



C-533-882
Investigation
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DATE: November 5, 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 Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination of the Countervailing Duty Investigation of Large
Diameter Welded Pipe from India

I. SUMMARY

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

Issues

- Comment 1: Whether Commerce Properly Applied Adverse Facts Available (AFA) in the Preliminary Determination.
- Comment 2: Whether Commerce Should Continue to Find the AAP, DDP, EPCG, and MEIS Programs Countervailable

II. BACKGROUND

A. Case History

On June 29, 2018, Commerce published its *Preliminary Determination* for this investigation.¹ The selected mandatory respondents in this investigation are Bhushan Steel (Bhushan) and Welspun Trading Limited (Welspun). In the *Preliminary Determination*, we aligned the final countervailing duty (CVD) determination with the final determination in the companion antidumping duty (AD) investigation, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4).

As noted in the *Preliminary Determination*, Bhushan and Welspun did not respond to Commerce's initial questionnaire. The GOI, however, submitted an initial questionnaire response (IQR) in which it claimed non-use for one or both of the mandatory respondents for 70 out of 71 of the programs under investigation, and provided certain non-use evidence for 11 of those programs.²

After the *Preliminary Determination*, on July 12, 2018, we issued a supplemental questionnaire to the GOI.³ On August 2, 2018, the GOI submitted its supplemental questionnaire response (SQR).⁴

On August 15, 2018, American Cast Iron Pipe Company, Berg Steel Pipe Corp./Berg Spiral Pipe Corp., Dura-Bond Industries, Skyline Steel, Stupp Corporation, Greens Bayou Pipe Mill, LP, JSW Steel (USA) Inc., and Trinity Products LLC (collectively, the petitioners), submitted comments on the GOI's SQR.⁵ On August 20, 2018, Commerce issued a second supplemental questionnaire to the GOI, and on August 27, 2018, the GOI submitted its second supplemental questionnaire response.⁶

¹ See *Large Diameter Welded Pipe from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 30690 (June 29, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² *Id.* at 2; GOI's Letter, "Large Diameter Welded Pipe from India CVD Investigation: Initial Questionnaire Response on behalf of Government of India (GOI)," dated May 2, 2018 (GOI IQR).

³ See Commerce's Letter, "Countervailing Duty Investigation of Large Diameter Welded Pipe from India: Supplemental Questionnaire for the Government of India," dated July 12, 2018 (Commerce Supplemental Questionnaire).

⁴ See GOI's Letter, "Large Diameter Welded Pipe from India- CVD Investigation: Response to Supplementary Questionnaire by Government of India," dated August 2, 2018 (GOI's SQR).

⁵ See Petitioners' Letter, "Large Diameter Welded Pipe from India: Comments on the GOI's Supplemental Questionnaire Response," dated August 14, 2018 (the Petitioners' Comments to GOI's SQR).

⁶ See Commerce's Letter, "Countervailing Duty Investigation of Large Diameter Welded Pipe from India: Supplemental Questionnaire for Government of India," dated August 20, 2018 (Commerce Second SQ); *see also* GOI's Letter, "Large Diameter Welded Pipe from India- CVD Investigation: Response to additional information required in QR filed by Government of India," dated August 27, 2018 (Second SQR).

On September 6, 2018, the GOI submitted a case brief,⁷ and on September 11, 2018, the petitioners submitted a rebuttal case brief.⁸ No other interested parties submitted case or rebuttal briefs.

B. Period of Investigation

The period of investigation (POI) is January 1, 2017, through December 31, 2017.

III. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall select from “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁹ Further, section 776(b)(2) of the Act states that an adverse inference in selecting from the facts otherwise available may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.¹⁰

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at

⁷ See GOI’s Letter, “Large Diameter Welded Pipe from India - CVD Investigation: Case Brief by Government of India,” dated September 6, 2018 (GOI Case Brief). We note that in its case brief, the GOI requested a hearing with Commerce, however, this request was untimely, pursuant to 19 CFR 351.310(c), as hearing requests were due 30 days after the publication of the *Preliminary Determination*, on July 30, 2018.

⁸ See Petitioners’ Letter, “Large Diameter Welded Pipe from India: Rebuttal Brief of Petitioners,” dated September 11, 2018 (the Petitioners’ Rebuttal Brief).

⁹ See section 776(b)(1)(B) of the Act.

¹⁰ See also 19 CFR 351.308(c).

its disposal.¹¹ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹²

Finally, under section 776(d) of the Act, when drawing an adverse inference in selecting from the facts otherwise available, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.¹³ When selecting from the facts otherwise available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.¹⁴

A. *Application of Total AFA to Non-Responsive Companies: Bhushan and Welspun*

As explained in the *Preliminary Determination*, Bhushan and Welspun were initially selected as mandatory respondents but did not respond to Commerce’s initial CVD questionnaire. As a result, for the final determination, we continue to rely on facts otherwise available, in accordance with section 776(a) of the Act, because (1) necessary information is not available on the record, (2) Bhushan and Welspun withheld necessary information requested by Commerce, and (3) Bhushan and Welspun significantly impeded the investigation. Thus, we must rely on facts otherwise available in accordance with sections 776(a)(1) and 776(a)(2)(A) and (C) of the Act in determining the estimated net countervailable subsidy rate for Bhushan and Welspun.

In selecting from among the facts otherwise available, Commerce continues to determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. Bhushan and Welspun did not submit a response to Commerce’s initial CVD questionnaire. For these reasons, we find that Bhushan and Welspun failed to cooperate by not acting to the best of their ability to comply with Commerce’s request for information in this investigation pursuant to section 776(b)(1) of the Act.

There are 71 programs under investigation. The GOI provided sufficient information concerning the countervailability of six programs, as explained in the “Programs Determined to Be Countervailable” section below. Consistent with the *Preliminary Determination*, Commerce is continuing to find that these six programs are specific and that the GOI provided a financial contribution, and we have included these programs in the final determination of the AFA rate. Regarding the remaining 65 programs under investigation, in the *Preliminary Determination*, Commerce found that the GOI’s IQR failed to provide information regarding key program procedures and guidelines. Thus, the record contained limited information regarding financial contribution and specificity with respect to these programs.¹⁵ Commerce has not made any

¹¹ See also 19 CFR 351.308(d).

¹² See Statement of Administrative Action (SAA) Accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. 103-316, Vol. 1 (1994) at 870.

¹³ See section 776(d)(1) of the Act.

¹⁴ See section 776(d)(3) of the Act.

¹⁵ See *Preliminary Determination* and accompanying PDM at 5-8.

changes to its determination in the *Preliminary Determination* to use facts otherwise available and AFA with respect to these 65 programs, as explained in the “Application of AFA: GOI” section below. Accordingly, as AFA, Commerce finds that Bhushan and Welspun used all 71 programs under investigation during the POI. As such, we selected an AFA rate for each of these programs pursuant to the hierarchy set out below and included them in the determination of the estimated net countervailable subsidy rate for Bhushan and Welspun for this final determination.

B. Application of AFA: GOI Response

In the *Preliminary Determination*, Commerce found that the GOI failed to provide information regarding key program procedures and guidelines necessary to our analysis regarding financial contribution and specificity with respect to most of the programs under investigation. Specifically, the GOI provided insufficient information for the following programs: Duty Free Import Authorization Scheme, Focus Product Scheme, Income Deduction Program (80-IB Tax Program), Status Holders Incentive Scheme (SHIS), Incremental Exports Incentive Scheme, seven Special Economic Zones (SEZs) programs, four Subsidies for Export Oriented Units programs, Market Development Assistance Scheme (MAIS), Market Access Initiative, Interest Equalization Scheme, Government of India Loan Guarantees, Steel Development Fund Loans (SDF), Provision of High-Grade Iron Ore for Less Than Adequate Remuneration (LTAR), Provision of Hot-Rolled Steel by the Steel Authority of India (SAIL) for LTAR, Provision of Captive Mining Rights for Coal and Iron Ore, Provision of Cut-To-Length (CTL) Plate for LTAR, three State Government of Uttar Pradesh (SGUP) programs, eleven State Government of Maharashtra (SGOM) programs, ten State Government of Andhra Pradesh (SGAP) Subsidy programs, two Andhra Pradesh Industrial Investment Corporation programs, five State Government of Gujarat (SGOG) programs, and eight State Government of Karnataka (SGOK) Industrial Policy Programs (KIP).¹⁶

Therefore, we determine that the GOI withheld information that was requested of it, thereby significantly impeding the conduct of the investigation. Thus, we must rely on “facts available” in making our determination in accordance with sections 776(a)(2)(A), (B), (C) and (D) of the Act. Moreover, we 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 applying AFA, we find based on the available record information¹⁷ 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) of the Act. Similarly, based on AFA, we determine that SAIL is a government authority providing a financial contribution.¹⁸ While most of these programs have been countervailed in prior cases, in this instance, we are relying on AFA for the programs identified above because the GOI has not cooperated to the best of its ability. For further discussion of our AFA determination regarding the GOI’s questionnaire responses,

¹⁶ See generally GOI IQR.

