




C-533-870
Investigation
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DATE: January 3, 2017

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Associate Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Certain New Pneumatic
Off-the-Road Tires from India

I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain new pneumatic off-the-road tires (off-road-tires) from India, within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act).¹ Below is the complete list of issues in this investigation for which we received comments from interested parties.

Issues:

- Comment 1: Whether Tax and Import Duty Exemptions Under the Special Economic Zone (SEZ) and Export-Oriented Unit (EOU) Programs are Countervailable
- Comment 2: Whether the Department Must Eliminate Certain Duties Regarding ATC's Tamil Nadu SEZ Location in the Final Determination
- Comment 3: Whether the Advance Authorization Scheme (AAP) Is a Countervailable Program
- Comment 4: Whether the Department Should Apply Adverse Facts Available (AFA) to Determine if the Government of Gujarat's (GOG) Provision of Land to BKT from the "Land Bank" was Specific
- Comment 5: Whether the Department May Use Land Purchased by BKT from Private Parties as Benchmarks and Whether They Show the GOG, through the "Land Bank" Did Not Provide Land to BKT at LTAR

¹ See also section 701(f) of the Act.

- Comment 6: Whether ATC Benefited from the Provision of Land for LTAR for its SEZ/EOU Locations and Whether the Provision of Land to ATC is Contingent upon Export Performance
- Comment 7: Whether the Department Should Revise the Benchmark for the Provision of Land Provided to ATC for its SEZ/EOU Locations
- Comment 8: Whether the Department Should Revise the Discount Rate Used to Allocate ATC's Land-Use Rights Benefits for its SEZ/EOU Locations
- Comment 9: Whether the Income Tax Deductions for Research and Development Expenditures Is a Specific Subsidy
- Comment 10: Whether the Department Should Use a Six-Month Comparison Period for Its Final Critical Circumstances Determination
- Comment 11: Whether the Department Should Correct Calculation Errors regarding ATC's Preliminary Determination Calculations
- Comment 12: Whether the Department Should Apply AFA because of Information Obtained at Verification
- Comment 13: Whether the Department Should Subtract BKT's Sales of its Paper Division from its Total Sales and Total Export Sales Denominators
- Comment 14: Whether the Department Should Subtract Sales from BKT's Wind Divisions from its Total Sales and Total Export Sales Denominators
- Comment 15: Whether the Department Should Use Total Sales Instead of Export Sales as the Denominator when Calculating the Rate for the Export Promotion of Capital Goods Scheme (EPCGS).

II. BACKGROUND

A. Case History

The cooperating mandatory company respondents in this proceeding are Balkrishna Industries Limited (BKT) and ATC Tires Private Limited (ATC). On June 20, 2016, the Department published the *Preliminary Determination* in this proceeding.²

Between July 29, 2016, and August 12, 2016, we conducted verification of the questionnaire responses submitted by the Government of India (GOI), ATC, and BKT.³ Interested parties submitted case and rebuttal briefs between October 14, and October 21, 2016.⁴ We conducted a public hearing in this case on November 17, 2016.

² See *Certain New Pneumatic Off-the-Road Tires from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Determination*, 81 FR 39903 (June 20, 2016) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

³ See Memoranda, "Verification of the Questionnaire Responses Submitted by the Government of India," October 5, 2016 (GOI Verification Report), "Verification of the Questionnaire Responses Submitted by Balkrishna Industries Limited,," September 30 2016 (BKT Verification Report), and "Verification of the Questionnaire Responses Submitted by ATC Tires Private Limited," October 6, 2016 (ATC Verification Report).

⁴ See Letter from Petitioners, "Certain New Pneumatic Off-the-Road Tires from India; Case Brief on Behalf of Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC," October 14, 2016 (Petitioners' Case Brief); Letter from

B. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2015 through December 31, 2015.

III. SCOPE OF THE INVESTIGATION

The scope of this investigation is certain new pneumatic off-the-road tires (certain off road tires). Certain off road tires are tires with an off road tire size designation. The tires included in the scope may be either tube-type⁵ or tubeless, radial, or non-radial, regardless of whether for original equipment manufacturers or the replacement market.

Subject tires may have the following prefix or suffix designation, which appears on the sidewall of the tire:

Prefix designations:

DH – Identifies a tire intended for agricultural and logging service which must be mounted on a DH drop center rim.

VA – Identifies a tire intended for agricultural and logging service which must be mounted on a VA multipiece rim.

IF – Identifies an agricultural tire to operate at 20 percent higher rated load than standard metric tires at the same inflation pressure.

VF – Identifies an agricultural tire to operate at 40 percent higher rated load than standard metric tires at the same inflation pressure.

Suffix designations:

ML – Mining and logging tires used in intermittent highway service.

DT – Tires primarily designed for sand and paver service.

BKT, “Certain New Pneumatic Off-the-Road Tires from India; ATC Tires Private Limited’s Case Brief,” October 14, 2016 (ATC’s Case Brief); Letter from BKT, “Certain New Pneumatic Off-The-Road Tires from India; Balkrishna Industries Limited’s Case Brief,” October 14, 2016 (BKT’s Case Brief); Letter from Petitioners, “Certain New Pneumatic Off-the-Road Tires from India; Rebuttal Brief on Behalf of Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC,” October 14, 2016 (Petitioners’ Rebuttal Brief); Letter from ATC, “Certain New Pneumatic Off-the-Road Tires from India: Resubmission of ATC Tires Private Limited’s Rebuttal Brief,” November 16, 2016 (ATC’s Rebuttal Brief); and Letter from BKT, “Certain New Pneumatic Off-The-Road Tires from India; Balkrishna Industries Limited’s Rebuttal Brief,” October 21, 2016 (BKT’s Rebuttal Brief).

⁵ While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

NHS – Not for Highway Service.

TG – Tractor Grader, off-the-road tire for use on rims having bead seats with nominal +0.188” diameter (not for highway service).

K – Compactor tire for use on 5° drop center or semi-drop center rims having bead seats with nominal minus 0.032 diameter.

IND – Drive wheel tractor tire used in industrial service.

SL – Service limited to agricultural usage.

FI – Implement tire for agricultural towed highway service.

CFO – Cyclic Field Operation.

SS – Differentiates tires for off-highway vehicles such as mini and skid-steer loaders from other tires which use similar size designations such as 7.00-15TR and 7.00-15NHS, but may use different rim bead seat configurations.

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.

In addition, all tires that lack any of the prefixes or suffixes listed above in their sidewall markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the following sections of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set forth below. The sections of the Tire and Rim Association Year Book listing numerical size designations of covered certain off road tires include:

The table of mining and logging tires included in the section on Truck-Bus tires;

The entire section on Off-the-Road tires;

The entire section on Agricultural tires; and

The following tables in the section on Industrial/ATV/Special Trailer tires:

- Industrial, Mining, Counterbalanced Lift Truck (Smooth Floors Only);
- Industrial and Mining (Other than Smooth Floors);
- Construction Equipment;
- Off-the-Road and Counterbalanced Lift Truck (Smooth Floors Only);
- Aerial Lift and Mobile Crane; and
- Utility Vehicle and Lawn and Garden Tractor.

Certain off road tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes certain off road tires produced in the subject countries whether mounted on wheels or rims in a subject country or in a third country. Certain off road tires are covered whether or not they are accompanied by other parts, *e.g.*, a wheel, rim, axle parts, bolts, nuts, etc. Certain off road tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope are passenger vehicle and light truck tires, racing tires, mobile home tires, motorcycle tires, all-terrain vehicle tires, bicycle tires, on-road or on-highway trailer tires, and truck and bus tires. Such tires generally have in common that the symbol “DOT” must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following prefixes and suffixes included as part of the size designation on their sidewalls:

Prefix letter designations:

AT – Identifies a tire intended for service on All-Terrain Vehicles;

P – Identifies a tire intended primarily for service on passenger cars;

LT – Identifies a tire intended primarily for service on light trucks;

T – Identifies a tire intended for one-position “temporary use” as a spare only; and

ST – Identifies a special tire for trailers in highway service.

Suffix letter designations:

TR – Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156” or plus 0.250”;

MH – Identifies tires for Mobile Homes;

HC – Identifies a heavy duty tire designated for use on “HC” 15” tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.

Example: 8R17.5 LT, 8R17.5 HC;

LT – Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service;

ST – Special tires for trailers in highway service; and

M/C – Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: Pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; aircraft tires; and turf, lawn and garden, and golf tires. Also excluded from the scope are mining and construction tires that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1025, 4011.20.1035, 4011.20.5030, 4011.20.5050, 4011.61.0000, 4011.62.0000, 4011.63.0000, 4011.69.0050, 4011.92.0000, 4011.93.4000, 4011.93.8000, 4011.94.4000, 4011.94.8000, 8431.49.9038, 8431.49.9090, 8709.90.0020, and 8716.90.1020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.4550, 4011.99.8550, 8424.90.9080, 8431.20.0000, 8431.39.0010, 8431.49.1090, 8431.49.9030, 8432.90.0005, 8432.90.0015, 8432.90.0030, 8432.90.0080, 8433.90.5010, 8503.00.9560, 8708.70.0500, 8708.70.2500, 8708.70.4530, 8716.90.5035, 8716.90.5055, 8716.90.5056 and 8716.90.5059. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

IV. SCOPE COMMENTS

In the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*.⁶ No interested parties submitted scope comments in case or rebuttal briefs; therefore, the scope of this investigation remains unchanged for this final determination. On July 25, 2016, after receiving a request from Customs and Border Protection, the Department added two new HTSUS numbers to the scope of this investigation.⁷

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

The Department has made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation period or the allocation methodology used in the *Preliminary Determination*. For a description of the allocation period and the methodology used for this final determination, see the *Preliminary Determination*.⁸

⁶ See *Preliminary Determination* and accompanying PDM at “Scope Comments.”

⁷ The Department added HTSUS numbers 8716.90.5056 and 8716.90.5059 to the Automated Commercial Enterprise (aka ACE) case reference files for this case. See Memorandum, “Request from Customs and Border Protection to Update the ACE Case Reference File,” July 25, 2016.

⁸ See *Preliminary Determination* and accompanying PDM at 9.

B. Attribution of Subsidies

The Department has made no changes to the attribution of subsidies. The GOI submitted comments on the attribution of subsidies for the EPCGS scheme, which are discussed below in Comment 16. Interested parties raised no other issues in their case briefs regarding the attribution of subsidies.⁹ For descriptions of the methodologies used for all programs in this final determination, see the *Preliminary Determination*.¹⁰

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for respondents' receipt of benefits under each program when attributing subsidies, e.g., to a respondent's export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Final Analysis Memoranda."¹¹ Based on information obtained in supplemental questionnaire responses received after the preliminary determination and obtained during verification, we have revised the total sales, domestic sales, and export sales values for BKT used to calculate the subsidy rates in this final determination.¹² Petitioners submitted comments regarding sales denominators, which are discussed in Comments 13 and 14.

VI. BENCHMARKS AND INTEREST RATES

The Department has made no change to the calculated interest payment benchmark for BKT and ATC. We selected the benchmarks for measuring the adequacy of the remuneration for natural rubber in accordance with 19 CFR 351.511(a). As discussed below in the "Application of AFA: "Government Provision of Natural Rubber for LTAR" sections, the Department is finding that the natural rubber industry in India is distorted. As such, in a change from the *Preliminary Determination*, the Department is relying on external benchmarks derived from UN Comtrade export data provided by Petitioner for determining the benefit from the provision of natural rubber for LTAR. For a description of the other benchmarks and interest rates used for this final determination, which remain unchanged from the *Preliminary Determination*, see the *Preliminary Determination* and the Final Analysis Memorandum.

⁹ *Id.* at 9-10.

¹⁰ *Id.*

¹¹ See Memoranda, "Final Determination Analysis for ATC Tires Private Limited.," dated concurrently with this memorandum, and "Final Determination Analysis for Balkrishna Industries Limited.," dated concurrently with this memorandum (collectively, Final Analysis Memoranda).

¹² The Department relied on sales information relating to each Indian fiscal year in its calculations for the *Preliminary Determination*. See Memorandum, Countervailing Duty Investigation of Certain New Pnuematic Off-the-Road Tires from India: Balkrishna Industries Limited Preliminary Calculation Memorandum," June 13, 2016. (BKT Preliminary Calculation Memorandum). The Department received sales information relating to each calendar year after receiving a post-preliminary supplemental questionnaire response and at verification. The Department is also relying on sales information provided as minor corrections at Verification. See BKT Verification Report at "Corrections Accepted," Exhibit 1, 11-12.

