



C-533-886
Investigation
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DATE: April 26, 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: Decision Memorandum for the Preliminary Affirmative
Determination: Countervailing Duty Investigation of Polyester
Textured Yarn from India

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of polyester textured yarn (yarn) from India, as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On October 18, 2018, Commerce received a petition from Nan Ya Plastics Corporation, America and Unifi Manufacturing, Inc. (collectively, the petitioners) seeking the imposition of countervailing duties (CVDs) on yarn from India.¹ We describe the supplements to the Petition in the CVD Initiation Checklist.² Pursuant to section 702(b)(4)(A)(ii) of the Act, we invited

¹ See Petitioners' Letter, "Polyester Textured Yarn from India – Petition for the Imposition of Antidumping and Countervailing Duties," dated October 18, 2018 (Petition).

² See Memorandum, "Countervailing Duty Investigation Initiation Checklist: Polyester Textured Yarn from India," dated November 7, 2017 (Initiation Checklist); see also *Polyester Textured Yarn from India and the People's Republic of China: Initiation of Countervailing Duty Investigations*, 83 FR 58232 (November 19, 2018) (*Initiation Notice*)

representatives of the Government of India (GOI) for consultations with respect to the Petition.³ On November 7, 2018, Commerce initiated a CVD investigation on yarn from India.⁴

In the *Initiation Notice*, we stated that in the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheading listed in the scope of the investigation.⁵ On November 6, 2018, we released the CBP entry data under administrative protective order and indicated that interested parties wishing to comment on the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this CVD investigation.⁶ On November 21 and 28, 2018, the petitioners and Sanathan Textiles Pvt Limited (Sanathan), respectively, submitted respondent selection comments.⁷

On December 10, 2018, pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2), we selected JBF Industries Limited (JBF) and Reliance Industries Limited (Reliance) as mandatory respondents.⁸ On December 14, 2018, we issued the Initial Questionnaire to the GOI, via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).⁹ In the cover letter to the questionnaire, we notified the GOI that Commerce had selected JBF and Reliance as mandatory respondents in this investigation and stated that the GOI "is responsible for forwarding copies of this cover letter and questionnaire to these respondent companies."¹⁰

³ See Commerce Letter, "Countervailing Duty Petition on Polyester Textured Yarn from India: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated October 18, 2018.

⁴ See *Initiation Notice*.

⁵ *Id.* at 58235.

⁶ See Memorandum to the File, "Polyester Textured Yarn from India Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection," dated November 6, 2018.

⁷ See Petitioners' Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India – Petitioners' Comments on CBP Data and Respondent Selection," dated November 21, 2018; and Sanathan's Letter, "Certain Polyester Textured Yarn from India (C-533-886 and A-533-885), Comments on Respondent Selection," dated November 28, 2018.

⁸ See Memorandum to James Maeder, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Respondent Selection," dated December 10, 2018.

⁹ See Commerce Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Countervailing Duty Questionnaire," dated December 14, 2018 (Initial Questionnaire).

¹⁰ *Id.*

Between January 28, 2019 and April 15, 2019, we received timely questionnaire responses from JBF,¹¹ Reliance,¹² and the GOI.¹³ On March 27, 2019, the petitioners submitted benchmark data for calculation of benefits relating to the provision of inputs for less than adequate remuneration (LTAR).¹⁴ JBF initially improperly filed its questionnaire response, which Commerce rejected. However, Commerce allowed JBF to remedy the deficiencies with its filing and it subsequently properly submitted its questionnaire response to Commerce.¹⁵

On March 18, 2019, the petitioners filed five new subsidy allegations (NSAs).¹⁶ On April 8, 2019, Commerce initiated an investigation of all five alleged programs¹⁷ and issued an NSA questionnaire to JBF, Reliance, and the GOI.¹⁸ We intend to seek further information and to address these programs in a post-preliminary analysis.

¹¹ See JBF's Letter, "CVD Investigation of Polyester Textured Yarn from India: Revised Response for CVD Section III," dated March 5, 2019 (JBF's IQR); *see also* JBF's Letter, "CVD Investigation of Polyester Textured Yarn from India: Response for CVD Supplemental Questionnaire," dated March 7, 2019 (JBF's SQR1); JBF's Letter, "CVD Investigation of Polyester Textured Yarn from India: Response for CVD Second Supplemental Questionnaires," dated March 27, 2019 (JBF's SQR2); and JBF's Letter, "CVD Investigation of Polyester Textured Yarn from India: Response for CVD Third Supplemental Questionnaire," dated April 10, 2019 (JBF's SQR3).

