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Investigation
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DATE: August 10, 2018

MEMORANDUM TO: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: James Doyle
Director, Office V
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Stainless Steel Flanges
from India

I. SUMMARY

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

Comment 1: The Application of Adverse Facts Available (AFA) to Bebitz Flanges Works Private Limited (Bebitz)

Comment 2: Status Holder Incentive Scheme (SHIS) Licenses Discovered at Verification

Comment 3: Echjay Forgings Private Limited's (Echjay) Reporting of the Provision of Stainless Steel, Billet, and Bar from the Steel Authority of India Limited (SAIL) for Less Than Adequate Remuneration (LTAR)

Comment 4: Whether Sufficient Information Exists to Calculate a Subsidy Rate for Echjay Forging Industries Private Limited (EFIPL)

Comment 5: Whether the Advanced Authorization Program (AAP), the Duty Drawback Program (DDB), the Export Promotion of Capital Goods Scheme (EPCGS), Status Holders Incentives Scheme (SHIS), and the Incremental Exports Incentive Scheme (IEIS) are Countervailable

¹ See also section 701(f) of the Act.

Comment 6: Whether the Government of India (GOI) Provided Sufficient Information for Certain Programs

II. BACKGROUND

A. Case History

On January 16, 2018, Commerce published the *Preliminary Determination* in this proceeding.² On May 3, 2018, we issued a post-preliminary analysis memorandum.³ Between June 4 and June 8, 2018, we conducted verification of the questionnaire responses submitted by the GOI and Echjay.⁴ Interested parties submitted case and rebuttal briefs between July 2 and July 12, 2018.⁵ On July 26, 2018, Commerce held a public hearing, limited to the issues raised in the case and rebuttal briefs.

B. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2016, through December 31, 2016.⁶

III. SCOPE OF THE INVESTIGATION

In accordance with the Preamble to Commerce's regulations, the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁷ Pradeep Metals requested that Commerce treat Pradeep Metals' March 5, 2018, letter as a scope exclusion request.⁸ After evaluating the letter, we reaffirm our position in the *Preliminary Determination* of the companion antidumping duty (AD) investigation. The request for this

² See *Stainless Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 3118 (January 23, 2018) and accompanying Preliminary Decision Memorandum (*Preliminary Determination*).

³ See Memorandum, "Post-Preliminary Analysis Memorandum in the Countervailing Duty Investigation of Stainless Steel Flanges from India," dated May 3, 2018.

⁴ See Memorandum, "Verification of the Government of India in the Countervailing Duty Investigation of Stainless Steel Flanges from India," dated June 21, 2018 (GOI Verification Report); Memorandum, "Verification of Echjay Forgings Pvt. Ltd. in the Countervailing Duty Investigation of Stainless Steel Flanges from India," dated November 9, 2017; Memorandum, "Verification of the Questionnaire Responses of Tube Investments of India Ltd.," dated November 9, 2017 (Tube Investments' Verification Report).

⁵ See the GOI's Case Brief, "Countervailing Duty (CVD) Investigation of Stainless steel Flanges from India" dated July 12, 2018 (GOI's Case Brief); Echjay's Case Brief, "Echjay Administrative Case Brief," dated July 2, 2018 (Echjay's Case Brief); Bebitz Flanges Works Private Limited's (Bebitz) Case Brief, "Bebitz Case Brief," dated July 5, 2018 (Bebitz's Case Brief); the Petitioners' Case Brief, "Stainless Steel Flanges from India: Case Brief," dated July 2, 2018 (the Petitioners' Case Brief); Echjay's Rebuttal Brief, "Rebuttal Brief of Echjay Forgings Private Limited," dated July 9, 2018 (Echjay's Rebuttal Brief); the Petitioners' Rebuttal Brief, "Stainless Steel Flanges from India: Rebuttal Brief," dated July 9, 2018 (the Petitioners' Rebuttal Brief).

⁶ See *Preliminary Determination* at 3.

⁷ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)(Preamble); see also *Initiation Notice*, 82 FR at 42655.

⁸ See Pradeep Metals' Letter, re: Stainless Steel Flanges from India: Request to Treat Factual Information as a Scope Exclusion Request," dated April 2, 2018.

scope exclusion has been made well after the scope comment deadline, which was September 25, 2017, and no party followed the process of requesting permission to submit new additional factual information. Additionally, the factual information presented in the March 5, 2018, letter, was placed on the record of the companion AD investigation, but not placed on the record of this investigation or the records for the AD/CVD investigations on stainless steel flanges from the People's Republic of China, which had identical scopes. Moreover, the final determination for the CVD investigation on stainless steel flanges was issued on April 4, 2018, and thus any scope issues should have been raised in case briefs in this investigation for consideration at the China CVD final determination. Therefore, because this request was made months after the scope deadline had passed, the factual information detailed in the March 5, 2018, letter is not present on all of the records on the stainless steel flanges investigations, and the final determination for the China CVD investigation already was issued, we denied the scope exclusion request. As no interested parties submitted timely comments on the scope of this investigation, we made no changes to the scope language as it appeared in the *Initiation Notice*. For a complete description of the scope of this investigation, see Appendix I of the accompanying *Federal Register* notice.

IV. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES

In the *Preliminary Determination*, we found that the necessary reliable shipment data from Bebitz and Echjay was not available, and we determined that, pursuant to section 776(b) of the Act, both companies shipped stainless steel flanges in “massive” quantities during the comparison period, thereby fulfilling the criteria under section 733(e)(1)(B) of the Act and 19 CFR 351.206(h).⁹ Additionally, regarding the “all others” rate, based on data from Global Trade Atlas, we found there to be massive imports for all non-individually examined companies, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).¹⁰ No party to this investigation submitted comments on Commerce’s preliminary determination regarding critical circumstances. As described below, we continue to determine that Echjay received a benefit from a prohibited subsidy (*e.g.*, a program subsidy program that was contingent upon export performance as described under section 771(5A)(B) of the Act). With respect to Bebitz, as part of the AFA determination described below, we are making an adverse inference that Bebitz benefitted from an export subsidy program. Thus, for this final determination, we continue to find that critical circumstances exist for Bebitz, Echjay, and the “all others” companies under section 733(e)(1)(B) of the Act and 19 CFR 351.206(h).

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to the allocation period methodology used in the *Preliminary Determination* and no issues were raised by interested parties in briefs regarding these topics. For a description of the allocation period and the methodology used for this final determination, see the *Preliminary Determination*.¹¹

⁹ See *Preliminary Determination* at 5-6.

¹⁰ *Id.*

¹¹ *Id.* at 7.

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*.¹²

C. Denominators

In accordance with 19 CFR 351.525(b), Commerce considers the basis for respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to a respondent's export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the Echjay Final Analysis Memorandum, dated concurrently with this final determination.¹³ We have made no changes to the denominators used to calculate the subsidy rates in this final determination.¹⁴

VI. BENCHMARKS AND INTEREST RATES

Commerce has made no changes to the benchmarks or discount rates used in the *Preliminary Determination*. For a description of the benchmarks and interest rates used for this final determination, *see the Preliminary Determination* and the Echjay Final Analysis Memorandum.¹⁵

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Commerce relied on "facts otherwise available," including AFA, for several findings in the *Preliminary Determination*. For a description of these decisions, *see the Preliminary Determination*. Commerce has not made any changes to its decision to use facts otherwise available and AFA.¹⁶

To calculate the program rate for the following income tax reduction programs on which Commerce initiated an investigation, we applied an adverse inference that Bebitz paid no income tax during the POI. The standard income tax rate for corporations in India is 30 percent.¹⁷ Therefore, the highest possible benefit for the income tax rate programs is 30 percent. We are applying the 30 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 30 percent benefit).

¹² *Id.* at 7-9.

¹³ *See* Memorandum, "Final Analysis Memorandum for Echjay Forgings Private Limited," dated concurrently with this memorandum (Echjay Final Analysis Memorandum).

¹⁴ *Id.*

¹⁵ *See Preliminary Determination* at 9-10; Final Calculation Memoranda.

¹⁶ For a program-specific explanation of this determination, *see* Memorandum, "Preliminary Analysis Memorandum for Bebitz," dated January 16, 2018.

¹⁷ *See, e.g., Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016) and accompanying Issues and Decision Memorandum (*PET Resin from India*).

For programs other than those involving income tax exemptions and reductions, Commerce may apply the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program within the investigation, or if the rate is zero, Commerce may use the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another India CVD proceeding. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, Commerce may apply the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies.¹⁸

Based on the methodology described above, we determine the AFA countervailable subsidy rate for each of the non-responsive companies to be 256.16 percent *ad valorem*. The Appendix contains a chart summarizing our calculation of this rate.¹⁹

VIII. ANALYSIS OF PROGRAMS

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

A. Programs Determined to be Countervailable

1. DDB

The GOI and the petitioners²⁰ submitted comments in their case briefs regarding this program, discussed below in Comment 5. We have not changed our methodology for calculating a subsidy rate from the *Preliminary Determination*.²¹

Echjay: 1.58 percent *ad valorem*

2. EPCGS

The GOI and the petitioners submitted comments in their case briefs regarding this program, discussed at Comment 5 below. We have made certain changes to our calculation consistent with the minor corrections presented at verification.²² We find that the benefit Echjay received from this program was expensed prior to the POI.²³

¹⁸ *Id.* at “Selection of the Adverse Facts Available Rate.”

