



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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AD/CVD Operations, OVI: DF/JG

DATE: April 24, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Countervailing Duty Investigation of Glycine from India

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of glycine from India, as provided in section 705 of Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2017, through December 31, 2017.

Below is the complete list of the issues in this investigation for which we received comments from interested parties:

- Comment 1: Commerce's Reliance on Past Determinations
- Comment 2: Calculation of Kumar's Subsidy Rate
- Comment 3: Land for Less Than Adequate Remuneration by the Gujarat Industrial Development Corporation (GIDC)
- Comment 4: Duty Drawback (DDB) Program Countervailability
- Comment 5: Export Promotion of Capital Goods Scheme (EPCG) Countervailability
- Comment 6: Status Holder Incentive Scrip (SHIS) Program Countervailability
- Comment 7: Merchandise Exporter Incentive Scheme (MEIS) Countervailability
- Comment 8: State Government of Gujarat (SGOG) Water Supply Program Countervailability



II. BACKGROUND

A. Case History

On September 4, 2018, Commerce published in the *Federal Register* the *Preliminary Determination*,¹ and completed disclosure of all calculation materials to interested parties.² In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on a request from GEO Specialty Chemicals, Inc. and Chattem Chemicals, Inc. (the petitioners), we aligned the final determination in this CVD investigation with the final determination in the companion antidumping duty (AD) investigation of glycine from India.³ On September 10, 2018, the petitioners alleged that a ministerial error was made in the *Preliminary Determination* regarding the calculation of land for less than adequate remuneration (LTAR) for Paras.⁴ On September 11, 2018, Kumar alleged that a ministerial error was made in the *Preliminary Determination* in the calculation of DDB and MEIS,⁵ and Avid alleged that a ministerial error was made concerning the calculation of its benefit from the MEIS program.⁶ We received no rebuttal comments on these allegations. On October 31, 2018, we issued a response to the ministerial error allegations, stating that the alleged errors did not constitute ministerial errors and, therefore, no amended preliminary determination would be issued.⁷

In October 2018, we received timely scope comments from Ajinomoto Health and Nutrition North America and the petitioners, GEO Specialty Chemicals, Inc., and Chattem Chemicals, Inc., filed rebuttal scope comments.⁸ We issued a final scope decision memorandum, concurrent with this final determination, in response to these comments.⁹ We made no changes to the scope of the investigation since the *Preliminary Determination*.

From October 1, 2018, through October 13, 2018, we conducted verification of the questionnaire responses submitted by Paras, Kumar, Avid, and the Government of India (GOI). We issued the final verification report on December 13, 2018.¹⁰ We used standard verification procedures,

¹ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum.

² See Memoranda, “Preliminary Determination of Countervailing Duty Investigation of Glycine from India: Calculation Memorandum for Paras Intermediates Pvt. Ltd.,” “Preliminary Determination of Countervailing Duty Investigation of Glycine from India: Calculation Memorandum for Kumar Industries, India,” and “Preliminary Determination of Countervailing Duty Investigation of Glycine from India: Calculation Memorandum for Avid Organics Pvt. Ltd.,” each dated August 27, 2018.

³ See *Preliminary Determination*, 83 FR at 44860.

⁴ See Petitioners’ September 10, 2018 Ministerial Error Allegation.

⁵ See Kumar’s September 11, 2018 Ministerial Error Allegation.

⁶ See Avid’s September 11, 2018 Ministerial Error Allegation.

⁷ See Memorandum, “Response to Ministerial Error Comments,” dated October 31, 2018.

⁸ See Letter from AHN, “Glycine from the People’s Republic of China, India, Japan, and Thailand: Comments on the Scope of the Investigation”, dated October 4, 2018; Letter from the petitioners, “Glycine from India, Japan, the People’s Republic of China and Thailand: Petitioners’ Rebuttal to Ajinomoto Health and Nutrition North America, Inc.’s Comments on the Scope of Less-Than-Fair-Value and Countervailing Duty Investigations”, dated October 8, 2018.

⁹ See Memorandum, “Glycine from India, Japan, the People’s Republic of China and Thailand: Scope Comments Decision Memorandum for the Final Determinations,” dated April 24, 2019.

¹⁰ See Memorandum, “Countervailing Duty Investigation of Glycine from India; Verification of Verification of Paras Intermediates Private Limited,” dated November 23, 2018 (Paras Verification Report); see also Memorandum,

including an examination of relevant accounting and production records, and original source documents provided by Paras, Kumar, Avid, and the GOI.¹¹

In accordance with 19 CFR 351.309(c), we invited interested parties to comment on the *Preliminary Determination*.¹² Between January 3 and February 12, 2019, the GOI, Kumar, and Paras timely submitted case briefs.¹³ On February 19, 2019, the petitioners, Paras, and the GOI timely filed rebuttal briefs.¹⁴ Based on the requests of the petitioners, Avid, and Paras,¹⁵ Commerce scheduled a public hearing for March 13, 2019.¹⁶ However, because all hearing requests had been withdrawn by March 11, 2019, Commerce did not hold the hearing.¹⁷

Commerce conducted this investigation in accordance with section 701 of the Act.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination is now April 24, 2019.¹⁸

B. Period of Investigation

The POI is January 1, 2017, through December 31, 2017.

III. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of this

"Countervailing Duty Investigation of Glycine from India; Verification of the Questionnaire Responses Submitted by the Government of India," dated December 11, 2018 (GOI Verification Report); Memorandum, "Countervailing Duty Investigation of Glycine from India; Verification of Kumar Industries, India Questionnaire Responses," dated December 11, 2018 (Kumar Verification Report); Memorandum, "Countervailing Duty Investigation of Glycine from India; Verification of Avid Organics Pvt. Ltd. Questionnaire Responses," dated December 13, 2018 (Avid Verification Report).

¹¹ *Id.*

¹² See *Preliminary Determination*, 83 FR at 44859-44860.

¹³ See the GOI's January 3, 2019 Case Brief (GOI Case Brief), Kumar's February 12, 2019 Case Brief (Kumar Case Brief), and Petitioners' February 12, 2019 Case Brief (Petitioners Case Brief).

¹⁴ See Petitioners' February 19, 2019 Rebuttal Brief (Petitioners Rebuttal Brief), Paras' February 19, 2019 Rebuttal Brief (Paras Rebuttal Brief), and the GOI's February 19, 2019 Rebuttal Brief (GOI Rebuttal Brief).

¹⁵ See Petitioners', Avid's, and Kumar's October 3, 2018 Hearing Requests.

¹⁶ See Commerce Letter, "Hearing Schedule," dated February 25, 2019.

¹⁷ See Memorandum, "Countervailing Duty Investigation of Glycine from India: Hearing Cancellation," dated March 12, 2019.

¹⁸ See Memorandum to the Record, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019 (Tolling Memo). All deadlines in this segment of the proceeding have been extended by 40 days.

investigation if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56-40-6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.43.00. Sodium glycinate is classified in the HTSUS under 2922.49.80.00. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

IV. CHANGES FROM THE PRELIMINARY DETERMINATION

We calculated the value of subsidy programs found countervailable using the same methodology stated in the *Preliminary Determination*, with the exception of the MEIS calculation for Avid.

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination*, and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for this final determination, *see the Preliminary Determination*.¹⁹

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies. For a description of the methodology used for this final determination, *see the final analysis memoranda*.²⁰

C. Denominators

In accordance with 19 CFR 351.525(b), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the calculation memoranda prepared for this final determination.²¹

¹⁹ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 5-8.

²⁰ See Memorandum, "Final Determination of Countervailing Duty Investigation of Glycine from India: Calculation Memorandum for Paras Intermediates Pvt. Ltd.," dated April 24, 2019 (Paras Final Calculation Memorandum); *see also* Memorandum, "Final Determination of Countervailing Duty Investigation of Glycine from India: Calculation Memorandum for Kumar Industries, India," dated April 24, 2019 (Kumar Final Calculation Memorandum); Memorandum, "Final Determination of Countervailing Duty Investigation of Glycine from India: Calculation Memorandum for Avid Organics Pvt. Ltd.," dated April 24, 2019 (Avid Final Calculation Memorandum).

²¹ *Id.*

VI. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

1. Duty Drawback Program

We received comments regarding the countervailability of this program; however, we continue to find this program to be countervailable under our statute and regulations. We made changes to the calculations for Kumar, pursuant to observations at verification.²² Accordingly, the subsidy rate for this program has changed from the *Preliminary Determination*. For the final determination, we determine that there are measurable subsidies for each of the respondents. For a discussion of the issue related to the comments received, *see* Comment 4, below.

Kumar: 0.80 percent *ad valorem*
 Avid: 1.50 percent *ad valorem*
 Paras: 1.50 percent *ad valorem*

2. Merchandise Export from India Scheme

We received comments regarding the countervailability of this program and the methodology used to calculate the subsidy. We have not changed the methodology for calculating a subsidy rate for this program from the *Preliminary Determination* and continue to find this program to be countervailable. We made changes to the calculation for Avid for the final determination. For a discussion of the issue related to the comments received, *see* Comments 2 and 7, below.

Kumar: 2.49 percent *ad valorem*
 Avid: 2.17 percent *ad valorem*
 Paras: 0.88 percent *ad valorem*

3. Export Promotion of Capital Goods Scheme

We received comments regarding the countervailability of this program and the methodology used to calculate the subsidy. We have not changed the methodology for calculating a subsidy rate for this program from the *Preliminary Determination* and continue to find this program to be countervailable. For a discussion of the issue related to the comments received, *see* Comment 5, below.

Avid: 0.03 percent *ad valorem*

²² See Memorandum, "Countervailing Duty Investigation of Glycine from India; Verification of Kumar Industries, India" (Kumar Verification Report), at 2-3 and 10.

4. Status Holder Incentive Scrip Scheme

We received comments regarding the countervailability of this program and the methodology used to calculate the subsidy. We have not changed the methodology for calculating a subsidy rate for this program from the *Preliminary Determination* and continue to find this program to be countervailable. For a discussion of the issue related to the comments received, *see* Comment 6, below.

Paras: 0.24 percent *ad valorem*

5. Land for Less Than Adequate Remuneration

We received comments regarding the countervailability of this program and the methodology used to calculate the subsidy. We have not changed the methodology for calculating a subsidy rate for this program from the *Preliminary Determination*. Based on our analysis of the comments received, we continue to determine that there is no measurable benefit conferred by the Land for LTAR program. For a discussion of the issue related to the comments received, *see* Comment 3, below.

