



C-533-876
Investigation
Public Document
E&C/Office IV: TEAM

DATE: 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: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Fine Denier Polyester
Staple Fiber from India

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of fine denier polyester staple fiber from India, within the meaning of section 705 of the Act.¹ As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for Bombay Dyeing & Manufacturing Limited and Reliance Industries Limited, the two mandatory respondents in this case.² We recommend that you approve the positions described in the “Analysis of Comments” section of this memorandum.

II. LIST OF ISSUES

Comment 1: Whether to Countervail the AAP and DDB
Comment 2: Whether to Apply AFA to Reliance and Bombay Dyeing’s Discovered Benefits under the TUFS
Comment 3: Treatment of the EPCG

¹ See also section 701(f) of the Act.

² For this Issues and Decision Memorandum, we are using acronyms and short citations to various references, including administrative determinations, court cases, acronyms, and documents submitted and issued during the course of this proceeding, throughout the document. We have appended to this memorandum a table of authorities, which includes these short citations and acronyms. See Appendix.



Comment 4:	Whether to Apply AFA to Bombay Dyeing's Unreported Benefits from the SHIS
Comment 5:	Whether to Countervail the IEIS/FPS
Comment 6:	Whether to Countervail the SGOM PSI
Comment 7:	Whether to Apply AFA to the POI Value of Bombay Dyeing's Company-Wide Sales and Company-Wide Export Sales
Comment 8:	Whether to Apply AFA to Reliance's Unreported Benefits from the AAP
Comment 9:	Whether to Apply AFA to Reliance's Unreported Benefits from the MEIS and the MLFPS
Comment 10:	Whether to Apply AFA to Reliance's Alleged Benefits for EOU programs
Comment 11:	Whether to Apply AFA to Reliance's Purported Benefits for Two Income Deductions Related to SEZ programs
Comment 12:	Whether to Apply AFA to Reliance's Purported Benefits under Section 35(1)(iv), Section 35(1)(ii), and Section 35(1)(i) Income Tax Deductions
Comment 13:	Whether to Apply AFA to Reliance's Unreported Benefits for SEZ programs
Comment 14:	Whether to Revise the Application of AFA Rates for SEZ programs
Comment 15:	Whether to Apply Total AFA to Reliance
Comment 16:	Whether to Revise the Calculation of Benefits Received under the EPCG

III. BACKGROUND

A. Case History

On November 6, 2017, Commerce published the *Preliminary Determination* in this proceeding. Between November 13, and November 17, 2017, we conducted verification of the questionnaire responses submitted by Bombay Dyeing and Reliance.³ Interested parties submitted case briefs⁴ and rebuttal briefs⁵ between December 7, and December 20, 2017.⁶

B. Period of Investigation

The POI is January 1, 2016, through December 31, 2016.⁷

IV. SCOPE COMMENTS

In Commerce's Preliminary Scope Decision Memorandum, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope) in scope case briefs or other

³ See Bombay Dyeing's Verification Report; *see also* Reliance's Verification Report.

⁴ See Bombay Dyeing's Case Brief; *see also* GOI's Case Brief; *see also* Petitioners' Case Brief; *see also* Reliance's Case Brief.

⁵ See Bombay Dyeing's Rebuttal Brief; *see also* GOI's Rebuttal Brief; *see also* Petitioners Rebuttal Brief; *see also* Reliance's Revised Rebuttal Brief.

⁶ On December 19, 2017, Commerce rejected Reliance's rebuttal brief because it contained untimely factual information. On December 20, 2017, Reliance resubmitted its rebuttal brief and redacted its untimely new factual information.

⁷ See PDM at 4.

written comment on scope issues.⁸ Certain interested parties commented on the scope of the investigation as it appeared in the *Preliminary Scope Decision Memorandum*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, see the *Final Scope Decision Memorandum*.

V. SCOPE OF THE INVESTIGATION

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

- (1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under HTSUS subheadings 5503.20.0045 and 5503.20.0065.
- (2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable under HTSUS subheading 5503.20.0015.

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

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to the allocation period/methodology used in the *Preliminary Determination* and no issues were raised by interested parties in briefs regarding these topics. For a description of the allocation period and the methodology used for this final determination, see the *Preliminary Determination*.⁹

B. Attribution of Subsidies

Commerce has made no changes to the attribution of subsidies methodology applied in the *Preliminary Determination*. The GOI and the petitioners submitted comments in briefs regarding whether Commerce should attribute benefits to the export sales of subject merchandise for the EPCG program at Comment 3 below. For descriptions of the methodologies used for all programs in this final determination, see the *Preliminary Determination*.¹⁰

⁸ See Preliminary Scope Decision Memorandum; see also Memorandum, “Due Dates for Case and Rebuttal Briefs Regarding the Scope,” dated December 11, 2017.

⁹ See PDM at 5.

¹⁰ See PDM at 5-6.

C. Denominators

In accordance with 19 CFR 351.525(b), Commerce considers the basis for respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to a respondent's export or total sales, or portions thereof. As a result of verification, we revised Bombay Dyeing's and Reliance's total sales and export sales values. The denominators we used to calculate the countervailable subsidy rates for the subsidy programs described below are explained in the Final Analysis Memoranda prepared for this investigation.¹¹ For interested party comments related to Bombay Dyeing's and Reliance's sales denominators, see Comments 7 and 15 respectively below.

VII. BENCHMARKS AND INTEREST RATES

Commerce has made no change to the interest payment benchmark for Bombay Dyeing and Reliance. For a description of the benchmarks and interest rates used for this final determination, *see* the *Preliminary Determination* and the Final Analysis Memoranda.

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

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 withholds information that has been requested; fails to provide information within the established deadlines or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding; or provides information that cannot be verified, as provided by section 782(i) of the Act.¹²

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

Under the TPEA, numerous amendments to the AD and CVD laws were made.¹³ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.¹⁴

¹¹ See Bombay Dyeing's Final Analysis Memorandum; *see also* Reliance's Final Analysis Memorandum.

¹² See TPEA; *see also* *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws*.

¹³ See TPEA; *see also* *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws*.

¹⁴ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws*.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, and under the TPEA, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁵ Furthermore, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.¹⁶

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹⁷ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁸ Furthermore, Commerce is not required to corroborate any CVD rate applied in a separate segment of the same proceeding.¹⁹

Finally, under section 776(d) of the Act, when applying an adverse inference, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.²⁰ The TPEA also makes clear that, when selecting facts available with an adverse inference, 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.²¹

Consistent with section 776(d) of the Act and our established practice, when choosing a rate to apply as AFA, we select the highest calculated rate for the same or similar program.²² When selecting rates, we first determine if there is an identical program in the investigation and, if so, use the highest calculated rate, excluding zero rates, for the identical program. If there is no identical program with a rate above zero in the investigation, we then determine if an identical program was examined in another CVD proceeding involving the same country and apply the highest calculated rate, excluding rates that are *de minimis*, for the identical program.²³ If no identical program exists, we then determine if there is a similar or comparable program, based on

¹⁵ See section 776(b)(1)(B) of the Act; *see also* section 502(1)(B) of the TPEA.

¹⁶ See section 776(b)(2) of the Act; *see also* section 19 CFR 351.308(c) of the Act.

¹⁷ See section 776(c) of the Act; *see also* section 19 CFR 351.308(d) of the Act.

¹⁸ See SAA.

¹⁹ See section 776(c)(2) of the Act; *see also* section 502(2) of the TPEA.

²⁰ See section 776(d)(1) of the Act; *see also* section 502(3) of the TPEA.

²¹ See section 776(d)(3) of the Act; *see also* section 502(3) of the TPEA.

²² See, e.g., *Shrimp China Final IDM* at 13; *see also* *Essar Steel Ltd.* (upholding “hierarchical methodology for selecting an AFA rate”).

²³ See *Concrete Steel Wire China Final IDM* at 13.

the treatment of the benefit, in another CVD proceeding involving the same country and apply the highest calculated rate for the similar or comparable program.²⁴

B. Application of Adverse Facts Available

Commerce relied on “facts otherwise available,” including AFA, for several findings in the *Preliminary Determination*.²⁵ Commerce continues to rely on AFA with respect to financial contribution, specificity, and benefits for the following programs: (1) Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material; (2) Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material; (3) Exemption from Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ; (4) Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit; and (5) Discounted Land Fees in an SEZ. Furthermore, we continue to rely on AFA with respect to Bombay Dyeing’s benefits for the SHIS program.²⁶

Additionally, in this final determination, Commerce relies on AFA with respect to the following for Bombay Dyeing: Bombay Dyeing’s Total Sales and Total Export Sales figures on an FOB basis for the POI, the SGOM Stamp Duty Exemption, and TUFS. For the final determination, we further find that AFA is warranted for Reliance for the following programs: AAP, TUFS, MEIS, and MLFPS programs. These determinations are discussed further below.

C. Selection of the Adverse Facts Available Rate

As noted above and explained in further detail below, the GOI, Bombay Dyeing, and Reliance failed to act to the best of their abilities in this investigation, in accordance with section 776(b) of the Act. Consequently, we made an adverse inference in selecting from the facts available that Bombay Dyeing benefited from sales figures reported on a CIF basis and three subsidy programs (*i.e.*, SHIS, TUFS loan program, and SGOM Stamp Duty Exemption), and Reliance benefitted from nine subsidy programs (*i.e.*, five SEZ programs, MEIS, MLFPS, AAP, and TUFS loan program).²⁷ Using the methodology described above, we have applied AFA rates to Bombay Dyeing and Reliance for these programs.

Bombay Dyeing

With respect to the AFA rate for SHIS, we first determine that there is an identical program in this investigation; however, the calculated rate for the identical program is zero. Following our methodology detailed above, for this final determination, we are using the highest above-*de minimis* calculated subsidy rate for the identical program from another India CVD proceeding for the SHIS program.²⁸

²⁴ See *Shrimp China Final IDM* at 13-14.

²⁵ See PDM at 8-10.

²⁶ See PDM at 12-13.

²⁷ For further information, see Comments 2, 4, 6, 7, 8, 8, 13, and 14 below.

²⁸ See *Steel Flanges from India Final IDM*, where Commerce calculated a rate for the identical program entitled “SHIS.”

With respect to the TUFs loan program, we first determine that there is no calculated rate for an identical program in this investigation. Next, we determine that there is no identical program from another India CVD proceeding. Because we determine that there is no identical program in this investigation or from another India CVD proceeding, we are applying the 2.90 percent *ad valorem* subsidy rate calculated for a similar program, *i.e.*, “Pre-Shipment and Post-Shipment Export Financing” in *PET Film India 2006 Final*.²⁹ For a more detailed discussion of our selection of the AFA rate for this preferential lending program, see Comment 2.

With respect to the SGOM Stamp Duty Exemption, we first determine that there is no calculated rate for an identical program in this investigation. Next, we determine that there is an identical program from another India CVD proceeding. Specifically, we are applying the 3.09 percent *ad valorem* subsidy rate applied to an identical program, *i.e.*, “State Government of Maharashtra – Waiver of Stamp Duty” in *PET Resin India Final* which was based on a calculated subsidy rate for a similar program in *Hot-Rolled Steel 2001*.³⁰ For a more detailed discussion of our selection of the AFA rate for this program, see Comment 6.

Program	AFA Percent Subsidy Rate
Status Holder Incentive Scheme ³¹	0.51
TUFs Loan Program ³²	2.90
SGOM Stamp Duty Exemption ³³	3.09

Reliance

For Reliance, because there are no calculated rates in the investigation for the five SEZ programs in this proceeding, pursuant to our AFA hierarchy for CVD investigations, we are relying on the highest above-*de minimis* calculated subsidy rate for the identical/similar program from another India CVD proceeding. For a more detailed discussion, see Comment 14.

With respect to the TUFs loan program for Reliance, for the same reasons as stated above, we are applying the 2.90 percent *ad valorem* subsidy rate calculated for a similar program, *i.e.*, “Pre-Shipment and Post-Shipment Export Financing” in *PET Film India 2006 Final*.³⁴ For a more

²⁹ See *PET Film India 2006 Final* IDM, where Commerce calculated a rate for the similar program. The program we are drawing the AFA rate from, “Pre- and Post- Shipment Export Financing” has also been used as an AFA rate for “Preferential Post-Shipment Financing,” in *Lined Paper Products India Final* at 9-10.

³⁰ See *PET Resin India Final* IDM, where Commerce applied a rate for the identical program based on a calculated rate for a similar program entitled “State Government of Gujarat (SGOG) Tax Incentives” in *Hot-Rolled Steel India 2004 Final* IDM at 3.

³¹ See *Steel Flanges India Final* IDM, where Commerce calculated a rate for the identical program entitled “SHIS.”

³² See *PET Film India 2006 Final* IDM, where Commerce calculated a rate for the similar program entitled “Pre- and Post-Shipment Export Financing.”

³³ See *PET Resin India Final* IDM (citing *Hot-Rolled Steel India 2004 Final* IDM at 3), where Commerce calculated a rate for the similar program.

³⁴ See *PET Film India 2006 Final* IDM, where Commerce calculated a rate for the similar program.

detailed discussion of our selection of the AFA rate for this preferential lending program, see Comment 2.

With respect to the AAP program, we determine that there is an identical program in this investigation with a calculated rate for Bombay Dyeing that is above *de minimis*. As such, the rate below represents the highest calculated rate for an identical program within this investigation.

With respect to MEIS, we first determine that there is no calculated rate for an identical program in this investigation. Following our methodology detailed above, we are relying on the highest above-*de minimis* calculated subsidy rate for the identical program from another India CVD proceeding.³⁵ For a more detailed discussion of our selection of the AFA rate for this program, see Comment 9.

Finally, for the MLFPS program, we first determine there is no calculated rate in the investigation for the identical program. Applying our CVD hierarchy discussed above, we next determine that there is no identical program from another India CVD proceeding. Because we determine that there is no identical program in this investigation from another India CVD proceeding, we are applying the highest calculated rate from a similar program from another India CVD segment for MLFPS.³⁶ For a more detailed discussion of our selection of the AFA rate for this program, see Comment 9.

Program Name	Rate
Duty-Free Importation of Capital Goods and Raw Materials Components, Consumables, Intermediates, Spare Parts, and Packing Material ³⁷	1.23 percent
Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material ³⁸	0.53 percent
Exemption from Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ ³⁹	3.09 percent
Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit ⁴⁰	3.09 percent

³⁵ See *Mechanical Tubing India Final IDM* at 12. This rate was calculated for the identical program entitled “MEIS.”

³⁶ See *Steel Threaded Rod India Final IDM* at 17. This rate was calculated for the similar program, “Focus Product Scheme.”

³⁷ See *PET Film India 2012 Final IDM* at 15-16. This is the highest calculated rate for an identical program in India entitled “Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Materials.”

³⁸ See *PET Film CVD NSR India 2009 Final IDM* at “Exemption from Payment of Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material,” where Commerce calculated a rate for the identical program.

³⁹ See *Hot-Rolled Steel India 2004 Final IDM* at “State Government of Gujarat (SGOG) Tax Incentives” section where Commerce calculated a rate for a similar program.

⁴⁰ See *Hot-Rolled Steel India 2004 Final IDM* at 3. This rate was calculated for the similar program “State Government of Gujarat (SGOG) Tax Incentives.” Commerce previously applied this rate as AFA to the identical program entitled “Exemption from Electricity Duty and Cess thereon on the Sale or Supply to the SEZ

Discounted Land Fees in an SEZ ⁴¹	3.09 percent
AAP ⁴²	5.03 percent
MEIS ⁴³	1.48 percent
MLFPS ⁴⁴	5.00 percent
TUFS Loan Program ⁴⁵	2.90 percent

Corroboration of Secondary Information

Section 776(c)(1) 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.”⁴⁶ The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.⁴⁷

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.⁴⁸ 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.⁴⁹

With regard to the reliability aspect of corroboration of the AFA rates for the TUFS loan program, the MLFPS programs, and the five SEZ programs, as discussed above, we note that the rates on which we are relying are subsidy rates calculated in other India CVD proceedings for similar programs: “Pre-Shipment and Post-Shipment Export Financing” in the case of TUFS; “Focus Product Scheme;” in the case of MLFPS; “State Government of Gujarat (SGOG) Tax Incentives” in the case of the Exemption from Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ program, the Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit program, and the Discounted Land Fees in an

Unit.” *See Circular Welded Pipe India Final IDM* at 23.

⁴¹ *See Hot-Rolled Steel India 2004 Final IDM* at 3. This rate was calculated for the similar program “State Government of Gujarat (SGOG) Tax Incentives.” Commerce previously applied this rate as AFA to the identical program entitled “SGOG SEZ Act: Stamp Duty and Registration Fees for Land Transfers, Loan Agreements, Credit Deeds, and Mortgages.” *See Circular Welded Pipe India Final IDM* at 24.

⁴² This rate was calculated for the same program in this investigation for Bombay Dyeing.

⁴³ *See Mechanical Tubing India Final IDM* at 12. This rate was calculated for the identical program entitled “MEIS.”

⁴⁴ *See Steel Threaded Rod India Final IDM* at 17. This rate was calculated for the similar program, “Focus Product Scheme.”

⁴⁵ *See PET Film India 2006 Final IDM*, where Commerce calculated a rate for the similar program entitled “Pre- and Post-Shipment Export Financing.”

⁴⁶ *See SAA* at 870.

⁴⁷ *Id.*

⁴⁸ *Id.* at 869 – 870.

⁴⁹ *See* section 776(d) of the Act.

SEZ program. In addition, with respect to the Duty-Free Importation of Capital Goods and Raw Materials Components, Consumables, Intermediates, Spare Parts, and Packing Material program and the Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material program, we are relying on subsidy rates calculated in other India CVD proceedings for the identical programs. Thus, the calculated rates relied upon herein reflect the actual behavior of the GOI with respect to these similar and identical subsidy programs. Moreover, no information has been presented that calls into question the reliability of the calculated rates that we are applying as AFA for these programs. Finally, 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 corroborating the rates selected, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, Commerce will not use it.⁵⁰ Thus, we have corroborated the selected rates to the extent possible and find that the rates are reliable and relevant for use as AFA rates for the programs listed above.

Furthermore, under section 776(d) of the Act, 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, 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. Therefore, in accordance with section 776(c)(1) and 776(d) of the Act, we have applied subsidy rates which were calculated in previous India CVD proceedings, as discussed above, and have corroborated these AFA rates to the extent practicable.

IX. ANALYSIS OF PROGRAMS

With the exceptions explained below, Commerce made no changes to its *Preliminary Determination* with regard to the methodology used to calculate the subsidy rates for the programs listed below. For the descriptions, analyses, and calculation methodologies of these programs, *see the Preliminary Determination*. Except where noted, no issues were raised by interested parties in briefs regarding these programs. The final program rates for the mandatory respondents are identified below.

A. Programs Determined to Be Countervailable

1. AAP

Bombay Dyeing, the petitioners and the GOI submitted comments in their case briefs regarding this program. The countervailability of the program is discussed below in Comment 1. Reliance and the petitioners also commented on the application of AFA with respect to Reliance for unreported benefits under this program at Comment 8. Our application of AFA with respect to Reliance's benefits under this program is also discussed at Comment 8.

⁵⁰ *See, e.g., Flowers Mexico Final.*

Bombay Dyeing: 5.03 percent *ad valorem*
Reliance: 5.03 percent *ad valorem*

2. DDB

Bombay Dyeing, the petitioners and the GOI submitted comments in their case briefs regarding this program. The countervailability of the program is discussed below in Comment 1. We have not changed our methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.⁵¹

Reliance: 1.84 percent *ad valorem*

3. EPCG

The GOI and the petitioners provided comments in their case and rebuttal briefs regarding this program, which are discussed at Comments 3 and 16. We have changed our methodology for calculating a subsidy rate for Reliance under this program from the *Preliminary Determination*.⁵² We have discussed this methodological change at Comment 16, below.

Reliance: 0.08 percent *ad valorem*

4. SHIS

We have not changed our methodology for applying an AFA rate to Bombay Dyeing under this program from the *Preliminary Determination*.⁵³

Bombay Dyeing: 0.51 percent *ad valorem*

5. IEIS

The GOI, the petitioners, and Bombay Dyeing submitted comments regarding this program.⁵⁴ The countervailability of the program is discussed below in Comment 5. We have not changed our methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.⁵⁵

Bombay Dyeing: 0.40 percent *ad valorem*

⁵¹ See PDM at 18-20.

⁵² *Id.* at 20-22.

⁵³ *Id.* at 23-24.

⁵⁴ See GOI's Case Brief at 14; see also Petitioners' Rebuttal Brief at 34-35; see also Bombay Dyeing's Case Brief at 5.

⁵⁵ See PDM at 24.

6. *SGOM IPS*

The GOI, the petitioners, and Bombay Dyeing submitted comments regarding this program.⁵⁶ The countervailability of the program is discussed below at Comment 6. We have not changed our methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.⁵⁷

Bombay Dyeing: 1.29 percent *ad valorem*

7. *SGOM Stamp Duty Exemption*

The GOI, the petitioners, and Bombay Dyeing submitted comments regarding this program.⁵⁸ Reliance and the petitioners also commented on the application of AFA with respect to Bombay Dyeing for benefits under this program at Comment 6. Our application of AFA with respect to Bombay Dyeing's benefits under this program is also discussed at Comment 6.

Bombay Dyeing: 3.09 percent *ad valorem*

8. *SGOM Electricity Duty Exemption*

The GOI, the petitioners, and Bombay Dyeing submitted comments regarding this program.⁵⁹ The countervailability of the program is discussed below at Comment 6. We have not changed our methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.⁶⁰

Bombay Dyeing: 0.16 percent *ad valorem*

9. *Duty-Free Importation of Capital Goods and Raw Materials Components, Consumables, Intermediates, Spare Parts, and Packing Material*

⁵⁶ See GOI's Case Brief at 15; see also Petitioners' Rebuttal Brief at 35-36; see also Bombay Dyeing's Case Brief at 5-6.

⁵⁷ See PDM at 28-29.

⁵⁸ See GOI's Case Brief at 15; see also Petitioners' Rebuttal Brief at 37-39; see also Bombay Dyeing's Case Brief at 6.

⁵⁹ See GOI's Case Brief at 15; see also Petitioners' Rebuttal Brief at 37-39; see also Bombay Dyeing's Case Brief at 2-3.

⁶⁰ See PDM at 28-29.

We have not changed our methodology for applying an AFA rate for Reliance under this program from the *Preliminary Determination*.⁶¹

Reliance: 1.23 percent *ad valorem*

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

We have not changed our methodology for applying an AFA rate to Reliance under this program from the *Preliminary Determination*.⁶²

Reliance: 0.53 percent *ad valorem*

11. Exemption from Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ

We have not changed our methodology for applying an AFA rate for Reliance under this program from the *Preliminary Determination*.⁶³

Reliance: 3.09 percent *ad valorem*

12. Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit

We have changed our methodology for applying an AFA rate for Reliance under this program from the *Preliminary Determination* which is discussed below at Comment 14.

Reliance: 3.09 percent *ad valorem*

13. Discounted Land Fees in an SEZ

We have changed our methodology for applying an AFA rate to Reliance under this program from the *Preliminary Determination* which is discussed below at Comment 14.

Reliance: 3.09 percent *ad valorem*

14. MEIS

Reliance and the petitioners also commented on the application of AFA with respect to Reliance for discovered benefits under this program at Comment 9. Our application of AFA with respect to Reliance's benefits under this program is also discussed at Comment 9.

⁶¹ *Id.* at 9-10.

⁶² *See* PDM at 9-10.

⁶³ *Id.*

Reliance: 1.48 percent *ad valorem*

15. MLFPS

Reliance and the petitioners also commented on the application of AFA with respect to Reliance for discovered benefits under this program at Comment 8. Our application of AFA with respect to Reliance's benefits under this program is also discussed at Comment 9.

Reliance: 5.00 percent *ad valorem*

16. TUFs Loan Program

Bombay Dyeing, Reliance, the petitioners, and the GOI also commented on the application of AFA with respect to Reliance for discovered benefits under this program at Comment 8. Our application of AFA with respect to Reliance's benefits under this program is also discussed at Comment 9.

Bombay Dyeing: 2.90 percent *ad valorem*

Reliance: 2.90 percent *ad valorem*

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

Government of India Programs

- 1) DFIA
- 2) Focus Product Scheme (FPS)

We determine that Reliance and Bombay Dyeing did not receive a measurable benefit under this program.

- 3) MEIS

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

- 4) DDB

As described in the "Programs Determined to Be Countervailable" section, we determine that Reliance received a benefit under this program. Bombay Dyeing did not use this program.

- 5) Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material

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

6) EPCG

As described in “Programs Determined to Be Countervailable” section, we determine that Reliance received a benefit under this program. Bombay Dyeing did not use this program.

7) IEIS

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

8) Consumables, Intermediates, Spare Parts, and Packing Material

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

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

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

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

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

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

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

12) Discounted Land Fees in an SEZ

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

13) SEZ Income Tax Exemption Scheme (10A)

As described at Comment 11, below, we determine that Reliance did not receive a benefit under this program. We continue to determine Bombay Dyeing did not use this program.

14) SEZ Income Tax Exemption for Companies Located in a SEZ

Similar to the SEZ Income Tax Exemption Scheme (10A) program, we determine that Reliance did not receive a benefit under this program as described in Comment 11. We continue to determine that Bombay Dyeing did not use this program.

- 15) Reimbursement of Central Sales Tax Paid on Goods Manufactured in India*
- 16) Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured through a Domestic Tariff Area*
- 17) Duty Drawback on Furnace Oil Procured from Domestic Companies*
- 18) Market Access Initiative*
- 19) Market Development Program*
- 20) GOI Loan Guarantees*

21) Sections 35(1)(i), 35(1)(ii), and 35(1) (iv) of the Income Tax Act of 1961

As described at Comment 12, we determine that Reliance did not receive a benefit under this program. We continue to determine that Bombay Dyeing did not use this program.