¹⁹ For a program-specific explanation of this determination, *see* Memorandum, “Preliminary Analysis Memorandum for Bebitz,” dated concurrently with this memorandum.

²⁰ The petitioners in this investigation are the Coalition of American Flange Producers and its individual members, Maass Flange Corporation and Core Pipe Inc. (collectively, the petitioners)

²¹ *See Preliminary Determination* at 18-19.

²² *See* Echjay Final Analysis Memorandum at 1.

²³ *Id.*

Echjay: 0.00 percent *ad valorem*

3. *Merchandise Export from India Scheme*

We have not changed our methodology for calculating a subsidy rate from the *Preliminary Determination*.²⁴

Echjay: 2.30 percent *ad valorem*

4. *Interest Equalization Scheme for Export Financing*

We have not changed our methodology for calculating a subsidy rate from the *Preliminary Determination*.²⁵

Echjay: 0.71 percent *ad valorem*

5. *SHIS*

The GOI and the petitioners submitted comments in their case briefs regarding this program, discussed below in Comment 5 and Comment 6. We have not changed our methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.²⁶

Echjay: 0.28 percent *ad valorem*

6. *State Government of Maharashtra Sales Tax Program*

We have not changed our methodology for calculating a subsidy rate from the *Preliminary Determination*.²⁷

Echjay: 0.05 percent *ad valorem*

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

We have not changed our methodology for calculating a subsidy rate from the *Preliminary Determination*.²⁸ We continue to find that the benefit Echjay received from this program was

²⁴ *Id.* at 22-23. We note that the record evidence shows that Echjay received benefits under this program for its exports of subject merchandise to the United States. We also note that in the recent case *PTFE from India*, Commerce determined that MEIS was tied to non-subject merchandise.²⁴ See *Polytetrafluoroethylene Resin from India: Final Affirmative Determination*, 83 FR 23422 (May 21, 2018) and accompanying Issues and Decision Memorandum (*PTFE from India*), at 29-30. We have not made any decisions with respect to the issue of tying in this current proceeding as no parties have made the argument that the program is tied to any particular product. We intend to examine the issue of tying closely in the subsequent administrative review.

²⁵ *Id.* at 23-24.

²⁶ *Id.* at 24-26.

²⁷ *Id.* at 26-27.

²⁸ *Id.* at 27.

expensed prior to the POI.

Echjay: 0.00 percent *ad valorem*

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

- a. Advance License Program
- b. Advance Authorization Program
- c. Duty Free Import Authorization Scheme
- d. Export Oriented Units - Duty-Free Import of Goods, Including Capital Goods and Raw Materials
- e. Export Oriented Units - Reimbursements of Central Sales Tax Paid on Goods Manufactured in India
- f. Export Oriented Units - Duty Drawback on Fuel Procured from Domestic Oil Companies
- g. Export Oriented Units - Duty Drawback on Fuel Procured from Domestic Oil Companies
- h. Pre-Shipment and Post-Shipment Export Financing
- i. Market Development Assistance Scheme
- j. Market Access Initiative
- k. Focus Product Scheme
- l. GOI Loan Guarantees
- m. Status Certificate Program
- n. Income Deduction Program (80-IB Tax Program)
- o. Special Economic Zones - SEZ Income Tax Exemption
- p. Special Economic Zones - Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
- q. Special Economic Zones - Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit
- r. Special Economic Zones - Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
- s. Special Economic Zones - Service Tax Exemption
- t. Special Economic Zones - Exemption from Payment of Local Government Taxes and Duties, Such as Sales Tax and Stamp Duties
- u. Special Economic Zones - Steel Development Funds Loans
- v. Provision of Stainless Steel, Billet, and Bar by SAIL for Less Than Adequate Remuneration (LTAR)
- w. Incremental Exports Incentive Scheme
- x. State Government of Andhra Pradesh (SGAP) Subsidy Programs - Grant Under the Industrial Investment Promotion Policy: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas
- y. SGAP Subsidy Programs - Grant Under the Industrial Investment Promotion Policy: Reimbursement of Power at the Rate of Rs. 0.75 per Unit
- z. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion

- Policy: 50 Percent Subsidy for Expenses Incurred for Quality Certification
- aa. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy on Expenses Incurred in Patent Registration
 - bb. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 25- or 35-Percent Subsidy in Cleaner Production Measures
 - cc. SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages
 - dd. SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: Reimbursement on VAT, CST, and State Goods and Services Tax
 - ee. SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: Exemption from SGAP Non-Agricultural Land Assessment
 - ff. SGAP Subsidy Programs - Provision of Goods and Services for LTAR under the Industrial Investment Promotion Policy: Provision of Infrastructure for Industries Located More than 10 Kilometers from Existing Industrial Estates or Development Areas
 - gg. SGAP Subsidy Programs - Provision of Goods and Services for LTAR under the Industrial Investment Promotion Policy: Guaranteed Stable Water Prices and Reservation of Municipal Water
 - hh. SGOM Subsidy Programs - Infrastructure Assistance for Mega Projects under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects
 - ii. SGOM Subsidy Programs - Subsidies for Mega Projects under the Package Scheme of Incentives
 - jj. SGOM Subsidy Programs – Special Capital Incentive Under Package Scheme of Incentives 1988 Scheme

IX. DISCUSSION OF THE ISSUES

Comment 1: The Application of AFA to Bebitz

Bebitz's Comments:

- Commerce claims that Bebitz did not provide a timely response to the supplemental questionnaire, but Bebitz did submit the documentation before Commerce incorrectly rejected it.²⁹
- Bebitz, as both a mandatory CVD and AD case respondent, and essentially handling the cases on its own, had questionnaire responses due for both investigations on the same day, which is both uncommon and unreasonable.³⁰ Bebitz was also asked to produce

²⁹ See Bebitz's Case Brief at 1 (citing, e.g., Commerce Letter re: Countervailing Duty Investigation of Stainless Steel Flanges from India: Rejection of Supplemental Response, dated December 6, 2017).

³⁰ *Id.* at 2.

questionnaire responses for Viraj, notwithstanding that Viraj is not cross-owned as defined by the parameters in the initial questionnaire.³¹

- Three timely extension requests were made, and all three were wrongly denied (either partially or fully).³²
- Courts have held that respondents must be given sufficient opportunity to answer Commerce's requests.³³ Respondents are by statute to be given 30 days to answer a CVD questionnaire, but Viraj was only given 14 days, as the 30-day clock should have started when Commerce explicitly requested Viraj respond to the questionnaire.³⁴
- It took Commerce nearly a month to request a response from Viraj, which indicates it was not an easy issue.³⁵ Moreover, it is unlawfully contrary to Commerce's practice, as the Antidumping Manual states that supplemental questionnaires should be issued within ten days.³⁶
- Commerce claims it had not received a public version supplemental questionnaire response, but Commerce rejected the one-day lag business proprietary version of the response unlawfully and made submitting a public version by the deadline impossible.³⁷
- The claim from Commerce that extension requests made shortly before the deadline need to be rejected is false, as Commerce can decide strictly on the merits if an extension should be granted and grant verbal approval, providing a later written response as soon possible.³⁸ It is unlawful of Commerce to claim that the extension request was untimely, as two previous timely extension requests for the same reason were not granted the full extension requested.³⁹ Thus, although Commerce claims that Bebitz did not demonstrate extraordinary circumstances for an untimely extension request, it is the denial of timely extension requests that is unlawful.⁴⁰
- Although Commerce cites the *Russian Urea* case to support its denial of Bebitz's extension request by showing awareness of the consequences of untimely submissions, this proves too much and would lead to all extension requests being denied.⁴¹
- By unlawfully denying Bebitz's timely extension requests, Commerce has failed to calculate the most accurate subsidy rate possible, given it does not have all information necessary.⁴²
- Given Commerce's unlawful finalizing of the investigation and rejection of timely extension requests, no subsidy for Bebitz should be found.⁴³

³¹ *Id.* at 2-3 (citing Commerce Letter re: Countervailing Duty Questionnaire, dated October 4, 2017 (Initial CVD Questionnaire)).

³² *Id.* at 2.

³³ *Id.* at 2-3 (citing, e.g., *United States v. Stanley Works*, 849 F. Supp. 46, 50 (CIT 1993) (*US vs. Stanley Works*)).

³⁴ *Id.* at 3 (citing, e.g., *Ta Chen Stainless Pipe Ltd. v. United States*, 804, 818-819 (CIT 1999) (*Ta Chen v. US*)).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 4.

³⁸ *Id.* at 4-5 (citing Commerce Letter re: Countervailing Duty Investigation of Stainless Steel Flanges from India: Response to Reconsideration Request, dated December 12, 2017).

³⁹ *Id.*

⁴⁰ *Id.* at 5.