6. State Government of Gujarat Water Supply Program

We received comments regarding the countervailability of this program and the methodology used to calculate the subsidy. We have not changed the methodology for calculating a subsidy rate for this program from the *Preliminary Determination* and continue to find this program to be countervailable. For a discussion of the issue related to the comments received, *see* Comment 8, below.

Paras: 0.41 percent *ad valorem*

B. Programs Determined Not to be Countervailable

For a list of the programs we determined to not be countervailable, *see* the appendix attached to this memorandum.

VII. DISCUSSION OF THE ISSUES

Comment 1: Commerce's Reliance on Past Determinations

GOI's Comments:

- Commerce did not take into account the GOI's questionnaire responses in its *Preliminary Determination*, but simply relied on past determinations from previous cases, particularly with regard to the EPCG and DDB schemes.²³ Commerce ignored record evidence of monitoring and verification procedures in place for DDB.²⁴

²³ *See* GOI Case Brief, at 6.

²⁴ *Id.*

- In its *Preliminary Determination*, Commerce made its arguments based on its determinations in prior investigations without considering the particular merits of this case and conducting new analyses of the GOI's questionnaire responses.²⁵
- Regarding DDB, Commerce appears to ignore the GOI's submitted responses that it established mechanisms to assess the inputs used in the production of exported subject merchandise, which are congruent with the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the GOI's own Customs, Central Excise Duties and Service Tax Drawback Rules (Drawback Rules).²⁶
- In addition to the SCM Agreement Annexes stating that DDB programs cannot be countervailed unless they result in drawback that is greater than the original indirect taxes or import charges on inputs of subject merchandise, the "European Union – Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan, WT/DS486/R" (*EU – PET (Pakistan) (DS486)*) provides that, even in situations where DDB is countervailable, only the excess drawback is eligible for countervailing duties. This is referred to as the "Excess Remissions Principle." This panel decision on the Excess Remissions Principle was upheld and expounded upon by a further Appellate Body in report WT/DS486/AB/R.²⁷
- Commerce chose not to verify DDB when it conducted verification of the GOI's questionnaire responses, which implies that Commerce accepts the GOI's verification system of DDB.²⁸
- This method of evaluation by Commerce does not follow the precedent set in *Inland Steel*²⁹ and *Nation Ford Chem.*,³⁰ which individually conclude that Commerce's findings in past proceedings are not binding in subsequent cases and that each case must be evaluated for the facts on its specific record.³¹
- Commerce has not adhered to its statutory obligation, as per the Court of International Trade (CIT) ruling in *Bethlehem Steel Corp. v. United States*,³² to address specifically the parties' arguments in its determination.³³

²⁵ *Id.*

²⁶ *Id.*, at 6-7.

²⁷ *Id.*, at 9-10.

²⁸ *Id.*, at 7.

²⁹ *Id.*, at 7, citing *Inland Steel Industries, Inc. v. United States*, 967 F. Supp. 1338, 1361 (CIT 1997), affirmed 188 F.3d 1349 (Fed. Cir. 1999) (*Inland Steel*).

³⁰ *Id.*, at 7, citing *Nation Ford Chem. Co. v. United States*, 985 F. Supp. 133, 138 (CIT 1997), affirmed 166 F.3d 1373 (Fed. Cir. 1999) (*Nation Ford Chem.*).

³¹ *Id.*, at 7-8.

³² *Id.*, at 8 citing *Bethlehem Steel Corp. v. United States*, 140 F. Supp. 2d 1354, 1364, amended by, 25 CIT 627 (2001) (*Bethlehem Steel Corp.*).

³³ *Id.*, at 8.

Petitioners' Rebuttal Comments:

- The record does not support the GOI's argument that Commerce did not conduct any new analysis of the GOI's questionnaire responses.³⁴

Commerce's Position: We disagree with the GOI's argument that we did not consider record information to conduct our analyses of certain programs, particularly the DDB and EPCG programs, and that we relied only on past determinations from other cases. We are conducting this investigation in accordance with U.S. CVD laws, under the Act and Commerce's regulations, which are consistent with our obligations under the SCM Agreement, as U.S. CVD laws implement our obligations under the SCM Agreement.

As an initial and general matter, in accordance with the Act and regulations, we are required to examine the individual case record of each proceeding.³⁵ In accordance with this requirement, we reviewed and verified all interested parties' questionnaire responses on the record of this investigation in preparation for completing our final determination, pursuant to section 782(i) of the Act and 19 CFR 351.307.

Commerce initiated this investigation with respect to certain alleged programs under sections 702(b)(1) and (c) of the Act and 19 CFR 351.202(b), determining that the information in the petition³⁶ and supplemental questionnaire response³⁷ was sufficient for initiation purposes.³⁸ Commerce has been further examining these programs during the course of this investigation. Regarding the DDB and EPCG programs, we collected information from the GOI regarding these and other programs, in response to the issuance of questionnaires to the GOI and the respondents.³⁹ While we did not verify the DDB program in this investigation, we conducted verification specific to the EPCG program. As discussed in Comment 5, below, we continue to find the EPCG program countervailable and, as such, have calculated a subsidy rate for Avid.

With respect to the DDB program, based on our examination of information submitted by the GOI, we continue to find that such information does not provide a sufficient basis to alter our preliminary determination that the DDB program is countervailable. The GOI argued that, in our *Preliminary Determination*, we ignored record evidence of monitoring and verification procedures that the GOI has in place for DDB, including its Drawback Rules. However, as we stated in the *Preliminary Determination*, the system to which the GOI refers must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁴⁰ If such a system does not exist, or if it is not applied effectively, or the

³⁴ See Petitioners Rebuttal Brief, at 11.

³⁵ See, e.g., section 703(b)(1) of the Act requiring Commerce to make a preliminary determination "based upon the information available to it at the time of the determination;" section 777(i)(2) and (3) of the Act; and section 782(e) of the Act requiring Commerce to consider certain record information.

³⁶ See Petitioners' Letter, "Glycine from the People's Republic of China, India, Japan and Thailand: Petitions for the Imposition of Antidumping and Countervailing Duties," dated March 28, 2018 (Petition).

³⁷ See Petitioners' Letter, "Glycine from India: Responses to Supplemental Questions," dated April 5, 2018.

³⁸ See *Initiation Notice*; see also, CVD Initiation Checklist: Glycine from India, dated April 7, 2018 (CVD Initiation Checklist).

³⁹ See, e.g., "Countervailing Duty Investigation of Glycine from India: Countervailing Duty Questionnaire," dated May 16, 2018 (Commerce's Initial Questionnaire).

⁴⁰ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 13.

government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission, or drawback is countervailable, in accordance with 19 CFR 351.519(a)(4).⁴¹ As we discuss in further detail in Comment 4 below, we disagree that the GOI has an adequate verification system in place for the DDB program.

Concerning the issue of the fact that Commerce did not verify the DDB program, Commerce has the discretion as to which information to verify.⁴² Thus, the fact that we did not verify the DDB program in this investigation, for instance, does not imply that the program is not countervailable. To the contrary, we chose not to verify the DDB program in this investigation because the GOI had not provided sufficient information⁴³ on the record to enable such a verification.⁴⁴ Without explanation or documentation as to how the GOI derived the All India Rates (AIR), and without the GOI having conducted its own examination of the inputs used in the manufacture of exported products or providing documentation to demonstrate that it engaged in such a monitoring exercise, key aspects of this program are not verifiable.⁴⁵

Further, our findings in this proceeding are consistent with the CIT rulings in *Inland Steel* and *Nation Ford Chem.* In each of those cases, the CIT sustained Commerce's determinations, holding that the determinations were supported by substantial evidence on the specific records of each case.⁴⁶ Our examination of record information is wholly consistent with these CIT rulings because, as further explained in our analysis below in Comments 4 and 5, we relied on the record evidence submitted in this investigation, citing past determinations as relevant support for Commerce's determinations. Likewise, in accordance with the CIT's ruling in *Bethlehem Steel Corp.*, Commerce has provided "an explanation of the basis for its determination that addresses relevant arguments made by interested parties."⁴⁷ We, thus, disagree with the GOI and find that our analysis in the *Preliminary Determination* and this final determination has appropriately relied on the evidentiary record developed during the course of this investigation.

Finally, although the GOI purports that certain programs (*i.e.*, DDB, EPCG, MEIS, the provision of land for LTAR, and the SGOG Water Supply Program) cannot be countervailable under the SCM Agreement,⁴⁸ we maintain that we are conducting this investigation in accordance with U.S. CVD laws under the Act and Commerce's regulations, as noted above. We also disagree with the GOI that certain World Trade Organization (WTO) reports are relevant in this investigation. The WTO report cited by the GOI, *EU – PET (Pakistan) (DS486)*, was between

⁴¹ See 19 CFR 351.519(a)(4).

⁴² See *Ozdemir Boru San ve Tic Ltd STi v. United States*, 273 F. Supp. 3d 1224, 1242 (CIT 2017) wherein the CIT explains that Commerce has broad discretion in its verification procedures and that Commerce is under no obligation to verify information it determines cannot be corroborated at verification.

⁴³ See, *e.g.*, GOI June 25, 2018 IQR, at 18-19 and 25-26; see also *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 13-15.

⁴⁴ See GOI June 25, 2018 SQR, at 4-14.

⁴⁵ See Letter to GOI, "Countervailing Duty Investigation of Glycine from India: Supplemental Questionnaire for the Government of India," dated July 26, 2018, at 4.

⁴⁶ See GOI Case Brief at 7; see also *Inland Steel* at 1361, 1380; *Nation Ford Chem.*, at 138 (citing *Inland Steel* for the premise that factual findings in previous cases are relevant but not binding).

⁴⁷ See *Bethlehem Steel Corp.*, at 1364 (citing section 777(i)(3)(A) of the Act); see also GOI Case Brief, at 8.

⁴⁸ See GOI Case Brief, at 8-12.

Pakistan and the European Union, not the United States. Even if the United States were a party to that dispute, findings of the WTO 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 Uruguay Round Agreements (URAA).⁴⁹ As is clear from the discretionary nature of this scheme, Commerce did not intend for WTO reports to trump automatically the exercise of Commerce’s discretion in applying the statute.⁵⁰ Moreover, it is the Act and Commerce’s regulations that have direct legal effect under U.S. law, 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.”⁵¹ Our examination of each respondent is conducted on the basis of examination of record information, including questionnaire responses from both the GOI and the respondents, which were also verified during this investigation.⁵² Accordingly, we continue to find that Commerce has conducted this investigation in accordance with the Act and Commerce’s regulations.