22) Section 35(2)(AB) of the Income Tax Act of 1961

Similar to the sections 35(1)(i), 35(1)(ii), and 35(1)(iv) of the Income Tax Act of 1961, we determine that Reliance did not receive a benefit under this program as described at Comment 12. We continue to determine that Bombay Dyeing did not use this program.

23) SHIS

As described above, we determine that Reliance did not receive any measurable benefits from this program during the POI. For Bombay Dyeing, as described in “Facts Available and Adverse Facts Available,” we preliminarily found that an

adverse inference is warranted with respect to benefits Bombay Dyeing received under this program

State Government Subsidy Programs

24) State and Union Territory Sales Tax Incentive

State Government of Maharashtra Subsidies Under the Packages Scheme of Incentives

25) SGOM IPS

As described in the section “Programs Determined to Be Countervailable,” we determine that Bombay Dyeing received a benefit under this program. Reliance did not use this program.

26) SGOM Stamp Duty Exemption

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

27) SGOM Electricity Duty Exemption

As described in the section “Programs Determined to Be Countervailable,” we determine that Bombay Dyeing received a benefit under this program. Reliance did not use this program.

28) Interest Subsidy

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

State Government of Gujarat Subsidies

30) Plastics Industry Scheme: Interest Subsidy

31) Plastics Industry Scheme: VAT Incentive

32) Industry Policy 2009: Financial Benefits for Mega Projects

33) Industry Policy 2009: Promotion for Textiles and Apparel

34) Industry Policy 2009: Promotion of Non-Conventional Energy

35) Industry Policy 2009: Reimbursement of Stamp Duty

State Government of Uttar Pradesh Subsidies

36) Investment Promotion Scheme

37) Special Assistance for Mega Projects

X. ANALYSIS OF COMMENTS

Comment 1: Whether to Countervail the AAP and DDB

Bombay Dyeing's Case Brief

- During verification, Bombay Dyeing demonstrated that the AAP was used to import raw materials used in the production of PSF, namely PTA and MEG.⁶⁴
- The verification further confirmed that the GOI checks the utilization of the scrips and whenever there is any discrepancy between the undertaking given under the AAP and the redemption, penalizes the recipient. Because Bombay Dyeing is abiding by the program rules, Commerce should not consider the AAP a subsidy, and accordingly, remove the rate from the final subsidy margin calculation.⁶⁵

GOI's Case Brief

- Duty exemption and remission programs are not inconsistent with the ASCM.⁶⁶
- Indirect tax rebate schemes and substitution drawback schemes can constitute an export subsidy only to the extent that they result in exemption, remission, deferral or refund of indirect taxes or import charges in excess of the amount of such taxes or charges actually levied on inputs that are consumed in the production of the exported product.⁶⁷
- Commerce claimed that the GOI had no effective or reasonable verification system in place. The GOI, however, has an effective control mechanism at every stage in the process.⁶⁸
- The AAP is not countervailable according to Footnote I of the ASCM⁶⁹ as long as benefits received on the inputs that are consumed and the production of the exported product can be verified.⁷⁰
- The Customs, Central Excise Duties & Service Tax Rules, 1995 (Drawback Rules) provide a verification procedure under the DDB program.⁷¹
- The DDB program is not countervailable unless it can be shown that in a particular case, drawback of indirect taxes or import charges are greater than the amount of such taxes or charges actually levied on inputs that are consumed in the production of the exported product.⁷²

⁶⁴ See Bombay Dyeing's Case Brief at 6.

⁶⁵ *Id.* at 3 and 6.

⁶⁶ See GOI's Case Brief at 7 (citing paragraph I and II of Section I of Annex II as well as Section II of Annex II of the ASCM).

⁶⁷ *Id.* at 8.

⁶⁸ *Id.* at 9-10.

⁶⁹ Footnote I states that, "In accordance with the provisions of Article XVI of GATT 1994 (Note to Article XVI) and the provisions of Annexes I through III of this Agreement, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy."

⁷⁰ See GOI's Case Brief at 10-11.

⁷¹ *Id.* at 11.

⁷² *Id.* at 11-12 (citing *Panel Report, European Union – Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan* (WT/DS486/R)).

Petitioners' Rebuttal Brief

- The GOI must have in place and apply a “reasonable, effective” “system to confirm which inputs are consumed in the production of the exported products, and in what amounts.”⁷³
- Commerce properly determined that the GOI attempts to support its argument by repeating claims regarding its alleged “effective control mechanism” are insufficient, and that both programs are countervailable.⁷⁴
- The GOI failed to substantiate its previous responses with a description of the steps taken by the GOI to establish and verify the accuracy of the SION, because, in its supplemental response, the GOI simply reiterated the laws and regulations underlying the SION system, and stated that the norms for the respondents were fixed, *i.e.*, not based on actual consumption of the manufacturer.⁷⁵ Further, when Commerce requested that the GOI explain its “elaborate system for fixing SION for every product,” the GOI simply repeated that the “Norms are established based on an elaborate procedure, having regard to the information/data available with the Government of India” and cites to its Handbook of Procedures.⁷⁶
- Without a complete explanation of the SION calculations and a full explanation of the program’s enforcement process, Commerce is unable to establish the effectiveness of the system in tracking inputs consumed in the product of export products. Commerce has determined in numerous previous cases that the GOI has failed to demonstrate that it has implemented an effective enforcement system, and, as such, has determined that this program is countervailable pursuant to 19 C.F.R. 351.519.⁷⁷
- When the GOI was asked to provide “copies of the recommendation made by the committee” that determined the rates for the DDB Program, the GOI completely omitted an answer.⁷⁸ Further, the GOI continues to offer the same evidence in pointing to Rules 3 and 9 of the Drawback Rules and Chapter 22 of the Customs Manual of 2015.⁷⁹ Commerce already considered this record information in the preliminary determination and found it deficient given the GOI’s failure to provide supporting documentation.⁸⁰ Accordingly, consistent with Commerce’s regulations and prior practice, Commerce properly countervailed the AAP and DDB programs and should continue to do so in the final determination.⁸¹
- The argument that Bombay Dyeing is utilizing the AAP program in a “legitimate manner”⁸² does not address the issue as to whether the GOI maintains a system to

⁷³ See Petitioners’ Rebuttal Brief at 10 (citing PDM at 15-16; 19 C.F.R. 351.519(a)(1)(ii)).

⁷⁴ *Id.* (citing GOI’s Case Brief at 9-10 and 12).

⁷⁵ *Id.* at 11 (citing GOI’s September 28, 2017 GSQR at Question 1).

⁷⁶ *Id.* at 11-12 (citing GOI September 28, 2017 GSQR at Question 5).

⁷⁷ *Id.* at 12 (citing *OTR Tires India Final* at 28; *CORE China Final* at Comment 1; *PET Film CVD 2007 Final* at 5-8).

⁷⁸ *Id.* at 13 (citing GOI September 28, 2017 GSQR at Question 16. c.).

⁷⁹ *Id.* (citing GOI’s Case Brief at 11).

⁸⁰ *Id.* (citing PDM at 19).

⁸¹ *Id.* at 14 (citing *PET Film India 2003 Final* IDM at 3-5; *Shrimp India Final* IDM at 12-14; *Steel Flanges India Final* IDM at Comment 2).

⁸² *Id.* at 15 (citing Bombay Dyeing’s Case Brief at 6).

monitor the amount of imported product consumed in the production of the exported product for all companies within India, because the respondent cannot remedy a deficient government response.⁸³

- The act of a company monitoring its AAP obligations has no bearing on the GOI's actions regarding the AAP or the verification of such AAP licenses, and does not demonstrate the existence of a system used by the GOI to monitor product consumed in the exported merchandise; thus, Commerce should continue to find that the AAP and DDB programs are countervailable.⁸⁴

Commerce's Position: Commerce disagrees with the GOI and Bombay Dyeing, and continues to find that the AAP and DDB programs are countervailable. As explained in the *Preliminary Determination*, 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.⁸⁵ 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.⁸⁶ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁸⁷ 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.⁸⁸

With respect to the GOI's WTO-related arguments, as we explained in *Steel Flanges India Final*, Commerce has conducted this investigation in accordance with the Act and Commerce's regulations, and U.S. law is fully compliant with our WTO obligations:

Our CVD laws are consistent with our WTO obligations. Moreover, it is the Act and Commerce's regulations that have direct legal effect under U.S. law, and not the WTO Agreements or WTO reports.⁸⁹ In this regard, WTO reports "do not have any power to change U.S. law or to order such a change."⁹⁰

Regarding AAP (also known as Advance License Program (ALP)), Bombay Dyeing contends that verification confirmed that the GOI checks the utilization of the scrips and whenever there is any discrepancy between the undertaking given under the AAP and the redemption, penalizes the recipient. Because Bombay Dyeing is abiding by the program rules, Bombay Dyeing argues that Commerce should not consider the AAP a subsidy, and accordingly, remove the rate from the final subsidy margin calculation. We disagree. In *PET Film India 2003 Final*, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the

⁸³ *Id.* at 15.

⁸⁴ See Petitioners' Rebuttal Brief at 15.

⁸⁵ See PDM at 15 (citing section 19 CFR 351.519(a)(1)(ii) of the Act).

⁸⁶ See *Shrimp India Final* IDM at 12.

⁸⁷ *Id.*

⁸⁸ See section 19 CFR 351.519(a)(4)(i)-(ii) of the Act.

⁸⁹ See *Steel Flanges India Final* IDM at Comment 1.

⁹⁰ *Id.*

AAP/ALP during 2005.⁹¹ Commerce acknowledged that certain improvements to the AAP/ALP system were made. However, Commerce found that, based on the information submitted by the GOI and examined during previous reviews of that proceeding, and no information having been submitted for that review demonstrating that the GOI had revised its laws or procedures governing this program since those earlier reviews, systemic issues continued to exist in the AAP/ALP system during that POR.⁹² Specifically, in the 2003 review, Commerce stated that it continued to find the AAP/ALP countervailable based on:

{the} GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. Specifically, we still have concerns with regard to several aspects of the ALP including (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET Film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports.⁹³

Since the *PET Film CVD India 2003 Final* review, Commerce has, in several other proceedings, made determinations consistent with this treatment of the AAP/ALP.⁹⁴ In the current investigation, record evidence shows⁹⁵ that there has been no change to the AAP/ALP program. Therefore, for the final determination, we find that the program continues to confer a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondent from payment of import duties that would otherwise be due; (2) the GOI does not have in place, and does not apply, a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste, nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus, the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act; and (3) this program is specific under section 771(5A)(B) of the Act because it is contingent upon exportation.

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

The rates are determined following a specified procedure that is undertaken by an independent committee appointed by GOI. The committee makes its recommendations after discussions with all stake holders including Export

⁹¹ See *PET Film India 2003 Final* IDM at 3-5.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See *Mechanical Tubing Final* IDM at 19 (citing *Tubular Goods India Final* IDM at 18).

⁹⁵ See GOI September 6, 2017 GQR at 11-22; see also GOI September 28, 2017 GSQR at 6-10.

Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of exports products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analyzed and this information is used to form the basis for the rate of DDB.⁹⁶

As submitted by the GOI, Rule 3(2) of the Drawback Rules 1995 states that in determining the amount of drawback, “the Central Government shall have regard to” the average quantity and value of an input, component or intermediate product, whether produced in India or imported, the import duties or excise duties paid thereon, as well as account for waste, re-use or sale of a by-product, and packing and input services rendered.⁹⁷

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.⁹⁸ The GOI did not provide documentation enabling Commerce to determine whether the GOI has a system in place.⁹⁹ Thus, consistent with the *Shrimp India Final*, we are determining that the GOI’s response lacks the documentation to support that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products, and in what amounts. Therefore, for the final determination, we determine that the GOI has not supported its claim that its DDB system is reasonable or effective for the purposes intended.

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

Comment 2: Whether to Apply AFA to Reliance’s and Bombay Dyeing’s Discovered Benefits under the TUFs

Petitioners’ Case Brief

- Commerce must apply AFA with regards to the financial contribution and specificity of the GOI’s lending program and treat all additional government assistance as countervailable subsidies because the GOI withheld necessary information regarding financial assistance, *i.e.*, loans and interest reimbursements, from GOI owned institutions

⁹⁶ See GOI September 6, 2017 GQR at 22.

⁹⁷ *Id.* at 22.

⁹⁸ See GOI First SQ at 7.

⁹⁹ See GOI September 6, 2017 GQR at 19; *see also* GOI September 28, 2017 GSQR at 14.

and refused to corroborate lending that respondents have reported were provided by GOI institutions.¹⁰⁰

- The GOI twice failed to respond to Commerce’s request for information regarding “other subsidies,” in which any additional financial assistance provided by the GOI should have been reported.¹⁰¹ The GOI also failed to respond to Commerce’s request to corroborate the loans reported by respondents, because it only submitted certain loans, and stated it was providing this information collected by respondents without “certifying the correctness of the facts.”¹⁰²
- The GOI only reported lending obtained by respondents prior to verification. The lending and additional benefits from loans provided by GOI-owned institutions were never reported by the GOI.¹⁰³ Therefore, Commerce has no information to analyze the lending and additional financial assistance discovered at verification.

Petitioners’ Rebuttal Brief

- Commerce should reject Bombay Dyeing’s claim that it did not receive a benefit because the loan received from the EXIM Bank was obtained by the textile division and repaid before the division closed its operations, not during the POI.¹⁰⁴
- Commerce should find that the respondent withheld information and failed to act to the best of its ability, thereby warranting the application of AFA, because the respondent should have reported any additional benefits received during the AUL in its initial questionnaire response, rather than only submitting an explanation when asked by Commerce at verification.¹⁰⁵
- Commerce has determined that respondents must include benefits for all divisions of a company, even shuttered divisions.¹⁰⁶ Commerce has effectively concluded that because the respondent withheld information from Commerce that was only discovered at verification, due to the respondent’s determination that the subsidy should not be reported, the application of AFA is warranted with respect to the program benefit.¹⁰⁷
- Commerce was unable to verify Bombay Dyeing’s claims that the amount taken was paid back at any point during the AUL, because this information was not reported prior to verification.¹⁰⁸ Accordingly, Commerce should reject these claims and apply an AFA rate of 6.06 percent to Bombay Dyeing for the TUFS program benefit.¹⁰⁹

Bombay Dyeing’s Case Brief

- The verification report clearly states that the loan from the EXIM Bank was obtained by the Textile division for upgradation of machinery. The amount received was refunded to

¹⁰⁰ See Petitioners’ Case Brief at page 6-7.

¹⁰¹ *Id.* at 7 (citing GOI September 6, 2017 GQR at 62).

¹⁰² *Id.* (citing GOI November 6, 2017 G2SQR3 at 5).

¹⁰³ *Id.* (citing Reliance’s Verification Report at 8 and Bombay Dyeing’s Verification Report at 10).

¹⁰⁴ See Petitioners’ Rebuttal Brief at 40 (citing Bombay Dyeing Brief at 6).

¹⁰⁵ *Id.* at 40 (citing Petitioners’ Case Brief at 38).

¹⁰⁶ *Id.* at 40 (citing *Mechanical Tubing India Final* at Comment 13).

¹⁰⁷ See Petitioners’ Rebuttal Brief at 41 (citing *Mechanical Tubing India Final* at 41-42).

¹⁰⁸ *Id.* at 41 (citing Bombay Dyeing Brief at 6).

¹⁰⁹ *Id.* at 41-42 (citing Petitioners’ Case Brief at 38).

the bank by Bombay Dyeing before it closed its Textile division.¹¹⁰

- Any benefit received by the Textile division should not be extended to the PSF division.¹¹¹

Reliance's Revised Rebuttal Brief

- AFA is not warranted because under section 701(a)(1) of the Act the countervailable duty investigation must be related to the subject merchandise. The TUFS scheme is not related to PSF because it is a division that produces a downstream product and as a result has no relation to the production of PSF.¹¹²

Commerce's Position: We agree with the petitioners. Commerce finds that the application of AFA is warranted with respect to financial contribution, specificity, and benefit of the TUFS loan program, which is an unreported GOI lending program¹¹³ discovered at verification, because Bombay Dyeing, Reliance, and the GOI each failed to cooperate to the best of their abilities when they failed to report and provide complete responses regarding respective financial assistance provided to Bombay Dyeing and Reliance under the TUFS program.

As discussed in further detail below, we discovered at verification that Bombay Dyeing and Reliance each received assistance under the TUFS program that the GOI failed to report in its responses.¹¹⁴ Bombay Dyeing and Reliance claim that a benefit does not exist because the TUFS scheme is not related to the PSF division or the production of subject merchandise. According to Reliance, the loan provided to Reliance under the TUFS scheme is not countervailable under section 701(a)(1) of the Act, because the division that received the loan produces a downstream product, and thus has no relation to the production of PSF.¹¹⁵ Commerce's questionnaire asks for information on all programs under which the company as a whole received government assistance. When respondents do not provide such information, Commerce cannot understand the complete net of subsidies affecting a respondent nor explore and analyze such information to determine whether it is relevant to the investigation. Revealing such information at verification deprives the parties participating in the administrative process and Commerce of the ability to explore and analyze the information as provided by the statute. Respondents cannot circumvent the administrative process in this way, which is why Commerce requires the submission of all such information in its questionnaires before verification.

Further, for the reasons discussed below, Commerce finds that AFA is warranted with respect to Reliance's and Bombay Dyeing's failure to answer Commerce's questionnaire and to report interest reimbursements received under TUFS program. If Bombay Dyeing and Reliance believed that they had evidence supporting the non-countervailability of the program, the respondents should have reported such information before verification when Commerce requested the information on multiple occasions. As a result of each of the respondents' withholding of information, Commerce is prevented from fully analyzing the TUFS program and

¹¹⁰ See Bombay Dyeing's Case Brief at 6.

¹¹¹ *Id.*

¹¹² See Reliance's Revised Rebuttal Brief at 9.

¹¹³ See Bombay Dyeing's Verification Report at 10; see also Reliance's Verification Report at 8.

¹¹⁴ See Bombay Dyeing's Verification Report at 10; see also Reliance's Verification Report at 8.

¹¹⁵ See Reliance's Revised Rebuttal Brief at 9.

Commerce does not have any information to analyze the operations of the TUFS program. Commerce's tying methodology is to tie subsidies where there is clear and robust information showing the subsidies being provided are in fact tied to a particular market or product.¹¹⁶ While the respondents claim the loans are not tied to subject merchandise, Reliance and Bombay Dyeing have not provided any information on the record to corroborate this claim for Commerce to verify. Therefore, we could not analyze fully whether these assistance were tied to subject merchandise.

Based on these facts, we determine that the GOI, Bombay Dyeing, and Reliance withheld necessary information requested by Commerce regarding the TUFS program under section 776(a)(1) and (a)(2) of the Act and that as a result, necessary information is missing from the record. Further, we find that an adverse inference is warranted because the parties failed to cooperate to the best of their abilities to provide the necessary information regarding the TUFS program. We discuss this in further detail below.

Bombay Dyeing

As described above, in our initial CVD questionnaire to Bombay Dyeing, Commerce requested that Bombay Dyeing specify whether it received "Other Subsidies" from the GOI:

Did the GOI (or entities owned directly, in whole or in part, by the GOI or any provincial or local government) provide, directly or indirectly, any other forms of assistance to domestic manufacturers/exporters of fine denier PSF? If so, please describe such assistance in detail, including the amounts, date of receipt, purpose and terms, and answer all questions in the Standard Questions Appendix, as well as other appropriate appendices attached to this questionnaire.¹¹⁷

In its response to Commerce's initial questionnaire, Bombay Dyeing stated, "Not Applicable," and made no mention in its initial questionnaire response of receipt of loans under the TUFS program.¹¹⁸ Further, Commerce requested that Bombay Dyeing provide a complete response regarding "other subsidies" in our supplemental questionnaire:

Please respond to the question under "Other Subsidies" in Commerce's July 24, 2017 questionnaire. If the PSF division of Bombay Dyeing is a separately incorporated entity, please provide answers applicable to the PSF division separately. If the PSF division of Bombay Dyeing is not a separately incorporated entity, please provide answers applicable to all three divisions of Bombay Dyeing.¹¹⁹

In its response to our supplemental questionnaire, Bombay Dyeing withheld necessary information regarding the TUFS program in its response, indicating that "No other subsidy has

¹¹⁶ See *Mechanical Tubing Final* IDM at Comment 8.

¹¹⁷ See Initial CVD Questionnaire at 14.

¹¹⁸ See Bombay Dyeing September 6, 2017 IQR at Question "Other Subsidies."

¹¹⁹ See Bombay Dyeing October 5, 2017 SQR at 25.

been received by Bombay Dyeing or any of its divisions during the period of investigation.”¹²⁰ In our third request for information, we requested that Bombay Dyeing report the loans received from the GOI and the corresponding interest payment paid in 2016. Bombay Dyeing finally reported that it received a loan from the EXIM Bank under the TUFS program, but failed to provide information necessary for Commerce to analyze the TUFS program.¹²¹ In its response, Bombay Dyeing simply provided the name “TUFS.” More importantly, at no time leading up to verification did Bombay Dyeing indicate that the GOI provided an interest reimbursement under the TUFS program.¹²² At verification, while verifying loan programs, Commerce learned that under the TUFS program an interest reimbursement is made available during the period of the loan to fund the modernization and expansion of technology by the Ministry of Textiles.¹²³

Reliance

With respect to Reliance, we requested information identical to that which was requested from Bombay Dyeing in the initial CVD questionnaire, regarding “other subsidies.”¹²⁴ Reliance made no mention of financial assistance under the TUFS programs in its initial and supplemental questionnaire responses.¹²⁵

At Exhibit SUPP2-SHIS-7 of Reliance’s October 10, 2017 submission, Reliance reported that it received loans during the AUL from the IDBI to be used as a commercial benchmark to calculate subsidy rates for the SHIS and EPCG programs.¹²⁶ While Reliance claimed that it received these loans from the IDBI at commercial rates, Reliance withheld necessary information that it received loan assistance from the GOI under the TUFS program, failed to provide any details or description of the loan assistance under the TUFS program, and did not specify its interest payments under this program.¹²⁷ In a subsequent supplemental questionnaire specifically inquiring about loans Reliance received from the GOI and requesting details about Reliance’s loans from the GOI, Reliance again failed to provide information about the loan assistance it received under the TUFS program. More specifically, we asked Reliance to provide a complete response to the Standard Questions Appendix regarding each loan provided by the government banks and to provide complete responses to the loan benchmark and loan guarantees.¹²⁸

Commerce did not learn that Reliance’s IDBI loan was associated with the TUFS program until verification.¹²⁹ Company officials stated that Reliance “forgot” to report that it received a loan

¹²⁰ *Id.*

¹²¹ See Bombay Dyeing November 6, 2017 3SQR at 8-9; see also Bombay Dyeing November 6, 2017 3SQR at Annexures A and A-1.

¹²² See Bombay Dyeing November 6, 2017 3SQR at Annexures A and A-1.

¹²³ See Bombay Dyeing’s Verification Report at 10.

¹²⁴ See Initial CVD Questionnaire at 14.

¹²⁵ See Reliance September 6, 2017 IQR in general; see also Reliance September 11, 2017 SQR at 35.

¹²⁶ See Reliance October 10, 2017 2SQR3 at Exhibits SUPP2-SHIS-7, SUPP2-SHIS-8, and SUPP2-OTHER-1.

¹²⁷ *Id.*

¹²⁸ See Reliance November 6, 2017 5SQR1 at 2-3.

¹²⁹ See Reliance’s Verification Report at 8.

from a GOI majority-owned bank (IDBI) to promote the export of Indian textiles by providing resources for the textile industry to update its production machinery through loan assistance.¹³⁰

GOI

In addition to failures by Bombay Dyeing and Reliance to report information related to their receipt of benefits under the TUFs program, the GOI also withheld information. Prior to verification, we provided the GOI three opportunities to respond to our request for information regarding the TUFs program.¹³¹ In our initial and supplemental CVD questionnaires, we asked the GOI to report information regarding “other subsidies”:

Did the GOI (or entities owned directly, in whole or in part, by the GOI or any provincial or local government) provide, directly or indirectly, any other forms of assistance to domestic manufacturers/exporters of fine denier PSF? If so, please describe such assistance in detail, including the amounts, date of receipt, purpose and terms, and answer all questions in the Standard Questions Appendix, as well as other appropriate appendices attached to this questionnaire.¹³²

In responding to our requests, the GOI omitted responses to the same question about “other subsidies” in its initial and supplemental questionnaire responses.¹³³ In responding to Commerce’s supplemental questionnaires, Reliance and Bombay Dyeing both reported that they each received loans from the GOI in their questionnaire responses. Bombay Dyeing reported that it received long-term borrowings in its annual report, and Reliance reported that it received a loan from the IDBI.¹³⁴ Based on Bombay Dyeing’s and Reliance’s responses, Commerce issued a third supplemental questionnaire to the GOI after the *Preliminary Determination* and requested additional information about Bombay Dyeing’s and Reliance’s loans and to corroborate loans reported by Bombay Dyeing and Reliance. In our third supplemental questionnaire, Commerce asked the GOI the following two questions and explicitly referenced loans from the EXIM Bank and IDBI that each company received:

Record evidence indicates that Reliance received several loans from certain-state owned banks and government-owned specialty-purpose banks (e.g., Industrial development Bank of India (IDBI), Industrial Finance Corporation of India (IFCI), Export-Import Bank of India (EXIM) at market rates). Please coordinate with Reliance to determine which loans it received from certain state-owned banks and government owned specialty-purpose banks in order to provide complete questionnaire responses for each of these loans. Provide complete responses to all questions in the Standard Questions Appendix and the Loan Benchmark and Loan Guarantee Appendix, as applicable.¹³⁵

¹³⁰ *Id.*

¹³¹ See Initial CVD Questionnaire at 14; see also GOI First SQ at 20; see also GOI Third SQ.