⁴¹ *Id.* (citing Commerce Letter re: Rejection of Supplemental Response, dated December 6, 2017 at Attachment 4.)

⁴² *Id.* at 6 (citing, e.g., *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995) (*NTN Bearing v. US*)).

⁴³ *Id.* at 8.

- Commerce should calculate a subsidy for Bebitz based on the information submitted by the company.⁴⁴ Using the Echjay subsidy margin as a basis to evaluate Bebitz would be a mistake, as it would overstate Bebitz's margin.⁴⁵ Bebitz would find a *de minimis* subsidy margin a fair solution, leaving the calculation of the actual margin to the first review.⁴⁶ Bebitz acted to the best of its ability to provide a questionnaire response, and should not be given AFA status.⁴⁷
- Commerce is applying an AFA margin to Bebitz as if it participated in schemes from the States of Andhra Pradesh and Gujarat, but the information on the record indicates that Bebitz and Viraj are in the State of Maharashtra and, therefore, should be exempt from having subsidies from other states included in the AFA margin.⁴⁸

GOI's Comments:

- Commerce's rejection of Bebitz' questionnaire response does not conform with the Subsidies and Countervailable Measures (SCM) Agreement's letter or spirit. The World Trade Organization (WTO) Appellate Body has held that Commerce is expected to employ the best information available and must not impose high rates merely to punish non-cooperation. The use of facts available is only appropriate when a party fails to submit information within a reasonable amount of time and the word "reasonable" implies a degree of flexibility.⁴⁹
- Commerce should consider the SCM Agreement in addition to internal statutory requirements.⁵⁰
- A delay of two hours in an investigation that spans over one year, does not imply that Bebitz was not acting to the best of its abilities or that the company was trying to impede the investigation.⁵¹
- Commerce has assumed several benefits were availed by Bebitz without any evidence on record to support these assumptions.⁵²
- When applying facts available, the investigating authority must have a factual foundation, which is missing in Bebitz' case.⁵³ Applying the highest possible subsidy rate as a default rule is inconsistent with the SCM Agreement.⁵⁴

Petitioners' Comments:

- Bebitz faults Commerce for requiring it to submit questionnaire responses in both this proceeding and the corresponding antidumping duty investigation.⁵⁵ First, it is common

⁴⁴ *Id.*

⁴⁵ *Id.* at 8.

⁴⁶ *Id.*

⁴⁷ *Id.* at 7 (citing *Nippon Steel Corp v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon Steel v. US*)).

⁴⁸ *Id.* at 7 (citing *Preliminary Determination*).

⁴⁹ *Id.* at 21, 25-26.

⁵⁰ *Id.* at 22.

⁵¹ *Id.*

⁵² *Id.* at 23.

⁵³ *Id.* at 24.

⁵⁴ *Id.*

⁵⁵ See Petitioners' Rebuttal Brief at 13.

for companies to serve as a respondent in both an antidumping and countervailing duty investigation, so Bebitz's situation was not unique.⁵⁶ Second, the overlapping deadlines were caused by Bebitz requesting repeated extensions in both the AD and CVD cases.⁵⁷ Commerce granted Bebitz two extensions, providing double the amount of time initially provided, and Bebitz fails to show why this is not reasonable.⁵⁸ Commerce is not obligated to permit respondents to provide responses on a timeline of their own choosing.⁵⁹

- The initial questionnaire instructed Bebitz to provide a full questionnaire response for all cross-owned affiliates that meet certain criteria, such as when the affiliate produces subject merchandise.⁶⁰ Viraj is a cross-owned affiliate that produces subject merchandise and, thus, a response was required.⁶¹ Bebitz was provided two months to submit its response for Viraj.⁶² The company's decision not to provide the information when initially requested does not require that Commerce provide Bebitz an unlimited amount of time to remedy its earlier deficiencies.⁶³
- Although Bebitz claims that Commerce did not accurately describe its practice with regard to extension requests, the company misstates Commerce's position. Commerce accurately described its practice, stating that if it is unable to notify a party of the disposition of an extension request by the deadline, then the submission is due at 8:30 a.m. on the next working day.⁶⁴
- Whether Bebitz previously submitted timely extension requests is irrelevant, as the company did not submit its response by the established deadline.⁶⁵
- The GOI asserts that Bebitz's actions do not rise to the level of a failure to cooperate to the best of its ability, but an unsupported assertion does not undermine Commerce's determination.⁶⁶
- The GOI also argues that it provided all information requested by Commerce, but the record is clear that the GOI failed to provide all of the information with respect to a number of programs.⁶⁷ Moreover, even if the GOI had provided this information, it would not remedy Bebitz's failure.⁶⁸
- The GOI fails to identify instances to support its claim that Commerce assumed benefits for all programs even when usage of one precludes the usage of another.⁶⁹ In fact, Commerce avoided such double counting by applying collective margins for programs that could not be simultaneously used.⁷⁰

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 13-14.

⁵⁹ *Id.* at 14.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 14-15.

⁶⁴ *Id.* at 15.

⁶⁵ *Id.*

⁶⁶ *Id.* at 19.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

- Although the GOI contends that Commerce erred in applying the highest possible subsidy rates, this methodology is explicitly sanctioned by the statute.⁷¹
- Commerce is unable to determine where any affiliates are located and, therefore, which affiliates, if any, are benefitting from state programs, such as SGAP. Therefore, the record does not indicate that Bebitz did not benefit from these programs and Commerce should continue its adverse inference.⁷²

Commerce Position: Commerce disagrees with Bebitz and the GOI and continues to find that the application of AFA is warranted. As described in detail in the *Preliminary Determination*, on October 4, 2017, Commerce issued Bebitz the Initial CVD Questionnaire, which instructed Bebitz to provide a full questionnaire response for all cross-owned affiliates that meet certain criteria, such as when the cross-owned affiliate produces subject merchandise.⁷³ The questionnaire also defined cross-ownership for Bebitz, as it exists between two or more corporations where one corporation can use or direct the individual assets of the other corporations in essentially the same ways it can use its own assets.⁷⁴ Further, the questionnaire stated that Bebitz is responsible for identifying all cross-owned affiliates that have met any of the criteria and for responding on behalf of the cross-owned affiliates that meet certain criteria.⁷⁵ Bebitz submitted a timely response, but failed to state *any* affiliates are cross-owned with Bebitz.⁷⁶ However, after examining Bebitz’s deficient affiliate responses, Commerce concluded that Viraj “is a subject merchandise producer,⁷⁷ that is cross-owned with Bebitz since Viraj exercises significant influence over Bebitz.”⁷⁸ Under 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets and that “normally” this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. However, the *Preamble* further explains that “in certain circumstances” other fact patterns may also result in cross-ownership.⁷⁹ In *Fabrique*, the CIT upheld our authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.⁸⁰

Commerce issued a supplemental questionnaire asking Bebitz to provide a full questionnaire response on behalf of Viraj.⁸¹ In this supplemental questionnaire, we also requested information

⁷¹ *Id.* at 20.

⁷² *Id.* at 20-22.

⁷³ See Commerce Letter re: Countervailing Duty Questionnaire, dated October 4, 2017 (Initial CVD Questionnaire) at 114.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See Letter to the Secretary from Bebitz, re: Stainless Steel Flanges from India, dated October 23, 2017 (Bebitz Affiliation Response).

⁷⁷ See *Preliminary Determination* at 8.

⁷⁸ *Id.*

⁷⁹ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).

⁸⁰ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001) (*Fabrique*).

⁸¹ See Commerce Letter to Bebitz, re: Supplemental Questionnaire for Affiliation Questionnaire Response, dated November 20, 2017 (Bebitz Affiliation Supplemental Questionnaire).

with respect to other deficiencies in Bebitz's initial affiliate responses.⁸² As detailed in Commerce's December 6 and December 12, 2017, letters, Bebitz failed to provide a timely response to the supplemental questionnaire.⁸³ On November 22, 2017, Commerce granted Bebitz's first extension request for this supplemental questionnaire response.⁸⁴ On November 27, 2017, Commerce granted Bebitz's second request for an extension of time to submit its supplemental questionnaire response, and set a deadline of December 4, 2017.⁸⁵ Shortly before the deadline of 5:00 p.m. on December 4, 2017, Commerce received a third request for an extension from Bebitz.⁸⁶ Due to the proximity of the extension request to the actual deadline, Commerce was unable to respond to the extension request by the deadline. If Commerce is unable to notify a party requesting an extension of the disposition of a request by 5:00 p.m. on the due date, then the submission is due by 8:30 a.m. on the next working day.⁸⁷ In this case, because the extension request was filed shortly before the deadline, Commerce did not have sufficient time to consider the request and decide on its disposition. Therefore, the deadline then became 8:30 a.m. December 5, 2017.⁸⁸ Bebitz began the submission of its supplemental questionnaire response at 10:24 a.m. December 5, 2017 and continued filing its submission through 2:10 p.m. December 5, 2017. Thus, pursuant to 19 CFR 351.302(d), Commerce rejected the untimely response. Thus, contrary to Bebitz's assertions, Commerce gave Bebitz multiple opportunities and has provided Bebitz two months to provide the responses. Although Commerce is sympathetic to the difficulties inherent in responding to the questionnaire, Bebitz was represented by experienced counsel, and multiple extensions were granted, as explained above.