Comment 2: Calculation of Kumar’s Subsidy Rate

Kumar’s Comments:

- Commerce incorrectly calculated the overall net subsidy rate of Kumar for the *Preliminary Determination* by cumulating benefits Kumar received on the MEIS and DDB with those received by Avid.⁵³
- The MEIS and DDB programs are available only to the exporter of goods, regardless of whether the producer has knowledge of the goods that were exported.
- The “...benefits under the DDB and MEIS programs for Avid were zero. Therefore, in case of mutually exclusive schemes, the cumulation of benefits has resulted in double counting of the benefits available to each exporter” (*i.e.*, Kumar and Avid).⁵⁴ The double-counting of benefits under the MEIS and DDB programs are distorted due to Avid’s direct sales to the U.S. market.⁵⁵
- Because the DDB and MEIS benefits are mutually exclusive, they cannot be availed by the same companies for a single export transaction.⁵⁶
- Under 19 CFR 351.525(c), Commerce cannot cumulate Kumar’s benefits with those received by Avid, a trading company.
- The 27.56 percent MEIS subsidy rate calculated for Avid in the *Preliminary Determination* appears erroneous. Commerce has not considered Avid to be a non-cooperative respondent and has accepted all data submitted onto this record by Avid. Accordingly, the MEIS subsidy rate should be within the range of rates calculated for

⁴⁹ 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); and *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007).

⁵⁰ See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary).

⁵¹ See Uruguay Round Agreements Act Statement of Administrative Action, attached to H.R. Rep. No. 103-316 Vol. I at 873 (1994), reprinted in 1994 U.S.C.C.A.N 3773, 4163 (SAA), at 659.

⁵² See Paras Verification Report, at 8; see also, Kumar Verification Report, at 10; Avid Verification Report, at 7.

⁵³ See Kumar’s Case Brief, at 3.

⁵⁴ *Id.*, at 3-6, wherein Kumar provides a table to demonstrate a revised, capped subsidy rate, inclusive of the sum of the revised program-specific rates for MEIS, DDB and EPCG program.

⁵⁵ *Id.*, 4.

⁵⁶ *Id.*, at 5.

other exporters from India, such as the 2.49 percent rate for Kumar and the 0.88 percent rate for Paras, and should be capped at 3.0 percent.⁵⁷ The maximum benefit that any respondent can claim for the MEIS program for glycine exports under HTS code 2922.49.10 is 3.0 percent of the free on board (FOB) value of goods exported.⁵⁸

- Because the EPCG benefit is assigned to the producer of goods, under 19 CFR 351.525(c), no such benefit would be received by Kumar on subject merchandise exported to the United States.⁵⁹

No other interested party commented on Kumar's arguments.

Commerce's Position: We disagree with Kumar that the net subsidy rate for Kumar was calculated incorrectly. Countervailing duties are imposed with respect to the manufacture, production, or export into the United States.⁶⁰

As an initial matter, Kumar exported subject merchandise to the United States that consisted of its self-produced merchandise and merchandise produced by Avid; thus, Kumar acted as a trading company for sales of Avid's merchandise to the United States, pursuant to 19 CFR 351.525(c). To assess the level of subsidization conferred on Kumar's exports into the United States, we required both companies to report sales and subsidy information in response to our questionnaires. For purposes of calculating Kumar's net subsidy rate, we have cumulated subsidies received by Avid with subsidies received by Kumar to reflect Kumar's role as a trading company with respect to Avid, thus capturing the complete level of subsidization conferred on Kumar's exports. This is consistent with our practice of determining the cash deposit rates in CVD proceedings in which trading companies are involved. As stated in *Tetrafluoroethene from China*:

...our practice in CVD proceedings for trading companies has been to derive a weighted average of such rates to establish one deposit rate for the trading company for all its subject merchandise exports, regardless of the producer. Either way, however, in the course of determining the deposit rate(s) to apply to the trading company's subject entries, it is necessary for {Commerce} first to determine the individual deposit rate for each producer of subject merchandise exported by the trading company. In the CVD context, this means {that Commerce} needs to identify and measure any subsidies provided to each producer, determine the benefits allocable to the POI, and calculate a net countervailable subsidy rate for each producer. Thus, regardless of whether a particular producer is selected as a mandatory respondent,

⁵⁷ *Id.*, at 6.

⁵⁸ *Id.*

⁵⁹ *Id.*, at 5-6, wherein Kumar provides a table to demonstrate a revised, capped subsidy rate, inclusive of the sum of the revised program-specific rates for MEIS, DDB and EPCG program.

⁶⁰ See section 701(a)(1) of the Act.

{Commerce} must conduct the same level of analysis of each producer's subsidization as it would for a mandatory respondent.⁶¹

Thus, in the instant investigation, we separately calculated a net subsidy rate for Kumar and a net subsidy rate for Avid, prior to cumulating these subsidy rates to derive an overall net subsidy rate that we have assigned to Kumar for the final determination.

While Kumar argues that we incorrectly calculated the MEIS and DDB program subsidies by double-counting the benefits reported by Avid and Kumar, we determine that we did not double-count such benefits received by these companies, and that we properly calculated the subsidies using the individual benefits reported by each company. Record evidence demonstrates that Avid, as a producer/supplier of glycine for Kumar, used and benefitted from the MEIS and DDB programs.⁶² Record evidence also demonstrates that, separately, Kumar also used and benefitted from the MEIS and DDB programs.⁶³ Based on record information, the DDB and MEIS subsidies received by each company were on different exports to the United States.⁶⁴ Thus, we did not double-count benefits under these programs, as averred by Kumar. Instead, we separately calculated the benefit to Avid and to Kumar. We then cumulated those individual benefits, *i.e.*, the benefits to Avid based on sales of *Avid-produced* subject merchandise and, separately, the benefits to Kumar based on sales of *Kumar-produced* subject merchandise. Because further aspects of this discussion are proprietary in nature, *see* the Kumar Final Calculation Memorandum for additional detail.

It is unclear how Kumar's argument regarding the EPCG program relates to the argument it makes within the context of the calculation of the MEIS subsidy. We agree with Kumar that it did not utilize the EPCG program during the average useful life (AUL) period. As explained above, regardless of whether Kumar itself received benefits under the EPCG program during the AUL period, because we are cumulating subsidies received by Avid with those received by Kumar, we have included Avid's EPCG benefits received in determining the net subsidy rate for Kumar.⁶⁵

Kumar also posits that the MEIS program should be capped at three percent because the calculated subsidy rate for this program should be within the range of rates calculated for other companies for which an MEIS subsidy rate was also calculated. Kumar maintains that the subsidy rate for this program should be below the threshold of the FOB value of goods exported

⁶¹ See *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethene from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) (*Tetrafluoroethene from China*) and accompanying Issues and Decision Memorandum at 7-8.

⁶² See Avid June 28, 2018 IQR, at 8-12 and 27-30, Exhibits 7, 8 and 14; *see also* Avid August 3, 2018 SQR, at 5-7 and Exhibit 3; Avid August 14, 2018 SQR, at 5 and 8 and Exhibit 3; Avid Verification Report, at 7-12.

⁶³ See Kumar June 28, 2018 IQR, at 4-7, 9-18 and Exhibits CVD -8 and 11; *see also* Kumar July 31, 2018 SQR at 17 and Exhibit CVD-23; Kumar August 10, 2018 SQR at Exhibit CVD-31; Kumar Verification Report, at 10.

⁶⁴ See Avid June 28, 2018 IQR, at Exhibits 7, 8 and 14, Avid August 3, 2018 SQR, at Exhibit 3, Avid August 14, 2018 SQR, at Exhibit 3; Avid Verification Report, at 7-12 and VE-8 and 9; *see also* Kumar June 28, 2018 IQR, at Exhibits CVD -8 and 11; Kumar July 31, 2018 SQR at Exhibit CVD-23; Kumar August 10, 2018 SQR at Exhibit CVD-31; and Kumar Verification Report, at 10-12 and VE-7 and 8.

⁶⁵ See Kumar Final Calculation Memorandum.

under a related HTS code. However, we find that the record does not support Kumar's argument. Our statute and regulations do not speak to the need to ensure that program rates are calculated within a range of subsidy rates for the same, or different, programs calculated for other companies that participate in an investigation or review. Further, there is nothing in our statute or regulations that sets a cap on the calculated subsidy rate for either program and, thus, have not made changes to either the MEIS or DDB program to reflect such a cap.

Regarding Kumar's argument that we incorrectly calculated the MEIS benefit for Avid, we modified this calculation for the final determination to account for only the distinct MEIS license values reported by Avid, resulting in a change to the overall benefit for this program.⁶⁶

Comment 3: Land for Less Than Adequate Remuneration by the Gujarat Industrial Development Corporation

Details of the arguments set forth in the case and rebuttal briefs, along with Commerce's position, are BPI and, thus, cannot be discussed in this memorandum. *See* the Land for LTAR Memorandum⁶⁷ for a full discussion of proprietary information referenced herein. A brief public summary of those arguments, and Commerce's position, is provided below.

Petitioners' Comments:

- Commerce should modify the subsidy calculation of land for LTAR for the final determination and consider a benchmark price other than the price of the Outside Parcel that was used for the *Preliminary Determination*.⁶⁸
- Commerce's long-standing hierarchical preference is to select respondent-specific actual transactions as the Tier 1 benchmark price, in accordance with 19 CFR 351.511(a)(2).⁶⁹
- Commerce's practice is to look at factors of land-use classification, geographic proximity and contemporaneity to determine whether a private transaction is comparable.⁷⁰
- In *Rectangular Pipes and Tubes from Turkey Final* and *PET Resin from India Final 2016/17*, the land parcels at issue were classified in the same category as other parcels in the land market that were used as a benchmark, *i.e.*, agriculture.⁷¹ In the instant investigation, there is no evidence regarding the differences between the location of the

⁶⁶ *Id.*; *see also* Avid Final Calculation Memorandum.

⁶⁷ *See* Memorandum, "Countervailing Duty Investigation on Glycine from India; Provision of Land for Less than Adequate Remuneration," dated April 24, 2019 (Land for LTAR Memorandum).

⁶⁸ *See* Petitioner Case Brief, at 2.

⁶⁹ *Id.* at 11-12, citing, *e.g.*, *Truck and Bus Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606 (January 27, 2017) (*Truck and Bus Tires from China Final*) and accompanying Issues and Decision Memorandum at 12.

⁷⁰ *Id.*, at 10-12.

⁷¹ *See* Petitioners Case Brief, at 15, citing, *e.g.*, *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*Rectangular Steel Pipes and Tubes from Turkey Final*) and accompanying Issues and Decision Memorandum at Comment 2; *Polytetrafluoroethylene Resin from India: Final Affirmative Countervailing Duty Determination*, 83 FR 23422 (May 21, 2018) (*PET Resin from India Final 2016/17*) and accompanying Issues and Decision Memorandum at Comment 11.

