a financial contribution as defined by section 771(5)(D)(iii) of the Act. Additionally, we determine that the provision of land-use rights in the SIPCOT SEZ is specific as an export subsidy within the meaning of section 771(5A)(B) of the Act because enterprises must export their products to maintain eligibility.

In addition, ATC reported that another plant facilities is located in Gujarat and has been designated as an Export-Oriented Unit (EOU),¹⁸³ and that it obtained its land-use rights for this

¹⁷⁵ See the GOI's NSA Questionnaire Response at Exhibit 12.

¹⁷⁶ See BKT's NSA Questionnaire Response at 10.

¹⁷⁷ See BKT's Preliminary Calculation Memorandum.

¹⁷⁸ See the GOI's Initial Questionnaire Response at 57.

¹⁷⁹ See the GOI's NSA Questionnaire Response at 74; see also ATC's Initial Questionnaire Response at 6.

¹⁸⁰ See the GOI's NSA Questionnaire Response at Exhibit 19.

¹⁸¹ See New Subsidy Allegations at Exhibit 16.

¹⁸² See GOI's Initial Questionnaire Response at Exhibit 17.

¹⁸³ See the ATC's Initial Questionnaire Response at 23.

location through the Gujarat Industrial Development Corporation (GIDC), which is owned by the State Government of Gujarat.¹⁸⁴ According to information submitted by the GOI, the GIDC “offers reasonable allotment price with soft payment options.”¹⁸⁵ The purpose of the EOU program is to boost exports by creating additional production capacity,¹⁸⁶ and this program is governed by India’s Foreign Trade Policy.¹⁸⁷ According to the GOI, companies must maintain a positive NFE over five years to maintain eligibility.¹⁸⁸ Given that the GIDC is reportedly a company owned by the State Government of Gujarat, we preliminarily determine that the GIDC is an “authority” as defined by section 771(5)(B) of the Act. As a result, we find that ATC’s land-use rights from an authority for its Gujarat location is a provision of a good, and therefore is a financial contribution as defined by section 771(5)(D)(iii) of the Act. Finally, we determine that the GIDC’s provision of land-use rights to ATC’s EOU location is specific as an export subsidy within the meaning of section 771(5A)(B) of the Act because EOUs must export their products to maintain their EOU eligibility.

The adequacy of remuneration for government-provided goods or services is determined pursuant to 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2), the Department measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services for less than adequate remuneration (LTAR). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation (*i.e.*, tier one). This is because such prices generally would be expected to reflect the most closely the prevailing market conditions of the purchaser under investigation.

In this investigation, Petitioners and ATC submitted benchmark information for calculating whether land was provided to the respondents for LTAR.¹⁸⁹ Specifically, Petitioners submitted 2013 industrial park land values, *i.e.*, “Asia Pacific Industrial & Logistics; Marketview,” by CBRE Global Research and Consulting,¹⁹⁰ and 2012 factory land values, *i.e.*, “Asia Pacific Industrial Market Overview,” by Colliers International. These land valuation reports were generated by independent third parties, and both sets of data provide values for land sales within

¹⁸⁴ See Letter from ATC, “Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited’s Response to New Subsidy Allegations Questionnaire, June 1, 2106 at Exhibit 48.

¹⁸⁵ See the GOI’s NSA Questionnaire Response at Exhibit 20.

¹⁸⁶ See the GOI’s Initial Questionnaire Response at 77.

¹⁸⁷ *Id.*, at 80.

¹⁸⁸ *Id.*, at 77.

¹⁸⁹ See Petitioners’ Benchmark Submission at Exhibits 11 and 12; *see also* Letter from ATC, “Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Information to Rebut, Clarify, or Correct New Factual Information,” May 26, 2016 (ATC’s Land Benchmark Submission).

¹⁹⁰ We have relied on land valuation data from CBRE Global Research and Consulting in prior CVD proceedings. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) and accompanying IDM at 6.

India. ATC submitted 2011 and 2012 land value information that indicates it is from the local government in India that provided ATC with its land-use rights in Gujarat.¹⁹¹ However, based on our examination of ATC's Land Benchmark Submission, we are unclear on how this information can be used to determine whether land was provided to ATC for LTAR.¹⁹² For example, ATC has not demonstrated that the land prices are rates for land obtained within India and are applicable to industrial/factory land rather than generated for the purposes of this investigation. We intend to evaluate the adequacy of these land prices at verification. As a result, for these preliminary results, we find that we cannot rely on ATC's Land Benchmark Submission as a benchmark to determine whether land was provided for LTAR. Therefore, we preliminarily determine that an average of the industrial park and factory land values submitted by Petitioners represent the best comparable land values on the record to use as a benchmark, as they are rates for land obtained within India (*i.e.*, in the states of Maharashtra, Tamil Nadu and in New Delhi) and are applicable to industrial/factory land. Because these land values apply to 2013 and 2012, we will adjust these land values as necessary using India's Consumer Price Index as published by the International Monetary Fund to determine whether ATC received land for LTAR.