Due to the above-discussed deficiencies and given Bebitz's inadequate explanation for its failure to provide the requested information within the deadlines set by Commerce pursuant to sections 776(a)(1) and 776(a)(2)(A), necessary information regarding Bebitz's cross-owned subject merchandise producer, Viraj, is not on the record and Bebitz has failed to provide responses for a cross-owned subject merchandise producer, as required under 19 CFR 351.525(b)(6). Further, given Bebitz's deficient affiliate responses, Commerce is unable to determine which other potential cross-owned companies, if any, should have been reported, and is thus unable to determine which additional subsidy programs were utilized. Without the complete, accurate and reliable data upon which to attribute cross-owned companies' subsidies to Bebitz, Commerce cannot accurately calculate Bebitz's CVD subsidy rate for this final determination. Commerce must therefore rely on "facts available" in making its final determination with respect to certain countervailable subsidy programs that Bebitz and Viraj could have used.

⁸² *Id.*

⁸³ See Commerce Letter to Bebitz, re: Rejection of Supplemental Response, dated December 6, 2017 (Rejection Letter); Commerce Letter to Bebitz, re: Response to Reconsideration Request, dated December 12, 2017.

⁸⁴ See Commerce Letter re: First Supplemental Questionnaire of Affiliated Companies Response Deadline Extension, dated November 22, 2017.

⁸⁵ See Commerce Letter, "Countervailing Duty Investigation of Stainless Steel Flanges from India: First Supplemental Questionnaire of Affiliated Companies Response Second Deadline Extension," dated November 27, 2017.

⁸⁶ See Letter from Bebitz, "re: Stainless Steel Flanges from India," dated December 4, 2017.

⁸⁷ See *Extension of Time Limits*, 78 FR 57790 (September 20, 2013) at 57792.

⁸⁸ *Id.*

Moreover, we determine that Bebitz failed to cooperate by not acting to the best of its ability to comply with our requests for necessary information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that Bebitz and Viraj benefited from each of the programs on which Commerce initiated an investigation, with the exception of certain newly alleged subsidies programs for which Bebitz and Viraj provided timely and complete responses.⁸⁹

Therefore, we continue to find that the necessary information with respect to certain programs is not available on the record and that Bebitz did not provide information that was requested of it in a timely manner, thereby impeding the proceeding. Thus, Commerce is relying on “facts available” in making our final determination in accordance with sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act. Moreover, we determine that Bebitz failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act.

Although Bebitz argues that Commerce’s citation to *Russia Urea* would logically lead to all extension requests being denied, we disagree. As noted in our December 6, 2017, rejection letter, counsel for Bebitz had previously been made aware of the consequences of untimely submissions in a memorandum issued by Commerce in the *Russia Urea* case.⁹⁰ In that memorandum, Commerce discussed a “history of late filings” and counsel was informed that all future late submissions in any future proceeding would be rejected.⁹¹ This does not mean that all future extension requests would be denied, as argued by Bebitz. On the contrary, the memorandum states only that requests for extensions of time must be made in the proper manner.⁹²

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

Our CVD laws are consistent with our WTO obligations. Moreover, it is the Act and {Commerce’s} regulations that have direct legal effect under U.S. law, and not the WTO Agreements or WTO reports. In this regard, WTO reports “do not have any power to change U.S. law or to order such a change.”⁹³

With respect to Bebitz and the GOI’s arguments on AFA rates, as described above, Bebitz failed to cooperate by not acting to the best of its ability to comply with our requests for necessary

⁸⁹ The record evidence of this case indicates that Bebitz and Viraj could not have benefitted from certain programs in the new subsidies allegations. After the *Preliminary Determination*, we initiated on certain new subsidies programs and issued questionnaires to Bebitz and Viraj. Bebitz and Viraj provided timely and complete responses on these new subsidies programs and the responses show that Bebitz and Viraj did not use the new subsidies programs. Thus, we have not included these new subsidies programs in our final AFA determination.

⁹⁰ See Rejection Letter at 2, Attachment IV.

⁹¹ *Id.* at Attachment IV.

⁹² *Id.*

⁹³ See *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM (*India Carbon Steel Flanges*) at Comment 1.

information. After being given multiple opportunities, Bebitz still failed to provide timely and complete responses for cross-owned subject merchandise producer, Viraj, as required under 19 CFR 351.525(b)(6). Further, due to Bebitz's deficient affiliation responses, Commerce is unable to determine which other potential cross-owned companies, if any, should have been reported, and is, thus, unable to determine which additional subsidy programs were utilized. Contrary to the GOI's assertion, Commerce did not apply the highest possible subsidy rate as a default rule. Due to Bebitz's non-cooperation, *i.e.* failure to provide responses for its cross-owned affiliates including a subject merchandise producer, necessary information regarding Bebitz's cross-owned companies is not on the record. Without the complete, accurate and reliable data upon which to attribute cross-owned companies' subsidies to Bebitz, Commerce cannot accurately calculate Bebitz's CVD subsidy rate for this final determination.

As to the state-level subsidy programs included in the subsidy rate for Bebitz, we disagree that the evidence on the record is sufficient to establish that Bebitz or its cross-owned affiliates could not have used these programs. As explained in the *Preliminary Determination*, "by failing to respond to Commerce's questions with regard to other potential cross-owned companies, Commerce is unable to determine which other companies, if any, should have been reported and, thus, is unable to determine which additional subsidy programs were utilized."⁹⁴ Similarly, the GOI's responses do not contain a response on behalf of these additional companies. Thus, the record lacks sufficient information to establish that Bebitz's cross-owned affiliates were not located in the Indian states at issue, nor does the record indicate that they could not have utilized these programs. Therefore, we will continue to include these programs in the subsidy rate for Bebitz.

Comment 2: SHIS Licenses Discovered at Verification

Petitioners' Comments:

- At Commerce's verification of the GOI, Commerce discovered two SHIS licenses that Echjay failed to identify in its questionnaire responses.⁹⁵ Because of this, Commerce should apply AFA for this program.⁹⁶
- In selecting the AFA rate for this program, Commerce should deviate from its normal practice and select an AFA rate based on a similar program from this proceeding, which is 2.30%, rather than an AFA rate based on the same program, which is 0.51 percent.⁹⁷ A low AFA rate fails to serve as an incentive to respondents to cooperate.⁹⁸

Echjay's Comments:

- During verification of the GOI, Commerce discovered two SHIS license numbers assigned to Echjay that were not reported in Echjay's questionnaire responses.⁹⁹

⁹⁴ See *Preliminary Determination* at 13.

⁹⁵ See Petitioner's Case Brief at 5-6.

⁹⁶ *Id.*

⁹⁷ *Id.* at 6.

⁹⁸ *Id.* at 7.

⁹⁹ See Echjay's Case Brief at 1 (citing Memorandum, "Verification of Government of India in the Countervailing Duty Investigation of Stainless Steel Flanges from India", dated June 21, 2018 (GOI Verification Report PV)).

- Echjay has properly reported all SHIS licenses in use by the company during the AUL, backed up by audited and verified financial statements.¹⁰⁰
- SHIS license value cannot exceed 1percent of FOB yearly sales, which Echjay's financial records show they did not exceed.¹⁰¹
- The SHIS 1percent entitlement limit per year can be broken up into multiple licenses, such as when Echjay received five licenses in fiscal year 2011-2012.¹⁰² However, if the SHIS licenses discovered at the GOI pertained to split licenses, they would be numbered sequentially with the other licenses issued for that year.¹⁰³ If they were not numbered sequentially, then there was no physical issuance of a license and likely could be a GOI system error.¹⁰⁴
- It is not Commerce's policy to find AFA due to the foreign government's failure to participate to the best of its ability.¹⁰⁵
- Echjay should not be penalized for the GOI's failure to provide adequate explanation as to why a record exists of Echjay receiving two SHIS licenses that it did not use, with verified and audited financial statements from Echjay as evidence.¹⁰⁶
- Commerce, therefore, should ignore these two SHIS licenses in its final determination.¹⁰⁷
- Moreover, although the petitioners argue that Commerce should utilize an AFA rate of 2.30%, there is no justification for Commerce to deviate from the statute and its established practice.¹⁰⁸ It is Commerce's practice to use the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country.¹⁰⁹ Therefore, if Commerce applies AFA for the SHIS program, it should use a rate of 0.51percent, which is the rate of an identical program in another India CVD investigation.¹¹⁰

GOI's Comments:

- There is no discrepancy in the information provided by Echjay and the GOI with regard to the two SHIS licenses.

Commerce Position: We agree with Echjay and the GOI regarding the above-referenced SHIS licenses. During the GOI verification, we queried the government's electronic database, which appeared to reveal two SHIS licenses received by the company that had not previously been reported.¹¹¹ However, we also examined this program during the verification of Echjay, in which we were able to tie the company's reporting of SHIS licenses to its financial statements.¹¹²

¹⁰⁰ *Id.* at 2.