Outside Parcel and that of the GIDC estate to suggest that the land parcels can be similarly categorized.⁷²

- Commerce should make a final determination regarding financial contribution. The GIDC's allotment of land-use rights for infrastructure development should constitute the provision of a good and, thus, a financial contribution, as defined by section 771(5)(D)(iii) of the Act⁷³ and 19 CFR 351.511(a)(2).⁷⁴
- Commerce should find that the GIDC's provision of land-use rights is regionally specific under 771(5A)(D)(iv) of the Act, because it is only available in areas designated as industrial estates inside the SGOG.⁷⁵

GOI's Comments:

- The allotment of land to industrial units within the GIDC is based on a "cost plus basis" over and above the designated reference price in that locality. Thus, the land is not allotted at a price that would constitute a subsidy, whether as a grant or other benefit to an entity.⁷⁶
- The GIDC establishes industry-ready land with basic infrastructure, which it leases it out to manufacturing units at market rates. Those units also pay for the use of water and power on commercial terms and prices determined by the GIDC.⁷⁷
- Commerce verified this program and concluded that there were no discrepancies.⁷⁸

Paras' Rebuttal Comments:

- The petitioners' arguments are unsupported by record information. Accordingly, Commerce should not modify the calculation of the provision for land at LTAR. Instead, for the final determination, Commerce should continue to find that no measurable benefit exists in the provision for land by the GIDC at LTAR.⁷⁹
- Commerce's benefit calculation of land for LTAR is based on the evaluation of all record evidence to date, including submissions from the GOI and Paras, as well as verified information.⁸⁰ The petitioners have not provided any new evidence to demonstrate that the SGOG intervention in Gujarat's industrial land market impacts land prices.⁸¹
- In other CVD proceedings involving similar fact patterns, Commerce compared the allotment of land within the GIDC estate areas to a land benchmark outside of an

⁷² See Petitioners Case Brief, at 14-15.

⁷³ See Petitioners Case Brief, at 8-10, citing *Polytetrafluoroethylene Resin from India: Preliminary Affirmative Countervailing Duty Determination*, 83 FR 9842 (March 8, 2018) (*PET Resin from India Prelim*) and accompanying Preliminary Decision Memorandum, at Section IX.B.1.

⁷⁴ See Petitioners Case Brief, at 11.

⁷⁵ *Id.* at 14, citing *Toscelik Profil ve Sac Endustrisi A.S. v. United States*, Slip Op. 14-126 (October 29, 2014) (*Toscelik Profil*).

⁷⁶ See GOI Case Brief, at 13.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ See Paras Rebuttal Brief, at 2-3.

⁸⁰ See Petitioner Case Brief, at 1-3, citing, e.g., Paras Verification Report, at 10; Memorandum, "Response to Ministerial Error Comments," dated October 31, 2018 (Ministerial Error Memorandum), at 3.

⁸¹ *Id.*

industrial estate, such as in *WSPP from India*.⁸² In that case, where such a comparison was made, Commerce found that the respondent received no measurable benefit from the provision of land in the GIDC estate area.⁸³

- The benchmark price information provided by Paras meets the Tier 1 benchmark requirements, *i.e.*, market prices from actual transactions within the country under investigation.⁸⁴

Petitioners' Rebuttal Comments:

- Concerning the GOI's comments, while Commerce had no better benchmark alternative other than the price of land outside of the GIDC for the *Preliminary Determination*, the record has been further developed since that time. Record evidence now supports a better alternative to measure benefits under the land for LTAR program, which includes information collected at verification specific to the land lease agreements.⁸⁵
- Commerce verified that a lease sale where one company sells its lease to another company is viewed by the GOI as a commercial transaction in which the GOI has no role between the parties that are subject to that transaction.⁸⁶

Commerce's Position: We disagree with the petitioners. With respect to the petitioners' benchmark argument, having analyzed the record of this investigation, we continue to determine that it is appropriate to use the Outside Parcel as the benchmark parcel, and we have made no modifications to the calculation used for the *Preliminary Determination*.

Commerce's regulations at section 351.511(a)(2) state that the price used to measure the adequacy of remuneration should be based on a comparison of the government price to a market-determined price for the good or service at issue, resulting from actual transactions in the country in question. This regulation states further that "{s}uch a price could include prices stemming from actual transactions between private parties...." The most direct means of determining whether the government provided adequate remuneration is a comparison with private transactions for a comparable good or service in the country, *i.e.*, using a Tier 1 benchmark. We base this on an observed market price for the good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country or outside the country (the latter transaction would be in the form of an import.) Our preference for a Tier 1 benchmark is based on the expectation that such prices would generally reflect most closely the commercial environment of the purchaser under investigation.⁸⁷

⁸² *Id.*, at 3, citing: (1) Memorandum, "Post-Preliminary Analysis in the Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India," dated August 23, 2016, at 6; unchanged in *Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Final Affirmative Determination*, 81 FR 66925 (September 29, 2016) (*WSPP from India*) and accompanying Issues and Decision Memorandum; and (2) *PET Resin from India Final 2016/17* and accompanying Issues and Decision Memorandum, at 28.

⁸³ *Id.*

⁸⁴ *Id.*, at 5-6; *see also* *PET Resin from India Final 2016/17*, in which Commerce states its preference to use actual, private market transactions that are geographically proximate and contemporaneous.

⁸⁵ *See* Petitioners Rebuttal Brief, at 18-19.

⁸⁶ *Id.*

⁸⁷ *See* *Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review*, 82 FR 18896 (April 24, 2017) (*Supercalendered Paper*) and accompanying Issues and Decision Memorandum at Comment 23.

Here, the petitioners suggest various alternatives for revising the land benefit calculation for the final determination.⁸⁸ Among these suggested alternatives, the petitioners argue that one of the land parcels (“proposed alternative”) would serve as a better benchmark than the Outside Parcel. In particular, the petitioners argue that the proposed alternative is representative of a private-party, market-driven transaction suitable to use as the benchmark parcel.

The petitioners largely rely upon the “Deed of Assignment”⁸⁹ in support of their argument to modify the land calculation that was used for the *Preliminary Determination*. Our examination of verification documentation demonstrates that the petitioners’ proposed alternative was not a private-party-to-private-party transaction, as characterized by the petitioners.⁹⁰

The petitioners also argue that the Outside Parcel is not within the same land-use classification as the land at issue in this investigation, *i.e.*, land sold to Paras for LTAR.⁹¹ Upon examination of the Sale Agreement,⁹² however, we note that the Outside Parcel was characterized as a certain classification by the seller of that land parcel.⁹³ Further, we find that the Outside Parcel was also not described consistently within the Sale Agreement, but was referenced in different manners throughout that agreement. That is, within the agreement, it was referred to as a number of different classifications.⁹⁴ Additionally, the record demonstrates that the Government of Gujarat itself refers to the Outside Parcel as a different classification.⁹⁵ Therefore, we do not find compelling the petitioners’ argument that the Outside Parcel is a parcel of land that would be classified in a category different from the parcel of land⁹⁶ that Paras is currently leasing from the government. Further, with respect to the petitioners’ argument that *Rectangular Steel Pipes and Tubes from Turkey*⁹⁷ applies here, we disagree. In *Rectangular Steel Pipes and Tubes from Turkey*, the record was clear as to the usage of the land in question, *i.e.*, “investment land for industrial facilities.”⁹⁸ In this investigation, however, references to the type of land within the Sale Agreement and Certificate of Stamp Duty do not support a finding that the Outside Parcel is solely the classification described by the petitioners.⁹⁹

⁸⁸ See Petitioners Case Brief, at 10-22 and Attachments 1 and 2.

⁸⁹ See Countervailing Duty Investigation of Glycine from India; Verification of the Questionnaire Responses Submitted by the Government of India,” dated December 11, 2018 (GOI Verification Report) and accompanying verification exhibit- (VE) 5, at 100-109.

⁹⁰ See GOI VE-5 at 105, 110, and VE-8, at 131.

⁹¹ See Paras VE-11 at 28-38.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See Paras VE-11, at 29-30.

⁹⁵ See “Certificate of Stamp Duty,” in Paras VE-11 at 28.

⁹⁶ See Petitioners Case Brief at 14-15.

⁹⁷ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*Rectangular Steel Pipes and Tubes from Turkey*) and accompanying Issues and Decision Memorandum at Comment 2.

⁹⁸ *Id.*

⁹⁹ For additional information, see Land for LTAR Memorandum.

Furthermore, record information regarding the Outside Parcel does not contain evidence of any government involvement in the sale of the Outside Parcel between the private parties.¹⁰⁰ Therefore, we continue to find that the Outside Parcel represents an actual, private sale between an Indian buyer and seller, which serves as an appropriate benchmark for purposes of the final determination.

Because the petitioners' proposed alternative benchmark still reflects land owned by the GIDC, the use of it as the benchmark parcel in the land for LTAR calculation would amount to a comparison of a financial contribution to itself. Furthermore, it would be contrary to the objective set forth under 19 CFR 351.511(a)(2), which calls for a comparison between a government price to a market-determined price for the respective good or service at issue. For the reasons noted above, we determine it appropriate to utilize for the final determination the same calculation methodology used for the *Preliminary Determination*.^{101,102} Thus, we continue to rely on the Outside Parcel as the benchmark and we have, accordingly, continued to compare the price of the Outside Parcel to the prices on land parcels with leases within the AUL period. In doing so, we find no measurable benefit associated with the land calculation for the land purchases at issue.¹⁰³

Regarding arguments as to whether the provision of a good or service is not measurable,¹⁰⁴ Commerce collects the requisite information to examine and make the final determination as to whether that good or service was provided at LTAR, in accordance with section 771(5) of the Act and 19 CFR 351.511. Pursuant to 19 CFR 351.511(a)(2), we are measuring whether the GIDC is providing land to Paras for LTAR.¹⁰⁵

Regarding the petitioners' arguments that we should make a determination on financial contribution and specificity, including their proposal to find the land for LTAR program to be regionally specific, we find that, because there is no measurable benefit on the land for LTAR program,¹⁰⁶ we need not make a determination as to whether this program provides a financial contribution or whether it is specific.

Finally, regarding the GOI's comment that it leases out land to manufacturing units at market rates, during our verification of the GOI, we examined the authenticity of the GIDC Act, 1962 that the GOI submitted onto the record¹⁰⁷ and discussed with GOI officials the role of the GIDC in the allotment of land.¹⁰⁸ The GIDC Act, 1962 does not state that the GOI leases out land at

¹⁰⁰ See Paras VE-11 at 29-37.

¹⁰¹ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 18; see also Paras Final Calculation Memorandum.

