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Investigation
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January 16, 2018

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 Stainless Steel Flanges from
India

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of stainless steel flanges from India, as provided in section 703 of the Tariff Act of 1930, as amended (Act).

II. BACKGROUND

A. Initiation and Case History

On April 19, 2017, Commerce received a petition from the Coalition of American Flange Producers and its individual members, Maass Flange Corporation and Core Pipe Inc. (collectively, the petitioners).¹ Supplements to the petition and our consultations with the Government of India (GOI) are described in the *Initiation Notice* and accompanying Initiation

¹ See Letter to the Secretary from the Petitioners, re: Stainless Steel Flanges from the People's Republic of China and India: Petitions for the Imposition of Antidumping and Countervailing Duties, dated August 16, 2017 (the petition).

Checklist.² On September 5, 2017, Commerce initiated a CVD investigation on stainless steel flanges from India.³

We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on United States Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁴ On August 31, 2017, Commerce released the CBP entry data under administrative protective order.⁵

On September 14, 2017, the petitioners submitted respondent selection comments.⁶ On October 3, 2017, we selected Echjay Forgings Private Limited (Echjay) and Bebitz Flanges Works (Bebitz) as the mandatory respondents for this investigation.⁷ We issued our countervailing duty questionnaire to the GOI on October 4, 2017, seeking information regarding the alleged subsidies.⁸ Commerce instructed the GOI to forward the questionnaire to the selected mandatory respondents.⁹

On September 29, 2017, the petitioners timely submitted new subsidy allegations to Commerce.¹⁰ Commerce will decide whether to initiate on these new subsidy allegations after this preliminary determination. Should we initiate, we will issue a new subsidy allegation questionnaire to the relevant parties. We also intend to issue a post-preliminary analysis for any program on which we initiate.

Between October 23, 2017 and November 15, 2017, we received timely questionnaire responses from Echjay, Bebitz, and the GOI.¹¹ Between November 30, 2017 and January 8, 2018, we received timely responses from Echjay, Bebitz, and the GOI to our supplemental

² See *Stainless Steel Flanges from India and the People's Republic of China: Initiation of Countervailing Duty Investigations*, 82 FR 42654 (September 11, 2017) (*Initiation Notice*); see also Memorandum, "Countervailing Duty Investigation Initiation Checklist: Stainless Steel Flanges from India," dated September 5, 2017 (Initiation Checklist).

³ See *Initiation Notice*.

⁴ *Id.* at 42657.

⁵ See Memorandum regarding: Stainless Steel Flanges from India: U.S. Customs Data for Respondent Selection, dated August 31, 2017.

⁶ Letter to the Secretary from the Petitioners, re: Petitioners' Comments on Respondent Selection, dated September 14, 2017.

⁷ See Memorandum, "Countervailing Duty Investigation of Stainless Steel Flanges from India: Respondent Selection," dated October 3, 2017.

⁸ See Commerce Letter re: Countervailing Duty Questionnaire, dated October 4, 2017 (Countervailing Duty Questionnaire).

⁹ *Id.*

¹⁰ See Letter to the Secretary from the Petitions, re: New Subsidy Allegations, dated September 29, 2017.

¹¹ See Letter to the Secretary from Echjay, re: Initial Response to Section III of Initial Questionnaire – Identification of Affiliated Companies, dated October 23, 2017 (Echjay Affiliation Response); Letter to the Secretary from Bebitz, re: Stainless Steel Flanges from India, dated October 23, 2017 (Bebitz Affiliation Response); Letter to the Secretary from Echjay, re: Response to Section III of Original Countervailing Duty Questionnaire, dated November 15, 2017 (Echjay Initial Questionnaire Response); Letter to the Secretary from Bebitz, re: Stainless Steel Flanges from India, dated November 16, 2017 (Bebitz Initial Questionnaire Response); Letter to the Secretary from the GOI, re: Response to Section II on behalf of GOI, dated November 10, 2017 (GOI Initial Questionnaire Response).

questionnaires.¹² In addition, Bebitz filed an untimely supplemental questionnaire response, which Commerce rejected.¹³

On December 27, 2017, the petitioners alleged that critical circumstances exist with respect to imports of stainless steel flanges from India.¹⁴

B. Postponement of Preliminary Determination

On October 27, 2017, based on a request from the petitioners, Commerce postponed the deadline for the preliminary determination until January 16, 2017, in accordance with sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).¹⁵

C. Period of Investigation

The period of investigation (POI) is January 1, 2016 through December 31, 2016.

III. ALIGNMENT

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioners' request,¹⁶ we are aligning the final CVD determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of stainless steel flanges from India. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than May 28, 2017, unless postponed.

¹² See Letter to the Secretary from Echjay, re: First Supplemental Affiliation Response to Section III – Identification of Affiliated Companies, dated November 30, 2017 (Echjay Supplemental Affiliation Response); Letter to the Secretary from Bebitz, re: Stainless Steel Flanges from India, dated December 14, 2017 (Bebitz Supplemental Questionnaire Response); Letter to the Secretary from the GOI, re: Response to Supplementary Questionnaire for Section II Questionnaire Response, dated December 20, 2017 (GOI Supplemental Questionnaire Response); Letter to the Secretary from Echjay, re: 2nd Supplemental Response to Section III of CVD Questionnaire, dated January 5, 2018 (Echjay Second Supplemental Questionnaire Response); Letter to the Secretary from Echjay, re: Response to question 1 & 7 of 2nd Supplemental Response to Section III of CVD Questionnaire, dated January 8, 2018 (Echjay Second Supplemental Questionnaire Response Part II).

¹³ See Commerce Letter to Bebitz re: Rejection of Supplemental Response, dated December 6, 2017; *see also* Commerce Letter re: Response to Reconsideration Request, dated December 12, 2017.

¹⁴ See Letter to the Secretary from the Petitioners, re: Critical Circumstances Allegations, dated December 27, 2017 (Critical Circumstances Allegation).

¹⁵ See *Stainless Steel Flanges from India and the People's Republic of China: Postponement of Preliminary Determination of Countervailing Duty Investigations*, 82 FR 49786 (October 27, 2017).

¹⁶ See Letter to the Secretary from the Petitioners, re: Petitioners' Request to Align the Countervailing Duty Final Determination with the Antidumping Duty Final Determination, dated December 18, 2017.

IV. SCOPE COMMENTS

In accordance with the Preamble to Commerce's regulations, and as noted in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation.¹⁷ We did not receive scope comments from any interested party.

V. SCOPE OF THE INVESTIGATION

The product covered by this investigation is stainless steel flanges from India. For a full description of the scope of this investigation, *see* Appendix I to the accompanying preliminary determination *Federal Register* notice.

VI. INJURY TEST

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On October 6, 2017, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of stainless steel flanges from India that are allegedly subsidized by the GOI.¹⁸

VII. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

On December 27, 2017, the petitioners filed a timely critical circumstances allegation, pursuant to section 703(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of stainless steel flanges from India.¹⁹ On January 8, 2018, Commerce requested from Bebitz and Echjay monthly shipment data of subject merchandise to the United States for the period January 2017 through January 2018.²⁰ On January 11, 2018, Bebitz provided information in response to the request.²¹ However, Echjay did not provide the requested information. In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted a critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary critical circumstances determination not later than the date of the preliminary determination.²²

Section 703(e)(1) of the Act states that if the petitioner alleges critical circumstances, Commerce will determine, based on information available to it at the time, if there is a reason to believe or

¹⁷ *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)(Preamble); *see also Initiation Notice*, 82 FR at 42655.

¹⁸ *See Stainless Steel Flanges from China and India; Determinations*, 82 FR 46831 (October 6, 2017) (ITC Preliminary Determination).

¹⁹ *See Critical Circumstances Allegation*.

²⁰ *See Commerce Letter to Bebitz re: Request for Monthly Quantity and Value Shipment Data*, dated January 3, 2017; *See Commerce Letter to Echjay re: Request for Monthly Quantity and Value Shipment Data*, dated January 3, 2017.

