



C-533-880
Investigation
Public Document
E&C/I: Team

DATE: May 14, 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
Associate Deputy Assistant Secretary
for Enforcement and Compliance
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 Polytetrafluoroethylene
Resin from India

I. Summary

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of polytetrafluoroethylene resin (PTFE resin) from India, as provided in section 705 of the Tariff Act of 1930, as amended (the Act).¹ Below is the complete list of issues in this investigation for which we received comments from interested parties:

Comment 1: Whether Commerce is Conducting this Investigation in Accordance with its Obligations

Comment 2: Commerce's Application of AFA for the GOI's Failure to Provide Requested Information

Comment 3: Whether Commerce Should Use GFL's Corrections Presented at Verification

Comment 4: Whether EPCGS Continues to Confer a Countervailable Benefit

Comment 5: Whether the GOI Maintains a Reasonable or Effective Input Verification System for AAP

Comment 6: Whether GFL Has a Reliable AAP Database

Comment 7: Whether Commerce's Decision to find SHIS Countervailable is in Accordance with its Statutory Obligations

¹ See also section 701(f) of the Act.



Comment 8:	Whether Commerce Should Use GFL’s Minor Correction to the Electricity Duty Exemption for Wind Power
Comment 9:	Whether GFL Received a Countervailable Benefit from SGOG Preferential Water Rates
Comment 10:	Countervailability of Renewable Energy Certificates
Comment 11:	Whether a Tier-One Benchmark is Appropriate for SGOG Provision of Land for LTAR
Comment 12:	Whether MEIS is Tied to Non-Subject Merchandise
Comment 13:	Whether GFL Received a Benefit from Income Tax Exemption (80-IA) and Section 32AC (32AC) of the Income Tax Act

II. Background

A. Initiation and Case History

On March 8, 2018, Commerce published the *Preliminary Determination* in this proceeding.² Between March 7, 2018, and March 16, 2018, we conducted verification of the questionnaire responses submitted by the Government of India (GOI) and Gujarat Fluorochemicals Limited (GFL).³ Interested parties submitted case and rebuttal briefs, respectively on April 5, 2018, and April 11, 2018.⁴ On April 19, 2018, Commerce held a public hearing, limited to the issues raised in the case and rebuttal briefs.⁵

B. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is April 1, 2016, through March 31, 2017.⁶

III. Scope Comments

Commerce issued its Preliminary Scope Decision Memorandum, in which we considered the comments submitted by parties following the initiation of the investigation. We preliminarily

² See *Polytetrafluoroethylene Resin from India: Preliminary Affirmative Countervailing Duty Determination*, 83 FR 9842 (March 8, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

³ See Memorandum, “Verification of the Questionnaire Responses of the Government of India,” March 29, 2018 (GOI Verification Report); see also Memorandum, “Verification of the Questionnaire Responses of Gujarat Fluorochemicals Limited,” March 29, 2018 (GFL Verification Report).

⁴ See Letter from the GOI, “Countervailing Duty Investigation into PTFE Resin from India (Case No. C-533-880) – Case Brief on behalf of Government of India,” April 5, 2018; see also Letter from GFL, “Polytetrafluoroethylene Resin from India; Gujarat Fluorochemicals Limited’s Case Brief,” April 5, 2018; see also Letter from the petitioner, “Case Brief on Behalf of The Chemours Company FC LLC,” April 5, 2018 (Petitioner Case Brief); see also Letter from GFL, “Polytetrafluoroethylene Resin from India; Gujarat Fluorochemicals Limited’s Rebuttal Brief,” April 11, 2018; see also Letter from the petitioner, “Rebuttal Brief on Behalf of The Chemours Company FC LLC,” April 11, 2018 (Petitioner Rebuttal Brief).

⁵ See Hearing Transcript, “Public Hearing in the Matter of: the Investigation of the Countervailing Duty Order on Polytetrafluoroethylene (PTFE) Resin from India,” April 26, 2018.

⁶ See *Preliminary Determination* and accompanying PDM at 3.

determined to make no modifications to the scope language as presented in the initiation notice.⁷ We invited comments on the Preliminary Scope Decision Memorandum. No parties commented. As such, with this final determination, we are adopting the preliminary decision and we are making no modifications to the scope language.

IV. Scope of the Investigation

The product covered by this investigation is polytetrafluoroethylene (PTFE) resin, including but not limited to granular, dispersion, or coagulated dispersion (also known as fine powder). PTFE is covered by the scope of this investigation whether filled or unfilled, whether modified, and whether containing co-polymer additives, pigments, or other materials. Also included is PTFE wet raw polymer. The chemical formula for PTFE is C₂F₄, and the Chemical Abstracts Service Registry number is 9002-84-0.

PTFE further processed into micropowder, having particle size typically ranging from 1 to 25 microns, and a melt-flow rate no less than 0.1 gram/10 minutes, is excluded from the scope of this investigation.

PTFE is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3904.61.0010 and 3904.61.0090. Subject merchandise may also be classified under HTSUS subheading 3904.69.5000. Although the HTSUS subheadings and CAS Number are provided for convenience and Customs purposes, the written description of the scope is dispositive.

V. Subsidies Valuation

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 this topic. For a description of the allocation period and the methodology used for this final determination, *see the Preliminary Determination*.⁸

B. Attribution of Subsidies

Commerce has made no changes to the attribution of subsidies methodology applied in the *Preliminary Determination* and no issues were raised by interested parties in briefs regarding the attribution of subsidies methodology. For a description of the methodologies used for all programs in the final determination, *see the Preliminary Determination*.⁹

⁷ See *Polytetrafluoroethylene Resin from India: Initiation of Countervailing Duty Investigation*, 82 FR 49592 (October 26, 2017) (*Initiation Notice*).

⁸ See *Preliminary Determination*, and accompanying PDM at 4-5.

⁹ *Id.* at 5-6.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators we used to calculate the countervailable subsidy rate for the various subsidy programs in this investigation are explained in further detail in the final calculation memorandum, dated concurrently with this final determination.¹⁰ As a result of verification, and in consideration of a comment received in a case brief, we have made certain changes pursuant to the minor corrections presented at verification to the denominators used to calculate the subsidy rates in this final determination.¹¹ These changes included updates to GFL's reported domestic sales values over the AUL period so that they were on an FOB basis. We also accepted GFL's corrections that removed traded goods from certain domestic and export sales figures for both the POI and the AUL period. Finally, we accepted GFL's changes in which they calculated the FOB export sales by deducting the actual expenses for freight and insurance from the CIF value as recorded in the general ledger.

VI. Benchmarks and Discount Rates

Commerce made certain changes to the benchmark interest rates used in the *Preliminary Determination*, specifically to the long-term interest rates.¹² The results of verification indicate that some of the long-term loans that GFL reported were not denominated in rupees.¹³ Therefore, for the final determination, we are removing the non-rupee-denominated long-term loans from its loan benchmark calculations. For years during the AUL period in which GFL was approved for non-recurring subsidies or in which GFL was approved for long-term loans, and for which there are no comparable commercial rupee-denominated loans, we are relying on long-term lending rates from the International Monetary Fund's International Financial Statistics (IMF Statistics).¹⁴ Consistent with 19 CFR 351.524(d)(3)(i) we find that the loan information GFL provided and the IMF Statistics constitute a reasonable representation of long-term interest rates for rupee-denominated loans. The interest-rate benchmarks and discount rates used in our final calculations are provided in the Final Calculation Memorandum.¹⁵

VII. Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly

¹⁰ See Memorandum, "Final Determination Calculations for Gujarat Fluorochemicals Limited," dated concurrently with this memorandum (Final Calculation Memorandum).

¹¹ *Id.*

¹² See *Preliminary Determination* and accompanying PDM at 6-7.

¹³ See Letter from GFL, "Polytetrafluoroethylene Resin from India; Gujarat Fluorochemicals Limited's Minor Corrections Presented at the CVD Verification," March 14, 2018 (GFL Minor Corrections) at Exhibit 4.

¹⁴ See Final Calculation Memorandum.

¹⁵ *Id.*

impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.¹⁶

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that adverse facts available (AFA) may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an AFA rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."¹⁷ Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹⁸

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. However, section 776(c)(1) of the Act does not require corroboration when the information relied upon for AFA is derived from the petition, a final determination in the investigation, any previous review under section 751 of the Act or determination under section 753 of the Act, or any other information placed on the record.

Specifically, it is Commerce's practice in a CVD investigation to select, as AFA, the highest calculated rate for the same or similar program.¹⁹ When selecting rates, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program at or above *de minimis* in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding rates that are *de minimis*). If no identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated rate for the similar/comparable

¹⁶ Under the Trade Preferences Extension Act of 2015, numerous amendments to the antidumping duty (AD) and CVD law were made, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362, dated June 29, 2015. See also *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

¹⁷ See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

¹⁸ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

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

program. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program in a CVD case involving the same country, but we do not use a rate from a program if the industry in the proceeding cannot use that program.²⁰

Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.²¹ With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. Additionally, we are not applying subsidy rates to programs, but are applying AFA, as described below, to determine that certain programs provide a financial contribution and are specific. Therefore, the corroboration exercise of section 776(c)(1) of the Act is inapplicable for purposes of this investigation.

Commerce relied on “facts otherwise available,” including AFA, for several findings in the *Preliminary Determination*.²² Pursuant to section 776(b) of the Act, we continue to rely on AFA with respect to finding that the Exemption from Electricity Duty and the Renewable Energy Certificate programs each provide a financial contribution and is specific. We also continue to rely on the respondent’s reported usage information for these programs to calculate the countervailable subsidy rate for each program.²³

VIII. Analysis of Programs

With the exceptions explained below, we have made no changes to the *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 respondent are identified below.