¹³² See Initial CVD Questionnaire at 14; see also GOI First SQ at 20.

¹³³ See GOI September 6, 2017 GQR at 66; see also GOI September 28, 2017 GSQR at 31.

¹³⁴ See Bombay Dyeing October 5, 2017 SQR at 12-13; see also Reliance October 10, 2017 2SQR3 at Exhibits SUPP2-SHIS-7.

¹³⁵ See GOI November 6, 2017 G2SQR3 at Question 1.

If Bombay Dyeing received loans from the Government of India (GOI) (or entities owned directly, in whole or in part, by the GOI or any provincial or local government) or government owned specialty-purpose banks (Industrial Development Bank of India (IDBI), Industrial Finance Corporation of India (IFCI), Export-Import Bank of India (EXIM)), please coordinate with Bombay Dyeing to determine which loans it received from certain state-owned banks in order to provide complete questionnaire responses to all questions in the Standard Questions Appendix and the Loan Benchmark and Loan Guarantee Appendix, as applicable.¹³⁶

In response to our request for information, the GOI provided an incomplete response, made no mention of the TUFS program, and failed to provide answers to the Standard Questions Appendix regarding the TUFS program.¹³⁷ Instead, the GOI provided two exhibits that listed the details of the GOI loans received by Reliance and Bombay Dyeing.¹³⁸ Neither of those exhibits mentioned the TUFS program.¹³⁹ Moreover, the GOI failed to corroborate information regarding the TUFS program in its responses to our two questions:

The details of loans received by Reliance Industries Limited is enclosed at Annexure- A. The information provided is collected from the mandatory Respondent, (the GOI is not certifying the correctness of the facts) as these loans are received from banks on commercial terms and Government of India has no control over the disbursement or fixing the terms of loans. Therefore, the other questions in the Appendix are not being answered.¹⁴⁰

The details of loans received by Bombay Dyeing & Mfg. Co. Ltd. is enclosed at Annexure- B. The information provided is collected from the mandatory Respondent, (the GOI is not certifying the correctness of the facts) as these loans are received from banks on commercial terms and Government of India has no control over the disbursement or deciding the terms of loans. Therefore, the other questions to the Appendix are not being answered.¹⁴¹

Consequently, Commerce does not have the necessary information on the record of this investigation concerning the financial contribution and specificity of loans discovered at verification, because the GOI withheld information and failed to cooperate to the best of its ability regarding our requests for information on the TUFS program. Further, because the program in question was not reported in response to Commerce's request for information, Commerce finds the GOI deprived Commerce of the opportunity to analyze fully this unreported program to determine whether Reliance and Bombay Dyeing received a benefit under the TUFS program. The purpose of verification is not to collect new factual information about previously unreported government subsidies.¹⁴²

¹³⁶ See GOI Third SQ.

¹³⁷ See GOI November 6, 2017 G2SQR3 at Question 1 and 2.

¹³⁸ *Id.* at Annexure A and Annexure B.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at Question 1.

¹⁴¹ *Id.* at Question 2.

¹⁴² See Bombay Dyeing's Verification Outline at 2; see also Reliance's Verification Outline at 2; see also *Steel Flanges India Final IDM* at 28-31.

For the reasons stated above, we find that necessary information is not available on the record to fully analyze the TUFs program discovered at verification, pursuant to section 776(a)(1) of the Act. Furthermore, pursuant to section 776(a)(2) of the Act, Commerce finds that the GOI withheld information that was requested, failed to provide such information by the appropriate deadlines, and significantly impeded the proceeding by not providing accurate or complete responses to Commerce's questions about the companies' receipt of government assistance. Further, we find that an adverse inference is warranted under section 776(b) because the parties failed to cooperate to the best of their abilities to provide the necessary information regarding the TUFs program.

Further, we find, as AFA, that the GOI's unreported lending program meets the financial contribution and specificity criteria outlined under sections 771(5)(D) and 771(5A) of the Act, respectively.¹⁴³ As AFA, we also find that this subsidy program confers a benefit under section 771(5)(E) of the Act.

As described in the section "Use of Facts Otherwise Available and Adverse Inferences" of this memorandum, under the hierarchy, Commerce will select AFA rates in the following order of preference: the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program and the rate is not zero; if there is no identical program match within the investigation, or if the rate is zero, 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, 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, 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.¹⁴⁴

No non-*de minimis* rate has been calculated for an identical program in this or any other India proceeding. Pursuant to the rate selection hierarchy, as described above, we therefore determine that it is appropriate to apply, as AFA, a rate of 2.90 percent *ad valorem*, which is the subsidy rate calculated for a similar preferential lending program in *PET Film India 2000-2001 Final*.¹⁴⁵ This is the highest rate for a similar program in a proceeding involving India. Because this rate constitutes secondary information, we have, in accordance with section 776(c)(1) of the Act, corroborated the rate to the extent practicable. With respect to the reliability aspect of corroboration, we are relying on a subsidy rate calculated in another CVD proceeding. Further, under Commerce's CVD AFA methodology, when using secondary information, we seek to assign AFA rates that are the same in terms of the type of benefit (*e.g.*, grant to grant, loan to loan, indirect tax to indirect tax). Here, because the calculated rate was based on information provided for another government lending program (*i.e.*, "Pre-Shipment and Post-Shipment

¹⁴³ See *Steel Flanges India Final* IDM at 28-31; see also *Supercalendered Paper Canada Final* IDM at 17-20, 153-154.

¹⁴⁴ See, *e.g.*, *Lawn Groomers China Preliminary PDM* (unchanged in *Lawn Groomers China Final*) at "Application of Facts Available, Including the Application of Adverse Inferences"; see also *Aluminum Extrusions China Final* at "Application of Adverse Inferences: Non-Cooperative Companies."

¹⁴⁵ See *PET Film India 2000-2001 Final* IDM at 4-5.

Export Financing”), it reflects the actual behavior of the GOI with respect to a program that is similar to discovered lending program.

With respect to the relevance aspect of corroborating the rate selected, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that certain information on the record is not appropriate as AFA, Commerce will not use it. Therefore, pursuant to section 776(c)(1) of the Act, in the instant case, Commerce has applied a rate derived from another proceeding. We find that this rate is both reliable and relevant for use as an AFA rate for the aforementioned lending program. Accordingly, we determine that this rate has been corroborated, to the extent practicable.

Comment 3: Treatment of the EPCG

GOI’s Case Brief

- Since the capital goods imported under the EPCG program can be used to produce both domestic and exported products, the benefits, if any, received under the EPCG program must be attributed to the entire sales of the company (including domestic sales).¹⁴⁶

Petitioners’ Rebuttal Brief

- The GOI does not raise any legal or factual argument against the countervailability of the EPCG program.¹⁴⁷ Accordingly, Commerce should affirm its preliminary decision on this program and continue to find the EPCG program countervailable for the final determination.¹⁴⁸
- The GOI is incorrect that Commerce should attribute program benefits to the respondent companies’ total sales, because Commerce has consistently found the EPCG Scheme to be contingent upon export performance in the investigation in which the program has been examined.¹⁴⁹

Commerce’s Position: Commerce agrees with the petitioners and continues to find that EPCG is an export-contingent subsidy attributable to export sales. In previous cases, Commerce has determined that this program is contingent upon export performance.¹⁵⁰ The evidence on the record of this investigation is consistent with those cases, with the GOI reporting that the program is used to reduce duties and taxes on capital goods used in the production of exported products.¹⁵¹ According to 19 CFR 351.525(b)(2), Commerce will attribute export subsidies only to products exported by a firm. Thus, Commerce will continue to attribute program benefits to the total export sales for Reliance.¹⁵²

¹⁴⁶ See GOI’s Case Brief at 13-14.

¹⁴⁷ See Petitioners’ Rebuttal Brief at 16 (citing GOI’s Case Brief at 13-14).

¹⁴⁸ *Id.* at 16.

¹⁴⁹ *Id.* at 16-17 (citing *Steel Flanges India Final* at 33).

¹⁵⁰ See *Mechanical Tubing India Final* IDM at 22; see also *PET Film India 2000-2001 Final* IDM at 12.

¹⁵¹ See GOI’s Case Brief at 13.

¹⁵² See Reliance’s Final Analysis Memorandum.

Comment 4: Whether to Apply AFA to Bombay Dyeing's Unreported Benefits from the SHIS

Bombay Dyeing's Case Brief

- Commerce's verification report excludes the SHIS program in its list of programs from which Bombay Dyeing has availed benefits.¹⁵³
- Since post-verification, it is confirmed that Bombay Dyeing has not used/availed benefits from the SHIS program. Therefore, any subsidy margin calculated on SHIS should be removed from the final subsidy margin calculation.¹⁵⁴

GOI's Case Brief

- The SHIS scheme was discontinued prior to the POI and is therefore not covered by the investigation.¹⁵⁵

Petitioners' Rebuttal Brief

- Commerce should continue to apply AFA in determining the benefit received by Bombay Dyeing for its SHIS use during the POI because Commerce has made no findings that the SHIS program has been terminated.¹⁵⁶ The GOI's termination argument is irrelevant regarding benefits received during the POI as the program provides non-recurring benefits.¹⁵⁷
- Commerce has determined that the SHIS program provides non-recurring benefits, as it is tied to "major equipment purchases," and that the SHIS licenses as issued by the GOI are the best method to determine and account for when the benefit is received. Therefore, benefits received from capital equipment purchases are allocated throughout the AUL.¹⁵⁸

Commerce's Position: We disagree with Bombay Dyeing. As an initial matter, the verification report excludes the SHIS on its list of programs from which Bombay Dyeing has availed benefits because Commerce did not examine the SHIS at verification. Commerce determined that the information concerning benefits received by Bombay Dyeing under the SHIS could not be verified because the record did not contain complete information submitted by Bombay Dyeing to verify. Because Bombay Dyeing's information does not satisfy the requirement in section 782(e)(2) of the Act, we did not consider this information in our analysis when assigning a total AFA net subsidy rate to Bombay Dyeing pursuant to section 776(a)(2)(A) and (C) of the Act. The aim of verification is to verify the reliability and accuracy of information submitted by a respondent. Such information has been subject to Commerce's analysis and further supplemental questionnaires, where warranted, prior to verification. Accordingly, the verification process is not intended to be an exercise in obtaining or collecting new information. As noted above, Bombay Dyeing did not submit necessary information for Commerce to reach a

¹⁵³ See Bombay Dyeing's Case Brief at 4 (citing Bombay Dyeing's Verification Report).

¹⁵⁴ *Id.* at 4.

¹⁵⁵ See GOI's Case Brief at 5.

¹⁵⁶ See Petitioners' Rebuttal Brief at 18.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

determination in this investigation that is based upon Bombay Dyeing's actual information. Without verified or verifiable data with respect to a benefit received under the SHIS, Commerce does not have a reliable numerator with which to calculate Bombay Dyeing's rate. Thus, Commerce resorted to the use of AFA and, therefore, applied our CVD AFA hierarchy to assign a net subsidy rate to Bombay Dyeing for the SHIS.¹⁵⁹

With respect to Bombay Dyeing's argument that Bombay Dyeing has not used/availed benefits from the SHIS program, Exhibit I of the GOI's initial QR provided details (including IEC, certificate file, certificate number, certificate date, value from, and value up to) regarding three licenses provided to mandatory respondents with certificate dates from as early as 2013.¹⁶⁰ The list included a license provided to Bombay Dyeing with a certificate date of November 28, 2014. However, Bombay Dyeing failed to respond to Commerce's request to provide a detailed list of all SHIS credit scrips received on exports during the AUL, stating that Bombay Dyeing "has not availed any benefits under this scheme."¹⁶¹ Further, in Bombay Dyeing's initial QR, the company stated that the scheme had been withdrawn for exports "made with effect" from January 4, 2013.¹⁶²

Consequently, in the *Preliminary Determination*, Commerce determined an adverse inference was warranted with respect to the SHIS program because Bombay Dyeing did not act to the best of its ability in failing to comply with our request for information.¹⁶³ Specifically, Bombay Dyeing did not act to the best of its ability when it: (1) failed to provide required information and answer necessary questions, appendices, and templates in its initial questionnaire regarding the SHIS program; and (2) failed to provide required information and answer necessary questions, appendices, and templates in its supplemental questionnaire, as requested.¹⁶⁴ In the *Preliminary Determination*, Commerce determined that Bombay Dyeing withheld necessary information that would allow Commerce to analyze the SHIS, thereby significantly impeding the investigation. Thus, Commerce relied on AFA in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A), (B) and (C) of the Act.

In response, the GOI argues that the SHIS program was discontinued prior to the POI and is therefore not covered by the investigation.¹⁶⁵ The GOI did not provide evidence supporting its proposition that the SHIS program is not covered by the POI. Additionally, record evidence states that under the SHIS program "Status Holders" under the GOI's listing of specified exported products receive incentive scrip (or credit) equal to one percent of the FOB value of the exports in the form of a duty credit.¹⁶⁶ Further, record evidence demonstrates that the SHIS license can only be used for importation of capital goods and it can be transferred to another Status Holder for the import of capital goods.¹⁶⁷ The *CVD Preamble* states that, if a government

¹⁵⁹ See PDM at 12-14.

¹⁶⁰ See GOI September 6, 2017 GQR at 62; see also GOI September 28, 2017 GSQR at 31.

¹⁶¹ See Bombay Dyeing October 5, 2017 SQR at 17.

¹⁶² See Bombay Dyeing September 6, 2017 IQR at 18.

¹⁶³ See PDM at 13.

¹⁶⁴ *Id.* at 13.

¹⁶⁵ See GOI's Case Brief at 5.

¹⁶⁶ See GOI September 28, 2017 GSQR at 19.

¹⁶⁷ See GOI September 28, 2017 GSQR at 19-26.

provides an import duty 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 exemption should be considered non-recurring.”¹⁶⁸ Commerce also treats the date at which SHIS licenses are issued as the date upon which the benefit is received.¹⁶⁹ Thus, in accordance with past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.¹⁷⁰

As stated in the PDM,

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.¹⁷¹

The GOI’s insistence that the SHIS program was discontinued prior to the POI and is therefore not covered by the investigation is not germane because 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.¹⁷² Additionally, as noted by the petitioners, Commerce has made no finding that the SHIS program in any investigation or administrative review that the SHIS program has been terminated.¹⁷³

Neither the GOI nor Bombay Dyeing address the reasons leading to Commerce’s use of AFA for the SHIS program in the *Preliminary Determination*. Because neither the GOI nor Bombay Dyeing provided a list and an accounting of the scrips Bombay Dyeing received, the record lacks the information necessary for Commerce to determine if any of the scrips it received were used during the POI. By not cooperating, Bombay Dyeing failed to recognize that Commerce, not interested parties, determines whether a company is required to provide a response to its questions and which information is necessary for its analysis. Accordingly, to ensure that interested parties do not prevent Commerce from conducting an accurate and complete investigation, a respondent cannot unilaterally decide to withhold information from Commerce that may require further analysis. The facts available provisions of section 776(a) of the Act specifically contemplate the application of facts available when interested parties withhold requested information and allow Commerce to take action in response.

The arguments submitted by the GOI and Bombay Dyeing fail to address the reasons for Commerce’s application of AFA to the SHIS program for Bombay Dyeing. Thus, we continue to find that the adverse inference is warranted in the application of facts available, pursuant to

¹⁶⁸ *See CVD Preamble* at 65401.

¹⁶⁹ *See* Petitioners’ Rebuttal Brief at 18 (citing PDM at 23).

¹⁷⁰ *See PET Film India 2013 Final IDM* at 12; *see also Steel Flanges India Final IDM* at 18-19).

¹⁷¹ *See* PDM at 23-24 (citing *PET Film India Final 2012 IDM* at 21 and Comment 3).

¹⁷² *Id.* at 23 (citing *Steel Threaded Rod India Final IDM* at “Status Holder Incentive Scrip”).

¹⁷³ *See* Petitioners’ Rebuttal Brief at 18.

section 776(b) of the Act because Bombay Dyeing withheld information, thereby impeding the investigation. In drawing an adverse inference, Commerce continues to find that Bombay Dyeing used and benefitted from the SHIS program, within the meaning of section 771(5)(E) of the Act.

Comment 5: Whether Commerce should countervail the FPS/IEIS

Bombay Dyeing's Case Brief

- The FPS/IEIS schemes were closed prior to the POI. As such, no scrips were received during the POI.¹⁷⁴
- During verification, Commerce confirmed that Bombay Dyeing received no benefit from these schemes for exports made during the POI.¹⁷⁵
- Neither scheme should be treated as countervailable. Commerce should adjust the subsidy margin appropriately in the final subsidy margin calculation.¹⁷⁶

GOI's Case Brief

- The exports were made before the POI and, therefore, the benefits received under the IEIS, if any, are not required to be taken into consideration as they are outside the POI.¹⁷⁷

Petitioners' Rebuttal Brief

- Bombay Dyeing and the GOI incorrectly argue that because the IEIS was not in operation during the POI, Commerce should not include these program benefits in the subsidy margin for Bombay Dyeing, and that "it was verified that no benefits were received for the exports made during the POI."¹⁷⁸
- In the *Preliminary Determination*, Commerce stated "{t}he GOI reported that while the IEIS program was terminated prior to the POI, Bombay Dyeing received pending entitlements under this program during the POI."¹⁷⁹ Commerce verified that Bombay Dyeing received a benefit for a license during the POI due to a delay in processing by the GOI, despite any claim from the GOI or the respondent stating otherwise.¹⁸⁰
- Commerce properly included the IEIS program benefit in the subsidy margin as this benefit was received during the POI. Commerce should continue to include benefits received under the IEIS program in Bombay Dyeing's final subsidy margin.¹⁸¹

Commerce's Position: We agree with the petitioners. Though Bombay Dyeing did not receive benefits for exports made during the POI under the IEIS, the GOI reported that while the IEIS program was terminated prior to the POI, Bombay Dyeing received pending entitlements under this program during the POI.¹⁸² With respect to the FPS, Commerce found at verification that a

¹⁷⁴ See Bombay Dyeing's Case Brief at 5.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ See GOI's Case Brief at 14.

¹⁷⁸ See Petitioners' Rebuttal Brief at 34 (citing Bombay Dyeing's Case Brief at 5).

¹⁷⁹ *Id.* at 34 (citing PDM at 24).

¹⁸⁰ *Id.* at 34-35.

¹⁸¹ *Id.* at 35.

¹⁸² See GOI September 6, 2017 GQR at 44-45.

shipment reported as having been made during the POI was incorrectly documented and thus was not made during the POI. Consequently, Bombay Dyeing did not receive a benefit under the FPS during the POI and the issue of whether to countervail a benefit received under the FPS is moot.

At verification, Commerce also confirmed that Bombay Dyeing received a benefit for an IEIS license during the POI due to a delay in processing by the GOI.¹⁸³ Consistent with the *Preliminary Determination*, Commerce continues to find for the final determination that the benefit received during the POI under the IEIS represents a countervailable subsidy.¹⁸⁴

Normally, in cases where the benefits are granted based on the percentage value of a shipment, Commerce calculates a benefit as having been received as of the date of exportation.¹⁸⁵ However, because the IEIS benefit, *i.e.*, the scrip, amount is not automatic and is not known to the exporter until well after exports are made, the IEIS licenses, which contain the date of validity and the duty exemption amount as issued by the GOI, are the best method to determine and account for when the benefit is received.¹⁸⁶

As noted in the *Preliminary Determination*, the program is specific within section 771(5A)(B) of the Act because, as the GOI and Bombay Dyeing admit, eligibility to receive the scrips is contingent upon export.¹⁸⁷ Similar to the SHIS program, the IEIS provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act because the scrips provide exemptions for paying duties associated with the import of goods which represents revenue forgone by the GOI.¹⁸⁸ Thus, we have determined that the IEIS confers a countervailable subsidy.¹⁸⁹

Comment 6: Whether Commerce should countervail the SGOM PSI

Bombay Dyeing's Case Brief

- Commerce's verification report states that the benefits associated with the SGOM PSI ended September 2016.¹⁹⁰
- The purpose of the SGOM PSI was to provide certain benefits to companies located in designated "backward areas." As such, this program cannot be said to be countervailable.¹⁹¹
- With respect to the Stamp Duty, the benefit was received by the now-closed Ranjangaon

¹⁸³ See Bombay Dyeing's Verification Report at 8.

¹⁸⁴ See PDM at 24-25.

¹⁸⁵ See section 19 CFR 351.519(b)(1) of the Act.

¹⁸⁶ See PDM at 24 (citing Commerce determined, and was upheld by the CIT in *Essar Steel* with respect to a similar, but discontinued, GOI program, the Duty Entitlement Passbook Scheme (DEPS), that benefits were conferred when earned, rather than when the credits were used; see also generally *PET Film India 2012 Prelim*, unchanged in *PET Film India 2012 Final*; *PET Film India 2013 Final* IDM at Comment 2).

¹⁸⁷ See Bombay Dyeing September 6, 2017 IQR at Annexure 18; and GOI September 6, 2017 GQR at 44-45.

¹⁸⁸ See *Steel Flanges India Preliminary* IDM at 16, unchanged in *Steel Flanges India Final*.

¹⁸⁹ See Bombay Dyeing's Final Analysis Memorandum.

¹⁹⁰ See Bombay Dyeing's Case Brief at 5.

¹⁹¹ *Id.* at 5.

plant. Because the unit is closed and the company had paid back the received amount, plus interest, no benefit should be charged for the PSF division for calculating the final subsidy rate.¹⁹²

GOI's Case Brief

- These schemes under the SGOM PSI are not contingent upon actual export performance or export potential of the applicant. The GOI denies that the programs confer any financial benefit.¹⁹³

Petitioners' Rebuttal Brief

- The GOI's argument this program is not contingent on export performance or export potential is irrelevant. At no point has Commerce determined that these programs are contingent upon export performance or export capacity.¹⁹⁴
- The GOI's argument this program confers no financial contribution from the government is baseless because Bombay Dyeing reported and provided evidence that it utilized benefits during the POI in the form of tax refunds from the IPS and the Electricity Duty Exemption.¹⁹⁵ Moreover, Commerce determined that these programs are specific within the meaning of section 771(5A)(D)(iv) of the Act as they are limited to certain geographical regions within the state of Maharashtra.¹⁹⁶
- Bombay Dyeing claims that the calculated benefit under the SGOM PSI is clear and that the program is not countervailable.¹⁹⁷ Moreover, the respondent argues that the benefit received by its Ranjangaon unit should not be included in the respondent's subsidy margin. These arguments should be rejected on a legal and factual basis, and Commerce should continue to countervail all benefits received under this program, as AFA, for the final determination.¹⁹⁸
- As a general matter, Commerce has countervailed this program in numerous cases, and the facts of this case are no different than the previous instances in which Commerce determined that this program provided countervailable benefits.¹⁹⁹ Bombay Dyeing's claim that the program is a development scheme aimed at "designated backwards areas" has no bearing on the countervailable nature of the programs.²⁰⁰
- The benefit under the PSI is unclear. This is demonstrated by the verification report stating that "company officials failed to clearly demonstrate how the total benefit under the PSI was calculated." This statement is supported by the respondent's failure to reconcile its individual benefits under the Electricity Duty Exemption and Stamp Duty Exemption to its accounting system.²⁰¹ With regard to the Electricity Duty Exemption,

¹⁹² See Bombay Dyeing's Case Brief at 6.

¹⁹³ See GOI's Case Brief at 15.

¹⁹⁴ See Petitioners' Rebuttal Brief at 20.

¹⁹⁵ *Id.* at 20-21.

¹⁹⁶ *Id.* at 20.

¹⁹⁷ *Id.* at 35.

¹⁹⁸ *Id.* at 35-36.

¹⁹⁹ *Id.* at 36 (citing *PET Film India 2012 Final IDM* at Comment 5; *OCTG India Final IDM* at "SGOM Subsidies Under the Package Scheme of Incentives of 2007").

²⁰⁰ *Id.* at 36 (citing Bombay Dyeing's Case Brief at 5).

²⁰¹ *Id.* at 36-37 (citing Bombay Dyeing's Verification Report at 10).

the verification report states “the electricity duty exemption is not recorded in the SAP system,” and regarding the Stamp Duty Exemption, “company officials failed to demonstrate whether this amount was record in Bombay Dyeing’s SAP {accounting} system.”²⁰²

- Bombay Dyeing officials confirmed at verification that benefits were received by the Ranjangaon plant under the PSI, though Commerce is unable to determine when the Ranjangaon plant actually received the benefit.²⁰³ Accordingly, Commerce should treat all benefits received by the Ranjangaon plant as providing a benefit during the POI.²⁰⁴
- Commerce requested that the respondent clarify its responses on numerous occasions because its reported benefits and narrative responses for these programs were misleading and confusing. Given these numerous failures by Bombay Dyeing, despite the respondent’s claims otherwise, there is no way to ensure the actual benefit received that was calculated in the preliminary determination is accurate and capture the true subsidy being provided. As such, for the final determination, Commerce should resort to the application of AFA, which is consistent with its past practice regarding the inability to verify programs reported in questionnaire responses.²⁰⁵ Commerce should find that Bombay Dyeing failed to act to the best of its ability in its reporting and verification of the program, further warranting the application of AFA.²⁰⁶
- Consistent with its CVD AFA hierarchy, Commerce should apply the highest calculated non-*de minimis* rate for a similar program (based on treatment of benefit) in India. In doing so, Commerce would apply an AFA rate of 6.06 percent to the IPS, Electricity Duty Exemption, and Stamp Duty Exemption for a collective rate of 18.18 percent – a rate recently selected as an AFA rate for the identical IPS program in two investigations.²⁰⁷

Commerce’s Position: We agree with the petitioners, in part. Under the PSI, incentives are offered to encourage dispersal of industries to the less industrially developed areas of the state of Maharashtra to achieve higher and sustainable economic development. Pursuant to this objective, Annexure I of the PSI-2007 places all “*talukas*,” *i.e.*, district subdivisions, into six different development zones: A, B, C, D, D+, and “no industry.” The zones cover the entire state of Maharashtra. Benefits under the PSI-2007 vary by zone.²⁰⁸ As such, the petitioners are correct that Commerce has determined that these programs are regionally specific within the meaning of section 771(5A)(D)(iv) of the Act.²⁰⁹

Bombay Dyeing reported that it participated in the PSI under the provisions for “mega projects.”²¹⁰ Moreover, Bombay Dyeing stated that it received benefits under the PSI for its

²⁰² See Petitioners’ Rebuttal Brief at 37 (citing Bombay Dyeing’s Verification Report at 9-10).