²¹ *See Letter to the Secretary from Bebitz, re: Stainless Steel Flanges from India*, dated January 11, 2018.

²² *See, e.g., Policy Bulletin 98/4 Regarding Timing of Issuance of Critical Circumstances Determinations*, 63 FR 55364 (October 15, 1998).

suspect the alleged countervailable subsidies are inconsistent with the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (the SCM Agreement) and whether there have been massive imports of the subject merchandise over a relatively short period.

In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 703(e)(1)(B) of the Act, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.²³

Echjay

As discussed in the “Analysis of Programs” section below, the Department preliminarily determined that Echjay received countervailable benefits under three programs that are contingent upon export performance. Therefore, we preliminarily determine that there is a reasonable basis to believe or suspect that there are programs in this investigation that are inconsistent with the SCM Agreement. Use of an export subsidy program is sufficient to meet the inconsistent-with-the-SCM-Agreement criterion under section 703(e)(1)(A) of the Act.²⁴ As discussed above, Echjay did not timely provide the requested monthly shipment data. Without this information, Commerce is unable to determine whether there were “massive imports” over a “relatively short period.” Thus, we are making an adverse inference that Echjay had “massive imports” over a “relatively short period.” As such, Commerce preliminarily determines that critical circumstances exist with regard to imports of the merchandise under consideration shipped by Echjay, pursuant to sections 703(e) and 776(a) and (b) of the Act and 19 CFR 351.206.

Bebitz

As discussed in further detail below in the “Use of Facts Otherwise Available and Adverse Inferences” section, the Department is applying total AFA to Bebitz. Although Bebitz provided certain quantity and value information, as discussed below, Commerce does not have complete and accurate depiction of the company’s corporate structure. Further, Bebitz did not identify which companies it is providing responses for in its response. Thus, Commerce is unable to determine that the monthly shipment information provided accurately reflects the amounts exported by Bebitz and its cross-owned affiliates. As part of the AFA determination described below, we are making an adverse inference that Bebitz benefitted from an export subsidy program, and that it had “massive imports” over a “relatively short period.” Thus, the

²³ See 19 CFR 351.206(h)-(i).

²⁴ See *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43189-90 (August 17, 2001); and *Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, 67 FR 36070 (May 22, 2002) (the unchanged final determination).

Department preliminarily determines that critical circumstances exist with regard to imports of the merchandise under consideration shipped by Bebitz, pursuant to sections 703(e) and 776(a) and (b) of the Act and 19 CFR 351.206.

All-Other Exporters or Producers

Consistent with prior determinations, we did not impute the adverse inference of massive imports that we applied to the mandatory respondents to the non-individually examined companies receiving the all-others rate.²⁵ Rather, Commerce examined data for total imports of the subject merchandise during the comparison period relative to a base period to determine whether or not imports were massive with respect to these companies. Commerce typically determines whether or not to include the month in which a party had reason to believe that a proceeding was likely in the base or comparison period based on whether the event that gave rise to the belief (*i.e.*, the filing of the Petition) occurred in the first half of the month (included in the comparison period) or the second half of the month (included in the base period).²⁶ Moreover, it is Commerce's practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months.²⁷ Therefore, we chose to compare the base period of June 2017 through August 2017 to the comparison period of September 2017 through November 2017 to determine whether or not imports of subject merchandise were massive. These base and comparison periods satisfy the regulatory provisions that the comparison period be at least three months long and that the base period have a comparable duration. We relied on U.S. import statistics, as reported by Global Trade Atlas, to determine whether or not there were massive imports of subject merchandise in the comparison period.²⁸ This comparison indicates that there was a 60.33 percent (*i.e.*, more than 15 percent) increase in imports of subject merchandise during a "relatively short period" of time, in accordance with 19 CFR 351.206(h) and (i). Therefore, we preliminarily find there to be massive imports for all non-individually examined companies, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i). Accordingly, we preliminarily find that there were massive imports of merchandise from all

²⁵ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum (noting that, where mandatory respondents receive AFA, we do not impute "massive imports" to companies receiving the all-others rate), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

²⁶ See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances*, 77 FR 31309, 31312.

²⁷ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004).

²⁸ See Memorandum, "Stainless Steel Flanges from India: Calculation Memorandum for the Preliminary Critical Circumstances Determination in the Countervailing Duty Investigation," dated concurrently with this preliminary determination. Because we lack the necessary reliable shipment data from the mandatory respondents, as discussed above, Commerce is not able to adjust the U.S. import statistics to exclude the data reflecting shipments made by the mandatory respondents. Therefore, we relied on the total quantity of U.S. imports to conduct the "massive imports" analysis for all other India exporters and producers.

other Indian exporters and producers and, thus, that critical circumstances exist for all other Indian exporters and producers.

VIII. SUBSIDIES VALUATION

A. Allocation Period

Commerce 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. Commerce finds the AUL in this proceeding to be 14 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.²⁹ Commerce notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. Although Bebitz argues for a company-specific AUL of 11.1 years,³⁰ the application of adverse facts available (AFA), as discussed below, renders this issue moot. No other party in this proceeding has disputed the allocation period.

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

B. Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This section of Commerce'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 Commerce's regulations further clarifies Commerce's cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

²⁹ See U.S. Internal Revenue Service Publication 946 (2015), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

³⁰ See Bebitz Initial Questionnaire Response at 33-35.

{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.³¹

Thus, Commerce’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 Commerce’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.³²

Echjay

Echjay responded to Commerce’s questionnaire on behalf of itself.³³ After an analysis of the company’s affiliation response and supplemental questionnaire responses, however, Commerce directed Echjay to provide a full questionnaire response on behalf of Echjay’s affiliate, subject merchandise producer Echjay Forging Industries Private Limited (EFIPL).³⁴ Based on the information in Echjay’s questionnaire responses, we preliminarily determine, in accordance with 19 CFR 351.525(b)(6)(vi), that cross-ownership exists between Echjay and one additional Indian company, EFIPL, because of the substantial ownership positions held by family members.³⁵ We note that EFIPL reported receiving no subsidies.³⁶

Bebitz

Bebitz responded to Commerce’s questionnaire on behalf of itself.³⁷ Based on an analysis of the company’s affiliation response and supplemental questionnaire responses, we determine that Viraj Profiles Limited (Viraj), a subject merchandise producer, is cross-owned with Bebitz within the meaning of 19 CFR 351.525(b)(6)(vi).³⁸ The information on the record indicates that Viraj is a subject merchandise producer,³⁹ that exercises significant influence over Bebitz.⁴⁰

³¹ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

³² See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).

³³ See, e.g., Echjay Affiliation Response.

³⁴ See Commerce Letter to Echjay, re: Second Supplemental Questionnaire, dated December 19, 2017 (Echjay Second Supplemental Questionnaire).

³⁵ For additional discussion of this issue, which includes business proprietary information, see Memorandum, “Preliminary Determination Calculations for Echjay,” dated concurrently with this memorandum at 2 (Echjay Preliminary Calculation Memorandum).

³⁶ See generally Echjay Second Supplemental Questionnaire Response Part II.

³⁷ See, e.g., Bebitz Affiliation Response.

³⁸ *Id.* at Exhibit 1.

³⁹ *Id.*

⁴⁰ See Bebitz Initial Questionnaire Response at Exhibit 3.

Commerce directed Bebitz to provide a full questionnaire response on behalf of Viraj.⁴¹ As discussed in further detail below in the “Use of Facts Otherwise Available and Adverse Inferences” section, the Department is applying total AFA to Bebitz.

C. Denominators

In accordance with 19 CFR 351.525(b)(1) – (5), Commerce 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 the respondent’s export sales, including deemed exports,⁴² or total sales as appropriate as described below, and which are also explained in further detail in the preliminary calculations memoranda prepared for this preliminary determination.⁴³

IX. 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{,}” Commerce will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans during the period, Commerce “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 Commerce will not consider a loan provided by a government-owned special purpose bank for purposes of calculating benchmark rates. Also, in the absence of reported long-term loan interest rates, we use the above-discussed interest rates as discount rates for purposes of allocating non-recurring benefits over time pursuant to 19 CFR 351.524(d)(3)(i)(B).

