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Investigation
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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Countervailing Duty Investigation of Fine Denier Polyester Staple
Fiber from India

I. Summary

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of fine denier polyester staple fiber (fine denier PSF) from India, as provided in section 703 of the Tariff Act of 1930, as amended (Act).

II. Background

A. Initiation and Case History

On May 31, 2017, the Department received a petition from DAK Americas LLC, Nan Ya Plastics Corporation, America, and Auriga Polymers, Inc. (collectively, the petitioners) seeking the imposition of countervailing duties (CVDs) on fine denier PSF from India.¹ Supplements to the petition and our consultations with the Government of India (GOI) are described in the

¹ See Letter from petitioners, "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam – Petition for the Imposition of Antidumping and Countervailing Duties," (May 31, 2017).

Initiation Notice and accompanying Initiation Checklist.² On June 20, 2017, the Department initiated a CVD investigation on fine denier PSF from India.³

We stated in the *Initiation Notice* that, if respondent selection became necessary, we intended to base our selection of mandatory respondents on the United States Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheading listed in the scope of the investigation. On June 23, 2017, the Department released the CBP entry data under administrative protective order.⁴

On July 5, 2017, the petitioners submitted respondent selection comments.⁵ On July 24, 2017, we selected Reliance Industries Limited (Reliance) and Bombay Dyeing & Manufacturing (Bombay Dyeing) as mandatory respondents.⁶ We issued our countervailing duty questionnaire to the GOI, seeking information regarding the alleged subsidies on July 24, 2017.⁷ The Department instructed the GOI to forward the questionnaire to the selected mandatory respondents.⁸ Between August 14, 2017, and October 16, 2017, we received timely questionnaire

² See Memorandum, “Countervailing Duty Investigation Initiation Checklist: Fine Denier Polyester Staple Fiber from India,” dated June 20, 2017 (Initiation Checklist); see also *Fine Denier Polyester Staple Fiber from India and the People’s Republic of China: Initiation of Countervailing Duty Investigations*, 82 FR 29028 (June 27, 2017) (*Initiation Notice*).

³ See *Initiation Notice*.

⁴ See Memorandum regarding Fine Denier Polyester Staple Fiber from India: Customs Data for Respondent Selection Purposes, dated June 23, 2017.

⁵ See Letter from the petitioners, “Fine Denier Polyester Staple Fiber from India: Petitioners’ Comments on CBP Data and Respondent Selection,” dated July 5, 2017.

⁶ See Memorandum, “Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India,” dated July 24, 2017.

⁷ See Letter from the Department, “Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Countervailing Duty Questionnaire,” dated July 24, 2017 (CVD Questionnaire).

⁸ *Id.*

and supplemental questionnaire responses from Bombay Dyeing,⁹ Reliance,¹⁰ and the GOI.¹¹ Bombay Dyeing and the GOI initially improperly filed its questionnaire response, which the Department rejected.¹² However, the Department allowed Bombay Dyeing and the GOI to remedy the deficiencies with its filing and both parties subsequently properly submitted their questionnaire responses to the Department.¹³

⁹ See Letter from Bombay Dyeing, “Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Response to Section III Identifying Affiliated Companies,” dated August 24, 2017 (Bombay Dyeing’s AR); Letter from Bombay Dyeing, “Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Supplemental Questionnaire for Bombay Dyeing’s Affiliation Response,” dated September 5, 2017 (Bombay Dyeing’s AR1); Letter from Bombay Dyeing, “Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Supplemental Questionnaire for Bombay Dyeing’s Affiliation Response,” dated September 6, 2017 (Bombay Dyeing’s QR); Letter from Bombay Dyeing, “Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Response to Supplemental Questionnaire,” dated October 5, 2017 (Bombay Dyeing’s SQR); Letter from Bombay Dyeing, “Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Response to Second Supplemental Questionnaire,” dated October 16, 2017 (Bombay Dyeing’s Second SQR).

¹⁰ See Letter from Reliance, “Fine Denier Polyester Staple Fiber from India; Reliance Industries Limited’s Questionnaire Response to Section III Identifying Affiliated Companies, dated August 14, 2017 (Reliance’s AR); Letter from Reliance, “Fine Denier Polyester Staple Fiber from India; Reliance Industries Limited’s Questionnaire Response to Section III (General Questions),” dated September 6, 2017 (Reliance’s QR); Letter from Reliance, “Fine Denier Polyester Staple Fiber from India; Reliance Industries Limited’s Questionnaire Response to Section III (General Questions),” dated September 7, 2017 (Reliance’s AR1); Letter from Reliance, “Fine Denier Polyester Staple Fiber from India; Reliance Industries Limited’s Questionnaire Response to Section III (Program Specific Questions),” dated September 11, 2017 (Reliance’s QR1); Letter from Reliance, “Fine Denier Polyester Staple Fiber from India; Reliance Industries Limited’s Second Supplemental Questionnaire Response (EPCG Questions # 14-24),” dated October 5, 2017 (Reliance’s SQR1); Letter from Reliance, “Fine Denier Polyester Staple Fiber from India; Reliance Industries Limited’s Second Supplemental Questionnaire Response,” dated October 6, 2017 (Reliance’s SQR2); Letter from Reliance, “Fine Denier Polyester Staple Fiber from India; Reliance Industries Limited’s Second Supplemental Questionnaire Response,” dated October 10, 2017 (Reliance’s SQR3); Letter from Reliance, “Fine Denier Polyester Staple Fiber from India; Reliance Industries Limited’s Second Supplemental Questionnaire Response,” dated October 16, 2017 (Reliance’s Sales Information and SHIS information).

¹¹ See Letter from the GOI, “Fine Denier Polyester Staple Fiber (C-533-876)- Initial Questionnaire Response,” submitted September 6, 2017 (GQR); Letter from the GOI, “Fine Denier Polyester Staple Fiber (C-533-876)- Initial Questionnaire Response,” submitted September 28, 2017 (GSQR); Letter from the GOI, “Fine Denier Polyester Staple Fiber (C-533-876)- Initial Questionnaire Response,” submitted October 11, 2017 (G2SQR1); Letter from the GOI, “Fine Denier Polyester Staple Fiber (C-533-876)- Initial Questionnaire Response,” submitted October 13, 2017 (G2SQR2).

¹² See Memorandum to the File, “Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Email Correspondence,” dated August 10, 2017; Memorandum, “Teleconference Regarding the Department of Commerce’s August 17, 2017 Letter to APJ-SLG Law Offices, Counsel for Bombay Dyeing & Manufacturing Company Limited,” dated August 18, 2017.

¹³ See Letter from the Department “Countervailing Duty Investigation of Certain Fine Denier Polyester Staple Fiber from India: Untimely Filed Questionnaire Response to the Department’s July 24, 2017, Countervailing Duty Initial Questionnaire,” dated August 23, 2017; *see also* Memorandum to the File, “Fine Denier Polyester Staple Fiber from India: Deadline for the Government of India to Refile its Section II Response,” dated September 5, 2017.

B. Postponement of Preliminary Determination

On August 8, 2017, based on a request from the petitioners, the Department postponed the deadline for the preliminary determination until October 30, 2017, in accordance with sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).¹⁴

C. Period of Investigation

The period of investigation (POI) is January 1, 2016, through December 31, 2016. This period corresponds to the most recently completed calendar year in accordance with 19 CFR 351.204(b)(2).

III. Scope Comments

In accordance with the Preamble to the Department's regulations, and as noted in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation.¹⁵

We received several comments and rebuttal comments concerning the scope of the antidumping duty (AD) and CVD investigations of fine denier PSF from, *inter alia*, India.¹⁶ We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigations, which are currently due December 18, 2017. We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determinations after considering any relevant comments submitted in case and rebuttal briefs.

IV. Scope of the Investigation

The merchandise covered by this investigation is fine denier PSF, not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

¹⁴ See *Fine Denier Polyester Staple Fiber from the People's Republic of China and India: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 82 FR 37048 (August 8, 2017).

¹⁵ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (Preamble); see also *Initiation Notice*, 82 FR at 29030.

¹⁶ Letter from David C. Poole Company Inc., "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and Vietnam; Scope Comments," dated July 10, 2017; Letter from Suominen Corporation, "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam," dated July 10, 2017; Letter from Consolidated Fibers, Inc., "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam – Scope Comments," dated July 10, 2017; Letter from Reliance, "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam: Reliance Industries, Ltd.'s Comments Regarding the Scope of the Investigation," dated July 10, 2017; Letter from the petitioners, "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam - Petitioners' Scope Comments," dated July 12, 2017; Letter from the petitioners, "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam – Petitioners' Rebuttal Scope Comments to the Importers' Scope Exclusion Requests," dated July 12, 2017.