A. Programs Preliminarily Determined to Be Countervailable

1. Export Promotion of Capital Goods Scheme (EPCGS)

The Chemours Company FC LLC (the petitioner), the GOI, and GFL submitted comments in their case briefs regarding this program. The countervailability of the program is discussed below in Comment 4. We have not changed our methodology for calculating the subsidy rate from the *Preliminary Determination*.²⁴

²⁰ See *Shrimp from the PRC*, and accompanying IDM at 13-14.

²¹ See section 776(d)(3) of the Act.

²² See *Preliminary Determination* and accompanying PDM at 7-10.

²³ *Id.*

²⁴ *Id.* at 10-13.

GFL: 0.16 percent *ad valorem*

2. *Advance Authorization Program (AAP) aka Advance License Program (ALP)*

The petitioner, the GOI, and GFL submitted comments in their case briefs regarding this program. The countervailability of the program is discussed below in Comments 5 and 6. We have not changed our methodology for calculating the subsidy rate from the *Preliminary Determination*.²⁵

GFL: 0.98 percent *ad valorem*

3. *Status Holders Incentive Scrip (SHIS)*

The petitioner, the GOI, and GFL submitted comments in their case briefs regarding this program. The countervailability of the program is discussed below in Comment 7. We have not changed our methodology for calculating the subsidy rate from the *Preliminary Determination*.²⁶

GFL: 0.19 percent *ad valorem*

4. *Exemption from Electricity Duty*

The petitioner, the GOI, and GFL submitted comments in their case briefs regarding this program. The countervailability of the program is discussed below in Comment 8. As discussed at Comment 8, we have modified the calculation of the benefit used to determine the countervailable subsidy rate.²⁷

GFL: 1.30 percent *ad valorem*

5. *State Government of Gujarat (SGOG) Preferential Water Rates*

The petitioner, the GOI, and GFL submitted comments in their case briefs regarding this program. The countervailability of the program is discussed below in Comment 9. As discussed at Comment 9, we have modified the calculation of the benefit used to determine the countervailable subsidy rate.²⁸

GFL: 0.60 percent *ad valorem*

6. *Renewable Energy Certificate*

The petitioner, the GOI, and GFL submitted comments in their case briefs regarding this program. The countervailability of the program is discussed below in Comment 10. We have

²⁵ *Id.* at 13-15.

²⁶ *Id.* at 15-16.

²⁷ *Id.* at 16-17.

²⁸ *Id.* at 17-18.

not changed our methodology for calculating the subsidy rate from the *Preliminary Determination*.²⁹

GFL: 0.37 percent *ad valorem*

B. Programs Preliminarily Determined Not to Confer a Benefit During the POI

1. SGOG Provision of Land for Less than Adequate Remuneration (LTAR)

The petitioner and GFL submitted comments in their briefs regarding this program. The countervailability of the program is discussed below in Comment 11. We have not changed our methodology from the *Preliminary Determination* and we continue to determine that this program did not provide a measurable benefit to GFL.³⁰

2. Duty Drawback Program (DDB)

We have not changed our methodology from the *Preliminary Determination* and we continue to determine that GFL did not receive a benefit under this program.³¹

3. Merchandise Exports from India Scheme (MEIS)

The petitioner and GFL submitted comments in their briefs regarding this program. The countervailability of the program is discussed below in Comment 12. We have not changed our methodology from the *Preliminary Determination*, and continue to determine that GFL did not receive a benefit under this program.³²

C. Programs Determined to be Not Used

GOI Programs

- 1. Income Tax Exemption Scheme (80-IA)*³³
- 2. Section 32AC of the Income Tax Act*³⁴
- 3. Duty Free Import Authorization (DFIA)*
- 4. Duty Free Importation of Capital Goods and Raw Materials, etc.*
- 5. Exemption from Payment of Central Sales Tax (CST)*
- 6. SEZ Income Tax Exemption*
- 7. Bank Loans Obtained from Public Sector Bank*

²⁹ *Id.* at 18-19.

³⁰ *Id.* at 19-21.

³¹ *Id.* at 21-22.

³² *Id.* at 22-23.

³³ See Comment 13 for a discussion on the countervailability of this program.

³⁴ For this program, the GOI did not provide the necessary information to determine financial contribution or specificity, see *Preliminary Determination*. However, we determine that GFL did not receive a benefit from this program and therefore, it was not used. See Comment 13 for a discussion on the countervailability of this program.

SGOG Programs

8. *SGOG Interest Subsidy under Assistance to Manufacturing Sector Scheme*
9. *SGOG Core Infrastructure in Manufacturing Sector*
10. *SGOG Assistance in Setting Up Common Facilities*
11. *SGOG Assistance in Common Effluent Treatment Plant*
12. *SGOG Assistance for Center for Excellence*
13. *Export Promotion – Government Grants*
14. *Exemption from Payment of State Sales Tax*
15. *Gujarat Exemption from Payment of State Government Taxes and Duties Such as Stamp Duties*

IX. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce is Conducting this Investigation in Accordance with its Obligations

GOI's Case Brief

- Commerce's initiation and subsequent conduct of this investigation is highly irregular considering the United States' obligations under the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM).
- Commerce failed to give any consideration to issues the GOI raised in the pre-initiation consultation, which made it a meaningless exercise. Commerce unilaterally added programs without granting the GOI an opportunity for consultations, as required by law.
- The petitioner's allegations were unsubstantiated, based on conjecture rather than evidence, and thus not sufficient for initiation. The petitioner made no attempt to examine and explain any other known factors that may be injuring the domestic industry.
- The U.S. Court of International Trade (CIT) has recognized that Commerce is statutorily obligated to provide "an explanation of the basis for its determination that addresses relevant arguments made by interested parties who are parties to the investigation ... concerning the establishment of ... a countervailable subsidy."³⁵

Petitioner's Rebuttal Brief

- Commerce conducted this investigation in accordance with U.S. law, which incorporates all obligations under the ASCM.
- In *Hot-Rolled Steel from India*, Commerce stated that CVD proceedings are "governed by the U.S. countervailing duty law . . . {which} fully implements the United States' obligations under the ASCM."³⁶

³⁵ See *Bethlehem Steel Corp. v. United States*, 25 CIT 307, 317, amended, 162 F. Supp. 2d 627 (CIT 2001); see also section 777(i)(3)(A) of the Act.

³⁶ See *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) (*Hot-Rolled Steel from India*) and accompanying IDM at Comment 3.

- Section 102(a) of the Uruguay Round Agreements Act states that if there is a conflict between U.S. law and the Uruguay Round agreement, U.S. law will take precedence.³⁷
- In *Hot-Rolled Steel from India*, Commerce made clear that its consultation obligations are fully met by the provision of “ample time and ample notice” to respond to information on the record and to reply to its questionnaires.³⁸

Commerce’s Position: We are conducting this investigation pursuant to U.S. CVD law, specifically the Act and Commerce’s regulations. To the extent that the GOI is raising arguments concerning certain provisions of the ASCM in this proceeding, the U.S. CVD law fully implements the United States’ obligations under the ASCM. Therefore, because our decisions here are consistent with the Act and our regulations, they are also consistent with our obligations under the ASCM.

We disagree with the GOI’s argument that the petitioner’s allegations were unsubstantiated, based on conjecture, and were not sufficient for initiation. We analyzed the petition and found that the evidence the petitioner presented met the requirements of section 702 of the Act with regard to 18 of the programs alleged in the petition.³⁹ We did not initiate on four alleged programs because we found that those allegations in the petition did not meet the statutory requirements for initiation.⁴⁰ Our conduct subsequent to the initiation has been fully compliant with the Act and our regulations.

The Act explicitly provides for consultations when Commerce receives a petition.⁴¹ Thus, prior to the initiation of the investigation, we offered, and held consultations with the GOI, in accordance with section 702(b)(4)(A)(ii) of the Act and 19 CFR 351.203(i)(2). We carefully considered the GOI’s claims, presented at consultations and submitted for the record thereafter,⁴² that the petitioner failed to provide adequate support for several of the allegations included in the petition, and therefore the allegations did not meet the initiation standard.⁴³ However, at the initiation, we disagreed with the GOI’s contention that the petition did not adequately address any other known factors injuring domestic industry. The petition provided allegations concerning PTFE resin imports threatening to cause material injury, and information in support of those allegations.⁴⁴ We examined the allegations and supporting information, and as

³⁷ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Sess. Vol. 1 at 659.

³⁸ See *Hot-Rolled Steel from India* and accompanying IDM at Comment 3; see also *James A. Barnhart v. United States Treasury Department*, 588 F. Supp 1432, 1438 (CIT 1984).

³⁹ See *Initiation Notice*; see also Commerce Checklist, “Polytetrafluoroethylene Resin (PTFE Resin) from India: Countervailing Duty Investigation Initiation Checklist,” October 18, 2017 at 7-22 (Checklist).

⁴⁰ *Id.* at 22-25.

⁴¹ See section 702(b)(4)(A)(ii) of the Act.

⁴² See Letter from the GOI, “Brief for Pre-initiation Consultation On behalf of Government of India,” October 18, 2017.

⁴³ See Memorandum, “Consultations with Officials from the Government of India (GOI) Regarding the Countervailing Duty Petition on Polytetrafluoroethylene (PTFE) Resin from India,” October 18, 2017.

⁴⁴ See Letter from the petitioner, “Polytetrafluoroethylene (PTFE) Resin from the People’s Republic of China and India: Antidumping and Countervailing Duty Petitions,” September 28, 2017 (the petition) at 35-38.

explained in our initiation checklist, we found that there was a sufficient basis to initiate the investigation.⁴⁵

We disagree with the GOI's argument that we unilaterally added programs during the course of the investigation without granting the GOI an opportunity for consultation. It is Commerce's practice to request that respondents and foreign governments report in their questionnaire responses any other assistance they may have received during the POI and over the AUL.⁴⁶ It is also a Commerce requirement that respondents and foreign governments cooperate to the best of their ability with our investigation procedures. Therefore, respondents are required to report other assistance in order to cooperate with Commerce's request for information. Commerce provides respondents and foreign governments ample notice and ample time to request meetings with Commerce officials and to respond to information on the record, including information pertaining to other self-reported subsidies. For instance, we met with GFL at its request to discuss reporting requirements for certain of its cross-owned companies.⁴⁷ Consistent with our practice, Commerce's proceedings are conducted in an open and transparent manner. Furthermore, throughout the proceeding, all parties have had opportunities to meet and discuss record evidence, and file comments and case briefs.