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

Based on Echjay’s responses, we preliminarily determine that the company did not take out comparable rupee-denominated long-term loans from commercial banks in the years for which we must calculate benchmark and discount rates.⁴⁴ Therefore, pursuant to 19 CFR 351.505(a)(3)(ii), we are preliminarily using national average interest rates. Specifically, we used national average interest rates from the International Monetary Fund’s International Financial Statistics (IFS) as benchmark rates for rupee-denominated short-term and long-term loans. We preliminarily find that the IFS rates provide a reasonable representation of both short-term and long-term interest rates for rupee-denominated loans.

⁴¹ See Commerce Letter to Bebitz, re: Supplemental Questionnaire for Affiliation Questionnaire Response, dated November 20, 2017 (Bebitz Affiliation Supplemental Questionnaire).

⁴² See 19 CFR 351.535(b)(2).

⁴³ See Memorandum, “Preliminary Determination Calculations for Echjay,” dated concurrently with this memorandum at 2 (Echjay Preliminary Calculation Memorandum).

⁴⁴ See Echjay Questionnaire Response at Exhibit 21(a).

B. Discount Rates

For allocating the benefit from non-recurring grants, we have used the discount rates described above for the year in which the government agreed to provide the subsidy, consistent with 19 CFR 351.524(d)(3)(i)(A).⁴⁵ The interest-rate benchmarks and discount rates used in our preliminary calculations are provided in the preliminary calculation memoranda.⁴⁶

X. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that Commerce 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 Commerce, 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.⁴⁷

Section 776(b) of the Act further provides that Commerce 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, Commerce’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 Commerce with complete and accurate information in a timely manner.”⁴⁸ Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁹

Section 776(c) of the Act provides that, when Commerce 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

⁴⁵ See Echjay Preliminary Calculation Memorandum at 2.

⁴⁶ *Id.*

⁴⁷ 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).

⁴⁸ 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).

⁴⁹ 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.

disposal.⁵⁰ Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁵¹ It is Commerce’s practice to consider information to be corroborated if it has probative value.⁵² In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.⁵³ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.⁵⁴

Finally, under section 776(d) of the Act, when applying an adverse inference, Commerce 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, Commerce may 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. Specifically, Commerce applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program, even if the rate is *de minimis*, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, Commerce uses the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country. If no such rate is available, Commerce will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, Commerce applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.⁵⁵ Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁵⁶

For the reasons explained below, Commerce preliminarily determines that application of facts otherwise available, with an adverse inference, to the financial contribution and specificity 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 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.

Bebitz

As discussed in the “Case History” section above, Bebitz was selected as a mandatory respondent in this investigation, but it has failed to participate in this investigation to the best of

⁵⁰ See also 19 CFR 351.308(d).

⁵¹ See, e.g., SAA at 870.

⁵² *Id.*

⁵³ See, e.g., SAA at 869.

⁵⁴ See SAA at 869-870.

⁵⁵ See *Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at “Selection of the Adverse Facts Available Rate.”

⁵⁶ See section 776(d)(3) of the Act.

its ability. Therefore, under section 776(a) of the Act, we preliminarily find that by not fully responding to Commerce's questionnaire, Bebitz withheld information that had been requested and failed to provide information within the deadlines established. Furthermore, because Bebitz did not fully respond to the questionnaire, it significantly impeded this proceeding. Thus, in reaching a preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we based the CVD rates for Bebitz on facts otherwise available.

As discussed below, we preliminarily determine that the application of AFA is warranted due to Bebitz's failure to timely submit its questionnaire response for a cross-owned subject merchandise producer, Viraj, a company that Bebitz should have provided a response for, in accordance with 19 CFR 351.525(b)(6)(ii). In its affiliation response, Bebitz provided information regarding numerous affiliates, including Viraj, a producer of subject merchandise.⁵⁷ However, Bebitz failed to provide a response on behalf of any cross-owned companies. On November 20, 2017, Commerce issued a supplemental questionnaire seeking certain information with regard to Bebitz's affiliated companies.⁵⁸ In that supplemental questionnaire, Commerce directed Bebitz to provide a complete questionnaire response on behalf of Viraj.⁵⁹ In addition, Commerce requested certain information about other potentially cross-owned companies, including the nature of the affiliates' businesses; the owners, directors, board members, and managers for each entity; and a detailed description of Bebitz's relationship with the affiliated entities.⁶⁰

As detailed in Commerce's December 6 and December 12, 2017, letters, Bebitz failed to provide a timely response to the supplemental questionnaire.⁶¹ On November 22, 2017, Commerce granted Bebitz's first extension request for this supplemental questionnaire response.⁶² On November 27, 2017, Commerce granted Bebitz's second request for an extension of time to submit its supplemental questionnaire response, and set a deadline of December 4, 2017.⁶³ Shortly before the deadline of 5:00 p.m. on December 4, 2017, Commerce received a third request for an extension from Bebitz.⁶⁴ Due to the proximity of the extension request to the actual deadline, Commerce was unable to respond to the extension request by the deadline. If Commerce is unable to notify a party requesting an extension of the disposition of a request by 5:00 p.m. on the due date, then the submission is due by 8:30 a.m. on the next working day.⁶⁵ In this case, because the extension request was filed shortly before the deadline, Commerce did not have sufficient time to consider the request and decide on its disposition. Therefore, the deadline then became 8:30 a.m. December 5, 2017.⁶⁶ Bebitz began the submission of its supplemental questionnaire response at 10:24 a.m. December 5, 2017 and continued filing its submission

⁵⁷ See Bebitz Affiliation Response.

⁵⁸ See Bebitz Affiliation Supplemental Questionnaire.

⁵⁹ *Id.* at 3.

⁶⁰ *Id.*

⁶¹ See Commerce Letter to Bebitz, re: Rejection of Supplemental Response, dated December 6, 2017 (Rejection Letter); Commerce Letter to Bebitz, re: Response to Reconsideration Request, dated December 12, 2017.

⁶² See Department Letter re: First Supplemental Questionnaire of Affiliated Companies Response Deadline Extension, dated November 22, 2017.

⁶³ See Second Extension of Time.

⁶⁴ See Letter from Bebitz re: Stainless Steel Flanges from India, dated December 4, 2017.

⁶⁵ See *Extension of Time Limits*, 78 FR 57790 (September 20, 2013) at 57792.

⁶⁶ *Id.*

through 2:10 p.m. December 5, 2017. Thus, pursuant to 19 CFR 351.302(d), Commerce rejected the untimely response.

Due to the above-discussed deficiencies, and given Bebitz's inadequate explanation for its failure to provide the requested information within the deadlines set by Commerce pursuant to sections 776(a)(1) and 776(a)(2)(A), we preliminarily determine that necessary information is not on the record and that Bebitz has withheld information that was requested of it. Commerce must therefore rely on "facts available" in making its preliminary determination with respect to certain countervailable subsidy programs that Bebitz and Viraj could have used.

Moreover, we preliminarily determine that Bebitz failed to cooperate by not acting to the best of its ability to comply with our requests 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 Bebitz and Viraj benefited from each of the programs on which Commerce initiated an investigation unless the record evidence made it clear that Bebitz and Viraj could not have benefitted from that program because, for example, the company's responses to our requests for information sufficiently demonstrated non-use, or because we have found the program to be not countervailable.⁶⁷ Moreover, by failing to respond to Commerce's questions with regard to other potential cross-owned companies, Commerce is unable to determine which other companies, if any, should have been reported, and is thus unable to determine which additional subsidy programs were utilized. Without the information described above, the application of total AFA for all investigated subsidy programs is warranted, unless the record evidence made it clear that a benefit could not have been derived from that program.