¹⁷ See Petitioners’ Letter, “Large Diameter Welded Pipe from Canada, Greece, India, the People’s Republic of China, the Republic of Korea, and the Republic of Turkey: Petitions for the Imposition of Antidumping and Countervailing Duties,” dated January 17, 2018 (Petition), at Volume 5 of the Petition at 1-115.

¹⁸ See Petition at Volume I of the Petition, and at Exhibit CVD-IN-28.

see Comment 1 below.

C. *Calculation of AFA Rates for Bhushan and Welspun*

It is Commerce's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.¹⁹ When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a countervailable duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.²⁰ Accordingly, when selecting AFA rates, if we have cooperating respondents, 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 that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).²¹ If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company-specific program in a CVD case involving the same country that the company's industry could conceivably use.²²

Commerce's methodology is consistent with Section 502 of the Trade Preferences Extension Act of 2015 (TPEA), which the President of the United States signed into law on June 29, 2015. Section 502 of the TPEA added new subsection (d) to section 776 of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, Commerce may (i) use a countervailable subsidy rate applied for the same

¹⁹ See, e.g., *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975-76 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum (IDM) at "Application of Facts Available, Including the Application of Adverse Inferences"); see also *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

²⁰ 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 China*), and accompanying IDM at 13-14; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

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

²² See *Shrimp from China* at 13-14.

or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce's existing practice of using an AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."²³ No legislative history accompanied this provision of the TPEA. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

We find that the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: 1) Commerce may apply its hierarchy methodology and 2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.²⁴

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."²⁵ Further, "in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin."²⁶ It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.²⁷

²³ See Section 776(d)(2) of the Act.

²⁴ This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B). Under that provision, "any dumping margin from any segment of the proceeding under the applicable antidumping order" may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

²⁵ See SAA at 870; see also *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012) (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*De Cecco*) (finding that "the purpose of the adverse facts statute is 'to provide respondents with an incentive to cooperate' with Commerce's investigation, not to impose punitive damages.")).

²⁶ See *De Cecco*, 216 F.3d at 1032.

²⁷ Commerce has adopted a practice of applying its hierarchy in CVD cases. See e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Carbon Steel Flanges from India*), and accompanying IDM at 28-31 (applying the AFA hierarchical methodology within the

In applying its AFA hierarchy in CVD investigations, Commerce's goal is as follows: In the absence of necessary information from cooperative respondents, Commerce is seeking to find a rate that is a relevant indicator of how much the government of the country under investigation is likely to subsidize the industry at issue, through the program at issue, while inducing cooperation. Accordingly, in sum, the three factors that Commerce takes into account in selecting a rate are: 1) the need to induce cooperation, 2) the relevance of a rate to the industry in the country under investigation (*i.e.*, can the industry use the program from which the rate is derived), and 3) the relevance of a rate to a particular program, though not necessarily in that order of importance.

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a "pool" of available rates that Commerce can rely upon for purposes of identifying an AFA rate for a particular program. In investigations for example, this "pool" of rates could include the rates for the same or similar programs used in either that same investigation, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among that "pool" of rates; rather, it adopts the factors identified above of cooperation inducement, relevancy to the industry and to the particular program.

Under the first step of Commerce's investigation hierarchy, Commerce applies the highest non-zero rate calculated for a cooperating company for the identical program in the investigation. Under this step, we will even use a *de minimis* rate as AFA if that is the highest rate calculated for another cooperating respondent in the same industry for the same program.

However, if there is no identical program match within the investigation, or if the rate is zero, then Commerce will shift to the second step of its investigation hierarchy, and either apply the highest non-*de minimis* rate calculated for a cooperating company in another countervailing duty proceeding involving the same country for the identical program, or if the identical program is not available, for a similar program. This step focuses on the amount of subsidies that the government has provided in the past under the investigated program. The assumption under this step is that the non-cooperating respondent under investigation uses the identical program at the highest above *de minimis* rate of any other company using the identical program.

Finally, if no such rate exists, under the third step of Commerce's investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any non-

context of CVD investigation); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. *See, e.g., Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.²⁸

In all three steps of Commerce's AFA investigation hierarchy, if Commerce were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the "reward" for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce's investigation AFA hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.²⁹

Furthermore, we find that section 776(d)(2) applies as an exception to the selection of AFA rate under 776(d)(1); that is, after "an evaluation of the situation that resulted in the application of an adverse inference," Commerce may decide that given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate.

In applying AFA to Bhushan and Welspun, we are guided by Commerce's methodology detailed above. As there are no program-specific above-zero rates determined for cooperating respondents in the investigation, we are applying the highest non-*de minimis* subsidy rate calculated for the same or, if lacking such rate, for a similar program in an India CVD investigation or administrative review. For this final determination, we are able to match, based on program name, description, and treatment of the benefit, the following programs to identical or similar programs from other India CVD proceedings:

1. Advance License Program (ALP)
2. Advance Authorization Program (AAP)
3. Duty Free Import Authorization Scheme (DFIA)
4. Duty Drawback Program (DDP)
5. Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Square Parts, and Packing Materials
6. Reimbursements of Central Sales Tax (CST) Paid on Goods Manufactured in India
7. Duty Drawback on Fuel Procured from Domestic Oil Companies

²⁸ In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

²⁹ It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. See, e.g., *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying IDM at 2 ("As AFA in the instant case, the Department is relying on the highest calculated final subsidy rates for income tax, VAT and policy lending programs of the other producer/exporter in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did not receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed..."). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as AFA under its hierarchy.

8. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area
9. Export Promotion of Capital Goods Scheme (EPCG)
10. Merchandise Exports from India Scheme (MEIS)
11. Interest Equalization Scheme for Export Financing
12. Status Holders Incentive Scheme (SHIS)
13. Pre-Shipment and Post-Shipment Export Financing
14. Market Development Assistance Scheme
15. Market Access Initiative
16. Focus Product Scheme (FPS)
17. GOI Loan Guarantees
18. Status Certificate Program (SCP)
19. Income Deduction Program (80-IB Tax Program)
20. SEZ Income Tax Exemption
21. Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
22. Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
23. Exemption from Electricity Duty and Cess (a tax or levy) on Electricity Supplied to a SEZ Unit
24. Special Economic Zones - Service Tax Exemption
25. Exemption from Payment of Local Government Taxes and Duties, Such as Sales Tax and Stamp Duties
26. Steel Development Fund Loans
27. Provision of Hot-Rolled Steel by the Steel Authority of India for LTAR
28. Provision of Captive Mining Rights for Iron Ore
29. Provision of Captive Mining Rights for Coal
30. Provision of High-Grade Iron Ore for LTAR
31. Provision of Cut-to-Length Plate for LTAR
32. Incremental Exports Incentive Scheme
33. State Government of Andhra Pradesh (SGAP) Grant Under the Industrial Investment Promotion Policy: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas
34. SGAP Grant Under the Industrial Investment Promotion Policy: Reimbursement of Power at the Rate of Rs. 0.75 per Unit
35. SGAP Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy for Expenses Incurred for Quality Certification
36. SGAP Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy on Expenses Incurred in Patent Registration
37. SGAP Grant under the Industrial Investment Promotion Policy: 25- or 35-Percent Subsidy in Cleaner Production Measures
38. SGAP 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
39. SGAP Tax Incentives under the Industrial Investment Promotion Policy:

- Reimbursement on VAT, CST, and State Goods and Services Tax
40. SGAP Tax Incentives under the Industrial Investment Promotion Policy: Exemption from SGAP Non-Agricultural Land Assessment
 41. SGAP 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
 42. SGAP Provision of Goods and Services for LTAR under the Industrial Investment Promotion Policy: Guaranteed Stable Water Prices and Reservation of Municipal Water
 43. Andhra Pradesh Industrial Investment Corporation's Allotment of Land for LTAR
 44. Andhra Pradesh Industrial Investment Corporation's Provision of Infrastructure
 45. State Government of Maharashtra (SGOM) Sales Tax Program
 46. SGOM Infrastructure Assistance for Mega Projects under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects
 47. SGOM Subsidies for Mega Projects under the Package Scheme of Incentives
 48. SGOM VAT Refunds under the SGOM Package Scheme of Incentives
 49. SGOM Electricity Duty Exemptions
 50. SGOM Waiving of Loan Interest by the State Industrial and Investment Corporation of Maharashtra Ltd.
 51. SGOM Investment Subsidies
 52. SGOM Royalty Refund on Purchase of Minerals from Mine Owners within the SGOM for a Period of Five Years
 53. SGOM Micro, Small and Medium Manufacturing Enterprise Subsidies
 54. SGOM Waiver of Stamp Duty
 55. SGOM Provision of Land for LTAR
 56. State Government of Gujarat's (SGOG's) Exemptions and Deferrals on Sales Tax for Purchases of Goods
 57. SGOG's VAT Remission Scheme Established on April 1, 2006
 58. SGOG's Special Economic Zone Act (SGOG SEZ Act): Stamp Duty and Registration Fees for Land Transfers, Loan Agreements, Credit Deeds, and Mortgages
 59. SGOG SEZ Act: Sales Tax, Purchase Tax, and Other Taxes Payable on Sales and Transactions
 60. SGOG SEZ Act: Sales and Other State Taxes on Purchases of Inputs (Both Goods and Services) for the SEZ or a Unit within the SEZ
 61. State Government of Karnataka (SGOK) Industrial Policy (KIP) Tax Incentives
 62. KIP Provision of Land for LTAR
 63. KIP Provision of Iron Ore for LTAR
 64. KIP Provision of Power/Electricity for LTAR
 65. KIP Provision of Water for LTAR
 66. KIP Provision of Roads and Port Facility Infrastructure for LTAR
 67. KIP Loans
 68. KIP Grants
 69. State Government of Uttar Pradesh (SGUP) Exemption from Entry Tax for the Iron and Steel Industry
 70. SGUP Long-Term Interest Free Loans Equivalent to the Amount of VAT and CST Paid

71. SGUP's Interest Free Loans Under the SGUP Industrial Development Promotion Rules 2003

Accordingly, we determine the AFA countervailable subsidy rate for Bhushan and Welspun to be 541.15 percent *ad valorem*. The appendix to this memorandum contains a chart summarizing our calculation of this rate.