²⁰³ *Id.* at 37 (citing Bombay Dyeing’s Verification Report at 9).

²⁰⁴ *Id.* at 38.

²⁰⁵ *Id.* at 38 (citing *PET Resin China Final IDM* at 17).

²⁰⁶ *Id.* at 39.

²⁰⁷ *Id.* at 39 (citing *Mechanical Tubing India Final IDM* at 10; *PET Resin India Final IDM* at 26).

²⁰⁸ See PDM at 27 (citing GOI September 6, 2017 GQR at 38).

²⁰⁹ See Petitioners’ Rebuttal Brief at 20.

²¹⁰ See PDM (citing Bombay Dyeing September 6, 2017 IQR at Annexure 20; Bombay Dyeing October 5, 2017 SQR at 20-24).

production facilities in two regions of Maharashtra, Patalganga and Ranjangoan. According to the GOI:

For claiming eligibility... New/Expansion/Diversification, Eligible Unit shall commence the commercial production and also acquire the fixed assets at site... within the investment period... For Mega Projects/Ultra Mega projects, the investment period will be five years from the date of application or such greater period as may be approved by the “High Power Committee” or the “Cabinet Sub Committee” on a case by case basis.²¹¹

Record evidence indicates that under the PSI, Bombay Dyeing availed itself of benefits provided by the State Industrial and Investment Corporation of Maharashtra (SICOM) during the POI in the form of tax refunds from the IPS and the Electricity Duty Exemption.²¹² The SGOM PSI, initially valid for seven years, was extended by two years on October 1, 2014 until September 30, 2016.²¹³

Commerce has repeatedly determined programs under the SGOM PSI to be countervailable.²¹⁴ The GOI’s argument that the schemes under the SGOM PSI are not contingent upon actual export performance or export potential of the respondent was never in question, because, as noted above, Commerce has determined that these programs are regionally specific within the meaning of section 771(5A)(D)(iv) of the Act.²¹⁵ Further, Bombay Dyeing asserts that programs providing certain benefits to companies located in designated “backward areas” cannot be countervailed, but Commerce precedent establishing the countervailability of programs under the SGOM PSI contradicts Bombay Dyeing’s assertion.

a. IPS

The IPS, at paragraph 5.1, is part of the SGOM PSI offered for new or expanding projects.²¹⁶ Commerce has previously determined this program to be countervailable.²¹⁷ Because the IPS is a part of the SGOM PSI, the extent of the benefits is determined by the zone the project is located in or by whether the project qualifies as a “mega project.” As such, Commerce determined that these programs are specific within the meaning of section 771(5A)(D)(iv) of the Act as they are limited to certain geographical regions within the state of Maharashtra.²¹⁸

²¹¹ See GOI September 6, 2017 GQR at 57 and Exhibits N and O; see also *OCTG India Final IDM* at “SGOM Subsidies Under the Package Scheme of Incentives of 2007”.

²¹² See PDM (citing Bombay Dyeing October 5, 2017 SQR at 20-24).

²¹³ See PDM (citing Bombay Dyeing October 5, 2017 SQR at 20-24; Bombay Dyeing September 6, 2017 IQR at 24).

²¹⁴ See PDM (citing *PET Film India 2012 Final IDM* at Comment 7; see also *OCTG India Final IDM* at “SGOM Subsidies Under the Package Scheme of Incentives of 2007”).

²¹⁵ See GOI’s Case Brief at 15.

²¹⁶ See PDM (citing *OCTG India Final IDM* at “SGOM Subsidies Under the Package Scheme of Incentives of 2007”).

²¹⁷ See PDM (citing *PET Film India 2012 Final IDM* at Comment 7; see also *OCTG India Final IDM* at “SGOM Subsidies Under the Package Scheme of Incentives of 2007”).

²¹⁸ See Petitioners’ Rebuttal Brief at 20 (citing PDM at 27).

Under the IPS, Bombay Dyeing received a rebate of payable VAT and CST for a period of nine years, ending September 2016.²¹⁹ The amount of the benefit Bombay Dyeing received each year is based on the state VAT and CST Bombay Dyeing paid that year. Accordingly, we find that this program provides a financial contribution in the form of revenue forgone by the SGOM pursuant to section 771(5)(D)(ii) of the Act.

Under the SGOM's VAT system, taxpayers are required to remit VAT collected from customers (output VAT) to the SGOM.²²⁰ Before doing so, taxpayers reduce the amount of output VAT collected by the amount of VAT they have paid to their own suppliers (input VAT). Alternatively, instead of crediting output VAT with input VAT in this manner, they may receive a rebate of input VAT paid to their suppliers. Either way, the net amount of VAT the taxpayer pays to the SGOM equals the difference between output VAT and input VAT. Under the IPS program as applied to Bombay Dyeing, however, that amount is refunded.²²¹ A refund for this amount would not be available absent the IPS program.²²² Likewise, under the SGOM's CST system, the taxpayer pays to the SGOM the difference between the CST it collects from its customers and the CST it pays to its suppliers. Again, under the IPS program as applied to Bombay Dyeing, that amount is refunded.²²³ The excessive refund of VAT/CST provides a benefit under 19 CFR 351.510(a) (the refunded output VAT is only collected on domestic sales) and 19 CFR 351.509(a).

We disagree with the petitioners' argument that Commerce should apply an AFA rate to Bombay Dyeing for benefits received under the IPS due to Commerce's inability to verify the program and Bombay Dyeing's alleged failure to act to the best of its ability in its reporting and verification of the program.²²⁴ Bombay Dyeing reported having received benefits under the IPS in the initial and supplemental questionnaire.²²⁵ Bombay Dyeing provided the calendar year amounts received under the IPS for the PSF and Retail/Textile divisions in its October 16, 2017 submission, pursuant to Commerce's request.²²⁶ At verification, we confirmed that the amount recorded under the IPS.

Bombay Dyeing officials also claimed that the reported benefits received for the Retail/Textile division were refunded to the GOI due to the division's closure in 2016.²²⁷ Thus, in its October 5, 2017 submission, Bombay Dyeing calculated a "total amount" received under the IPS by subtracting the benefit amount received by the Retail/Textile division from the benefit amount received by the PSF division.²²⁸ In the *Preliminary Determination*, however, because Bombay

²¹⁹ See Bombay Dyeing's Verification Report at 9.

²²⁰ See PDM (citing *OCTG India Final* IDM at "SGOM Subsidies Under the Package Scheme of Incentives of 2007").

²²¹ See PDM (citing Bombay Dyeing October 5, 2017 SQR at 21).

²²² *Id.*

²²³ See Bombay Dyeing October 5, 2017 SQR at 21.

²²⁴ See Petitioners' Rebuttal Brief at 38-39.

²²⁵ See Bombay Dyeing September 6, 2017 IQR at 24; see also Bombay Dyeing October 5, 2017 SQR at 20-23 and Annexure Q.

²²⁶ See Bombay Dyeing October 16, 2017 2SQR at Annexure F and Annexure G.

²²⁷ *Id.* at Annexure G.

²²⁸ *Id.*

Dyeing provided no evidence of a reimbursement, we instead summed the total benefit amounts received by the PSF and the Retail/Textile divisions to calculate the subsidy rate.²²⁹

Thus, consistent with the *Preliminary Determination*, because there is no record evidence of repayment to the government, we are treating the sum of rebated sales tax (VAT/CST) claimed by the Retail/Textile and PSF divisions of Bombay Dyeing as a recurring benefit, consistent with 19 CFR 351.524(c)(1).²³⁰ We divided the total benefits for Bombay Dyeing under this program by Bombay Dyeing's total POI sales.²³¹

b. SGOM Electricity Duty Exemption

Under the SGOM PSI, SICOM has exempted specific industries and enterprises from electricity duties in certain less developed industrial regions in the state of Maharashtra. In *Cold-Rolled Steel from India*, Commerce found that this program constitutes a financial contribution, in the form of revenue forgone, and is regionally specific, under sections 771(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively.²³² In the *Preliminary Determination*, we determined that the Electricity Duty Exemption is countervailable because this program confers a financial contribution by exempting Bombay Dyeing from paying the full amount of electricity duties that would otherwise be due.²³³ The program is specific because it is limited to certain geographical regions within the state of Maharashtra. Bombay Dyeing reported that their manufacturing facilities were exempted from the payment of electricity duties during most of the POI until September 2016, thus conferring a benefit pursuant to section 771(5)(E) of the Act in the amount of the exempted electricity duties.²³⁴

Bombay Dyeing reported the amount to be reimbursed by the GOI under the Electricity Duty Exemption in its October 5, 2017 submission.²³⁵ At verification, we found that Bombay Dyeing did not record the reported benefit amount under the Electricity Duty Exemption in its accounting system.²³⁶ As company officials explained, consistent with Annexure Y of its October 5, 2017 submission, the reported benefit under the Electricity Duty Exemption was not recorded in company accounting records because Bombay Dyeing had not yet received it.²³⁷ At verification, Commerce officials examined the electricity duty listed on the monthly electricity bills received during the POI and confirmed the reported benefit amount.²³⁸ We found that the electricity duty amounts listed in the monthly electricity bills during the POI reconciled with the reported benefit in Annexure Y of Bombay Dyeing's October 5, 2017 submission.²³⁹

²²⁹ See Bombay Dyeing's Preliminary Analysis Memorandum at Footnote 7 and Attachment II.

²³⁰ *Id.* at Footnote 7.

²³¹ See Bombay Dyeing's Preliminary Analysis Memorandum at 3-4.

²³² See PDM at 29 (citing *Cold-Rolled Steel Flat Products India Final*).

²³³ *Id.* at 29.

²³⁴ See PDM (citing Bombay Dyeing October 5, 2017 SQR at 24).

²³⁵ See Bombay Dyeing October 5, 2017 SQR at Annexure Y.

²³⁶ See Bombay Dyeing's Verification Report at 9.

²³⁷ *Id.*

²³⁸ *Id.* at 9-10.

²³⁹ *Id.*

The petitioners argue that Commerce’s inability to reconcile the reported benefit amount to Bombay Dyeing’s accounting records meant that Bombay Dyeing “failed to act to the best of its ability.”²⁴⁰ However, as Bombay Dyeing officials explained, and we confirmed at verification, the reported benefit amount had not yet been received by Bombay Dyeing, and has therefore not yet been entered into the Bombay Dyeing’s accounting system.²⁴¹

To support their argument, the petitioners cite to *PET Resin China Final* wherein Commerce applied AFA because it could not verify respondent’s individual imported equipment purchases to respondents’ accounting system.²⁴² Commerce argued that AFA was warranted due to its inability to ensure the veracity of the reported benefit and because the respondent “failed to act to the best of its ability.”²⁴³ However, in the instant case, Commerce was able to confirm the reported benefit information through electricity bills listing the electricity duty amounts owed for each relevant month of the POI. As noted above, these amounts matched the benefit amount reported in Annexure Y of Bombay Dyeing’s October 5, 2017 submission.²⁴⁴

Therefore, we disagree with the petitioners’ argument that Bombay Dyeing failed to act to the best of its ability because the company reported the benefits under the Electricity Duty Exemption, and provided the benefit amounts. Although at verification Bombay Dyeing had yet to receive the reported benefit from the GOI, per 19 CFR 351.510(b), “in the case of a ... remission of an indirect tax..., the Secretary normally will consider the benefit as having been received at the time the recipient firm otherwise would be required to pay the indirect tax...”²⁴⁵ Thus, Commerce considers the reported benefit to have been received during the POI. In order to calculate the benefit, we divided the total amount of exemptions Bombay Dyeing received during the POI under the Electricity Duty Exemption by the company’s total sales during the POI. On this basis, we determined a countervailable subsidy rate of 0.16% *ad valorem* for Bombay Dyeing.²⁴⁶

c. SGOM Stamp Duty Exemption

The petitioners argue that Commerce’s inability to tie the reported benefit amount received under the Stamp Duty Exemption to Bombay Dyeing’s accounting system meant that Bombay Dyeing “failed to act to the best of its ability.”²⁴⁷ As such, the petitioners argue that Commerce must apply AFA to the benefit received under the Stamp Duty Exemption.²⁴⁸ To support its argument, the petitioners cite to *PET Resin China Final*, wherein Commerce applied AFA because it could not verify respondent’s individual imported equipment purchases to respondents’ accounting system, ultimately finding the respondent had not acted to the best of its ability.²⁴⁹

²⁴⁰ See Petitioners’ Rebuttal Brief at 39.

²⁴¹ See Bombay Dyeing’s Verification Report at 9-10.

²⁴² See Petitioners’ Rebuttal Brief at 38 (citing *PET Resin China Final* IDM).

²⁴³ *Id.*

²⁴⁴ See Bombay Dyeing’s Verification Report at 9-10.

²⁴⁵ See section 19 CFR 351.510(b) of the Act.

²⁴⁶ See Bombay Dyeing’s Final Analysis Memorandum at 4.

²⁴⁷ See Petitioners’ Rebuttal Brief at 38 (citing *PET Resin China Final* IDM).

²⁴⁸ *Id.* at 38.

²⁴⁹ *Id.* (citing *PET Resin China Final* IDM).

Similarly, to the SGOM Electricity Duty Exemption, we find that that this program constitutes a financial contribution, in the form of revenue forgone, and is regionally specific, under sections 771(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively. The program is specific because it is limited to certain geographical regions within the state of Maharashtra. Bombay Dyeing reported that its manufacturing facility was exempt from the payment of stamp duty on land registration, thus conferring a benefit pursuant to section 771(5)(E) of the Act in the amount of the exempted stamp duty.

At verification, Bombay Dyeing officials provided a certificate from the GOI indicating an exemption from payment of stamp duty, and a letter from Bombay Dyeing to the Government of Maharashtra Industries Department, dated July 6, 2009, stating the benefit owed to them under the Stamp Duty Exemption.²⁵⁰ While the requested amount matches the amount reported in Annexure I of Bombay Dyeing's October 16, 2017 submission,²⁵¹ company officials at verification could not demonstrate that this amount was recorded in Bombay Dyeing's accounting system.²⁵² The purpose of the verification of this non-recurring program was to confirm the veracity of Bombay Dyeing's reported benefits, and this information could only be found in the company's books and records. Bombay Dyeing's refusal to access accounting records confirming the amount received by Bombay Dyeing under the Stamp Duty Exemption means Bombay Dyeing failed to cooperate by not acting to the best of its ability.

Sections 776(a)(1) and (2) of the Act provide that Commerce shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by 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. Bombay Dyeing, by failing to provide access to accounting records demonstrating the benefit received under the Stamp duty exemption, withheld requested information.²⁵³

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that Commerce "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires Commerce to use the information if it can do so without undue difficulties.

²⁵⁰ See Bombay Dyeing's Verification Report at 10.

²⁵¹ See Bombay Dyeing October 16, 2017 2SQR at Annexure I.

²⁵² See Bombay Dyeing's Verification Report at 10.

²⁵³ *Id.*

Section 776(b) of the Act further provides that Commerce may use an adverse inference in relying on the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, and under the TPEA, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.²⁵⁴ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.²⁵⁵ Bombay Dyeing did not act to the best of its ability for the reasons explained above, and Commerce is therefore applying an adverse inference to the benefit received under the Stamp Duty exemption.

Under section 776(d) of the Act, when applying an adverse inference, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.²⁵⁶ The TPEA makes clear that, when selecting facts available with an adverse inference, 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.²⁵⁷

It is Commerce’s practice in CVD proceedings to select, as AFA, the highest calculated program-specific rates determined in the instant investigation, or if not available, rates calculated in prior CVD cases involving the same country.²⁵⁸ We selected an AFA rate for Bombay Dyeing under this program of 3.09 percent *ad valorem* using information available in *Hot-Rolled Steel 2001* wherein a respondent had availed benefits under a similar scheme.²⁵⁹

Comment 7: Whether to Apply AFA to the POI Value of Bombay Dyeing’s Company-Wide Sales and Company-Wide Export Sales

Petitioners’ Case Brief

- At verification, Bombay Dyeing failed to reconcile any of its reported sales figures in the manner requested, despite Commerce’s clear instructions to do so. Bombay Dyeing improperly included freight, insurance, and commissions in its export sales figures.²⁶⁰ Further, Commerce officials were unable to reconcile Bombay Dyeing’s total company sales to its accounting system.²⁶¹ Bombay Dyeing’s reporting failures led to a significantly understated subsidy margin at the *Preliminary Determination* due to the

²⁵⁴ See section 776(b)(1)(B) of the Act; see also section 502(1)(B) of the TPEA.

²⁵⁵ See section 19 CFR 351.308(c) of the Act.

²⁵⁶ See section 776(d)(1) of the Act; see also section 502(3) of the TPEA.

²⁵⁷ See section 776(d)(3) of the Act; see also section 502(3) of the TPEA.

²⁵⁸ See *PET Resin India Final IDM* at 12.

²⁵⁹ *Id.* at 26 (citing *Hot-Rolled Steel India 2004 Final IDM* at 3).

²⁶⁰ See Petitioners’ Case Brief at 34 (citing Bombay Dyeing’s Verification Report at 4).

²⁶¹ *Id.*

incorrect inclusion of these items.²⁶²

- Commerce requested that Bombay Dyeing report its sales values on a FOB basis, consistent with its regulations and practice. Commerce requested that Bombay Dyeing describe any adjustments that were made to derive FOB value for values recorded on a basis other than FOB.²⁶³
- Commerce officials only discovered that Bombay Dyeing submitted sales figures that improperly included freight, insurance, and commissions at verification, even though Bombay Dyeing was instructed in its verification agenda that it must be prepared to reconcile its sales on an FOB basis. Either Bombay Dyeing did not properly prepare for verification, or it intentionally chose to not disclose its critically flawed reporting of its sales to Commerce. In doing so, Bombay Dyeing has failed to act to the best of its ability by failing to provide Commerce with accurate sales figures.²⁶⁴
- At verification, Bombay Dyeing provided a revised total export sales figure that excluded freight and insurance costs, but included commissions. Therefore, at no point during verification was Bombay Dyeing able to provide export sales values on a FOB basis, and tie this value to its accounting system. Commerce's practice is to only include production related expenses, thus with the inclusion of commissions, Commerce is unable to use any of Bombay Dyeing's export sales figures (*i.e.*, total exports, exports of subject merchandise, exports to the U.S.) for the final calculation.²⁶⁵
- Commerce's verification report stated that the Retail/Textile and Realty divisions sales figures were also not reported on an FOB basis. Company officials were unable to revise its total sales figures for the two divisions and report them on an FOB basis. Therefore, the submitted sales figures for two-thirds of Bombay Dyeing's divisions were not reported on an FOB basis.²⁶⁶ Without sales on an FOB basis, Commerce simply cannot calculate an accurate margin that captures the entire benefits received by Bombay Dyeing.²⁶⁷
- Commerce's discovery that Bombay Dyeing failed to accurately report its sales values and the company's continued inaccurate reporting demonstrate that Bombay Dyeing has significantly impeded Commerce's investigation. As a result, Commerce is unable to reconcile the companies' sales figures and, therefore, the application of AFA is warranted.²⁶⁸
- In a recent case where a respondent was unable to reconcile its sales values, Commerce has applied AFA to those sales figures.²⁶⁹
- Bombay Dyeing failed to reconcile its FOB values for export sales and total sales to its internal accounting system, and thus, as AFA, Commerce should use Bombay Dyeing's smallest sales denominator on the record to calculate all benefits received by Bombay Dyeing during and prior to the POI.²⁷⁰

²⁶² See Petitioners' Case Brief at 34.

²⁶³ *Id.* (citing Bombay Dyeing September 6, 2017 IQR at "General Questions 1-6").

²⁶⁴ *Id.* at 35.

²⁶⁵ *Id.* at 35-36 (citing *Washers Korea Final IDM* at 52-53).

²⁶⁶ *Id.* at 36 (citing Bombay Dyeing's Verification Report at 4).

²⁶⁷ *Id.* at 36.

²⁶⁸ *Id.* at 37.

²⁶⁹ *Id.* (citing *Silica Fabric China Final IDM* at 17).

²⁷⁰ *Id.* at 38.

Commerce’s Position: We disagree with the petitioners, in part. In the *Preliminary Determination*, Commerce used Bombay Dyeing’s reported total sales figure during the POI, and total export sales figure during the POI as denominators.²⁷¹ At verification, Bombay Dyeing officials provided sales data, including total sales, across divisions; the PSF division’s domestic sales; and the adjustments necessary to determine the PSF division’s reported total export sales on an FOB basis.²⁷² Company officials tied reported total sales figures for each of Bombay Dyeing’s three divisions, as well as the total company-wide total sales figure, to the internal accounting system and the company’s financial statements for the POI.²⁷³

Company officials, however, failed to provide evidence to support their statement that the total sales figures for the Realty and Retail/Textile division were reported on an FOB basis.²⁷⁴ Company officials stated that each division of Bombay Dyeing maintains separate detailed accounting records, that the Retail/Textile division was shuttered in 2016, and that the company had no personnel able to access records for the Realty division or the Retail/Textile division.²⁷⁵ Moreover, at verification, Commerce officials discovered that the reported total export sales figures were not on an FOB basis.²⁷⁶ Despite Commerce’s inability to verify whether sales figures for the Realty and the Retail/Textile divisions were reported on an FOB basis, there is no evidence to support the petitioners’ argument that Bombay Dyeing “chose to not disclose its critically flawed reporting of its sales to {Commerce},” thus warranting the application of full AFA.²⁷⁷ To support the argument that Commerce should apply full AFA to Bombay Dyeing’s sales figures, the petitioners reference *Silica Fabric China Final*, in which Commerce was “unable to reconcile the respondent’s 2014 total sales, export sales, and sales of subject merchandise to the United States to the company’s accounting records.”²⁷⁸

Unlike the respondent in *Silica Fabric China Final*, Bombay Dyeing officials tied the total sales figures for each division to its accounting system and the company’s audited financial statements for the POI.²⁷⁹ Furthermore, upon discovering that the reported total export sales figures were not on an FOB basis, Bombay Dyeing officials provided total export sales figures adjusted for freight, insurance, and commission costs.²⁸⁰ Finally, the record lacks substantial evidence indicating that Bombay Dyeing hid information from Commerce given the company’s cooperation with respect to the reporting of benefits received from the AAP, FPS, and the IEIS.

Therefore, as explained above, we determine that the application of full AFA is not warranted with respect to Bombay Dyeing’s sales figures because Bombay Dyeing provided corroborated

²⁷¹ See Bombay Dyeing’s Preliminary Analysis Memorandum at 2.

²⁷² See Bombay Dyeing’s Verification Report at 4; *see also* Bombay Dyeing’s Verification Report Exhibit 3 at 40 and 60.

²⁷³ See Bombay Dyeing’s Verification Report at 4.

²⁷⁴ *Id.* at 4.

²⁷⁵ *Id.* at 2 and 4.

²⁷⁶ *Id.* at 4.

²⁷⁷ See Petitioners’ Case Brief at 35.

²⁷⁸ *Id.* (citing *Silica Fabric China Final* IDM at 17).

²⁷⁹ See Bombay Dyeing’s Verification Report at 3-4.

²⁸⁰ *Id.* at 4.

total sales figures and total export sales figures. Nevertheless, we find the application of partial AFA is warranted with respect to Bombay Dyeing's responses for failing to demonstrate whether the total sales figures for the Realty and Retail/Textile divisions were recorded on an FOB basis, thereby potentially overstating the company's total sales figure.²⁸¹ Furthermore, we find the application of partial AFA is warranted with respect to Bombay Dyeing's responses for failing to correctly account for, and deduct, freight, insurance, and commissions costs related to Bombay Dyeing's export sales until verification.²⁸²

In light of the above, we have relied on facts available, in accordance with section 776(a) of the Act, because (1) by not having demonstrated the sales figures for the Realty and Retail/Textile division are on an FOB basis, Bombay Dyeing withheld necessary information requested by Commerce, and (2) by incorrectly including freight, insurance, and commissions costs in the total export sales figures, Bombay Dyeing did not provide information in the manner requested by Commerce. Thus, we must rely on facts otherwise available in accordance with sections 776(a)(1) and 776(2)(A) and (B) of the Act.

Additionally, in selecting from among the facts available, Commerce has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act. Where Commerce determines that the use of facts available is warranted, section 776(b) of the Act permits Commerce to apply an adverse inference if it makes the additional finding that "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information." The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel Corp.*, provided an explanation of the "failure to act to the best of its ability" standard, noting that it requires a respondent to "put forth its maximum effort to provide {Commerce} with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness or inadequate record keeping."²⁸³ It requires them to, among other things, "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" their ability to do so.²⁸⁴ The CAFC noted that the statute does not require Commerce to show that a respondent made more than a simple mistake in order to apply an adverse inference, nor is an excuse that the respondent "did not think through inadvertence" sufficient; rather "{i}nadequate inquiries may suffice. The statutory trigger for {Commerce's} consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent."²⁸⁵

Commerce asked for information which was within Bombay Dyeing's possession, yet the information was not reported or was reported incorrectly. Thus, we find that Bombay Dyeing failed to cooperate by not acting to the best of their ability to comply with the Commerce's requests for information in this investigation, and as such, Commerce has based our final determination, with respect to Bombay Dyeing, on partial AFA.