As described above, Commerce intends to apply a rate determined entirely on AFA to Bebitz. When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a countervailing 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.⁶⁸ When selecting rates, if we have a cooperating mandatory respondent in the investigation, 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 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*

⁶⁷ See, e.g., *Certain Cold-Rolled Carbon Steel Flat Products from Korea: Final Affirmative CVD Determination*, 67 FR 62102 (October 3, 2002) and accompanying IDM at "Methodology and Background Information;" and *CFS from the PRC*, 72 FR at 60645, 46-47.

⁶⁸ 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 13-14; 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" prior to the TPEA).

rates).⁶⁹ 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 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 program that could conceivably be used by the non-cooperating companies.⁷⁰

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁷¹ The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.⁷²

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.⁷³ Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁷⁴

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. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.⁷⁵

⁶⁹ For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent 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.”

⁷⁰ See *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC*), and IDM at “Application of Adverse Inferences: Non-Cooperative Companies” section; see also *Thermal Paper from the PRC*, and Thermal Paper IDM at “Selection of the Adverse Facts Available Rate” section, and *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009), and accompanying Issues and Decision Memorandum (*Hot-Rolled Steel from India 2009*) at “SGOC Industrial Policy 2004-2009.”

⁷¹ See SAA at 870.

⁷² *Id.*

⁷³ *Id.*, at 869-870.

⁷⁴ See section 776(d) of the Act.

⁷⁵ See, e.g., *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

In determining the AFA rate we will apply to Bebitz, we are guided by Commerce's methodology detailed above. We begin by selecting, as AFA, the highest calculated program-specific above-zero rates determined for the cooperating respondents in the instant investigation.

To calculate the program rate for the following income tax reduction programs on which Commerce initiated an investigation, we applied an adverse inference that each of the non-responsive companies paid no income tax during the POI. The standard income tax rate for corporations in India is 30 percent.⁷⁶ Therefore, the highest possible benefit for the income tax rate programs is 30 percent. We are applying the 30 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 30 percent benefit).

For programs other than those involving income tax exemptions and reductions, Commerce applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program within the investigation, or if the rate is zero, Commerce uses the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another India CVD proceeding. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, the Department applies the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies.⁷⁷

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for each of the non-responsive companies to be 240.61 percent *ad valorem*. The Appendix contains a chart summarizing our calculation of this rate.⁷⁸

Government of India

As discussed, in part, above, on December 11, 2017, Commerce issued the GOI a supplemental questionnaire in response to certain deficiencies that we identified in its initial questionnaire response, submitted on November 10, 2017.⁷⁹ In this supplemental questionnaire, for a second time, we requested information that had been previously requested and which the GOI had failed to provide. This information included key program procedures and guidelines necessary to conduct our analysis regarding financial contribution and specificity. Specifically, in both its initial response and supplemental response, the GOI provided insufficient information for the following programs: GOI Loan Guarantees, Status Certificate Program, Provision of Stainless Steel, Billet, and Bar by the Steel Authority of India (SAIL) for Less than Adequate Remuneration (LTAR), Infrastructure Assistance for Mega Projects Under the Maharashtra Industrial Policy of 2013 and Other State Government of Maharashtra Industrial Promotion

⁷⁶ See, e.g., *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 Issues and Decision Memorandum (*PET Resin from India*).

⁷⁷ *Id.* at "Selection of the Adverse Facts Available Rate."

⁷⁸ For a program-specific explanation of this determination, see Memorandum, "Preliminary Analysis Memorandum for Bebitz," dated concurrently with this memorandum.

⁷⁹ See Commerce Letter to the GOI, re: Supplemental Questionnaire for Section II Questionnaire Response, dated December 11, 2017.

Policy to Support Mega Projects, Incremental Exports Incentive Scheme, Steel Development Funds, and ten State Government of Andhra Pradesh (SGAP) programs.⁸⁰

For the GOI Loan Guarantees program, although we requested that the GOI provide a response to the Standard Questions Appendix, the Loan Benchmark and Loan Guarantee Appendix, the GOI did not provide a response for either appendix.⁸¹ Thus, the record lacks any information regarding specificity and financial contribution for this program.

For the Status Certificate program, the GOI failed to provide necessary information requested by Commerce. Specifically, we requested that the GOI identify all forms of assistance provided under the program, as well as which of the respondents and cross-owned companies utilized the program.⁸² Commerce also directed the GOI to provide a completed application and approval package, information regarding the number of companies and industries receiving assistance under the program, a response to the Tax Programs Appendix, and detailed information on currency repatriation and conversion requirements.⁸³ The GOI failed to provide this information, and thus the record lacks the information necessary to determine specificity and financial contribution.

Regarding the Provision of Steel Inputs by SAIL for LTAR, the GOI failed to provide a variety of necessary information. In its initial response, the GOI provided only a brief statement that it was not involved in the decisions of SAIL, and did not submit any of the requested appendices.⁸⁴ When the Department requested the information a second time, the GOI again failed to fully respond to the Department's request for information.⁸⁵ Specifically, the GOI failed to respond to the Department's questionnaire by making only a general statement that SAIL is not a governmental authority and failed to complete the Input Supplier Appendix as requested by the Department's questionnaire.⁸⁶ Without this information, the Department lacks the evidence necessary to analyze SAIL's operations and evaluate the GOI's argument that the Provision of Steel Inputs by SAIL for LTAR is not a program that confers a benefit from the GOI because SAIL neither possesses governmental authority nor discharges any government function.⁸⁷ Additionally, the GOI failed to provide complete information related to domestic production and consumption of steel inputs, the industries that purchase such inputs, or trade publications specifying the price of such inputs.⁸⁸

For the Steel Development Fund Loan program, the GOI provided only a short description of the program and did not provide any response to the Standard Questions Appendix or the Loan Benchmark and Loan Guarantee Appendix.⁸⁹ Although the GOI indicated that the program is

⁸⁰ See generally GOI Supplemental Questionnaire Response.

⁸¹ See GOI Initial Questionnaire Response at 113; GOI Supplemental Questionnaire Response at 80.

⁸² *Id.* at 80-86.

⁸³ *Id.*

⁸⁴ See GOI Questionnaire Response at 137.

⁸⁵ See GOI Supplemental Questionnaire Response at 86.

⁸⁶ *Id.* at 30.

⁸⁷ *Id.*

⁸⁸ *Id.* at 30-34.

⁸⁹ See GOI Initial Response at 134; GOI Supplemental Questionnaire Response at 16.

limited to a specific industry, thus satisfying the specificity requirement, there is not sufficient information regarding financial contribution.⁹⁰

With regard to the Incremental Exports Incentive Scheme, the GOI did not provide any response to the Standard Questions Appendix, Allocation Appendix, or the Tax Appendix. Thus, the record does not contain necessary information with regard to specificity and financial contribution.

Finally, for Infrastructure Assistance for Mega Projects Under the Maharashtra Industrial Policy of 2013 and Other State Government of Maharashtra Industrial Promotion Policy to Support Mega Projects, as well as ten State Government of Andhra Pradesh (SGAP) programs, there GOI failed to provide any substantive response. Given that such necessary information has been withheld by the GOI, the Department's ability to investigate those programs is significantly impeded.

Therefore, we preliminarily determine that necessary information is not available on the record 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 the programs outlined above constitute 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. Similarly, we are using an adverse inference to determine that SAIL is a governmental authority providing a financial contribution. We note that while certain of these programs have been countervailed in prior cases, in this instance we are preliminarily relying on adverse inferences as the GOI has not cooperated to the best of its ability. As respondents reported their respective usage of the aforementioned programs, we are relying on the respondents' reported usage data to calculate the benefit for the aforementioned programs, within the meaning of section 771(5)(E) of the Act.

XI. ANALYSIS OF PROGRAMS

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

⁹⁰ *Id.*

A. Programs Preliminarily Determined to Be Countervailable

1. Duty Drawback (DDB)

Echjay reported receiving 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 in respect of inputs and (ii) Service Tax in respect of input services.⁹³ The duty drawback is generally fixed as a percentage of the free on board (FOB) price of the exported product.⁹⁴

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.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 production of the exported product, the entire amount of any exemption, deferral, remission or 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 the GOI. The committee makes its recommendations after discussions with all stakeholders 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 Duty Drawback.⁹⁹

As submitted by the GOI, Rule 3(2) of the Drawback Rules 1995, states that in determining the

⁹¹ See Echjay Initial Questionnaire Response at 14-19.