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

In a change from the *Preliminary Determination*, we are now relying on AFA in finding that BKT benefitted from specific subsidies when it purchased land from the GOG (*i.e.*, the “land bank” program). We are also relying on AFA in finding that the Indian natural rubber industry is distorted and that all of BKT’s purchases of natural rubber from Indian producers are from authorities and, thus, constitute a financial contribution from the GOI. Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.¹³

Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse rate from among the possible sources of information, the Department’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”¹⁴ The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁵

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained during the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent resources that are reasonably at its disposal.¹⁶ Secondary information is “information derived from the petition that

¹³ On June 29, 2015, the President of the United States signed into law the Trade Preferences Act of 2015, which made numerous amendments to the antidumping duty and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). This 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretive rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this investigation.

¹⁴ *See, e.g., Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); *see also Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) (*CORE from the PRC*).

¹⁵ *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA), at 870.

¹⁶ *Id.* At 870.

gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.” The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.¹⁷ In analyzing whether information has probative value, it is the Department’s practice to examine the reliability and relevance of the information to be used.¹⁸ However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.¹⁹

Finally, under the new section 776(d) of the Act, the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.²⁰

Application of AFA: The Natural Rubber Industry is Distorted

In order to determine the appropriate benchmark with which to measure the benefit of inputs provided at LTAR under 19 CFR 351.511, the Department asked the GOI several questions concerning the structure of the Indian natural rubber industry. Specifically, we sought information from the GOI that would allow us to determine whether the Indian natural rubber industry is “distorted.” As discussed below, the GOI failed to provide the necessary information in its questionnaire responses regarding the natural rubber market during the POI including information about state invested entities (SIE’s) and data regarding natural rubber produced or sold by SIE’s during the POI. Pursuant to sections 776(a)(2)(A)-(D) of the Act, when an interested party withholds information that has been requested, fails to provide information by the applicable deadlines and in the manner requested, significantly impedes a proceeding, and/or does not provide information that can be verified, the Department applies facts otherwise available. Accordingly, application of facts otherwise available is appropriate here.

The Department issued new subsidy allegation (NSA) questionnaires to BKT and the GOI and received responses to the questionnaires shortly before the *Preliminary Determination*. The Department relied on these responses when it included the NSAs in its *Preliminary*

¹⁷ *Id.*

¹⁸ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

¹⁹ See SAA at 896-870.

²⁰ See section 776(d)(3) of the Act.

*Determination.*²¹ However because of the short period between receipt of the NSAs and the *Preliminary Determination*, the Department was only able to issue a NSA supplemental questionnaire after the *Preliminary Determination*.²² In its May 12, 2016 initial NSA questionnaire to the GOI, the Department asked the GOI to provide information about the natural rubber industry during the POI, including statistics about domestic production and consumption, information about the total volume and value of domestic sales accounted for by the GOI and SIEs, and levels of imports.²³ In its response, the only POI data provided by the GOI stated that Indian produced natural rubber accounted for “almost” 58 percent of natural rubber consumed in India. The GOI also explained that the “share of cooperatives (in which government agencies have a stake or managed by a Board in which government representatives are there) in rubber trading was around 6 {percent} during 2012-13.”²⁴ Given the amount of time available, the Department relied on this information for the *Preliminary Determination*, as it was the only information available at the time of the determination and the GOI had not yet been given the opportunity to remedy the deficiencies in its response. Shortly after the *Preliminary Determination*, the Department issued its second NSA questionnaire to the GOI, noting that the 2012-2013 data were outside of the POI, that the data apparently only accounted for the value of natural rubber *traded* in India, and that the GOI provided no volume information at all. The Department asked the GOI to provide volume and value *production* data for domestic consumption accounted for by the GOI, including cooperatives that might be state-controlled and non-cooperatives that might be state-controlled.²⁵ We also asked the GOI to “please explain why and the methods {it} took to attempt to provide an answer” if it could not provide a full response.²⁶ Finally, we asked for additional details concerning individual cooperatives. The GOI again responded with non-POI, 2012-2013 data and, as discussed in more detail below, also

²¹ See Letter to the GOI, “New Subsidy Allegations Questionnaire for the Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India,” May 12, 2016 (GOI’s May 12, 2016 questionnaire)

²² The Department received the first NSA questionnaire responses on May 31, 2016. See Letter from the GOI, “Countervailing Duty investigation of Certain New Pneumatic Off-the-Road Tires from India,” May 31, 2016 (GOI’s May 31, 2016 QR) at 74-92. However the *Preliminary Determination* was published on June 20, 2016. Therefore, the Department had insufficient time to release a supplemental questionnaire, and receive responses before the *Preliminary Determination*. As such, the Department submitted a supplemental questionnaire shortly after the *Preliminary Determination*. See Letter to the GOI, “Countervailing Duty Investigation of Certain New Pneumatic Off-The-Road Tires from India; Supplemental Questionnaire,” June 30, 2016 (GOI’s June 30, 2016 questionnaire).

²³ In its questionnaire, the Department defined SIEs as “any company or enterprise that is wholly or partially owned by the Government, directly or indirectly, or over which the Government holds managerial control (e.g., Government officials sit on the board of directors or hold key managerial positions, or directors or key managerial personnel are appointed by Government officials or agencies). Government ownership includes ownership by agencies of the Government, state asset management entities, Government funded or controlled pension funds, state-owned enterprises, state-owned banks, and other entities of the Government, such as branches of the military.” See GOI’s May 12, 2016 questionnaire at “Government Provision of Natural Rubber for Less Than Adequate Remuneration.”

²⁴ See GOI’s May 31, 2016 QR at 37.

²⁵ The Department asked that the GOI’s list of state-controlled cooperatives include “a breakdown of each company’s share in rubber trading within India and indicate whether each company is a primary producer/supplier or secondary supplier of rubber, i.e. whether the company produces natural rubber or buys it from a producer and subsequently sells it.” See GOI’s June 30, 2016 questionnaire.

²⁶ *Id.*

did not answer our questions about individual cooperatives.²⁷ The GOI stated the natural rubber consumption attributable to *production* by SIEs (*i.e.*, not the cooperatives, but actual enterprises) constituted less than two percent of natural rubber production in India during the period 2012-2013, and clarified that cooperatives do not produce natural rubber; they only trade natural rubber produced by other parties. By failing to provide contemporaneous production data for the POI, by not explaining why its response was incomplete, and by not answering our questions concerning individual cooperatives, the GOI did not cooperate to the best of its ability in this investigation. Accordingly, we now determine that an adverse inference is warranted for the GOI, pursuant to section 776(b) of the Act. The information requested is crucial for our analysis to determine whether the natural rubber industry in India was distorted during the POI. As AFA, the Department determines that the domestic market for natural rubber is distorted, through the intervention of the GOI, and is relying on an external benchmark to determine the benefit from the provision of this input at LTAR.

Application of AFA: Natural Rubber Producers are “Authorities”

In its questionnaire concerning new subsidy allegations, the Department asked the GOI, “{p}lease coordinate immediately with the company respondents to obtain a complete list of each company’s input suppliers,”²⁸ and the GOI provided the lists in response.²⁹ The GOI provided no information concerning its involvement in these suppliers, indicating its belief that the information was necessary for RubberMark only.³⁰ In a supplemental questionnaire concerning the allegation, the Department requested an additional list, asking the GOI to identify all cooperatives in which government agencies have a stake or which are managed by a board with government representatives and to indicate whether each company is a primary producer/supplier or secondary supplier of rubber (*i.e.*, whether the company produces natural rubber or buys it from a producer and subsequently sells it).³¹ The GOI had described the existence of such cooperatives in its previous response and had explained that they accounted for six percent of rubber trading during 2012-2013.³² While the GOI had previously provided information concerning such state-involved cooperatives in the aggregate, it had not identified any individual cooperatives within this category, other than RubberMark.³³ The Department requested the list of such state-involved cooperatives in order to determine which of BKT’s suppliers of natural rubber are “authorities” under 771(5)(B) of the Act and to determine whether

²⁷ The GOI specifically listed seven entities “other than cooperatives which produce and sell natural rubber in India.” However, the GOI stated that natural rubber was traded by 266 cooperatives considered SIEs. The GOI failed to list and provide data for each of the 266 possible state-owned cooperatives. *See* GOI’s July 14, 2016 QR at 7-8.

²⁸ *See* GOI’s May 12, 2016 questionnaire.

²⁹ *See* GOI’s May 31, 2016 QR at Exhibits 1 and 2.

³⁰ Question A(g) of the GOI’s May 12, 2016 questionnaire asked the GOI to “provide the name(s) of the entity/entities that provided each instance of assistance under the program to the mandatory respondent(s).”

Question A(h) asked the GOI to “specify if the entity/entities listed in response to Question H {sic}, above, is a national, state or local government entity, e.g., a government ministry, department, agency, office, etc.”

³¹ *See* Letter to the GOI, “Countervailing Duty Investigation of Certain New Pneumatic Off-The-Road Tires from India; Supplemental Questionnaire,” June 30, 2016 (GOI’s June 30, 2016 questionnaire).

³² *See* GOI’s May 31, 2016 QR at 37.

³³ *Id.*

its purchases amounted to a financial contribution under section 771(5)(D) of the Act.³⁴ In response to our request for the new list, the GOI provided additional aggregate data for “village based cooperatives” and noted the total number of such cooperatives was 266, including RubberMark, but it did not identify the remaining 265 village based cooperatives.³⁵ Thus, 265 possibly state-controlled companies remain that the GOI provided no information on the record for the Department to analyze for purposes of determining whether they are under the management or control of the GOI. Accordingly, we determine that an adverse inference is warranted pursuant to section 776(b) of the Act in determining which of BKT’s suppliers are authorities. By not providing the requested information about suppliers including the names and nature of certain cooperatives the GOI failed to provide requested necessary information in this investigation. The information requested is crucial for our analysis to determine which of BKT’s suppliers of natural rubber are “authorities” within the meaning of section 771(5)(B) of the Act and therefore, whether any of BKT’s purchases amounted to a financial contribution from the GOI. In drawing an adverse inference, we find that all of BKT’s domestic purchases of natural rubber are from authorities and constitute a financial contribution within the meaning of section 771(5)(D) of the Act.

For details on the calculation of the subsidy rate for respondents, *see* below at “Provision of Natural Rubber for LTAR.”

Application of AFA: Provision of Land for LTAR To BKT Through the “Land Bank”

As discussed further below in Comment 4, the Department is investigating whether BKT received land for LTAR under the land bank program. We requested information from the GOI regarding the GOG’s provision of land to BKT. Our review of the GOI’s questionnaire response shows that the GOI did not respond fully to certain sections regarding this program. Pursuant to sections 776(a)(2)(A) – (D) of the Act, when an interested party withholds information that has been requested, significantly impedes a proceeding, and/or does not provide information that can be verified, the Department applies facts otherwise available. Accordingly, application of facts otherwise available is appropriate here.

In its May 31, 2016 questionnaire response, the GOI explained that the “{GOG} gave land to BKT before the POI.”³⁶ BKT also explained in its June 1, 2016, questionnaire response that it purchased land from the GOG from a “land bank”.³⁷ The Department asked the GOI in its June

³⁴ In the *Preliminary Determination* we found that ATC was not provided natural rubber at LTAR because it does not purchase natural rubber from domestic sources therefore we did not send a supplemental questionnaire to ATC regarding this program. *See Preliminary Determination* and accompanying PDM at “Provision of Natural Rubber for LTAR.”

³⁵ *See* GOI’s July 14, 2016 QR at 7-8.

³⁶ *See* GOI’s May 31, 2016 QR at 74-92.

³⁷ *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 June 1, 2016 QR) at 16. Subsequently, in the same questionnaire response, BKT stated that the “land bank” belonged to the GOI. BKT first stated that it purchased this land from the GOG. The GOI also subsequently confirmed in its May 31, 2016 questionnaire response, that the land was purchased from the GOG, not the GOI.