- (1) PSF equal to or greater than 3.3. decitex (more than 3 denier, inclusive) currently classifiable under HTSUS subheadings 5503.20.0045 and 5503.20.0065.
- (2) Low-melt PSF defined as a bi-component fiber with a polyester core and an outer, polyester sheath that melts at a significantly lower temperature than its inner polyester core currently classified under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

V. Injury Test

Because India is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On July 21, 2017, the ITC determined that there is reasonable indication that an industry in the United States is materially injured by reason of imports of fine denier PSF from India that are allegedly subsidized by the GOI.¹⁷

VI. Subsidies Valuation

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System.¹⁸ The Department notified the respondents of the 10-year AUL in the initial questionnaire and requested data accordingly.

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

B. Attribution of Subsidies

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

¹⁷ See *Fine Denier Polyester Staple Fiber from China, India, Korea, and Taiwan*, 82 FR 33925 (July 21, 2017).

¹⁸ See U.S. Internal Revenue Service Publication 946 (2015), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

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

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.¹⁹

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.²⁰

Bombay Dyeing

Bombay Dyeing responded to the Department's questionnaire on behalf of itself, reporting that it did not have any affiliated companies involved or engaged in the sale, purchase, marketing and production of subject merchandise.²¹ While Bombay Dyeing has several subsidiaries, these companies are not involved in the production or sale of subject merchandise or the production of inputs used in subject merchandise. Therefore, we will attribute subsidies received by Bombay Dyeing to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

Reliance

Reliance responded to the Department's questionnaire on behalf of itself, reporting that it did not have any affiliated companies involved or engaged in the sale, purchase, marketing and production of subject merchandise.²² While Reliance has several subsidiaries, these companies are not involved in the production or sale of subject merchandise or the production of inputs used in subject merchandise. Therefore, we will attribute subsidies received by Reliance to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

¹⁹ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

²⁰ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).

²¹ See generally Bombay Dyeing's AR, AR1, and QR.

²² See generally Reliance's AR and AR1, and QR.

C. Denominators

In accordance with 19 CFR 351.525(b)(1) – (5), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators we used to calculate the countervailable subsidy rate for the various subsidy programs in this investigation are explained in further detail in the preliminary calculations memoranda prepared for this preliminary determination.²³

VII. Benchmarks and Discount Rates

Section 771(5)(E)(ii) of the Act provides that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,” indicating that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient “could actually obtain on the market{,}” the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans during the period, the Department “may use a national average interest rate for comparable commercial loans,” pursuant to 19 CFR 351.505(a)(3)(ii). In addition, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government-owned special purpose bank for purposes of calculating benchmark rates. The Department has previously determined that the Industrial Development Bank of India (IDBI), the Industrial Finance Corporation of India (IFCI), and the Export-Import Bank of India (EXIM) are government-owned special purpose banks. As such, the Department does not use loans from the IDBI, the IFCI, or the EXIM as a basis for a commercial loan benchmark.²⁴ Also, in the absence of reported long-term commercial loan interest rates, we use the national average interest rates from the International Monetary Fund's International Financial Statistics (IFS) as discount rates for purposes of allocating non-recurring benefits over time pursuant to 19 CFR 351.524(d)(3)(i)(B).

In this investigation, Reliance and Bombay Dyeing did not report any comparable commercial long-term rupee-denominated loans from commercial banks for the required year. While Reliance reported long-term loans from the IDBI as a potential benchmark,²⁵ we did not use the loans as a basis for a commercial loan benchmark because we have determined that the IDBI is a government-owned special purpose bank.²⁶ Therefore, we are preliminarily using national

²³ See Memorandum, “Preliminary Determination Calculations for Bombay Dyeing,” dated concurrently with this memorandum (Bombay Dyeing Preliminary Calculation Memo); Memorandum, “Preliminary Determination Calculations for Reliance,” dated concurrently with this memorandum at 2 (Reliance Preliminary Calculation Memo).

²⁴ See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*PET Film Final Results 2003 Review*), and accompanying Issues and Decision Memorandum (IDM) at Comment 3; see also *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008) (*PET Film Final Results 2005 Review*), and accompanying IDM at Benchmark Interest Rates and Discount Rates.

²⁵ See Reliance's SQR3 at Exhibit 7.

²⁶ See Reliance Preliminary Calculation Memo.

average interest rates from the International Monetary Fund's International Financial Statistics (IMF Statistics) as benchmark rates for rupee-denominated long-term loans.²⁷

For allocating the benefit from non-recurring grants, we have used the yearly average long-term lending rate in India from the IMF Statistics for the year in which the government agreed to provide the subsidy, consistent with 19 CFR 351.524(d)(3)(i)(A). The interest-rate benchmarks and discount rates from the IMF Statistics used in our preliminary calculations are provided in the preliminary calculation memoranda.²⁸

VIII. Use of Facts Otherwise Available and Adverse Inferences

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.²⁹

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) 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 facts available (AFA) 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."³⁰ 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."³¹

Section 776(c)(1) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. However, section 776(c)(1) does not require corroboration when the information

²⁷ *Id.*

²⁸ *Id.*

²⁹ Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD law were made, 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, dated June 29, 2015. *See also 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).

³⁰ *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) (*Drill Pipe from the PRC*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

³¹ *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.

relied upon for adverse inferences is derived from the petition, a final determination in the investigation, any previous review under section 751 of the Act or determination under section 753 of the Act, or any other information placed on the record.

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 776(c), 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.⁸⁹ With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. Additionally, as stated above, we are applying subsidy rates, which were calculated in this investigation or previous India CVD investigations or administrative reviews. Therefore, the corroboration exercise of section 776(c)(1) of the Act is inapplicable for purposes of this investigation.

For the reasons explained below, the Department preliminarily determines that application of facts otherwise available, with an adverse inference, to the financial contribution, specificity, and benefit aspects of the countervailability determination of several programs is warranted pursuant to section 776(b) of the Act because, by not responding to our requests for information, the GOI and the mandatory respondents failed to provide information within the time limits and in the manner requested, and therefore failed to cooperate by not acting to the best of its ability.

Special Economic Zone (SEZ) Programs

We preliminarily determine that the application of facts otherwise available, with an adverse inference, is warranted with respect to Reliance. We initiated on six programs under the SEZ Act of India because we have previously investigated these programs and found them countervailable and Petitioners provided certain evidence that one of Reliance’s plants is located in one of the SEZ.³² In the initial questionnaire, we indicated that Reliance is one of our mandatory respondents and that information contained in the initial questionnaire should be answered for Reliance.³³ We did not limit our request for responses to Reliance’s PSF plants. In its initial questionnaire response, Reliance stated that its “PSF plants are not situated in a SEZ;

³² See *Countervailing Duty Investigation Initiation Checklist: Fine Denier Polyester Staple Fiber from India*,” dated June 20, 2017 (*Initiation Checklist*), at 13-16. The Department initiated on the following six SEZ programs: (1) Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material; (2) Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material; (3) Exemption from Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ; (4) Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit; (5) SEZ Income Tax Exemption Scheme (10A); and (6) Discounted Land Fees in a SEZ.

³³ See CVD Questionnaire.

therefore, Reliance did not receive any benefit under this program.”³⁴ Reliance did not cite to any past cases where the Department has found these six SEZ programs tied to any particular merchandise and Reliance did not provide any evidence to support its claim that benefits under these six SEZ programs are tied to non-subject merchandise. As such, Reliance did not provide a complete response to our standard questions for the six SEZ programs.³⁵ We subsequently uncovered a reference in Reliance’s income tax return to the fact that Reliance appeared to receive an income tax deduction for a plant located in an SEZ.³⁶ We issued a supplemental questionnaire to Reliance requesting a detailed explanation of the deduction (*i.e.*, “to provide a complete response to all relevant questions and appendices, as requested in the initial questionnaire.”)³⁷ Reliance responded with an unexplained statement that its “SEZ deduction reported in the income tax return pertains to export profit of Polypropylene” and did not provide a complete response to our standard questions.³⁸ As such, we preliminarily determine that Reliance failed to provide a complete response to our standard or supplemental questionnaires for all six SEZ programs.³⁹

Accordingly, we preliminarily determine that necessary information is not available on the record for us to determine whether a benefit exists for all six SEZ programs and that Reliance withheld information that was requested of it in the time and manner requested, thereby significantly impeding the conduct of the investigation. Thus, the Department must rely on “facts available” in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A), (B) and (C) of the Act. Moreover, we preliminarily determine that Reliance failed to cooperate by not acting to the best of its ability in failing to comply with our request for information. Consequently, 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 this program constitutes a benefit under section 771(5)(E) of the Act.