¹⁰¹ *Id.* at 2-3 (citing Echjay's November 15, 2017 Initial Questionnaire Response).

¹⁰² *Id.* at 3-4 (See Exhibit 1).

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 4.

¹⁰⁵ *Id.* at 5 (citing *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 7, 2008) (*Hot-Rolled Carbon Steel Flat India Final*)).

¹⁰⁶ *Id.* at 5-6.

¹⁰⁷ *Id.* at 6.

¹⁰⁸ See Echjay's Rebuttal Brief at 6.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 7.

¹¹¹ See GOI Verification Report at 6.

¹¹² See Echjay Verification Report at 7-8.

Moreover, consistent with Echjay's argument above, the two SHIS licenses are not numbered sequentially with the other licenses, suggesting that they were not split licenses. After an examination of the documentation provided by Echjay, both in its questionnaire responses and at verification (much of which is proprietary), Commerce determines that Echjay accurately reported its use of the SHIS program.¹¹³ Thus, the application of AFA is not warranted, and Commerce will continue to calculate a subsidy rate based upon the information available on the record. Therefore, the petitioners' arguments regarding the selection of an AFA rate outside our normal hierarchy are moot.

Comment 3: Echjay's Reporting of the Provision of Stainless Steel, Billet, and Bar from SAIL for LTAR

Petitioners' Comments:

- In its initial questionnaire, Commerce requested that Echjay provide information on purchases of steel, billet, and bar from SAIL, but the company instead responded only that it had not received a benefit under the program.¹¹⁴
- Commerce reiterated its request in a supplemental questionnaire and requested that Echjay report all purchases of stainless steel, billet, and bar during the POI, but the company only responded that it had no purchases from SAIL and provided no documentation to support its claim.¹¹⁵ Commerce's questionnaire instructed the company to report *all* purchases of stainless steel, billet, and bar during the POI, not only purchases from SAIL.¹¹⁶
- The GOI failed to supply adequate responses to Commerce's request for details about Echjay's purchases from SAIL.¹¹⁷ In its initial questionnaire response, the GOI stated only that SAIL did not provide goods or services to the respondents.¹¹⁸ Although Commerce instructed the GOI to provide a detailed explanation as to the information received from SAIL to support this statement, the GOI merely repeated the initial response.¹¹⁹
- Although Commerce's verification report states that there was no evidence that Echjay received additional subsidies, these findings do not change the fact that the company did not fully cooperate when responding to the questionnaires.¹²⁰ Moreover, it is not clear whether the information reviewed by Commerce would reveal if the company purchased inputs from SAIL, and the verification report itself states that it does not draw conclusion as to whether information was verified successfully.¹²¹

¹¹³ For a complete discussion of this issue, which includes business proprietary information, *see* Echjay Final Analysis Memorandum.

¹¹⁴ *See* Petitioners' Case Brief at 2.

¹¹⁵ *Id.* at 3.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 3-4.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 4.

¹²¹ *Id.*

Echjay's Comments:

- The initial questionnaire instructs companies to report the purchase of stainless steel, billet, and bar within the context of the question regarding SAIL.¹²² Although the petitioners claim that Echjay was required to report all purchases of these inputs, and not just purchases from SAIL, this would result in respondents needing to provide voluminous records of every program, even if the program was not used.¹²³
- As indicated in the questionnaire responses, Echjay did not purchase steel inputs from SAIL during the POI.¹²⁴ Because there were no purchases and the program was not used, no further information was required.¹²⁵
- Commerce's verification report indicates that no additional subsidies were received.¹²⁶ By questioning this, the petitioners are undermining the process of verification.¹²⁷

Commerce Position: We agree with Echjay that it properly responded to our questions regarding the provision of stainless steel, billet, and bar by SAIL for LTAR. In both our initial and supplemental questionnaires, we requested information regarding Echjay's purchases of stainless steel, billet, and bar from SAIL. Echjay reported that it had no purchases of any kind from SAIL during the POI, and in the *Preliminary Determination* we found no benefit received by Echjay for this program. No evidence was uncovered at verification that called into question Echjay's reporting of purchases from SAIL. Therefore, we find that there is no evidence that the company's response was inaccurate, and we continue to find that the company did not receive a benefit for this program.

Comment 4: Whether Sufficient Information Exists to Calculate a Subsidy Rate for EFIPL

Petitioners' Comments:

- Though Echjay initially reported that it had no cross-owned affiliates, Commerce requested that EFIPL respond to Section III of the initial CVD questionnaire.¹²⁸
- EFIPL reported receiving no subsidies and Commerce calculated no subsidies in the *Preliminary Determination*. However, EFIPL's response was submitted one week before the *Preliminary Determination*, and Commerce did not have time to conduct a thorough analysis.
- EFIPL provided minimal information to support the responses to Commerce's request and the information it did provide conflicts.¹²⁹ It is unclear how EFIPL made determinations as to its usage of programs, as it indicated that it does not have the staff to work on the response, and so the company provided documentation to Echjay, which then

¹²² See Echjay's Rebuttal Brief at 2.

¹²³ *Id.* at 2-3.

¹²⁴ *Id.* at 3.

¹²⁵ *Id.*

¹²⁶ *Id.* at 4.

¹²⁷ *Id.*

¹²⁸ See Petitioners' Case Brief at 8.

¹²⁹ *Id.* at 9.

worked on the response.¹³⁰ This documentation was not included in the questionnaire response, and it is not clear what steps EFIPL took or what documents were reviewed.¹³¹

- Although EFIPL stated that it is no longer engaged in the production or sale of any manufactured products, other information submitted raises questions about the accuracy of this reporting.¹³² Moreover, the financial statements provided by EFIPL raise questions about the circumstances under which they were prepared.¹³³
- There is no information on the record which permits Commerce to verify the accuracy of EFIPL's reporting—the GOI's responses did not address EFPIIL and Commerce did not verify any of EFIPL's reported subsidy usage.¹³⁴

Echjay's Comments:

- EFIPL provided a complete questionnaire response, and the petitioners did not submit any deficiency comments regarding that response or pre-verification comments.¹³⁵ EFIPL submitted audited financial which showed no sales during the POI.¹³⁶ The company also submitted photographs of EFIPL showing no manufacturing facility.¹³⁷ Commerce verified original documentation from EFIPL supporting its closure of operations.
- If Commerce did not have sufficient time to analyze EFIPL's response, it would have indicated such in the *Preliminary Determination*.¹³⁸

Commerce Position: We agree with Echjay that the company provided sufficient information for its cross-owned affiliate, EFIPL. After an analysis of Echjay's affiliation response and supplemental questionnaire responses, we directed Echjay to provide a full questionnaire response on behalf of its affiliate, subject merchandise producer EFIPL.¹³⁹ In its questionnaire response, EFIPL reported receiving no subsidies.¹⁴⁰ At verification, company officials provided original documentation supporting the closing of operations of EFIPL.¹⁴¹ Although the petitioners argue that information in EFIPL's response raises questions about the accuracy of its reporting, the information reviewed during Commerce's verification supported the information

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 10.

¹³³ *Id.* at 10-11.

¹³⁴ *Id.* at 11.

¹³⁵ See Echjay's Rebuttal Brief at 7.

¹³⁶ *Id.* at 11.

¹³⁷ *Id.*

¹³⁸ *Id.* at 8-9.

¹³⁹ See Commerce Letter to Echjay, re: Second Supplemental Questionnaire, dated December 19, 2017 (Echjay Second Supplemental Questionnaire).

¹⁴⁰ See generally Letter to the Secretary from Echjay, re: Response to question 1 & 7 of 2nd Supplemental Response to Section III of CVD Questionnaire, dated January 8, 2018 (Echjay Second Supplemental Questionnaire Response Part II).

¹⁴¹ See Echjay Verification Report at 3.

previously reported by the company.¹⁴² Therefore, we continue to find that EFIPL received no subsidies during the relevant period.

Comment 5: Whether AAP, DDB, EPCGS, SHIS, and IEIS are Countervailable

GOI's Comments:

- The AAP is not countervailable according to the SCM Agreement because the benefits received for the inputs, as well as the exported products, can be verified.¹⁴³ The AAP and the Advance License Program (ALP) are the same program.¹⁴⁴ The GOI has an effective control mechanism at every stage of the AAP process.¹⁴⁵
- The SCM Agreement supports the fact that indirect tax rebate schemes and substitution drawback schemes (including AAP and DDB) do not constitute export subsidies unless the subsidy is more than the amount of duties imposed.¹⁴⁶
- The GOI has an effective verification system to ensure that the quantity of inputs for which drawback is claimed does not exceed the quantity of similar good exported.¹⁴⁷
- AAP and DDB are mutually exclusive and, thus, Commerce cannot countervail both schemes.¹⁴⁸
- The EPCGS is highly monitored and it can be verified that the recipients meet all the requirements of the duty exemption.¹⁴⁹
- Once a company meets the requirements for EPCGS, it can receive the import duty exemption on imports for goods that are sold both domestically and goods that are exported.¹⁵⁰
- The SHIS was discontinued prior to the POI and, thus, cannot be countervailed in this investigation.¹⁵¹
- IEIS was only applicable to the exports made during 2013-14 and it has since been discontinued. Any exports on which benefits were received were made prior to the POI.¹⁵²
- There is no information suggesting that the respondent has availed a benefit from IEIS. GOI has provided the necessary information about IEIS and Commerce has no basis for suggesting otherwise.¹⁵³

Petitioners' Comments:

- Although the GOI asserts that the AAP/ALP, DDB, and EPCGS programs are not

¹⁴² For a complete discussion of this issue, which includes business proprietary information, *see* Echjay Final Analysis Memorandum at 2.