D. *Corroboration of AFA Rate*

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”³⁰ The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.³¹

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.³² Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.³³

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.³⁴

In the absence of responses from Bhushan and Welspun concerning the alleged programs, due to their decision not to participate in this investigation, Commerce reviewed the information concerning Indian subsidy programs in this and other cases.³⁵ Where we have a program-type

³⁰ See SAA at 870.

³¹ *Id.*

³² *Id.* at 869-870.

³³ See section 776(d)(3) of the Act.

³⁴ See, e.g., *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017) (*Silica Fabric from China*), and accompanying IDM at 14 (citing *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996)).

³⁵ Specifically, Commerce examined information in the Petition regarding each alleged program and compared its description with that of programs examined in other cases. See Petition at Volume V and memorandum,

match, we find that, because these are the same or similar programs, they are relevant to the programs in this case. Additionally, the relevance of the rates applied is that they are actual calculated CVD rates for GOI programs, from which Bhushan and Welspun could actually receive a benefit. Due to the lack of participation by Bhushan and Welspun and their failure to provide a response concerning each of these programs, Commerce has corroborated the rates it selected to use as AFA to the extent practicable for this final determination.

IV. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

In the *Preliminary Results*, Commerce found the programs listed below to be countervailable, based on information submitted by the GOI in its IQR. Specifically, we found that the GOI provided information that supports a finding that the following six programs are specific and constitute a financial contribution.³⁶

We have not made any changes to our *Preliminary Determination* that the six programs listed below are countervailable. Specifically, we continue to find that the AAP/ALP, DDP, MEIS and EPCG programs confer a financial contribution under section 771(5)(D)(ii) of the Act, and that the SCP and Pre-Shipment and Post-Shipment Export Financing a financial contribution under section 771(5)(D)(i) of the Act. We also find these six programs to be specific under section 771(5A)(B) of the Act. For a full description and analysis regarding these programs, see the *Preliminary Determination*.³⁷ Additionally, for further discussion of our final countervailability determination with regards to the AAP, DDP, MEIS and EPCG programs, *see* Comment 2 below.

1. Advance Authorization Program (AAP)/Advanced License Program (ALP)
2. Duty Drawback Program (DDP)
3. Merchandise Export from India Scheme (MEIS)
4. Status Certificate Program (SCP)
5. Export Promotion of Capital Goods Scheme (EPCG)
6. Pre-Shipment and Post-Shipment Export Financing

As described above, we made no changes to our *Preliminary Determination* with respect to the methodology used to calculate the AFA rates for the above programs. *See* the chart in the appendix to this memorandum for the AFA rates we have calculated for these six programs.

B. Non-Use Information Submitted by the GOI

As stated above, Bhushan and Welspun did not respond to Commerce's initial questionnaire. The GOI did submit its IQR, in which it claimed non-use for one or both of the mandatory

"Enforcement and Compliance, Office of AD/CVD Operations Countervailing Duty Investigation Initiation Checklist," dated February 9, 2018 (CVD Initiation Checklist).

³⁶ *Preliminary Determination* and accompanying PDM at 13-19.

³⁷ *Id.*

respondents for 70 out of 71 of the programs under investigation. Out of the 71 programs, Commerce found that the GOI provided some form of non-use evidence for 11 of those programs.³⁸ In *Lined Paper from India*,³⁹ as in this case, the mandatory company respondents were uncooperative, but the GOI provided a response to our CVD questionnaire, which included claims of non-use of certain programs. In that case, we stated that if the foreign government provides complete, verifiable, positive evidence, we will consider certain types of information in determining whether a non-cooperating mandatory respondent (including their cross-owned affiliates) used a subsidy program.⁴⁰ Consistent with *Lined Paper from India*,⁴¹ Commerce issued the GOI a supplemental questionnaire after the *Preliminary Determination*, asking the GOI substantiate its claims that Bhushan, Welspun, or any of their cross-owned companies, did not use the following 11 programs:

1. Advance Authorization Program (AAP)/Advance License Program (ALP)
2. Duty Drawback Program (DDP)
3. Duty Free Import Authorization Scheme (DFIA)
4. Export Promotion of Capital Goods Scheme (EPGG)
5. Focus Product Scheme (FPS)
6. GOI Loan Guarantees
7. Status Certificate Program (SCP)
8. State Government of Gujarat (SGOG) VAT Remission Scheme Established on April 1, 2006
9. State Government of Maharashtra (SGOM) Subsidies Under the Package Scheme of Incentives
10. Status Holders Incentive Scrip (SHIP)
11. Pre-Shipment and Post-Shipment Export Financing

As evidence, we asked the GOI to provide complete and verifiable documentation/records which the GOI maintains in its normal course of business (*e.g.*, GOI accounting records, GOI company-specific files, databases, budget authorizations, *etc.*).⁴² In its SQR, the GOI states that Welspun informed the GOI that the following companies are their cross-owned companies: Welspun Trading Ltd., Welspun Corp Ltd., and Welspun Wasco Coating Pvt Ltd.⁴³ Below we discuss the information submitted by the GOI in support of its non-use claim for each of the 11 programs.

1. Advance Authorization Program (AAP)/Advance License Program (ALP)

In its IQR, the GOI stated that Welspun Corp Ltd. and Welspun Wasco Coatings Pvt Ltd. received assistance from this program.⁴⁴ The GOI submitted its current *Foreign Trade Policy 2015 - 2020 (FTP 2015 - 2020)*, a publication by the GOI containing laws relating to the

³⁸ *Id.*

³⁹ See *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review*; Calendar Year 2012, 80 FR 19637 (April 13, 2015) (*Lined Paper from India Final*), and accompanying IDM.

⁴⁰ *Id.* at 1-2, 8-13.

⁴¹ *Id.* at 1-2.

⁴² See Commerce Supplemental Questionnaire at 3-5.

⁴³ See GOI SQR at Question 2.

⁴⁴ See GOI IQR at 7-8 and Annexure-2.

specified years, to show the laws and regulations relating to the AAP program and an Excel sheet with the maximum import authorizations allowed to Welspun Wasco Coatings Pvt Ltd. and Welspun Corp Ltd.⁴⁵ However, the GOI did not provide any information concerning whether Welspun, Bhushan Steel or their possible cross-owned companies received benefits under this program.

As evidence that Bhushan did not receive assistance under this program during the POI, in its SQR, the GOI submitted a print out of a data query from the Central Server of National Informatics Center (NIC) showing AAP authorizations for Welspun Wasco Coatings Pvt Ltd. and Welspun Corp Ltd.; however, the NIC data did not show the company names that the GOI searched for in the query (*i.e.*, the AAP search results do not include Bhushan, but the query itself also does not identify Bhushan or any other company name in the search parameters).⁴⁶ Therefore, there is no way of knowing if the search results could have included results for all mandatory respondents and their possible cross-owned companies. Therefore, we find that the evidence provided does not constitute complete, verifiable, and positive evidence that none of the companies under investigation (Bhushan, Welspun, and their respective cross-owned companies) received assistance under this program. Accordingly, based on the information provided and as further discussed below in Comment 1, we find that the GOI did not provide sufficient information to show non-use for the mandatory respondents and any of their cross-owned companies, and thus we continue to include this program in the AFA rate to be applied to both mandatory respondents.

2. Duty Free Import Authorization Scheme (DFIA)

In its IQR, the GOI claimed that none of the mandatory respondents received any assistance under this scheme. To support this claim, the GOI submitted the *FTP 2015 - 2020*, to show the laws and regulations relating to the DFIA scheme.⁴⁷

As evidence that neither of the mandatory respondents received assistance under this program, in its SQR, the GOI submitted a print out of a data query from the NIC showing no results for this program.⁴⁸ As stated above, however, the company names used in the NIC search parameters are unclear, and so the data results for the search are also unclear. Therefore, there is no way of knowing if the data query could have included results for the mandatory respondents and their possible cross-owned companies. Additionally, the NIC query combines the DFIA scheme together with the AAP scheme, and there is no way of knowing if a separate search was performed for the DFIA program. Therefore, the evidence provided does not constitute complete, verifiable, and positive evidence that none of the companies under investigation (Bhushan, Welspun and their respective cross-owned companies) received assistance under this program. Accordingly, based on the information provided and further discussed below in Comment 1, we find that the GOI did not provide sufficient information to show non-use for the mandatory respondents and any of their cross-owned companies, and thus we continue to include this program in the AFA rate to be applied to both mandatory respondents.