We further note that the GOI stated that “none of the mandatories are located in a SEZ and therefore the question in the Standard Question Appendix is not being answered”⁴⁰ We also note that we have previously countervailed these programs in past cases.⁴¹ Thus, we preliminarily find that the current record information provides additional bases to infer, as AFA, that these

³⁴ See Reliance’s QR1 at 19.

³⁵ The Department initiated on the following six SEZ programs: (1) Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material; (2) Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material; (3) Exemption from Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ; (4) Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit; (5) SEZ Income Tax Exemption Scheme (10A); and (6) Discounted Land Fees in an SEZ.

³⁶ See Reliance AR1 at Exhibit 7.

³⁷ See Reliance’s SQR2 at 28.

³⁸ *Id.*

³⁹ See Reliance AR1 at Exhibit 7.

⁴⁰ See GQR at 62 and GSQR at 31.

⁴¹ See *Countervailing Duty Investigation Initiation Checklist: Fine Denier Polyester Staple Fiber from India*, dated June 20, 2017 (*Initiation Checklist*), at 13-16; see also *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2014*, 81 FR 89056 (December 9, 2016), and accompanying IDM (*PET Film 2014 IDM*) at 3; See *PET Film 2014 PDM* at 12 and *PET Film 2014 IDM* at 4.

programs constitute financial contributions and meet the specificity requirements of the Act.

Section 35(1)(iv), Section 35 (1)(ii), and section 35 (1)(i) Income Tax Deduction for 2016-2017⁴²

The GOI reported that Reliance made deduction claims under Section 35(1)(iv), Section 35(1)(ii), and Section 35 (1)(i) of the Income Tax Act.⁴³ We preliminarily determine that application of facts available with adverse inference is warranted with respect to *de facto* specificity of these income tax deduction programs.

We provided the GOI with opportunities to provide full and complete responses with respect to *de facto* specificity in our supplemental questionnaire to the GOI regarding (1) the number of companies that received assistance,⁴⁴ (2) the total amount of assistance provided for the PSF industry and for every other industry in which companies were approved for assistance under this program,⁴⁵ (3) the total number of companies that applied for, but were denied assistance under the program,⁴⁶ and (4) the types of records maintained by the relevant government regarding the deduction.⁴⁷ As mentioned above, this information is a necessary component of our analysis in determining whether the programs are *de facto* specific. However, the GOI did not provide complete responses to these questionnaires. As such, we preliminarily determine AFA is warranted because the Department lacks information necessary for our specificity determination regarding these programs and that the GOI withheld information that was requested of it in the time and manner requested, thereby significantly impeding the conduct of the investigation. Thus, the Department must rely on “facts available” in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A), (B) and (C) of the Act. Moreover, we preliminarily determine that the GOI failed to cooperate by not acting to the best of its ability in failing to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In drawing

⁴² *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*; 2014, 81 FR 89056 (December 9, 2016), and accompanying IDM (*PET Film 2014 IDM*) at 3; *See PET Film 2014 PDM* at 12 and *PET Film 2014 IDM* at 4.

⁴³ *See* Reliance’s QR1 at 24.

⁴⁴ When reporting the number of companies that received assistance under the program, Reliance stated “{f}or financial year 2015-16 the deduction/weighted deduction claimed under section 35(1), 35(2AA) and 35(2AB) combined together is Rs.10107.4 crore for all corporate tax payers and Rs.11.8 crore for all noncorporate tax payers. (Source: Revenue Impact of Tax Incentive as per *the Receipts Budget 2017-18*).” *See* GSQR at 28.

⁴⁵ When reporting the total amount of assistance provided for the PSF industry and for every other industry in which companies were approved for assistance under this program, the GOI stated that “{n}o such list is maintained at the centralized level.” *See* GSQR at 29.

⁴⁶ When reporting the total number of companies that applied for, but were denied assistance under the program, the GOI stated “{t}he tax payer files its Income-tax Return furnishing the details of profits eligible for deduction/ expenditure claimed which can be verified by the Income Tax Officer during the course of assessment proceedings along with relevant forms duly filled. The deduction under this program cannot be availed or claimed unless the taxpayer satisfies all the conditions specified as per the provisions of the Income-tax Act, 1961 and Income-Tax Rules, 1962.” *See* GSQR at 29.

⁴⁷ When asked to identify and explain the types of records maintained by the relevant government or governments (*e.g.*, accounting records, company-specific files, databases, budget authorizations, etc.) regarding the deduction received by Reliance under sections 35(1)(I), 35(1)(ii), 35(1)(iv), and 35(2AB), the GOI omitted a response. *See* GSQR at 30.

an adverse inference, we find that these programs are *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act.

Income Tax Deduction for Companies Located in a SEZ⁴⁸

In our initial and supplemental questionnaires, we requested information regarding whether the GOI provided, directly or indirectly, any forms of assistance to domestic manufacturers/exporters of PSF in the “Other Subsidies” section of the questionnaire.⁴⁹ The GOI omitted a response to the “Other Subsidies” question twice.⁵⁰ However, we discovered during this investigation that Reliance’s income tax return includes an income tax deduction for companies located in a SEZ.⁵¹ As such, we preliminarily determine that AFA is warranted with respect to GOI’s specificity and financial contribution because it was provided two opportunities to report complete responses for this program but failed to cooperate to the best of its ability when it completely omitted a response to the “Other Subsidies” question twice.⁵² Therefore, we preliminarily determine that necessary information is not available on the record for us to determine whether a financial contribution and specificity exists and that the GOI withheld information that was requested of it in the time and manner requested, thereby significantly impeding the conduct of the investigation. Thus, the Department must rely on “facts available” in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A), (B) and (C) of the Act. Moreover, we preliminarily determine that the GOI failed to cooperate by not acting to the best of its ability in failing to comply with our request for information. Consequently, 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 this program constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and are specific within the meaning of section 771(5A)(B) and 771(5A)(D) of the Act.

Status Holder Incentive Scheme (SHIS)

For the Status Holder Incentive Scheme (SHIS), Exhibit I of the GOI’s initial QR provided details (including IEC, certificate file, certificate number, certificate date, value from, and value up to) regarding three licenses provided to mandatory respondents with certificate dates from as early as 2013.⁵³ The list included a license provided to Bombay Dyeing, with a certificate date of November 28, 2014. However, in Bombay Dyeing’s initial QR, the company stated that the scheme had been withdrawn for exports “made with effect” from January 4, 2013.⁵⁴ Further, Bombay Dyeing failed to respond to the Department’s request to provide a detailed list of all SHIS credit scrips received on exports during the AUL stating that Bombay Dyeing “has not

⁴⁸ *Id.*

⁴⁹ See Letter from the Department, “Fine Denier Polyester Staple Fiber from India: Countervailing Duty Questionnaire,” dated July 24, 2017 at 14; see Letter from the Department, “Fine Denier Polyester Staple Fiber from India: Countervailing Duty Supplemental Questionnaire,” dated September 13, 2017 at 20.

⁵⁰ See GQR at 62 and GSQR at 31.

⁵¹ See Reliance QR1 at Exhibit 7.

⁵² See GQR at 62 and GSQR at 31.

⁵³ See GQR at Exhibit I.

⁵⁴ See Bombay Dyeing’s QR at 18.

availed any benefits under this scheme.”⁵⁵ Bombay Dyeing moreover failed to provide complete responses to all relevant questions, as requested in the initial questionnaire and the supplemental questionnaire.⁵⁶ As such, we preliminarily determine that AFA is warranted with respect to Bombay Dyeing’s benefit because it was provided two opportunities to report complete responses for this program but failed to cooperate to the best of its ability when it: (1) failed to provide a complete response to relevant questions, appendices, and templates in its initial questionnaire regarding the SHIS program; and (2) failed to provide a complete response to relevant questions, appendices, and templates in its supplemental questionnaire, as requested.

Therefore, we preliminarily determine that Bombay Dyeing withheld information that was requested of it in the time and manner requested, thereby significantly impeding the conduct of the investigation. Thus, the Department must rely on “facts available” in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A), (B) and (C) of the Act. Moreover, we preliminarily determine that Bombay Dyeing failed to cooperate by not acting to the best of its ability in failing to comply with our request for information. Consequently, 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 program outlined above constitutes a benefit within the meaning of 771(5)(E) of the Act.

Selection of an AFA Rate

When selecting AFA rates, section 776(d) of the Act provides that the Department may use any countervailable subsidy rate applied for the same or similar program in a countervailable duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Consistent with section 776(d) of the Act and our established practice, we selected the highest calculated rate for the same or similar program as AFA.⁵⁷ When selecting rates, if we have a cooperating respondent, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program above zero, as is the case here, calculated for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).⁵⁸ If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the

⁵⁵ See Bombay Dyeing’s SQR at 17.