⁹² See GOI Initial Questionnaire Response at 10.

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.*

⁹⁸ See 19 CFR 351.519(a)(4)(i)-(ii).

⁹⁹ See GOI Initial Questionnaire Response at 17.

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 Commerce to determine whether the GOI has a system in place.¹⁰² Thus, consistent with the *Shrimp from India Final Determination*, based on the GOI’s questionnaire response that lacks the documentation to support that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products, we preliminarily conclude 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 confers a countervailable subsidy. Under the DDB, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because rebated duties represent revenue foregone by the GOI. Moreover, as explained above, the GOI has not supported its claim that the DDB system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported product. Therefore, under 19 CFR 351.519(a)(4), the entire amount of the import duty rebate earned during the POI constitutes a benefit. Finally, this program is only available to exporters; therefore, it is specific under sections 771(5A) (B) of the Act.

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

We calculated the subsidy rate using the value of all DDB duty rebates that Echjay earned on U.S. sales. Further, we were able to tie the benefits to the U.S. sales of subject merchandise. We divided the total amount of the benefit received by Echjay by the company’s U.S. exports of subject merchandise during the POI. On this basis, we preliminarily determine a countervailable subsidy rate of 1.58 percent *ad valorem* for Echjay.¹⁰⁴

2. *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

¹⁰⁰ *Id.* at 19.

¹⁰¹ See Countervailing Duty Questionnaire.

¹⁰² See GOI Initial Questionnaire Response at 9-28; GOI Supplemental Questionnaire Response at 16-25.

¹⁰³ See *Shrimp from India Final Determination*, and accompanying IDM at 12-14.

¹⁰⁴ See Echjay Preliminary Calculation Memorandum at 2-3.

products.¹⁰⁵ 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.¹⁰⁶ If the company fails to meet the export obligation, the company is subject to withdrawal of the duty exemption.¹⁰⁷

Commerce 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.¹⁰⁸ 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.

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 Commerce'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).¹⁰⁹ Since the unpaid duties are a liability contingent on subsequent events, these interest-free contingent-liability loans constitute the first benefit under the EPCG program. The second benefit arises when the GOI waives the duty on imports of capital equipment covered by those EPCG licenses for which the export requirement has already been met. For those licenses for which the GOI has acknowledged that the company has completed its export obligation, we treat the import duty savings as grants received in the year in 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...."¹¹⁰ 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.¹¹¹

¹⁰⁵ See GOI Initial Questionnaire Response at 29.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 46.

¹⁰⁸ 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.

¹⁰⁹ *Id.*

¹¹⁰ See *CVD Preamble*, 63 FR at 65393.

¹¹¹ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 6634 (February 10, 2010), and accompanying IDM at Comment 9; see also *Certain Frozen Warmwater Shrimp from India: Preliminary Countervailing Duty Determination*, 78 FR 33344 (June 4, 2013) (*Shrimp from India Preliminary Determination*), and accompanying PDM at "Duty Incentives under the Export Promotion Capital Goods ("EPCG") Program," unchanged in *Shrimp from India Final Determination*.

Echjay reported that it imported capital goods at reduced import duty rates under the EPCG program.¹¹² The company received various EPCGS licenses, which it reported were for the production of subject merchandise and non-subject merchandise. Echjay provided license documentation on the record of this investigation, including copies of the original licenses issued by the GOI.¹¹³ Echjay reported that it received certain licenses used for the production of both subject and non-subject merchandise, and certain other licenses exclusively for the production of non-subject merchandise. Commerce requested original documentation supporting Echjay's contention that certain licenses were used exclusively in the production of non-subject merchandise. In response, Echjay did not provide any documentation, and instead included only a brief description of the product at issue.¹¹⁴ Thus, Echjay has not demonstrated that, at the point of bestowal by the GOI, the license was tied to the production of non-subject merchandise. Based on this information, we cannot reliably determine that the reported EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we find that Echjay's reported EPCG licenses benefit the company's export sales.

To calculate the benefit received from the GOI's formal waiver of import duties of Echjay's capital equipment, where the export obligations were fulfilled, we used the total amounts of duties waived. We treated these amounts as grants pursuant to 19 CFR 351.504. Further, consistent with the approach followed in the *PET Film Final Determination*, we preliminarily determined the year of receipt of the benefit to be the year in which the GOI formally waived the respondents' outstanding import duties.¹¹⁵ Next, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the total value of duties waived, for each year in which the GOI granted these companies an import duty waiver. For any years in which the value of the waived import duties was less than 0.5 percent of the respondent's total export sales, we expensed the amount of the waived duties to the year of receipt. For years in which the value of the waivers exceeded 0.5 percent of the respondent's total export sales in that year, we allocated the waived duty amount using the allocation period of 15 years for nonrecurring subsidies, in accordance with 19 CFR 351.524(d)(2). See the "Allocation Period" section, above. For purposes of allocating the value of the waived duties over time, we used the appropriate discount rate for the year in which the GOI officially waived the import duties. See "Benchmarks and Discount Rates" section, above.

As noted above, 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 the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment), occurs at a point in time that is more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the long-term interest rates as discussed in the "Benchmarks and Discount Rates" section, above.¹¹⁶ We multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year

¹¹² See Echjay Initial Questionnaire Response at 21-33; Echjay Supplemental Questionnaire Response at 7-8.

¹¹³ See Echjay Initial Questionnaire Response at Exhibit 18(c).

¹¹⁴ See Echjay Supplemental Questionnaire Response at 8 and Revised Exhibit 18(e).

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

¹¹⁶ See the Preliminary Calculation Memoranda for further details.

in which the capital good was imported and then summed these amounts to determine the total benefit from these contingent liability loans.

The benefit received under the EPCG program is equal to 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. We then divided the total benefit received by Echjay under the EPCG program by the company's total export sales during the POI. On this basis, we preliminarily determine a countervailable subsidy rate of 0.08 percent *ad valorem* for Echjay.¹¹⁷

3. *Merchandise Export from India Scheme (MEIS)*

Echjay reported receiving benefits from the MEIS during the POI.¹¹⁸ The GOI explained that the MEIS was introduced in the Foreign Trade Policy (FTP) 2015-2020.¹¹⁹ Its purpose is to “offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India’s export competitiveness.”¹²⁰ Under this program, the GOI issues a scrip worth either two, three, or five percent FOB value of the of “exports in free foreign exchange, or on the FOB value of exports, as given on the shipping bills in free foreign exchange, whichever is less.”¹²¹ To receive the scrip, a recipient must file an electronic application and supporting shipping documentation for each port of export with Director General of Foreign Trade (DGFT).¹²² After a recipient receives and registers the scrip, it may use it for either the payment of future customs duties for importing goods or transfer it to another company.¹²³

In the *Steel Flanges from India Preliminary Determination*, Commerce found the MEIS program to be countervailable based on its similarities to India’s Status Holder Incentive Scheme (SHIS) which Commerce has also found countervailable.¹²⁴ For that program, similar to the MEIS program, the GOI provides scrips to exporters worth a certain percentage of the FOB value of exports. The scrip could then be used as a credit for future import duties or could be transferred to other “Status Holders” to be used as a credit for future import duties.¹²⁵

The program is specific within sections 771(5A)(B) of the Act because, as the GOI and Echjay

¹¹⁷ See Echjay Preliminary Calculation Memorandum at 3-4.

¹¹⁸ See Echjay Initial Questionnaire Response at 34-39.

¹¹⁹ See GOI Initial Questionnaire Response at 48.

¹²⁰ *Id.*

¹²¹ *Id.* at Exhibit 2.

¹²² *Id.* at 53.

¹²³ See Echjay Questionnaire Response at 34.