To calculate the benefit, we first multiplied the average of the industrial land benchmarks discussed above by the total area of ATC's countervailed land-use rights. We then subtracted the price actually paid for these land-use rights to derive the unallocated benefit. Because land is related to a respondent's capital structure, we treated the amount of the unallocated benefit as a non-recurring subsidy, pursuant to 19 CFR 351.524(c)(2)(iii). We conducted the "0.5 percent test," as instructed by 19 CFR 351.524(b)(2), for the year of the relevant land-use agreement by dividing the total unallocated benefit for each tract of land by the appropriate sales denominator. If more than one tract was provided in a single year, we combined the total unallocated benefits from the tracts before conducting the "0.5 percent test." When we found that the benefits were greater than 0.5 percent of the relevant sales for a particular year, we allocated the total unallocated benefit amounts across the terms of the land-use agreements, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount attributable to the POI. We then summed all of the benefits attributable to the POI and divided this amount by the appropriate sales denominator, as discussed in the "Subsidies Valuation Information" section above, to derive the preliminary subsidy rate of 2.85 percent *ad valorem* for ATC.

BKT provided information showing that it purchased land from a GOI land bank in Gujarat at its request at a price set by the GOI in March 2012.¹⁹³ The land was not acquired through a formal process *i.e.*, through negotiating or bidding. BKT states the land bank "allot{s} land to industrialists at a price set by {the land bank}."¹⁹⁴ The original application to purchase the land was made by another company who subsequently drafted a consent letter which allowed BKT to purchase the land. Although land was provided to BKT by a "government authority," the record provides no indication of specificity within the meaning of 771(5A) of the Act or that the land was provided to BKT at preferential terms.

¹⁹¹ See ATC's Land Benchmark Submission at Attachment A.

¹⁹² *Id.*

¹⁹³ See BKT's Initial Questionnaire Response at 16-19.

¹⁹⁴ *Id.*, at 19.

B. Programs Preliminarily Determined to be Not Used

1. Income Tax Deduction Program
2. Duty Drawback Scheme (DDB Scheme)
3. Duty Free Import Authorization Scheme (DFIA Scheme)
4. Market Development Assistance (MDA) Scheme
5. Focus Product Scheme
6. Market Access Initiative
7. Kerala Industrial & Commercial Policy Amended, 2015
8. State of Maharashtra Octroi Refund Scheme
9. State of Maharashtra Loan Guarantees Based on Octroi Refunds
10. Incentives Under the West Bengal Support for Industries Scheme
11. Union Territories Sales Tax Exemption
12. Gujarat Industrial Policy. 2015 Stamp Duty Reimbursement
13. Gujarat Industrial Policy. 2015 Infrastructure Subsidies
14. Export Credit Insurance
15. Assistance to States for Infrastructure Development for Exports and Allied Activities (“ASIDE”)
16. GOI Central Capital Investment Subsidy Scheme
17. GOI Freight Subsidy Scheme, 2013
18. New Industrial Policy of Tamil Nadu, 2007 - Capital Subsidy
19. Tamil Nadu Industrial Policy, 2014
20. Punjab Fiscal Incentives for industrial Promotion, 2013
21. Rajasthan Investment Promotion Scheme, 2003, 2010, and 2014.
 - i. *Electricity Duty*
 - ii. *Interest/Wage Subsidy*
22. Incremental Export Incentive Scheme (IEIS)
23. Status Holder Incentive Script (SHIS)
24. Status Certificate Program

X. CALCULATION OF THE ALL-OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not individually 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 any zero, *de minimis*, or facts available rates. In this review, the preliminary subsidy rates calculated for the two mandatory respondents are above *de minimis* and neither was determined based entirely on facts otherwise available pursuant to section 776 of the Act. However, calculating the all-others rate by using the respondents’ actual weighted-average rates risks disclosure of proprietary information. Therefore, for these preliminary results, we calculated the weighted-average all-others rate for non-selected

companies using publicly-ranged information reported by ATC and BKT. As a consequence, the all-others rate is 6.17 percent *ad valorem*.¹⁹⁵

XI. ITC NOTIFICATION

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

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

XII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹⁹⁶ Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁹⁷ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.¹⁹⁸ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time, and location to be determined. Parties will be notified of the date, time, and location of any hearing.

¹⁹⁵ See Memorandum, "Countervailing Duty Investigation of Certain New Pneumatic Off-The-Road Tires from India: Preliminary Determination Margin Calculation for All-Others," dated concurrently with this memorandum.

¹⁹⁶ See 19 CFR 351.224(b).

¹⁹⁷ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁹⁸ See 19 CFR 351.310(c).

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.²⁰¹ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time, on the due dates established above.²⁰²

XIII. CONCLUSION

We recommend that you approve the preliminary determination described above.

✓ Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

13 JUNE 2016
Date

²⁰¹ See 19 CFR 351.303(b)(2)(i).

²⁰² See 19 CFR 351.303(b)(1).