⁴⁵ See GOI IQR Annexure 3-4 at 101-135 and Annexure 2.

⁴⁶ See GOI SQR at Question 1 and Exhibit A.

⁴⁷ See GOI IQR at 35-36 and Annexure 3-4 at 74-76.

⁴⁸ See GOI SQR Exhibit A.

3. Duty Drawback (DDP)

In its IQR and SQR, the GOI stated that an exporter who received benefits under AAP cannot also receive benefits under DDP.⁴⁹ Therefore, according to the GOI, Welspun could not have received benefits under this program, because it received benefits under the AAP program.⁵⁰ To support its claim, the GOI provided its 2015 Central Board of Excise and Customs (CBEC) Manual and a customs notification from the GOI's Ministry of Finance.⁵¹ However, the GOI did not explain how these regulations in the CBEC manual apply to Bhushan, Welspun and their possible cross-owned companies. Therefore, the evidence provided does not constitute complete, verifiable, and positive evidence, that neither Welspun, nor its cross-owned entities, received assistance under this program. Accordingly, based on the information provided and further discussed below in Comment 1, we find that the GOI did not provide sufficient information to show non-use for Welspun, and thus we continue to include this program in the AFA rate to be applied to both mandatory respondents.

4. Export Promotion of Capital Goods (EPCG)

In its IQR, the GOI submitted the *FTP 2015 - 2020* to show the laws and regulations relating to the EPCG program and an Excel spreadsheet with Welspun Corp Ltd.'s license information.⁵² The GOI further stated that it received the information directly from the respondent, rather than relying on its own official government documents, as requested by Commerce. Consistent with Commerce's practice, where a respondent does not participate in the investigation and the government asserts non-use claims, Commerce will request the government to support its non-use claims with official government documents.⁵³ The GOI also states that the details of the export obligation should be obtained by the mandatory respondents, and if required, the GOI can cross verify the information.⁵⁴

In order to demonstrate that Bhushan did not receive benefits under this program, in its SQR, the GOI submitted a print out of a data query from the NIC showing EPCG licenses for Welspun Gujarat Stahl Rohren Ltd., and Welspun Corp Ltd; however, the data query does not indicate whether the GOI performed an EPCG license search for Bhushan.⁵⁵ Furthermore, the data makes no mention of the mandatory respondent, Welspun, and there is no way of knowing if "Welspun Trading Limited." was included in the search parameters. Furthermore, as stated above, Commerce asked the GOI to support its claims of non-use by providing complete verifiable information which is used in its normal course of business. In this instance, the GOI stated that it did not rely on official government documents, but rather collected information from Welspun

⁴⁹ See GOI IQR at 21 and GOI SQR at Question 6.

⁵⁰ See GOI IQR at 21, 25 and 29-30.

⁵¹ See GOI IQR Annexure 5 and GOI SQR Exhibit F.

⁵² See GOI IQR Annexure 2 and Annexure 3.

⁵³ See *Certain Lined Paper Products from India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 79 FR 60447 (October 7, 2014) (*Lined Paper from India Prelim*), and accompanying PDM at 16 (unchanged in *Lined Paper from India*, and accompanying IDM).

⁵⁴ See GOI IQR at 72.

⁵⁵ See GOI SQR at Exhibit A.

with regards to usage for any possible cross-owned entities. Moreover, search parameters for the NIC data results, specifically what company names were searched, are unclear. Therefore, there is no way of knowing if the data query could have included results for the mandatory respondents and their possible cross-owned companies.

Additionally, the GOI submitted a letter from the Director General of Foreign Trade (DGFT) stating that EPCG license information for all regional offices of the DGFT are stored in the DGFT Central Server.⁵⁶ The letter also states the data provided is for the “respondent companies” for the time period of January 1, 2002 – December 31, 2016. Consistent with *Lined Paper from India*, Commerce does not accept letters as a form of complete and verifiable evidence, if the letter does not describe or provide the type of records examined or elaborate on the methodology used to conduct the review of non-use,⁵⁷ as is the case for the letter provided by the DGFT. Furthermore, the letter did not address the GOI’s claims of non-use for Bhushan and its possible cross-owned companies. Therefore, we find that the evidence provided does not constitute complete, verifiable, and positive evidence that any of the companies under investigation (Bhushan, Welspun, and their respective cross-owned companies) received assistance under this program. Accordingly, based on the information provided and further discussed below in Comment 1, we find that the GOI did not provide sufficient information to show non-use for Welspun and Bhushan, and thus we continue to include this program in the AFA rate to be applied to both mandatory respondents.

5. Focus Product Scheme (FPS)

In its IQR, the GOI claims that the FPS is discontinued and submitted the *FTP 2015 - 2020* as evidence; however, the *FTP 2015 - 2020* does not contain any information on FPS or its discontinuation.⁵⁸ To clarify, Commerce issued a supplemental response, asking the GOI to substantiate its claim of discontinuation by providing citations, decrees, or regulations issued by the GOI stating that the FPS was discontinued during the POI.⁵⁹

In its SQR, the GOI states that the last date of exports for which companies can receive benefits for this program is March 31, 2015.⁶⁰ The GOI also states that its *Hand Book of Procedures 2009-2014 (HBP 2009 – 2014)* has provisions that say companies can still apply by March 31, 2018, to receive benefits; however, the GOI did not submit the *HBP 2009 – 2014* to address its claims of non-use for Bhushan, Welspun and their possible cross-owned companies.⁶¹ Furthermore, the last date a party can apply is after the POI, so a mandatory respondent could have applied for and received benefits during the POI. Therefore, we find that the evidence provided does not constitute complete, verifiable, and positive evidence that none of the companies under investigation (Bhushan, Welspun, and their respective cross-owned companies) received assistance under this program. Accordingly, based on the information provided and further discussed below in Comment 1, we find that the GOI failed to submit sufficient evidence

⁵⁶ See GOI SQR at Exhibit B.

⁵⁷ See *Lined Paper from India Prelim* and accompanying PDM at 13 (unchanged in *Lined Paper from India* and accompanying IDM).

⁵⁸ See GOI IQR at 46-47 and Annexure 3.

⁵⁹ See Commerce Supplemental Questionnaire at 3.

⁶⁰ See GOI SQR at Question 3.

⁶¹ *Id.*

to demonstrate that this program was discontinued, or to demonstrate that neither mandatory respondent or their possible cross-owned companies received benefits under this program. Furthermore, based on the GOI narrative, it appears that the mandatory respondents and their possible cross-owned companies could have applied and received benefits from this program during the POI. Therefore, we continue to include this program in the AFA rate to be applied to both mandatory respondents

6. GOI Loan Guarantees

In its IQR, the GOI claims that it does not provide loans to the private sector and provided its 2017 *General Financial Rules* to substantiate its claim.⁶² Commerce issued a supplemental questionnaire regarding this claim, asking the GOI to provide information demonstrating that the GOI did not provide any loan guarantees to Bhushan or Welspun, including any of their cross-owned companies.⁶³

In its response, the GOI provided Rule 246 of the 2005 *General Financial Rules* and Rule 277 of the 2017 *General Financial Rules*.⁶⁴ However, the General Financial Rules do not provide any company-specific GOI loan information on Bhushan and Welspun, or any of their cross-owned companies. Therefore, we find that the evidence provided does not constitute complete, verifiable, and positive evidence that none of the companies under investigation (Welspun, Bhushan, and their respective cross-owned companies) received assistance under this program. Accordingly, based on the information provided and further discussed below in Comment 1, we find that the GOI did not provide sufficient information to show non-use for the mandatory respondents and any of their cross-owned companies. Therefore, we continue to include this program in the AFA rate to be applied to both mandatory respondents

7. Pre-Shipment and Post-Shipment Export Financing

In its IQR, the GOI claimed that no benefits were granted to Bhushan and Welspun under this program because interest rates on advances have been deregulated since October 18, 1994, and interest rates are now determined by commercial banks, not by the GOI.⁶⁵ To substantiate its claim, the GOI provided the following Reserve Bank of India (RBI) circulars: *Deregulation of Interest Rates on Export Credit in Foreign Currency*, and *Rupee Export Credit Interest Rate Circular and Interest Rates on Advances Circular*.⁶⁶

In prior CVD proceedings involving India, Commerce determined that, with respect to rupee-denominated export financing, the RBI had previously capped the interest rate that commercial banks could charge on these loans. However, beginning on July 1, 2010, the RBI eliminated the interest rate cap and allowed participating commercial banks to set the interest rates for these

⁶² See GOI IQR at 86-87.