¹²⁴ See *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016), and accompanying Preliminary Decision Memorandum (PDM) at 16 (*Steel Flanges from India Preliminary Determination*) (unchanged in *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying Issues and Decision Memorandum (*Carbon Steel Flanges from India*); see also “Status Holder Incentive Scheme (SHIS)” section, below.

¹²⁵ *Id.*

admit, eligibility to receive the scrips is contingent upon export.¹²⁶ As Commerce determined in the *Steel Flanges from India Preliminary Determination*, similar to the SHIS program, this program provides a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act because the scrips provide exemptions for paying duties associated with the import of goods which represents revenue foregone by the GOI.¹²⁷

Echjay reported that it submitted applications and received approval under the MEIS program upon the export of qualified goods.¹²⁸ The company indicated that it sold all of its scrips, or licenses, in the market and has not used them for the import of goods.¹²⁹

In the *Steel Flanges from India Preliminary Determination*, Commerce found the MEIS program is continuous and thus, recurring, in nature.¹³⁰ This program provides a recurring benefit because, unlike the scrips in the SHIS scheme, the scrips provided under this program are not tied to capital assets.¹³¹ Furthermore, recipients can expect to receive additional subsidies under this same program on an ongoing basis from year to year under 19 CFR 351.524(c)(2)(i).¹³² We calculated the benefit to Echjay to be the total value of scrips granted during the POI. Normally, in cases where the benefits are granted based on a percentage value of a shipment, Commerce calculates benefits as having been received as of the date of exportation.¹³³ However, because the MEIS benefit, *i.e.* the scrip amount, is not automatic and is not known to the exporter until well after the exports are made, the MEIS licenses, which contain the date of validity and the duty exemption amount as issued by the GOI, are the best method to determine and account for when the benefit is received.¹³⁴ On this basis, we preliminarily determine a countervailable subsidy of 2.30 percent *ad valorem* for Echjay.¹³⁵

4. Interest Equalization Scheme (IES) for Export Financing

The GOI introduced the IES program effective April 1, 2015, which centers on rupee export financing, or pre-shipment and post-shipment export financing in rupee denomination.¹³⁶ Under this program, the RBI provides a refund of three percent of interest charged by the bank on “pre-

¹²⁶ See, e.g., GOI Initial Questionnaire Response at Exhibit 2.

¹²⁷ See *Steel Flanges from India Preliminary Determination*, and accompanying PDM at 16.

¹²⁸ See Echjay Initial Questionnaire Response at 35.

¹²⁹ *Id.* at 36.

¹³⁰ See *Steel Flanges from India Preliminary Determination*, and accompanying PDM at 16.

¹³¹ *Id.*

¹³² *Id.*

¹³³ See 19 CFR 351.519(b)(1).

¹³⁴ See *Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results And Partial Rescission of Countervailing Duty Administrative Review; 2012*, 79 FR 50616, (August 25, 2014) (*PET Film from India Preliminary Results 2012*), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11160 (March 2, 2015) (*PET Film from India Final Results 2012*); *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 7753 (February 16, 2016) (*PET Film from India Final Results 2013*), and accompanying IDM at Comment 2.

¹³⁵ See Echjay Preliminary Calculation Memorandum at 3.

¹³⁶ See GOI Initial Questionnaire Response at 60.

shipment and post-shipment export finance in Rupees.”¹³⁷ According to Echjay, this scheme is available to certain products that are exported under specific tariff codes, as identified by the RBI for exports made by Micros, Small & Medium (MSMEs) across all “ITC (HS) codes.”¹³⁸ Echjay states that the three percent interest equalization, as charged by the bank is contingent upon exports.¹³⁹

In order to avail itself of benefits under this program, Echjay explains that it must first submit a formal application to its local commercial bank identifying the “ITC HS code” of the product to be exported or that has been exported and for which it is requesting a refund under the IES. Echjay further explained that once the bank is satisfied with the information submitted in the company’s application, the bank issues a credit to the company’s bank account equivalent to the three percent refund under this scheme.¹⁴⁰

In its response, the GOI supported the above information as reported by Echjay.¹⁴¹ Specifically, the GOI indicated that the RBI provides interest equalization for export financing in the form of a refund on export finance.¹⁴² Thus, the program is specific within sections 771(5A)(B) of the Act because the benefit is contingent upon export.¹⁴³ In addition, the program provides a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act in the form of refunded interest.¹⁴⁴ Accordingly, we preliminarily determine that the GOI conferred a financial contribution and we find that the IES program is specific within the meaning of 771(5)(D) and 771(5A)(B) of the Act, respectively.

Based on the information provided on the record of this investigation, we find that a benefit was conferred under section 771(5)(E)(ii) of the Act in as much as the interest rates, which are determined by the RBI, provided under these programs are lower than commercially available interest rates. Because the IES program is contingent upon exports, and is a recurring benefit, we divided the total benefit received for each year in which this benefit was reported by the value of Echjay’s total exports during the POI. On this basis, we determine the countervailable subsidy provided to Echjay under the IES program to be 0.71 percent *ad valorem*.¹⁴⁵

5. *Status Holders Incentive Scrip Scheme (SHIS)*

Echjay reported use of the SHIS in its questionnaire response and provided certain supporting documentation.¹⁴⁶ Commerce has previously determined that import duty reductions or exemptions provided under the SHIS program are countervailable export subsidies because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act; (2)

¹³⁷ *Id.* at 61.

¹³⁸ See Echjay Initial Questionnaire Response at 40.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 41.

¹⁴¹ See GOI Initial Questionnaire Response at 60-70 and Exhibit 13.

¹⁴² *Id.*

¹⁴³ *Id.* at Exhibit 13.

¹⁴⁴ *Id.*

¹⁴⁵ See Echjay Preliminary Calculation Memorandum at 5.

¹⁴⁶ See Echjay Initial Questionnaire Response at 42-53.

provides a benefit in the amount of exempted duties on imported capital equipment (*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 limited to exporters.¹⁴⁷ 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.

As explained in the *Steel Flanges from India Preliminary Determination* which relied on *Steel Threaded Rod from India*, 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.¹⁴⁸ Echjay reported that import duty exemptions under this program are provided solely for the purchase of capital equipment.¹⁴⁹ 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... .”¹⁵⁰ 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.¹⁵¹

Echjay reported that it received SHIS license scrips to import capital goods duty-free during the AUL. Information provided by Echjay 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 Echjay to its total exports.¹⁵²

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.¹⁵³ Although Commerce’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 issued by the GOI, are the best method to determine and account for when the benefit is received.¹⁵⁴

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 Echjay received the SHIS scrip and

¹⁴⁷ *See, e.g., Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014), and accompanying IDM (*Steel Threaded Rod from India*).

¹⁴⁸ *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”).

¹⁴⁹ *See* Echjay Initial Questionnaire Response at 43.

¹⁵⁰ *See Countervailing Duties*, 63 FR at 65393.

¹⁵¹ *See Steel Threaded Rod from India*, and accompanying IDM at “Status Holder Incentive Scrip.”

¹⁵² *See generally* Echjay Questionnaire Response at 42-53.

¹⁵³ *See Steel Threaded Rod from India*, and accompanying IDM at “Status Holder Incentive Scrip.”

¹⁵⁴ Commerce 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.

allocated the benefits across the AUL.¹⁵⁵ We then calculated the benefits according to the calculation provided for in 19 CFR 351.524(d)(1). On this basis, we determine a countervailable subsidy of 0.28 percent *ad valorem* for Echjay.¹⁵⁶

6. *State Government of Maharashtra (SGOM) Subsidy Programs*

The GOI reported that the SGOM provides a Package Scheme of Incentives (PSI), which encourages investments in new units and/or the expansion of existing production capacity located in specified underdeveloped areas in accordance with the terms and conditions specified by SGOM.¹⁵⁷ Commerce has previously determined that these constitute countervailable export subsidies because the program provides a financial contribution in the form of revenue foregone and is regionally specific, under sections 771(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively.¹⁵⁸ 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.

a. *SGOM Sales Tax Program*

In past CVD proceedings involving India, Commerce found that certain states in India (including the state of Maharashtra) provide a package of incentives to encourage the development of certain regions of those states.¹⁵⁹ One incentive is the exemption or deferral of state sales taxes. Specifically, under these state programs, companies are exempted from paying state sales taxes on purchases, and from collecting state sales taxes on sales.¹⁶⁰ Echjay reported that its manufacturing unit was located in the state of Maharashtra and that it utilized this program, which provides a tax deferral of payable sales tax that is collected but not paid.¹⁶¹ This unpaid sales tax is deferred for a number of years after which the duty is required to be paid in five installments.