²⁸¹ See Bombay Dyeing's Verification Report at 4.

²⁸² *Id.*

²⁸³ See *Nippon Steel Corp.* at 1382.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

As partial AFA, we have used information available on the record. Specifically, we have used the freight, insurance, and commissions figures tied to Bombay Dyeing's total export sales, which were discovered at verification, to adjust Bombay Dyeing's total export sales and total sales figures. With respect to total sales figures reported for the Realty and Retail/Textile divisions, Commerce is as AFA assuming these figures were reported on a CIF basis. We are therefore applying the percentage difference between the originally reported total export sales figure and the calculated FOB total export sales figure of three percent to Bombay Dyeing's total sales figures for the Realty and Retail/Textile division, which increases Bombay Dyeing's total sales figure.²⁸⁶ Moreover, we are applying the calculated FOB total export sales figure to the PSF division's total sales. The summed total sales figures for all three divisions equal Bombay Dyeing's total sales figure.²⁸⁷

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. Here, however, we are using verified information provided by Bombay Dyeing itself in this investigation to adjust Bombay Dyeing's total and export sales figures. Therefore, in accordance with section 776(c)(1) of the Act, it is not necessary for Commerce to corroborate that information because we have relied on primary information obtained from Bombay Dyeing.

Comment 8: Whether to Apply AFA to Reliance's Unreported Benefits from the AAP

Petitioners' Case Brief

- Commerce should apply AFA to the entire AAP program in determining the benefit to Reliance because Reliance failed to submit a significant number of AAP licenses to Commerce; thereby prohibiting Commerce from verifying the accuracy of its AAP licenses.²⁸⁸
- Reliance claims the licenses were for another division but Commerce never instructed Reliance to only report a response for AAP licenses related to subject merchandise.²⁸⁹ Reliance should have reported its company-wide benefits in accordance with Commerce's regulations and practice.²⁹⁰ The Courts have upheld Commerce's determination that the burden of producing relevant evidence belongs with the respondent, not Commerce.²⁹¹ In this investigation, Reliance had an obligation to provide accurate and complete responses to Commerce in response to Commerce's questionnaire and failed to do so with respect to the AAP subsidy program.²⁹²
- Reliance inaccurate and misleading statements warrants application of AFA because they impeded Commerce's investigation of the AAP and Reliance's conduct results in the record lacking the necessary information to calculate a benefit under the program.

²⁸⁶ See Bombay Dyeing's Final Analysis Memorandum.

²⁸⁷ See Bombay Dyeing's Final Analysis Memorandum.

²⁸⁸ See Petitioners' Case Brief at 15.

²⁸⁹ *Id.* at 16.

²⁹⁰ *Id.* at 17 (citing *Mechanical Tubing India Final IDM* at 43).

²⁹¹ *Id.* at 17 (citing *Thai I-Mei Frozen Foods Co.; Zenith Electronics Corp.; Tianjin Mach. Imp. & Exp. Corp.* (CIT 1992)).

²⁹² *Id.* at 18.

Whether this behavior was the result of “inattentiveness and carelessness,” or amounted to “deliberate concealment or inaccurate reporting,” it “surely evinces a failure to cooperate.”²⁹³

Reliance’s Revised Rebuttal Brief

- The petitioners’ claims are unsupported and do not meet the statutory requirements for the application of AFA because Reliance informed Commerce that it was reporting the AAP licenses for only the PSF exports in the initial questionnaire. At verification, Commerce did not identify any deficiency in this response and verified that Reliance had four AAP licenses for PSF export. The remaining AAP licenses in Reliance’s system related to non-subject merchandise and therefore were not reported. The petitioners have failed to argue that the AAP information for non-subject merchandise is relevant to the subsidy investigation for PSF.²⁹⁴

Commerce’s Position: Commerce agrees with the petitioners and is applying AFA to the AAP program. While performing completeness checks for the AAP program at verification, Commerce discovered that Reliance did not report that it received a significant number of AAP licenses for its physical exports, deemed exports, sales to SEZ, sales to EOUs, and sales to Reliance’s SEZ during the POI.²⁹⁵ In the Standard Questions Appendix of the Initial Questionnaire, Commerce asked Reliance to (1) “identify all instances in which assistance under the program was provided to any mandatory respondent (including all cross-owned companies) during the POI” and (2) whether Reliance was eligible for and actually used the program.²⁹⁶ In Reliance’s initial questionnaire response, Reliance stated that it “made certain ‘deemed’ exports of PSF in India under four AAP licenses.”²⁹⁷ Reliance also stated that Reliance “used the Duty Drawback Scheme for all of its physical exports, including the exports to the U.S. during the POI.”²⁹⁸ By failing to report that it used a significant number of AAP licenses for its other exports in its questionnaire response, Reliance failed to provide an accurate and complete response to Commerce questionnaire regarding its use of the AAP program. Accordingly, for the final determination, Commerce determines that AFA is warranted for the AAP program because Reliance’s inaccurate statements regarding the AAP program deprived Commerce of the ability to fully analyzing the benefit Reliance receive under the program and impeded Commerce’s ability to conduct an accurate and complete investigation.

While Reliance claims that it informed Commerce that it was reporting the AAP licenses for only the PSF exports in the initial questionnaire response, that is not what Reliance’s response indicates. Record evidence indicates that Reliance did not inform Commerce that it received other AAP licenses for other products.²⁹⁹ Additionally, Reliance did not request that Commerce allow it to limit its reporting of the licenses to only the PSF division or PSF product for the AAP program. In fact, in Reliance’s August 7, 2017 letter informing Commerce of its difficulty in

²⁹³ See Petitioners’ Case Brief at 18 (citing *Tianjin Mac. Imp. & Exp. Corp.* (CIT 2005)).

²⁹⁴ See Reliance’s Revised Rebuttal Brief at 1 and 3-5.

²⁹⁵ See Reliance’s Verification Report at 7.

²⁹⁶ See Initial CVD Questionnaire.

²⁹⁷ See Reliance September 11, 2017 SQR at 5.

²⁹⁸ *Id.* at 3-5.

²⁹⁹ *Id.*

reporting the EPCG program, Reliance requested that it be able to limit its reporting for the PSF division for PSF products with respect to only the EPCG program.³⁰⁰ Reliance never referenced the AAP program or any other programs in the submission.³⁰¹ In our September 22, 2017 supplemental questionnaire, Commerce explicitly denied Reliance's request and instructed Reliance to report *all* of its licenses under the EPCG program for all of its business segments and divisions.³⁰² At that point in the investigation, Reliance was put on notice that it was required to report all of its benefits for all programs. Reliance's response to Commerce's September 22, 2017 supplemental questionnaire indicates that Reliance was aware that it was required to report all of its benefits for all programs because Reliance reported all of its benefits for all products and business segment and business divisions under the EPCG, SHIS, Duty Drawback, and FPS programs.³⁰³ As such, we find that Reliance never informed Commerce that it was limiting its reporting to only the PSF division and product. Moreover, Reliance was put on notice to report *all* of its benefits under the AAP program based on Commerce's September 22, 2017 supplemental questionnaire.

Reliance also claims that AFA is not warranted because Commerce did not identify any deficiencies in its response and verified that Reliance had four AAP licenses for PSF export during the POI. According to Reliance, the remaining AAP licenses in its accounting system related to non-subject merchandise and therefore were not reported. We disagree with both of Reliance's assertions. In addition to Reliance's failure to report the company-wide benefits under the AAP, we were unable to confirm at verification whether Reliance reported all of the benefits that Reliance's PSF division received during the POI.³⁰⁴ Company officials explained at verification that they did not import any materials during the POI under the four licenses issued during 2016; however, Reliance's PSF division may have received licenses in 2015 and subsequent import duty exemptions for the 2015 licenses during the POI.³⁰⁵ When we asked to examine the tracking spreadsheet for all of the imports associated with the licenses issued in 2016 and 2015 under this program, company officials provided us with the tracking spreadsheet for the licenses issued in 2016 but stated that they no longer have the tracking spreadsheet for the 2015 licenses.³⁰⁶ Because Reliance did not provide its tracking spreadsheet for all of the imports associated with the licenses issued in 2015 under the AAP program, Commerce does not know, nor can it know, the full extent of the benefit Reliance received via the AAP program. As such, Commerce finds that, in addition to failing to report its company-wide benefits, Reliance failed to demonstrate at verification that it reported all of its benefits for Reliance's PSF division during the POI under the AAP program. Based on these facts, we determine that Reliance withheld complete and accurate information requested by Commerce regarding its use of the AAP program and that as a result, necessary information is missing on the record in order to calculate an accurate benefit under the AAP program. In accordance with sections 776(a)(1) and 776(a)(2) of the Act, we determine that the use of facts available is warranted. Moreover, because Reliance failed to provide necessary information regarding program use, despite Commerce's requests that it do so, we find that Reliance failed to act to the best of its abilities in

³⁰⁰ See Reliance's EPCG Letter.

³⁰¹ *Id.*

³⁰² See Reliance Second SQ.

³⁰³ *Id.*

³⁰⁴ See Reliance's Verification Report at 6-7.

³⁰⁵ *Id.*

³⁰⁶ *Id.*

providing the requested information that was in its possession, and that the application of AFA is warranted pursuant to 776(b) of the act, in determining benefit. Further, for the reasons discussed in Comment 1 regarding financial contribution and specificity, we find this program is also a countervailable subsidy.

Comment 9: Whether to Apply AFA to Reliance's Unreported Benefits from the MEIS and MLFPS Programs

Reliance's Case Brief

- At verification, Commerce observed that Reliance had recorded benefits it received from the MLFPS and the MEIS in its SAP system.³⁰⁷
- In both the initial questionnaire as well as at verification, Reliance explained that PSF is not eligible for benefit under the MEIS program and therefore Reliance has not received benefits under the MEIS scheme.³⁰⁸ Furthermore, Reliance provided supporting documentation in response to Commerce's supplemental questionnaire that established that the MEIS program benefits are not available for PSF.³⁰⁹
- Record evidence demonstrates that the MLFPS program was only available for products *not* covered under the FPS. Therefore, the benefits Reliance received for the MLFPS could not be for PSF because Reliance had used the FPS for PSF exports (prior to the POI).³¹⁰

Bombay Dyeing's Case Brief

- As demonstrated during verification, MEIS is not applicable for the subject goods.³¹¹

Petitioners' Case Brief

- Reliance provided false responses to Commerce's questions regarding the program in its initial questionnaire responses. To the extent that Reliance believed the information was irrelevant because the benefits were allegedly for non-subject merchandise, Commerce has rejected similar claims in prior determinations. Specifically, in *Mechanical Tubing India Final*, Commerce applied AFA to the respondent's similar claims that it was not required to report certain subsidies during the POI.³¹²
- It was not Reliance's prerogative to make a relevancy determination regarding the information it deemed appropriate to submit to Commerce's questionnaires.³¹³
- According to the verification report, the MEIS entry was listed under an account, which Reliance should have reviewed when reporting program use to Commerce throughout the investigation.³¹⁴ Consistent with its CVD AFA hierarchy, Commerce should apply the highest calculated non-*de minimis* rate for the identical program in India: 1.48 percent.³¹⁵

³⁰⁷ See Reliance's Case Brief at 2.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ See Bombay Dyeing's Case Brief at 5.

³¹² See Petitioners' Case Brief at 24.

³¹³ *Id.*

³¹⁴ *Id.* at 25.

³¹⁵ *Id.* at 26 (citing *Mechanical Tubing India Final* IDM at 12).

- Reliance did not report the use of MLFPS in response to Commerce’s initial and supplemental requests for other forms of direct or indirect assistance provided by the “GOI (or entities owned directly, in whole or in part, by the GOI or any provincial or local government.”³¹⁶
- This additional benefit amount appeared in Reliance’s account that should have been reviewed and reported.³¹⁷ Even if Reliance chose not to report this subsidy, perhaps believing it was not reportable because, as company officials tried to explain at verification, the benefit was not related to PSF exports to the United States, the company is mistaken because as explained in *Mechanical Tubing India Final* and *CTL Plate Korea Final*, Commerce has rejected respondents’ contention that it had “discretion to not report” subsidies discovered for the first time at verification.³¹⁸
- To the extent Reliance believed it had evidence supporting the non-countervailability of the {MLFPS} program, the time to provide such data was during the course of the investigation, not at verification.³¹⁹
- Although company officials state that Reliance did not receive benefits for PSF products sold to the United States under {MLFPS}, Commerce has made no determination regarding this program because Reliance withheld the necessary information to analyze this program.³²⁰
- Consistent with its CVD AFA hierarchy, Commerce should apply a rate of 16.63 percent.³²¹

Reliance’s Revised Rebuttal Brief

- The MEIS and MLFPS programs were not used for subject-merchandise; therefore, these programs are not countervailable. Both the MEIS and MLFPS are programs that allow exporters to earn duty credit scrips on the FOB value of the exports for certain products for certain markets.³²² Under 19 CFR 351.525(b)(4) and (5), if a subsidy is tied to sales to a particular market or sale of a particular product, Commerce will attribute that subsidy to only the products sold to that market or only to the product. The MEIS scheme is tied to exports of a specific product and the MLFPS is tied to specific products exported to specific markets.³²³

Petitioners’ Rebuttal Brief

- Reliance’s claim that it was only required to report benefits received for subject merchandise and non-subject merchandise exported to the United States; therefore, it was

³¹⁶ See Petitioners’ Case Brief at 31 (citing *Steel Flanges India Final* IDM at Comment 4).

³¹⁷ *Id.* at 31.

³¹⁸ *Id.*

³¹⁹ *Id.* at 33.

³²⁰ *Id.* at 34.

³²¹ *Id.* at 26 (citing *Mechanical Tubing India Final* IDM at Comment 12); see also *See* Petitioners’ Case Brief at 32 (citing *PET Resin India Final* IDM at 25).

³²² See Reliance’s Revised Rebuttal Brief at 7-8 (citing *OCTG India Final* IDM at Comment 12).

³²³ *Id.* at 7-8 (citing *PET Film India 2009 Final* IDM at 6 (using post-shipment loans tied to exports of subject merchandise to the United States as the numerator where the post-shipment loans were tied to specific shipments of a particular product to a particular country).

correct in not reporting that certain subsidies unrelated to subject merchandise are contrary to the *Preliminary Determination*, case precedent, and the law.³²⁴

- Reliance’s second argument is that because its subsidies were not tied to subject merchandise (which the petitioners demonstrated is false), it did not have to report these benefits is incorrect because the company does not have “discretion to not report” subsidies.³²⁵
- With respect to MEIS, Commerce should reject Reliance’s attempted revision of the facts of this case and apply AFA for its failure to report its MEIS program use because instead of properly reporting these benefits, Reliance initially claimed non-use for the MEIS program.³²⁶
- With respect to MLFPS, Reliance argues the MLFPS and the FPS programs are mutually exclusive and because it utilized the FPS for exports of subject merchandise, the respondent could not utilize the MLFPS for exports of subject merchandise. While it may be true that these programs are mutually exclusive, Commerce countervailed all benefits received under the FPS, not only those relating to subject merchandise or subject merchandise exported to the U.S.³²⁷ Therefore, Reliance was still required to report the entire universe of FPS benefits and not only those relating to subject merchandise.³²⁸

Commerce’s Position: Commerce agrees with the petitioners and is applying AFA to the MEIS program alleged in the Petition and the MLFPS program that Commerce found at verification. As discussed below, at the verification of Reliance’s questionnaire responses, Commerce examined Reliance’s audited financial statements, tax returns, general ledger accounts, and other selected accounts from the chart of accounts to confirm Reliance’s reported receipts of assistance were complete and accurate, and to ensure that there were no additional unreported assistance.³²⁹ In examining these accounts, we discovered that Reliance did not report that its non-PSF divisions received benefits under the MEIS and MLFPS programs.³³⁰ Accordingly, Commerce determines that AFA is warranted with respect to benefit, specificity, and financial contribution because Reliance and the GOI failed to cooperate to the best of their abilities when they failed to report and provide complete responses regarding the MEIS and MLFPS programs.

Reliance

With respect to the MEIS program, in the Standard Questions Appendix of the Initial Questionnaire, Commerce asked Reliance to (1) “identify *all* instances in which assistance under the program was provided to any mandatory respondent (including all cross-owned companies) during the POI” (*emphasis added*) and (2) whether Reliance was eligible for and actually used

³²⁴ See Petitioners’ Rebuttal Brief at 29.

³²⁵ *Id.* at 31-32 (citing *CTL Plate Korea Final IDM* at 42).

³²⁶ *Id.* at 32.

³²⁷ See Bombay Dyeing’s Preliminary Analysis Memorandum at 4, (“we then divided the total by total POI export sales.”).

³²⁸ See Petitioners’ Rebuttal Brief at 33-34.

³²⁹ See Reliance’s Verification Report at 2 and 13-14.

³³⁰ *Id.* at 13.

the program.³³¹ Reliance response to the initial questionnaire demonstrates that it withheld necessary information requested by Commerce. In its questionnaire response, Reliance stated that no division of Reliance received assistance and did not provide a response to our Standard Questions Appendix:

“{n}ot applicable. PSF is not eligible for benefit under the MEIS scheme. Therefore, {Reliance} has not received benefits under the MEIS scheme.”³³²

Reliance should have reported that its non-PSF division received benefits under the program. Commerce did not give Reliance discretion to limit its reporting to only PSF products or to the PSF division. Because Reliance did not report that it received assistance under these programs for its non-PSF divisions, Reliance deprived Commerce of the opportunity to fully investigate these benefits. We discovered Reliance’s failure to report its use of the MEIS at verification, which is too late in the investigation to remedy the deficient response. Reliance’s withholding of information on the use of these subsidy programs impeded our investigation and prevented us from verifying information about the unreported subsidy. Thus, we determine that Reliance demonstrates that Reliance did not cooperate to the best of its ability and that AFA is warranted.

Similarly, with respect to the MLFPS program, Commerce’s initial CVD questionnaire asked Reliance to report “other subsidies” not named in the petition. Reliance responded that Reliance, not Reliance’s PSF division, received no other benefits under any scheme:

{Reliance} is cooperating to the best of its ability by providing information on all alleged programs initiated in this investigation. Absent an allegation and sufficient evidence regarding other alleged subsidy programs, as required under Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures, {Reliance} believes that no response to this question is required. *However, based on our analysis, {Reliance} received no other benefits under any scheme. (emphasis added)*³³³

Despite Commerce’s questions concerning “Other Subsidies,” Reliance did not report the existence of the MLFPS program in their initial and supplemental questionnaires. Reliance made no attempt to provide the information requested by the deadline for the submission of information, and gave no indication that it needed more clarification or time regarding whether it needed to provide this information. Nowhere in Commerce’s initial questionnaire does it state that respondents have the option of only reporting benefits related to a particular product or division. Commerce needs such information to evaluate the all the subsidies received by the company to determine if they are countervailable. Furthermore, Reliance made no request to limit its reporting to its PSF division or for its PSF product. As such, as explained above in the in the section “Use of Facts Otherwise Available and Adverse Inferences,” we find that Reliance failed to provide information regarding its use of the MLFPS program, and thus, section 776(a)(2)(B) of the Act applies. Commerce also notes that in the Preliminary Determination, we explicitly stated that “it did not limit its request for responses to Reliance’s PSF plants.”³³⁴ Nonetheless, Reliance did not divulge the receipt of the unreported assistance

³³¹ See Initial CVD Questionnaire.

³³² See Reliance September 11, 2017 SQR at 17.

³³³ *Id.* at 35.

³³⁴ See PDM at 9.

prior to the commencement of verification. As such, we determine that Reliance failed to cooperate by not acting to the best of its ability and precluded this unreported assistance from being verified. Thus, pursuant to section 776(b) of the Act, we are finding, as AFA, that the unreported assistance in question is countervailable.

Despite this contradiction of its responses with the use of the MEIS and MLFPS programs, Reliance asserts that it believes that its non-reporting was correct because PSF is not eligible for benefit under the MEIS scheme.³³⁵ According to Reliance, the MEIS and MLFPS programs are not countervailable because these programs were not used for subject merchandise.³³⁶ Consistent with case precedent, practice, and the law, Commerce rejects these arguments. As in initial matter, while Reliance believes that its non-reporting of the MEIS and MLFPS programs was correct, it is Commerce, not interested parties, who determines whether a company is required to provide a response to its questions and which information is necessary for its analysis.³³⁷ The CVD questionnaire is clear that respondents are instructed to report “any other forms of assistance” not only assistance that the respondent considers to have been provided to subject merchandise.³³⁸ Commerce needs the information on all provided assistance in order for the administrative process to properly evaluate the subsidy environment in which a respondent is operating. Reliance failed to report its benefits under both these programs for its non-PSF divisions despite Commerce’s request that Reliance report all of its benefits for all of its divisions. Reliance possessed the necessary records regarding these benefits. At verification, Commerce observed that Reliance had the capability to report these sales because the entries were discovered in an account which Reliance should have reviewed when reporting program use to Commerce. However, Reliance failed to cooperate to the best of its ability by never requesting clarification from Commerce as to whether reporting only benefits for its PSF division for PSF products was sufficient with respect to Commerce’s reporting requirements. In Commerce’s *Steel Flanges India Final*, we stated that to ensure that interested parties do not prevent Commerce from conducting an accurate and complete investigation, a respondent cannot unilaterally decide to withhold information from Commerce that may require further analysis.³³⁹ More recently, in *Mechanical Tubing India Final*, Commerce applied AFA to the respondent based on similar claims that it believed it was not required to report its use of a certain subsidy. In that case, Commerce stated:

{the respondent} additionally alleges that the record contains evidence that this program is not countervailable. However,...it is not within {the respondent’s} discretion to determine which subsidies, whether named in the petition or not, should be reported to {Commerce}. Here, again, {the respondent’s} determination to substitute its judgment for {Commerce’s} has prevented Commerce from conducting a full investigation in order to determine the countervailability of this program. Thus, the application of AFA is warranted.³⁴⁰

³³⁵ See Reliance’s Case Brief at 2.

³³⁶ See Reliance’s Revised Rebuttal Brief at 7.

³³⁷ See *Maverick Tube Corp.* at 1360-61; see also *Mechanical Tubing India Final* IDM at Comment 11a.

³³⁸ See, e.g., *Supercalendered Paper Canada Final* IDM at 12; see also *Reinforcing Bar Turkey Final* IDM at Comment 5.

³³⁹ See *Steel Flanges India Final* IDM at 27.

³⁴⁰ See *Mechanical Tubing India Final* IDM at 11c.

Consistent with *Mechanical Tubing India Final*, for this final determination, we find that application of AFA is warranted with respect to Reliance's benefits under the MEIS and MLFPS programs because Reliance's determination to not provide the requested data has prevented Commerce from conducting a full investigation in order to determine the countervailability of these programs.

Moreover, we disagree with Reliance's claim that its non-reporting of the MEIS and MLFPS benefits for non-subject merchandise was correct. Commerce has stated that money is fungible within a single integrated company and its use for one purpose may free up money to benefit another purpose.³⁴¹ Subsidies provided to the non-PSF division may impact the overall production and sale of all other products of the company.³⁴² Reliance is a vertically integrated company and Reliance's PSF division is not a distinct corporate entity.³⁴³ Rather, Reliance is a corporate entity which files the tax documents and consolidates the financial statements of all of its divisions, as one corporate entity.³⁴⁴ As such, absent corporate walls, there is no evidence that the unreported benefits from the MEIS and MLFPS programs were restricted by subject or non-subject merchandise.³⁴⁵ Furthermore, there is no record demonstration that the unreported assistance from the MEIS and MLFPS programs were not used for upstream products used to produce subject merchandise. Commerce notes that as a vertically integrated company, record evidence indicates that Reliance also produces its own PTA and MEG, primary inputs used to produce subject merchandise.³⁴⁶ Because Reliance did not report that it received assistance under these programs for its non-PSF divisions, Reliance deprived Commerce of the opportunity to fully investigate whether the benefits Reliance received under both these programs were for upstream products used to produce PSF products. While exhibit SUPP2-MEIS-1 indicates that PSF is not eligible to receive benefits under the MEIS program, the exhibit does not indicate whether any upstream products used to produce PSF products are eligible to receive benefits under the program because the list is incomplete. Specifically, the list Reliance provided at Exhibit SUPP2-MEIS-1 is missing the preceding 2,288 serial numbers and the subsequent sub-categories that fall under Harmonized Tariff Code 56 "Wadding, Felt and Nonwovens; Special Yarns; Twine, Cordage, Ropes And Cables Thereof."³⁴⁷ As such, we are unable to determine whether the upstream products Reliance used to produce subject merchandise are eligible to receive scrips under the MEIS program and we disagree with Reliance's claim that its non-reporting of the MEIS and MLFPS program benefits for non-subject merchandise was correct.

Reliance also asserts that it did not have to report these benefits because its subsidies were not tied to subject merchandise. According to Reliance, both the MEIS and MLFPS programs allow exporters to earn duty credit scrips on the FOB value of the exports for certain products for certain markets.³⁴⁸ The MEIS program is tied to exports of a specific product and the MLFPS is tied to specific products exported to specific markets. As such, Reliance contends that these

³⁴¹ See *Softwood Lumber Canada Final* IDM at Comment 53.

³⁴² *Id.*

³⁴³ See Reliance's Verification Report at 3; see also Reliance October 6, 2017 2SQR2 at 7.