⁶³ See Commerce Supplemental Questionnaire at 4.

⁶⁴ See GOI Second SQR Exhibit 1 and Exhibit 2.

⁶⁵ See GOI IQR at 47-59.

⁶⁶ See GOI IQR at 47-59 and Annexure 11-12.

export loans based on the bank's own operating and lending costs.⁶⁷ Commerce further determined that the RBI instituted an interest subvention program for certain exporting companies, including small and medium enterprises. Banks that participated in the interest subvention program were restricted to charging an interest rate not exceeding the Benchmark Prime Lending Rate minus 4.5 percentage points on pre-shipment credit up to 270 days and post-shipment credit up to 180 days on the outstanding amount.⁶⁸ In addition, Commerce found that the RBI provided a two-percentage point interest subvention on the export loans and required the banks to completely pass on the two-percent interest subvention to small and medium enterprises.⁶⁹ This means that if the commercial bank sets the interest rate for the export at nine percent, the RBI would then provide a two-percentage point interest subvention on the loan which would be passed on to the exporter. In *Steel Threaded Rod from India*, Commerce found that the mandatory respondent, Mangal Steel Enterprises Limited, qualified and received the interest subvention during the POI.⁷⁰

In this proceeding, to determine if this program was used during the POI, Commerce issued a supplemental questionnaire asking the GOI to provide information demonstrating that the mandatory respondents and their possible cross-owned companies did benefit from the interest rate subvention replacement program.⁷¹ In its SQR, the GOI provided the RBI Master Direction Interest Rate on Advances Directions, 2016, which outlines the framework of how commercial banks charge interest on advances, but did not provide any further information on the interest rate subvention replacement program.⁷² Based on the documents provided and further discussed below in Comment 1, Commerce finds that the RBI circulars and guidelines that the GOI provided do not address the interest rate subvention replacement program. Furthermore, no information was provided that addressed the GOI claims of non-use for the mandatory respondents and their possible cross-owned companies. Therefore, we find that the evidence provided does not constitute complete, verifiable, and positive evidence that the pre-shipment and post-shipment export financing program, or its replacement, the interest subvention program, was not used by the companies under investigation (Welspun, Bhushan, and their respective cross-owned companies). Accordingly, based on the information provided and further discussed below in Comment 1, Commerce finds that the GOI did not provide sufficient information to show non-use for the mandatory respondents and any of their cross-owned companies. Therefore, we continue to include this program in the AFA rate to be applied to both mandatory respondents.

⁶⁷ See *Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) (*Threaded Rod from India*), and accompanying IDM at 10-11.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See Commerce Supplemental Questionnaire at 4.

⁷² See GOI SQR Exhibit E.

8. State Government of Gujarat (SGOG) VAT Remission Scheme Established on April 1, 2006

In its IQR, the GOI claimed that one of Welspun's cross-owned companies, Welspun Corp Ltd., received benefits under this scheme and provided information from the SGOG showing the company's identification number, the financial benefit received, and the time period of the benefit.⁷³ However, the GOI provided no evidence demonstrating that Bhushan, Welspun or any of their other possible cross-owned companies did not receive any benefits under this scheme.

In its SQR, the GOI provided a letter from the SGOG claiming that Bhushan did not receive any benefits from this scheme during the POI.⁷⁴ As stated above, Commerce does not accept letters as a form of complete and verifiable evidence, if the letter does not describe or provide the type of records examined or elaborate on the methodology used to conduct the review of non-use.⁷⁵ Additionally, the letter from SGOG did not address the GOI's claims of non-use for any possible cross-owned companies. Therefore, we find that the evidence provided does not constitute complete, verifiable, and positive evidence that Bhushan, Welspun, or any of their other cross-owned companies, did not receive assistance under this program. Accordingly, based on the information provided and further discussed below in Comment 1, Commerce finds that the GOI did not provide sufficient information to demonstrate non-use for the mandatory respondents and any of their cross-owned companies. Therefore, we continue to include this program in the AFA rate to be applied to both mandatory respondents.

9. State Government of Maharashtra (SGOM) Subsidies Under the Package Scheme of Incentives

In its IQR, the GOI claimed that Welspun did not receive any benefits under this program and provided a letter from the SGOM Directorate of Industries claiming that Welspun is not eligible to receive benefits from this program.⁷⁶ We issued a supplemental questionnaire asking the GOI to substantiate its claim that Welspun, including any of its cross-owned companies, did not use this scheme.⁷⁷

In its SQR, the GOI provided a letter from the SGOM Directorate of Industries claiming that Welspun did not receive any benefits from this scheme during the POI.⁷⁸ As discussed above, Commerce does not accept letters as a form of complete and verifiable evidence, if the letter does not describe or provide the type of records examined or elaborate on the methodology used to conduct the review of non-use.⁷⁹ Additionally, the letter does not address the GOI's claims of non-use for Welspun's possible cross-owned companies, or Bhushan's cross-owned companies. Therefore, the evidence provided does not constitute complete, verifiable, and positive evidence that Bhushan and its cross-owned companies, or Welspun and its cross-owned companies did not receive assistance under this program. Accordingly, based on the information provided and

⁷³ See GOI IQR at 98.

⁷⁴ See GOI SQR at Question 1 and Exhibit C.

⁷⁵ See *Lined Paper from India Prelim* at 13 (unchanged in *Lined Paper from India*).

⁷⁶ See GOI IQR at 89-96 and Annexure 18.

⁷⁷ See Commerce Supplemental Questionnaire at 3.

⁷⁸ See GOI SQR at Question 2 and Exhibit D.

⁷⁹ See *Lined Paper from India Prelim* at 13 (unchanged in *Lined Paper from India*).

further discussed below in Comment 1, we find that the GOI did not provide sufficient information to show non-use for the mandatory respondents and any of their cross-owned companies. Therefore, we continue to include this program in the AFA rate to be applied to both mandatory respondents.

10. Status Certificate Program (SCP)

In its IQR, the GOI stated that Bhushan received benefits under this program and provided the *FTP 2015 - 2020* to show the laws and regulations relating the SCP and an Excel spreadsheet showing Bhushan's trading house designations and certificate numbers.⁸⁰ The GOI's IQR does not mention if Welspun, its cross-owned companies, or Bhushan's cross-owned companies received benefits under this program.

In its SQR, the GOI submitted a print out of a data query from the NIC showing SCP certificate numbers for Bhushan and no SCP certificate numbers for Welspun.⁸¹ However, as stated above, the company names used in the search parameters for the NIC data results are unclear. Therefore, there is no way of knowing if the search included data for both mandatory respondents and their possible cross-owned companies. Therefore, we find that the evidence provided does not constitute complete, verifiable, and positive evidence that Welspun, its cross-owned companies, or Bhushan's cross-owned companies received assistance under this program. Accordingly, based on the information provided and further discussed below in Comment 1, we find that the GOI did not provide sufficient information to show non-use for the mandatory respondents and any of their cross-owned companies. Therefore, we continue to include this program in the AFA rate to be applied to both mandatory respondents.

11. Status Holders Incentive Scrip (SHIS)

In its IQR, the GOI claimed that the SHIS is discontinued and submitted the *FTP 2015 - 2020* as evidence; however, the *FTP 2015 - 2020* does not contain any information on SHIS or its discontinuation.⁸² To clarify, Commerce issued a supplemental response, asking the GOI to substantiate its claim of discontinuation by providing citations, decrees or regulations issued by the GOI showing that the SHIS was discontinued during the POI.⁸³

In its SQR, the GOI explains that the *FTP 2015 - 2020* does not contain SHIS information, and therefore, the SHIS program is terminated.⁸⁴ The GOI also references the *HBP 2009-2014* policy that says the last date to apply for this program is March 31, 2016, for exports made by March 31, 2013.⁸⁵ However, in prior determinations Commerce has found that SHIS import duty exemptions are solely provided for the purchase of capital goods.⁸⁶ Commerce allocates

⁸⁰ See GOI IQR Annexure 3-4 at 57-60 and Annexure 2.

⁸¹ See GOI SQR Exhibit A.

⁸² See GOI IQR Annexure 3-4.

⁸³ See Commerce Supplemental Questionnaire at 3.

⁸⁴ See GOI SQR Question 3.

⁸⁵ *Id.*

⁸⁶ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review: 2015*, 82 FR 36124 (August 3, 2017), and accompanying PDM at 9-10

non-recurring benefits over the average useful life (AUL). Even if respondents received an SHIS before the March 31, 2016 deadline to apply, they would still have received benefits for the AUL of their capital purchase, which would extend into the POI.

Based on the information provided, we find that the GOI failed to provide the necessary information needed to prove the SHIS program was discontinued and that respondents would not receive a benefit during the POI. Therefore, we find that the evidence provided does not constitute complete, verifiable, and positive evidence maintained in the ordinary course that neither Welspun and its cross-owned companies, or Bhushan and its cross-owned companies received assistance under this program. Therefore, we continue to include this program in the AFA rate to be applied to both mandatory respondents.

V. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce Properly Applied AFA in the Preliminary Determination

GOI's Arguments

- The GOI has fully cooperated in this investigation and has provided to the best of its ability all available and necessary information requested by Commerce.⁸⁷
- Applying AFA to the programs in this investigation violates Article 12.7 of the World Trade Organization's (WTO) Subsidies and Countervailing Measures (SCM) Agreement which permits the use of facts available in countervailing duty investigations. The purpose of Article 12.7 is to ensure that non-cooperating parties do not impede the investigation; it should not be used to punish non-cooperating parties by drawing adverse conclusions.⁸⁸
- In *DRAMS from Korea*,⁸⁹ the EC panel stated that Article 12.7 does not permit the investigating authority to use facts available as a punishment. Additionally, it clarified that noncooperation does not allow an investigating authority to use the information available to draw the worst possible result, and that the investigating authority cannot automatically reach a negative conclusion for the uncooperating party in the absence of additional facts, simply because the information was not provided.⁹⁰
- The GOI further argues that it provided non-use details for Market Access Initiative, Market Development Assistance Scheme, DFIA, Steel Development Funds, and Provision of High Grade Iron Ore from SAIL for Less Than Adequate Remuneration; and ineligibility details for the State Government of Andhra Pradesh (SGAP) Subsidy programs, Government of Karnataka subsidy programs and Special Economic Zones Programs.⁹¹ The GOI also states that it informed Commerce that FPS and SHIS are

(unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*; 2015, 83 FR 5612 (February 8, 2018), and accompanying IDM).

⁸⁷ See GOI Case Brief at 3.

⁸⁸ *Id.* at 3-4.

⁸⁹ *Id.* at 4 (citing Panel Report, *European Communities—Countervailing Measures on Dynamic Random Access Memory Chips from Korea*, WT/DS299/R (June 17, 2005) (*DRAMS from Korea*)).

⁹⁰ See GOI Case Brief at 4.

⁹¹ *Id.*

discontinued and that it provided utilization details for AAP/ALP, DDB, MEIS, and EPCG.⁹²

- Commerce cannot require the GOI to provide the information with the respect to third parties which are not identified by Commerce (*i.e.*, mandatory respondents and their possible cross-owned affiliates). The GOI has submitted several requests to Commerce asking it to identify the specific company names needed for this investigation. Additionally, the SCM Agreement states that an investigating authority may only examine the records of a firm if (a) the firm so agrees and (b) the Member in question is notified and does not object.⁹³

The Petitioners' Arguments

- Commerce properly applied AFA in this investigation because the mandatory respondents, Bhushan and Welspun, failed to respond to Commerce's questionnaire.⁹⁴
- Commerce properly concluded that AFA is warranted pursuant to section 776(b) of the Act because the GOI failed to cooperate by not acting to the best of its ability in providing Commerce with its requested information.⁹⁵
- In its IQR, the GOI failed to provide information regarding key program procedures and guidelines necessary (including several Standard Questions Appendices) to conduct an analysis of the financial contribution and specificity of most of the programs under investigation.⁹⁶
- The GOI largely relies on broad statements that the application of AFA is inconsistent with the WTO SCM Agreement.⁹⁷ Commerce explained in its recent final determination in the CVD investigation for *Stainless Steel Flanges from India*, that U.S. CVD laws are consistent with the United States' WTO Obligations.⁹⁸ According to the SAA, Commerce does not need to prove that facts available are the best alternative information.⁹⁹

Commerce's Position

We find that the GOI did not cooperate to the best of its ability to comply with Commerce's requests for information regarding 65 of the 71 programs under investigation. Thus, in accordance with section 776(b) of the Act, we continue to find that the application of AFA is warranted in our analysis of whether these programs provide a financial contribution and are specific. In addition, because the mandatory respondents failed to cooperate to the best of their ability in responding Commerce's information requests, we continue to find that Bhushan and

⁹² *Id.*

⁹³ *Id.* at 7.

⁹⁴ See the Petitioners' Rebuttal Brief at 3.

⁹⁵ *Id.* at 3-4.

⁹⁶ *Id.*

⁹⁷ See the Petitioners' Rebuttal Brief at 2.

⁹⁸ *Id.* at 5-6 (citing *Stainless Steel Flanges from India: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 83 FR 40748 (August 16, 2018) (*Stainless Steel Flanges from India*), and accompanying IDM at 8-15).

⁹⁹ *Id.*

Welspun used all 71 programs under investigation and have applied an AFA rate to each of these programs consistent with our CVD AFA hierarchy, as we did in the preliminary determination.

With respect to the GOI's argument that the application of AFA in this case is inconsistent with the WTO SCM Agreement, as we explained in *Carbon Steel Flanges from India*, 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."¹⁰⁰

Moreover, we disagree with the GOI's claim that certain WTO reports are relevant in this investigation. Findings of WTO reports are without effect under U.S. law "unless and until such {a report} has been adopted pursuant to the specified statutory scheme" established in the URAA.¹⁰¹ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to trump automatically the exercise of Commerce's discretion in applying the statute.¹⁰² In this regard, WTO reports do not have any power to change U.S. law or to order such a change.

Commerce also disagrees with the GOI's contention that the application of AFA was not appropriate in this instance, where the GOI failed to provide requested information with respect to the 65 programs under investigation. Here, because the GOI and the mandatory respondents did not provide the requested information, Commerce was forced to select from the facts available to replace missing information. Commerce did so in accordance with section 776(a) and 776(b) of the Act. As noted in the *Preliminary Determination*, the GOI did not provide information regarding key program procedures and guidelines necessary (including several appendices) to conduct an analysis of the financial contribution and specificity for 65 of the programs under investigation.¹⁰³ As stated above, the purpose of the application of AFA is to ensure cooperation, Commerce did not select among the facts available and apply an adverse inference to punish the GOI or the mandatory respondents, but rather to provide a remedy for their failure to cooperate.

First, with respect to the scope of the GOI's responses, we note that the GOI did not respond on behalf of all possible respondent companies, as the GOI did not properly identify all possible cross-owned companies of each mandatory respondent. In Commerce's non-use supplemental questionnaire, we asked the GOI to provide complete and verifiable documentation/records which the GOI maintains in its normal course of business for the mandatory respondents and

¹⁰⁰ See *Carbon Steel Flanges from India Final 2017* at 12-15.

¹⁰¹ See *Corus Staal BV v. United States*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), accord *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007); see also *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007).

¹⁰² See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary).

¹⁰³ See *supra* at 4-12 for the list of these 65 cases; see also *Preliminary Determination* and accompanying PDM at 5-6.

their possible cross-owned companies.¹⁰⁴ In its response, the GOI stated that Welspun had informed it that Welspun Trading Ltd., Welspun Corp Ltd., and Welspun Wasco Coating Pvt Ltd. are cross-owned companies. Thus, in its response the GOI did not rely on its own records, as directed, but rather, in responding on behalf of Welspun, relied on information provided by the company. In responding on behalf of Bhushan, the GOI did not mention, or produce any information about, Bhushan's cross-owned companies. Therefore, as an initial matter, the information provided by the GOI is insufficient, as we have no information or evidence – derived from complete and verifiable documentation/records which the GOI maintains in its normal course of business – regarding program usage by known (or possibly unknown) cross-owned companies.

Second, with respect to the nature of the documentation provided by the GOI, we note that the GOI submitted the following documents as evidence of non-use in its SQR: print outs of data queries from the NIC, a letter from DGFT, a letter from the State Government of Gujarat, a letter from the State Government of Maharashtra, the GOI *FTP 2015 – 2020* report, the Master Direction - Reserve Bank of India (Interest Rate on Advances) Directions 2016 Circular, GOI Ministry of Finance Notifications dated Oct. 31, 2016 & Sept. 21, 2017, and the GOI General Financial Rules, 2015.¹⁰⁵ In our supplemental questionnaire, we requested that the GOI provide complete and verifiable documentation/records which the GOI maintains in its normal course of business (*e.g.*, GOI accounting records, GOI company-specific files, databases, budget authorizations, *etc.*).¹⁰⁶ As explained in our supplemental questionnaire, and consistent with *Lined Paper from India*,¹⁰⁷ Commerce does not accept letters as a form of complete and verifiable evidence, if the letter does not describe or provide the type of records examined or elaborate on the methodology used to conduct the review of non-use.¹⁰⁸ Furthermore, while the GOI provided copies of policies, guidelines, and financial rules, this information did not address the GOI's claims of non-use for the mandatory respondents and possible cross-owned companies. Commerce also finds that the NIC data are unclear. The GOI provides little guidance on the search parameters of the queries, and we have no way of knowing if the results include the mandatory respondents and their possible cross-owned companies.

Finally, the GOI claims that it submitted numerous requests to Commerce for the names of the mandatory respondents' cross-owned companies and argues that Commerce cannot require it to provide information on the mandatory respondents' cross-owned companies, if Commerce does not identify the names of the companies itself.¹⁰⁹ We note that, as an initial matter, Commerce did not receive any requests from the GOI regarding the identification of cross-owned companies. Further, as clearly stated in Commerce's CVD questionnaire,¹¹⁰ the burden is on

¹⁰⁴ See Commerce Supplemental Questionnaire at 3.