Because the tax deferrals that Echjay received have to be repaid to the GOI, we are treating the unpaid tax liability as an interest-free loan,¹⁶² and thus find that the aforementioned company benefited from this program, pursuant to section 771(5)(E) of the Act. Accordingly, we find the benefit to be the interest that Echjay would have paid during the POI had they borrowed the full amount of the tax deferrals.¹⁶³ As noted above, the time period to repay the tax deferral is a certain number of years. As such, pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event of repayment of the deferred

¹⁵⁵ See Echjay Preliminary Calculation Memorandum at 5.

¹⁵⁶ *Id.*

¹⁵⁷ See GOI Supplemental Questionnaire Response at Exhibit SQ-24.

¹⁵⁸ See, e.g., *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Final Affirmative Determination*, 81 FR 35323 (June 2, 2016) and accompanying Issues and Decision Memorandum.

¹⁵⁹ *Id.*

¹⁶⁰ See, e.g., *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (2003 Review of PET Film from India), and accompanying Issues and Decision Memorandum (2003 Review of PET Film from India Decision Memorandum) at “State Sales Tax Incentives” section.

¹⁶¹ See Echjay Initial Questionnaire Response at 69-74.

¹⁶² See 19 CFR 351.505(d)(1).

¹⁶³ *Id.*

taxes occurs at a point in time that is more than one year. As the benchmark interest rate, we used the long-term interest rates as discussed in the “Benchmarks and Discount Rates” section, above.¹⁶⁴ On this basis, we preliminarily determine a countervailable subsidy of 0.05 percent *ad valorem* for Echjay.

b. *Special Capital Incentive under Package Scheme of Incentives 1988 Scheme*

Echjay stated it benefited from a onetime special capital incentive associated with the expansion of its Khopoli unit.¹⁶⁵ Because this incentive is tied to capital assets, we applied the “0.5 percent test,” for non-recurring subsidies, as described in 19 CFR 351.524(b)(2). To determine whether to allocate these grants over the AUL, we divided the total amount of the incentive received during each respective year of the AUL by the total sales values of each respective year of Echjay. On this basis, because the amount approved did not pass “0.5 percent test,” in each year before the POI, we find that the benefit Echjay received from this program was expensed prior to the POI.

B. Programs Preliminarily Determined to Be Not Used by, or Not Confer a Measurable Benefit to Echjay

1. Advance License Program
2. Advance Authorization Program
3. Duty Free Import Authorization Scheme
4. Export Oriented Units - Duty-Free Import of Goods, Including Capital Goods and Raw Materials
5. Export Oriented Units - Reimbursements of Central Sales Tax Paid on Goods Manufactured in India
6. Export Oriented Units - Duty Drawback on Fuel Procured from Domestic Oil Companies
7. Export Oriented Units - Duty Drawback on Fuel Procured from Domestic Oil Companies
8. Pre-Shipment and Post-Shipment Export Financing
9. Market Development Assistance Scheme
10. Market Access Initiative
11. Focus Product Scheme
12. GOI Loan Guarantees
13. Status Certificate Program
14. Income Deduction Program (80-IB Tax Program)
15. Special Economic Zones - SEZ Income Tax Exemption
16. Special Economic Zones - Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
17. Special Economic Zones - Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit
18. Special Economic Zones - Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing

¹⁶⁴ See the Preliminary Calculation Memoranda for further details.

¹⁶⁵ See Echjay Initial Questionnaire Response at 74-75.

Material

19. Special Economic Zones - Service Tax Exemption
20. Special Economic Zones - Exemption from Payment of Local Government Taxes and Duties, Such as Sales Tax and Stamp Duties
21. Special Economic Zones - Steel Development Funds Loans
22. Provision of Stainless Steel, Billet, and Bar by SAIL for Less Than Adequate Remuneration (LTAR)
23. Incremental Exports Incentive Scheme
24. State Government of Andhra Pradesh (SGAP) Subsidy Programs - Grant Under the Industrial Investment Promotion Policy: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas
25. SGAP Subsidy Programs - Grant Under the Industrial Investment Promotion Policy: Reimbursement of Power at the Rate of Rs. 0.75 per Unit
26. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy for Expenses Incurred for Quality Certification
27. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy on Expenses Incurred in Patent Registration
28. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 25- or 35-Percent Subsidy in Cleaner Production Measures
29. SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages
30. SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: Reimbursement on VAT, CST, and State Goods and Services Tax
31. SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: Exemption from SGAP Non-Agricultural Land Assessment
32. SGAP Subsidy Programs - Provision of Goods and Services for LTAR under the Industrial Investment Promotion Policy: Provision of Infrastructure for Industries Located More than 10 Kilometers from Existing Industrial Estates or Development Areas
33. SGAP Subsidy Programs - Provision of Goods and Services for LTAR under the Industrial Investment Promotion Policy: Guaranteed Stable Water Prices and Reservation of Municipal Water
34. SGOM Subsidy Programs - Infrastructure Assistance for Mega Projects under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects
35. SGOM Subsidy Programs - Subsidies for Mega Projects under the Package Scheme of Incentives
36. SGOM Subsidy Programs – Special Capital Incentive Under Package Scheme of Incentives 1988 Scheme

XII. CALCULATION OF THE ALL-OTHERS RATE

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

XIII. 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 Commerce makes its final affirmative determination.

XIV. DISCLOSURE AND PUBLIC COMMENT

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹⁶⁶ 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.¹⁶⁷ 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, maybe 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.¹⁶⁸ This summary should be limited to five pages total, including footnotes.

¹⁶⁶ See 19 CFR 351.224(b).

¹⁶⁷ See 19 CFR 351.309(c)-(d); *see also* 19 CFR 351.303 (for general filing requirements).

¹⁶⁸ See 19 CFR 351.309(c)(2) and (d)(2).

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*.¹⁶⁹ 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, Commerce 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 Commerce's electronic records system, ACCESS.¹⁷⁰ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹⁷¹ on the due dates established above.

XV. VERIFICATION

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

XVI. CONCLUSION

We recommend that you approve the preliminary findings described above.

☒

☐

Agree

Disagree

1/16/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
Performing the non-exclusive functions and duties of
Assistant Secretary for Enforcement and Compliance

¹⁶⁹ See 19 CFR 351.310(c).

¹⁷⁰ See 19 CFR 351.303(b)(2)(i).

¹⁷¹ See 19 CFR 351.303(b)(1).

APPENDIX

AFA Rate Calculation

	Program Name	AFA Rate	Source
1	Advance License Program ¹⁷²	11.95%	Highest Rate for Same/Similar Program Based on Benefit Type
2	Advance Authorization Program ¹⁷³		Highest Rate for Same/Similar Program Based on Benefit Type
3	Duty Free Import Authorization Scheme ¹⁷⁴	14.61%	Highest Rate for Same/Similar Program Based on Benefit Type
4	Duty Drawback Program ¹⁷⁵	1.58%	Calculated - Echjay
5	Export Oriented Units - Duty-Free Import of Goods, Including Capital Goods and Raw Materials ¹⁷⁶	27.75%	Highest Rate for Same/Similar Program Based on Benefit Type
6	Export Oriented Units - Reimbursements of Central Sales Tax Paid on Goods Manufactured in India ¹⁷⁷		Highest Rate for Same/Similar Program Based on Benefit Type
7	Export Oriented Units - Duty Drawback on Fuel Procured from Domestic Oil Companies ¹⁷⁸		Highest Rate for Same/Similar Program Based on Benefit Type
8	Export Oriented Units - Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area ¹⁷⁹		Highest Rate for Same/Similar Program Based on Benefit Type
9	Export Promotion of Capital Goods Scheme ¹⁸⁰	0.08%	Calculated - Echjay
10	Merchandise Exports from India Scheme ¹⁸¹	2.30%	Calculated - Echjay

¹⁷² 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) and accompanying Issues and Decision Memorandum at 19.