¹⁰² See *WSPP from India* and accompanying Issues and Decision Memorandum at Comment 8, wherein Commerce states that it found no measurable benefit for the Land for LTAR program, upholding the post-preliminary analysis. In the post-preliminary analysis, Commerce compared a non-GIDC parcel of land that represented a market transaction to a GIDC parcel of land.

¹⁰³ See Land for LTAR Memorandum).

¹⁰⁴ See Paras Rebuttal Brief, at 2-4.

¹⁰⁵ *Id.*, at 1-4.

¹⁰⁶ See Paras Final Calculation Memorandum.

¹⁰⁷ See GOI August 21, 2018 Questionnaire Response (GOI Second Supplemental Response), at Exhibit 3.

¹⁰⁸ See GOI Verification Report, at 7.

market rates, nor does the GIDC Act, 1962 explain how the Government of Gujarat determines whether such rates are deemed to be “market rates.”¹⁰⁹ As noted above, we find it appropriate to use record information to determine whether a measurable benefit exists. However, as explained above, based on our calculations, we found no measurable benefit associated with this land for LTAR program.

Comment 4: Duty Drawback (DDB) Program Countervailability

GOI’s Comments:

- Commerce should find that the DDB program does not constitute a countervailable subsidy, because Commerce’s claim in the *Preliminary Determination* that the GOI does not utilize an effective mechanism to account for the type and amount of inputs used in the production of the subject merchandise that is exported lacks credibility.¹¹⁰
- The GOI’s duty exemption schemes are consistent with the SCM Agreement. Annexes I and II of the SCM Agreement allow for exemption, remission, deferral or refund of indirect taxes or import charges levied on inputs consumed in production of the exported product.¹¹¹
- The Customs, Central Excise Duties & Service Tax Drawback Rules, 1995, as amended in 2006 (Drawback Rules) allow for the verification of inputs consumed in the exported subject merchandise.¹¹²
- In addition to the SCM Agreement Annexes stating that DDB programs cannot be countervailed unless they result in drawback that is greater than the original indirect taxes or import charges on inputs of subject merchandise, *EU – PET (Pakistan) (DS486)* provides that, even in situations where DDB is countervailable, only the excess drawback is eligible for countervailing duties, per the Excess Remissions Principle. This panel decision on the Excess Remissions Principle was upheld and expounded upon by a further appellate body in report WT/DS486/AB/R.¹¹³
- Commerce ignored the GOI’s initial questionnaire response, which specified the rules that establish the monitoring of input consumption in the production of the exported product.¹¹⁴ Commerce chose not to verify the DDB program, which would have otherwise demonstrated that the GOI has an effective monitoring system in place.¹¹⁵
- Commerce cannot merely rely upon previous determinations regarding the GOI’s DDB and, should instead, consider the facts on the record of this investigation. For the final determination, Commerce should reconsider its finding that this program is countervailable.¹¹⁶

¹⁰⁹ *Id.*

¹¹⁰ See GOI Case Brief, at 8.

¹¹¹ *Id.*

¹¹² *Id.*, at 8-9.

¹¹³ *Id.*, at 9-10.

¹¹⁴ *Id.*, at 6-7; see also GOI June 25, 2018 IQR, at 10-26.

¹¹⁵ See GOI Case Brief, at 7.

¹¹⁶ *Id.*, at 8.

Petitioners' Rebuttal Comments:

- Consistent with 19 CFR 351.519(a), Commerce correctly determined that the DDB program is countervailable, as the GOI has not placed any evidence on the record to substantiate the non-countervailability of the DDB program.¹¹⁷
- In its *Preliminary Determination*, Commerce stated that the GOI did not provide any requisite supporting documentation to substantiate its claim that it has a system in place to monitor the type and amount of inputs used in the production of exported subject merchandise, including data on individual exporters, procurement prices of inputs, duty rates, consumption ratios, FOB values of exports and Central Excise and Customs' corresponding information.¹¹⁸
- Even if an evaluation system does exist, it still must be "reasonable and effective," per the SCM Agreement. The GOI has only submitted written procedures in its initial questionnaire response and case brief regarding the monitoring element of its DDB program. The GOI did not provide requested documentation to demonstrate that such verification by an independent committee has actually been carried out to account for inputs used in the production of exported subject merchandise.¹¹⁹ This further indicates that the GOI's monitoring provision is merely a procedure on paper.¹²⁰
- The GOI stated in its initial questionnaire response that the DDB may be paid by the "Brand Rate" of duty drawback (or All Industry Rates (AIRs)), known as the average duty/tax incidence) rate for the whole industry. The GOI also stated that: (a) the requirement of actual import of inputs is not prescribed;" and (b) the drawback to manufacturers is an average amount of the duty they paid for inputs of any kind used in the production of export goods.¹²¹ Thus, Commerce properly determined that this is a common and fixed rate applied to all exporters, regardless of its production process or inputs.¹²²
- In a similar CVD investigation, *Coated Free Sheet Paper from the Republic of Korea*, the Government of Korea refunded manufacturers their drawback using either a company-specific or fixed amount method. Consistent with 19 CFR 351.519(a)(4)(i), Commerce found that the fixed amount method was unreasonable, because the government did not verify which inputs were used in the production of the exported subject merchandise.¹²³
- While the GOI argues that Commerce merely relied upon past determinations without any analysis of India's DDB program, record information demonstrates otherwise. Further, Commerce maintains discretion as to which program(s) it wants to verify and, absent requested documentation from the GOI, such a verification by Commerce officials would prove meaningless.¹²⁴
- The GOI's reliance upon the WTO decision in *EU – PET (Pakistan) (DS486)* is misplaced, as that decision dealt with Pakistan, not India.¹²⁵ Moreover, Commerce is not

¹¹⁷ See Petitioners Rebuttal Brief, at 7.

¹¹⁸ *Id.*, at 8.

¹¹⁹ *Id.*, at 8-9.

¹²⁰ *Id.*

¹²¹ *Id.*, at 9-10.

¹²² *Id.*

¹²³ *Id.*, at 10-11.

¹²⁴ *Id.*, at 12.

¹²⁵ *Id.*

bound by WTO decisions by its dispute settlement panel or Appellate Body.¹²⁶ Thus, Commerce should dismiss the GOI's arguments and, for the final determination, continue to find that the DDB program is countervailable.

Commerce's Position: We disagree with the GOI's arguments that the DDB program is not countervailable and that the GOI has a mechanism in place to account for the type and amount of inputs used in the production of the subject merchandise that is exported to the United States.

As stated in the *Preliminary Determination*, pursuant to 19 CFR 351.519(a)(1)(ii), import duty exemptions on inputs for exported products are not countervailable, so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.¹²⁷ However, the government in question must have in place, and apply, a system to confirm which inputs are consumed in the production of the exported products, and in what amounts.¹²⁸ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.¹²⁹ If such a system does not exist, if it is not applied effectively, or the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission, or drawback is countervailable.¹³⁰

According to the GOI, the DDB program provides rebates of duties or taxes chargeable on any: (1) imported or excisable materials; and (2) input services used in the manufacture of export goods.¹³¹ Specifically, the duties and tax "neutralized" under the program are the: (i) Customs and Union Excise Duties on inputs; and (ii) Service Tax with respect to input services.¹³² The DDB is generally fixed as a percentage of the FOB price of the exported product.¹³³ In its questionnaire responses, the GOI indicated that it had a verification system, along with guidelines, in place to check whether and how much of the inputs are used in the production of the exported product.¹³⁴

Regarding its establishment of applicable DDB rates, the GOI stated the following:

The rates are determined following a specified procedure that is undertaken by an independent committee appointed by the GOI. The committee makes its recommendations after discussions with all stake holders including Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs,

¹²⁶ *Id.*

¹²⁷ See Preliminary Decision Memorandum at 13; see also 19 CFR 351.519(a)(1)(ii).

¹²⁸ See Preliminary Decision Memorandum at 13; see also 19 CFR 351.519(a)(4).

¹²⁹ See Preliminary Decision Memorandum at 13; see also 19 CFR 351.519(a)(4)(i).

¹³⁰ See 19 CFR 351.519(a)(4)(i)-(ii); see also Preliminary Decision Memorandum at 13.

¹³¹ See GOI June 25, 2018 IQR, at 24.

¹³² *Id.*, at 16-19.

¹³³ *Id.*

¹³⁴ See GOI August 13, 2019 SQR, at 7-8.

indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analysed *{sic}* and this information is used to form the basis for the rate of Duty Drawback.¹³⁵

The GOI claims that, it not only has a reasonable and effective system in place, but that its Drawback Rules allow for verification of inputs consumed in the exported subject merchandise. However, the GOI has not demonstrated on the record of this investigation that it has a system that is reasonable or effective to detail how the standard input-output norm (SION) is applied to derive the DDB rate(s), or why there are no differences in rates, including where different production processes are utilized.¹³⁶ Second, while the GOI maintains that its Drawback Rules provide for a verification procedure, the GOI has provided no record evidence that it has conducted such verification, let alone implemented verification on a consistent basis.¹³⁷

To the extent that the GOI confirms inputs were consumed in the export product for which DDB was earned, the GOI claims that "...the exporter is compensated the incidence actually incurred in the export product based on a verification of documents and proof of usage of actual quantity of inputs/services utilized in the manufacture of export product and duties/tax thereon."¹³⁸ In its Supplemental Response, the GOI purports that "...the scrutiny, sanction and payment of Duty Drawback claims at the Electronic Data Interchange (EDI) locations is carried out with the aid of the EDI system."¹³⁹ In addition, the GOI states that, in order to determine the materials used in the production of an exported product, it has "...guidelines for ensuring sampling for testing of export goods unless specified test reports are already available and the goods are subjected to examination as per norms."¹⁴⁰ However, the record of this investigation does not contain any evidence of any verification undertaken by the GOI. Further, the GOI failed to provide detail, including standard procedures, regarding such a review or verification, let alone the extent of that review.¹⁴¹ For example, the GOI does not provide specific details regarding how it conducts verification of duty drawback payments, other than to identify the system (EDI) used for claimed verifications, the number of verifications it has conducted, data examined, or the outcome of the verifications.¹⁴² To merely state or point to a system is not enough to demonstrate that such a system actually exists in practice; that system must also be implemented and supported with documentation.¹⁴³ Thus, contrary to the GOI's claim, we do not find that the GOI has a

¹³⁵ See GOI June 25, 2018 IQR, at 23.

¹³⁶ See GOI June 25, 2018 IQR and Exhibit 2, Chapter 4.

¹³⁷ *Id.*, at 12.

¹³⁸ See GOI August 13, 2018 SQR, at 7-8.