30, 2016, questionnaire to provide information about BKT's purchase of land from the GOG.³⁸ Specifically, the Department asked for information about laws, regulations, promotional materials, contingencies, incentives, and involved authorities regarding the "GOI's land bank" and land provided by the GOG to BKT.³⁹ In all instances, the GOI simply responded that either no scheme named the "Land Bank" exists, that the "GOG and the BKT had entered into a transaction of sale in March 2012" but "further details of the transaction is more company specific information" ascertainable by BKT, or that a response is "{n}ot applicable."⁴⁰

During verification, the Department asked whether there is an entity named a "Land Bank" in India to which GOI officials reiterated that they have never heard of a program in all of India, including in Gujarat called a "Land Bank."⁴¹ First, the Department's questions in its June 30, 2016 regarding the provision of land for LTAR mentioned the "Land Bank" and the GOG's provision of land. Thus, regardless of the GOI's claims that a "land bank" does not exist, the Department still requested information and documentation concerning BKT's land transaction. Furthermore, the GOI did not attempt to provide the Department with information that would explain the discrepancy. Without such information, the Department is unable to resolve the apparent discrepancy between BKT's response claiming it purchased land from a "land bank" and the GOI's insistence that there is no land bank. Indeed, during verification, when asked to explain this discrepancy, the GOI reiterated that they "have never heard of a program in all of India, including in Gujarat called a 'Land Bank.'"⁴² This directly contradicts information on the record provided by BKT and the GOI's response with regards ATC's land programs.⁴³ Second, much of the information requested by the Department is not company specific and is only ascertainable by the GOI, including information about relevant regulations, whether the provision of land or land-use rights was contingent upon the firm's status or activity, and whether any incentives or preferential policies were offered to firms in connection with such purchases of land. When determining financial contribution and specificity, the Department relies on the government's information as the government is the authority of its own statutory and regulatory schemes and its sales of land or land-use rights. Finally, the fact that the land was given to BKT prior to the POI does not preclude the GOI from providing information about the transaction.⁴⁴ Land is consistently treated by the Department as a non-recurring subsidy allocable across the AUL of a proceeding.⁴⁵

We determine that an adverse inference is warranted for the GOI, pursuant to section 776(b) of the Act. The GOI did not cooperate to the best of its ability because it did not provide the requested information about BKT's purchase of land from the GOG, including land contracts;

³⁸ See GOI's June 30, 2016 questionnaire.

³⁹ *Id.*

⁴⁰ See GOI's July 14, 2016 QR at 9-10.

⁴¹ See GOI Verification Report at 15.

⁴² *Id.*

⁴³ In the GOI's questionnaire response regarding ATC's use of the GIDC Program, the GOI submitted a document which explicitly mentions "Land Bank{s} of the appropriate government." See GOI's May 31, 2016 QR at Exhibit 18 Page 33 of Document titled "Gujarat Government Gazette: THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013."

⁴⁴ See GOI's May 12, 2016 questionnaire at "Allocation Appendix."

⁴⁵ See 19 CFR 351.511(c); see also 19 CFR 351.524(d).

any applicable regulations; and any incentives or preferential policies. The requested information is crucial to determine whether an alleged program is specific within the meaning of 19 CFR 351.502 and section 771(5A)(D) of the Act, as Petitioners argue, and as discussed below in response to Comment 4, whether there is a financial contribution, and whether the land was provided in a manner consistent with market principles.⁴⁶

Consequently, because the GOI did not act to the best of its ability to comply with our request for information we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOI's provision of land-use rights is specific within the meaning of section 771(5A) of the Act and constitutes a financial contribution.

VIII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

With the exceptions explained below, the Department made no changes to its *Preliminary Determination* with regard to the methodology used to calculate the subsidy rates for the following programs. For the descriptions, analyses, and calculation methodologies of these programs, *see* the *Preliminary Determination*. Except where noted, no issues were raised by interested parties in case briefs regarding these programs. Therefore, the only changes in the final company-specific program rates from the *Preliminary Determination* for each of the following programs are the incorporation of BKT's sales denominators, adjustments for BKT's benefits received under the Income Tax Deduction for Research and Development Program, adjustments made under the Export Promotion of Capital Goods Scheme, changes to input benchmarks and benefits received for the GOI's provision of natural rubber at LTAR, and adjustments made pursuant to accepted minor corrections submitted at verification and certain other corrections regarding ATC including changes to exempted duty and tax amounts and purchase data under the EOU and SEZ programs.⁴⁷ The final program rates for respondents are as follows.

1. Advance Authorization Scheme (AAP)

BKT: 4.03 percent *ad valorem*.

BKT and the GOI submitted comments in their case briefs regarding this program.⁴⁸ The countervailability of the program is discussed below in Comment 3. As explained above, the Department changed the export sales denominator. However, we have not otherwise changed our methodology for calculating a subsidy rate for this program from the *Preliminary*

⁴⁶ Petitioners are 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).

⁴⁷ *See* Final Analysis Memoranda.

⁴⁸ *See* BKT's Case Brief at 9; *see also* the GOI's Case Brief at 9.

Determination. On this basis, we determine a revised countervailable subsidy rate of 4.03 percent *ad valorem* for BKT.⁴⁹

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

BKT: 0.27 percent *ad valorem*.

The GOI submitted comments in its case briefs regarding this program.⁵⁰ BKT also commented on the manner the Department calculated its benefits.⁵¹ Specifically, BKT contended that the Department did not exclude BKT's payments of partial duties from its benefit calculation.⁵² The GOI's comments are discussed in Comment 16. As explained above, the Department changed the export sales denominator. The Department's methodology for calculating the benefits received under this program are discussed in the Final Analysis Memoranda.⁵³ On this basis, we determine a revised countervailable subsidy rate of 0.27 percent *ad valorem* for BKT.⁵⁴

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

ATC: 0.49 percent *ad valorem*.

The GOI and ATC submitted comments in its case briefs regarding this program which are discussed in Comment 1 below.⁵⁵ We revised certain reported exempted duty amounts, exempted taxes, and purchase data per ATC's minor corrections reported at the start of verification.⁵⁶ On this basis, we determine a revised countervailable subsidy rate of 0.49 percent *ad valorem* for ATC.⁵⁷

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

ATC: 4.41 percent *ad valorem*.

The GOI and ATC submitted comments in its case briefs regarding this program which are discussed in Comment 1 below.⁵⁸ We revised certain reported exempted duty amounts, exempted taxes, and purchase data per ATC's minor corrections reported at the start of verification.⁵⁹ In addition, as discussed below in response to Comment 2, the Department is now

⁴⁹ See Final Analysis Memoranda.

⁵⁰ See GOI's Case Brief at 11.

⁵¹ See BKT's Case Brief at 18.

⁵² *Id.*

⁵³ See Final Analysis Memoranda.

⁵⁴ *Id.*

⁵⁵ See GOI and ATC Verification Reports.

⁵⁶ See ATC Verification Report at "Corrections Accepted."

⁵⁷ See Final Analysis Memoranda.

⁵⁸ See GOI's Case Brief at 15; ATC's Case Brief at 34.

⁵⁹ See ATC Verification Report at "Corrections Accepted."

treating certain exemptions as grants, instead of as part of a contingent interest free loan. On this basis, we determine a revised countervailable subsidy rate of 4.41 percent *ad valorem* for ATC.⁶⁰

5. Maharashtra Package Scheme of Incentives, 2013

BKT: 0.06 percent *ad valorem*.

As explained above, the Department changed the total sales denominator. The Department also revised the amount of the sales tax deferral BKT received under the program as a result of minor corrections accepted at the start of verification and BKT's comments that the Department's Verification Report contained incorrect figures.⁶¹ However, we have not otherwise changed our methodology for calculating a subsidy rate for this program from the *Preliminary Determination*. On this basis, we determine a revised countervailable subsidy rate of 0.06 percent *ad valorem* for BKT.⁶²

6. Merchandise Export Incentive Scheme (MEIS)

BKT: 0.02 percent *ad valorem*.

As explained above, the Department changed the export sales denominator. However, we have not otherwise changed our methodology for calculating a subsidy rate for this program from the *Preliminary Determination*. On this basis, we determine a revised countervailable subsidy rate of 0.02 percent *ad valorem* for BKT.⁶³

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

BKT: 0.06 percent *ad valorem*.

As explained above, the Department changed the export sales denominator. However, we have not otherwise changed our methodology for calculating a subsidy rate for this program from the *Preliminary Determination*. On this basis, we determine a revised countervailable subsidy rate of 0.06 percent *ad valorem* for BKT.⁶⁴

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

BKT: 0.81 percent *ad valorem*.

As discussed in the “*Application of AFA: The Natural Rubber Industry is Distorted*,” and the “*Application of AFA: Natural Rubber Producers are ‘Authorities’*” sections above, the Department is relying on AFA to find that the domestic market for natural rubber is “distorted”

⁶⁰ See Final Analysis Memoranda.

⁶¹ See BKT's Case Brief at 21; BKT Verification Report at “Corrections Accepted.”

⁶² See Final Analysis Memoranda.

⁶³ *Id.*

⁶⁴ *Id.*

through the control of the GOI. Therefore, the Department is relying on an external benchmark provided by Petitioners to determine the benefit from the provision of rubber at LTAR.⁶⁵ The Department also finds as AFA that all of BKT's domestic purchases of natural rubber are supplied by "authorities" and therefore constitute a financial contribution within the meaning of section 771(5)(D) of the Act.

As explained in the *Preliminary Determination*, the Department finds the provision of rubber at LTAR to be specific under sections 771(5A)(D)(iii)(I)-(III) of the Act because natural rubber is consumed by a limited number of users in India.⁶⁶ Furthermore, as explained in the *Preliminary Determination*, we find that tire industry is the "predominant user" of natural rubber in India and benefits from a disproportionately large amount of the subsidy.⁶⁷

In the *Preliminary Determination*, the Department also found that natural rubber was provided to BKT by the SIE named RubberMark, an "authority" within the meaning of section 771(5)(B) of the Act. As described above in the "Use of Facts Otherwise Available and Adverse Inferences" section, we requested information from the GOI regarding other state-invested natural rubber producers. Specifically, we sought information from the GOI that would allow us to determine which producers are "authorities" within the meaning of section 771(5)(B) of the Act. The GOI provided information indicating that several hundred producers and suppliers of natural rubber are SIEs, including 266 state-controlled or state-invested cooperatives.⁶⁸ However, as discussed above in the "*Application of AFA: Natural Rubber Producers are 'Authorities'*" section, the GOI failed to cooperate to the best of its ability in responding to our requests for necessary information that would allow us to determine which of BKT's suppliers were the state-controlled or state-invested suppliers mentioned by the GOI. Therefore, we determine as AFA that BKT's remaining suppliers of natural rubber are "authorities" within the meaning of section 771(5)(B) of the Act and, as such, that their provision of natural rubber constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

⁶⁵ Petitioners submitted external natural rubber benchmarks shortly after submitting NSAs. See Letter from Petitioners, Certain New Pneumatic Off-The-Road Tires from India - Petitioners' Benchmark Information," May 16, 2016 at Exhibits 1-3 (Petitioners' Benchmark Memorandum).

⁶⁶ See *Preliminary Determination* and accompanying PDM at 29.

⁶⁷ *Id.*

⁶⁸ See GOI's July 14, 2016 QR at 7-8.

As discussed above under the “Benchmarks and Discount Rates” section, the Department is selecting natural rubber external benchmark prices, *i.e.*, “tier two” or world market prices derived from UN Comtrade export data provided by Petitioner, instead of the internal data from BKT’s natural rubber purchases in India used in the *Preliminary Determination*, because, as explained above, we are finding India to have a distorted rubber market.⁶⁹ The Department adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv). Regarding delivery charges, we included ocean freight and the inland freight charges that would be incurred to deliver natural rubber to respondent’s production facilities. We added import duties and the VAT applicable to natural rubber imported during the POI. In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties.

Based on this comparison, we determine that natural rubber was provided for LTAR and that a benefit exists for BKT in the amount of the difference between the benchmark prices and the prices BKT paid, excluding purchases that were above the benchmark. As explained in the Final Analysis Memoranda, we divided the total benefit amount for BKT by the appropriate total sales denominator. On this basis, we determine a revised countervailable subsidy rate of 0.81 percent *ad valorem* for BKT.⁷⁰

9. Income Tax Deduction for Research and Development Expenditures

BKT: 0.11 percent *ad valorem*.

BKT provided comments in its case brief regarding this program.⁷¹ The countervailability of the program is discussed below in Comment 9. As explained above in the “Denominators” section, the Department changed the export sales denominator. As discussed in the Final Analysis Memoranda, the Department also adjusted the tax rate used to calculate the benefit BKT received under this program. Finally, as discussed in the Final Analysis Memoranda, the Department changed the methodology for calculating the benefit BKT received for its deductions for research and development “revenue expenditures.”⁷² On this basis, we determine a revised countervailable subsidy rate of 0.11 percent *ad valorem* for BKT.⁷³

B. Programs Determined to Be Not Used by, or to Not Confer a Measurable Benefit to, Respondents during the POI

1. Assistance to States for Infrastructure Development for Exports and Allied Activities (“ASIDE”)

⁶⁹ See Petitioners’ Benchmark Memorandum at Exhibits 1-3.

⁷⁰ See Final Analysis Memoranda.

⁷¹ See BKT’s Case Brief; *see also* the GOI’s Case Brief.

⁷² See Final Analysis Memoranda.