³⁴⁴ See Reliance September 6, 2017 IQR at Exhibit 4.

³⁴⁵ See, e.g., *Mechanical Tubing India Final* IDM at Comment 13.

³⁴⁶ See Reliance's Verification Report at 3.

³⁴⁷ See Reliance October 6, 2017 IQR at Exhibit 4.

³⁴⁸ See Reliance's Revised Rebuttal Brief at 7 (citing *OCTG India Final* IDM at Comment 12).

schemes would only be relevant to the investigation if they applied to the exports of PSF.³⁴⁹

We disagree with Reliance's claim. In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we will attribute that subsidy to only that product or market.³⁵⁰ The burden of producing relevant evidence belongs with the respondent, not Commerce.³⁵¹ Reliance did not provide any evidence supporting its claim that the benefits are tied to a certain product or market and cannot be transferred or used in the production or sale of subject merchandise. As stated above, Reliance is a vertically integrated company that produces its own PTA and MEG.³⁵² We have no information on the record that the unreported benefits from the MEIS and MLFPS programs do not tie to PTA, MEG, or other inputs that are used to produce subject merchandise. As such, by its own actions, Reliance precluded Commerce from fully investigating and verifying this information when it failed to provide any information, leaving Commerce to discover Reliance uses of these unreported programs during the verification process.

The purpose of verification is to verify the accuracy of information previously submitted to the record by the respondent. Verification is not an opportunity to provide new factual information; as such, we did not verify whether the MEIS and MLFPS programs are tied to the production or sale of a particular product and whether these programs could have benefitted subject merchandise. While Reliance may believe it has evidence supporting the non-countervailability of these programs, the time to provide such information was during the course of the investigation, not at verification. Providing a complete response prior to verification to the Standard Questions Appendix about Reliance's use of these programs, as requested in Commerce's initial questionnaire, and submitting evidence that its unreported benefits from MEIS and MLFPS are not tied to inputs used to produce subject merchandise to support Reliance's non-countervailability claim, would have enabled Commerce and other interested parties to conduct a full analysis of the programs for the preliminary determination, which would have allowed Commerce to administratively vet such evidence in the manner intended by the statute.³⁵³ As a result, Reliance's questionnaire responses on these program failed verification. Given Reliance's reporting failures, the record does not contain verified information with respect to the use of these programs and whether these programs are tied to upstream products used to produce subject merchandise. Commerce discovered that Reliance failed to report its use of the MEIS and MLFPS programs at verification, which is too late in the investigation to remedy the deficient response. As such, we determine that there is non-verifiable information on the record which was withheld and not provided in the form and manner to Commerce requested, pursuant to sections 776(a)(2)(A)(B) and (D) of the Act. In addition, we further determine that Reliance failed to cooperate by not acting to the best of its ability in responding to our requests for information, pursuant to section 776(b) of the Act. As such, for the final determination, we find

³⁴⁹ See Reliance's Revised Rebuttal Brief at 7-8 (citing *PET Film India 2009 Final IDM* at 6 using post-shipment loans tied to exports of subject merchandise to the United States as the numerator where the post-shipment loans were tied to specific shipments of a particular product to a particular country).

³⁵⁰ See *Shrimp China Final IDM* at Section IV.A.4.

³⁵¹ See Petitioners' Case Brief at 17 (citing *Thai I-Mei Frozen Foods Co.; Zenith Electronics Corp.; Tianjin Mach. Imp. & Exp. Corp.* (CIT 1992)).

³⁵² See Reliance's Verification Report at 3.

³⁵³ See Petitioners' Case Brief at 33.

that AFA is warranted with respect to Reliance's benefits under the MEIS and MLFPS programs.

With respect to only MLFPS, Reliance asserts that because the MLFPS and FPS programs are mutually exclusive and because it utilized the FPS for exports of subject merchandise, Reliance could not utilize the MLFPS for exports of subject merchandise.³⁵⁴ We are not persuaded by this argument. While it may be true that these programs are mutually exclusive for PSF, as explained above, we do not have any information regarding whether Reliance used the MLFPS program for exports of upstream products used to produce subject merchandise. Commerce countervailed all benefits received under the FPS, not only those relating to subject merchandise or subject merchandise exported to the United States.³⁵⁵ Nevertheless, even if the MLFPS was not related to subject merchandise exports, Reliance was still required to report the entire universe of FPS benefits and not only those relating to subject merchandise. Moreover, as with the MEIS program, Commerce only discovered that Reliance used this program at verification.³⁵⁶ The time for Reliance to make its claim of program non-use should have been in response to Commerce's question regarding "other subsidies" in its initial questionnaire response, and not at verification. As we stated above, verification is not the time to remedy deficient responses, but rather to verify information submitted in Reliance's questionnaire responses already on the record.³⁵⁷ For these reasons, we agree with the petitioners that application of AFA is appropriate for the MLFPS program and reject Reliance's claims that it was not required to report MLFPS benefits.

GOI

In addition to Reliance's failure to report information related to its receipt of benefits under the MEIS and MLFPS programs, the GOI also withheld information specific to these programs discovered at Reliance's verification. In the Standard Questions Appendix of our initial questionnaire, we asked the GOI to report all of its benefits under the MEIS program:

For each program, if no company(ies) under investigation or "cross-owned" companies as defined in Section III applied for, used, or benefited from that program during the POI, the GOI must so state and provide a brief explanation of the program and a detailed description of the records kept on that program. Otherwise, please answer all of the questions listed.³⁵⁸

In response to the MEIS program section of the questionnaire, the GOI simply stated "None of the Company(ies) under investigation applied for, used, or benefitted from MEIS during the POI."

³⁵⁴ According to Reliance, in the Foreign Trade Policy of 2015-2010, the GOI merged several export specific programs, including the MLFPS program into the MEIS. Record evidence demonstrates that the MLFPS was only available for products not covered under the FPS. As a result, Reliance claims the benefits Reliance received for the MLFPS could not be for PSF because Reliance had used the FPS program for PSF exports.

³⁵⁵ See Bombay Dyeing's Preliminary Analysis Memorandum at 4 ("we then divided the total by total POI export sales."); see also Reliance's Preliminary Analysis Memorandum at 7 ("we then divided the total by total POI export sales").

³⁵⁶ See Reliance's Verification Report at 2 and 13-14.

³⁵⁷ See Reliance Verification Agenda at 2 ("{p}lease note that verification is not intended to be an opportunity for the submission of new factual information").

³⁵⁸ See Initial CVD Questionnaire at 3.

Thus, the questions in the Standard Questions is not being answered.”³⁵⁹ As such, the GOI failed to disclose to Commerce that Reliance received benefits under the MEIS program. The GOI also failed to (1) answer any of the questions regarding whether any of the benefits Reliance received were for goods consumed in the production of subject merchandise³⁶⁰ and (2) list the duty credit scrips provided to Reliance during the POI for inputs into the exported subject merchandise by both rate and amount.³⁶¹

Similarly, the GOI withheld necessary information regarding the benefits it received under the MLFPS program. In our initial and supplemental CVD questionnaires, we asked the GOI to report information regarding “other subsidies.” In responding to our requests, the GOI omitted responses to the same question about “other subsidies” in its initial and supplemental questionnaire responses.³⁶²

Consequently, Commerce does not have the necessary information on the record of this investigation concerning the financial contribution and specificity of these two programs discovered at verification because the GOI withheld information and failed to cooperate to the best of its ability regarding our requests for information for the MLFPS and MEIS programs. Commerce finds the GOI deprived Commerce of the opportunity to analyze fully these unreported programs at verification to determine whether Reliance’s unreported benefits under these two programs are related to the production of subject merchandise. Consistent with our findings in prior proceedings, we find, as AFA, that the discovered MEIS and MLFPS programs meet the financial contribution and specificity criteria outlined under sections 771(5)(D) and 771(5A) of the Act, respectively.³⁶³ As AFA, we also find that this subsidy program confers a benefit under section 771(5)(E) of the Act.

As described in section “Use of Facts Otherwise Available and Adverse Inferences” of this memorandum, above, under the hierarchy, Commerce will select AFA rates in the following order of preference: the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program and the rate is not zero; if there is no identical program match within the investigation, or if the rate is zero, 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, 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, the highest calculated subsidy

³⁵⁹ See GOI September 6, 2017 GQR at 43.

³⁶⁰ See Initial CVD Questionnaire at 7 (“{f} or each good identified above, please specify and document whether it is consumed in the production of the subject merchandise”).

³⁶¹ See Initial CVD Questionnaire at 7 (“{p} lease list the duty credit scrips provided to each producer/exporter of the subject merchandise during the POI for inputs into the exported subject merchandise by both rate and amount”).

³⁶² See GOI September 6, 2017 GQR at 66; see also GOI September 28, 2017 GSQR at 31.

³⁶³ See, e.g., *Supercalendered Paper Canada* Final IDM at 17-20 and 153-154; see also *Reinforcing Bar Turkey* Final IDM at Comment 5.

rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.³⁶⁴

Commerce determined there is no calculated rate in the investigation for an identical program for the MEIS and MLFPS programs. Following the hierarchy described above, Commerce relied on the highest above-*de minimis* calculated rate, 1.48 percent *ad valorem*, for the identical program from another India CVD proceeding with respect to MEIS.³⁶⁵

With respect to the MLFPS, because we determine that there is no identical program in this investigation from another India CVD proceeding, we are applying the highest calculated rate from a similar program, *i.e.*, the FPS program, from another India CVD proceeding for MLFPS.³⁶⁶ We disagree with the petitioners that the rate of 16.63 percent *ad valorem* should be used for the MLFPS program because the rate selected by the petitioners was calculated for the EPCG program³⁶⁷ which is a non-recurring program that is tied to capital equipment.³⁶⁸

Commerce is relying on the highest calculated rate for the FPS program because we determine that the FPS program reflects the actual behavior of the GOI with respect to the MLFPS program since both the FPS and MLFPS programs are recurring programs that are for exports of particular products.³⁶⁹ Therefore, for the final determination, we determine that is appropriate to apply, as AFA, a rate of 5.00 percent *ad valorem*., for the MLFPS program.

Comment 10: Whether to Apply AFA to Reliance's Alleged Benefits for EOU programs

Petitioners' Case Brief

- While Commerce already applied AFA in the preliminary determination to Reliance's use of the six SEZ programs alleged, Reliance now submits that it also utilized EOU programs.³⁷⁰ Commerce discovered at verification that the company did, in fact, utilize at least some EOU program benefits during the POI, and potentially during the AUL.
- Recently, in *Mechanical Tubing India Final*, Commerce applied AFA to four EOU programs that Commerce officials discovered at verification were used by respondent. Commerce should reach the same decision conclusion here. Reliance failed to properly report the entire universe of its AAP and EOU programs, and, therefore, Commerce

³⁶⁴ See, e.g., *Lawn Groomers China Preliminary PDM*, unchanged in *Lawn Groomers China Final* at "Application of Facts Available, Including the Application of Adverse Inferences"; see also *Aluminum Extrusions China Final* at "Application of Adverse Inferences: Non-Cooperative Companies."

³⁶⁵ See *Mechanical Tubing India Final* IDM at 12. This rate was calculated for the identical program entitled "MEIS."

³⁶⁶ See *Steel Threaded Rod India Final* IDM at 17. This rate was calculated for the similar program, "Focus Product Scheme."

³⁶⁷ See *PET Resin India Final* at 25 and fn. 113 (the AFA rate was applied for the "Focus Market Scheme" where the Department calculated a subsidy rate for any program from any CVD proceeding involving India that JBF could have conceivably used. Commerce, in applying AFA to JBF, used the EPCG program from *Hot-Rolled Steel India 1999-2000 Final*).

³⁶⁸ See GOI September 6, 2017 GQR at 31-42; see also PDM at 20-21.

³⁶⁹ See GOI September 6, 2017 GQR at Exhibit F.

³⁷⁰ See Petitioners' Case Brief at 15.

should not presume that the information on AAP and EOU program usage obtained at verification is accurate and complete.³⁷¹

Reliance's Revised Rebuttal Brief

- Commerce must reject the petitioners' request to use AFA for all EOU programs because the petitioners failed to explain how sales by Reliance to EOUs somehow establishes that Reliance itself has an EOU and thus uses EOU programs. The fact that Reliance may sell to EOUs does not establish that it owns any EOUs or that it can take advantage of EOU programs. The petitioners have provided no evidence producers selling to an EOU receive a benefit.³⁷²

Commerce's Position: We disagree with the petitioners that AFA is also warranted for Reliance's alleged use of four EOU programs that we initiated on during the investigation. During the course of the verification we reviewed the companies' tax return, general ledger accounts, financials, and other selected accounts from the chart of accounts and Commerce did not find that Reliance used any of the four EOUs.³⁷³ While Reliance's verification report indicates that Reliance made sales to EOUs; Commerce did not find any evidence that Reliance had or used any EOUs.³⁷⁴ Further, the petitioners have not demonstrated how sales by Reliance to EOUs establishes that Reliance itself has an EOU and thus uses EOU programs.³⁷⁵ As such, we disagree that the facts of this case are analogous to *Mechanical Tubing India Final*, where Commerce discovered at verification that the respondent failed to report that it used any EOUs. Furthermore, we agree with Reliance that there is no record evidence that Reliance may sell to EOUs, nor does the record establish that it owns any EOUs or that it is used any EOU programs. Therefore, for the final determination, Commerce finds that AFA is not warranted with respect to the four EOU programs that the petitioners claim that Reliance uses.³⁷⁶

Comment 11: Whether to Apply AFA to Reliance's Purported Benefits for Two Income Deductions Related to SEZ programs

GOI's Case Brief

- The GOI denies that there was any deliberate omission since none of the mandatory exporters producing PSF or its inputs were located in the SEZ. There were no other subsidies to the knowledge of GOI which were required to be mentioned in the response.³⁷⁷
- If an enterprise is operating both as a domestic tariff area unit as well as a special economic zone unit, it has two distinct identities with separate books of accounts.³⁷⁸

³⁷¹ See Petitioners' Case Brief at 19-20.

³⁷² See Reliance's Revised Rebuttal Brief at 6-7.

³⁷³ See Reliance's Verification Report at 13.

³⁷⁴ *Id.* at 6-7.

³⁷⁵ See Petitioners' Case Brief at 15-20.

³⁷⁶ See Reliance's Revised Rebuttal Brief at 6-7.

³⁷⁷ See GOI's Case Brief at 5.

³⁷⁸ *Id.*

The books of accounts in the domestic tariff area unit – where the PSF was being produced – would not reflect any other subsidies, including deductions related to the SEZ income tax deductions.³⁷⁹

- From the preliminary determination, it appears Commerce has widened the scope of enquiry to cover benefits conferred in relation to other products also. This is beyond the scope of the notice of initiation as well as beyond the provisions of the Act and the ASCM.³⁸⁰

Reliance's Case Brief

- Reliance paid its income tax based on the MAT calculation instead of under normal tax calculations. Commerce verified that under the MAT law, Reliance could not use tax deductions other than Section 10 for capital gains. Despite eligibility, Reliance did not, in fact, receive benefits for (1) the SEZ Income Tax Exemption Section 10A scheme and (2) income tax benefit for companies located in a SEZ. Reliance's tax return filed during the POI makes it clear that Reliance did not receive an exemption under the SEZ Income Tax Exemption Section 10A scheme.³⁸¹

Petitioners' Rebuttal Brief

- Commerce properly concluded in its preliminary determination that the GOI withheld information regarding Reliance's use of this program and that it did not act in the best of its ability to answer Commerce's questions because the GOI failed to properly report this program twice – as an "other subsidy" as well as the entire "other subsidies" question.³⁸²
- Reliance failed to properly report its use of the (1) SEZ Income Tax Deduction under Schedule 10A and (2) another SEZ Income Tax Deduction for companies located in a SEZ.³⁸³
- With respect to Section 10A, Commerce applied AFA to Reliance's use of the benefits under SEZ Income Tax Deduction under Schedule 10A due to Reliance's failure to properly disclose benefits received based on its location in an SEZ. Therefore, Commerce correctly did not verify any information related to this program.³⁸⁴
- Commerce should reject Reliance's claims that it did not use the other income tax deduction for companies located in a SEZ because Reliance failed first to report this program in its initial questionnaire response then failed to provide a complete response to this program for a second time upon Commerce's request to provide a complete response to this program. Reliance provided only a one-sentence response claiming that the benefits was provided to its SEZ facility.³⁸⁵

Commerce's Position: We disagree with the petitioners. For the *Preliminary Determination*, Commerce applied AFA with respect to financial contribution, specificity, and benefits for (1)

³⁷⁹ See GOI's Case Brief at 5.

³⁸⁰ *Id.* at 14.

³⁸¹ See Reliance's Case Brief at 6-7.

³⁸² See Petitioners' Rebuttal Brief at 5.

³⁸³ *Id.* at 27.

³⁸⁴ *Id.* (citing PDM at 9-11).

³⁸⁵ *Id.* at 28.

SEZ Income Tax Exemption Section 10A and (2) another separate income tax deduction for companies located in a SEZ.³⁸⁶ Commerce determined that AFA was warranted with respect to the GOI and Reliance because both parties withheld information regarding Reliance use and location in a SEZ and failed to cooperate by not acting to the best of its ability in our requests for information because we discovered during the course of this investigation that Reliance's income tax return includes an income tax deduction amount for companies located in a SEZ.³⁸⁷

Based on our verification of Reliance's questionnaire responses, income tax return, and income tax acknowledgement, for the final determination, we have determined that Reliance did not use or claim any income tax deductions under (1) SEZ Income Tax Exemption Section 10A and (2) another separate income tax deduction for companies located in a SEZ.³⁸⁸ Specifically, at verification, we saw that Reliance utilized the MAT during the POI; however, the only deduction Reliance claimed was the Section 10 deduction for capital gains, which is available generally to Indian corporations and not industry-specific.³⁸⁹ Because Commerce does not find that a countervailable benefit exists with respect to each of these two income tax deduction programs related to SEZ, the remaining issues becomes moot.

Comment 12: Whether to Apply AFA to Reliance's Purported Benefits under Section 35(1)(iv), Section 35(I)(ii), and Section 35(I)(i) Income Tax Deductions

GOI's Case Brief

- The GOI provided substantial information relating to the Income Tax Act. Details of deductions claimed by the mandatory respondents for 2016-2017 was furnished, however deductions claimed for 2017-2018 was not provided as there was still time for returns to be filed under the Income Tax Act.³⁹⁰
- The fact that the GOI is not maintaining records of the type required by Commerce is not, in itself, grounds to determine that the GOI has not acted to the best of its ability or been non-cooperative.³⁹¹

Petitioners' Rebuttal Brief

- The GOI had sufficient time to prepare its responses for this program, and was granted numerous extensions by Commerce. Therefore, any argument that the GOI was unable to provide responses in a timely manner is completely false.³⁹²
- The GOI blatantly omitted responses to Commerce's questions and refused to provide the requested information and in doing so, intentionally withheld the request information from Commerce concerning the income tax deductions under Section 35 of the Income Tax Act.³⁹³

³⁸⁶ See PDM at 9-10, 12, and 26.

³⁸⁷ *Id.*

³⁸⁸ See Reliance's Verification Report at 6.

³⁸⁹ *Id.*

³⁹⁰ See GOI's Case Brief at 4.

³⁹¹ *Id.*

³⁹² See Petitioners' Rebuttal Brief at 6.

³⁹³ *Id.*

Commerce’s Position: We disagree with the petitioners. In the *Preliminary Determination*, Commerce countervailed Sections 35(1)(iv), Section 35(1)(ii), and Section 35(1)(i) income tax deductions, because the GOI and Reliance stated that Reliance “made deduction claims” under Sections 35(1)(iv), Section 35(1)(ii), and Section 35(1)(i) of the Income Tax Act.³⁹⁴ Commerce also preliminarily determined that application of AFA was warranted with respect to *de facto* specificity of these income tax deduction programs because the GOI did not provided Commerce with full and complete responses with respect to *de facto* specificity in our supplemental questionnaire to the GOI.

At verification, we reviewed Reliance’s questionnaire responses which indicated that there are two methods that a corporation can file its taxes: 1) Normal Tax Methodology; 2) MAT.³⁹⁵ These Section 35 income tax deductions fall under the Normal Tax Methodology, not the MAT.³⁹⁶ Indian tax law states that the only deduction a company can claim under MAT is section 10 deduction for capital gains.³⁹⁷ At verification, we examined Reliance’s records and saw that, during the POI, Reliance did not use the Normal Tax Methodology and thus, Reliance did not actually claim any section 35 income tax deductions.³⁹⁸ Rather, Reliance utilized the MAT during the POI and the only deduction Reliance claimed was the Section 10 deduction for capital gains, which is available generally to Indian corporations.³⁹⁹ Therefore, for the final determination, Commerce determines that Reliance did not receive a benefit under Section 35 income tax deduction programs. As there are no countervailable benefits to calculate for this final determination, the remaining issues becomes moot.

Comment 13: Whether to Apply AFA to Reliance’s Unreported Benefits for SEZ Programs

Reliance’s Case Brief

- Section 782(d) of the Act requires that Commerce “inform the person of the nature of the deficiency” and to the extent practicable provide that person with an opportunity to remedy or explain the deficiency.⁴⁰⁰
- Commerce, in its supplemental questionnaire, specifically asked about the Schedule 10 deduction, relating only to the income tax deduction and not to all SEZ programs as characterized in the preliminary determination. Had Commerce asked for information regarding all benefits available to the SEZ unit and why Reliance believed that it was not relevant to the investigation, Reliance would have provided the necessary responses.⁴⁰¹

³⁹⁴ See PDM at 26.

³⁹⁵ See Reliance October 6, 2017 2SQR2 at 20-21.

³⁹⁶ See Reliance’s Verification Report at 6.

³⁹⁷ *Id.* At verification, we also observed that Reliance did not claim a benefit under Section 35(2)(AB) of the Income Tax Act.

³⁹⁸ See Reliance’s Verification Report at 6.

³⁹⁹ *Id.*

⁴⁰⁰ See Reliance’s Case Brief at 3.

⁴⁰¹ *Id.*

- There is nothing on the record that indicates that the benefits for the SEZ are linked directly or indirectly to PSF or that the SEZ unit supplied raw materials for PSF during the POI.⁴⁰²
- The petitioners specifically alleged several SEZ benefits. Commerce only asked questions about the income tax deduction, not about additional benefits from the SEZ.⁴⁰³
- Reliance is not aware of any Commerce precedence that requires a respondent to respond to questionnaires regarding the SEZ program when the subject merchandise is not produced or exported from the SEZ. When a subsidy is tied to a certain product or market, Commerce will only attribute that subsidy to that particular product or market.⁴⁰⁴
- It is unreasonable to countervail an export promotion program when the respondent does not produce or export the subject merchandise from the SEZ.⁴⁰⁵

GOI's Case Brief

- The response from the GOI⁴⁰⁶ in its initial questionnaire regarding the SEZ program was factually correct. None of the mandatory exporters produce the product under consideration, or any inputs for the product under consideration, are located in an SEZ.⁴⁰⁷
- If Commerce thought that one of the mandatory respondents did operate in an SEZ, it should have asked for further information in supplementary questionnaires or during verification rather than treating the GOI as non-cooperative.⁴⁰⁸
- Commerce should have verified this program, as well as others, as part of its verification of the GOI.⁴⁰⁹

Petitioners' Rebuttal Brief

- The GOI failed to provide a response to the Standard Questions Appendix, stating that "none of the mandatories are located in the SEZ." The GOI incorrectly assumed that Commerce requested information solely for units involved in the production of subject merchandise.⁴¹⁰
- Commerce clearly stated that responses should be provided on a company-wide basis and the GOI failed to provide responses accordingly.⁴¹¹ In *Mechanical Tubing India Final*, Commerce explained that unless a program is tied to the production of subject or non-subject merchandise, "absent corporate walls, there is no evidence that these benefits were restricted by subject or non-subject merchandise." Commerce has not yet determined whether or not the SEZ programs are tied to the production of non-subject merchandise.⁴¹²

⁴⁰² See Reliance's Case Brief at 5.

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.* at 6.

⁴⁰⁶ Regarding the SEZ program, the GOI stated that, "None of the Mandatory Respondents are SEZ therefore the question in the Standard Question Appendix is not being answered." See GOI's August 30, 2017 IQR at 45.

⁴⁰⁷ See GOI's Case Brief at 3.

⁴⁰⁸ *Id.* at 3-4.

⁴⁰⁹ *Id.* at 4.

⁴¹⁰ See Petitioners' Rebuttal Brief at 3.

⁴¹¹ *Id.* at 4.

⁴¹² *Id.*

- The GOI's claim that Commerce should have verified the programs is incorrect. It is Commerce's practice not to accept new factual information at verification.⁴¹³
- Commerce sent Reliance a supplemental questionnaire asking Reliance to provide information regarding the deduction as well as to "provide a complete response to all of the relevant questions and appendices, as requested in the initial questionnaire." In response, Reliance stated that the "SEZ deduction reported under income tax return pertains to export profit of polypropylene." This was the second instance (the first being the initial questionnaire) in which Reliance refused to provide Commerce with a complete response.⁴¹⁴
- In *Tianjin Magnesium Int'l Co.*, the CIT held that there cannot be "an incentive {for respondents} to submit false information to Commerce in an attempt to lower their margins without the fear of negative consequences." The purpose of a supplemental questionnaire is not for respondents to be allowed to "come clean" once its previous omission has been discovered.⁴¹⁵ Commerce sent Reliance seven supplemental questionnaires, allowing Reliance ample opportunity to disclose its earlier omission.⁴¹⁶

Commerce's Position: We agree with the petitioners, in part, and continue to find that the use of adverse inference is warranted with respect to Reliance's benefits and the GOI's specificity and financial contribution for the five SEZ programs: (1) Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material; (2) Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material; (3) Exemption from Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ; (4) Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit; and (5) Discounted Land Fees in an SEZ. Additionally, Commerce determines that AFA is not warranted with respect to the SEZ Income Tax Exemption Scheme (10A) that was alleged in the Petition and the other income tax deduction related on companies located in a SEZ that we did not initiate on during the investigation because company officials demonstrated at verification that these income tax deductions were not used under the MAT methodology. For a more detailed discuss of these two income tax deduction programs, see Comment 11.