Comment 2: Commerce's Application of AFA for the GOI's Failure to Provide Requested Information

GOI's Case Brief

- The GOI has cooperated in this investigation and has provided all available information to the best of its ability. Thus, Commerce erred in applying AFA to the following programs: Exemption from Electricity Duty and Renewable Energy Certificates.
- The GOI has not withheld information nor impeded this proceeding; the GOI has stated that it would provide the requisite assistance in case Commerce decided to verify the information available on the record. Thus, the application of AFA is inconsistent with section 776(b) of the Act and Article 12.7 of the ASCM.

GFL's Case Brief

- The wind electricity exemption is not countervailable because it fails to meet the specificity requirement in section 771 (5A) of the Act. Under the *Wind Power Policy of 2013*, any company that meets the objective criteria is eligible for the exemption and this policy does not limit the exemption to any specific industry or user.

Petitioner's Rebuttal Brief

- The record does not support that the GOI cooperated to the best of its ability. There were several instances in which the GOI characterized Commerce's questions as "not relevant" or

⁴⁵ See Checklist at 3-5 and Attachment III.

⁴⁶ See, e.g., *Certain Softwood Lumber Products from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 19657 (April 28, 2017) and accompanying IDM (for instances of foreign government and respondents self-reporting programs); see also Letter to the GOI, "Countervailing Duty Investigation of Polytetrafluoroethylene Resin from India: Countervailing Duty Questionnaire," November 16, 2017 at 24 and 95.

⁴⁷ See Memorandum, "Countervailing Duty Investigation of Polytetrafluoroethylene Resin from India: Meeting with Gujarat Fluorochemicals Limited," December 15, 2017.

“cannot be considered necessary,” or refused to provide the information requested of it but instead offered to “cross verify” the information if Commerce could collect it elsewhere, or simply declared that Commerce’s questions were “not being answered.”

- Commerce should continue to rely on AFA and find that the programs are specific within the meaning of section 771(5A) of the Act because the GOI failed to respond to Commerce’s questions concerning program eligibility and actual use. Neither the GOI nor GFL provided any information concerning the actual use of this program after the *Preliminary Determination*, so the record does not include sufficient evidence for Commerce to examine whether the program is specific.⁴⁸

Commerce’s Position: We disagree with the GOI and continue to find that application of AFA is warranted. As described in more detail in the *Preliminary Determination*, on January 9, 2018, January 29, 2018, and February 5, 2018, we issued to the GOI supplemental questionnaires⁴⁹ in response to certain deficiencies that we identified in its initial and supplemental questionnaire responses submitted on January 8 and 30, 2018.⁵⁰ In these supplemental questionnaires, we requested information, for a second and third time, that we had previously requested and that the GOI had failed to provide. This information included key program procedures and guidelines necessary to conduct our analysis regarding financial contribution and specificity. Specifically, the GOI did not provide any substantive responses to the Standard Questions Appendix or to the Usage Appendix for the following programs in either the initial or supplemental questionnaire responses: Exemption from Electricity Duty and Renewable Energy Certificates.⁵¹

Therefore, we continue to find that the necessary information with respect to the above programs is not available on the record and that the GOI did not provide information that was requested of it, thereby impeding the proceeding. Thus, we are 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 failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In drawing an adverse inference when selecting from the facts available, we continue to find that the Renewable Energy Certificate program and the Exemption from Electricity Duty program constitute a financial

⁴⁸ See Petitioner Rebuttal Brief at 11-12.

⁴⁹ See Letter to the GOI, “Countervailing Duty Investigation into PTFE Resin from India (Case No. C-533-880) – Questionnaire Response on behalf of Government of India,” January 9, 2018 (IQR); see also Letter to the GOI, “Polytetrafluoroethylene (PTFE) Resin from India: Supplemental Questionnaire for the Government of India,” January 29, 2018; see also Letter to the GOI, “Polytetrafluoroethylene (PTFE) Resin from India: Third Supplemental Questionnaire for the Government of India,” February 5, 2018.

⁵⁰ See Letter from the GOI, “Countervailing Duty Investigation into PTFE Resin from India (Case No. C-533-880) – Questionnaire Response on behalf of Government of India,” January 8, 2018 (GOI January 8, 2018 IQR); see also Letter from the GOI, “Countervailing Duty Investigation into PTFE Resin from India (Case No. C-533-880) – Response to Supplemental Questionnaire dated 9 January 2018 on behalf of Government of India,” January 30, 2018 (GOI January 30, 2018 SQR).

⁵¹ See generally GOI January 8, 2018 IQR; GOI January 30, 2018 SQR; Letter from the GOI, “Countervailing Duty Investigation into PTFE Resin from India (Case No. C-533-880) – Response to Supplemental Questionnaire dated 5 February 2018 on behalf of Government of India,” February 15, 2018 (GOI February 15, 2018 SQR).

contribution, within the meaning of section 771(5)(D) of the Act, and that both programs are specific, within the meaning of section 771(5A) of the Act.⁵²

Finally, our application of AFA is governed by the provisions of the Act discussed above. The Act complies with our international obligations under the ASCM.⁵³ Here, because the GOI did not provide the necessary information and impeded the proceeding, our reliance on the AFA is appropriate, and consistent with the Act.

Comment 3: Whether Commerce Should Use GFL's Corrections Presented at Verification

GFL's Case Brief

- Commerce should use the minor corrections for the sales values, and the programs EPCGS, AAP, and Exemption from Electricity Duty.
- At verification, GFL submitted revised sales databases to correct several issues: FOB values for domestic sales for the AUL period; corrected methodological issues with respect to the FOB export values, and removed traded goods from all sales reporting; and, submitted revised POI and AUL sales charts. Commerce should use these revised sales values in its final determination.
- GFL corrected the AAP database to include the appropriate application fees. Commerce should use the revised database for its final determination.

Commerce's Position: Regarding the corrections to the sales values, the Exemption from Electricity Duty, AAP, and SHIS programs, we agree with GFL and we are incorporating the minor corrections into our calculations for this final determination.⁵⁴

However, while we are making the corrections for the rounding error in the information provided for the EPCGS program and the duplicate reporting of an EPCGS license, we are not using all of GFL's revisions to the variable loan interest rates.⁵⁵ As we learned at verification, for certain of the long-term loans, the interest rates which we had used as the discount rates for allocating non-recurring subsidies over the AUL were not rupee-denominated.⁵⁶ Thus, we are not including these loans in our calculations of the long-term loan interest rate benchmarks and the discount rates.

Additionally, for further discussion regarding corrections to information provided for the Exemption from Electricity Duty program, *see* Comment 8.

⁵² See GOI January 30, 2018 SQR at 11, 17, and 39; *see also* the Petition at 62.

⁵³ See ASCM Article 12.7 ("In cases in which any interested Member or interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.").

⁵⁴ See Letter from GFL, "Polytetrafluoroethylene Resin from India; Gujarat Fluorochemicals Limited's CVD Verification Exhibits," March 23, 2018 at Verification Exhibit (GFL VE) at VE-1.

⁵⁵ *Id.*

⁵⁶ See GFL Verification Report at 19.

Comment 4: Whether EPCGS Continues to Confer a Countervailable Benefit

GOI's Case Brief

- EPCGS does not confer countervailable subsidies. Because there are no limitations placed on the goods manufactured by the imported machines, this scheme is not specific.
- Commerce's mechanical reliance on *PET Film from India* and *Shrimp from India* is unsustainable.⁵⁷ As the CIT stated, factual findings in past determinations, while often relevant, are not binding in subsequent cases.
- EPCGS is a permitted drawback scheme that allows a partial exemption from payment of customs duties upon importation of capital goods used for producing goods for export.
- EPCGS is not specific pursuant to Article 2 of the ASCM because there are no restrictions on goods manufactured by the imported machines.

Petitioner's Rebuttal Brief

- Commerce should continue to find EPCGS specific because its benefits are export contingent.
- To obtain EPCGS benefits, producers commit to earning convertible foreign currency equal to six times the duty saved within a period of six years in exchange for the waiver of all duties on imported capital equipment.

Commerce's Position: We disagree with the GOI and continue to find EPCGS countervailable. According to the GOI, EPCGS provides for a reduction of, or exemption from, customs duties and excise taxes on imports of capital goods used in the production of exported products.⁵⁸ Under this program, producers pay reduced duty rates on imported capital equipment in return for a commitment to earn convertible foreign currency equal to six times the duty saved within a period of six years.⁵⁹ Once a company has met its export obligations, the GOI will formally waive the exempted duties on the imported goods.⁶⁰ Therefore, with respect to the GOI's argument that the program is not specific because there are no restrictions on goods manufactured by the imported machines, we found EPCGS specific in the *Preliminary Determination* under sections 771(5A)(A) and (B) of the Act because the program was contingent upon export performance.⁶¹ Whether the goods produced with the imported capital equipment are permitted to be sold in the domestic market is not relevant to our analysis. Companies qualify for the duty reductions or exemptions, and the eventual final duty waivers are based on their commitment to export. If they are unable to meet the export requirements, they will have to pay the duties normally applicable to the capital equipment imports. Therefore, the

⁵⁷ See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 73 FR 7708 (February 11, 2008) (*PET Film from India*) and accompanying IDM at 9-12; see also *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India*) and accompanying IDM at 14.