⁷³ *Id.*

2. Duty Drawback Scheme (DDB Scheme)
3. Duty Free Import Authorization Scheme (DFIA Scheme)
4. Electricity Duty
5. Export Credit Insurance
6. Focus Product Scheme
7. GOI Central Capital Investment Subsidy Scheme
8. GOI Freight Subsidy Scheme, 2013
9. Government Provision of Land for LTAR; ATC's SEZ/EOU Locations

- In a change from the *Preliminary Determination*, we are now finding that this program was not used by ATC. For a full discussion of this program, see Comment 6, below.

10. Gujarat Industrial Policy. 2015 Infrastructure Subsidies
11. Gujarat Industrial Policy. 2015 Stamp Duty Reimbursement
12. Incentives Under the West Bengal Support for Industries Scheme
13. Income Tax Deduction Program
14. Incremental Export Incentive Scheme (IEIS)
15. Interest/Wage Subsidy
16. Kerala Industrial & Commercial Policy Amended, 2015
17. Market Access Initiative
18. Market Development Assistance (MDA) Scheme
19. New Industrial Policy of Tamil Nadu, 2007 - Capital Subsidy
20. Provision of Land from the "Land Bank" for LTAR
21. Punjab Fiscal Incentives for industrial Promotion, 2013
22. Rajasthan Investment Promotion Scheme, 2003, 2010, and 2014.
23. Rupee-Denominated Pre- and Post- Shipment Credits
24. State of Maharashtra Loan Guarantees Based on Octroi Refunds
25. State of Maharashtra Octroi Refund Scheme
26. Status Certificate Program
27. Status Holder Incentive Script (SHIS)
28. Tamil Nadu Industrial Policy, 2014
29. Union Territories Sales Tax Exemption

IX. ANALYSIS OF COMMENTS

Comment 1: Whether Tax and Import Duty Exemptions Under the SEZ and EOU Programs are Countervailable.

The GOI's Comments:

- SEZ/EOU units are designated areas located within India territory for the generation of additional economic activity within the country and for the promotion of exports. By Indian law, companies that operate SEZ/EOU units are entitled to exemptions from customs duties and from various taxes on goods and services that are imported and exported from SEZ/EOU facilities.

- Eligibility for tax and duty exemptions is subject to whether SEZ/EOU units achieve a positive Net Foreign Exchange (NFE). SEZ/EOU units that do not achieve a positive NFE are subject to penalty.
- SEZ/EOU units that achieve a positive NFE may sell surplus goods to the Domestic Tariff Area in India (DTA). These sales to the DTA are subject to applicable import duties and taxes.
- There is a mechanism in place to ensure there is no excess remission if imported goods into the DTA without the payment of applicable duties and taxes and it ensures that the goods that were imported duty free are meant for the production of exported goods.

ATC's Comments:

- The SEZ/EOU programs in which ATC operates its factories do not constitute countervailable subsidies. Record evidence submitted by ATC and the GOI demonstrates that ATC's SEZ/EOU locations constitute zones outside of the customs territory of India. As such, any duties and taxes not paid by ATC do not constitute revenue forgone by the GOI.
- Indian law designates SEZs/EOUs as territories outside of the customs territory of India. As a result, SEZ/EOU units are not required to pay "taxes, duties or cess" when entering raw materials or capital goods into SEZ/EOU locations from outside of India.
- The sale of goods to SEZs/EOUs from the DTA is deemed an export. Similarly, sales of goods from SEZs/EOUs to the DTA are subject to applicable customs duties for goods imported from outside of India.
- The GOI maintains tight controls at SEZ/EOU facilities to ensure they operate outside of India's customs territory. Customs monitors all shipments made into and out of SEZ/EOU facilities.
- Any penalty provisions under the SEZ/EOU rules do not bring those areas under the customs territory of India.
- The instant case presents new legal and factual arguments to challenge and distinguish this case from the Department's prior precedent. The Department can distinguish the instant case from prior precedent without changing that prior precedent if the facts are sufficiently distinguishable.
 - In *Circular Welded Carbon-Quality Steel Pipe from Vietnam*,⁷⁴ the Department found that duty exemptions from Export Processing Enterprises, which are outside of the customs territory of Vietnam, did not provide a financial contribution in the form of revenue forgone since the respondent was not responsible in the first place for payment of any duties.
 - In *Circular Welded Carbon Steel Pipes and Tubes from Turkey*,⁷⁵ the Department concluded that the "free zones" in Turkey were not countervailable. In reaching this conclusion, the Department noted that these free zones are "considered

⁷⁴ 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*).

⁷⁵ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013) (*Circular Welded Carbon Steel Pipes and Tubes from Turkey*).

outside of the customs territory of Turkey,” and, as such, goods from these free zones into Turkey are subject to regular customs duties and VAT.

- In *Certain Uncoated Paper from Indonesia*,⁷⁶ the Department again concluded that the exemption from import duties for capital goods and equipment for companies in “bonded zone locations” in Indonesia are not countervailable. The Department emphasized that these bonded zones were “outside of the customs territory of Indonesia,” and that companies in bonded zones were not subject to customs duties, but were liable for duties in case the imported goods were subsequently sold in the domestic market.
- Finally, in *Certain PET Resin From Oman*,⁷⁷ the Department concluded that tariff exemptions on imported equipment, machinery, raw materials, and packaging materials in the “Salalah Free Zone” of Oman were not countervailable. The Department noted that this free zone was “outside the customs territory of Oman,” and reasoned that generally, if raw materials and equipment do not enter the customs territory of Oman, the Department considers that they are not dutiable and thus, no revenue is foregone.

Petitioners’ Rebuttal Comments:

- The Department should continue to find that the SEZ and EOU programs provide countervailable subsidies. Nothing on the record merits deviation from the Department’s findings in the *Preliminary Determination*.

Department’s Position: The GOI and ATC argue that by law, SEZ/EOU locations are outside of the customs territory of India, and any duties and taxes not paid by ATC on imports into its SEZ/EOU locations are not dutiable. Therefore, according to the GOI and to ATC, there is no revenue forgone by the GOI as a result of these exemptions. Additionally, the GOI and ATC both argue that the GOI has mechanisms in place at SEZ/EOU facilities to ensure they operate outside of India’s customs territory. We disagree.

At the verification of the GOI’s questionnaire responses, the GOI provided us with background on its SEZ/EOU programs.⁷⁸ According to the GOI, SEZs are established to promote exports, increase general economic activity, and to develop infrastructural facilities (*e.g.*, roads, water, and electricity) in certain areas throughout India. These zones are governed and operated under laws and regulations such as the SEZ Act of 2005, the SEZ Rules of 2006, and the Customs Act of 1962. EOUs, which are similar to SEZs, can be located anywhere in India, and are governed by laws and regulations including India’s Foreign Trade Policy. The GOI stated that by law, SEZs and EOUs are bonded zones that are outside of the DTA, which are monitored by India’s Customs agency.⁷⁹ Companies maintain their SEZ/EOU eligibility by maintaining a positive NFE over a five-year period. The GOI also stated that SEZ/EOU companies are not limited to

⁷⁶ See *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016) (*Uncoated Paper from Indonesia*).

⁷⁷ See *Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 81 FR 13321 (March 14, 2016) (*Certain PET Resin From Oman*).

⁷⁸ See GOI Verification Report at 4-5.

⁷⁹ *Id.*

exporting finished goods to non-domestic customers. Indeed, according to the GOI, SEZ/EOU companies are also allowed to sell finished goods to customers in the DTA.⁸⁰ Customs monitors physical goods moving into and out of SEZ/EOU facilities through a “closed system,” which, generally, tracks items using the declaration forms regarding these goods.

When we asked the GOI about the purpose of having SEZ/EOU companies achieve a positive NFE, GOI officials stated that the NFE requirement helps to ensure that SEZ/EOU companies actually export their produced goods.⁸¹ GOI officials went on to explain that some SEZ/EOU companies meet their five-year NFE requirement and then focus on sales to the DTA, for which applicable duties and taxes are paid. GOI officials stated that a company’s failure to meet its NFE requirement would be reviewed on a case-by-case basis, and penalties may range from INR 10,000 to a maximum of five times the amount that the SEZ/EOU company needed to achieve its requirement (*e.g.*, if an SEZ/EOU unit was INR 100,000 short of reaching its NFE requirement, the penalty could be up to INR 500,000).⁸²

In the *Preliminary Determination*, we stated that the SEZ rules “indicate that penalties will be applied when the company fails to achieve its NFE requirement. 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 SEZs and companies are held liable for those duties unless the export requirement is met.”⁸³ As described above, at verification of the GOI’s questionnaire responses, the GOI stated that SEZ/EOU companies are subject to penalty if they do not meet their NFE requirements. Therefore, we continue to find that duties are applied when goods enter SEZs and EOUs, and that companies are liable for those duties until the export requirement is met. As we stated in the *Preliminary Determination*, if SEZs and EOUs operated outside of the customs territory of India, there would be nothing to exempt or refund unless duties are applicable in the first place.⁸⁴

With respect to the GOI’s and ATC’s argument that the GOI has mechanisms in place at SEZ/EOU facilities to ensure they operate outside of India’s customs territory, we disagree. In prior proceedings, we determined 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.⁸⁵ The GOI argued that its system is in compliance with Annex I of the Subsidies Agreement but provided no evidence in this investigation to support this claim or which would otherwise contradict our prior determinations that the SEZ program has systemic record keeping problems. As a result, we stated that we

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 5.

⁸³ See *Preliminary Determination* and accompanying PDM at 22. As noted, the EOU program is similar to the SEZ program in that EOU companies are also subject to penalty if they do not meet their NFE requirement.

⁸⁴ *Id.*

⁸⁵ See, *e.g.*, *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.

would 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/EOU programs.⁸⁶

At verification of the GOI's questionnaire responses, the GOI explained that their "closed system" used for monitoring goods into and out of SEZ/EOU locations does not consider waste and consumption production factors, nor does this system provide for the monitoring of waste and scrap.⁸⁷ When we asked about whether Customs performs actual physical inspections of goods leaving SEZ/EOU facilities, GOI officials stated that physical inspections may be performed on manufactured goods to verify the purity of gems and jewelry (*i.e.*, assaying), but generally, physical inspections are not normally performed.⁸⁸ According to the GOI, India's Customs officials have not audited respondent ATC's manufacturing processes at ATC's SEZ location.⁸⁹

As a result, we have concluded that 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 the actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts. As discussed above, SEZ/EOU companies are allowed to sell goods to the DTA once they achieve their NFE requirement. While the GOI's "closed system" may keep track of goods moving into and out of SEZ/EOU locations, the GOI did not demonstrate how this system can confirm which inputs, and in what amounts, after accounting for waste, are consumed in products sold for export or to the DTA.

Therefore, based on the record, and consistent with the *Preliminary Determination*,⁹⁰ we continue to determine that the GOI's SEZ/EOU programs are countervailable. These programs provide a financial contribution in the form of revenue forgone pursuant to section 771(5)(D)(ii) of the Act because of foregone duty collection and a benefit is conferred in the amount of the exemptions of customs duties not collected, in accordance with section 771(5)(E) of the Act. SEZ/EOU companies must achieve a positive NFE requirement to maintain eligibility, which makes assistance from these programs specific within the meaning of sections 771(5A)(A) and (B) of the Act.

With respect to the proceedings cited by ATC to support its argument that the Department has previously determined that enterprises in duty-free zones are not liable to pay duties and taxes (the non-payment of which does not constitute a financial contribution), those proceedings are distinguishable from the instant case. In each case cited by ATC, the Department found that the countries referenced maintained reasonable and effective systems to confirm which, and the amount of, inputs, are consumed in the production of the exported products after allowing for

⁸⁶ See *Preliminary Determination* and accompanying PDM. We note that the GOI uses similar monitoring and record keeping systems for SEZs and EOUs; see also GOI Verification Report at 2-5.

⁸⁷ See GOI Verification Report at 3.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ See *Preliminary Determination* and accompanying PDM at 18-23.

waste. However, and as discussed above, the instant record does not demonstrate that the GOI maintains such a system. Thus, there is no clear demarcation separating the processing zones and the DTA.