Reliance

In the *Preliminary Determination*, we found that application of fact otherwise available, with an adverse inference, is warranted with respect to Reliance's benefits because Reliance failed to provide complete responses to our initial or supplemental questionnaires for all six SEZ programs that we initiated on during the investigation.⁴¹⁷ Additionally, in the *Preliminary Determination*, we explained that as a result of Reliance failure to provide complete responses regarding the six SEZ programs, necessary information was not on the record for us to determine

⁴¹³ See Petitioners' Rebuttal Brief at 4.

⁴¹⁴ *Id.* at 5.

⁴¹⁵ *Id.* at 23.

⁴¹⁶ *Id.* at 24.

⁴¹⁷ See PDM at 9-10.

whether a benefit exists for all six SEZ programs, and that Reliance withheld information that was requested of it in the time and manner requested, thereby significantly impeding the conduct of the investigation.⁴¹⁸

Reliance contends that Commerce's application of AFA is unlawful because it "is not aware of any {Commerce} precedence that requires a respondent in India to respond to questionnaires regarding the SEZ program when the subject merchandise is not produced or exported from the SEZ." Reliance also cites to *PET Film India 2014 Prelim* and *OTR Tires India Prelim* to support its claim that Reliance was not required to report benefits under the SEZ. We disagree. Commerce's application of AFA is warranted because Reliance should have provided complete responses to our initial and supplemental questionnaires. As we explained in the *Preliminary Determination*, the company under investigation is Reliance, not just the PSF division of Reliance.⁴¹⁹ In the initial questionnaire we indicated that Reliance is one of our mandatory respondents and that information contained in the initial questionnaire should be answered for Reliance.⁴²⁰ We did not limit our request for responses to Reliance's PSF plants. Commerce had not made, nor could it have made, any decision regarding the tying of any subsidies to non-subject merchandise per 19 CFR 351.525(b)(5) prior to analyzing complete responses to the initial questionnaire. Additionally, Reliance did not cite to any cases in which Commerce has found these SEZ programs tied to any particular merchandise in the past. Nor did Reliance provide any evidence to support the claim that benefits under the programs are tied to non-subject merchandise. Commerce's tying methodology is to tie subsidies where there is clear and robust information showing the subsidies being provided are in fact tied to a product.⁴²¹ Commerce, not respondent companies, makes the determination of whether or not the benefits of a subsidy are tied to a particular product or a particular market. Commerce can only make that determination once it has been provided with a complete response by the mandatory respondents. As the petitioners note, Commerce explained in *CTL Plate Korea* that a respondent –

cannot unilaterally decide to withhold information from {Commerce} that may require further analysis. This is necessary to ensure that interested parties do not prevent {Commerce} from conducting an accurate and complete investigation by deciding not to provide necessary information based on their own viewpoints and judgment.⁴²²

Commerce also finds that Reliance's dependence on *PET Film India 2014 Prelim* and *OTR Tires India Prelim* to support its claims that it was not required to report benefits for non-subject merchandise under the SEZ program lacks merit. Commerce did not limit reporting of benefits under the SEZ programs to any particular product in either of these cases. Unlike Reliance, the respondents in both of these cases provided complete responses regarding the use of its SEZs programs as requested by Commerce in its initial questionnaires.⁴²³ In *OTR Tires India Prelim*, the respondent reported its benefits in the initial questionnaire responses first and then argued that the benefits were not countervailable.⁴²⁴ In the instant case, Reliance did not report its

⁴¹⁸ See PDM at 10.

⁴¹⁹ *Id.* at 9-10.

⁴²⁰ See Initial CVD Questionnaire at page 2.

⁴²¹ See *Mechanical Tubing Final* IDM at Comment 8.

⁴²² See *CTL Plate Korea Final*.

⁴²³ See *PET Film India 2014 Prelim* PDM at 10; see also *OTR Tires India Prelim* PDM at 21.

⁴²⁴ See *OTR Tires India Prelim*, unchanged in *OTR Tires India Final* IDM at Comment 1.

benefits related to any of the SEZ programs. Additionally, it failed to submit a complete response to our initial and supplemental questionnaires regarding the six SEZ programs. We, therefore, find that AFA is warranted because Reliance should have provided complete responses regarding the use of its SEZ, as requested in our initial and supplemental questionnaires. Such information must be provided on the record for analysis by other interested parties and Commerce as contemplated by the statutory scheme.

Reliance claims that it was not given the opportunity to correct any potential deficiencies in its initial questionnaire response. We agree with the petitioners that Reliance was given ample opportunity to correct the deficiencies in its response to the initial questionnaire. We issued a supplemental questionnaire regarding the income tax deduction for SEZs, but we also requested that Reliance “provide a complete response to all relevant questions and appendices, as requested in the initial questionnaire.”⁴²⁵ A complete response to this question would have included a full response outlining its use of SEZ programs, whether Reliance considered this usage pertinent to the investigation or not. However, in response to this question Reliance simply replied that, “{The} SEZ deduction reported under income tax return pertains to export profit of Polypropylene.”⁴²⁶ Reliance provided no evidence that these programs are tied to a particular product and cited no past cases where Commerce has tied the SEZ programs to a particular production for these five SEZ programs. As such, based on our review of record evidence and the parties’ arguments, we find that AFA is warranted with respect to Reliance benefits under the five SEZ programs.

GOI

For the final determination, we continue to find that AFA is warranted with respect to the GOI’s specificity and financial contribution because the GOI failed to provide complete and accurate information for the above five SEZ programs. In our initial questionnaire, we asked the GOI to provide the following:

For each program, if no company(ies) under investigation or “cross-owned” companies as defined in Section III applied for, used, or benefited from that program during the POI, the GOI must so state and provide a brief explanation of the program and a detailed description of the records kept on that program. Otherwise, please answer all of the questions listed.⁴²⁷

In response to the SEZ programs section of the questionnaire, the GOI simply stated “None of the Mandatory Respondents are SEZ therefore the question in the Standard Question Appendix is not being answered.”⁴²⁸ As such, the GOI failed to disclose to Commerce that Reliance has an

⁴²⁵ See Reliance’s First SQ at 28.

⁴²⁶ *Id.*

⁴²⁷ See Initial CVD Questionnaire at 3.

⁴²⁸ See GOI’s IQR at 45.

operational plant located in an SEZ. The GOI also failed to “provide a brief explanation of the program and a detailed description of the records kept on that program.”⁴²⁹

In its case brief, the GOI claims that the mandatory respondents do not produce the subject merchandise or any inputs for the subject merchandise in an SEZ, and, therefore, the GOI does not need to answer Commerce’s questions regarding the SEZ program.⁴³⁰ We disagree. It is Commerce’s responsibility to determine if subsidies are tied to particular markets or to particular products. Without sufficient information on the programs in question and the respondents’ usage of the programs, we have no way to determine whether a program is tied. Commerce’s tying methodology is to tie subsidies where there is clear and robust information showing the subsidies being provided are in fact tied to a product.⁴³¹ Therefore, we continue to find that the GOI response regarding the SEZ programs is deficient, and accordingly continue to find, through the application of AFA, that the SEZ programs constitute financial contributions and meet the requirements for specificity.

The GOI argues that Commerce “should have carried out a verification of the schemes of GOI to get clarification with respect to the response submitted by the GOI in its questionnaire response.”⁴³² However, even had the GOI provided all of the adequate information regarding SEZs at verification instead of in its questionnaire responses as requested, Commerce would have rejected the submissions as new factual information which is not subject to verification. The verification process is intended to “verify the accuracy and completeness of *submitted* factual information.” (emphasis added).⁴³³ Commerce is unable to verify factual information that has not been submitted prior to the verification process. To allow such submissions would circumvent the administrative procedures for the proper vetting of the information through the administrative process established by the statute and regulations.

Therefore, we continue to find that the necessary information with respect to the above programs is not available on the record and that neither the GOI nor Reliance provided information that was requested of them in a timely manner, thereby impeding the proceeding. Thus, Commerce is relying on “facts available” in making our final determination in accordance with sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act. Moreover, we determine that the GOI and Reliance failed to cooperate by not acting to the best of their 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 making an adverse inference, we continue to find that the five SEZ programs (*i.e.*, all SEZ programs from the *Preliminary Determination* except the SEZ Income Tax Exemption Scheme (10A)) 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)(A) of the Act.

⁴²⁹ See GOI’s IQR at 2. The index for the GOI’s response shows that the GOI only discussed the SEZ on page 475 (which itself was a typo as the program was discussed on page 45) and offered no exhibits showing the laws, eligibility, application process, record keeping processes, *etc.*, for these programs.

⁴³⁰ See GOI’s Case Brief at 3.

⁴³¹ See *Mechanical Tubing Final* IDM at Comment 8.

⁴³² See GOI’s Case Brief at 4.

⁴³³ See section 19 CFR 351.907(d) of the Act.

Comment 14: Whether to Revise the Application of AFA Rates for SEZ programs

Petitioners' Case Brief

- Commerce selected two *de minimis* rates as AFA rates in the *Preliminary Determination*. These rates should be changed to non-*de minimis* rates to comply with Commerce's AFA hierarchy.⁴³⁴
- Commerce should change the Duty-Free Importation of Capital Goods and Raw Materials Components, Consumables, Intermediates, Spare Parts, and Packing Material program to 1.66 percent⁴³⁵ instead of 1.23 percent⁴³⁶ in the *Preliminary Determination*.
- Commerce should change the Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit program to 3.09 percent⁴³⁷ instead of 0.21 percent⁴³⁸ in the *Preliminary Determination*. 0.21 percent is a *de minimis* rate and is not applicable for AFA rates.
- Commerce should change the SEZ Income Tax Exemption Scheme (10A) program to 35.00 percent⁴³⁹ instead of 2.74 percent⁴⁴⁰ in the *Preliminary Determination*.
- Commerce should change the Discounted Land Fees in an SEZ program to 6.06 percent⁴⁴¹ instead of 0.04⁴⁴² percent in the *Preliminary Determination*. 0.04 percent is a *de minimis* rate and is not applicable for AFA rates.

Reliance's Revised Rebuttal Brief

- The rates recommended by the petitioners for the Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit; the SEZ Income Tax Exemption Scheme 10(A); and the Discounted Land Fees are not identical programs. For these programs, Commerce should continue to use the rates used in the *Preliminary Determination*.⁴⁴³
- The petitioners suggest a rate of 3.09 percent for the Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit. This rate is taken from an AFA rate given in *Circular Welded Pipe India Final*, which itself was taken from the calculated rate of 3.09 percent for the State Government of Gujarat Tax Incentive scheme

⁴³⁴ See Petitioners' Case Brief at 42.

⁴³⁵ *Id.* (citing *Hot-Rolled Steel India 2007 Final* at 16-17 (this rate was applied to "Duty free import/domestic procurement of goods and services for development, operation, and maintenance of SEZ units program.")).

⁴³⁶ See *Preliminary Determination* at 14 (this rate was applied to a program called "(SEZ-A) Duty-Free Importation of Capital Goods and Raw Materials, etc." from *PET Resin India Final*).

⁴³⁷ See Petitioners' Case Brief at 43 (citing *Circular Welded Pipe India Final* at 23 (this rate was applied to "Exemption from Electricity Duty and Cess thereon on the Sale or Supply to the SEZ Unit")).

⁴³⁸ See PDM at 15 (this rate was applied to a program called "(SEZ-D) Exemption from Electricity Duty and Cess" from *PET Resin India Final*).

⁴³⁹ See Petitioners' Case Brief at 43 (citing *Circular Welded Pipe India Final* at 23-24 for "SEZ Income Tax Exemption Scheme (Section 10A)").

⁴⁴⁰ See PDM at 15 (this rate was applied to a program called "Income Tax Exemptions Under Section 10B" from *Lined Paper India Final*).

⁴⁴¹ See Petitioners' Case Brief at 43 (citing *Mechanical Tubing India Final* IDM at 10. This rate was itself an AFA rate, selected from a similar program's calculated rates from *Hot-Rolled Steel India 1999-2000 Final* for the GOI's forgiveness of Steel Development Fund loans).

⁴⁴² See PDM at 15 (this rate was applied to a program called "(SEZ-F) Discounted Land Fees in an SEZ").

⁴⁴³ See Reliance's Revised Rebuttal Brief at 11.

countervailed in *Hot-Rolled Steel India 2004 Final*. SGOG is not a similar program, and Commerce should continue using the rate it determined in the *Preliminary Determination*.⁴⁴⁴

- Commerce should continue to use the 0.04 percent *ad valorem* rate for the Discounted Land Fees program. This is a calculated rate from the identical program, and therefore it is the correct rate under Commerce's hierarchy.⁴⁴⁵

Commerce's Position: As described in section "Use of Facts Otherwise Available and Adverse Inferences" of this memorandum, above, under the hierarchy, Commerce will select AFA rates in the following order of preference: the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program and the rate is not zero; if there is no identical program match within the investigation, or if the rate is zero, 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, 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, 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.⁴⁴⁶

First, we disagree with the petitioners that the rate of 1.66 percent *ad valorem* should be used for the Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials. The rate recommended by the petitioners⁴⁴⁷ is from a program that is similar but not identical to the program in question. The rate that we applied in the *Preliminary Determination* is the rate applied to the identical program in *PET Resin India Final*, and therefore takes priority in the AFA hierarchy. Therefore, for the final determination, we will continue to use a rate of 1.23 percent *ad valorem* with respect to this program.

Second, we agree with the petitioners that 3.09 percent *ad valorem* should be used for the Exemption from Electricity Duty and Cess on the Sale of Supply of Electricity to the SEZ Unit. Reliance is correct that the rate from the *Preliminary Determination* was calculated for the identical program "(SEZ-D) Exemption from Electricity Duty and Cess" from *PET Resin India Final*. However, 0.21 percent that we preliminarily used is a *de minimis* rate, and would not provide Reliance incentive to cooperate in future proceedings if applied and would not keep with Commerce's AFA rate policy described above. The rate suggested by the petitioners, while used in the past as an AFA rate for an identical program, is not a rate that was calculated from an identical program. However, lacking a non-*de minimis* rate for the identical program in this proceeding or another proceeding involving India, we must go to the next level in the AFA rate

⁴⁴⁴ See Reliance's Revised Rebuttal Brief at 11.

⁴⁴⁵ *Id.* at 12-13.

⁴⁴⁶ See, e.g., *Lawn Groomers China Prelim*, unchanged in *Lawn Groomers China Final* IDM at "Application of Facts Available, Including the Application of Adverse Inferences"; see also *Aluminum Extrusions China Final* IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

⁴⁴⁷ The rate recommended by the petitioners is from *Hot-Rolled Steel India 2007 Final* IDM (the program this rate was applied to as AFA is "Duty free import/domestic procurement of goods and services for development, operation, and maintenance of SEZ units program").

hierarchy – the highest non-*de minimis* rate for a similar program in another proceeding involving the same country. In this case, it is a rate of 3.09 percent *ad valorem* from the Exemption from Electricity Duty and Cess thereon on the Sale or Supply to the SEZ Unit program from *Circular Welded Pipe India Final*.⁴⁴⁸

Third, we agree with the petitioners that a rate of 0.04 percent *ad valorem* is *de minimis* and should not be used as an AFA rate for the Discounted Land Fees program, as it would not provide Reliance incentive to cooperate in future proceedings if applied and would not keep with Commerce’s AFA rate policy described above. Lacking a calculated rate non-zero rate in this investigation for the identical program or a calculated non-*de minimis* rate for the identical program in another proceeding involving India, we must move to the next step in the AFA hierarchy – the highest non-*de minimis* rate for a similar program. The AFA rate that the petitioners put forth of 6.06 percent *ad valorem* is not useable. The AFA rate of 6.06 percent *ad valorem* was applied as AFA to the IPS program in *Mechanical Tubing India Final*, and was originally calculated for a GOI loan forgiveness program in *Hot-Rolled Steel India 1999-2000 Final*.⁴⁴⁹ The petitioners provided no record evidence describing the nature of the IPS program or the GOI loan program it was calculated for and offered no arguments as to why either of these programs should be considered similar to the Discounted Land Fees program. In *Hot-Rolled Steel India 2008 Final*, Commerce countervailed the SGOG SEZ Act: Stamp Duty and Registration Fees for Land Transfers, Loan Agreements, Credit Deeds, and Mortgages program using an AFA rate of 3.09 percent *ad valorem*.⁴⁵⁰ This rate was applied as an AFA rate to the SGOG SEZ program and was originally calculated in *Hot-Rolled Steel India 2004 Final* for the SGOG Tax Incentive program.⁴⁵¹ As the SGOG Tax Incentive program is a similar program to the Discounted Land Fees program and as Commerce applied that rate previously to a land subsidy program, for this final determination we are applying an AFA rate of 3.09 percent *ad valorem* for the Discounted Land Fees SEZ program.⁴⁵²

Finally, for the final determination, we determined in Comment 9 (above) that Reliance offered evidence that it did not use the SEZ Income Tax Exemption Scheme 10(A) and we are therefore not countervailing this program. For the final determination, Commerce has not applied a net subsidy rate to this program.

Comment 15: Whether to Apply Total AFA to Reliance

Petitioners’ Case Brief

- Commerce should apply total AFA to Reliance because of Reliance’s numerous failures at verification and over the course of the investigation.⁴⁵³ More significantly, Reliance falsely claimed that it did not receive any benefits under the six SEZ programs despite

⁴⁴⁸ See *Circular Welded Pipe India Final* IDM at 23.

⁴⁴⁹ This was itself an applied AFA rate. It was originally calculated in *Hot-Rolled Steel India 1999-2000 Final* IDM as a rate for a GOI loan forgiveness program.

⁴⁵⁰ See *Hot-Rolled Steel India 2008 Final* IDM.

⁴⁵¹ *Id.* at 3.

⁴⁵² *Id.* at 23. “{T}he respondent firm was not required to pay the registration charge on leased land from the SEZ Developer nor the stamp duty on the lease rental.”

⁴⁵³ See Petitioners’ Case Brief at 8-9.

record evidence demonstrating that it did receive certain benefits for this plant located in an SEZ.⁴⁵⁴

- Also, in its questionnaire response, Reliance claimed that it did not receive any benefits under the AAP program.⁴⁵⁵ At verification, however, Commerce discovered that Reliance not only withheld a large number of AAP licenses, it found that Reliance had in fact utilized these licenses for exports to SEZs and at least-one EOU.⁴⁵⁶
- Commerce should apply total AFA to Reliance because Commerce also discovered at verification that Reliance had incorrectly reported its sales figures,⁴⁵⁷ failed to report use of three subsidy programs the usage of EOUs, MEIS, and MLFPS.⁴⁵⁸

Reliance's Revised Rebuttal Brief

- Commerce's ability to use facts available is subject to Section 782(d) of the Act which requires that Commerce must inform the respondent promptly of the nature of the deficiency.⁴⁵⁹ Section 701(a)(1) of the Act provides that Commerce imposes countervailable duties on merchandise if Commerce determines that the government of a country "is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States. So long as a subsidy is provided with respect to the manufacture, production or sale of subject merchandise, Commerce may impose countervailable duties." Therefore, Commerce's countervailable subsidy investigation is tied to the subject merchandise and is not an investigation into a company {at large} without any connection to the subject merchandise. The petitioners have not established that Reliance's actions in this investigation meet the statutory requirements for the imposition of AFA.⁴⁶⁰ Commerce should reject the petitioners' claim that Reliance withheld information regarding the AAP program because Reliance informed Commerce that it was providing information only regarding AAP licenses utilized by the PSF unit in the initial questionnaire.⁴⁶¹
- The petitioners have not established that AFA is warranted for all EOU programs because the petitioners failed to explain how sales by Reliance to EOUs somehow establishes that Reliance itself has an EOU and thus uses EOU programs.
- Commerce should reject the petitioners' claim that Reliance withheld information regarding the MEIS and MLFPS programs because these programs were not used for subject merchandise and therefore are not countervailable.⁴⁶²
- The record contains the necessary sales information to calculate countervailing duty margins (*i.e.*, FOB sales values exclusive of byproduct sales, VAT and excise taxes).⁴⁶³

⁴⁵⁴ See Petitioners' Case Brief at 9; *see also* PDM at 9-10; *see also* Reliance's September 11, 2017 SQR at 19.

⁴⁵⁵ See Petitioners' Case Brief at 9; *see also* Reliance's Verification Report at 2.

⁴⁵⁶ See Petitioners' Case Brief at 10; *see also* Reliance's Verification Report at 6-7.

⁴⁵⁷ See Petitioners' Case Brief at 10; *see also* Reliance's Verification Report at 2.

⁴⁵⁸ See Petitioners' Case Brief at 11; *see also* Reliance's Verification Report at 2, 8, and 14.

⁴⁵⁹ See Reliance's Revised Rebuttal Brief at 3.

⁴⁶⁰ *Id.* at 3-4.

⁴⁶¹ *Id.* at 4.

⁴⁶² *Id.* at 7.

⁴⁶³ *Id.* at 9 (citing Reliance's Verification Report at Exhibit VE-4A).

Commerce's Position: The petitioners contend that Commerce should apply total AFA to Reliance because Commerce also discovered at verification that Reliance had incorrectly reported its sales figures⁴⁶⁴ and failed to report the usage of EOUs, MEIS, and MLFPS.⁴⁶⁵ We disagree with the petitioners. While, as discussed above, AFA is appropriate for certain programs, total AFA is not warranted because record evidence indicates that Reliance provided the necessary information with respect to its EPCG, Duty Drawback, Income Tax Deductions for Research and Development, Income Tax Deductions for Companies Located in Special Economic Zones, SHIS, and FPS programs.⁴⁶⁶ Further, with regard to the EPCG, Duty Drawback, SHIS, and FPS programs, Reliance provided the necessary information with respect to these programs without undue difficulties in order for Commerce to calculate a subsidy margin. Specifically, Reliance provided responses to Commerce's initial questionnaire and six supplemental questionnaires within the established deadlines with respect to these programs and the sales denominators.⁴⁶⁷ Reliance also participated in a three-day verification during which Reliance reconciled its benefits to its accounting system and demonstrated that all of its benefits were reported under its EPCG, Duty Drawback, SHIS, and FPS programs.⁴⁶⁸ Reliance also demonstrated during verification that its 2016 income tax liability was calculated based on the MAT calculation and that under the MAT calculation, Reliance did not use the Income Tax Deductions for Research and Development and the Income Tax Deductions for Companies Located in Special Economic Zones.⁴⁶⁹

Commerce also determines that total AFA for Reliance is not warranted because the record contains the necessary sales information (*i.e.*, the denominators) to calculate accurate countervailing duty margins for the above-mentioned programs. With respect to Reliance's sales information, we reconciled Reliance reported sales information to its audited financial statements and confirmed that the necessary FOB sales value is exclusive of any byproduct sales, VAT, and excise taxes.⁴⁷⁰ We note that while Reliance initially reported its sales figures incorrectly, at verification we examined the revised export sales figure on a FOB basis, which are exclusive of any byproduct sales, VAT and excise taxes.⁴⁷¹ We reviewed the revised export sales figure and found no discrepancies.⁴⁷² Therefore, the record contains the necessary sales information to calculate accurate countervailing duty margins for the programs listed above.

Moreover, we determine that total AFA for Reliance is not warranted because record evidence does not indicate that Reliance used any EOUs. As discussed at Comment 10 above, the petitioners' claim about other unreported use of EOUs are not supported by record evidence and the petitioners fail to explain how sales by Reliance to EOUs establish that Reliance itself has an

⁴⁶⁴ See Petitioners' Case Brief at 10; *see also* Reliance's Verification Report at 2.

⁴⁶⁵ See Petitioners' Case Brief at 11; *see also* Reliance's Verification Report at 2, 8, and 14.

⁴⁶⁶ See Reliance's Preliminary Analysis Memorandum; *see also* Reliance's Final Analysis Memorandum.

⁴⁶⁷ See Reliance August 14, 2017 AFFR; *see also* Reliance September 6, 2017 IQR; *see also* Reliance September 7, 2017 SAFFR; *see also* Reliance September 11, 2017 SQR; *see also* Reliance October 5, 2017 2SQR1; *see also* Reliance October 6, 2017 2SQR2; *see also* Reliance October 10, 2017 2SQR3; *see also* Reliance October 16, 2017 3SQR; *see also* Reliance October 27, 2017 4SQR; *see also* Reliance November 6, 2017 5SQR1; *see also* Reliance November 7, 2017 5SQR2.

⁴⁶⁸ See Reliance's Verification Report at 9-12.

⁴⁶⁹ *Id.* at 6.

⁴⁷⁰ *Id.* at 4-5.

⁴⁷¹ *Id.*

⁴⁷² *Id.* at VE-4A.

EOU and uses EOU programs. As such, we determine that total AFA with respect to Reliance is not warranted.