¹⁷³ *Id.*

¹⁷⁴ See *PET Resin from India* at 27.

¹⁷⁵ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination*, 81 FR 49932 (July 29, 2016) and accompanying Issues and Decision Memorandum (*Cold-Rolled Steel from India*) at 10.

¹⁷⁶ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Countervailing Duty Determination*, 82 FR 58172 (December 11, 2017) and accompanying Issues and Decision Memorandum at 10 (*Cold-Drawn Mechanical Tubing from India*).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ See *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) and accompanying Issues and Decision Memorandum (*Steel Pipe from India*) at 16.

¹⁸¹ See *Cold-Drawn Mechanical Tubing from India* at 12.

11	Interest Equalization Scheme ¹⁸²	0.71%	Calculated - Echjay
12	Status Holder Incentive Scheme ¹⁸³	0.28%	Calculated - Echjay
13	Pre-Shipment and Post-Shipment Export Financing ¹⁸⁴	2.90%	Highest Rate for Same/Similar Program Based on Benefit Type
14	Market Development Assistance Scheme ¹⁸⁵	16.63%	Highest Rate for Same/Similar Program Based on Benefit Type
15	Market Access Initiative ¹⁸⁶	16.63%	Highest Rate for Same/Similar Program Based on Benefit Type
16	Focus Product Scheme ¹⁸⁷	2.00%	Highest Rate for Same/Similar Program Based on Benefit Type
17	GOI Loan Guarantees ¹⁸⁸	2.90%	Highest Rate for Same/Similar Program Based on Benefit Type
18	Status Certificate Program ¹⁸⁹	2.90%	Highest Rate for Same/Similar Program Based on Benefit Type
19	Income Deduction Program (80-IB Tax Program) ¹⁹⁰	30.00%	Highest Rate for Same/Similar Program Based on Benefit Type
20	Special Economic Zones - SEZ Income Tax Exemption ¹⁹¹		Highest Rate for Same/Similar Program Based on Benefit Type
21	Special Economic Zones - Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material ¹⁹²	0.53%	Highest Rate for Same/Similar Program Based on Benefit Type
22	Special Economic Zones - Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit ¹⁹³	0.21%	Highest Rate for Same/Similar Program Based on Benefit Type

¹⁸² See *Carbon Steel Flanges from India* at 9.

¹⁸³ See *Fine Denier Polyester Staple Fiber from India: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 51387 (November 6, 2017) and accompanying Issues and Decision Memorandum (*Staple Fiber from India*) at 14.

¹⁸⁴ See *Carbon Steel Flanges* at 9.

¹⁸⁵ See *PET Resin from India* at 26.

¹⁸⁶ See *Certain Lined Paper Products from India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 79 FR 60447 (October 7, 2014) and accompanying Issues and Decision Memorandum at 16.

¹⁸⁷ See *PET Resin from India* at 26.

¹⁸⁸ *Id.* at 25.

¹⁸⁹ See *Steel Pipe from India* at 21.

¹⁹⁰ See *PET Resin from India* at 26.

¹⁹¹ *Id.*

¹⁹² *Id.* at 25.

¹⁹³ *Id.* at 26.

23	Special Economic Zones - Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material ¹⁹⁴	1.23%	Highest Rate for Same/Similar Program Based on Benefit Type
24	Special Economic Zones - Service Tax Exemption ¹⁹⁵	0.07%	Highest Rate for Same/Similar Program Based on Benefit Type
25	Special Economic Zones - Exemption from Payment of Local Government Taxes and Duties, Such as Sales Tax and Stamp Duties ¹⁹⁶	3.09%	Highest Rate for Same/Similar Program Based on Benefit Type
26	Special Economic Zones - Steel Development Funds Loans ¹⁹⁷	0.99%	Highest Rate for Same/Similar Program Based on Benefit Type
27	Provision of Stainless Steel, Billet, and Bar by SAIL for Less Than Adequate Remuneration (LTAR) ¹⁹⁸	16.14%	Highest Rate for Same/Similar Program Based on Benefit Type
28	Incremental Exports Incentive Scheme ¹⁹⁹	0.39%	Highest Rate for Same/Similar Program Based on Benefit Type
29	State Government of Andhra Pradesh (SGAP) Subsidy Programs - Grant Under the Industrial Investment Promotion Policy: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas ²⁰⁰	6.06%	Highest Rate for Same/Similar Program Based on Benefit Type
30	SGAP Subsidy Programs - Grant Under the Industrial Investment Promotion Policy: Reimbursement of Power at the Rate of Rs. 0.75 per Unit ²⁰¹	6.06%	Highest Rate for Same/Similar Program Based on Benefit Type
31	SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy for Expenses Incurred for Quality Certification ²⁰²	6.06%	Highest Rate for Same/Similar Program Based on Benefit Type

¹⁹⁴ *Id.* at 25.

¹⁹⁵ *See Hot-Rolled Steel from India 2009* at 19.

¹⁹⁶ *See PET Resin from India* at 25.

¹⁹⁷ *See Steel Pipe from India.*

¹⁹⁸ *Id.* at 25.

¹⁹⁹ *See Staple Fiber from India* at 25.

²⁰⁰ *See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) and accompanying Issues and Decision Memorandum at D.

²⁰¹ *Id.*

²⁰² *Id.*

32	SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy on Expenses Incurred in Patent Registration ²⁰³	6.06%	Highest Rate for Same/Similar Program Based on Benefit Type
33	SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 25- or 35-Percent Subsidy in Cleaner Production Measures ²⁰⁴	6.06%	Highest Rate for Same/Similar Program Based on Benefit Type
34	SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages ²⁰⁵	3.09%	Highest Rate for Same/Similar Program Based on Benefit Type
35	SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: Reimbursement on VAT, CST, and State Goods and Services Tax ²⁰⁶	3.09%	Highest Rate for Same/Similar Program Based on Benefit Type
36	SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: Exemption from SGAP Non-Agricultural Land Assessment ²⁰⁷	3.09%	Highest Rate for Same/Similar Program Based on Benefit Type
37	SGAP Subsidy Programs - Provision of Goods and Services for LTAR under the Industrial Investment Promotion Policy: Provision of Infrastructure for Industries Located More than 10 Kilometers from Existing Industrial Estates or Development Areas ²⁰⁸	18.08%	Highest Rate for Same/Similar Program Based on Benefit Type
38	SGAP Subsidy Programs - Provision of Goods and Services for LTAR under the Industrial Investment Promotion Policy: Guaranteed Stable Water Prices and Reservation of Municipal Water ²⁰⁹	18.08%	Highest Rate for Same/Similar Program Based on Benefit Type

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

39	State Government of Maharashtra (SGOM) Subsidy Programs - SGOM Sales Tax Program ²¹⁰	0.05%	Calculated - Echjay
40	SGOM Subsidy Programs - Infrastructure Assistance for Mega Projects under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects ²¹¹	6.06%	Highest Rate for Same/Similar Program Based on Benefit Type
41	SGOM Subsidy Programs - Subsidies for Mega Projects under the Package Scheme of Incentives ²¹²	0.95%	Highest Rate for Same/Similar Program Based on Benefit Type
42	SGOM Subsidy Programs – Special Capital Incentive Under Package Scheme of Incentives 1988 Scheme	0.95%	Highest Rate for Same/Similar Program Based on Benefit Type
	Total	239.61%	

²¹⁰ See *PET Resin from India* at 26.

²¹¹ *Id.*

²¹² See *Cold-Rolled Steel from India* at 10.