⁵⁶ *Id.* and Bombay Dyeing’s QR at 18.

⁵⁷ See, e.g., *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from the PRC*), and accompanying Issues and Decision Memorandum (Shrimp IDM) at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding “hierarchical methodology for selecting an AFA rate”).

⁵⁸ For purposes of selecting AFA program rates, we normally treat rates less than 0.5% to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum at “1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program” and “2. Grant Under the Elimination of Backward Production Capacity Award Fund.”

highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company and non-industry specific program in a CVD case involving the same country.⁵⁹

In applying AFA to Bombay Dyeing and Reliance, we are guided by the Department's methodology detailed above. With respect to the application of AFA to Bombay Dyeing for SHIS, we first determined that there is an identical program in the investigation; however, the highest calculated rate for the identical program is zero. Following our methodology detailed above, for this preliminary determination, we are using the highest above-*de minimis* calculated subsidy rate for the identical program from another India CVD proceeding.⁶⁰ We are using the highest above *de minimis* calculated rate for SHIS program from another India CVD investigation.⁶¹

For Reliance, we first determined that there are no identical programs in the investigation with a rate above zero for the six SEZ programs. Following our methodology detailed above, we are relying on the highest above-*de minimis* calculated subsidy rate for the identical program from another India CVD proceeding. We are using the highest above *de minimis* calculated rate for the SEZ programs from another India CVD investigations.

Bombay Dyeing

Program	AFA Percent Subsidy Rate
Status Holder Incentive Scheme ⁶²	0.51

Reliance

Program	AFA Percent Subsidy Rate
Duty-Free Importation of Capital Goods and Raw Materials ⁶³ Components, Consumables, Intermediates, Spare Parts, and Packing Material	1.23

⁵⁹ See Shrimp IDM at 13-14.

⁶⁰ See *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying Issues and Decision Memorandum, where the Department calculated a rate for the identical program.

⁶¹ See *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016) (*Steel Flanges from India Preliminary Determination*) and accompanying PDM affirmed in *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Steel Flanges from India Final Determination*), where the Department calculated a rate for the identical program.

⁶² *Id.*

⁶³ See *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016), and accompanying IDM.

Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material ⁶⁴	0.53
Exemption from Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ ⁶⁵	3.09
Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit ⁶⁶	0.21
SEZ Income Tax Exemption Scheme (10A) ⁶⁷	2.74
Discounted Land Fees in an SEZ ⁶⁸	0.04

IX. Analysis of Programs

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

A. Programs Preliminarily Determined to Be Countervailable

1. Advance Authorization Program (AAP), aka, Advance License Program (ALP)

Under the AAP (aka ALP) exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported. The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled their export requirement.⁶⁹ The quantities of imported materials and exported finished products are linked through standard input-output norms (SIONs) established by the GOI.⁷⁰ During the POI, Bombay Dyeing used advance licenses to import certain materials duty free.⁷¹

Import duty exemptions on inputs for exported products are not countervailable so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.⁷² However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products,

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Certain Lined Paper Products from India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2010*, 77 FR 61742 (October 11, 2012) affirmed in *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; 2010*, 78 FR 22845 (April 17, 2013).

⁶⁸ *See Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016), and accompanying IDM.

⁶⁹ *See* GQR at 4-16.

⁷⁰ *See* GQR at 7-9; *see also* SGQR at 6-8.

⁷¹ *See* GQR at 5; *see also* Bombay Dyeing QR at 14.

⁷² *See* 19 CFR 351.519(a)(1)(ii).

and in what amounts.⁷³ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁷⁴ If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission or drawback is countervailable.⁷⁵

In the 2005 administrative review of countervailing duties on Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the AAP/ALP during 2005. The Department acknowledged that certain improvements to the AAP/ALP system were made. However, the Department found that, based on the information submitted by the GOI and examined during previous reviews of that proceeding, and no information having been submitted for that review demonstrating that the GOI had revised its laws or procedures governing this program since those earlier reviews, systemic issues continued to exist in the AAP/ALP system during that period of review.⁷⁶ Specifically, in the 2005 review, the Department stated that it continued to find the AAP/ALP countervailable based on:

the GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. Specifically, we still have concerns with regard to several aspects of the ALP including (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET Film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports.⁷⁷

Since that *2005 Review of PET Film from India*, the Department has in several other proceedings made determinations consistent with this treatment of the AAP/ALP.⁷⁸ In this investigation, record evidence shows⁷⁹ there has been no change to the AAP/ALP program and therefore we preliminarily find that the program confers a countervailable subsidy because: (1) a financial

⁷³ See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India Final Determination*), and accompanying IDM at "Duty Drawback (DDB)."

⁷⁴ *Id.*

⁷⁵ See 19 CFR 351.519(a)(4)(i)-(ii).

⁷⁶ See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 73 FR 7708 (February 11, 2008) (*2005 Review of PET Film from India*), and accompanying IDM at Comment 3.

⁷⁷ *Id.*

⁷⁸ 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) (*Oil Country Tubular Goods from India Final*), and accompanying IDM; see also *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 80 FR 19637 (April 13, 2015), and accompanying IDM.

⁷⁹ See GQR at 11-22; see also SQR at 6-10.

contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from payment of import duties that would otherwise be due; (2) the GOI does not have in place, and does not apply, a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported product, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste, nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act; and (3) this program is specific under section 771(5A)(B) of the Act because it is contingent upon exportation.

Pursuant to 19 CFR 351.524(c)(1), the exemption of import duties on raw material inputs normally provides a recurring benefit.⁸⁰ Bombay Dyeing imported inputs under the AAP for the production of subject merchandise and non-subject merchandise duty free during the POI.⁸¹ Although Bombay Dyeing provided a sample license,⁸² the single license alone was insufficient to determine which export licenses applied to the export of the subject merchandise or to determine which export license applied to export of merchandise to the United States. As such, we cannot reliably determine that the AAP licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). Thus, for the preliminary determination, we find that all of Bombay Dyeing's licenses benefit all of the company's exports. To calculate the subsidy rate for Bombay Dyeing, we first determined the total value of import duties exempted during the POI for Bombay Dyeing under AAP licenses. We then divided the resulting benefit by the total value of Bombay Dyeing's export sales. On this basis, we determine the countervailable subsidy provided to Bombay Dyeing under the AAP to be 4.87 percent *ad valorem*.⁸³

Reliance reported that it made certain "deemed" exports of PSF in India under four AAP licenses but claims that Reliance has not received any benefits under these licenses because Reliance does not have any bills of entry for the imported products that are necessary to receive the benefit.⁸⁴ While Reliance believes that it did not receive any benefits under this program, Chapter 5.04 of the Indian Foreign Trade Policy 2015-2020 state that a firm operating under this program may fulfill its export obligation through deemed exports.⁸⁵ Further, we have found in the past that the timing of benefit under AAP is on the date license is issued, *i.e.* the date input is imported duty free.⁸⁶ Because Reliance did not believe it received any benefit, Reliance did not provide

⁸⁰ See, e.g., *Oil Country Tubular Goods from India Final*, and accompanying IDM.

⁸¹ *Id.*

⁸² See Bombay Dyeing QR at Annexure 12A.

⁸³ See Memorandum, "Preliminary Determination Calculations for Bombay Dyeing," dated concurrently with this memorandum (Bombay Dyeing Preliminary Calculation Memo).

⁸⁴ See Reliance QR1 at 5.

⁸⁵ See GQR at Exhibit B.

⁸⁶ 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) (*Oil Country Tubular Goods from India Final*), and accompanying IDM.

information to the standard questions and appendix.⁸⁷ Instead, Reliance provided an exhibit that lists the license number and the “duty import allowance” associated with the license number but Reliance did not specify the importer and the import duties exempted under the license on the list.⁸⁸ In order to determine the benefit, it is essential that Reliance provide the licenses, the corresponding condition sheets, supplier invoices, and a list of import duty details that specify that duties exempted. Because Reliance did not provide us with this information, we are resorting to the use of facts otherwise available within the meaning of section 776(a)(1) of the Act because the necessary information from Reliance concerning the importer and the amount of duties exempted under the license is not on the record. Thus, for the preliminary determination, we are relying on Reliance’s “duty-free import duty allowance” associated with the four AAP licenses to determine the benefit associated with this program.⁸⁹ We then divided the resulting benefit by the total value of Reliance’s export sales. On this basis, we determine the countervailable subsidy provided to Reliance under the AAP to be 0.002 percent *ad valorem*.⁹⁰ The resulting benefit, 0.002 percent, consistent with Department practice does not confer a measurable benefit and is not included in the calculation of the net countervailable rate.