¹² See Reliance's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Reliance Industries Limited Section III Affiliate Response," dated January 28, 2019 (Reliance's AR); *see also* Reliance's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Reliance Industries Limited Section III General Questionnaire Response," dated March 4, 2019 (Reliance's IQR); Reliance's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Reliance Industries Limited Section III Supplemental Questionnaire," dated March 28, 2019 (Reliance's SQR1); Reliance's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Reliance Industries Limited Section III Partial Supplemental Questionnaire Response," dated April 1, 2019 (Reliance's SQR1.2); Reliance's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Reliance Industries Limited Section II Supplemental Questionnaire Response," dated April 2, 2019 (Reliance's SQR2); Reliance's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Reliance Industries Limited Section III 4th Supplemental Questionnaire Response," dated April 10, 2019 (Reliance's SQR3); Reliance's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Reliance Industries Limited Section III 5th Supplemental Questionnaire Response," dated April 12, 2019 (Reliance's SQR4); and Reliance's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Reliance Industries Limited Section III English Translation of Jamnagar Manufacturing Division Land Purchase Contracts," dated April 15, 2019 (Reliance's SQR 4.1).

¹³ See the GOI's Letter, "Polyester Textured Yarn (C-533-886), POI (4/1/2017-3/31/2018), Initial Questionnaire Response to Section-II on Behalf of the Government of India," March 4, 2019 (GOI's IQR); *see also* the GOI's Letter, "Polyester Textured Yarn (C-533-886), POI (4/1/2017-3/31/2018), Supplementary Questionnaire Response to Section-II on Behalf of the Government of India," March 29, 2019 (GOI's SQR); and the GOI's Letter, "Additional Information on Supplementary Questionnaire Response Issued to Section-II on Behalf of Government of India," dated April 1, 2019 (GOI's SQR2).

¹⁴ See the petitioners' letter, "Original Investigation of Polyester Textured Yarn from India: Petitioners' Submission of Factual Information to Measure the Adequacy of Remuneration," dated March 27, 2019 (Benchmark Info).

¹⁵ See Commerce's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Refiling Request for the Questionnaire Response from JBF Industries Limited," dated February 26, 2019.

¹⁶ See Petitioners' Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India – New Subsidy Allegation," dated March 18, 2019.

¹⁷ See Memorandum, "Countervailing Duty Investigation on Polyester Textured Yarn from India: Decision Memorandum on New Subsidy Allegations."

¹⁸ See Commerce's Letter, "Polyester Textured Yarn from India: Countervailing Duty Investigation, New Subsidy Allegations Questionnaire for the Government of India (GOI)," dated April 8, 2019; and Commerce's Letter, "Polyester Textured Yarn from India: Countervailing Duty Investigation, New Subsidy Allegations Questionnaire for JBF Industries Limited (JBF) and Reliance Industries Limited (Reliance)," dated April 8, 2019.

On April 16, 2019, the petitioners filed pre-preliminary comments.¹⁹ Due to time constraints, we were unable to consider these comments for the preliminary determination; however, we will do so for the final determination.

B. Postponement of Preliminary Determination

On February 1, 2019, based on a request from the petitioners,²⁰ Commerce postponed the deadline for the preliminary determination until March 18, 2019 in accordance with sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).²¹ Subsequently, 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, 2019.²² The revised deadline for the preliminary determination in this investigation is April 26, 2019.

C. Period of Investigation

The period of investigation (POI) was originally defined as January 1, 2017, through December 31, 2017. We received comments from Reliance requesting that Commerce alter the POI to correspond with the most recently completed Indian fiscal year, April 1, 2017, through March 31, 2018, rather than with the calendar year.²³ No other parties submitted comments regarding the POI. We found that this request is consistent with 19 CFR 351.204(b)(2), and consequently changed the POI to April 1, 2017, through March 31, 2018, reflecting the most recently completed Indian fiscal year.²⁴

III. INJURY TEST

Because India is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On December 10, 2018, the ITC preliminarily determined that there was reasonable indication that an industry in the United States is materially injured by reason of imports of polyester textured yarn from India that are allegedly subsidized by the GOI.²⁵

¹⁹ See Petitioners’ Letter, “Polyester Textured Yarn from India – Petitioners’ Pre-Preliminary Comments,” dated April 16, 2019.

²⁰ See Letter, “Countervailing Duty Investigation of Polyester Textured Yarn from India – Petitioners’ Request to Postpone Preliminary Determination,” dated December 10, 2018.