For example, with respect to the Export Processing Enterprises ATC referenced in *Circular Welded Carbon-Quality Steel Pipe from Vietnam*, we verified that Vietnam’s “Customs comes and inspects the {scrap} being sold to confirm the materials are consistent with what is reported on the import declaration form,” and company officials in the Vietnam case stated that Vietnamese Customs conducts this examination on every sale of scrap. In that case we also stated that “we consider the GOV to be implementing the laws regarding export processing enterprises, and effectively monitoring goods entering and leaving Hongyuan’s facilities,” and that “{t}hese rigorous procedures demonstrate that Hongyuan clearly is outside the customs territory of Vietnam and that the Vietnamese customs authorities ensure that there is no blurring of the line between Hongyuan and Vietnam.”⁹¹

In *Circular Welded Carbon Steel Pipes and Tubes from Turkey*, we noted that we have previously examined Turkey’s duty drawback system and determined that the GOT has in place and applies a drawback system that ensures that duty exemptions are provided only to products that are consumed in the production of the exported product.⁹²

Regarding ATC’s reference to our findings in *Uncoated Paper from Indonesia*, we stated that the Government of Indonesia’s monitoring system included a physical inspection of raw materials and finished products entering and leaving bonded zones by customs officials assigned to each zone, along with routine reporting requirements and periodic audits. In that proceeding, we stated that the Government of Indonesia’s “customs enforcement is extensive; it includes physical inspections of goods entering and exiting the bonded zones by customs officials assigned to each zone, routine reporting requirements, and periodic audits.”⁹³ As a result we concluded that because the Indonesian company respondents in that case were “located in a bonded zone that is subject to rigorous customs enforcement measures, and their imports within the bonded zone are not subject to Indonesian customs duties, we determine there is no financial contribution within the meaning of section 771(5)(D)(ii) of the Act, and accordingly find this program not to be countervailable.”⁹⁴

Finally, in *Pet Resin from Oman*, at verification in that proceeding, we observed the administration of the Salalah Free Zone (SFZ) by both SFZ officials and by Oman Customs, and found no discrepancies with information reported by the Government of Oman.⁹⁵ We stated that therefore, merchandise entering the SFZ is not dutiable and that it did not provide a financial contribution.

⁹¹ See *Circular Welded Carbon-Quality Steel Pipe from Vietnam* and accompanying IDM at 15.

⁹² See *Circular Welded Carbon Steel Pipes and Tubes from Turkey* and accompanying IDM at 21.

⁹³ See *Uncoated Paper from Indonesia* and accompanying IDM at 22-23.

⁹⁴ *Id.*

⁹⁵ See *Pet Resin from Oman* and accompanying IDM at 12.

Comment 2: Whether the Department Must Eliminate Certain Duties Regarding ATC's Tamil Nadu SEZ Location in the Final Determination

ATC's Comments:

- In the *Preliminary Determination*, the Department treated all duties and taxes forgone at ATC's Tamil Nadu SEZ location as long-term interest-free loans, pursuant to 19 CFR 351.505(d)(1), but this treatment is contrary to the facts of this case.
- At verification, the GOI certified that ATC's Tamil Nadu SEZ unit satisfied its first five-year NFE requirement, meaning that any duties and taxes on imported raw materials and capital goods imported during this period for which ATC may have had a contingent duty liability was officially forgiven.
- As such, to the extent the Department treats any duties forgone at ATC's Tamil Nadu SEZ unit as a benefit, the Department should eliminate any duties and taxes forgone during ATC's first five-year NFE period from its benefit calculation.

Petitioners' Rebuttal Comments:

- The Department should treat duties exempted during ATC's first five-year NFE period as non-recurring grants and countervail the benefit over the AUL period, pursuant to 19 CFR 351.524(c)(2)(iii).

Department's Position:

We agree with Petitioner and are now finding countervailable ATC's applicable duties and taxes forgone during ATC's first five-year NFE period at its SEZ facility, as non-recurring grants.⁹⁶ ATC correctly notes that it satisfied its first five-year NFE requirement and, as a result, any contingent duty liability was officially forgiven. However, the satisfaction of the NFE requirement does not render the exemptions non-countervailable. It simply changes the nature of the benefit. Previously, as the status of the exemptions was pending, we considered the contingent exemptions to be an interest-free loan and treated the amount of interest that would have been due under a benchmark interest rate as the benefit (*i.e.*, we did not countervail the total amount exempted, but only a hypothetical interest payment based on that total amount). Now that the exemptions are final, the entire amount of the funds exempted during the first five-year period has been bestowed on ATC, and , provides a grant in the year the contingency was satisfied.⁹⁷ In accordance with 19 CFR 351.524, exemptions tied to the importation of capital goods are treated as non-recurring subsidies (*i.e.*, allocated over the AUL), and exemptions tied to the importation of raw materials are treated as recurring subsidies (*i.e.*, expensed in the year of receipt).

⁹⁶ See PDM at 20-23.

⁹⁷ See, *e.g.*, *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) and accompanying IDM at 23 (explaining the different benefit treatments in the context of the export promotion capital goods program, a duty exemption program similar to the SEZ program at issue).

Comment 3: Whether the AAP Is a Countervailable Program

The GOI's Comments:

- The World Trade Organization's Agreement on Subsidies and Countervailing Measures (SCM) states that tax and duty rebate schemes for inputs consumed in the production of exported products are not countervailable so long as they (1) make normal allowances for waste; and (2) the taxes are levied on inputs "consumed in the production of the exported products."
- The *ad hoc* norm system accounts for waste and input usage because the system is based on "actual consumption," which guarantees there were "no excess imports" beyond those needed to produce the products for export and which account for a reasonable level of waste.

BKT's Comments:

- The import duty exemptions extend to inputs consumed in the production of the subject merchandise, making normal allowances for waste thus no benefit arises.
- BKT has linked its imported materials to its exported finished products under each license and the GOI's system to confirm which inputs are consumed in the production of the exported products, and the amount of such inputs, is reasonable.
 - *Ad hoc* norms link imports to exports based on BKT's own experience.
 - Standard input-output norms (SIONs) are not involved; thus there is no need for the GOI to provide SION calculations.
 - BKT provides certain tables to the GOI which list the inputs to be imported and consumed in the production of the exported merchandise, the quantity required per unit of resultant products, the percentage wastage on a "net content basis," and the quantity and value of "recoverable wastage/by products"
 - These norms are "actual calculations that reflect BKT's production experience."
 - BKT provided prior production and consumption data and details of prior authorizations for the same product.
 - The GOI confirms actual consumption by reviewing and consolidating bills of entry for imports and shipping bills for exports filed electronically with usage data provided by BKT at the time of redemption.
 - Because the GOI, through the norms committee, approves *ad hoc* norms provided by BKT, "the GOI has carried out an examination of the actual inputs consumed in the production of subject merchandise and in what amounts."
 - Department regulations require the system to be based on generally accepted commercial practices in the country of the respondent. This system is reasonable, effective for the purposes intended, and based on generally accepted commercial practices in India.
- There are mechanisms for penalties for companies not meeting the export requirements under the AAP for claiming excessive credits.

- Because BKT did not utilize any “deemed exports” under its AAP licenses, the Department’s concerns regarding “deemed exports” are irrelevant
- U.S. importers routinely use similar programs such as substitution drawback.
- The Department’s requests for norms committee meeting minutes, Director General of Foreign Trade (DGFT) physical checks, and information concerning the frequency at which norms are accepted are irrelevant, misplaced, and asks for confidential information not relating to BKT.
- The Department found that a duty drawback in a program similar to the AAP, the Advanced Licensing Program, which also uses SIONS, to be countervailable only to the extent that the license resulted in the over-rebate of duties on imports not consumed in the production process.⁹⁸

Petitioners’ Rebuttal Comments:

- The Department countervailed this program on several other occasions.
- The GOI was unable to provide information regarding whether the program reliably links input norms to exports or whether the norms estimations are reliable.
 - Information submitted by respondents establishes that BKT is not required to provide “the basis for {its} norm estimations.”
 - BKT has submitted significantly different norms for the same product within a nine-month period.
 - The GOI did not provide any information about the decision-making process in the norms committee.
- The GOI did not provide sufficient information about whether the GOI effectively enforces export requirements or whether it applies penalties for failing to meet export requirements.
 - The GOI did not show that it has an adequate monitoring and enforcement system in place to ensure that the duty free imported inputs are actually consumed in exports.
 - The GOI, as in previous cases, has not shown a single instance in which a company has not met an export obligation. It also failed to provide statistics on the number of companies that have failed to reach their export requirements.
- The AAP continues to be available for a broad variety of “deemed exports,” which are not linked to actual exportation.
 - BKT’s argument that it has not utilized deemed exports is irrelevant as the “deemed export” issue is a “systematic concern” of the AAP program because the laws regarding “deemed exports” have not changed.
- The GOI’s arguments are based on the SCM agreement which has “no direct legal effect under U.S. law.”
- The Department’s requested information concerning audits and Norms Committee meeting minutes was necessary to assess the effectiveness of the AAP’s monitoring program.

⁹⁸ See *Final Results of the Countervailing Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001) (*Hot-Rolled Steel from India*), and accompanying IDM at Comment 5.

- The Department in *Hot Rolled Steel from India* addressed an older version of the AAS, and the Turkish program cited by BKT involved distinct issues from the program at hand.⁹⁹
 - The Department has since found the revised version of the AAP to be countervailable.
 - The program in Turkey “relies on company capacity reports and conducts on-site inspection of production facilities.”

Department’s Position: Under the AAP, exporters may import duty free specified quantities of materials required for production of an export product. However, the exemption is contingent upon the company’s completed export obligation.¹⁰⁰ In the *CORE Final Determination*, the Department found, as it did in several cases since *PET Film 2007* and *PET Film 2005*, that the GOI continues to lack 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 351.519.¹⁰¹ Specifically, the Department has expressed concern with (1) the GOI’s inability or unwillingness to provide the SION calculations that should, in theory, reflect the production experience of its industries; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the AAP’s export requirements or for claiming excessive credits; and, (3) the availability of AAP benefits for a broad category of “deemed” exports.¹⁰² In *WSPP from India*, the Department also determined that the SIONs did not adequately account for inputs and waste.¹⁰³ Specifically, the Department expressed the same concerns, as it had in previous cases, about the “GOI’s actual implementation and monitoring of respondents’ use of the program (e.g., to ensure that inputs listed in the SIONs are actually consumed in the production of exports, or the implementation of penalties for companies not meeting the export requirements or claiming excessive credits).”¹⁰⁴ In that case,

⁹⁹ See e.g. *Certain Welded Carbon Steel Standard Pipe from Turkey: Preliminary Results of Countervailing Duty Administrative Review*, 77 FR 19623 (April 2, 2012), and accompanying IDM at 18; *unchanged in Certain Welded Carbon Steel Standard Pipe from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 6, 2012).

¹⁰⁰ See *Preliminary Determination* and accompanying PDM at “Advanced Authorization Program (AAP).”

¹⁰¹ 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 “Advance Authorization Scheme (AAP), aka, Advance License Program (ALP).”; *unchanged in CORE Final Determination*, citing *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*PET Film 2005*); *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 6634 (February 10, 2010) (*PET Film 2007*).

¹⁰² *Id.*

¹⁰³ *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) (*WSPP from India*), and accompanying IDM at 1. Advance Authorization Scheme (AAP), aka, Advance License Program (ALP), *unchanged in Countervailing Duty Investigation of Welded Stainless Pressure Pipe From India: Final Affirmative Determination*, 81 FR 66925 (September 29, 2016) (*WSPP Final Determination*), and accompanying IDM at “Comment 1: Whether the Advance Authorization Program (“AAP”) Provides a Countervailable Subsidy.”

¹⁰⁴ *WSPP Final Determination* and accompanying IDM at “Comment 1: Whether the Advance Authorization Program (“AAP”) Provides a Countervailable Subsidy.”

the GOI refused to provide the formulas for industry-specific SIONs in its questionnaire response.¹⁰⁵

In this case, although BKT utilizes *ad hoc* norms and not SIONs, the GOI has still failed to demonstrate that it has a system in place to confirm which inputs are consumed in the production of exported products and in what amounts. First, under the *ad hoc* norms system BKT provides its own norms when applying for AAS licenses.¹⁰⁶ However, the GOI has not shown that it has an adequate system for determining whether the provided norms are accurate. BKT and the GOI claim that the body responsible for reviewing the *ad hoc* norms, the Norms Committee, bases its review of norms on a company's actual consumption and its prior norms (which likewise were *ad hoc* norms that the company developed itself).¹⁰⁷ However during verification, the GOI was unwilling to discuss the factors used by the Norms Committee in a company's initial norms application.¹⁰⁸ The GOI also failed to provide information concerning the review process such as minutes from Norms Committee sessions and data about the rate of norms rejections or revisions.¹⁰⁹ Without such information, it is impossible to determine whether the norms accepted by the committee accurately reflect the inputs needed for production of exports, or whether the GOI (through the Norms Committee) has an adequate procedure in place that ensures the *ad hoc* norms reflect actual consumption. Without evidence that the norms are reviewed or audited in practice, there is little likelihood of accurate consumption rates, in which case the *ad hoc* norms may actually be less likely to reflect accurate usage rates than the SIONs employed under the AAP. Without auditing or review, the new system is in effect an "honor system" involving self-policing.