¹⁰⁵ See GOI's SQR Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F, Exhibit G.

¹⁰⁶ See Commerce Supplemental Questionnaire at 3.

¹⁰⁷ See *Lined Paper from India* and accompanying IDM.

¹⁰⁸ See *Lined Paper from India Prelim* at 13 (unchanged in *Lined Paper from India*); see also Commerce Supplemental Questionnaire at 3.

¹⁰⁹ See GOI Case Brief at 7.

¹¹⁰ See Commerce's Initial CVD Questionnaire, dated March 19, 2018, at Section II page 12 ("The government is responsible for providing the information requested below for each company respondent and each of the respondent's cross-owned companies and for each trading company through which the respondent sells subject

respondents to respond on behalf of all cross-owned companies, and here both of the non-cooperative mandatory respondents and the GOI failed to do so. Furthermore, Commerce instructed the GOI in the supplemental questionnaire to provide government documentation regarding the mandatory respondents' and their respective cross-owned companies.¹¹¹ In its response, the GOI did not rely on its own records, as directed, but rather, relied on information provided by Welspun.¹¹² In responding on behalf of Bhushan, the GOI did not discuss, or provide any information about, Bhushan's cross-owned companies.¹¹³

Due to the above-discussed deficiencies and given the GOI's failure to provide the requested information, the GOI's response does not support its claim of non-use by the mandatory respondents or their cross-owned companies. Without the complete, accurate and reliable data from the GOI, and in light of the GOI's failure to cooperate to the best of its ability, Commerce must therefore rely on AFA in making its final determination with respect to the financial contribution and specificity of 65 of the 71 programs under investigation. Furthermore, it is appropriate for Commerce to apply AFA to determine whether the respondents used, and the benefit provided by, the 71 programs under investigation because neither Welspun or Bhushan participated in the investigation and, therefore, did not act to the best of their ability, under section 776(b) of the Act.

Comment 2: Whether Commerce Should Continue to Find the AAP, DDP, EPCG, and MEIS Programs Countervailable

GOI's Arguments

- Commerce has erred in finding AAP countervailable. AAP is not countervailable because duty exemption and remission programs are consistent with the SCM Agreement. Further, the GOI has in place and applies a system to confirm which inputs are consumed in the production of exported products and the amounts consumed.¹¹⁴
- Commerce should not find the DDP program countervailable. India has a verification mechanism in place to monitor the consumption of inputs in the production of exported goods. Further, Commerce erred in finding this program countervailable because Commerce had an obligation under the SCM Agreement to calculate the excess duty remission, which it did not.¹¹⁵
- Commerce should not find the EPCG program countervailable because no benefit accrues to the EPCG license holder.¹¹⁶
- Commerce erred finding MEIS countervailable because the program is consistent with the SCM Agreement.¹¹⁷

merchandise to the United States;" and Section III, page 2 ("Your company is responsible for identifying all cross-owned affiliates that have met any of the conditions above and for responding on behalf of these companies.")

¹¹¹ See Commerce Supplemental Questionnaire at 3.

¹¹² See GOI's SQR at 8.

¹¹³ *Id.*

¹¹⁴ See GOI Case Brief at 4-5.

¹¹⁵ *Id.* at 5-6.

¹¹⁶ *Id.* at 6.

¹¹⁷ *Id.* at 7.

The Petitioners' Arguments

- Commerce should continue to find the AAP, DDP, EPCG, and MEIS programs countervailable because the GOI has provided no new substantial information that would warrant a departure from the *Preliminary Determination*. Further, Commerce has found these programs countervailable in prior proceedings.¹¹⁸
- With respect to DDP, Commerce reviewed the information on the record and found that the GOI does not have a system in place to confirm which inputs are consumed in the production of the exported products and in what amounts.¹¹⁹ Similarly, Commerce has found systemic issues still exist with the GOI's system in place for AAP.
- While the GOI cites to the WTO SCM Agreement claiming these programs are not countervailable, the U.S. CVD laws are consistent with the United States' international obligations. In addition, Commerce has countervailed these particular programs in recent proceedings.¹²⁰

Commerce's Position:

We disagree with the GOI and continue to find these programs countervailable for the final determination. Specifically, we disagree with the GOI's claim that it has an adequate system in place for the AAP and DDP, such that these programs are not countervailable under 19 CFR 351.519(a)(4)(i). While the GOI provided what appears to be a system print-out for the AAP,¹²¹ 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 duties that would otherwise be due; (2) the GOI has not demonstrated on the record that it has in place, or applies, 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. The GOI also did not demonstrate that it carries 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.

With respect to DDP, as we explain in the *Preliminary Determination*, the GOI provides a general explanation of how duty drawback on exported goods is claimed. The GOI does not provide a detailed explanation of how the GOI can examine the actual inputs consumed in the

¹¹⁸ See the Petitioners' Rebuttal Brief at 6 (citing *e.g.*, *Carbon Steel Flanges from India Final* at 33-34).

¹¹⁹ *Id.* (citing *Preliminary Determination* and accompanying PDM at 15-16).

¹²⁰ *Id.* (citing *e.g.* *Certain Corrosion-Resistant Steel Products from India*, 81 FR 35323 (June 2, 2016), and accompanying IDM).

¹²¹ See GOI IQR at Annexure 2; see also GOI SQR at Exhibit A.

production of the exported good.¹²² The GOI has identified no record evidence which runs counter to this finding.¹²³ The GOI has not supported its claim that the DDP 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) and 771(5)(E), the entire amount of the import duty rebate earned during the POI constitutes a benefit. The GOI, through the program, provides a financial contribution under section 771(5)(D)(ii). 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 DDP confers a countervailable subsidy.

Regarding EPCG and MEIS, Commerce has previously found these programs countervailable.¹²⁴ Further, we agree with the petitioners that the GOI has not identified any record information that would indicate these programs are not contingent upon export or are otherwise discontinued.¹²⁵ Accordingly, we continue to find that these programs are countervailable.

VI. 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 International Trade Commission of our determination.

☒

Agree

☐

Disagree

11/5/2018

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

¹²² See GOI IQR at 19.

¹²³ See GOI SQR at Question 6.

¹²⁴ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Countervailing Duty Determination*, 82 FR 58172 (December 11, 2017) (*Cold-Drawn Mechanical Tubing from India*), and accompanying IDM at 12-13; see also *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016) (*Carbon Steel Flanges from India Prelim*), and accompanying PDM at 16 (unchanged in *Carbon Steel Flanges from India*).

¹²⁵ See *Preliminary Determination* and accompanying PDM at 16-18.

Appendix

AFA Rate Calculation

Program Name	AFA Rate
1. Advance License Program ¹²⁶	6.82%
2. Advance Authorization Program ¹²⁷	
3. Duty Drawback Program ¹²⁸	2.97%
4. Duty Free Import Authorization Scheme ¹²⁹	14.61%
5. Duty-Free Import of Goods, Including Capital Goods and Raw Materials ¹³⁰	14.61%
6. Reimbursements of Central Sales Tax (CST) Paid on Goods Manufactured in India ¹³¹	3.09%
7. Duty Drawback on Fuel Procured from Domestic Oil Companies ¹³²	14.61%
8. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area ¹³³	14.61%
9. Export Promotion of Capital Goods Scheme ¹³⁴	16.63%
10. Merchandise Exports from India Scheme ¹³⁵	1.48%
11. Interest Equalization Scheme ¹³⁶	0.27%
12. Status Holder Incentive Scheme ¹³⁷	0.39%
13. Pre-Shipment and Post-Shipment Export Financing ¹³⁸	2.90%
14. Market Development Assistance Scheme ¹³⁹	16.63%
15. Market Access Initiative ¹⁴⁰	16.63%

¹²⁶ See *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016) (*PET Resin from India*), and accompanying IDM at 25.

¹²⁷ *Id.*

¹²⁸ See *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016) (*PET Resin from India*), and accompanying IDM at 25.

¹²⁹ *Id.* at 27.

¹³⁰ See *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) (*Circular Welded Steel Pipe from India*), and accompanying IDM at 12-13.

¹³¹ *Id.* at 13.

¹³² *Id.* at 13-14.

¹³³ *Id.* at 14-15.

¹³⁴ *Id.* at 16.

¹³⁵ See *Cold-Drawn Mechanical Tubing from India* at 12.

¹³⁶ *Id.* at 13.

¹³⁷ *Id.* at 12-13; see also *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review 2015*, 83 FR 5612 (February 8, 2018), and accompanying IDM at 4.

¹³⁸ *Id.*

¹³⁹ See *PET Resin from India* at 26.

¹⁴⁰ See *Circular Welded Steel Pipe from India* at 19-20.