2. *Duty Drawback Program (DDB Program)*

Reliance reported that it received duty rebates under this program.⁹¹ The GOI explained that the DDB Program provides rebates for duty or tax chargeable on any (a) imported or excisable materials and (b) input services used in the manufacture of export goods.⁹² Specifically, the duties and tax “neutralized” under the program are the (i) Customs and Union Excise Duties for inputs and (ii) Service Tax for services.⁹³ The duty drawback is generally fixed as a percentage of the free on board (FOB) price of the exported product.⁹⁴

Imported duty exemptions on inputs for exported products are not countervailable so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.⁹⁵ However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products and in what amounts.⁹⁶ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁹⁷ If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the

⁸⁷ See Reliance QR1 at 5.

⁸⁸ *Id.* at Exhibit 5.

⁸⁹ *Id.*

⁹⁰ See Memorandum, “Preliminary Determination Calculations for Reliance,” dated concurrently with this memorandum at 2 (Reliance Preliminary Calculation Memo).

⁹¹ See Reliance QR1 at 9.

⁹² See GQR at 12-13.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ See 19 CFR 351.519(a)(1)(ii).

⁹⁶ See *Shrimp from India Final Determination*, and accompanying IDM at “Duty Drawback (DDB).”

⁹⁷ *Id.*

production of the exported product, the entire amount of any exemption, deferral, remission of drawback is countervailable.⁹⁸

Regarding its establishment of applicable duty drawback rates, the GOI explained that a committee is established to review data and recommend duty drawback rates. Specifically, the GOI stated the following:

The rates are determined following a specified procedure that is undertaken by an independent committee appointed by GOI. The committee makes its recommendations after discussions with all stake holders including Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of exports products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analyzed and this information is used to form the basis for the rate of DDB.⁹⁹

Rule 3(2) of the Drawback Rules 1995 states that in determining the amount of drawback, the “Central Government shall have regard to” the average quantity and value of an input, component or intermediate product, whether produced in India or imported, the import duties or excise duties paid thereon, as well as account for waste, re-use or sale of a by-product, and packing and input services rendered.¹⁰⁰

We requested that the GOI provide a copy of the recommendations and supporting documents (*e.g.*, accounting records, company-specific files, databases, budget authorizations, *etc.*) for the drawback rates in effect during the POI.¹⁰¹ The GOI did not provide documentation enabling the Department to determine whether the GOI has a system in place.¹⁰² Thus, consistent with *Shrimp from India*, we are determining that the GOI’s response lacks the documentation to support that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products, and in what amounts. Therefore, we preliminarily determine that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended.¹⁰³

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

⁹⁸ See 19 CFR 351.519(a)(4)(i)-(ii).

⁹⁹ See GQR at 22.

¹⁰⁰ *Id.*

¹⁰¹ See CVD Questionnaire. Letter from the Department, “See Letter from Department, “Fine Denier Polyester Staple Fiber from India: Countervailing Duty Supplemental Questionnaire,” dated September 13, 2017 at 7.

¹⁰² See GQR at 19; *see also* GSQR at 14.

¹⁰³ See *Shrimp from India Final Determination*, and accompanying IDM at “Duty Drawback (DDB).”

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

Reliance reported the benefits earned on exports of subject merchandise to the United States under this program on a transaction-basis. In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we will attribute that subsidy to only that product or market.¹⁰⁴ Therefore, we divided the DDB rebates earned on exports of subject merchandise to the United States during the POI by Reliance's POI exports of subject merchandise to the United States.

On this basis, we preliminarily determine a countervailable subsidy rate of 1.84 percent *ad valorem* for Reliance.¹⁰⁵

3. *Export Promotion of Capital Goods Scheme (EPCG)*

The GOI reported that the EPCG program provides for a reduction of or exemption from customs duties and excise taxes on imports of capital goods used in the production of exported products.¹⁰⁶ Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to a multiple of the duty saved within a period of a certain number of years.¹⁰⁷ If the company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, in addition to an interest penalty.¹⁰⁸

The Department has previously determined that import duty reductions or exemptions provided under the EPCG program are countervailable export subsidies because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act; (2) provides two different benefits (*see* below) under section 771(5)(E) of the Act; and (3) is specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is contingent upon export performance.¹⁰⁹ Because the evidence on the record with respect to this program has not changed from previous findings, we preliminarily determine that this program is countervailable.¹¹⁰

¹⁰⁴ *Id.*

¹⁰⁵ *See* Reliance Preliminary Calculation Memo.

¹⁰⁶ *See* GQR at 31-42.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *See, e.g., Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film Final Determination*), and accompanying IDM at "EPCGS" section; *see also Shrimp from India Final Determination*, and accompanying IDM at 14.

¹¹⁰ *See Steel Flanges from India Preliminary Determination* and accompanying PDM at 13, affirmed in *Steel Flanges from India Final Determination*.

Under the EPCG program, the exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. It is the Department's practice to treat any balance on an unpaid liability that may be waived in the future as a contingent-liability interest-free loan pursuant to 19 CFR 351.505(d)(1).¹¹¹ Since the unpaid duties constitute a liability contingent on subsequent events, we treat the amount of unpaid duty liabilities as an interest-free contingent-liability loans. We find the amount respondents would have paid during the POI had it borrowed the full amount of the duty reduction or exemption at the time of importation to constitute the first benefit under the EPCG program. The second benefit arises based on the amount of duty waived by the GOI on imports of capital equipment covered by those EPCG licenses for which the export requirement had already been met. With regard to licenses for which the GOI and Reliance have acknowledged that the company has completed its export obligation, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are approved for the purchase of capital equipment. The *CVD Preamble* states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring..."¹¹² In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.

Reliance reported that it imported capital goods with waived import-duty rates under the EPCG program.¹¹³ Based on the information and the documentation submitted by Reliance, we cannot reliably determine that the EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we preliminarily find that all of Reliance's EPCGS licenses benefit all of the company's exports.¹¹⁴ Reliance reported that it met several export requirements for EPCG since December 31, 2016 (the last day of the POI). Reliance also reported that it did not meet the export requirements for many EPCG licenses prior to the last day of the POI. Therefore, Reliance received final waivers of the obligation to pay duties for some imports of capital goods while receiving deferrals from paying import duties for other imports of capital goods. For those deferrals, the final waiver of the obligation to pay the duties has not yet been granted.

To calculate the benefit received from Reliance's formal waiver of import duties on capital equipment imports where its export obligations were met prior to the end of the POI, we considered the total amount of duties waived, *i.e.*, the calculated duties payable less the duties actually paid in the year, net of required application fees, in accordance with section 771(6) of the Act, to be the benefit and treated these amounts as grants pursuant to 19 CFR 351.504. Further, consistent with the approach followed in previous investigations, we preliminarily determine the year of receipt of the benefit to be the year in which the GOI formally waived respondents' outstanding import duties.¹¹⁵ Next, we performed the "0.5 percent test," as

¹¹¹ *Id.*

¹¹² See *CVD Preamble*, 63 FR at 65393.

¹¹³ See Reliance QR1 at 11.

¹¹⁴ See Reliance SQR1 at Exhibits SUPP2-EPCG5 to Exhibits SUPP2-EPCG18.

¹¹⁵ See *PET Film Final Determination*, and accompanying IDM at Comment 5.

prescribed under 19 CFR 351.524(b)(2), for the total value of duties waived, for each year in which the GOI granted respondents an import duty waiver. For any years in which the value of the waived import duties was less than 0.5 percent of respondents' total export sales, we expensed the value of the duty waived to the year of receipt. For each year of the AUL, Reliance's licenses had values of less than 0.5 percent of Reliance's total export sales (and deemed exports) and were expensed in the year of receipt. For Reliance's benefit that was received during the POI, because the benefit was received during the POI, we divided the benefit by the total exports (and deemed exports) during the POI.

As noted above, import duty reductions that Reliance received on the imports of capital equipment for which it had not yet met export obligations may have to be repaid to the GOI if the obligations under the license are not met. Consistent with our practice and prior determinations, we are treating the unpaid import duty liability as an interest-free loan.¹¹⁶

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

As discussed above, the time period for fulfilling the export requirement expires a certain number of years after importation of the capital good. As such, pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment), occurs at a point in time that is more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the long-term interest rate as discussed in the "Loan Benchmark and Interest Rates" section, above. We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the capital good was imported and summed these amounts to determine the total benefit. For EPCG licenses with duty free imports made during the POI, we calculated a daily interest rate based on a long-term interest rate and the number of days the loan was outstanding during the POI, to arrive at a prorated contingent liability for those imports.