⁵⁸ See GOI January 8, 2018 IQR at 4-17.

⁵⁹ *Id.* at 6-7.

⁶⁰ *Id.* at 5-7.

⁶¹ See *Preliminary Determination* and accompanying PDM at 10. As noted above, the U.S. CVD law fully implements the United States' obligations under the ASCM. Therefore, because our decisions here are consistent with the Act and our regulations, they are also consistent with our obligations under the ASCM.

benefits are contingent on export performance and the program is specific in accordance with sections 771(5A) and (B) of the Act.

In addition, Commerce has previously determined that import duty reductions or exemptions provided under EPCGS are countervailable export subsidies because the scheme: provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act; provides two different benefits under section 771(5)(E) of the Act; and is specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is contingent upon export performance.⁶² With reference to the GOI's assertion that because circumstances change, factual findings in past determinations are not necessarily binding in subsequent cases, the GOI has not identified any record information indicating that there has been a change in the administration and mechanics of the program. Moreover, we verified the record information in this investigation and find that there is no change in the administration and mechanics of the program that would cause us to change our determination from prior proceedings.⁶³ As a result, and consistent with our prior determinations in, *inter alia*, *Corrosion-Resistant Steel from India*, *PET Resin from India*, and *PET Film from India*, we determine that this program is countervailable.

Finally, we disagree with the GOI's claim that EPCGS is a drawback scheme. Unlike drawback programs, in which an input is imported duty-free that is then incorporated in a product produced for exportation, this program facilitates the importation of capital equipment to be used to produce export products.⁶⁴ Under 19 CFR 351.519(i), “{i}n the case of remission of drawback of import charges upon exportation, a benefit exists to the extent that . . . the amount of the remission or drawback exceeds the amount of import charges on imported inputs that are consumed in the production of the exported product, making normal allowances for waste.” In the case of EPCGS, the exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. It is Commerce's practice to treat any balance on an unpaid liability that may be waived in the future as a contingent-liability interest-free loan pursuant to 19 CFR 351.505(d)(1).⁶⁵ Because the unpaid duties are a liability contingent on subsequent events, these interest-free contingent-liability loans constitute the first benefit under EPCGS. The second benefit arises when the GOI waives the duty on imports of capital equipment covered by those EPCGS licenses for which the export requirement has already been met. For those licenses for which the GOI has acknowledged that the company has completed its export obligation, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption pursuant to 19 CFR 351.505(d)(2).

⁶² See, e.g., *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Final Affirmative Determination*, 81 FR 35323 (June 2, 2016) (*Corrosion-Resistant Steel from India*) and accompanying IDM at 22-23; see also *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 from India*) and accompanying IDM at 14-16; see also *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) and accompanying IDM at EPCGS section.

⁶³ See GOI Verification Report at 8-9; see also GFL Verification Report at 17-19.

⁶⁴ See GOI January 8, 2018 IQR at 7.

⁶⁵ *Id.*

Comment 5: Whether the GOI Maintains a Reasonable or Effective Input Verification System for AAP

GOI's Case Brief

- The ASCM states that both 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 levied on inputs consumed in the production of the exported product, making normal allowance for waste.
- AAP is not countervailable if benefits received on the consumption of inputs and production of the exported products can be verified.
- The GOI has a reasonable and effective input verification system at every stage of the process, which has been highlighted in detail in the GOI's questionnaire responses.
- Commerce's decision to countervail AAP based on a 2005 administrative review is inconsistent with the evidence on the record, which demonstrates that there is an effective and reasonable verification system.

Petitioner's Rebuttal Brief

- The GOI does not maintain a reasonable or effective verification system for its AAP program.
- Nothing on the record would justify Commerce's reversal of its longstanding finding that the GOI does not maintain a reasonable and effective system to verify duty-free inputs are used in exported products under AAP.
- The GOI does not specify the record evidence for AAP that would allow Commerce to reverse its *Preliminary Determination* or other recent findings.
- Consistent with Commerce's findings in the 2005 administrative review of *PET Film from India*, the record of this investigation lacks information concerning any standard input output norm (SION) calculations applicable to the PTFE industry, penalties for companies not meeting the export requirements under AAP or claiming excessive credits, or the availability of AAP benefits for "deemed" exports.

Commerce's Position: We continue to find that the GOI does not maintain a reasonable or effective input verification system for AAP. In *PET Film from India*, Commerce conducted an on-site verification of the GOI's procedures for devising product SIONs, and the then reported new monitoring procedures.⁶⁶ At that time, Commerce also examined the GOI's new monitoring procedures that it introduced in 2005. There is no evidence that there have been any changes to the GOI's procedures for devising SIONs or for monitoring the import of inputs used for the production of exports, and the quantity of such imported inputs used for producing a corresponding quantity of exports, making normal allowance for waste, that would require Commerce to reconsider the finding in *PET Film from India*. We agree with the petitioner that consistent with Commerce's findings in the 2005 administrative review of *PET Film from India*, the record of this investigation lacks information concerning (1) any SION calculations applicable to the PTFE industry, (2) penalties for companies not meeting the export requirements

⁶⁶ See *PET Film from India* and accompanying IDM at 7-9, 21-24.

under AAP or claiming excessive credits, or (3) the availability of AAP benefits for “deemed” exports.

Commerce determined in prior cases that the systemic deficiencies in AAP continue to exist for both the SION development and the monitoring system in general, *i.e.*, 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 351.519.⁶⁷ No allowance was made by the GOI to account for waste to ensure that the amount of duty deferred would not exceed the amount of import charges on imported inputs consumed in the production of the exported product.⁶⁸ Commerce continued to have concerns in *PET Film from India*, specifically with regard to several aspects of AAP including: the GOI’s inability to provide the SION calculations that reflect the production experience of the PET film industry as a whole; the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under AAP or for claiming excessive credits; and the availability of AAP benefits for a broad category of “deemed” exports. In that decision, Commerce further stated that, while the GOI was able to demonstrate at verification that certain mechanisms for monitoring had been put in place, Commerce still found that the GOI did not have a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, making normal allowances for waste.⁶⁹ Commerce determined that the GOI’s system or procedure was not reasonable and effective for the purpose intended, based on generally accepted commercial practices in the country of export; thus, contrary to the GOI’s claim, the monitoring system did not meet the requirements for an exception in accordance with 19 CFR 351.519(a)(4).

Since the *PET Film from India* investigation and in subsequent investigations, Commerce has verified and continued to find that the GOI has no adequate system in place.⁷⁰ Furthermore, as stated in this *Preliminary Determination*, there is no new information on the record of this investigation for Commerce to reconsider its decision. Therefore, we continue to find that the GOI lacks a reasonable and effective system for the purposes intended to confirm which inputs are consumed in the production of the exported products, and in what amounts, making normal allowances for waste, as required under 19 CFR 351.519.

Comment 6: Whether GFL Has a Reliable AAP Database

Petitioner’s Case Brief

- The new factual information provided by GFL at verification exposes GFL’s prior AAP reporting as unreliable.
- GFL’s AAP database is incomplete regarding imports entered under each bill of entry.
- GFL failed to provide necessary or complete information regarding its reported AAP benefits. Accordingly, Commerce should apply, as AFA, the highest rate determined for a similar program in a prior countervailing duty proceeding.

⁶⁷ *Id.*, at Comment 5; see also *Corrosion-Resistant Steel from India* and accompanying IDM at Comment 1.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See *PET Resin from India* and accompanying IDM at 2.

GFL's Rebuttal Brief

- Though the petitioner asserts unreliability based on certain dates found on the export obligation discharge certificate that are not included in the AAP database, the petitioner has misread the dates in the ledger of imports for the license.
- The petitioner confuses the estimate of the maximum quantity of inputs it may require to produce an exported product that GFL provides in its AAP application with the actual imports utilized by GFL. The actual quantity of inputs used may be less than the quantity in the application due to actual production quantities and because the amount of inputs requested are based on SION's and not GFL's actual production requirements.
- GFL corrected the AAP database to include the appropriate application fees. Commerce should use the revised database for its final determination.

Commerce's Position: We disagree with the petitioner's assertion that GFL's AAP database is incomplete and unreliable. As GFL noted, of the dates the petitioner highlighted from one of the AAP licenses reviewed at verification, only dates pertaining to the bill of entry (BOE) are relevant to the identification of actual import duty exemptions provided under the AAP and were included in the AAP database. The remaining dates were from the Import General Manifesto (IGM); contrary to the petitioner's contention, our review of business proprietary information provided at verification demonstrates that these IGM dates do not represent instances of additional unreported duty exemptions.⁷¹ Thus, we do not find that GFL's reporting is incomplete, and we disagree with the petitioner that the application of AFA is warranted.

Further, we find that it is not inappropriate that the input quantities actually used differ from the quantities identified in the application, and that this difference does not render GFL's record keeping unreliable or invalid. As GFL explained,⁷² the application presents an estimated quantity of inputs GFL anticipates needing for its production and this estimate is the maximum quantity for which they are applying for duty-exempt imports. For purposes of our examination, we expect GFL to report the actual duty exemptions granted, pursuant to each AAP license, on the basis of actual import of inputs during the POI. Moreover, the estimates on the AAP application are based on SIONs, which we have found not to be a system that is reasonable and effective for the purpose of confirming which inputs, and in what amounts, are needed to manufacture products for export. While that finding, by itself, supports our broader conclusion that the duty drawback program provides countervailable benefits, we do not find that, as the petitioner contends, it renders unreliable GFL's reporting of the actual imports of inputs and the corresponding duty exemptions during the POI.⁷³

We verified the duty exemptions that GFL reported it had received on imported inputs, pursuant to its AAP licenses during the POI. We found no discrepancies between GFL's reporting and the records we examined at verification, both for AAP licenses that we identified for examination in advance of verification, and for AAP licenses we identified for on-the-spot examination.⁷⁴ Thus,

⁷¹ See GFL VE-8.