¹⁴³ *See* GOI's Case Brief at 8.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 11-12.

¹⁴⁷ *Id.* at 14-15.

¹⁴⁸ *Id.* at 15.

¹⁴⁹ *Id.* at 16.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 16.

¹⁵² *Id.* at 17.

¹⁵³ *Id.*

countervailable under the SCM Agreement, Commerce has previously explained that WTO agreements and reports do not have any power to change U.S. law.¹⁵⁴ Commerce has previously determined that these programs are countervailable, and nothing on this record supports a departure from these prior findings.¹⁵⁵

- With regard to the AAP/ALP, Commerce has found that the GOI lacks a system to confirm which inputs are consumed in the production of exported products.¹⁵⁶
- For the DDB program, Commerce found that the GOI failed to provide requested information regarding whether there is an effective system in place to confirm what inputs are consumed.¹⁵⁷ The GOI has failed to demonstrate that it provided the requested information, and so Commerce should continue to find that the program is countervailable.¹⁵⁸
- Commerce has previously determined that EPCGS provides a financial contribution in the form of a duty exemption and is specific as it is contingent upon export.¹⁵⁹ It is unclear why the GOI believes the program is not countervailable, but it appears to be based on whether the program is specific.¹⁶⁰ However, the GOI recognizes that the receipt of benefits is subject to an export obligation, and thus the program is unambiguously specific.¹⁶¹
- For the SHIS and IEIS programs, the GOI asserts that the programs have been discontinued and thus cannot be countervailed.¹⁶² However, Commerce is concerned with the period in which a respondent receives the benefit and not necessarily when the benefit may have been applied for or approved.¹⁶³ Because benefits under both the SHIS and IEIS could have been received during the POI, Commerce properly calculated countervailable subsidies for these programs.¹⁶⁴

Commerce Position: We agree with the petitioners that the above-referenced programs should continue to be found countervailable. With regard to the AAP/ALP and DDB programs, and as explained in the *Preliminary Determination*, import duty exemptions on inputs for exported products are not countervailable so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.¹⁶⁵ However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products, and in what amounts.¹⁶⁶ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.¹⁶⁷ If such a system does not exist, or if it is not applied

¹⁵⁴ See Petitioners' Rebuttal Brief at 5-6.

¹⁵⁵ *Id.* at 6.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 7.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 7-8.

¹⁶² *Id.* at 8.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ See 19 CFR 351.519(a)(1)(ii).

¹⁶⁶ See *PRC Shrimp Final*, and accompanying IDM at "Duty Drawback (DDB)."

¹⁶⁷ *Id.*

effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission or drawback is countervailable.¹⁶⁸

Regarding AAP/ALP, in the 2003 administrative review of countervailing duties on *Polyethylene Terephthalate Film, Sheet, and Strip from India (2003 PET Film)*, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the AAP/ALP during 2005.¹⁶⁹ Commerce acknowledged that certain improvements to the AAP/ALP system were made. However, we found that, based on the information submitted by the GOI and examined during previous reviews of that proceeding, and no information having been submitted for that review demonstrating that the GOI had revised its laws or procedures governing this program since those earlier reviews, systemic issues continued to exist in the AAP/ALP system during that POR.¹⁷⁰ Specifically, in the 2003 review, Commerce stated that it continued to find the AAP/ALP countervailable based on:

the GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. Specifically, we still have concerns with regard to several aspects of the ALP including (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET Film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports.¹⁷¹

Since the 2003 *PET Film* review, Commerce has, in several other proceedings, made determinations consistent with this treatment of the AAP/ALP.¹⁷² In the current investigation, record evidence shows that there has been no change to the AAP/ALP program. Specifically, we requested that the GOI provide information as to how it tracks the inputs used in the production of exported merchandise, but the GOI failed to provide a response to this request.¹⁷³ Thus, the GOI did not provide documentation enabling Commerce to determine whether the GOI has a sufficient system in place to confirm which inputs are consumed in the production of the exported products. Therefore, we continue to find that the program confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondent from payment of import

¹⁶⁸ See 19 CFR 351.519(a)(4)(i)-(ii).

¹⁶⁹ See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*2003 Review of PET Film from India*), and accompanying IDM at 3-5.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² See, e.g., *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) (*Oil Country Tubular Goods from India Final*), and accompanying IDM; see also *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 80 FR 19637 (April 13, 2015), and accompanying IDM.

¹⁷³ See Initial CVD Questionnaire at 14-15.

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

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

The rates are determined following a specified procedure that is undertaken by an independent committee appointed by the GOI. The committee makes its recommendations after discussions with all stakeholders including Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of exports products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analyzed and this information is used to form the basis for the rate of Duty Drawback.¹⁷⁴

As submitted by the GOI, Rule 3(2) of the Drawback Rules 1995, states that in determining the amount of drawback, “the Central Government shall have regard to” the average quantity and value of an input, component or intermediate product, whether produced in India or imported, the import duties or excise duties paid thereon, as well as account for waste, re-use or sale of a by-product, and packing and input services rendered.¹⁷⁵

We requested that the GOI provide a copy of the recommendations and supporting documents (*e.g.*, accounting records, company-specific files, databases, budget authorizations, *etc.*) for the drawback rates in effect during the POI.¹⁷⁶ The GOI did not provide documentation enabling Commerce to determine whether the GOI has a sufficient system in place to confirm which inputs are consumed in the production of the exported products.¹⁷⁷ Thus, consistent with our practice, based on the GOI’s questionnaire response that lacks the documentation to support that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products, we conclude that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended.¹⁷⁸

¹⁷⁴ See GOI Questionnaire Response at 17.

¹⁷⁵ See GOI Supplemental Questionnaire Response at Exhibit E.

¹⁷⁶ See Countervailing Duty Questionnaire.

¹⁷⁷ See Letter to the Secretary from the GOI, re: Response to Section II on behalf of GOI, dated November 10, 2017 (GOI Questionnaire Response) at 81; GOI Supplemental Questionnaire Response at 18-20.

¹⁷⁸ See *Shrimp from India Final Determination* IDM at 12-14.

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

Regarding EPCGS, Commerce has previously found that this program to be countervailable.¹⁷⁹ The evidence on the record of this investigation is consistent with those cases.¹⁸⁰ Further, as explained in our *Preliminary Determination*, there are two types of benefits under the EPCGS. The first benefit is the amount of unpaid import duties that would have to be paid to the GOI if accompanying export obligations are not met. The repayment of this liability is contingent on subsequent events, and in such instances, Commerce treats any balance on an unpaid liability as an interest-free loan. The second benefit is the waiver of 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 companies demonstrate that they have completed their export obligations, for those licenses for which companies demonstrate that they have completed their export obligations, 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.

Although the GOI argues that the SHIS and IEIS programs were discontinued prior to the POI and are thus not countervailable, we disagree. Consistent with 19 CFR 351.524, and as explained in the initial questionnaire, Commerce examines a period known as the AUL period in order to appropriately measure any allocated subsidies.¹⁸¹ The questionnaire informs the GOI and company respondents that they must provide information concerning non-recurring subsidies approved or disbursed during the 14-year AUL.¹⁸² As explained in our *Preliminary Determination*, SHIS is a non-recurring program. Thus, residual benefits continue to be bestowed, despite GOI's claim that the programs were discontinued. With respect to IEIS, in the recent *PSF from India*, Commerce found a respondent was able to receive entitlements under the program, despite the GOI's claim that the program had been terminated.¹⁸³ Thus, the GOI's statements that the SHIS and IEIS programs were terminated prior to the POI is not a basis to decline to calculate a subsidy margin, as residual benefits under both of these programs could have been received during the POI. Finally, the GOI's WTO-related arguments are addressed in Comment 1 above.

¹⁷⁹ See, e.g., *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film Final Determination*), and accompanying IDM at "EPCGS" section.

¹⁸⁰ See GOI Questionnaire Response at 29.

¹⁸¹ See Commerce Letter re: Countervailing Duty Questionnaire, dated October 4, 2017 (Countervailing Duty Questionnaire) at 12.

¹⁸² *Id.*

¹⁸³ See *Final Results of Countervailing Duty Investigation of Fine Diner Polyester Staple Fiber from India*: 82 FR 51387, (Nov 6, 2017) (*PSF from India*) and accompanying IDM at 24.