The benefit received under the EPCG program is the sum of: (1) the benefit attributable to the POI from the formally-waived duties for imports of capital equipment for which the respondents met export requirements by the end of the POI; and (2) the interest that would have been due had the respondents borrowed the full amount of the duty reduction or exemption at the time of the importation for imports of capital equipment that have unmet export requirements during the POI. We then divided the total benefit received by Reliance under the EPCG program by the combined total exports sales of Reliance during the POI, as described above. On this basis, we preliminarily determine a countervailable subsidy rate of 0.08 percent *ad valorem* for Reliance.¹¹⁷

¹¹⁶ See, e.g., *Steel Flanges from India Preliminary Determination*, and accompanying PDM at 15, affirmed in *Steel Flanges from India Final Determination*.

¹¹⁷ See Reliance Preliminary Calculation Memo.

4. Status Holders Incentive Scrip Scheme (SHIS)

The SHIS was introduced in 2009 with the objective of promoting investment in upgrading technology in specific sectors.¹¹⁸ “Status Holders” under the GOI’s listing of specified exported products receive incentive scrip (or credit) equal to one percent of the FOB value of the exports in the form of a duty credit. The SHIS license can only be used for imports of capital goods and it can be transferred to another Status Holder for the import of capital goods.¹¹⁹

This program is countervailable because it provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act because duty free import of goods represents revenue forgone by the GOI.¹²⁰ Further, it is specific under section 771(5A)(A) and (B) of the Act because it is limited to exporters.¹²¹ A benefit is also provided under the SHIS program under 771(5)(E) of the Act and 19 CFR 351.519 in the amount of exempted duties on imported capital equipment.¹²²

The GOI reported that import duty exemptions under this program are provided for the purchase of capital equipment.¹²³ The *CVD Preamble* states that, if a government provides an import duty exemption tied to major equipment purchases, “it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring....”¹²⁴ In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.¹²⁵

Reliance reported that it received SHIS license scrips to import capital goods duty-free during the AUL. Information provided by Reliance indicates that its SHIS license scrips were issued for the purchase of capital goods used for the production of exported goods, so we are attributing the SHIS benefits received by Reliance to its total exports.¹²⁶

The SHIS scrip represents a non-recurring benefit that is not automatically received, and the amount of said benefit is not known to the recipient at the time of receipt of the scrip.¹²⁷ Although the Department’s regulations stipulate that we will normally consider the benefit as having been received as of the date of exportation, *see* 19 CFR 351.519(b)(1), because the SHIS benefit amount is not automatic and is not known to the exporter until well after the exports are made, the SHIS licenses, which contain the date of validity and the duty exemption amount, as

¹¹⁸ See GSQR at 19-26 and Exhibit I.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² See *Steel Flanges from India Preliminary Determination*, and accompanying PDM at 18 (citing *Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) (*Steel Threaded Rod from India*), and accompanying IDM, at “Status Holder Incentive Scrip”).

¹²³ See GSQR at 19.

¹²⁴ See *Countervailing Duties*, 63 FR at 65393.

¹²⁵ See *Steel Threaded Rod from India*, and accompanying IDM at “Status Holder Incentive Scrip.”

¹²⁶ See Reliance’s SQR2 at 30.

¹²⁷ See *Steel Threaded Rod from India*, and accompanying IDM at “Status Holder Incentive Scrip.”

issued by the GOI, are the best method to determine and account for when the benefit is received.¹²⁸

We performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), for the total value of the exempted customs duties for the year in which Reliance received such SHIS licenses and determined to allocate the benefits across the AUL. However, Reliance’s licenses had values of less than 0.5 percent of Reliance’s total export sales and were therefore expensed in the year of receipt. On this basis, we determine that Reliance did not receive any benefits from this program during the POI. For Bombay Dyeing, as described in the above “Facts Available and Adverse Facts Available,” we preliminarily found that an adverse inference is warranted with respect to benefits Bombay Dyeing received under this program.

5. *Incremental Exports Incentive Scheme (IEIS)*

The GOI reported that while the IEIS program was terminated prior to the POI, Bombay Dyeing received pending entitlements under this program during the POI.¹²⁹ As reported by the GOI and Bombay Dyeing, the IEIS program entitles companies to a scrip equivalent to two percent of the incremental realized FOB value of exports in free foreign exchange during the current year compared to the previous year.¹³⁰ Further, Bombay Dyeing provided the application, license, and license value for its license received during the POI.¹³¹ The program is specific within sections 771(5A)(B) of the Act because, as the GOI and Bombay Dyeing admit, eligibility to receive the scrips is contingent upon export.¹³² Similar to the SHIS program, this program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act because the scrips provide exemptions for paying duties associated with the import of goods which represents revenue forgone by the GOI.¹³³

Normally, in cases where the benefits are granted based on a percentage value of a shipment, the Department calculates benefit as having been received as of the date of exportation;¹³⁴ however, because the IEIS benefit, *i.e.* the scrip, amount is not automatic and is not known to the exporter until well after the exports are made, the IEIS licenses, which contain the date of validity and the duty exemption amount as issued by the GOI, are the best method to determine and account for when the benefit is received.¹³⁵

¹²⁸ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11163, (March 2, 2015) (*PET Film Final Results 2012 Review*), and accompanying IDM at 21 and Comment 3.

¹²⁹ See GOI QR at 44-45.

¹³⁰ *Id.* and Bombay Dyeing QR at 19 and Exhibit 18.

¹³¹ *Id.* at Exhibit 19A; Bombay Dyeing SQR at Annexure P.

¹³² *Id.* at Exhibit 18; and GOI QR at 44-45.

¹³³ See *Steel Flanges from India Preliminary Determination*, and accompanying PDM at 16, affirmed in *Steel Flanges from India Final Determination*.

¹³⁴ See 19 CFR 351.519(b)(1).

¹³⁵ The Department determined, and was upheld by the CIT in *Essar Steel v. United States*, 395 F. Supp. 2d 1275, 1278 (CIT 2005) (*Essar Steel*) with respect to a similar, but discontinued, GOI program, the Duty Entitlement Passbook Scheme (DEPS), that benefits were conferred when earned, rather than when the credits were used; see generally *PET Film Preliminary Results 2012*, affirmed in *PET Film Final Results 2012*; *PET Film from India Final Results 2013* at Comment 2.

Thus, with regard to Bombay Dyeing, to determine the subsidy rate, we divided the amount of the benefits provided to Bombay Dyeing under section 771(5)(E) the Act during the POI and divided it by Bombay Dyeing's total export sales during the POI. On this basis, we preliminarily determine a countervailable subsidy rate of 0.39 percent *ad valorem* for Bombay Dyeing.¹³⁶

6. Income Tax Deductions

A) Section 35 Income Tax Deductions

We initiated on Income Tax Deduction for Research and Development Expenses under Section 35(2AB) of the Income Tax Act.¹³⁷ Reliance reported that it received benefits under this income tax deduction program.¹³⁸ In responding to our questionnaire on section 35(2AB), the GOI also reported that Reliance made deduction claims under Section 35(i)(iv), Section 35(1)(ii), and Section 35 (1)(i) of the Income Tax Act.¹³⁹ The GOI's responses stated that Section 35 of Income Tax Act allows deduction for expenditure on scientific research.¹⁴⁰ Section 35(2AB) of the Income Tax Act of 1961 provides a tax deduction to cover expenses related to scientific research for Indian companies engaged in the bio-technology sector or in a business not involved in sectors listed in the Eleventh Schedule of the Income Tax Act of 1961.¹⁴¹

We preliminarily determine that the tax deductions provide a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act. Further, we preliminarily determine that income tax deduction under Section 35(2AB) is *de jure* specific under 771(5A)(D)(i) because the law expressly limits the receipt of the benefit to certain enterprises or industries or a certain group of enterprises or industries.¹⁴² With respect to income tax deductions under Section 35(i)(iv), Section 35(1)(ii), and Section 35 (1)(i) of the Income Tax Act, we preliminarily determine that these programs are not *de jure* specific because according to the laws provided by the GOI, these programs are available to any entities that conduct scientific research in India.¹⁴³ With respect to *de facto* specificity, as stated above, in 'facts available and adverse facts available' section, in drawing an adverse inference, we find that these programs are *de facto* specific within the meaning of 771(5A)(D)(iii) of the Act.

With respect to benefit, there appears to be conflicting information on the record of this proceeding. Despite the fact that GOI and Reliance state that Reliance claimed deductions under these programs, our examination of Reliance's income tax return shows that its taxable income is derived from the greater of the "(1) Income Tax computed as per normal provisions of income tax act and 2) Income Tax computed as per provision of section 115JB of the income tax act" or

¹³⁶ See Bombay Dyeing Preliminary Calculation Memo.