⁷² See Letter from GFL, "Polytetrafluoroethylene Resin from India; Gujarat Fluorochemicals Limited's First Supplemental Questionnaire Response," February 8, 2018 at 8.

⁷³ See GFL Verification Report at 16-17.

⁷⁴ *Id.* at 16-17.

there is no basis for finding GFL's AAP database to be unreliable, and we are continuing to use it for the final determination.

Comment 7: Whether Commerce's Decision to find SHIS Countervailable is in Accordance with its Statutory Obligations

GOI's Case Brief

- The GOI discontinued SHIS prior to the POI; thus, Commerce should not find the program countervailable in this investigation.

Petitioner's Rebuttal Brief

- Whether or not SHIS was terminated prior to the POI, its benefits are non-recurring and allocable over the AUL from equipment purchased using those benefits.
- GFL continues to benefit from SHIS for benefits received prior to the POI and Commerce correctly imposed preliminary duties in that amount to offset those benefits.

Commerce's Position: We agree with the petitioner that the SHIS program is a countervailable subsidy under Commerce's regulations. Even though the GOI discontinued SHIS prior to the POI, GFL continues to benefit from assistance provided by the GOI during the AUL period.⁷⁵ GFL received these benefits for the purchase of capital equipment and, therefore, the benefits are non-recurring under 19 CFR 351.524(c)(1).⁷⁶ Commerce allocates non-recurring benefits over the AUL. The SHIS benefits continue to be allocated to the POI.⁷⁷ As such, the GOI's termination of this program does not meet the provisions of 19 CFR 351.526, which provides that Commerce may take into account program-wide changes and may adjust the cash deposit rate under certain circumstances. With regard to terminated programs, 19 CFR 351.526(d) provides that {Commerce} will not adjust the cash deposit rate . . . if "(1) {Commerce} determines that residual benefits may continue to be bestowed under the terminated program." Here, the period over which the benefits provided to GFL under SHIS continue to be allocated includes the POI, thus there remain residual benefits provided to GFL. As such, we continue to measure the benefit and calculate a countervailable subsidy rate for this program for inclusion in the cash deposit rate.

Comment 8: Whether Commerce Should Use GFL's Minor Correction to the Electricity Duty Exemption for Wind Power

Petitioner's Case Brief

- GFL failed to demonstrate that it would have been subject to the lower electricity duty rate.
- GFL did not demonstrate that the electricity duty exemption reported was based on GFL-generated wind power only, and not based on wind power consumed from third parties.
- Even if GFL is eligible for the 0.55 rupees rate, the electricity duty law provides that the electricity may not be used to "maintain or operate" the distribution system. GFL has not demonstrated that its consumption of its self-generated energy was not used to construct, maintain, or operate its wind generating stations.

⁷⁵ See GOI January 8, 2018 IQR at Exhibit 24.1.

⁷⁶ *Id.* at Exhibit 25.

⁷⁷ See 19 CFR 351.524(b)(1); *see also* 19 CFR 351.524(c)(1).

GFL's Rebuttal Brief

- GFL explained at verification how it determined that the higher duty rate (15 percent) applies to all electricity utilized, and that the rate provided at verification (0.55 rupees per unit) is applicable to consumers who produce their own wind energy based on the electricity duty law.
- GFL's monthly electricity bills demonstrate that the wind units reported by GFL were from its own generation and not purchased from third parties. Further, Commerce's review of monthly billing statements at verification establishes that the wind units reported for the duty exemption benefit are generated by GFL's windmills.
- The electricity bills demonstrate that the wind power GFL generates is used at its manufacturing unit, and not used to maintain or operate its wind generation stations.

Commerce's Position: For this final determination, we have calculated the countervailable subsidy rate for the duty exemption for wind power using the rate of 0.55 rupees per unit as presented as a minor correction by GFL. As discussed at verification,

GFL noted that under Schedule II of the Gujarat Electricity Duty Act (GEDA) of 1958, the duty applicable to a company for self-generated electricity is 0.55 rupees per unit and not 15 percent of the total value of the electricity bill. Because GFL generates the electricity from the windmill itself, GFL revised the applicable duty rate for the units generated by the windmill to 0.55 rupees per unit.⁷⁸

At verification, GFL demonstrated that for each month, GFL pays an electricity duty rate of 15 percent on all electricity it consumes in that month. In the next month, GFL receives a credit equal to the duty it paid at the 15 percent rate on the amount of self-generated wind power it consumed in the prior month.⁷⁹ In its initial submission, GFL incorrectly reported this credited amount at a rate of 15 percent as the benefit it received from its self-generated wind power. However, GFL officials stated that because this wind energy is self-generated it is actually subject to electricity duty at a rate of 0.55 rupees per unit, as provided in Section 2(a)(i) and (ii) of the GEDA, not the 15 percent rate it initially reported.⁸⁰ Our review of the documents demonstrates that the self-generated wind power is not subject to the 15 percent electricity duty rate. Because GFL consumes the wind energy it produces, it is instead exempt from the electricity duty for self-generated wind power, which is at a rate of 0.55 rupees per unit. GFL's error in reporting the applicable duty as 15 percent of its consumption rather than 0.55 rupees per unit is explained by the fact that there is no accounting entry for recording the 0.55 rupees per unit duty that it is not actually charged.⁸¹ GFL corrected this error at verification through a review of its electricity bills and the relevant provisions of the GEDA.⁸²

⁷⁸ See GFL Verification Report at 3.

⁷⁹ *Id.* at 9; see also GFL VE-5.

⁸⁰ *Id.*

⁸¹ *Id.* at 10.

⁸² *Id.* at GFL VE-5.

The petitioner argues that GFL failed to satisfy the definition of “consumer” set out in Section 2 of the GEDA, and therefore, is not qualified to receive the lower electricity duty rate of 0.55 rupees per unit consumed.⁸³ However, we find that GFL substantiated its explanation that the electricity generated from its windmill is subject to the self-generated electricity duty rate.⁸⁴ GFL also meets the Section 2 definition of a consumer set out in the GEDA.

In addition, our review of GFL’s electricity bills demonstrates that GFL pays electricity duty at a rate of 15 percent on electricity consumed from third parties, and that the credits are only being applied to the self-generated wind power that it consumes.⁸⁵ GFL also demonstrated that the amount of self-generated wind power it consumes each month is reported directly on the electricity bill,⁸⁶ and that the self-generated wind units that it consumes each month, as reported on the electricity bill, are equal to the actual wind units transmitted from the wind power station to the manufacturing unit in the respective month. As such, the documents show that the self-generated wind power is used in GFL’s production facility, and contrary to the petitioner’s contention, it is not used to maintain or operate GFL’s wind generation station.⁸⁷

Therefore, based on the record information, for purposes of this final determination, we are calculating the benefit to GFL based on the exemption from electricity duty for wind power at the applicable duty rate of 0.55 rupees per unit consumed.⁸⁸

Comment 9: Whether GFL Received a Countervailable Benefit from SGOG Preferential Water Rates

GOI’s Case Brief

- Commerce’s treatment of the SGOG’s water supply as a countervailable subsidy is erroneous and misguided. Commerce did not consider evidence the GOI submitted establishing that water rates within GIDC industrial estates are not “discounted.”
- Companies located in industrial estates are legally obligated to use only GIDC-supplied water, under the GIDC Water Supply Regulation of 1991. Rather than a benefit, it is a compulsory cost incurred by companies located in industrial estates.
- Commerce was overly reliant on *Pressure Pipe from India*.⁸⁹ This is inconsistent with Commerce’s position that “[i]t is well-established that Commerce’s findings in a particular case are not binding on it in a subsequent case. Rather, Commerce’s findings must be based solely on facts in the administrative record of that case, regardless of the findings made in an earlier case.”⁹⁰

⁸³ See Petitioner’s Case Brief at 24-26.

⁸⁴ See GFL Minor Corrections at 8-9 and Exhibit VI.

⁸⁵ See GFL Verification Report at 7-9; see also GFL VE-5.

⁸⁶ *Id.*, at GFL VE-5.

⁸⁷ *Id.*

⁸⁸ See Final Calculation Memorandum.

⁸⁹ See *Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Final Affirmative Determination*, 81 FR 66925 (September 29, 2016) (*Pressure Pipe from India*) and accompanying IDM.

⁹⁰ See *Inland Steel Industries, Inc. v. United States*, 967 F. Supp. 1338, 1361 (CIT 1997), affirmed, 188 F.3d 1349 (Fed. Cir. 1999).

- In *Pressure Pipe from India*, Commerce found that the “GOI did not provide evidence to support its claim that water infrastructure costs were charged to companies within the estates as part of other fees or costs.”⁹¹ In this case the GOI clearly demonstrated at verification that the industrial estates incurred the development costs, including the pipelines, *etc.*, for supply of water.⁹²
- Units outside industrial estates that receive GIDC-supplied water have not contributed to the development of water infrastructure; thus, the cost of water supplied to these units includes the development cost and is therefore, higher.

GFL’s Case Brief

- GIDC established regulations to recover the capital expenditures associated with water infrastructure. Companies outside GIDC industrial estates pay twice the water rate because they are not charged separately for the capital contribution that companies inside GIDC industrial estates are required to pay.
- The record shows that GFL paid capital contribution charges.

Petitioner’s Rebuttal Brief

- Commerce should continue measuring the benefit by comparing GFL’s purchase prices to double that rate because the record does not support the claim that payments for water and infrastructure are co-dependent. Commerce grants such adjustments only if the cost is “directly related” to the price paid for the good and is “reflected in one comparison price but not the other.”
- Record evidence demonstrates that the infrastructure charges are not directly related to the water charges and are not reflected in either the price paid by GFL or the benchmark price. Accordingly, no adjustment is necessary to achieve the appropriate comparison.
- The GIDC incentivizes companies to locate within its industrial estates by offering cheaper land prices with full infrastructure; these incentives include an exception to paying double the prevailing water rate charged to companies located outside the estate.