¹³⁹ *Id.*

¹⁴⁰ *Id.*; see also GOI June 25, 2018 IQR, at 24.

¹⁴¹ See GOI August 13, 2018 SQR, at 7.

¹⁴² *Id.*

¹⁴³ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 10789 (March 22, 2019) (*PET Film Final Results 2016*) and accompanying Issues and Decision Memorandum, at Comment 4; see also *Steel Threaded Rod from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination and Partial Final Affirmative Determination of Critical Circumstances 79 FR 40712* (July 14, 2014) (*Steel Threaded Rod from India Final*) and accompanying Issues and Decision Memorandum, at Comment 4.

reasonable or effective system in place that implements the monitoring of the inputs consumed in the production of the exported product. Under 19 CFR 351.519(a)(4), in the absence of an adequate drawback system, the entire amount of customs and excise duties and service taxes rebated during the POI constitutes a benefit.¹⁴⁴ For this reason, we determine that benefits from the DDB program are conferred on the dates of exportation of the shipments for which the pertinent drawbacks were earned.¹⁴⁵

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

With respect to the GOI's arguments concerning the fact that Commerce did not verify this program, we note that the GOI did not submit requested information, including data on procurement prices of inputs, applicable duty rates, consumption ratios and the FOB value of exports. We also requested information regarding how the SION is applied to derive the DDB rates, why there are no differences in rates, along with supporting documentation, none of which the GOI submitted onto this record.¹⁴⁶ Therefore, because the GOI's questionnaire responses did not provide all requested information, we could not verify whether there was an effective system in place. Without this information on the record, Commerce could not comprehend key components of the program, specifically, how AIRs are derived and the extent to which there exists a SION.¹⁴⁷ Furthermore, and as pointed out by the petitioners, Commerce maintains the discretion to verify record information of its choosing.¹⁴⁸ In this investigation, we initiated on the duty drawback program based on information included in the petition,¹⁴⁹ and we have found in the *Preliminary Determination*¹⁵⁰ and in this final determination that this program provides a countervailable subsidy, as discussed above.

¹⁴⁴ See 19 CFR 351.519(a)(4).

¹⁴⁵ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 14; see also *Steel Flanges from India Prelim* and accompanying Preliminary Decision Memorandum at 12; unchanged in *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 Final*) and accompanying Issues and Decision Memorandum.

¹⁴⁶ See *Preliminary Determination*, at 13-15.

¹⁴⁷ See, e.g., *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018) and accompanying Issues and Decision Memorandum at Comment 4.

¹⁴⁸ See, e.g., *Torrington Co. v. United States*, 156 F.3d 1361 (Fed. Cir. 1998) at 1364 ("Commerce's interpretation of its regulations as not requiring it to 'verify' the evidence submitted by petitioner is entitled to 'substantial deference.'").

¹⁴⁹ See CVD Initiation Checklist, at 9.

¹⁵⁰ See *Preliminary Determination*, at 14.

With regard to the GOI's argument that this program is not countervailable under the SCM Agreement, we addressed this issue in Comment 1, above.

Comment 5: Export Promotion of Capital Goods (EPCG) Scheme Countervailability

GOI's Comments:

- Commerce should not find the EPCG program to be countervailable. It is a permitted drawback scheme that allows for a partial exemption from the payment of customs duties upon importation of capital goods at a zero-duty amount subject to an export obligation.¹⁵¹ Because there are no restrictions on the imported goods to be sold in the home market, this scheme is not specific, and cannot be deemed a countervailable program under Articles 1-2 of the SCM Agreement.¹⁵²
- Capital goods that fall within the meaning of Annex I(g) of the SCM Agreement, even if exported, are subject to the exemption on indirect taxes. Similarly, Customs charges, including taxes and duties, are exempted on capital goods under the EPCG program also fall within Annex I(i) of the SCM Agreement, which allows for the remission of import charges levied on imported inputs consumed in the production of the exported product not in excess of the value that accrued.¹⁵³
- Commerce should not rely upon past determinations without taking into account information placed on the record of this investigation.¹⁵⁴

Petitioners' Rebuttal Comments:

- Commerce should continue to find the program is contingent upon export performance under Section 771(5A)(A) and (B) of the Act and, thus, countervailable, for the final determination.¹⁵⁵
- The GOI's argument that the EPCG program is not specific because it is available to all companies that meet import/export requirements is meritless and unsupported by record evidence. Record information supports the fact that this program is contingent upon exports as explained in the *Preliminary Determination*¹⁵⁶ and in the GOI verification report.¹⁵⁷

Commerce's Position: While the GOI contends this program is not countervailable, we continue to find that the EPCG program constitutes a countervailable subsidy under Commerce's statute and regulations.

¹⁵¹ See GOI's Case Brief, at 10.

¹⁵² *Id.*, at 10-11.

¹⁵³ *Id.*, at 11.

¹⁵⁴ *Id.*

¹⁵⁵ See Petitioners Rebuttal Brief, at 12-13.

¹⁵⁶ See Petitioners Rebuttal Brief, at 12, citing *Preliminary Determination* and accompanying Preliminary Decision Memorandum, in which Commerce explains that this program is contingent upon exports.

¹⁵⁷ See Petitioners' Rebuttal Brief, at 13, citing GOI Verification Report, at 4.

The record shows that the EPCG program provides for a reduction or exemption of customs duties and excise taxes on imports of capital goods used in the production of exported products.¹⁵⁸ Under this program, producers are exempted from or pay reduced duties on imported capital equipment by committing to export six times the amount of duties, taxes, and cess saved on capital goods within six years.¹⁵⁹ Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, plus a penalty interest.¹⁶⁰ Thus, this program has an export obligation that requires a company to export a certain amount of goods in order to qualify for program benefits. Consistent with the statute at section 771(5A)(B) of the Act and our regulations under 19 CFR 351.514(a), we consider the subsidy under this program to be an “export subsidy” and “contingent upon export performance.”

As discussed in the *Preliminary Determination*, we find that the import duty reductions provided under the EPCG program are countervailable export subsidies because, under section 771(5)(D)(ii) of the Act, this scheme provides a financial contribution in the form of revenue foregone as a result of not collecting duties otherwise due, and it is contingent upon export performance as explained above. Also, under section 771(5)(E) of the Act,¹⁶¹ exporters may receive two different types of benefits under this program: (1) the amount of unpaid import duties that would have to be paid to the GOI if the accompanying export obligations are not met; or (2) the waiver of duty on imports of capital equipment covered by those EPCG licenses for which the export requirement has already been met.¹⁶²

We disagree with the GOI’s argument that the EPCG program is not countervailable because it is a permitted drawback scheme. It is unclear what the GOI means by referencing the EPCG program as a drawback program; the record does not demonstrate that it should be treated as such. However, to the extent that the EPCG and DDB programs, for instance, both neutralize duties or taxes related to exports, we find that the exemption under each program is earned differently. That is, the DDB program involves rebates of duties or taxes on the exported product. Under the EPCG program, however, the waiver of duties occurs once the company has met its export obligation. The waiver of import charges on inputs that are imported duty-free for the production of the exported product are contingent upon the producer’s commitment to earn convertible currency equal to six times the amount of duties, taxes, and cess saved on capital goods within six years.¹⁶³ Once the company has met its export obligation, the GOI will formally waive the duties otherwise due to the government on the imported goods.¹⁶⁴ Further, we verified this program with the GOI and Avid,¹⁶⁵ and we find that there is nothing we found

¹⁵⁸ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum.

¹⁵⁹ See GOI Second Supplemental Response, at 2-11 and GOI June 25, 2018 IQR, at Exhibit 12, pages 85-90.

¹⁶⁰ See Petitioners’ Letter, “Glycine from The People’s Republic of China, India, Japan and Thailand: Petitions for the Imposition of Antidumping and Countervailing Duties,” dated March 28, 2018 (Petition), at Volume III, pages 6-7; see also GOI June 25, 2018 IQR, at 160-175 and Exhibit 13.

¹⁶¹ See 771(5)(E) of the Act.

¹⁶² See *Preliminary Determination* and accompanying Preliminary Decision Memorandum.

¹⁶³ See GOI Second Supplemental Response, at 2-11; see also GOI June 25, 2018 IQR, at 85-90 and Exhibit 12.

¹⁶⁴ *Id.*

¹⁶⁵ See GOI Verification Report, at 3-4; see also Avid Verification Report, at 9-10.

during verification or otherwise on the record or in parties' arguments that would cause us to make changes to our *Preliminary Determination*.

Comment 6: Status Holder Incentive Scrip (SHIS) Program Countervailability

GOI's Comments:

- Commerce should not find the SHIS program to be countervailable.
- Under the Foreign Trade Policy (FTP) 2009-2014, the SHIS program was only available for exports until March 31, 2013, and formally ended on March 31, 2015. Therefore, it was not included or referenced in the FTP 2015-2020.¹⁶⁶

Petitioners' Rebuttal Comments:

- Consistent with past practice, for the final determination, Commerce should continue to find that the SHIS is countervailable.¹⁶⁷
- The GOI's argument that the SHIS program is no longer countervailable because it was discontinued in 2013 is meritless, based on Commerce's longstanding practice to treat exemptions tied to capital equipment as non-recurring benefits under 19 CFR 351.524(c)(2)(iii).¹⁶⁸

Commerce's Position: We continue to determine that the SHIS program is a countervailable subsidy. As explained in the *Preliminary Determination*, the SHIS program provides a financial contribution in the form of revenue forgone, pursuant to section 771(5)(D)(ii) of the Act, because duty free import of goods represents revenue forgone by the GOI. The program is specific, pursuant to sections 771(5A)(A) and (B) of the Act, because it is limited to exporters.¹⁶⁹ We continue to find that a benefit is conferred under the SHIS program in the amount of the scrip granted to the recipient, pursuant to section 771(5)(E) of the Act and 19 CFR 351.519.

Although the GOI maintains that this program was terminated in 2013, record evidence demonstrates that certain parties received benefits from this program during the AUL period.¹⁷⁰ Specifically, the exemption of such benefits received under this program is solely provided for the purchase of capital goods.¹⁷¹ The *Countervailing Duties Preamble* to Commerce's regulations states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that because these duty exemptions are

¹⁶⁶ See GOI Case Brief, at 12; see also GOI IQR at 27.

¹⁶⁷ *Id.*, citing *Steel Threaded Rod from India*, in which Commerce explained the countervailability of this program, in detail, at Section VI.A.5; see also *Steel Threaded Rod from India Final*, at Section VI.A.5.

¹⁶⁸ See Petitioners Rebuttal Brief, at 16-17.

¹⁶⁹ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 10.