Second, regardless of the accuracy of the self-determined norms, the GOI has not demonstrated that it adequately enforces the program's export requirements and that it prevents companies from claiming excessive import credits. As Petitioners comment, the GOI has not shown a single instance in this case, or any previous case, where a company did not meet an export requirement.¹¹⁰ When asked at verification, the GOI could not provide statistics on the frequency at which companies have claimed excessive credits or not met export requirements.¹¹¹ The GOI and BKT only point to laws stating that companies would be liable for penalties for not meeting export requirements or claiming excessive credits, but have not shown whether the GOI effectively enforces those penalties.¹¹² Furthermore, as explained by the GOI, the DGFT, the AAP's primary regulatory authority, does not "conduct regular physical audits" of advance authorization holders to ensure that companies do not claim excessive credits or to ensure duty-free inputs are in fact consumed in the production of exports.¹¹³ Even though the DGFT has the ability to conduct "random," "physical checks," and excise authorities have the general authority

¹⁰⁵ *Id.*

¹⁰⁶ 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 April 21, 2016 QR) at 9-14, Exhibit 9.

¹⁰⁷ See BKT Verification Report at 11; GOI Verification Report at 7.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*, at 7-8.

¹¹¹ *Id.*

¹¹² *Id.*, At 8.

¹¹³ *Id.*, at 7-8.

to conduct audits of any importer (regardless of its status as an AAP license holder), GOI officials at verification could not discuss, or provide sample documentation, of a single “physical check” or audit.¹¹⁴

As such, the Department finds the AAP to be countervailable because the GOI has not shown it has a reasonable system in place to ensure duty free inputs are actually consumed in the production of exported products.

Comment 4: Whether the Department Should Apply AFA to Determine if the GOG’s Provision of Land to BKT from the “Land Bank” was Specific

Petitioners’ Comments:

- Contrary to the *Preliminary Determination*, information on the record was sufficient to determine that the GOG’s provision of land to BKT through the “land bank” was specific.
- The Department should apply AFA to find specificity because the GOI failed to provide necessary information to determine whether the “land bank” program is specific.
 - In its first NSA response, the GOI stated, the GOG “gave land to BKT before {the} POI.” In the same response, the GOI did not respond to questions regarding the eligibility criteria, the application process, government discretion, and the amount of assistance provided to the mandatory respondents and to other companies on an industry-specific basis.
 - This information is necessary to determine specificity.
- At verification, the GOI stated that it has “never heard of a {land bank} program in all of India, including in Gujarat.”
 - BKT provided information on the record, contrary to this assertion; mainly, that it bought land from the GOG’s land bank.

The GOI’s Rebuttal Comments:

- The GOI does not maintain a “Land Bank,” and any land allotted to BKT was allotted at higher-than-market prices.
- The GOI clarified in its NSA supplemental questionnaire response that the GOI does not maintain a “land bank,” that BKT’s original response regarding the *GOI’s* land bank was a typo, and that BKT originally meant to state that the *GOG’s* land bank provided land to BKT.

BKT’s Rebuttal Comments:

- The Department should continue to find no specificity as it did in the preliminary determination.

Department’s Position: In the *Preliminary Determination*, the Department found that although land was provided to BKT through the “land bank,” a government “authority,” the record

¹¹⁴ *Id.*, at 8.

provided no indication of specificity within the meaning of 771(5A) of the Act or that the land was provided to BKT at preferential terms.¹¹⁵ As discussed in the *Application of AFA: Provision of Land for LTAR* section above, the Department asked the GOI to provide information about BKT's purchase of land from the "land bank" and the GOG in its NSA supplemental questionnaire.¹¹⁶

The GOI did not provide the required information about BKT's purchase of land from the GOG and thus did not cooperate to the best of its ability in this investigation.¹¹⁷ The information requested regarding the provision of land-use rights and the basis for which they were provided are crucial for our analysis to determine whether an alleged program is a specific within the meaning of 19 CFR 351.502 and section 771(5A)(D) of the act. As such, we find that the GOG's provision of land to BKT from the "land bank" was specific based on AFA. However, as described below, the Department found that the GOG did not confer a benefit to BKT.

Comment 5: Whether the Department May Use Land Purchased by BKT from Private Parties as Benchmarks and Whether Such Transactions Show the GOG, through the "Land Bank," Did Not Provide Land to BKT at LTAR

Petitioners' Comments:

- The land purchased by BKT from private parties is not comparable to the land purchased from the GOG and, thus, should not be used as a benchmark.
 - A duty stamp for the privately-purchased land labels the land differently than land listed in an application for purchasing through the government, indicating the privately-purchased land and the land provided by the land bank are not comparable.¹¹⁸
- The price evaluated by a government land evaluation committee for the government land was more than the price BKT eventually paid for the land.

The GOI's Rebuttal Comments:

- At verification, BKT provided a map of the land purchased by BKT for its factory in Gujarat, which showed that BKT purchased land from the government to form one, whole, contiguous piece of land. Thus these contiguous tracts of land are comparable.
- The prices paid to private parties for the adjacent land indicate the price paid to the government is not for LTAR.

¹¹⁵ BKT and the GOI self-reported information about the transaction in their original NSA questionnaire responses to questions regarding ATC's purchase of land from the GOG. See *Preliminary Determination* and accompanying PDM at 33.

¹¹⁶ See Letter from the Department, "Countervailing Duty Investigation of Certain New Pneumatic Off-The-Road Tires from India; Supplemental Questionnaire," June 30, 2016 (GOI's June 30, 2016 Questionnaire).

¹¹⁷ See GOI's July 14, 2016 QR at 9-10.

¹¹⁸ Details as to the specific language in documents are business proprietary information (BPI) and thus cannot be disused in this memorandum. See the Final Analysis Memoranda for a full discussion of proprietary information referenced herein in a public manner.

BKT's Rebuttal Comments:

- BKT purchased government land to form one whole, contiguous piece of land with the privately-purchased land and is comparable land purchased from the government.
- BKT paid considerably less for private land than it did for land purchased from the government.
- Petitioners' reference to prices discussed by a land evaluation committee is irrelevant; the only relevant price is the actual price paid by BKT.
- The record does not show that land purchased from private parties and from the government are described differently.
 - Documents from the privately-purchased land transaction only show the previous use of the original seller, while documents from the government land transaction only show the prospective use of the buyer.

Department's Position: Petitioners argue that the prices provided by BKT are not adequate tier-one benchmark prices.¹¹⁹ Petitioners contend that land purchased by BKT from the GOG is not comparable to land purchased from private parties because certain documents provided by BKT during verification label the intended use of the formerly-public land differently than the privately-purchased land.¹²⁰ However, after reviewing these documents, the Department confirms that they do not specify the type, function, zoning requirements, or quality of the land purchased by BKT, or otherwise provide any information implying that the tracts are not comparable or that they were in different conditions at the time of purchase. Rather, the documents simply note the previous use or intended use of the land by the former, private owners and the prospective uses of the buyer. Furthermore, these documents relate to BKT's purchase of land from only one of several different private parties.¹²¹ In fact, additional information provided by BKT on the record shows that the land purchased from the government was similar to the privately-purchased land.¹²² Thus, the Department determines that the privately-purchased land is adequately comparable to the type and quality of the government-purchased land, under 19 CFR 351.511(a)(2)(i), and serves as an adequate benchmark, demonstrating the government purchased land was not for LTAR.

Comment 6: Whether ATC Benefited from the Provision of Land for LTAR for its SEZ/EOU Locations and Whether the Provision of Land to ATC is Contingent upon Export Performance

Petitioners' Comments:

- For the final determination, and consistent with the *Preliminary Determination*, the Department should continue to find that the land provided to ATC was contingent upon export performance, and therefore is specific and countervailable.

¹¹⁹ Petitioners' Case Brief at 21-22.

¹²⁰ *Id.*; BKT Verification Report at Exhibit 19; BKT's June 1, 2016 QR at Exhibits 14-16.

¹²¹ BKT Verification Report at Exhibit 19.

¹²² Details as to the specific language in, and contents of, the documents in the record are BPI and thus cannot be disused in this memorandum. See the Final Analysis Memoranda for a full discussion of proprietary information referenced herein in a public manner.

The GOI's Comments:

- In the *Preliminary Determination*, the Department improperly found that ATC's land-use rights conferred a benefit.
- The land allotted to ATC was not provided at preferential rates. At verification, the Department examined instances where land within the same area was provided to companies that were not export-oriented units.

ATC's Comments:

- ATC's land purchases do not constitute a countervailable subsidy as it did not purchase land at LTAR.
- ATC's land purchases were not specific.
 - In the *Preliminary Determination*, the Department found the provision of land-use rights to ATC to be an export subsidy because SEZ/EOU facilities must export their products to maintain their eligibility.
 - Not all parties purchasing land from state government agency SIPCOT and the state government agency GIDC are operating in an SEZ or as an EOU.
 - The areas in which SIPCOT and the GIDC are selling land are industrial zones, but the purchase of a plot of land in an industrial zone does not confer SEZ/EOU status on a party, nor is it required that a party apply to be an SEZ/EOU facility in order to lease land in these areas.
 - The prices charged by SIPCOT and by the GIDC are the same for all purchasers of land in a particular area during a particular period regardless of whether a party seeks SEZ/EOU status.
 - The agency allotting land is different and independent from the agency granting a party SEZ/EOU status.
 - ATC acquired its relevant land plots before its SEZ/EOU applications were approved.

Petitioners' Rebuttal Comments:

- Despite the date that the approval documents for ATC's SEZ and EOU land-use rights were finalized, the Department should continue to find that the provision of land to ATC is contingent upon exports.
- The *CVD Preamble* states that "if exportation or anticipated exportation was either the sole condition or one of several conditions . . ." pursuant to which the subsidy was granted, the Department "would consider any benefits provided under the program to the firm to be export subsidies unless the firm in question can clearly demonstrate that it had been approved to receive the benefits solely under non-export-related criteria."
- The *CVD Preamble* also provides a "non-exhaustive list" of factors the Department may consider when determining whether a program constitutes an export subsidy, including applications, approval documents, and other evidence.
- Neither the GOI nor ATC has clearly demonstrated that the land was approved solely under non-export-related criteria.

The GOI's Rebuttal Comments:

- Petitioners erroneously contend that the land allotted to ATC because it was an export unit.

- ATC received its land-use rights before it received its SEZ/EOU designations. As such, there was no export obligation on ATC at the time the land was allotted to ATC.
- Neither the allotment of land was contingent on exports, nor was the land allotted at preferential rates. As such, the Department is requested to conclude that no subsidy was granted to ATC for its land allotments.

ATC's Rebuttal Comments:

- The provision of Land to ATC is not contingent upon exports. Under 19 CFR 351.514(a), the Department considers a subsidy to be an “export subsidy” if it determines that “eligibility for, approval of, or the amount of, a subsidy is contingent upon export performance.
- Neither ATC’s eligibility, nor its approval of land-use rights, was contingent upon exports. ATC was not required to fulfill any specific criteria other than the upfront payment of the consideration for obtaining its land-use rights.
- ATC’s acquisition of its land-use rights was independent and not contingent upon its SEZ/EOU status or its activities.
- ATC’s land-use rights will remain unaffected even if ATC loses its SEZ/EOU status.
- ATC and the GOI demonstrated that SEZ/EOU units are also able to obtain land at their official rates regardless of their intent to apply for SEZ/EOU status. This is positive proof that ATC’s leases were approved under non-export related criteria.

Department’s Position: We countervailed this program in the *Preliminary Determination*, finding specificity based on ATC’s location in an SEZ and its EOU designation.¹²³ According to the GOI, the State Industries Promotion Corporation of Tamil Nadu (SIPCOT) and the Gujarat Industrial Development Corporation (GIDC) are both state government agencies that were established to develop industrial economic growth, which includes developing and managing industrial parks.¹²⁴ During verification of the GOI’s questionnaire responses, the GOI confirmed that ATC purchased its land-use rights for its SEZ facility from SIPCOT, while the land-use rights for ATC’s EOU location were purchased from the GIDC.¹²⁵ According to the GOI, the lease rates for lots in the industrial parks managed by SIPCOT and by the GIDC are based on the costs to develop these industrial parks (*e.g.*, costs for land acquisition, infrastructure development, and a service charge to cover SIPCOT’s and the GIDC’s overhead), and the current land market rates for that particular area.¹²⁶ The GOI explained that lease rates charged by both SIPCOT and the GIDC for lots in their industrial parks are reviewed from time to time and are adjusted based on current market conditions.¹²⁷ For example, in reviewing the rates charged at the various industrial parks managed by SIPCOT we noted that SIPCOT charged different lease prices for the various industrial parks that it managed throughout the state of Tamil Nadu.¹²⁸ When asked about these price discrepancies, GOI officials stated that factors such as the demand for land and its market value in a particular location can affect the value for

¹²³ See *Preliminary Determination* and accompanying PDM at 31-33.