¹³⁷ See *Countervailing Duty Investigation Initiation Checklist: Fine Denier Polyester Staple Fiber from India*, dated June 20, 2017 (Initiation Checklist) at 22.

¹³⁸ See Reliance SQR1 at 24.

¹³⁹ See GQR at 46 and Exhibit M.

¹⁴⁰ See GQR at 47; see also SGQR at 27 and Exhibit L.

¹⁴¹ *Id.*

¹⁴² See GQR at 46 and Exhibit M.

¹⁴³ *Id.*

the Minimum, Alternate Tax (MAT)).”¹⁴⁴ Based on our review of the income tax return, it appears that Reliance has utilized profit under MAT to derive taxable income.¹⁴⁵ According to the tax return, the profit under the MAT calculation does not appear to include the following deductions:

- (1) 35(2AB) of the Income Tax Act of 1961;
- (2) 35(1)(iv) of the Income Tax Act of 1961,
- (3) 35(1)(ii) of the Income Tax Act of 1961;
- (4) 35 (1)(i) of the Income Tax Act of 1961;
- (5) Income Tax Deduction for Companies Located in a SEZ .¹⁴⁶

Because of the fact that the GOI and Reliance claim that Reliance made deductions under these income tax programs in their responses, for this preliminary determination, we preliminarily determine that Reliance received benefits under these income tax programs within the meaning of section 771(5)(E) of the Act and 19 CFR 351.509. After the preliminary determination, we will seek clarifications and examine this issue at verification. To determine the subsidy rate, we divided the amount of the benefits provided to Reliance under section 771(5)(E) the Act during the POI and divided it by Reliance’s total sales. On this basis, we preliminarily determine a countervailable subsidy rate of 0.03 percent *ad valorem* for Reliance for Section 35(2AB) of the Income Tax Act of 1961.¹⁴⁷

The resulting benefit for (1) 35(1)(iv) of the Income Tax Act of 1961 is 0.00 percent *ad valorem*, (2) 35(1)(ii) of the Income Tax Act of 1961 is 0.0001 percent *ad valorem*; and (3) 35(1)(i) of the Income Tax Act of 1961 is .001 percent *ad valorem*. Because the resulting benefits for these three programs are less than 0.005 percent, consistent with Department practice, we preliminarily determine that they do not confer a measurable benefit and is not included in the calculation of the net countervailable rate.

B) Income Tax Deduction for Companies Located in a SEZ

We discovered during this investigation that Reliance’s income tax return includes an income tax deduction amount for companies located in a SEZ. As described above in “Facts Available and Adverse Facts Available,” the GOI failed to cooperate by not acting to the best of its ability in failing to comply with our request for information. Consequently, 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 this program constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A)(B) and 771(5A)(D) of the Act.

With respect to benefit, similar to the income tax programs under section 35 and as described above, there appears to be conflicting information on the record of this proceeding. However, Reliance’s income tax return shows that Reliance appears to claim deductions under this program. Thus, we preliminarily determine that Reliance received benefits this program within

¹⁴⁴ See Reliance QR1 at Exhibit 7.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ See Reliance Preliminary Calculation Memo.

the meaning of section 771(5)(E) of the Act and 19 CFR 351.509. After the preliminary determination, we will seek clarification and examine this issue at verification. To determine the subsidy rate, we divided the amount of the benefits provided to Reliance under section 771(5)(E) of the Act during the POI and divided it by Reliance's total sales. On this basis, we preliminarily determine a countervailable subsidy rate of 0.08 percent *ad valorem* for Reliance.¹⁴⁸

7. *State Government of Maharashtra (SGOM) Package Scheme of Incentives (PSI) Subsidy Programs*

Under the PSI, incentives are offered to encourage dispersal of industries to the less industrially developed areas of the state of Maharashtra to achieve higher and sustainable economic development. Pursuant to this objective, Annexure I of the PSI-2007 places all "*talukas*," i.e., district subdivisions, into six different development zones: A, B, C, D, D+, and "no industry." The zones cover the entire state of Maharashtra. Benefits under the PSI-2007 vary by zone.¹⁴⁹ The Department previously determined this program to be countervailable.¹⁵⁰

Bombay Dyeing reported that it participated in the PSI under the provisions for "mega projects."¹⁵¹ Bombay Dyeing received benefits under the PSI for its production facilities in Patalganga and Ranjangaon. According to the GOI:

For claiming eligibility under the PSI-2013, and New/Expansion/Diversification, Eligible Unit shall commence the commercial production and also acquire the fixed assets at site... within the investment period... For Mega Projects / Ultra Mega projects, the investment period will be five years from the date of application or such greater period as may be approved by the "High power Committee" or the "Cabinet Sub Committee" on a case by case basis.¹⁵²

Under the PSI, Bombay Dyeing availed itself of benefits during the POI in the form of tax refunds from the Industrial Promotion Subsidy (IPS) and the Electricity Duty Exemption.¹⁵³ The scheme, initially valid for seven years, was extended by two years on October 1, 2014 until September 30, 2016.¹⁵⁴

¹⁴⁸ See Reliance Preliminary Calculation Memo.

¹⁴⁹ See GQR at 38.

¹⁵⁰ See *PET Film Final Results 2012 Review* at Comment 5; see also *See Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) (*OCTG from India 2012*), and accompanying IDM at SGOM Subsidies Under the Package Scheme of Incentives of 2007.

¹⁵¹ See Bombay Dyeing QR at Annexure 20; see also Bombay Dyeing SQR at 20-24.

¹⁵² See GQR at 57 and Exhibits N and O; see also *OCTG from India 2012*, IDM at SGOM Subsidies Under the Package Scheme of Incentives of 2007.

¹⁵³ See Bombay Dyeing SQR at 20-24.

¹⁵⁴ *Id.* and Bombay Dyeing QR at 24.

a. *SGOM Industrial Promotion Subsidy (IPS)*

The IPS, at paragraph 5.1, is part of the PSI-2007 incentives offered for new or expanding projects.¹⁵⁵ The Department has previously determined this program to be countervailable.¹⁵⁶ The extent of the benefits is determined by the zone the project is located in or by whether the project qualifies as a “mega project.” The amount of the subsidy is also linked to the fixed capital investment.¹⁵⁷ As stated in *OCTG from India 2012*, the SGOM’s Modalities of Sanction and Disbursement of Industrial Promotion Subsidy to Mega Projects under the PSI 2001 and PSI 2007, at 1.1:

“Industrial Promotion Subsidy” in respect of Mega Projects under PSI 2001 & 2007 means an amount equivalent to the percentage of “Eligible Investments” which has been agreed to as a part of the customized package, or the amount of tax payable under Maharashtra Valued Added Tax Act (VAT) 2002 and Central Sales Tax (CST) Act, 1956 by the eligible Mega Projects in respect of sale of finished products eligible for incentives before adjustment of set off or other credit available for such period as may be sanctioned by the State Government, less the amount of benefits by way of Electricity Duty exemption, exemption from payment of Stamp Duty, refund of royalty and any other benefits (as may be specified by the Government) availed by the eligible Mega Projects under PSI 2001/2007, whichever is lower.¹⁵⁸

As noted above, Bombay Dyeing has been eligible for this benefit since 2007.¹⁵⁹ The annual amount of the benefit is determined by SGOM each year through an annual application. Because its project in Maharashtra meets the criterion of a “mega project,” Bombay Dyeing was allowed to propose the means through which it would receive its benefits. It chose exemption of state VAT and CST payments.¹⁶⁰ Thus, the amount of the benefit determined each year is based on the state VAT and CST Bombay Dyeing paid that year.

We find that this program provides a financial contribution in the form of revenue forgone by the SGOM pursuant to section 771(5)(D)(ii) of the Act.

Under the SGOM’s VAT system, taxpayers are required to remit VAT collected from customers (output VAT) to the SGOM.¹⁶¹ Before doing so, they reduce the amount of output VAT collected by the amount of VAT they have paid to their own suppliers (input VAT). Alternatively, instead of crediting output VAT with input VAT in this manner, they may receive a rebate of input VAT paid to their suppliers. Either way, the net amount of VAT the taxpayer pays to the SGOM equals the difference between output VAT and input VAT. Under the IPS

¹⁵⁵ See *OCTG from India 2012*, IDM at SGOM Subsidies Under the Package Scheme of Incentives of 2007.

¹⁵⁶ See *PET Film Final Results 2012 Review* at Comment 5; see also *OCTG from India 2012*, IDM at SGOM Subsidies Under the Package Scheme of Incentives of 2007.