¹⁷⁰ See GOI June 25, 2018 IQR at 27; see also Paras' June 28, 2018 IQR, at 21-32 and Exhibit 9; see also Paras' July 30, 2018 SQR, at 1-6; Paras' Verification Report, at 10-11.

¹⁷¹ See GOI June 25, 2018 IQR, at 28-29 and Exhibit 7; see also *Steel Threaded Rod from India Final* and accompanying Issues and Decision Memorandum at "Status Holder Incentive Scrip;" *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 81 FR 51186 (August 3, 2016) and accompanying Preliminary Decision Memorandum, at 8-9, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2014*, 81 FR 89056 (December 9, 2016), and accompanying Issues and Decision Memorandum at 4.

tied to capital assets, the benefits from such duty exemptions should be considered non-recurring....”¹⁷² Thus, the SHIS program is considered a non-recurring program pursuant to 19 CFR 351.524(c).¹⁷³ Therefore, in accordance with 19 CFR 351.524(c)(2)(iii), we are treating the import duty exemptions on capital equipment as non-recurring benefits.

As explained in the *Preliminary Determination*, the GOI reported that Paras received SHIS licenses during the POI.¹⁷⁴ Paras also reported receipt of SHIS license scrips to import capital goods duty-free.¹⁷⁵ Further, during verification of Paras’ information submitted to Commerce, Paras officials explained and provided documentation of Paras’ receipt of benefits under this program, which reflected the program’s termination in 2013 and demonstrated its residual nature.¹⁷⁶ However, the fact that Paras received residual benefits from this program is consistent with Commerce’s understanding of this program in which residual benefits are received, even after termination of the program.¹⁷⁷ Although this program was terminated in 2013, under this program, companies could still apply for licenses for up to three years after its termination.

Further, as explained in the *Preliminary Determination*:

The SHIS scrip represents a non-recurring benefit that is not automatically received and is known to the recipient at the time of receipt of the scrip.¹⁷⁸ Although 19 CFR 351.519(b)(1) stipulates that we will normally consider the benefit as having been received as of the date of exportation, because the SHIS benefit amount is not automatic and is not known to the exporter until well after the exports are made, the SHIS licenses, which contain the date of validity and the duty exemption amount, as issued by the GOI, are the best method to determine and account for when the benefit is received.¹⁷⁹

¹⁷² See *Countervailing Duties*, 63 FR 65348, 65393 (November 25, 1998) (*Countervailing Duties Preamble*).

¹⁷³ See 19 CFR 351.524; see also Avid’s August 3, 2018 SQR, at 7.

¹⁷⁴ See GOI June 25, 2018 IQR, at 30 and Exhibit 7.

¹⁷⁵ See Paras June 28, 2018 IQR, at 21-32.

¹⁷⁶ See Paras Verification Report, at 10-11.

¹⁷⁷ See *Steel Threaded Rod from India Final*, and accompanying Issues and Decision Memorandum, at VI.A.5, page 17.

¹⁷⁸ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 11; see also *Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*; 2016, 83 FR 39677 (August 10, 2018) (*PET Film Preliminary Results 2016*), and accompanying Preliminary Decision Memorandum, at 5 and 10; unchanged in *PET Film Final Results 2016*; *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) and accompanying Issues and Decision Memorandum; *Steel Threaded Rod from India Final*, and accompanying Issues and Decision Memorandum, at VI.A.5.

¹⁷⁹ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum. Commerce determined in the similar but discontinued GOI program, the Duty Entitlement Passbook Scheme (DEPS), that similar benefits were conferred when earned, rather than when the credits were used. Commerce’s determination was upheld by the CIT in *Essar Steel v. United States*, 395 F. Supp. 2d 1275, 1278 (CIT 2005) (*Essar Steel*).

Given that the SHIS program is a non-recurring program and the record evidence of Paras' use of this program, coupled with the fact that it availed benefits even after the GOI's termination of the program in 2013, we continue to find that this program confers a measurable benefit to Paras during the POI.

Comment 7: Merchandise Exporter Incentive Scheme (MEIS) Countervailability

GOI's Comments:

- The MEIS should not be considered countervailable, as the purpose of this scheme is to provide a level playing field and "neutralize infrastructure efficiencies," as verified by Commerce officials.¹⁸⁰
- Under the MEIS, the refund of prior-stage cumulative indirect taxes levied on inputs consumed in the production of the exported product do not relate to a refund from the GOI; rather, the indirect taxes are primarily specific to electricity or fuel used in the production activity.¹⁸¹
- Commerce verified that the scrip issued to MEIS applicants is not sector-specific; therefore, this scheme cannot be deemed a countervailable subsidy under Article 2 of the SCM Agreement.¹⁸²
- Because the remission of taxes or duties levied on inputs consumed in the production of the exported product is not in excess of those taxes or duties levied on the production and distribution of like products sold for consumption in the domestic market, the MEIS is not an export subsidy under Annex I (g) and (h) of the SCM Agreement.¹⁸³
- The duty rate calculated for the *Preliminary Determination* is unreasonable, given how the MEIS entitlement is calculated, *i.e.*, the lessor of the realized FOB value of exports in free foreign exchange or the FOB value of exports as given in the shipping bills in free foreign exchange, and the fact that the scrips issued under this program range from only three to five percent.¹⁸⁴

Petitioners' Rebuttal Comments:

- The MEIS program is clearly contingent upon export performance and, therefore, it is specific within the meaning of sections 771(5A)(A) and (B) of the Act.¹⁸⁵
- The URAA specifies that the countervailability of infrastructure is based on whether the program satisfies the public welfare concept. The MEIS program however, provides a financial contribution to companies or industries that export.¹⁸⁶
- Commerce should dismiss the argument proffered by the GOI and Kumar that the MEIS rate of 27.56 percent calculated for the *Preliminary Determination* is unreasonable, as it makes no sense simply to compare the refund rate and the subsidy rate. Instead, in the

¹⁸⁰ See GOI Case Brief, at 11.

¹⁸¹ *Id.*, at 12.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ See Petitioners Rebuttal Brief, at 14.

¹⁸⁶ *Id.*, at 14-15.

Preliminary Determination, Commerce explained how it calculated the benefit under this program and the basis thereof.¹⁸⁷

- For the final determination, Commerce should continue to cumulate Avid's benefits under the MEIS program with Kumar's benefits.

Commerce's Position: We agree with the petitioners and continue to find that the MEIS Program is countervailable under the Act and Commerce's regulations.

Pursuant to 19 CFR 351.518, prior-stage cumulative indirect taxes are taxes that are levied at each stage of production and distribution without any offset, and the amounts exempted, remitted or deferred upon export must correspond to the prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product, making normal allowances for waste. That is, only exemptions, remissions or deferrals of such taxes in excess of the indirect taxes on inputs that are not consumed in the production of the export product are countervailable.¹⁸⁸

The supporting documentation to this program, submitted by the GOI, indicates that the duty credit scrips under this program bear no relationship to any cumulative indirect taxes potentially levied on inputs throughout the production of the exported product but, instead, are calculated based on the FOB value received in foreign exchange for the exported product.¹⁸⁹ Similar to *PET Film Final Results 2016*,¹⁹⁰ the GOI claims that duty credit scrips earned by the respondents under this program constitute the remission of prior-stage cumulative indirect taxes, as the MEIS assists exporters to offset infrastructural inefficiencies and associated costs and taxes and is, thus, not countervailable, to the extent that there is no excess remission. However, the GOI failed to demonstrate that it has a system and procedures in place to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and that its system or procedures are reasonable and effective.¹⁹¹

Furthermore, while the respondents provide a table listing the percent rate for calculating the duty credit scrip by product group, including tariff code, and group of countries for Commerce to confirm the reported benefits, the GOI did not provide any explanation as to how the percent rate for calculating the duty scrip on exports of subject merchandise to the United States was derived for that group of products.¹⁹² That is, the GOI failed to explain how that particular percent reimbursement/credit on the FOB value received in foreign exchange was determined, or how it relates to any cumulative indirect tax expenses incurred by the Indian producer/exporter due to any prior-stage cumulative indirect taxes paid on the exported product, or how infrastructural

¹⁸⁷ *Id.*, at 15.

¹⁸⁸ See 19 CFR 351.518(a)(1)-(3).

¹⁸⁹ See GOI June 25, 2018 IQR, at Exhibit 12 (Foreign Trade Policy (FTP) 2015-2020, Chapter 3).

¹⁹⁰ See *PET Film Final Results 2016* and accompanying Issues and Decision Memorandum, at Comment 1.

¹⁹¹ See 19 CFR 351.518(a)(4).

¹⁹² See, e.g., Letter from Paras, "Glycine from India: Initial Response to Section III of Countervailing Duty Questionnaire," dated June 28, 2018, at 38 and Exhibit 10b and 10c; see also, Letter from Kumar, "Certain Glycine from India (C-533-884) Program specific questionnaire response," dated June 28, 2018, at 28 and Exhibit CVD-11 (Appendix 3B); GOI June 25, 2018 IQR, at 43 and Exhibit 3B.

inefficiencies are measured and assessed. Accordingly, the duty credit scrips under this program bear no relationship to any cumulative indirect taxes potentially levied on inputs throughout the production of the exported product.

As stated in the *Preliminary Determination*,¹⁹³ we continue to determine that this program is specific pursuant to sections 771(5A)(A) and (B) of the Act, because, as the GOI, Kumar, Avid, and Paras reported, eligibility to receive the scrips is contingent upon export.¹⁹⁴ This program provides a financial contribution in the form of revenue forgone pursuant to section 771(5)(D)(ii) of the Act, because the scrips provide exemptions for paying duties associated with the importation of goods, which represents revenue forgone by the GOI.¹⁹⁵ Record information demonstrates that Kumar, Avid, and Paras received benefits under the MEIS program, which Commerce verified.¹⁹⁶ Accordingly, we continue to calculate subsidy rates for each respondent for this program. For the final determination, we revised the MEIS calculation.¹⁹⁷ Also, as explained in Comment 2, we are using the same methodology as that used in the *Preliminary Determination* to calculate the overall net subsidy rate for Kumar, based on a cumulation of benefits received by both Avid and Kumar.¹⁹⁸

Finally, while the GOI argues that the MEIS program cannot be countervailable under the SCM Agreement, we disagree. We address the GOI's argument in detail in Comment 1 above.