Comment 16: Whether to Revise the Calculation of Benefits Received under the EPCG

Petitioners' Case Brief

- Commerce should make corrections to the preliminary determination calculations of benefits Reliance received under the EPCG and SEZ programs. Specifically, Commerce should calculate the benefits attributed to Reliance under the EPCG program by including benefits received from the company's fulfilled licenses during the POI. Commerce's practice regarding the calculation of benefits for this program is to (1) sum all benefits received from fulfilled and unfulfilled licenses, and then (2) divide cumulated benefit by Reliance's appropriate sales denominator.⁴⁷³

Reliance's Revised Rebuttal Brief

- Commerce should reject the petitioners' request to change the EPCG calculation because it is not consistent with Commerce's practice.⁴⁷⁴

Commerce's Position: We agree with the petitioners. Although dividing the fulfilled and unfulfilled licenses' benefits separately by the same denominator and summing the result has no effect on the calculated program rate, 19 CFR 351.525 states Commerce will "calculate the rate by dividing the amount of the subsidy benefit by the sales value..." In similar instances, Commerce has cumulated the benefits and then divided by the appropriate sales values pursuant to our regulations.⁴⁷⁵ Moreover, Commerce has also summed the benefits for the fulfilled and unfulfilled licenses for this program in other proceedings.⁴⁷⁶ Therefore, for the final determination, Commerce revised its calculation by cumulating the benefits and then dividing by Reliance's appropriate sales value.⁴⁷⁷

⁴⁷³ See Petitioners' Case Brief at 41 (citing *PET Resin India Final* IDM at 16).

⁴⁷⁴ See Reliance's Revised Rebuttal Brief at 10-11.

⁴⁷⁵ See, e.g., *CORE Korea Final* IDM at 7 ({for portions treated as a grant and long-term interest loan} "...we summed the two benefits received during the POR...and divided the total benefit amount during the POR by HYSCO's total freed on board (f.o.b.) sales...").

⁴⁷⁶ See *PET Resin India Final* IDM at 16; see also *Steel Flanges India Prelim*, unchanged in *Steel Flanges India Final*; see also *Cold-Rolled Steel Flat Products India Prelim*, unchanged in *Cold-Rolled Steel Flat Products India Final*.

⁴⁷⁷ See Reliance's Final Analysis Memorandum.

XI. RECOMMENDATION

We recommend approving all of the above positions. If these Commerce positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.



Agree

Disagree

1/16/2018

X 

Signed by: GARY TAVERMAN

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

ATTACHMENT

List of Abbreviations and Acronyms

Acronym/Abbreviation	Full Names
AAP	Advance Authorization Program
The Act	Tariff Act of 1930, as amended
AD	Antidumping
AFA	Adverse Facts Available
Bombay Dyeing	Bombay Dyeing & Manufacturing
CIF	Cost, Insurance and Freight
Commerce	Department of Commerce
CST	Central Sales Tax
CVD	Countervailing Duty
DDB	Duty Drawback
EOUs	Export-Oriented Units
EPCG	Export Promotion Capital Goods
Fine Denier PSF	Fine Denier Polyester Staple Fiber
FOB	Free on Board
FPS	Focus Product Scheme
GOI	Government of India
HTSUS	Harmonized Tariff Schedule of the United States
IDBI	Industrial Development Bank of India
IEIS	Incremental Exports Incentive Scheme
IPS	Industrial Promotion Subsidy
EXIM Bank	Export Import Bank of India
MLFPS	Market-Linked Focus Product Scheme
MEIS	Merchandise Export Incentive Scheme
MEG	Mono-Ethylene Glycol
Petitioners	DAK Americas LLC, Nan Ya Plastics Corporation, America, and Auriga Polymers
POI	Period of Investigation
MAT	Minimum Alternative Tax
ASCM	WTO's Agreement on Subsidies and Countervailing Measures
PSI	Package Scheme of Incentives
PTA	Purified Terephthalic Acid
Reliance	Reliance Industries Limited
SAA	Statement of Administrative Action
SEZs	Special Economic Zones
SGOG	State Government of Gujarat
SGOM	State Government of Maharashtra
SHIS	Status Holder Incentive Scheme
SICOM	State Industrial and Investment Corporation of Maharashtra
TPEA	Trade Preferences Extension Act of 2015
TUFS	Technology Upgradation Funds Scheme

Case and Rebuttal Briefs

Bombay Dyeing's Case Brief	Bombay Dyeing's Case Brief, "Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Case Brief on behalf of The Bombay Dyeing & Mfg. Co. Ltd.," dated December 7, 2017
GOI's Case Brief	Government of India's Case Brief, "Case Brief on behalf of Government of India in the Countervailing Duty (CVD) Investigation of Fine Denier Polyester Staple Fiber (C-533-876)", dated December 7, 2017
Petitioners' Case Brief	Petitioners' Case Brief, "Fine Denier Polyester Staple Fiber from India: Petitioners' Case Brief," dated December 7, 2017
Reliance's Case Brief	Reliance's Case Brief, "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Case Brief," dated December 7, 2017
Petitioners' Rebuttal Brief	Petitioners' Rebuttal Brief, "Fine Denier Polyester Staple Fiber from India: Petitioners' Rebuttal Brief," dated December 13, 2017
Reliance's Revised Rebuttal Brief	Reliance's Rebuttal Brief entitled, "Fine Denier Polyester Staple Fiber from India; Reliance Industries Limited's Revised Rebuttal Brief," dated December 20, 2017

Questionnaires

Initial CVD Questionnaire	Commerce Letter re: Countervailing Duty Questionnaire, dated July 24, 2017 (Initial CVD Questionnaire)
GOI First SQ	Commerce Letter re: First Supplemental Questionnaire, dated September 13, 2017 (GOI First SQ)
Reliance Second SQ	September 22, 2017 Letter from Commerce, "Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Second Supplemental Questionnaire for Reliance Industries Limited's," (Reliance Second SQ)
GOI Third SQ	Commerce Letter re: Third Supplemental Questionnaire, dated October 31, 2017 (GOI Third SQ)

Questionnaire Responses

Bombay Dyeing August 24, 2017 AFFR	Bombay Dyeing's August 24, 2017 Affiliation Response (Bombay Dyeing August 24, 2017 AFFR)
Bombay Dyeing September 5, 2017 SAFFR	Bombay Dyeing's September 5, 2017 Supplemental Affiliation Response (Bombay Dyeing September 5, 2017 SAFFR)

Bombay Dyeing September 6, 2017 IQR	Bombay Dyeing's September 6, 2017 Initial Questionnaire Response (Bombay Dyeing September 6, 2017 IQR)
Bombay Dyeing October 5, 2017 SQR	Bombay Dyeing's October 5, 2017 First Supplemental Questionnaire Response (Bombay Dyeing October 5, 2017 SQR)
Bombay Dyeing October 16, 2017 2SQR	Bombay Dyeing's October 5, 2017 Second Supplemental Questionnaire Response (Bombay Dyeing October 16, 2017 2SQR)
Bombay Dyeing November 6, 2017 3SQR	Bombay Dyeing's November 6, 2017 Third Supplemental Questionnaire Response (Bombay Dyeing November 6, 2017 3SQR)
Reliance's EPCG Letter	Reliance's letter "Fine Denier Polyester Staple from India; Difficulty In Reporting EPCGS Program," dated August 7, 2017 (Reliance's EPCG Letter)
Reliance August 14, 2017 AFFR	Reliance's August 14, 2017 Affiliation Response (Reliance August 14, 2017 AFFR)
Reliance September 6, 2017 IQR	Reliance's September 6, 2017 Initial Questionnaire Response (Reliance September 6, 2017 IQR)
Reliance September 7, 2017 SAFFR	Reliance's September 7, 2017 Supplemental Affiliation Response (Reliance September 7, 2017 SAFFR)
Reliance September 11, 2017 SQR	Reliance's September 11, 2017 First Supplemental Questionnaire Response (Reliance September 11, 2017 SQR)
Reliance October 5, 2017 2SQR1	Reliance's October 5, 2017 Second Supplemental Questionnaire Response (EPCG Questions #14-24) (Reliance October 5, 2017 2SQR1)
Reliance October 6, 2017 2SQR2	Reliance's October 6, 2017 Second Supplemental Questionnaire Response (Part 2) (Reliance October 6, 2017 2SQR2)
Reliance October 10, 2017 2SQR3	Reliance's October 10, 2017 Second Supplemental Questionnaire Response (Part 3) (Reliance October 10, 2017 2SQR3)
Reliance October 16, 2017 3SQR	Reliance's October 16, 2017 Third Supplemental Questionnaire Response (Sales and SHIS Information) (Reliance October 16, 2017 3SQR)
Reliance October 27, 2017 4SQR	Reliance's October 27, 2017 Fourth Supplemental Questionnaire Response (Publicly Ranged Sales Information) (Reliance October 27, 2017 4SQR)
Reliance November 6, 2017 5SQR1	Reliance's November 6, 2017 Fifth Supplemental Questionnaire Response (Loan Template) (Reliance November 6, 2017 5SQR1)
Reliance November 7, 2017 5SQR2	Reliance's November 7, 2017 Fifth Supplemental Questionnaire Response (Loan Appendix) (Reliance November 7, 2017 5SQR2)
GOI September 6, 2017 GQR	GOI's September 6, 2017 Initial Questionnaire Response (GOI September 6, 2017 GQR)

GOI September 28, 2017 GSQR	GOI's September 28, 2017 First Supplemental Questionnaire Response (GOI September 28, 2017 GSQR)
GOI October 11, 2017 G2SQR1	GOI's October 11, 2017 Second Supplemental Questionnaire Response (GOI October 11, 2017 G2SQR1)
GOI October 13, 2017 G2SQR2	GOI's October 13, 2017 Second Supplemental Questionnaire Response (GOI October 13, 2017 G2SQR2)
GOI November 6, 2017 G2SQR3	GOI's November 6, 2017 Third Supplemental Questionnaire Response (GOI November 6, 2017 G2SQR3)

DOC Memoranda and Letters

Bombay Dyeing's Preliminary Analysis Memorandum	Memorandum, "Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Bombay Dyeing Preliminary Calculation Memorandum," dated October 30, 2017
Bombay Dyeing's Verification Report	Memorandum, "Verification of the Questionnaire Responses of The Bombay Dyeing & Manufacturing Company Limited," dated November 29, 2017
Bombay Dyeing's Final Analysis Memorandum	Memorandum, "Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Bombay Dyeing Final Calculation Memorandum," dated January 18, 2018
Reliance's Preliminary Analysis Memorandum	Memorandum, "Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Preliminary Determination Calculation for Reliance Industries Limited," dated October 30, 2017
Reliance's Verification Report	Memorandum, "Verification of the Questionnaire Responses of Reliance Industries Limited," dated November 29, 2017
Reliance's Final Analysis Memorandum	Memorandum, "Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Final Determination Calculation for Reliance Industries Limited," dated January 18, 2018
Preliminary Scope Decision Memorandum	Memorandum, "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 8, 2017
Final Scope Decision Memorandum	Memorandum, "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this memorandum

Others

Petitions	Fine Denier Polyester Staple Fiber from the People of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam--Petition for the Imposition of Antidumping and Countervailing Duties, dated May 31, 2017
Fine Denier PSF from India Initiation Checklist	Fine Denier Polyester Staple Fiber from India (C-533-876), Initiation Checklist (June 20, 2017)
Initiation Notice	<i>Fine Denier Polyester Staple Fiber from India and the People's Republic of China: Initiation of Countervailing Duty Investigations</i> , 82 FR 29028 (June 27, 2017) (<i>Initiation Notice</i>)
Preliminary Determination	<i>Fine Denier Polyester Staple Fiber from India: Preliminary Affirmative Countervailing Duty Determination</i> , 82 FR 51389 (November 6, 2017) (<i>Preliminary Determination</i>), and accompanying Preliminary Decision Memorandum (PDM)
PDM	Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India, dated October 30, 2017
SAA	Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1, 103d Congress 2d Session (1994)
TPEA	Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015)
<i>Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws</i>	<i>Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015</i> , 80 FR 46,793 (Aug. 6, 2015)
CVD Preamble	<i>Countervailing Duties; Final Rule</i> , 63 FR 65348 (November 25, 1998) (<i>CVD Preamble</i>)

Litigation Cite Table

<i>Acciai Speciali Terni S.p.A.</i>	<i>Acciai Speciali Terni S.p.A. v. United States</i> , 142F. Supp. 2d969 (CIT 2001)
<i>Coalition for the of Am. Brake Drum & Rotor Mfrs.</i>	<i>Coalition for the of Am. Brake Drum & Rotor Mfrs. v. United States</i> , 44 F. Supp.2d229 (CIT 1999)
<i>Corus Staal BV.</i>	<i>Corus Staal BV. v. Dep't Commerce</i> , 395 F. 3d 1343 (Fed. Cir. 2005)
<i>Essar Steel Ltd.</i>	<i>Essar Steel Ltd. v. United States</i> , 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014)
<i>Fabrique de Fer de Charleroi, SA</i>	<i>Fabrique de Fer de Charleroi, SA v. United States</i> , 25 C.I.T. 567, 599-600 (2001)
<i>Fine Furniture (Shanghai) Ltd.</i>	<i>Fine Furniture (Shanghai) Ltd. v. United States</i> , 748 F. 3d 1365 (Fed. Cir. 2014)

<i>Fujian Machinery & Equipment Imp. & Exp. Com.</i>	<i>Fujian Machinery & Equipment Imp. & Exp. Com. v. United States</i> , 276 F. Supp. 2d 1371 (CIT 2003)
<i>Gerber Food (Yunnan) Co.</i>	<i>Gerber Food (Yunnan) Co. v. United States</i> , 491 F. Supp. 2d 1326 (2007)
<i>Mannesmannrohren-Werke AG</i>	<i>Mannesmannrohren-Werke AG v. United States</i> , 77 F. Supp.2d 1302 (CIT 1999)
<i>Marsan Gida Sanayi Ve Ticaret A.S. v. United States</i>	<i>Marsan Gida Sanayi Ve Ticaret A.S. v. United States</i> , 931 F. Supp. 2d 1258 (CIT 2013)
<i>Maverick Tube Corp.</i>	<i>Maverick Tube Corp. v. United States</i> , 857 F. 3d 1353 (Fed. Cir. 2017)
<i>Nippon Steel Corp.</i>	<i>Nippon Steel Corp. v. United States</i> , 337 F. 3d 1373 (Fed. Cir. 2003)
<i>PPG Indus. Inc.</i>	<i>PPG Indus. Inc. v. United States</i> , 978 F. 2d 1232 (Fed. Cir. 1992)
<i>Reiner Brach GmbH & Co. KG</i>	<i>Reiner Brach GmbH & Co. KG v. United States</i> , 206 F. Supp. 2d 1323 (CIT 2002)
<i>Solar World Americas. Inc.</i>	<i>Solar World Americas. Inc. v. United States</i> , 229 F. Supp. 3d 1366 (CIT 2017)
<i>SNR Roulements</i>	<i>SNR Roulements v. United States</i> , 341 F. Supp. 2d 1334 (CIT 2004)
<i>Thai I-Mei Frozen Foods Co.</i>	<i>Thai I-Mei Frozen Foods Co. v. United States</i> , 477 F. Supp. 2d 1332 (CIT 2007)
<i>Tianjin Mach. Imp. & Exp. Corp.</i> (CIT 1992)	<i>Tianjin Mach. Imp. & Exp. Corp. v. United States</i> , 806 F. Supp. 1008 (CIT 1992)
<i>Tianjin Mach. Imp. & Exp. Corp.</i> (Fed. Cir. 2005)	<i>Tianjin Machinery Imp. & Exp. Com v. United States</i> , 353 F. Supp. 2d 1294 (CIT 2004), <i>aff'd</i> without op. 2005 U.S. App. LEXIS 23,082 (Fed. Cir. 2005)
<i>Tianjin Magnesium Int'l Co.</i>	<i>Tianjin Magnesium Int'l Co. v. United States</i> , 844 F. Supp. 2d 1342 (CIT 2012)
<i>Zenith Electronics Corp.</i>	<i>Zenith Electronics Corp. v. United States</i> , 988 F.2d 1573 (Fed. Cir. 1993)

Table of Shortened Citations

<i>Aluminum Extrusions China Final</i>	<i>Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination</i> , 76 FR 18521 (April 4, 2011) (<i>Aluminum Extrusions China Final</i>), and accompanying IDM
<i>Bottle-Grade PET Resin India Final</i>	<i>Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India</i> , 70 FR 13460 (March 21, 2005) (<i>Bottle-Grade PET Resin India Final</i>), and accompanying IDM
<i>Carbon Pipe Turkey Final</i>	<i>Final Affirmative Countervailing Duty Determinations; Certain Welded Carbon Steel Pipe and Tube Products from Turkey</i> , 51 FR 1268 (January 10, 1986) (<i>Carbon Pipe Turkey Final</i>), and accompanying IDM

<i>Chlorinated Isocyanurates China Final</i>	<i>Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014, 82 FR 27466 (June 15, 2017) (Chlorinated Isocyanurates China Final), and accompanying IDM</i>
<i>Circular Welded Pipe India Final</i>	<i>Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination, 77 FR 64468 (October 22, 2012) (Circular Welded Pipe India Final), and accompanying IDM</i>
<i>Cold-Rolled Steel Flat Products India Prelim</i>	<i>Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination, 80 FR 79562 (December 22, 2015) (Cold-Rolled Steel Flat Products India Prelim), and accompanying PDM</i>
<i>Cold-Rolled Steel Flat Products India Final</i>	<i>Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination, 81 FR 49932 (July 29, 2016) (Cold-Rolled Steel Flat Products India Final), and accompanying IDM</i>
<i>Concrete Steel Wire China Final</i>	<i>Pre-Stressed Concrete Steel Wire Strand from China, Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010) (Concrete Steel Wire China Final), and accompanying IDM</i>
<i>CORE China Final</i>	<i>Final Determination in the Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China, 81 FR 35308 (May 24, 2016) (CORE China Final), and accompanying IDM</i>
<i>CORE Korea Final</i>	<i>Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2010, 78 FR 19210 (March 29, 2013) (CORE Korea Final), and accompanying IDM</i>
<i>CTL Plate Korea Final</i>	<i>Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination, 82 FR 16341 (April 4, 2017) (CTL Plate Korea Final), and accompanying IDM</i>
<i>Fish Fillet Vietnam Final</i>	<i>Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2013-2014, 81 FR 17435 (March 29, 2016) (Fish Fillet Vietnam Final), and accompanying IDM</i>
<i>Flowers Mexico Final</i>	<i>Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996) (Flowers Mexico Final), and accompanying IDM</i>
<i>Hot-Rolled Steel India 1999-2000 Final</i>	<i>Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India, 66 FR</i>

	49635 (September 28, 2001) (<i>Hot-Rolled Steel India 1999-2000 Final</i>), and accompanying IDM
<i>Hot-Rolled Steel India 2004 Final</i>	<i>Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India</i> , 71 FR 28665 (May 10, 2006) (<i>Hot-Rolled Steel India 2004 Final</i>), and accompanying IDM
<i>Hot-Rolled Steel India 2007 Final</i>	<i>Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review</i> , 74 FR 20923 (May 6, 2009) (<i>Hot-Rolled Steel India 2007 Final</i>), and accompanying IDM
<i>Hot-Rolled Steel India 2008 Final</i>	<i>Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review</i> , 75 FR 43488 (July 26, 2010) (<i>Hot-Rolled Steel India 2008</i>), and accompanying IDM
<i>Lawn Groomers China Prelim</i>	<i>Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination</i> , 73 FR 70971 (November 24, 2008) (<i>Lawn Groomers China Prelim</i>), and accompanying PDM
<i>Lawn Groomers China Final</i>	<i>Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination</i> , 74 FR 29180 (June 19, 2009) (<i>Lawn Groomers China Final</i>), and accompanying IDM
<i>Lined Paper India Prelim</i>	<i>Certain Lined Paper from India</i> , 77 FR 61742 (October 11, 2012) (<i>Lined Paper from India Prelim</i>), and accompanying PDM
<i>Lined Paper India Final</i>	<i>Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; 2010</i> , 78 FR 22845 (April 17, 2013) (<i>Lined Paper India Final</i>), and accompanying IDM
<i>Lined Paper Sunset Final</i>	<i>Certain Lined Paper Products from India: Final Results of Expedited Second Sunset Review of Countervailing Duty Order</i> , 82 FR 51390 (November 6, 2017) (<i>Lined Paper Sunset Final</i>), and accompanying IDM
<i>Mechanical Tubing India Final</i>	<i>Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India</i> , 82 FR 58,172 (December 11, 2017) (<i>Mechanical Tubing India Final</i>), and accompanying IDM
<i>OCTG India Final</i>	<i>Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances</i> , 79 FR 41967 (July 18, 2014) (<i>OCTG India Final</i>), and accompanying IDM
<i>OTR Tires India Prelim</i>	<i>Certain New Pneumatic Off-the-Road Tires from India: Preliminary Affirmative Countervailing Duty Determination</i> ,

	<i>Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Determination, 81 FR 39903 (June 20, 2016) (OTR Tires India Prelim), and accompanying PDM</i>
<i>OTR Tires India Final</i>	<i>Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part, 82 FR 2946 (January 10, 2017) (OTR Tires India Final), and accompanying IDM</i>
<i>Paper Products India Final</i>	<i>Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012, 80 FR 19637 (April 13, 2015) (Paper Products India Final), and accompanying IDM</i>
<i>PET Film India 2000-2001 Final</i>	<i>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 India 2000-2001 Final), and accompanying IDM</i>
<i>PET Film India 2003 Final</i>	<i>Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 71 FR 7534 (February 13, 2006) (PET Film India 2003 Final), and accompanying IDM</i>
<i>PET Film India 2006 Final</i>	<i>Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 73 FR 7708 (February 11, 2008) (PET Film India 2006 Final), and accompanying IDM</i>
<i>PET Film India 2007 Final</i>	<i>Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 75 FR 6634 (February 3, 2010) (PET Film India 2007 Final), and accompanying IDM</i>
<i>PET Film India 2009 Final</i>	<i>Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review, 76 FR 76948 (December 9, 2011) (PET Film India 2009 Final), and accompanying IDM</i>
<i>PET Film CVD NSR India 2009 Final</i>	<i>Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Antidumping Duty New Shipper Review, 76 FR 30910 (May 27, 2011) (PET Film AD NSR India 2009 Final), and accompanying IDM</i>
<i>PET Film India 2012 Prelim</i>	<i>Preliminary Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 79 FR 50620 (August 25, 2014) (PET Film India 2012 Prelim), and accompanying PDM</i>
<i>PET Film India 2012 Final</i>	<i>Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012, 80 FR 11163 (March 2, 2015) (PET Film India 2012 Final), and accompanying IDM</i>

<i>PET Film India 2013 Final</i>	<i>Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2013, 81 FR 7753 (February 16, 2016) (PET Film India 2013 Final), and accompanying IDM</i>
<i>PET Film India 2014 Prelim</i>	<i>Preliminary Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 81 FR 51186 (August 3, 2016) (PET Film India 2014 Prelim) and accompanying PDM</i>
<i>PET Resin China Final</i>	<i>Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Affirmative Determination, 81 FR 13337 (March 14, 2016) (PET Resin China Final), and accompanying IDM</i>
<i>PET Resin India Final</i>	<i>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) (PET Resin India Final), and accompanying IDM</i>
<i>Reinforcing Bar Turkey Final</i>	<i>Countervailing Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Determination 82 FR 23188 (May 22, 2017) (Reinforcing Bar Turkey Final), and accompanying IDM</i>
<i>Semiconductors Taiwan Final</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909 (February 23, 1998) (Semiconductors Taiwan Final), and accompanying IDM</i>
<i>Shrimp China Final</i>	<i>Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 50391 (August 19, 2013) (Shrimp China Final), and accompanying IDM</i>
<i>Shrimp India Final</i>	<i>Final of Certain Frozen Warmwater Shrimp from India, 78 FR 50385 (August 12, 2013) (Shrimp India Final), and accompanying IDM</i>
<i>Silica Fabric China Final</i>	<i>Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination, 82 FR 8405 (January 25, 2017) (Silica Fabric China Final), and accompanying IDM</i>
<i>Softwood Lumber Canada Final</i>	<i>Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances, 82 FR 51814 (November 8, 2017) (Softwood Lumber Canada Final), and accompanying IDM</i>
<i>Steel Flanges India Prelim</i>	<i>Finished Carbon Steel Flanges from Italy: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 82 FR 9711 (February 8, 2017) (Steel Flanges India Prelim), and accompanying PDM</i>

<i>Steel Flanges India Final</i>	<i>Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination</i> , 82 FR 29479 (June 29, 2017) (<i>Steel Flanges India Final</i>), and accompanying IDM
<i>Steel Threaded Rod India Final</i>	<i>Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances</i> , 79 FR 40712 (July 14, 2014) (<i>Steel Threaded Rod India</i>), and accompanying IDM
<i>Supercalendered Paper Canada Final</i>	<i>Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination</i> , 80 FR 63535 (October 20, 2015) (<i>Supercalendered Paper Canada Final</i>), and accompanying IDM
<i>Thermal Paper from China Final</i>	<i>Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination</i> , 73 FR 57323 (October 2, 2008) (<i>Thermal Paper from China</i>), and accompanying IDM
<i>Washers Korea Final</i>	<i>Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination</i> , 77 FR 75975 (December 26, 2012) (<i>Washers Korea Final</i>), and accompanying IDM
<i>Welded Steel Pressure Pipe India Final</i>	<i>Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Final Affirmative Determination</i> , 81 FR 66925 (September 29, 2016) (<i>Welded Steel Pressure Pipe India Final</i>), and accompanying IDM
<i>Aluminum Extrusions China Final</i>	<i>Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination</i> , 76 FR 18521 (April 4, 2011) (<i>Aluminum Extrusions China Final</i>) and accompanying IDM
<i>Bottle-Grade PET Resin India Final</i>	<i>Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India</i> , 70 FR 13460 (March 21, 2005) (<i>Bottle-Grade PET Resin India Final</i>), and accompanying IDM
<i>Chlorinated Isocyanurates China Final</i>	<i>Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014</i> , 82 FR 27466 (June 15, 2017) (<i>Chlorinated Isocyanurates China Final</i>), and accompanying IDM