Commerce’s Position: In the *Preliminary Determination*, we calculated the benefit from the SGOG Preferential Water Rates program by comparing the amount that GFL paid to the GIDC for water, at the applicable rates, to the amount that GFL would have paid for water absent the discount available to water users inside GIDC industrial estates. Based on the current record evidence and consistent with prior precedent established in *Pressure Pipe from India*, we preliminarily countervailed the program. We agree with the GOI that each case stands on its own and is not bound by determinations made in previous cases. However, we note that in instances where there is no new information provided to indicate a change in a program, Commerce will rely on prior case precedent, together with the record in the proceeding being conducted, as was done in the *Preliminary Determination*. Since the preliminary findings of the current investigation, the GOI and GFL have provided additional information and evidence during verification regarding water rates and other charges which warrant reconsideration of our earlier decision.

⁹¹ See *Pressure Pipe from India* and accompanying IDM at 31.

⁹² See Letter from the GOI, “Countervailing Duty Investigation into PTFE Resin from India (Case No. C-533-880) - Verification Exhibits on behalf of Government of India,” March 16, 2018 at VE-5b and VE-8.

GFL argues that GFL pays for water infrastructure through separate “capital contributions” that the GIDC uses to recover its infrastructure costs from companies located inside industrial estates. According to GFL, these capital contributions are compulsory fees that parties inside the industrial estates must pay to cover GIDC’s costs of providing water infrastructure. Moreover, the rate that GIDC charges to certain water users outside the industrial estate is double the rate charged inside the industrial estate specifically because, according to the GOI and GFL, the water rates outside the industrial estates must cover the cost of the water infrastructure, and those users have not made capital contributions.

At verification we reviewed a GIDC circular from 2012 indicating that firms outside the GIDC industrial estate pay twice the rate for water compared to firms inside the industrial estate *because they have not paid for capital expenditures related to water infrastructure*, unlike firms inside the industrial estate, such as GFL, that were charged a separate amount to cover the costs of infrastructure.⁹³ We also reviewed the Memorandum of Understanding (MOU) between the GIDC and GFL regarding the provision of water.⁹⁴ This agreement lays out the requirement that GFL pay certain amounts as “capital contributions,” specifically to cover the cost of water infrastructure, as well as the method for calculating the amount of such contributions.⁹⁵ Moreover, this MOU, together with the circular, substantiates the GOI’s and GFL’s claims that these payments are effectively part of “the amount that GFL pays for water,” and that the water price outside the industrial estate includes a component to cover the cost of infrastructure. We verified the capital contribution amounts at verification and tied them to water infrastructure.⁹⁶ As such, we find, for purposes of this final determination, that it is appropriate to include the capital contributions, in the amounts allocated to the POI, as part of the charges that GFL pays for its water, for purposes of measuring the benefit. Because the capital contributions are one-time payments related to infrastructure, we allocated the capital contributions over the AUL period using the discount rate for the year in which the payment was made. We then added the amount allocated to the POI to the amount GFL paid on its water bills during the POI.

The GOI also argues that, in addition to the capital contributions, there are “other fees and charges” that should be considered as part of GFL’s payments for water. However, unlike the capital contributions, for these “other fees and charges,” there is no evidence that they pertain directly and specifically to the costs of water infrastructure. Rather, the evidence indicates that these charges relate more generally to how the GIDC charges companies locating in the industrial estates for the services it provides.⁹⁷ As such, we do not find, for purposes of this final determination, that it is appropriate to include these other fees and charges in the “amount that GFL paid” for water.

Notwithstanding the GOI’s argument that the provision of water is not a subsidy because GFL is obligated to purchase its water from the GIDC, we continue to find the program provides a financial contribution through the provision of goods from a government authority under section

⁹³ See GFL Verification Report at 11; Letter from GFL, “Polytetrafluoroethylene Resin from India; Gujarat Fluorochemicals Limited’s First Supplemental Questionnaire Response,” February 9, 2018 (GFL February 9, 2018 SQR) at Exhibit SUPP-37.

⁹⁴ See GFL VE-6, 32-42.

⁹⁵ *Id.*

⁹⁶ *Id.* at 28-47.

⁹⁷ See GFL Verification Report at 11; *see also* GFL VE-6.

771(5)(D)(iii) of the Act by providing preferential water rates to those companies located within the industrial estates.

Comment 10: Countervailability of Renewable Energy Certificates

GFL Case Brief

- A program can be found countervailable only if Commerce determines that a financial contribution was provided from an “authority,” *i.e.*, a government of a country or any public entity within the territory of the country.
- At verification, GFL demonstrated that the GOI’s only role in this program is issuing the Renewable Energy Certificates (RECs), which a company receives if they are accredited and registered with the GOI as a producer of energy from renewable sources. To the recipient, the RECs have no use until they are sold; they do not have a value as a credit to fulfill any other obligation to the GOI. RECs are sold to other companies that need to meet certain green energy requirements. The relevant government authorities are informed of the sale only by the purchaser seeking to demonstrate that it has met its green energy compliance requirements.
- The record shows that RECs are sold on private exchanges to private parties. At verification, GFL demonstrated that it received compensation only from private parties, and not from any “authority.” Because the GOI provides no financial contribution to the party selling the REC, *i.e.*, GFL, the REC program cannot be found countervailable.
- Even if Commerce were to find that RECs provide a financial contribution, all of the RECs sold by GFL during the POI were issued prior to the POI. GFL was not issued any RECs during the POI, and thus received no financial contribution during the POI.

GOI Case Brief

- Commerce has relied only on AFA to determine that this program provides a financial contribution that is specific to certain companies and provides a benefit.
- Commerce did not conduct a complete analysis to determine if this program exists. Commerce must first determine whether a program provides a financial contribution, is specific, and confers a benefit before concluding it is a countervailable subsidy.

Petitioner’s Rebuttal Brief

- The GOI “entrusts or directs” private companies to purchase RECs from companies such as GFL in order to satisfy renewable energy obligations established by the GOI.
- In the *Preliminary Determination*, Commerce relied on AFA to determine that this program provides a financial contribution because the GOI did not act to the best of its ability and provide requested information. Commerce did not verify this program, and no new information has been placed on the record by the GOI. Commerce should not reverse its AFA finding for the final determination.

Commerce’s Position: We continue to find, as AFA, that the REC program provides a financial contribution and is specific. We are also continuing to calculate a benefit from this program based on GFL’s use during the POI.

As discussed in the *Preliminary Determination*, we applied AFA and found that this program provides a financial contribution and is specific because the GOI did not provide requested information. GFL self-reported this program in its initial questionnaire response.⁹⁸ In our first supplemental questionnaire to the GOI, we requested a completed Standard Questions Appendix for this program.⁹⁹ In its response, the GOI provided a brief narrative response explaining a general overview of the program's operation, and identified the regulation under which the program operates. The GOI did not submit a response to the "Standard Questions Appendix" for this program. The GOI instead provided a brief overview and a 2010 Central Electricity Regulatory Commission (CERC) circular that appears to regulate the program.¹⁰⁰ None of the information provided by the GOI discussed the number of companies or industries that utilized this program, and the amount of assistance approved under this program. The GOI response also failed to note whether there were any changes to the program, which it stated began in 2010. We were given no details whether the 2010 CERC was still the governing regulation for this program, or if it had been updated or revised. GFL provided the CERC's "Approval of Modification of REC Procedure" and the Indian Energy Exchange's "Procedure for Application of Issuance of Renewable Energy Certificates."¹⁰¹ The GOI did not support, explain, or refer to any of GFL's exhibits in its responses. It is Commerce's practice to rely on the government for program information pertaining to the administration and eligibility criteria of the program in question. The information requested in the Standard Questions Appendix specifically addresses the operations of a program, the eligibility criteria, and the application and approval processes for a program. Without an explanation from the GOI it is difficult for a proper analysis to be conducted of the program as the necessary information, and explanation of such information, for Commerce's analysis has not been provided.

When we requested this information for a second time, the GOI stated that, "USDOC is requested to refer to the response dated 30 January 2018 submitted by GOI to the First Supplemental questionnaire issued by USDOC. Necessary information pertaining to the above program has already been provided therein."¹⁰² However, the supplemental response to which the GOI referred did not include a response to these questions. Without the GOI's answers to the "Standard Questions Appendix" for this program, we reached our *Preliminary Determination* that this program provides a financial contribution and is specific on the basis of AFA. We relied on GFL's reported use of this program to determine the benefit and calculate the countervailable subsidy rate.

Moreover, we did not have the requested information regarding this program from the GOI to verify, and we verified only GFL's reported use of this program at GFL. Information regarding financial contribution and specificity is information that is in the possession of the government, and Commerce does not normally rely solely on information provided by respondent companies for purposes of evaluating financial contribution and specificity. Moreover, because the GOI

⁹⁸ See Letter from GFL, "Polytetrafluoroethylene Resin from India; Gujarat Fluorochemicals Limited's Section III Questionnaire Response," January 8, 2018 (GFL January 8, 2018 IQR) at 59.

⁹⁹ See IQR.

¹⁰⁰ See GOI January 30, 2018 SQR at Exhibit 15.

¹⁰¹ See GFL January 8, 2018 IQR at Exhibit 35; GFL February 9, 2018 SQR at Exhibit SUPP-50.

¹⁰² See GOI February 15, 2018 SQR at 11.

failed to provide the necessary information and explanation of such information, and because we are making a finding with respect to financial contribution on the basis of AFA, we are not addressing parties' substantive arguments regarding this issue.