Comment 8: State Government of Gujarat Water Supply Program Countervailability

GOI's Comments:

- In the *Preliminary Determination*, Commerce erroneously determined that the SGOG water supply program was countervailable. This program is consistent with the provision of Article 2.2 of the SCM Agreement.¹⁹⁹
- Commerce failed to take into consideration record evidence demonstrating that water rates within the GIDC are not "discounts" in any form. Under the GIDC Water Supply Regulation of 1991, industrial units located within the GIDC are legally bound to use water supplied by the GIDC, rather than dig their own well; therefore, this legal obligation cannot confer a subsidy.²⁰⁰
- Commerce's reliance on previous decisions, including that in *WSPP Final Determination*²⁰¹ involving a similar water-related issue, runs contrary to Commerce's

¹⁹³ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 12.

¹⁹⁴ See GOI June 25, 2018 IQR, at 102; see also Kumar June 28, 2018 IQR at section entitled, "Other Subsidies," at 5; Avid June 28, 2018 IQR, Section II.F. at 28; Paras June 28, 2018 IQR, at 38-39.

¹⁹⁵ *Id.*; see also GOI January 16, 2018 IQR at 85.

¹⁹⁶ See Kumar June 28, 2018 IQR, at "Other Subsidies," 7-9, and Exhibit CVD-8; see also Kumar July 31, 2018 SQR, at Exhibits CVD-23 and CVD-25; Avid June 28, 2018 IQR, at Section II.F, at 28; Paras June 28, 2018 IQR, at 39-41 and Exhibit 10(f); Kumar Verification Report, at 11; Paras Verification Report, at 9; and Avid Verification Report, at 8.

¹⁹⁷ See Avid Final Calculation Memorandum and Kumar Final Calculation Memorandum.

¹⁹⁸ *Id.*

¹⁹⁹ See GOI Case Brief, at 13.

²⁰⁰ *Id.*, at 14.

²⁰¹ *Id.*, citing *WSPP Final Determination* and accompanying Issues and Decision Memorandum at Comment 7.

own position in the CAFC's decision in *Inland Steel*.²⁰² In that case, Commerce adopted the position that each administrative record stands on its own, irrespective of findings made in an earlier case.²⁰³

- Commerce's reliance on the *WSPP Final Determination*²⁰⁴ is misplaced because, unlike that case, the GOI demonstrated in this investigation that units have already paid for infrastructure development costs, including the supply of water.²⁰⁵
- Record evidence indicates that the cost of water supplied to Paras is the actual cost of water at the time of the allotment and that the price includes the expenses on the water supplied to Paras.²⁰⁶ However, because the units outside of the GIDC area have not contributed to the development of the GIDC water facility, including pipelines, the cost of water is higher, which could explain why there is no element of subsidy to the units located in the GIDC area.²⁰⁷

Petitioners' Rebuttal Comments:

- Commerce should continue to find that the SGOG water supply program is countervailable for the final determination, dismissing arguments raised by the GOI in its case brief.²⁰⁸
- Contrary to the GOI's assertion, the GOI did not provide evidence that water infrastructure costs were charged to companies within the estates, as Commerce verified that the water charges paid by Paras to the GIDC were combined with various other charges, including taxes.²⁰⁹
- The GOI's argument that the 50 percent lower rates the GOI offered to units located within the GIDC did not reflect 'discounts' in any form but, rather, serve as development costs to units located outside of the GIDC, is misplaced.²¹⁰

Commerce's Position: We disagree with the GOI and continue to find that the water program is countervailable. With respect to the GOI's argument that this program is not countervailable under the SCM Agreement, we discussed this issue in detail in Comment 1 above.

In its case brief, the GOI correctly points out that each record stands on its own, citing to *Inland Steel*.²¹¹ Our decisions are based solely on the evidentiary record developed in the proceeding at issue.²¹² In this investigation, we examined the record related to the SGOG's water supply program. Specifically, the GOI placed on this record the governing rules of the Gujarat Special Investigation Region Act, 2009, along with the GIDC Water Supply Regulation, 1991 (GIDC

²⁰² *Id.*, citing *Inland Steel*.

²⁰³ *Id.*

²⁰⁴ See GOI Case Brief, at 14, citing *WSPP Final Determination* and accompanying Issues and Decision Memorandum at Comment 7.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*, at 14-15.

²⁰⁸ *Id.*, at 17-18.

²⁰⁹ See Petitioners Rebuttal Brief, at 18.

²¹⁰ *Id.*, at 17.

²¹¹ See *Inland Steel*.

²¹² See section 777(i) of the Act.

Water Supply Regulation).²¹³ Taken together, these laws define the governing body of the Gujarat Industrial Development Corp. and the rules dictating operation of the water supply within the GIDC estate area. The GIDC Water Supply Regulation, at paragraph 17, discusses the water charges borne by companies that are located outside of the estate area. Specifically, the rule states, “{i}f the connection is given to the premises outside the limits of the Corporation’s industrial estate, water charges shall be calculated at double the prevailing rates fixed by the Corporation....”²¹⁴ We determine that the “doubling of rates” outside the GIDC estate area serves as a “discount” of water rates for companies located within the GIDC estate area.

Regardless of whether the water rates are coined “discounts,” the record is clear that the water rates outside of the GIDC estate are twice the amount of the water rates paid by companies located within the GIDC estate, pursuant to the GIDC’s own binding directives that provide benefits to companies within the GIDC estate areas.²¹⁵ Despite the fact that the water rates of companies within the GIDC already pay for infrastructure costs, the GIDC’s own regulation, *i.e.*, the GIDC Water Supply Regulation, makes clear that water charges are twice as high for companies located outside of the GIDC area, constituting a financial contribution to those companies inside the GIDC area, including Paras, in the form of revenue forgone under section 771(5)(D)(ii) of the Act.²¹⁶ That is, the utility of water at preferential rates, *i.e.*, the 50 percent discounted rate for companies located within the GIDC estate area as compared with those outside of this estate area, meets the definition of a benefit conferred pursuant to section 771(5)(E) of the Act.²¹⁷ Further, the GOI has not demonstrated how it derived the water rates charged to companies within the GIDC estate inclusive of infrastructure costs. Also, the GOI has not provided any underlying support to show how this information is relevant to its decision to charge companies located outside of the GIDC estate a rate that is twice as high as companies located within the GIDC estate. Without such support on the record of this investigation, we cannot take this information into consideration when determining the countervailability of this program.

While the GOI takes issue with Commerce’s reference to other proceedings in the context of supporting a particular determination or result, we maintain that such references do not negate the fact that we rely on the information developed in the ongoing investigation or review, as explained in further detail in Comment 1, above. Here, for instance, we examined in detail information submitted by the GOI and Paras in connection with the GIDC’s water program. While similarities on this program exist with the GIDC water program examined by Commerce in the *WSPP Final Determination*,²¹⁸ contrary to the GOI’s argument, we do not limit our analysis based solely on case precedent. Instead, we use such information in connection with our policies, laws and regulations, to serve as a guide for determining the best course of action specific to the issue before us. Based on record evidence, we continue to find the GIDC water

²¹³ See Letter from the GOI, “Countervailing Duty Investigation into Glycine from India (Case No. C-533-884) – Response to 2nd Supplemental Questionnaire on behalf of the Government of India,” dated August 21, 2018, at Exhibit 6 (The Gujarat Special Investment Region Act, 2009) and Exhibit 7 (GIDC Water Supply Regulation).

²¹⁴ See GOI Second Supplemental Response, at Exhibit 7 (GIDC Water Supply Regulation, at paragraph 17).

²¹⁵ *Id.*

²¹⁶ *Id.*; see also 771(5)(D)(ii) of the Act.

²¹⁷ See 771(5)(E) of the Act.

²¹⁸ See *WSPP Final Determination* and accompanying Issues and Decision Memorandum, at Comment 7.

program countervailable and have calculated a subsidy rate for Paras for the final determination by dividing the total benefits received by the total sales value.

As discussed above, we continue to find that this program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, and that it confers a benefit in the amount of the 50 percent discount rate within the meaning of section 771(5)(E) of the Act.

IX. RECOMMENDATION

We recommend following the above methodology for this final determination.



Agree



Disagree

4/24/2019

X 

Signed by: JEFFREY KESSLER

Appendix

List of Programs Determined to be Countervailable, Non-Used, or Having No Measurable Benefit

Programs Determined to Be Countervailable

Export Promotion Capital Goods Scheme (EPCG)
Status Holder Incentive Scrip (SHIS)
Merchandise Export from India Scheme (MEIS)
Duty Drawback (DDB) Program
State Government of Gujarat (SGOG) Water Supply Program

Programs Determined Not to Be Used

GOI Programs:

Duty Free Import Authorization Scheme (DFIA Scheme)

Advance Authorization Scheme (AAS)

Special Economic Zones (SEZs) (formerly known as Export Processing Zones/Export Oriented Units) (EPZs/EOUs)

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

Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material Without the Payment of Central Sales Tax (CST)

Exemption from Service Tax for Services Consumed Within the SEZ

Exemption of Stamp Duty for All Transactions and Transfers of Immoveable Property, or Documents Related Thereto Within the SEZ

Exemption from Electricity Duty and Cess Thereon on the Sale or Supply to the SEZ Unit

Discounted Land in an SEZ

Income Tax Exemptions Under the Income Tax Exemption Scheme Section 10A

State Programs:

State and Union Territory Sales Tax Incentive Programs in the States of Gujarat and Maharashtra
State Government of Gujarat (SGOG) Subsidies Under Industrial Policy 2015 and 2009

Financial Benefits for Mega Projects

Promotion of Cluster Development in States

Promotion of Non-Conventional Energy

Anchor Institutes

Market Development Assistance (MDA)

Upgrading Industrial Infrastructure
State Government of Maharashtra (SGOM) Subsidies Under the Package Scheme of Incentives
1993, 2007 and 2013

- Financial Incentives for PSI-2013's MSMEs/LSIs
- Industrial Promotion Subsidy for MSMEs and LSIs
- Interest Subsidy
- Exemption from Electricity Duty
- Waiver of Stamp Duties
- Power Tariff Subsidy
- Subsidy Equal to Various Levels Related to VAT on Local Sales (Minus Input Tax Credit)
- 5% Subsidy on Capital Equipment
- 75% Subsidy on Expenses Incurred on Quality Certifications
- 75% Subsidy on Cost of Water Audit
- 75% Subsidy on Cost of Energy Audit
- 50% Subsidy on Cost of Capital Equipment Under Measures to Conserve/Recycle Water
- 50% Subsidy on Cost of Capital Equipment for Improving Energy Efficiency
- 25% Subsidy on Capital Equipment for Cleaner Production Measures
- 25% Subsidy on Patent Registration
- Incentives for Strengthening MSMEs and LSIs
- Incentives for Units Coming up in Naxalism Affecting Talukas
- Incentives for Mega/Ultra Mega Projects

Programs with No Measurable Benefit

Land for Less Than Adequate Remuneration