16. Focus Product Scheme ¹⁴¹	2.00%
17. GOI Loan Guarantees ¹⁴²	2.90%
18. Status Certificate Program ¹⁴³	2.90%
19. Income Deduction Program (80-IB Tax Program) ¹⁴⁴	35%
20. SEZ Income Tax Exemption ¹⁴⁵	
21. Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material ¹⁴⁶	14.61%
22. Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material ¹⁴⁷	0.53%
23. Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit ¹⁴⁸	3.09%
24. Special Economic Zones - Service Tax Exemption ¹⁴⁹	3.09%
25. Exemption from Payment of Local Government Taxes and Duties, Such as Sales Tax and Stamp Duties ¹⁵⁰	3.09%
26. Steel Development Funds Loans ¹⁵¹	0.99%
27. Provision of Hot-Rolled Steel by SAIL for LTAR ¹⁵²	16.14%
28. Provision for Captive Mining Rights for Iron Ore ¹⁵³	18.08%
29. Provisions of Captive Mining Rights for Coal ¹⁵⁴	3.09%
30. Provisions of High-Grade Iron Ore for LTAR ¹⁵⁵	16.14%
31. Provisions of CTL Plate for LTAR ¹⁵⁶	16.14%
32. Incremental Exports Incentive Scheme ¹⁵⁷	0.40%

¹⁴¹ See *PET Resin from India* at 18-19.

¹⁴² *Id.* at 26.

¹⁴³ See *Circular Welded Steel Pipe from India* at 20-21.

¹⁴⁴ *Id.* at 11.

¹⁴⁵ *Id.* at 11, 23-24.

¹⁴⁶ *Id.* at 12-13.

¹⁴⁷ See *PET Resin from India* at 25.

¹⁴⁸ See *Circular Welded Steel Pipe from India* at 23.

¹⁴⁹ 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 Carbon Steel Flat Products from India*), and accompanying IDM at 18-19.

¹⁵⁰ See *PET Resin from India* at 25.

¹⁵¹ See *Hot-Rolled Carbon Steel Flat Products from India* at 11.

¹⁵² See *Circular Welded Steel Pipe from India* at 24-25.

¹⁵³ *Id.* at 25.

¹⁵⁴ *Id.* at 25-26.

¹⁵⁵ *Id.* at 26.

¹⁵⁶ *Id.* at 24-25. No rate exists for this program and, therefore, we are using the rate for the Provision of Hot-Rolled Steel by SAIL for LTAR as a similar/comparable program.

¹⁵⁷ See *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination*, 83 FR 3122 (January 23, 2018), and accompanying IDM at 11.

33. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas ¹⁵⁸	6.06%
34. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: Reimbursement of Power at the Rate of Rs. 0.75 per Unit ¹⁵⁹	6.06%
35. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy for Expenses Incurred for Quality Certification ¹⁶⁰	6.06%
36. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy on Expenses Incurred in Patent Registration ¹⁶¹	6.06%
37. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 25- or 35-Percent Subsidy in Cleaner Production Measures ¹⁶²	6.06%
38. 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 ¹⁶³	3.09%
39. SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: Reimbursement on VAT, CST, and State Goods and Services Tax ¹⁶⁴	3.09%
40. SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: Exemption from SGAP Non-Agricultural Land Assessment ¹⁶⁵	3.09%
41. 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 ¹⁶⁶	18.08%
42. 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 ¹⁶⁷	18.08%
43. Andhra Pradesh Industrial Investment Corp.'s Allotment of Land for LTAR ¹⁶⁸	6.06%

¹⁵⁸ See *Hot-Rolled Carbon Steel Flat Products from India* at 29-30.

¹⁵⁹ *Id.* at 30.

¹⁶⁰ *Id.* at 30-31.

¹⁶¹ *Id.* at 31-32.

¹⁶² *Id.* at 31.

¹⁶³ *Id.* at 32.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 33.

¹⁶⁶ *Id.* at 33-34.

¹⁶⁷ *Id.* at 34.

¹⁶⁸ *Id.* at 29-30. No rate exists for this program and, therefore, we are using the rate for the SGAP Grant Under the

44. Andhra Pradesh Industrial Investment Corp.'s Provision of Infrastructure ¹⁶⁹	18.08%
45. State Government of Maharashtra (SGOM) Subsidy Programs - SGOM Sales Tax Program ¹⁷⁰	0.59%
46. 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 ¹⁷¹	6.06%
47. SGOM Subsidy Programs - Subsidies for Mega Projects under the Package Scheme of Incentives ¹⁷²	0.95%
48. SGOM VAT Refunds under the SGOM Package Scheme of Incentives ¹⁷³	3.09%
49. SGOM Electricity Duty Exemptions ¹⁷⁴	3.09%
50. SGOM Waiving Loan Interest by State Industrial and Investment Corporation of Maharashtra Ltd. (SICOM) ¹⁷⁵	2.9%
51. SGOM Investment Subsidies ¹⁷⁶	6.06%
52. SGOM Royalty Refund on Purchase of Minerals from Mine Owners with in the State of Maharashtra for a Period of 5 years ¹⁷⁷	3.09%
53. SGOM Micro, Small and Medium Manufacturing Enterprise Subsidies ¹⁷⁸	6.06%
54. SGOM Waiver of Stamp Duty ¹⁷⁹	3.09%
55. SGOM Provision of Land for LTAR ¹⁸⁰	18.08%
56. SGOM's Exemptions and Deferrals on Sales Tax for Purchases of Goods ¹⁸¹	3.09%
57. SGOM's VAT Remission Scheme Established 4/1/06 ¹⁸²	3.09%

Industrial Investment Promotion Policy: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas as a similar/comparable program.

¹⁶⁹ *Id.* at 33-34. No rate exists for this program and, therefore, we are using the rate for the SGAP Provision of Goods and Services for LTAR under the Industrial Investment Promotion Policy as a similar/comparable program.

¹⁷⁰ *See Circular Welded Steel Pipe from India* at 26-27.

¹⁷¹ *Id.* at 29-30.

¹⁷² *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination*, 81 FR 4992 (July 29, 2016), and accompanying IDM at 11-12.

¹⁷³ *See Circular Welded Steel Pipe from India* at 27.

¹⁷⁴ *Id.* at 28.

¹⁷⁵ *Id.* at 31-32.

¹⁷⁶ *Id.* at 30-31.

¹⁷⁷ *See Hot-Rolled Carbon Steel Flat Products from India* at 37. No rate exists for this program and, therefore, we are using the rate for the SGAP Grant Under the Industrial Investment Promotion Policy: SGOC Tax Incentives Under the Industrial Policy 2004-2009 as a similar/comparable program.

¹⁷⁸ *See PET Resin from India* at 27.

¹⁷⁹ *Id.* at 26.

¹⁸⁰ *See Circular Welded Steel Pipe from India* at 30.

¹⁸¹ *See Hot-Rolled Carbon Steel Flat Products from India* at 21-22.

¹⁸² *Id.* at 22-23.

58. SGOG Special Economic Zone Act (SGOG SEZ Act): Stamp Duty and Registration Fees for Land Transfers, Loan Agreements, Credit Deeds, and Mortgages ¹⁸³	3.09%
59. SGOG SEZ Act: Sales Tax, Purchase Tax, and Other Taxes Payable on Sales and Transactions ¹⁸⁴	3.09%
60. SGOG SEZ Act: Sales and Other State Taxes on Purchases of Inputs (Both Goods and Services) for the SEZ or a Unit within the SEZ ¹⁸⁵	3.09%
61. State Government of Karnataka (SGOK) KIP Industrial Policy Tax Incentives ¹⁸⁶	3.09%
62. KIP Provision of Land for LTAR ¹⁸⁷	18.08%
63. KIP Provision of Iron Ore for LTAR ¹⁸⁸	18.08%
64. KIP Provision of Power/Electricity for LTAR ¹⁸⁹	18.08%
65. KIP Provision of Water for LTAR ¹⁹⁰	18.08%
66. KIP Provision of Roads & Port Facility Infrastructure for LTAR ¹⁹¹	18.08%
67. KIP Loans ¹⁹²	1.32%
68. KIP Grants ¹⁹³	6.06%
69. SGUP Exemption from Entry Tax for the Iron and Steel Industry ¹⁹⁴	3.05%
70. SGUP Long-term Interest Free Loans Equivalent to the Amount of VAT and CST Paid ¹⁹⁵	3.09%
71. SGUP's Interest Free Loans Under the SGUP Industrial Development Promotion Rules 2003 ¹⁹⁶	1.32%
TOTAL:	541.15%

¹⁸³ *Id.* at 23-24.

¹⁸⁴ *Id.* at 24.

¹⁸⁵ *Id.* at 24-25.

¹⁸⁶ *Id.* at 45.

¹⁸⁷ *Id.* at 46.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 47.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 47-48.

¹⁹² *Id.* at 49.

¹⁹³ *Id.* at 48-49.

¹⁹⁴ *See Cold-Drawn Mechanical Tubing from India* at 14.

¹⁹⁵ *See Hot-Rolled Carbon Steel Flat Products from India* at 22-23. No rate exists for this program and, therefore, we are using the rate for the SGOG's VAT Remission Scheme as a similar/comparable program.

¹⁹⁶ *Id.* at 27-28. No rate exists for this program and, therefore, we are using the rate for the SGOM Waiving Loan Interest by SICOM as a similar/comparable program.