In the *Preliminary Determination*, we found that this program confers a recurring benefit pursuant to 19 CFR 351.504, and we measured the benefit to GFL on the basis of REC's that GFL sold during the POI.¹⁰³ Although GFL argues that the fact that all of the REC's it sold during the POI were granted prior to the POI demonstrates that it did not receive a benefit during the POI, we consider the benefit, as a recurring grant pursuant to 19 CFR 351.504(b), as having been received on the date on which the firm received the grant. Based on record information, GFL receives a benefit under this program when it sells REC's, not when it receives them.¹⁰⁴ Therefore, we continue to measure the benefit from this program based on the value of REC's sold during the POI.

Comment 11: Whether a Tier-One Benchmark is Appropriate for SGOG Provision of Land for LTAR

Petitioner's Case Brief

- There is widespread government intervention in the Indian market for industrial land. Consequently, Indian real estate prices do not provide a useable benchmark to measure the adequacy of remuneration GFL paid to lease land in an industrial estate.
- GFL's private real estate transaction, which was for farmland lacking any infrastructure, is not an appropriate benchmark to measure the benefit from developed industrial land leased from the GIDC.
- Commerce should measure the adequacy of remuneration by using a tier-three benchmark using third-country industrial estate land prices. Out of available third-country prices on the record, Singapore's price is the most comparable; given Commerce's past determinations, in which state governments promote industrial projects by providing infrastructure and developed industrial real estate, it is unreasonable to conclude that the GIDC's leases are equivalent to market rates.
- Of the available third country prices, the Singapore price for a petrochemical estate is the most comparable to GFL's GIDC-leased land because (1) the end-use dictates the required infrastructure and available services and (2) of the countries for which industrial land prices are available, Singapore is the most comparable to India.

GFL's Rebuttal Brief

- Commerce prefers market prices from actual transactions and does not require the benchmark to be identical to the purchased land. Commerce has previously determined that agricultural land can be used as a benchmark for industrial land when the expectation was to use that land for industrial use. Consistent with *Rectangular Steel Pipes and Tubes from Turkey*, the fact

¹⁰³ See *Preliminary Determination* and accompanying PDM at 19.

¹⁰⁴ *Id.* at 14-15.

that the private purchase was for agricultural land when it was purchased does not disqualify the benchmark because the land was purchased for industrial use.¹⁰⁵

- The petitioner has not met the substantial evidence standard to establish that the tier-one land price is distorted. The petitioner submitted anecdotal news stories and non-comprehensive studies to argue that the private sales prices for land across India are unreliable.
- The benchmark offered by the petitioner is, by their own test, a distorted land price affected by the Government of Singapore's role as the largest supplier of land in Singapore.
- The petitioner's conclusion that Singapore and India are at comparable levels of economic development is not based on *per capita* GNI, which would be a reasonable method of comparison. Further, the petitioner does not cite to any other relevant economic data points. Singapore is a developed island city-state that is not at the same level of development as India.
- Commerce should continue to use the tier-one benchmark because it offers the best benchmark on the record of this investigation. The private land purchase is a market-based land transaction in the state of Gujarat and is comparable to the land that GFL leases in Gujarat.

Commerce's Position: We are continuing to use a tier-one benchmark to measure the benefit GFL received through this program. The use of this benchmark resulted in no measurable benefit.

Commerce's regulations under 19 CFR 351.511(a)(2)(i) provide that Commerce will normally measure the adequacy of remuneration using actual transactions between private parties and will consider product similarity and other factors affecting comparability in choosing proper private transactions. Regarding the petitioner's argument that the tier-one benchmark is not a comparable benchmark because the land was purchased as agricultural land, while GFL leased the industrial estates as industrial land, we note that a land-use classification is not the sole measure of comparability. Comparability factors such as geographic proximity and contemporaneity are other important factors that indicate whether a private transaction is comparable. The tier-one benchmark transaction in Gujarat occurred contemporaneously with GFL's lease of land in the industrial estates within Gujarat. Therefore, we find that it meets these two important factors of comparison.

Furthermore, Commerce's regulations do not dictate that benchmarks must be identical, but rather that they must be comparable.¹⁰⁶ While the tier-one benchmark land price represents land that was purchased as agricultural land, Commerce has used tier-one land benchmarks that were not for identical uses in prior cases. In *Rectangular Steel Pipes and Tubes from Turkey*, Commerce used agricultural land offered to the respondent as a tier-one benchmark.¹⁰⁷ In this case, record evidence demonstrates that GFL intended to develop this land for industrial use

¹⁰⁵ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*Rectangular Steel Pipes and Tubes from Turkey*) and accompanying IDM at 27-29.

¹⁰⁶ See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009) and accompanying IDM at 52.

¹⁰⁷ See *Rectangular Steel Pipes and Tubes from Turkey* and accompanying IDM at 27-29.

rather than continue to use it for agricultural purposes.¹⁰⁸ Further, this tier-one benchmark satisfies Commerce's preference to use a private market transaction and is the only contemporaneous data on the record.

Regarding the petitioner's allegation that there is SGOG intervention in Gujarat's industrial land market and resulting distortion in the industrial land market, the petitioner does not present evidence demonstrating that alleged SGOG intervention in Gujarat's industrial land market substantially affects land prices or invalidates the market principles of Gujarat's land transactions and so requires Commerce to use a tier-three benchmark. To demonstrate government intervention, the petitioner submitted a news story concerning the purchase of land for industrial purposes by the Indian states of Orissa, Maharashtra, Karnataka, and West Bengal.¹⁰⁹ Though the news story discusses land purchases by these respective state governments, the fact that the government is purchasing industrial land does not alone indicate the presence of distortion in the industrial land prices in these states nor in the state of Gujarat, which was not mentioned in the news story. Another news story provided by the petitioner discusses industrial land policy in the Indian state of Uttarakhand and its effect on industrial land prices in Uttarakhand.¹¹⁰ However, this news story does not provide evidence of distortion in industrial land prices in Gujarat. The petitioner also provides a report discussing industrial land in India.¹¹¹ This report briefly discusses the SGOG's acquisition of industrial land and notes its "novel approach" to valuing land.¹¹² The report also notes the SGOG's attempts to fix any potential market inefficiency by mapping industrial land and making this information publicly available.¹¹³ The report covers the status of the industrial land market in several areas in India. The result does not establish that the land market for industrial land is distorted in Gujarat or India as a whole. Therefore, it does not provide a sufficient basis for Commerce to use a tier-three benchmark.

While the usability of the tier-one benchmark is the primary issue, we also do not believe the proposed tier-three benchmark to be appropriate for several reasons. First, the tier-three benchmark for Singapore that the petitioner provides is not contemporaneous; it is out of date by eight years. Second, the petitioner did not substantiate its claim that a developed city-state like Singapore is comparable to a large developing nation like India. The petitioner did not demonstrate that Singapore is at a comparative level of economic development nor did the petitioner provide adequate background information concerning the benchmark for Singapore's industrial land for us to consider. Third, the tier-three benchmark is not as geographically proximate as the other proposed benchmark on the record. Fourth, information the petitioner provided concerning its proposed tier-three benchmark discusses the Government of Singapore's intervention in the Singapore land market and its resulting distortion.¹¹⁴

¹⁰⁸ See GFL VE-11, 169 and 186-203.

¹⁰⁹ See Letter from the petitioner, "Polytetrafluoroethylene (PTFE) Resin from India: Submission of Factual Information to Rebut, Clarify, and Correct GFL's February 1, 2018 Benchmark Submission," February 12, 2018 at Attachment 1.

¹¹⁰ See Letter from the petitioner, "Polytetrafluoroethylene (PTFE) Resin from India: Chemours' Factual Information Submission," February 16, 2018 (Petitioners February 16 Factual Information) at Attachment 1.

¹¹¹ *Id.*, at Attachment 2.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ See Petitioner's February 16 Factual Information at Attachment 2.

We disagree with the petitioner's argument that Commerce should use a tier-three land benchmark for industrial land prices in Singapore. The tier-one benchmark is the best available information on the record because it satisfies Commerce's preference to use actual market transactions and is a private transaction that is geographically proximate and contemporaneous to GFL's leasing of industrial estates. Consequently, we are using the tier-one benchmark for the benefit calculation.

Comment 12: Whether MEIS is Tied to Non-Subject Merchandise

Petitioner's Case Brief

- While the MEIS benefits are created through the production of certain products, the scrips received by GFL may be used to pay any customs duty owed or may even be transferred to another company. Because at the time of bestowal, it is known that the scrips can be used on any imports, Commerce must find that MEIS benefits are not tied to the production of a particular product, and should calculate a subsidy rate for the benefits GFL received during the POI.
- If Commerce finds that MEIS benefits are tied to the products for which the scrips are generated, then Commerce must allocate the benefits to GFL's export sale of subject merchandise because the company received scrips for its exports of an input of subject merchandise, as well as for co-products of subject merchandise.

GFL's Rebuttal Brief

- In the case of exemption of import charges, Commerce considers the benefit as having been received as of the date of exportation, consistent with 19 CFR 351.519(b)(2). Commerce bases the time of receipt of benefits on when the scrip is granted because it contains the value of the credit and the date it was granted. Commerce evaluates the purpose of the subsidy based on information available at the time of bestowal and does not trace how the subsidy is actually used by companies. This practice was affirmed in *Essar Steel Ltd. v. United States*.
- In the *Preliminary Determination*, Commerce was aware that scrips may be used to pay any customs duty owed by GFL for inputs to PTFE resin. Commerce did not countervail the program, explaining that the MEIS benefit was tied only to the products specified by the GOI, which Commerce verified.
- Commerce should not allocate the MEIS benefits to GFL's sales of PTFE resin for its exports of a PTFE resin input (refrigerant) and PTFE resin co-products (caustic soda flakes and calcium chloride). MEIS scrips are tied to the export product, not production of the input product, therefore 19 CFR 351.525(b)(5)(ii) is not applicable.
- If Commerce agrees with the petitioner, then the benefit should be the scrip value utilized during the POI, not the scrip value received. Because the MEIS scrips can be used for both exports and domestic products and subject and non-subject merchandise, the correct denominator is GFL's total FOB sales.