¹²⁴ See GOI Verification Report at 12-15.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

that land,¹²⁹ which would affect the lease prices charged by SIPCOT and by the GIDC. When reviewing the lease prices charged by SIPCOT and the GIDC during the time ATC purchased its land-use rights at verification, we noted that ATC paid the established rates.¹³⁰ We also reviewed the leases for other companies located in the SIPCOT industrial park where ATC's SEZ facility is located and in the GIDC industrial park where ATC's EOU facility is located that were executed around the same time ATC's leases were granted, and we noted that these other companies paid the same lease prices as ATC.¹³¹ We also noted that these other companies did not operate in the same industry as ATC, nor were they located in the SEZ within the SIPCOT industrial park where ATC's SEZ facility is located.¹³² Based on the record, we find that ATC did not receive land for less than adequate remuneration land-use rights.

Petitioners argue that "the Department will find that a subsidy is an export subsidy if it is, 'in law or in fact, contingent upon export performance, alone or as 1 or 2 or more conditions.'" ¹³³ Petitioners also contend that the Department is "not required to 'examine all of the factors to determine that the program is an export subsidy if {its} examination of one or more factors provides sufficient evidence to determine that a program is a *de facto* export subsidy.'" ¹³⁴ Petitioners further argue that the *CVD Preamble* provides a "non-exhaustive list" of factors the Department may consider when determining whether a program constitutes an export subsidy, including applications, approval documents, and other evidence, and cites prior proceedings in which the Department has considered information on exports contained in the applications for a benefit to be sufficient to demonstrate that a firm's export activities, or anticipated export activities, is at least one of the criteria relied upon when granting benefits.¹³⁵ However, in each of the cases cited by Petitioners, the actual applications for the benefits requested that the applicants provide information on anticipated export performance as part of the application process.¹³⁶ This is not so in the instant proceeding. At verification, the GOI demonstrated that the rates charged by these state-run industrial parks were established based on the demand and its market value in a particular location. Furthermore, the GOI provided information showing that ATC and the other companies located at ATC's SEZ location that received leases contemporaneously all received their land leases prior to the creation of any economic zone.¹³⁷ Additionally, the GOI also provided information showing that ATC received the land lease at its EOU facility before it was granted its EOU designation, meaning that the terms of ATC's leases were not based on the company's SEZ or EOU designation by the central

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ See Petitioners' Rebuttal Brief at 27, citing Section 771(5A)(B) of the Act, and 19 CFR 351.514.

¹³⁴ *Id.* at 27, citing *Countervailing Duties: Final Rule*, 63 FR 65348 (November 25, 1998) (*CVD Preamble*).

¹³⁵ See Petitioners' Rebuttal Brief at 27. The prior proceedings cited by Petitioners' are: *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) and accompanying IDM at 29; *coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) and accompanying IDM at 77; and *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) and accompanying IDM at 70.

¹³⁶ *Id.*

¹³⁷ See GOI Verification Report at 12-15; see also ATC's Case Brief at 34-36.

government.¹³⁸ We examined the operating lease and saw no evidence of requirements related to export performance. Finally, the GOI demonstrated that other companies such as non export-oriented companies, and those operating in different industries as ATC, paid the same rates as ATC for land-use rights in these industrial parks.¹³⁹ As a result, the record does not demonstrate that ATC was granted its land-use rights at either location contingent on export performance. Therefore, in this instance, the facts on the record support that the provision of land provided by the GOI to ATC is not export contingent within the meaning of section 771(5A)(B) of the Act, and we find that this program was not used by ATC.

Comment 7: Whether the Department Should Revise the Benchmark for the Provision of Land Provided to ATC for its SEZ/EOU Locations

ATC's Comments:

- The land rates used as benchmarks in the *Preliminary Determination* are not representative of the land rates regarding ATC. As provided by Article 14 of the *SCM*, the benefit under an LTAR analysis must be determined on the basis of prevailing market conditions for assessing the adequacy of remuneration.
 - Petitioners' benchmark information does not relate to the specific period during which ATC made its land purchases, and the Department adjusted these values based on India's consumer price index to the years in which ATC made its land purchases.
 - ATC's benchmarks are contemporaneous to the years in which ATC made its land purchases.
 - The land benchmarks submitted by Petitioners disavow any claim to the accuracy of the data that they report and encourage parties to undertake an independent inquiry to confirm the accuracy of such data. There is no evidence that Petitioners undertook this recommended inquiry.
 - Under Indian law, the "ready reckoner" land values submitted by ATC are considered to reflect market prices of the land-use rights for specific parcels of land.
 - Petitioners' values are from metropolitan areas that are hundreds of kilometers from ATC's factories. ATC's Tamil Nadu SEZ facility is far from any significant metropolitan area; ATC's EOU facility in Dahej is in an underdeveloped part of India. The fact that ATC's facilities are far from the metropolitan centers upon which Petitioners' benchmarks are based undercuts the utility of Petitioners' reported benchmarks.

Petitioners' Rebuttal Comments:

- The Department should continue to use the market prices it relied on in the *Preliminary Determination*, as the benchmark for the provision of land to ATC.

¹³⁸ *Id.*

¹³⁹ See GOI Verification Report at Exhibit 1, "State Industries Promotion Corporation of Tamil Nadu Limited: Application for Allotment of Developed Plot in SIPCOT Industrial Complexes/Parks/Growth Centres" (for SEZ location); see also "Gujarat Industrial Development Corporation: Application For Obtaining Plot/Shed For Industrial Purpose" (for EOU location).

- Section 351.511(a)(2) of the Department’s regulations direct the Department to use a market-determined price resulting from actual transactions in the country in question. The ready reckoner values submitted by ATC are not market-determined prices.
- The ready reckoner values submitted by ATC were determined by the government, and not the market, and the GOI itself states that the values do not reflect market prices and in most instances are below market prices.
- The Department has rejected such government land value assessments as inferior to Tier 1 market-determined prices for the provision of land in prior cases, such as *Circular Welded Carbon Steel Pipes and Tubes from Turkey*.

The GOI’s Rebuttal Comments:

- Under 19 CFR 351.511(a)(2), the Department measures the remuneration received by a government for goods or services against comparable benchmark prices. These potential benchmarks are: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles.
- For the final determination, the Department is requested to use the submitted market prices for actual transactions surrounding the land allotted to ATC.

Department’s Position: Because we are now finding that ATC did not use these programs, arguments regarding whether to revise the benchmark for these programs are now moot. As a result, we have not addressed these arguments in our final determination.

Comment 8: Whether the Department Should Revise the Discount Rate Used to Allocate ATC’s Land-Use Rights Benefits for its SEZ/EOU Locations

Petitioners’ Comments:

- In the *Preliminary Determination*, the Department relied on a short- and medium-term interest rate to allocate the benefit amount across ATC’s land-use rights contracts.
- In the final determination, and consistent with its practice, the Department should apply a long-term discount rate to allocate such benefits.

ATC’s Rebuttal Comments:

- The discount rate that the Department applied to allocate ATC’s benefit for Land for LTAR was reasonable and consistent with the Department’s regulation and with its prior practice.

Department’s Position: Because we are now finding that ATC did not use these programs, arguments regarding whether to revise the discount rate for these programs are now moot. As a result, we have not addressed these arguments in our final determination.

Comment 9: Whether the Income Tax Deductions Program for Research and Development Expenditures Is a Specific Subsidy

BKT's Comments:

- Record evidence shows the program is generally available to all companies engaged in research and development.
- The only limitation is that the products specified in the list of the “Eleventh Schedule” include a “few marginal items” such as “alcohol, tobacco and gramophone records,” which are ineligible for the deductions.
- These are only “sensitive items.” Excluding them does not mean that a company producing one of the remaining products belongs to a specific industry; it only shows that the program is “generally available.”
- Contrary to the Department’s assertions in the *Preliminary Determination*, the program is not limited to Indian companies engaged in the bio-technology sector. The section referencing biotechnology firms was only a subsection of the law that discussed certain conditions specific to biotechnology companies.

Petitioners' Rebuttal Comments:

- The negative list under the “Eleventh Schedule” contains a “broad and diverse” list of items which show that a “range of activities” are not eligible to receive the deduction.
 - The restricted industries include: cosmetics, toiletries, alcohol and tobacco, telecommunications, , office supplies, steel furniture, and cleaning supplies.

Department’s Position: Section 35(2AB) of the Income Tax Act of 1961 provides a tax deduction to cover expenses related to in-house research and development for companies “engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule” of the Income Tax Act of 1961.¹⁴⁰ Because the subsidy is limited to enterprises engaged in the manufacture of products not on the “Eleventh Schedule,” the Department determines it is expressly limited to certain enterprises and industries and is therefore *de jure* specific in accordance with section 771(5A)(D)(i) of the Act.¹⁴¹ This limitation on access means that the subsidy is not “broadly available” within the meaning of the SAA.¹⁴² As such, information on the record shows that the program is not generally available to all companies engaged in research and development activities and is, therefore, industry-specific pursuant to section 776(5A)(D)(i) of the Act. The Department has not changed its findings from the *Preliminary Determination* that the tax deductions provide a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act and that BKT received a benefit within the meaning of 771(5)(E) of the Act, 19 CFR 351.509, and 19 CFR 351.519 in the amount of tax payments that are exempted.¹⁴³ Therefore, we continue to find this program countervailable.

¹⁴⁰ See the GOI’s NSA Questionnaire Response at Exhibit 12.

¹⁴¹ See Letter from Petitioners, “Certain New Pneumatic Off-The-Road Tires from India -Petitioners' New Subsidy Allegations,” May 5, 2016 (Petitioners’ NSA) at Exhibit 15.

¹⁴² See SAA at 929.

¹⁴³ See *Preliminary Determination* and accompanying PDM at 31.

Comment 10: Whether the Department Should Use a Six-Month Comparison Period for Its Final Critical Circumstances Determination

Petitioners' Comments:

- The Department should revise its preliminary critical circumstances determination and compare imports over two six-month periods (*i.e.*, July 2015, through December 2015, and January 2016, through June 2016) to determine whether the increase in imports has been massive.
- Where the period examined in investigation would otherwise overlap with a preliminary CVD determination, the Department uses a comparison period that excludes the time when the preliminary CVD duties were in place so that such relief does not distort the Department's analysis.

The GOI's Rebuttal Comments:

- The Department should not revise its preliminary critical circumstances determination for the final determination.

ATC's Rebuttal Comments:

- The Department should continue to find that no critical circumstances exist with respect to ATC.
- The Department's use of a three-month comparison period in the *Preliminary Determination* is consistent with its regulation and with prior practice.
- Even if the Department decides to use six-month comparison periods, the record shows that there has not been "massive" imports of the subject merchandise with respect to ATC.
- If the Department considers expanding the comparison period to six months, ATC requests the opportunity to submit historical data using a six month window so that the Department can determine if comparable seasonal patterns exist.
- Issuing a final affirmative critical circumstances determination without giving ATC the opportunity to submit such data would be unfair to ATC and the Department would violate its regulatory obligation to consider "seasonal trends."

Department's Position: For this final determination, the Department is defining the base and comparison periods within the bounds of its normal practice by extending the comparison period up through the month of the *Preliminary Determination*, to the extent shipment data are available on the record to do so. ATC and BKT submitted their shipping data of subject merchandise to the United States through the month of the *Preliminary Determination*.¹⁴⁴ As such, we find that relevant shipment data are available on the record to extend the comparison period through the month of the *Preliminary Determination* with respect to ATC and to BKT. Therefore, for the final determination, we are now comparing ATC's and BKT's exports over two six-month periods (*i.e.*, July 2015, through December 2015, and January 2016, through June 2016). This is consistent with our past practice.¹⁴⁵ Based on our analysis of these shipment data, we find that there have been "massive imports" over a "relatively short period" with respect to ATC, but not for BKT. Consequently, and in a change from the *Preliminary Determination*,¹⁴⁶ we are now finding critical circumstances exist for ATC, consistent with 705(a)(2)(B) and 19 CFR 351.206.¹⁴⁷

¹⁴⁴ See, *e.g.*, Letter to the Secretary from ATC, "Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited Response to Request for Quantity and Value Shipment Data," July 15, 2016; *see also* Letter to the Secretary from BKT, "Certain New Pneumatic Off-The-road Tires from India: Balkrishna Industries Limited's Quantity and Value Shipment Data," July 15, 2016.

¹⁴⁵ See, *e.g.*, *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015) and accompanying IDM at Comment 22 (Appropriate Time Periods for Critical Circumstances Analysis).

¹⁴⁶ See *Preliminary Determination* and accompanying PDM at 6-8.