Comment 6: Whether the GOI Provided Sufficient Information for Certain Programs

GOI's Comments:

- The “Government of India Loan Guarantees” is not a GOI scheme. The GOI’s responses to questions about this scheme are factually correct and none of the respondents could have been eligible to receive loans under this scheme.¹⁸⁴
- If the GOI says that the respondent has not availed benefit under the Status Certificate Program, Commerce cannot then consider that the respondent has received a benefit under this program.¹⁸⁵ Commerce could have asked for more information from the GOI to support its claim.¹⁸⁶
- No goods or services were sold by SAIL to Bebitz and, therefore, Bebitz could not have purchased inputs from SAIL at LTAR.¹⁸⁷ The GOI is not involved with the commercial decisions of SAIL, as SAIL is a commercial organization governed by market conditions.¹⁸⁸ The SCM Agreement supports the notion that being a GOI enterprise does not guarantee that the company is a public body.¹⁸⁹
- None of the respondents or their cross-owned companies were provided any loan under the Steel Development Fund and, therefore, the GOI need not provide any more information.¹⁹⁰
- The Industrial Policy of 2013 and other State Government of Maharashtra (SGOM) Industrial Promotion Policy to Support Mega Projects, as well as SGAP Infrastructure Assistance for Mega Projects are not contingent upon export.¹⁹¹ are not benefits under the SCM Agreement. Therefore, the GOI has provided enough information and Commerce has no basis to assert otherwise.¹⁹²
- The GOI never withheld any information nor impeded proceedings in any manner.¹⁹³
- Commerce cannot countervail the SGAP Programs by stating they are region specific, as the WTO has held that the essential part of the specificity analysis is whether the relevant jurisdiction is that of a regional or local government, and whether the granting authority operates at a central, regional, or local level.¹⁹⁴
- Commerce cannot countervail programs of state governments wherein none of the respondent companies are located.¹⁹⁵

Petitioners' Comments:

- In contesting the countervailability of the above-referenced programs, the GOI does little more than repeat certain basic factual information about the programs and assert that no

¹⁸⁴ See GOI’s Case Brief at 17.

¹⁸⁵ *Id.* at 18.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 19.

¹⁸⁸ See the GOI’s Case Brief at 18-19.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 19-20.

¹⁹¹ *Id.* at 20.

¹⁹² *Id.*

¹⁹³ *Id.* at 23.

¹⁹⁴ *Id.* at 20.

¹⁹⁵ *Id.* at 21.

respondents benefitted from the programs.¹⁹⁶ Thus, the GOI fails to address the basis for Commerce's finding that it did not cooperate to the best of its ability, and provides no basis to modify this determination.¹⁹⁷

- For both the GOI Loan Guarantee program and the provision of stainless steel, billet, and bar by SAIL for LTAR, Commerce requested information in the initial and supplemental questionnaires which the GOI refused to provide.¹⁹⁸ For the other programs, the GOI asserts that no mandatory respondent used the programs.¹⁹⁹ The GOI does not argue that it has fully complied with Commerce's requests, and instead claims that it did not need to provide the information at issue.²⁰⁰ However, it is Commerce, not the GOI, that determines what information is necessary, and the GOI failed to comply with Commerce's request for information.²⁰¹

Commerce Position: We agree with the petitioners that the GOI failed to provide certain necessary information that was requested. As explained in the *Preliminary Determination*, the GOI failed to provide certain requested necessary information regarding these programs. On December 11, 2017, Commerce issued the GOI a supplemental questionnaire in response to certain deficiencies that we identified in its initial questionnaire response, submitted on November 10, 2017.²⁰² In this supplemental questionnaire, for a second time, we requested information that had been previously requested and which the GOI had failed to provide. This information included key program procedures and guidelines necessary to conduct our analysis regarding financial contribution and specificity. Specifically, in both its initial response and supplemental response, the GOI provided insufficient information for the following programs: GOI Loan Guarantees, Status Certificate Program, Provision of Stainless Steel, Billet, and Bar by SAIL LTAR, Infrastructure Assistance for Mega Projects Under the Maharashtra Industrial Policy of 2013 and Other State Government of Maharashtra Industrial Promotion Policy to Support Mega Projects, Incremental Exports Incentive Scheme, Steel Development Funds, and ten SGAP programs.²⁰³

For the GOI Loan Guarantees program, although we requested that the GOI provide a response to the Standard Questions Appendix, the Loan Benchmark and Loan Guarantee Appendix, the GOI did not provide a response for either appendix.²⁰⁴ Thus, the record lacks any information regarding specificity and financial contribution for this program.

For the Status Certificate program, the GOI failed to provide necessary information requested by Commerce. Specifically, we requested that the GOI identify all forms of assistance provided under the program, as well as which of the respondents and cross-owned companies utilized the

¹⁹⁶ See Petitioners' Rebuttal Brief at 9.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 9-10.

¹⁹⁹ *Id.* at 10.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² See Commerce Letter to the GOI, re: Supplemental Questionnaire for Section II Questionnaire Response, dated December 11, 2017.

²⁰³ See generally GOI Supplemental Questionnaire Response.

²⁰⁴ See GOI Questionnaire Response at 113; GOI Supplemental Questionnaire Response at 80.

program.²⁰⁵ Commerce also directed the GOI to provide a completed application and approval package, information regarding the number of companies and industries receiving assistance under the program, a response to the Tax Programs Appendix, and detailed information on currency repatriation and conversion requirements.²⁰⁶ The GOI failed to provide this information and, thus, the record lacks the information necessary to determine specificity and financial contribution.

Regarding the Provision of Steel Inputs by SAIL for LTAR, the GOI failed to provide a variety of necessary information. In its initial response, the GOI provided only a brief statement that it was not involved in the decisions of SAIL, and did not submit any of the requested appendices.²⁰⁷ When Commerce requested the information a second time, the GOI again failed to fully respond to the request for information.²⁰⁸ Specifically, the GOI failed to respond to the questionnaire by making only a general statement that SAIL is not a governmental authority and failed to complete the Input Supplier Appendix as requested by Commerce's questionnaire.²⁰⁹ Without this information, Commerce lacks the evidence necessary to analyze SAIL's operations and evaluate the GOI's argument that the Provision of Steel Inputs by SAIL for LTAR is not a program that confers a benefit from the GOI because SAIL neither possesses governmental authority nor discharges any government function.²¹⁰ Additionally, the GOI failed to provide complete information related to domestic production and consumption of steel inputs, the industries that purchase such inputs, or trade publications specifying the price of such inputs.²¹¹

For the Steel Development Fund Loan program, the GOI provided only a short description of the program and did not provide any response to the Standard Questions Appendix or the Loan Benchmark and Loan Guarantee Appendix.²¹² Although the GOI indicated that the program is limited to a specific industry, thus satisfying the specificity requirement, there is not sufficient information regarding financial contribution.²¹³

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

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

²⁰⁵ *Id.* at 80-86.

²⁰⁶ *Id.*

²⁰⁷ *See* GOI Questionnaire Response at 137.

²⁰⁸ *See* GOI Supplemental Questionnaire Response at 86.

²⁰⁹ *Id.* at 30.

²¹⁰ *Id.*

²¹¹ *Id.* at 30-34.

²¹² *See* GOI Questionnaire Response at 134; GOI Supplemental Questionnaire Response at 16.

²¹³ *Id.*

The GOI does not contend that it provided complete responses to Commerce's above requests for information. Therefore, based on the above, we continue to find that the GOI withheld information that was requested of it in the time and manner requested, thereby significantly impeding the conduct of the investigation. Thus, Commerce must rely on "facts available" in making its final determination in accordance with sections 776(a)(1) and 776(a)(2)(A), (B) and (C) of the Act. Moreover, we continue to determine that the GOI failed to cooperate by not acting to the best of its ability in failing to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the programs outlined above constitute a financial contribution within the meaning of section 771(5)(D) of the Act and are specific within the meaning of sections 771(5A)(B) and 771(5A)(D) of the Act. Similarly, we are using an adverse inference to determine that SAIL is a governmental authority providing a financial contribution.

With regard to the GOI's arguments that its questionnaire response indicates that the respondents did not use the program, in order for Commerce to rely on the GOI's responses on non-use of the programs by the respondents, the GOI should have provided accurate, complete, and verifiable information to support its claim that respondents did not use the programs.²¹⁴ The current record indicates that the GOI's responses on non-use of the programs are unverifiable mere assertions with no evidence to back up its claims.²¹⁵ On multiple occasions, when asked about usage of the programs, the GOI, in fact, did not provide any information.²¹⁶ Instead, the GOI had asked Commerce to seek the information from the respondent companies.²¹⁷ Thus, Commerce is unable to rely on GOI's responses of non-use of the programs in this investigation. Finally, for the GOI's WTO-related arguments, please see Comment 1 above.

²¹⁴ See *Final Results of Countervailing Duty Administrative Review: Certain Line Paper Products from India*: 80 FR 19637 (April 13, 2015)) and accompanying IDM at 8-12.

²¹⁵ See, e.g., GOI Questionnaire Response at 7, 8, 29.