Commerce's Position: We agree with GFL that this program is tied to non-subject merchandise. At verification, GOI officials confirmed that, "{o}nly products identified by HTS codes listed in 'Appendix 3B' qualify."¹¹⁵ PTFE resin is not among the products listed in

¹¹⁵ See GOI Verification Report at 5.

Appendix 3B. Therefore, exporters of PTFE resin cannot earn scrip on their exports of PTFE resin. In addition, at verification, we queried the GOI on-line system. The results of this query demonstrated that GFL received scrips only on exportation of non-subject merchandise.¹¹⁶

For this final determination, we continue to find that PTFE resin is not an eligible product to receive scrips under this program. The petitioner argues that at verification, Commerce discussed an unknown feature of this program: “the scrips can be used for customs duty owed on the import of goods. The imported products do not have to be listed in Appendix 3B to qualify . . . the scrip can be sold or transferred to another company, which can then use the scrip for their customs duty owed.”¹¹⁷ However, we considered this aspect of the MEIS program for the *Preliminary Determination*, specifically noting that “{a}fter a recipient receives and registers the scrip, it may use it for either the payment of future customs duties for importing goods or transfer it to another company.”¹¹⁸

The petitioner argues that the applicability of the scrip to import duties on any imported products, including inputs to PTFE resin, invalidates Commerce’s *Preliminary Determination* that the benefits are tied on the basis of the eligible products, which do not include subject merchandise. Further, the petitioner contends that Commerce considers that what is known at the time of bestowal about the use of the subsidy is the basis for our tying determination. The petitioner cites to *100- to 150-Seat Large Civil Aircraft from Canada* as support for their claim, but the citation refers to *Softwood Lumber from Canada*, where Commerce states:

The only exception is if the subsidy is tied to the production or sale of a particular product. Section 351.525(b)(5)(i) of the . . . regulations states that, generally, “(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.” In making this determination, {Commerce} analyzes the purpose of the subsidy based on information available at the time of bestowal. {Commerce’s} practice is to identify the type and monetary value of a subsidy at the time the subsidy is bestowed rather than examine the use or effect of subsidies (*i.e.*, to trace how the benefits are used by companies). A subsidy is only tied to a particular product when the intended use is known to the subsidy provider (*i.e.*, the GOQ) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been previously upheld by the CIT.¹¹⁹

In our past analysis of this program, as well as similar programs, we discuss that our practice is not to trace the usage of the program. The petitioner argues that, at the time of issuing the scrips, the GOI does not intend to tie the scrips to the production of a particular product; instead the GOI provides the scrips so they may be used to pay for import duties on any product or even sold to other companies. Because no legal or factual restriction is imposed on the use of the scrips at the time of bestowal, the petitioner requests that Commerce find that the benefit from this

¹¹⁶ *Id.* at 6 (citations omitted). We also verified this program at GFL, and noted that we did not find any instance of the company receiving scrips for its exports of PTFE resin. See GFL Verification Report at 24.

¹¹⁷ *Id.*

¹¹⁸ See *Preliminary Determination* and accompanying PDM at 22.

¹¹⁹ See *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 from Canada*) and accompanying IDM at Comment 53 (citations omitted).

program is not tied to a particular product (non-subject merchandise) but rather that it benefits all products (subject and non-subject merchandise).

Under 19 CFR 351.519(b)(2), Commerce considers the benefit as having been received as of the date of exportation. In the case of this program, at the time of exportation, the scrip is issued and the value is known at that time. Commerce's treatment of the benefits from these types of programs has been affirmed in *Essar Steel*, where the court found that under a similar program, the Duty Entitlement Passbook Scheme (DEPS), Commerce normally considers a benefit received on the date of exportation consistent with 19 CFR 351.519(b)(2).¹²⁰ Only after Commerce determines the timing of the receipt of the benefit can it determine the products to which it should be attributed. Under 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, Commerce will attribute that subsidy only to that product or market. Similar to the DEPS program, the scrip granted for MEIS is a percentage of the value of the exported merchandise on a shipment-by shipment basis, and the exact amount of the exemption is known at the time the scrip is granted. Because the amount of the scrip is known at the time it is issued, the benefit to GFL occurs when it receives the scrip. At this point of bestowal, the scrip is issued on the basis of exports of particular eligible products, which do not include PTFE resin. The petitioner is asking that we consider the usage of the scrip at the time of bestowal, contrary to our practice.

As emphasized at verification, the purpose of this program is "to provide an offset to the logistics costs faced by Indian firms due to the varying levels of development and infrastructure within India to bring their goods to export."¹²¹ Thus, we find that the purpose of this program is to offset costs for exportation of goods, not to incentivize imports of goods, supporting GFL's claim that this program is tied to the exported products, which in this case excludes subject merchandise.

GFL receives scrips for its export of refrigerant (an input of PTFE resin) and caustic soda flakes and calcium chloride (alleged co-products of PTFE resin). The petitioner argues that Commerce should measure the benefits received from exporting these products. GFL states, and the record supports, that caustic soda flakes are not co-products of subject merchandise.¹²² MEIS scrips are tied to the exportation of certain products, not the production of an input product. Therefore, we agree with GFL that 19 CFR 351.525(b)(5)(ii), which states that if a subsidy is tied to production of an input product, then Commerce will attribute the subsidy to both the input and downstream products produced by the corporation, is not applicable to this program.

Because we are continuing to find that this program provides no benefit to GFL, we are not addressing comments regarding MEIS benefit calculations.

¹²⁰ See *Essar Steel, Ltd. v. United States*, 29 CIT 1311, 1314 (August 30, 2005).

¹²¹ See GOI Verification Report at 5.

¹²² See GFL February 9, 2018 SQR at Exhibit SUPP-1.

Comment 13: Whether GFL Received a Benefit from Income Tax Exemption (80-IA) and Section 32AC (32AC) of the Income Tax Act

Petitioner's Case Brief

- Regardless of whether GFL ultimately paid taxes under the minimum alternate tax (MAT) calculation or the standard tax calculation, GFL paid less tax in assessment year 2016-17 due to the 80-IA and 32AC tax deductions. GFL therefore received a countervailable benefit from these programs.
- GFL ignores that its ability to pay taxes using the 18.5 percent MAT tax rate depends upon the normal tax liability calculated with the 80-IA and 32AC deductions. Absent these deductions, GFL would have paid under the standard tax rate, paying more in taxes than it did under the MAT system.
- The GOI confirmed that the 80-IA and 32AC deductions were claimed and impact the normal tax calculation, independent of the MAT calculation. The GOI reported unequivocally that GFL “received assistance under 80 IA... during Annual Assessment year 2016-17.” The GOI likewise reported the amount that “the deduction under Section 32AC has been availed” by GFL.
- GFL’s claim for the Section 80-IA deduction for Assessment Year 2014-2015 was evaluated and reduced by the Income Tax Department.

GFL's Rebuttal Brief

- GFL did not benefit from the 80-IA and 32AC tax deductions as verified by Commerce.
- The petitioner’s calculation of the normal tax liability without the deductions is incorrect because it treats a tax deduction as a tax credit. A tax deduction reduces taxable income, not the actual tax liability. A tax credit allows a reduction in the actual tax liability. As a result, the petitioner’s calculation incorrectly adds all the deductions to GFL’s tax liability to arrive at what the petitioner calculates as GFL’s tax liability under the normal computation method without the deduction.
- When the deductions are added to the total taxable income and the new figure is multiplied by GFL’s tax rate, the tax liability without the deductions is still lower than the tax liability calculated under MAT.
- The assessment order from 2014-2015 does not indicate that GFL actually received the 80-IA deduction. The assessment order notes deductions the company would have taken under the normal tax method. GFL continues to pursue the deductions to preserve its right to claim a deduction on future tax returns that may not be filed under the MAT system.

Commerce’s Position: We agree with GFL and continue to find the 80-IA and 32AC tax deductions are not used. Under India’s Income Tax Act, taxpayers must calculate their income tax liability under the normal tax and under MAT and then pay the higher of the normal tax or the MAT.¹²³ We disagree with the petitioner’s position that regardless of whether GFL ultimately paid taxes under the normal tax or MAT, GFL paid less tax in assessment year 2016-17 due to the 80-IA and 32AC tax deductions. The petitioner’s calculation of the normal tax liability without the deductions is incorrect because, as GFL noted, it treated the deductions as

¹²³ See GFL January 8, 2018 IQR at 24 and Exhibits 37 and 37.1.

tax credits and therefore incorrectly calculated the tax that GFL would have paid absent the deductions.

In measuring the benefit from an income tax program, in accordance with 19 CFR 351.509(a), Commerce compares the tax the company paid using the program to the tax they would have paid in the absence of this program. To do that comparison in this case, we first calculated the tax GFL would have paid absent these programs by adding together the amount of income deducted under the 80-IA and 32AC programs, multiplying this amount by GFL's tax rate, and then adding this to GFL's tax payable under the normal tax method, as reflected in GFL's tax return.¹²⁴ The result is the tax that GFL would have paid under normal tax without the 80-IA and 32AC deductions. We compared this amount to the tax that GFL actually paid (under the MAT method). This comparison shows that the tax that GFL actually paid is higher than the tax GFL would have paid absent the deductions available under 80-IA and 32AC.¹²⁵ Consequently, we continue to determine that GFL did not receive a benefit from the 80-IA and 32AC deductions and therefore the programs were not used.

X. CONCLUSION

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

5/14/2018

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

¹²⁴ *Id.* at Exhibit 5, page 15, line 2g.

¹²⁵ *See* Final Calculation Memorandum.