¹⁵⁷ See Bombay Dyeing QR at 24-25; see also Bombay Dyeing SQR at 21.

¹⁵⁸ See *OCTG from India 2012*, IDM at SGOM Subsidies Under the Package Scheme of Incentives of 2007.

¹⁵⁹ See Bombay Dyeing QR at 24; see also Bombay Dyeing SQR at 20-24.

¹⁶⁰ *Id.*

¹⁶¹ See *OCTG from India 2012*, IDM at SGOM Subsidies Under the Package Scheme of Incentives of 2007 – c. Industrial Promotion Subsidy.

program as applied to Bombay Dyeing, however, that amount is refunded.¹⁶² A refund for this amount would not be available absent the IPS program.¹⁶³ Likewise, under the SGOM's CST system, the taxpayer pays to the SGOM the difference between the CST it collects from its customers and the CST it pays to its suppliers. The excessive refund of VAT provides a benefit under 19 CFR 351.510(a) (the refunded output VAT is only collected on domestic sales) and the remission of CST otherwise due provides a benefit under 19 CFR 351.509(a).

Pursuant to section 771(5A)(D)(iv) of the Act, the program is specific because it is limited to certain geographical regions within the state of Maharashtra. There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable.

In order to calculate the benefit, we divided the total amount of the refunds Bombay Dyeing received during the POI under the IPS by its total sales during the POI. On this basis, we determined a countervailable subsidy rate of 1.26 percent *ad valorem* for Bombay Dyeing.

b. SGOM Electricity Duty Exemption

The GOI and Bombay Dyeing reported that SGOM provides a PSI, which encourages investments in new units and/or the expansion of existing production capacity located in specified underdeveloped areas in the state of Maharashtra in accordance with the terms and conditions specified by SGOM.¹⁶⁴ The SGOM has exempted certain industries and enterprises from electricity duties in certain less developed industrial regions in the state of Maharashtra. In *Cold-Rolled Steel from India*, the Department found that this program constitutes a financial contribution, in the form of revenue forgone, and is regionally specific, under sections 71(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively.¹⁶⁵ We preliminarily determine that the Electricity Duty Exemption is countervailable because this program confers a financial contribution by exempting Bombay Dyeing from paying the full amount of electricity duties that would otherwise be due. The program is specific because it is limited to certain geographical regions within the state of Maharashtra. Bombay Dyeing reported that their manufacturing facilities were exempted from the payment of electricity duties during most of the POI until September 2016, thus conferring a benefit pursuant to section 771(5)(E) of the Act in the amount of the exempted electricity duties.¹⁶⁶

In order to calculate the benefit, we divided the total amount of exemptions Bombay Dyeing received during the POI under the Electricity Duty Exemption by its total sales during the POI.

¹⁶² See Bombay Dyeing SQR at 21.

¹⁶³ *Id.* at Annexure 20.

¹⁶⁴ *Id.*; see also Bombay Dyeing SQR at 21.

¹⁶⁵ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 80 FR 79562 (December 22, 2015) (*CRS Final from India Preliminary Determination*) affirmed in *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination*, 81 FR 49932 (July 29, 2016) (*CRS Final from Final Determination*).

¹⁶⁶ See Bombay Dyeing SQR at 24.

On this basis, we determined a countervailable subsidy rate of 0.16 percent *ad valorem* for Bombay Dyeing.¹⁶⁷

B. Programs Preliminarily Determined Not to Be Used Or to Confer a Measurable Benefit During the POI

Government of India Programs

- 1) Duty Free Import Authorization Scheme
- 2) Merchandise Export Incentive Scheme/Focus Product Scheme
- 3) Duty-Free Importation of Capital Goods and Raw Materials, Components,

As described in the “facts available and adverse facts available” section, we preliminarily determined that Reliance received a benefit under this program. Bombay Dyeing did not use this program.

- 4) Consumables, Intermediates, Spare Parts, and Packing Material

As described in the “facts available and adverse facts available” section, we preliminarily determined that Reliance received a benefit under this program. Bombay Dyeing did not use this program.

- 5) Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material

As described in the “facts available and adverse facts available” section, we preliminarily determined that Reliance received a benefit under this program. Bombay Dyeing did not use this program.

- 6) Exemption from Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ

As described in the “facts available and adverse facts available” section, we preliminarily determine that Reliance received a benefit under this program. Bombay Dyeing did not use this program.

- 7) Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit

As described in the “facts available and adverse facts available” section, we preliminarily determined that Reliance received a benefit under this program. Bombay Dyeing did not use this program.

¹⁶⁷ See Bombay Dyeing Preliminary Calculation Memo.

8) SEZ Income Tax Exemption Scheme (10A)

9) As described in the “facts available and adverse facts available” section, we preliminarily determined that Reliance received a benefit under this program. Bombay Dyeing did not use this program.

10) Discounted Land Fees in an SEZ

As described in the “facts available and adverse facts available” section, we preliminarily determined that Reliance received a benefit under this program. Bombay Dyeing did not use this program.

11) Duty-Free Imports of Goods, Including Capital Goods and Raw Materials

12) Reimbursement of Central Sales Tax Paid on Goods Manufactured in India

13) Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured through a Domestic Tariff Area

14) Duty Drawback on Furnace Oil Procured from Domestic Companies

15) Market Access Initiative

16) Market Development Program

17) GOI Loan Guarantees

18) Section 35(1)(i) of the Income Tax Act of 1961

19) Section 35(1)(ii) of the Income Tax Act of 1961

20) Section 35(1)(iv) of the Income Tax Act of 1961

21) AAP

As described above, while Bombay Dyeing received measurable benefits under this program, Reliance did not receive measurable benefits under this program.

22) SHIS

As described above, we preliminarily determine the Reliance did not receive any benefits from this program during the POI. For Bombay Dyeing, as described in the above “Facts Available and Adverse Facts Available”, we preliminarily found adverse inference is warranted with respect to benefits Bombay Dyeing received under this program

State Government Subsidy Programs

23) State and Union Territory Sales Tax Incentive

State Government of Maharashtra Subsidies Under the Packages Scheme of Incentives

24) Interest Subsidy

25) Waiver of Stamp Duty

26) Incentives to Strengthening Micro-, Small-, and Medium-Sized and Large Scale Industries

27) Incentives for Mega/Ultra Mega Projects

State Government of Gujarat Subsidies

- 28) Plastics Industry Scheme: Interest Subsidy
- 29) Plastics Industry Scheme: VAT Incentive
- 30) Industry Policy 2009: Financial Benefits for Mega Projects
- 31) Industry Policy 2009: Promotion for Textiles and Apparel
- 32) Industry Policy 2009: Promotion of Non-Conventional Energy
- 33) Industry Policy 2009: Reimbursement of Stamp Duty

State Government of Uttar Pradesh Subsidies

- 34) Investment Promotion Scheme
- 35) Special Assistance for Mega Projects

X. CALCULATION OF THE ALL-OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not individually investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States, excluding any zero, *de minimis*, or facts available rates. In this investigation, the preliminary subsidy rates calculated for the two mandatory respondents are above *de minimis* and neither was determined based entirely on facts otherwise available pursuant to section 776 of the Act. However, calculating the all-others rate by using the respondents' actual weighted-average rates risks disclosure of proprietary information. Therefore, for this preliminary determination, we calculated the weighted-average all-others rate for non-selected companies using publicly-ranged information reported by Bombay Dyeing and Reliance. As a consequence, the all-others rate is 9.37 percent *ad valorem*.¹⁶⁸

XI. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance. In accordance with section 705(b)(2) of the Act, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after the Department makes its final affirmative determination.

¹⁶⁸ Memorandum, "Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Preliminary Determination Margin Calculation for All-Others," dated concurrently with this memorandum.

XII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹⁶⁹ Case briefs or other written comments for all non-scope issues may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹⁷⁰ Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of this preliminary determination in the *Federal Register*, and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for the case briefs. For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for the other concurrent countervailing duty and antidumping duty investigations.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁷¹ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.¹⁷² Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using the Department's electronic records system, ACCESS.¹⁷³ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹⁷⁴ on the due dates established above.

XIII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

¹⁶⁹ See 19 CFR 351.224(b).

¹⁷⁰ See 19 CFR 351.309(c)-(d); see also 19 CFR 351.303 (for general filing requirements).

¹⁷¹ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁷² See 19 CFR 351.310(c).

¹⁷³ See 19 CFR 351.303(b)(2)(i).

¹⁷⁴ See 19 CFR 351.303(b)(1).

XIV. CONCLUSION

We recommend that you approve the preliminary findings described above.



Agree



Disagree

10/30/2017

X



Signed by: GARY TAVERMAN