²¹⁶ *Id.*

²¹⁷ *Id.*

X. CONCLUSION

We recommend approving all of the above positions. If these 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

8/10/2018

X

James Maeder

Signed by: JAMES MAEDER

James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

APPENDIX

AFA Rate Calculation

	Program Name	AFA Rate	Source
1	Advance License Program ²¹⁸	11.95%	Highest Rate for Same/Similar Program Based on Benefit Type
2	Advance Authorization Program ²¹⁹		Highest Rate for Same/Similar Program Based on Benefit Type
3	Duty Free Import Authorization Scheme ²²⁰	14.61%	Highest Rate for Same/Similar Program Based on Benefit Type
4	Duty Drawback Program ²²¹	1.58%	Calculated - Echjay
5	Export Oriented Units - Duty-Free Import of Goods, Including Capital Goods and Raw Materials ²²²	27.75%	Highest Rate for Same/Similar Program Based on Benefit Type
6	Export Oriented Units - Reimbursements of Central Sales Tax Paid on Goods Manufactured in India ²²³		Highest Rate for Same/Similar Program Based on Benefit Type
7	Export Oriented Units - Duty Drawback on Fuel Procured from Domestic Oil Companies ²²⁴		Highest Rate for Same/Similar Program Based on Benefit Type
8	Export Oriented Units - Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area ²²⁵		Highest Rate for Same/Similar Program Based on Benefit Type
9	Export Promotion of Capital Goods Scheme ²²⁶	16.63%	Highest Rate for Same/Similar Program Based on Benefit Type

²¹⁸ See *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) and accompanying Issues and Decision Memorandum at 19.

²¹⁹ *Id.*

²²⁰ See *PET Resin from India* at 27.

²²¹ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination*, 81 FR 49932 (July 29, 2016) and accompanying Issues and Decision Memorandum (*Cold-Rolled Steel from India*) at 10.

²²² See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Countervailing Duty Determination*, 82 FR 58172 (December 11, 2017) and accompanying Issues and Decision Memorandum at 10 (*Cold-Drawn Mechanical Tubing from India*).

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ See *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) and accompanying Issues and Decision Memorandum (*Steel Pipe from India*) at 16. Pursuant to the established hierarchy to select AFA rates, Commerce applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical

10	Merchandise Exports from India Scheme ²²⁷	2.30%	Calculated - Echjay
11	Interest Equalization Scheme ²²⁸	0.71%	Calculated - Echjay
12	Status Holder Incentive Scheme ²²⁹	0.28%	Calculated - Echjay
13	Pre-Shipment and Post-Shipment Export Financing ²³⁰	2.90%	Highest Rate for Same/Similar Program Based on Benefit Type
14	Market Development Assistance Scheme ²³¹	16.63%	Highest Rate for Same/Similar Program Based on Benefit Type
15	Market Access Initiative ²³²	16.63%	Highest Rate for Same/Similar Program Based on Benefit Type
16	Focus Product Scheme ²³³	2.00%	Highest Rate for Same/Similar Program Based on Benefit Type
17	GOI Loan Guarantees ²³⁴	2.90%	Highest Rate for Same/Similar Program Based on Benefit Type
18	Status Certificate Program ²³⁵	2.90%	Highest Rate for Same/Similar Program Based on Benefit Type
19	Income Deduction Program (80-IB Tax Program) ²³⁶	30.00%	Highest Rate for Same/Similar Program Based on Benefit Type
20	Special Economic Zones - SEZ Income Tax Exemption ²³⁷		Highest Rate for Same/Similar Program Based on Benefit Type
21	Special Economic Zones - Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material ²³⁸	0.53%	Highest Rate for Same/Similar Program Based on Benefit Type

program and the rate is not zero. Because the rate calculated for Echjay for this program is now zero, we have used the highest non-*de minimis* rate calculated for the same/similar program in a CVD proceeding involving the same country.

²²⁷ See *Cold-Drawn Mechanical Tubing from India* at 12.

²²⁸ See *Carbon Steel Flanges from India* at 9.

²²⁹ See *Fine Denier Polyester Staple Fiber from India: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 51387 (November 6, 2017) and accompanying Issues and Decision Memorandum (*Staple Fiber from India*) at 14.

²³⁰ See *Carbon Steel Flanges* at 9.

²³¹ See *PET Resin from India* at 26.

²³² See *Certain Lined Paper Products from India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 79 FR 60447 (October 7, 2014) and accompanying Issues and Decision Memorandum at 16.

²³³ See *PET Resin from India* at 26.

²³⁴ *Id.* at 25.

²³⁵ See *Steel Pipe from India* at 21.

²³⁶ See *PET Resin from India* at 26.

²³⁷ *Id.*

²³⁸ *Id.* at 25.

22	Special Economic Zones - Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit ²³⁹	0.21%	Highest Rate for Same/Similar Program Based on Benefit Type
23	Special Economic Zones - Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material ²⁴⁰	1.23%	Highest Rate for Same/Similar Program Based on Benefit Type
24	Special Economic Zones - Service Tax Exemption ²⁴¹	0.07%	Highest Rate for Same/Similar Program Based on Benefit Type
25	Special Economic Zones - Exemption from Payment of Local Government Taxes and Duties, Such as Sales Tax and Stamp Duties ²⁴²	3.09%	Highest Rate for Same/Similar Program Based on Benefit Type
26	Special Economic Zones - Steel Development Funds Loans ²⁴³	0.99%	Highest Rate for Same/Similar Program Based on Benefit Type
27	Provision of Stainless Steel, Billet, and Bar by SAIL for Less Than Adequate Remuneration (LTAR) ²⁴⁴	16.14%	Highest Rate for Same/Similar Program Based on Benefit Type
28	Incremental Exports Incentive Scheme ²⁴⁵	0.39%	Highest Rate for Same/Similar Program Based on Benefit Type
29	State Government of Andhra Pradesh (SGAP) Subsidy Programs - Grant Under the Industrial Investment Promotion Policy: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas ²⁴⁶	6.06%	Highest Rate for Same/Similar Program Based on Benefit Type
30	SGAP Subsidy Programs - Grant Under the Industrial Investment Promotion Policy: Reimbursement of Power at the Rate of Rs. 0.75 per Unit ²⁴⁷	6.06%	Highest Rate for Same/Similar Program Based on Benefit Type

²³⁹ *Id.* at 26.

²⁴⁰ *Id.* at 25.

²⁴¹ *See Hot-Rolled Steel from India 2009* at 19.

²⁴² *See PET Resin from India* at 25.

²⁴³ *See Steel Pipe from India.*

²⁴⁴ *Id.* at 25.

²⁴⁵ *See Staple Fiber from India* at 25.

²⁴⁶ *See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) and accompanying Issues and Decision Memorandum at D.

²⁴⁷ *Id.*

31	SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy for Expenses Incurred for Quality Certification ²⁴⁸	6.06%	Highest Rate for Same/Similar Program Based on Benefit Type
32	SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy on Expenses Incurred in Patent Registration ²⁴⁹	6.06%	Highest Rate for Same/Similar Program Based on Benefit Type
33	SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 25- or 35-Percent Subsidy in Cleaner Production Measures ²⁵⁰	6.06%	Highest Rate for Same/Similar Program Based on Benefit Type
34	SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages ²⁵¹	3.09%	Highest Rate for Same/Similar Program Based on Benefit Type
35	SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: Reimbursement on VAT, CST, and State Goods and Services Tax ²⁵²	3.09%	Highest Rate for Same/Similar Program Based on Benefit Type
36	SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: Exemption from SGAP Non-Agricultural Land Assessment ²⁵³	3.09%	Highest Rate for Same/Similar Program Based on Benefit Type
37	SGAP Subsidy Programs - Provision of Goods and Services for LTAR under the Industrial Investment Promotion Policy: Provision of Infrastructure for Industries Located More than 10 Kilometers from Existing Industrial Estates or Development Areas ²⁵⁴	18.08%	Highest Rate for Same/Similar Program Based on Benefit Type

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

38	SGAP Subsidy Programs - Provision of Goods and Services for LTAR under the Industrial Investment Promotion Policy: Guaranteed Stable Water Prices and Reservation of Municipal Water ²⁵⁵	18.08%	Highest Rate for Same/Similar Program Based on Benefit Type
39	State Government of Maharashtra (SGOM) Subsidy Programs - SGOM Sales Tax Program ²⁵⁶	0.05%	Calculated - Echjay
40	SGOM Subsidy Programs - Infrastructure Assistance for Mega Projects under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects ²⁵⁷	6.06%	Highest Rate for Same/Similar Program Based on Benefit Type
41	SGOM Subsidy Programs - Subsidies for Mega Projects under the Package Scheme of Incentives ²⁵⁸	0.95%	Highest Rate for Same/Similar Program Based on Benefit Type
42	SGOM Subsidy Programs – Special Capital Incentive Under Package Scheme of Incentives 1988 Scheme ²⁵⁹	0.95%	Highest Rate for Same/Similar Program Based on Benefit Type
	Total	256.16%	

²⁵⁵ *Id.*

²⁵⁶ *See PET Resin from India* at 26.

²⁵⁷ *Id.*

²⁵⁸ *See Cold-Rolled Steel from India* at 10.

²⁵⁹ *Id.*