¹⁴⁷ See Section 703(e)(1)(B) of the Act and 19 CFR 351.206(i). We note that in the *Preliminary Determination*, we found that ATC and BKT received countervailable benefits that are inconsistent with the Subsidies Agreement, pursuant to Section 703(e)(1)(B) of the Act; *see also* Department Memorandum, "Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: "Final Analysis of Critical Circumstances," dated concurrently with this Decision Memorandum.

With respect to “all other” producers/exporters of subject merchandise from India, we do not have shipment data on the record through the month of the *Preliminary Determination*. As a result, we are not extending the comparison period through the month of the *Preliminary Determination*, and we are continuing to find that critical circumstances exist for the period September 2015, through April 2016, for all other producers/exporters of subject merchandise from India, in accordance with section 703(e)(1)(B) of the Act and 19 CFR 351.206(h).¹⁴⁸

Regarding ATC’s argument that we address “seasonal trends” in our analysis, the limited evidence for seasonality was not borne out in the shipment data submitted by ATC or BKT, which showed no consistent and predictable seasonal pattern. Specifically, the record contains data covering 12 months, whereas annual trends would only become apparent through the comparison of years’ worth of data. As a result, we find that the record evidence did not show clear, predictable trends that would establish that seasonality accounted for the post-petition surge in subject merchandise from India. Finally, regarding ATC’s contention that the Department should give ATC the opportunity to submit shipping data to conduct a seasonality analysis, we note that ATC had the opportunity to submit such data to rebut Petitioners’ critical circumstances allegation, but did not do so.

Comment 11: Whether the Department Should Correct Calculation Errors regarding ATC’s Preliminary Determination Calculations

Petitioners’ Comments:

- Regarding VAT and CST Under the SEZ Program, in the *Preliminary Determination* the Department calculated the benefit for the CST exemption for raw materials purchased during the POR by multiplying the amount of the tax exempted by the interest rate.
- For the final determination, and in accordance with 19 CFR 351.509 and 19 351.519, the Department should calculate the benefit as equal to the actual amount of the tax exempted.

ATC’s Rebuttal Comments:

- ATC has addressed the non-countervailability of the SEZ programs in its case brief. ATC contends that when the Department reaches the conclusion that these programs are not countervailable, the calculation of any alleged benefit under the CST program will become moot.

Department’s Position In a change from the *Preliminary Determination*, for the final determination, we calculated ATC’s benefit as equal to the actual amount of the tax exempted.

¹⁴⁸ See *Preliminary Determination* and accompanying PDM at 6-8.

Comment 12: Whether the Department Should Apply AFA because of Information Obtained at Verification of BKT

Petitioners' Comments:

- **Electricity Credit**
 - At verification BKT reported it receives a credit on its electricity bill for the electricity it generates from its wind turbines.
 - BKT receives the credit because it set up windmills in a relatively windy region; thus the program is regionally specific.
 - The Department should apply AFA for the electricity credit because BKT did not report the credit before verification.
- **Special Capital Incentive**
 - BKT failed to disclose benefits tied to an account in BKT's capital reserves called "special capital incentive."
 - At verification, BKT stated that this account was for benefits it received in 1989 and 1990 for a special capital incentive subsidy. Information shows that BKT "withdrew" and "utilized" these funds from its capital reserves account in 2015. Under a "cash-based" accounting system, the Department should find that the benefit was received in 2015, when BKT was able to "avail" itself of the funds.
 - In its 2015-2016 annual report, BKT states the subsidy was a "special capital incentive from the Government for setting up expansion of an industrial undertaking in {an} underdeveloped area of the State."
 - This definition shows that the subsidy is regionally specific because it is limited to certain areas; it also shows that the program provides a financial contribution from the government in the form of a direct transfer of funds.

BKT's Rebuttal Comments

- As a threshold matter, BKT had no legal obligation to report benefits received under programs not subject to investigation because the Department did not include standard language in its initial questionnaire requesting parties to report "all other forms of assistance."
- Despite this language, BKT fully cooperated with the Department as evident by the additional programs BKT reported in its initial questionnaire response.
- **Electricity Credit**
 - The electricity credit is an offset for wind power BKT generated for itself and is not a subsidy. Evidence on the record shows the amount BKT received is based solely on the electricity tariff schedule.
 - BKT disclosed the existence of the wind turbines at the outset of the investigation.
 - There is no specificity in this instance. Petitioners misrepresented BKT's statement regarding the wind turbines' location. The credit is not given as a result of a specific location requirement; rather, wind-generated electricity

was sent to the grid in lieu of sending it directly to BKT's plants because its plants were too far away from a viable wind turbine location.

- There is no financial contribution because BKT owns the turbines, generates the electricity, and does not sell the electricity.

- **Special Capital Incentive**

- BKT received the benefits from the incentive in 1989 and 1999, well before the POI. Furthermore, 19 CFR 351.504 states that the Department considers the benefit from a grant to be received on the date on which the firm received the grant.
- Petitioners mischaracterize the meaning of the word "withdrew." BKT made a journal entry in its capital reserves accounts in 2015 as a result of a de-merger of its paper operations from its tire operations.

GOI's Rebuttal Comments

- BKT did not withhold any information about the electricity credit or the special capital incentive.
- The GOI responded to all questions raised by the Department.

Department's Position: The Department determines that neither the electricity credit nor the special capital incentive journal entry in 2015 constitute unreported government assistance or countervailable subsidies, but rather are bookkeeping entries that do not indicate the disbursement of funds, foregone revenue, or any type of financial contribution. Petitioners argue the Department must apply AFA because BKT failed to provide information about an electricity credit for electricity generated by BKT's wind turbines.¹⁴⁹ As discussed below in response to Comment 14, BKT received the credit on its electricity bill for its own electricity transferred to the state grid.¹⁵⁰ The credit is not government assistance, but simply a means of determining the net amount of electricity provided by and purchased by BKT. This offsetting exercise does not provide a benefit to BKT consistent with section 771(5)(E) of the Act and 19 CFR 351.503 and 351.511. The credit is calculated according to the same tariff schedule by which BKT is charged for electricity.¹⁵¹ Thus, the credit is used to derive BKT's net purchase amount, for which BKT is then billed. The credit is not regionally specific. The government did not grant BKT a credit or reimbursement because of its location in a "relatively windy region."¹⁵² Rather, BKT built its wind turbines in a "relatively windy region" where it was economically reasonable to generate electricity.¹⁵³ In this sense, the credit can be thought of as the means of an exchange: BKT provides electricity to the grid connected to the wind farm and in exchange the grid provides electricity to the tire plant. The fact that BKT generated power and was thus both a consumer and provider of electricity was already known before verification.

¹⁴⁹ See Petitioners' Case Brief at 11-13.

¹⁵⁰ See BKT Verification Report at 5-6.

¹⁵¹ The GOI subtracted a certain amount from BKT's credit as a "fee" for using its electricity infrastructure. See BKT Verification Report at 5-6, Exhibit 21. Thus the credit is actually somewhat less on a per-unit basis than what BKT pays for electricity.

¹⁵² See Petitioners' Case Brief at 12.

¹⁵³ See BKT Verification Report at 5-6.

Regarding the second allegation, Petitioners claim that BKT failed to provide information about a subsidy program by pointing to a drawn-down capital reserve account named “special capital incentive.” Petitioners argue that even though its balance was established in 1989 and 1999, well before the beginning of the AUL, it appears not to have been “utilized” until 2015.¹⁵⁴ Therefore, according to Petitioners, the Department should find that BKT failed to provide information about the program because its benefits were not received until 2015 when BKT was able to “avail” itself of the funds.¹⁵⁵ Petitioners contend, correctly, that it is the Department’s normal practice to treat a benefit as received when a firm experiences an actual cash inflow.¹⁵⁶ However, BKT provided accounting records demonstrating that BKT’s cash flow was affected immediately in 1989 and 1999.¹⁵⁷ The 2015 accounting entry referenced by BKT is a debit to an offsetting account created when the payment was originally received. BKT was required to debit the account when it separated from the division in 2015 that had been the recipient of the subsidy.¹⁵⁸ As such, no cash and thus no subsidy were received under this program during the POI.

Comment 13: Whether the Department Should Subtract the Sales of BKT’s Paper Division from its Total Sales and Total Export Sales Denominators

Petitioners’ Comments:

- The Department should subtract paper sales from the sales denominator “in order to calculate the benefit received in connection with tire production only.”
- The Department should subtract revenue from its paper operations attributable to when BKT’s paper division was merged with BKT, from April 1, 2014 through February 9, 2015.

GOI’s Rebuttal Comments:

- The SCM agreement states that “where the subsidy is tied to the production or sale of a given product, the value of the product shall be calculated as the total value of the recipient firm’s sales.”
- Since the alleged subsidy is not linked to the subject goods, the subsidy can only be attributed to the overall sales of the firm.

BKT’s Rebuttal Comments

- There is no reason to subtract revenue from BKT’s paper division from the total denominator.

Department’s Position: Under 19 CFR 351.525(b)(3), domestic subsidies are to be attributed to all products sold by a firm, unless the Department determines particular subsidies are tied to particular products. We have not made any such tying determinations in this investigation and

¹⁵⁴ See Petitioners’ Case Brief at 13-15.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 15.

¹⁵⁷ See BKT Verification Report at 26, Exhibit 2.

¹⁵⁸ *Id.* at 22.

Petitioners do not offer any arguments for finding subsidies tied to particular products. As such, the Department is not subtracting revenue attributable to BKT's paper divisions from the sales denominators.

Comment 14: Whether the Department Should Subtract Sales by BKT's Wind Division from the Total Sales and Total Export Sales Denominators

Petitioners' Comments:

- BKT reported that after 2007 its wind power operations were not a separate segment of BKT. Thus, sales by this division are included in the sales totals reported by BKT
- BKT's annual report also states that if revenue from any segment is more than ten percent of total revenue, the company should provide additional information about that activity.
 - BKT's wind segment must account for less than ten percent of its total company revenue because the additional information is not reported.
 - BKT did not provide the actual figure for revenue associated with the wind division because it was not required to do so under the applicable accounting standards.
- The Department should thus subtract 9.9 percent of revenue from BKT's total sales.

BKT's Rebuttal Comments

- Information on the record shows that BKT does not gain revenue from its wind operations.
 - The 2008 financial report states BKT's wind power "is now not considered as a separate segment as it is meant for captive purpose only."
 - Annual reports since 2013 state that its wind power was for "captive consumption."
 - At verification, BKT company officials explained that it does not generate revenue from its windmills and it does not have a separate subsidiary dedicated to wind energy.

GOI's Rebuttal Comments

- The SCM agreement states that "where the subsidy is tied to the production or sale of a given product, the value of the product shall be calculated as the total value of the recipient firm's sales."
- Since the alleged subsidies are not linked to the subject goods, the final determination of the subsidy can only be attributed to the overall sales of the firm.

Department's Position: The record indicates BKT's wind turbines generate electricity that allow BKT to receive a credit on its energy bill, offsetting what BKT owes for electricity purchased.¹⁵⁹ The credit is not sales revenue that would be reflected in the sales denominators reported by BKT, which, the Department verified, are taken from BKT's sales accounts. The credit is not booked as sales revenue, but is booked as an offset to the electricity expense. This is

¹⁵⁹ BKT Verification Report at 6.

confirmed by BKT's annual reports since 2013 that state that its wind operations were only for "captive consumption."¹⁶⁰ Thus, no adjustment to BKT's sales denominators is necessary.

Comment 15: Whether the Department Should Use Total Sales Instead of Export Sales as the Denominator when Calculating the Rate for the Export Promotion of Capital Goods Scheme

GOI's Comments:

- Although the EPCGS has an export obligation and a company must export a certain amount of goods to qualify for the program, the benefit a company receives for the EPCGS does not flow to exports alone.
- A company may utilize the capital goods for which it received benefits to manufacture domestic products.

Petitioners' Comments:

- Under section 771(5A)(B) of the Act, subsidies, such as the EPCGS, which are contingent upon export performance are export subsidies, and under 19 CFR 351.525(b)(2), export subsidies are attributed to "products exported by a firm."

Department's Position As discussed in the *Preliminary Determination*, EPCGS has an export obligation which requires a company to export a certain amount of goods in order to qualify for the program. Because of the export obligation, the EPCGS is an "export subsidy" within the meaning of 19 CFR 351.514(a) as it is "contingent upon export performance." Under 19 CFR 351.525(b)(2), "the Secretary will attribute an export subsidy only to products exported by a firm." Therefore, because the EPCGS is an "export subsidy," the Department must attribute the benefit it receives from the EPCGS to export sales and not total sales.

¹⁶⁰ See BKT's April 21, 2016 QR at Exhibit 3 page 8.

X. RECOMMENDATION

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



Agree

Disagree

1/3/2017

X 

Signed by: PAUL PIQUADO

Paul Piquado
Assistant Secretary
for Enforcement and Compliance