²¹ See *Polyester Textured Yarn from India and the People’s Republic of China: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 84 FR 1062 (February 1, 2019).

²² See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations for Enforcement and Compliance, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

²³ See Reliance’s Letter, “Countervailing Duty Investigation of Polyester Textured Yarn from India: Reliance Industries Limited Request to Amend POI,” dated November 30, 2018.

²⁴ See Memorandum, “Countervailing Duty Investigation of Polyester Textured Yarn from India: Period of Investigation Change,” dated December 14, 2018.

²⁵ See *Polyester Textured Yarn from China and India*, 83 FR 63532 (December 10, 2018).

IV. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.²⁶ Commerce finds the AUL in this proceeding to be eight years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, which assigns an AUL of eight years for productive assets employed in the "manufacture of textile yarns."²⁷ Commerce notified the respondents of the eight-year AUL in the initial questionnaire and requested data accordingly.

Furthermore, for non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (i) producers of the subject merchandise; (ii) holding companies or parent companies; (iii) producers of an input that is primarily dedicated to the production of the downstream product; and (iv) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This section of Commerce's regulations states that this standard will normally be met where there is a majority of voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *CVD Preamble* to Commerce's regulations further clarifies Commerce's cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation.

²⁶ See 19 CFR 351.524(b).

²⁷ See U.S. Internal Revenue Service Publication 946 (2015), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.²⁸

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.²⁹

JBF

JBF responded to Commerce’s questionnaire on behalf of itself, reporting that it did not have any affiliated companies involved or engaged in the sale, purchase, marketing and production of subject merchandise.³⁰ While JBF has several subsidiaries, these companies either are not located in India or not in operation during the POI. Therefore, we are not treating JBF as a parent company under 19 CFR 351.525(b)(6)(iii), and we will attribute subsidies received by JBF to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

Reliance

Reliance responded to Commerce’s questionnaire on behalf of itself, reporting that it did not have any affiliated companies involved or engaged in the sale, purchase, marketing and production of subject merchandise.³¹ However, Reliance is a parent company with several subsidiaries. Therefore, we will attribute subsidies received by Reliance in accordance with 19 CFR 351.525(b)(6)(iii), using the sales data that Reliance reported.

C. Denominators

In accordance with 19 CFR 351.525(b)(1) - (5), Commerce considers the basis for the respondent’s receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent’s export or total sales. Where the program has been found to be contingent upon export activities, we used the recipient’s export sales as the denominator. For a further discussion of the denominators used, *see* the JBF Preliminary Calculation Memorandum and the Reliance Preliminary Calculation Memorandum.³²

²⁸ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

²⁹ See *Fabrique de Fer de Charleroi S.A. v. United States*, 166 F. Supp. 2d 593, 603 (CIT 2001).

³⁰ See JBF’s IQR, at 1.

³¹ See Reliance’s AR, at 2-5.

³² See Memorandum to the File, “Preliminary Determination Calculations for JBF,” dated concurrently with this memorandum (JBF Preliminary Calculation Memorandum); and Memorandum to the File, “Preliminary Determination Calculations for Reliance,” dated concurrently with this memorandum (Reliance Preliminary Calculation Memorandum).

V. BENCHMARKS AND DISCOUNT RATES

A. Long-Term Lending Rates

Section 771(5)(E)(ii) of the Act provides that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,” indicating that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient “could actually obtain on the market{,}” Commerce will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans during the period, Commerce “may use a national average interest rate for comparable commercial loans,” pursuant to 19 CFR 351.505(a)(3)(ii). In addition, 19 CFR 351.505(a)(2)(ii) states that Commerce will not consider a loan provided by a government-owned special purpose bank for purposes of calculating benchmark rates. Commerce has previously determined that the Industrial Development Bank of India (IDBI), the Industrial Finance Corporation of India (IFCI), and the Export-Import Bank of India (EXIM) are government-owned special purpose banks. As such, Commerce does not use loans from the IDBI, the IFCI, or the EXIM as a basis for a commercial loan benchmark.³³ Also, in the absence of reported long-term commercial loan interest rates, we use the national average interest rates from the International Monetary Fund’s (IMF’s) International Financial Statistics (IFS) as discount rates for purposes of allocating non-recurring benefits over time pursuant to 19 CFR 351.524(d)(3)(i)(B).

In this investigation, the petitioners and Reliance submitted national average interest rates from the IMF’s IFS as benchmark rates for rupee-denominated long-term loans.³⁴

B. Discount Rates

Reliance did not report any commercial long-term loans from commercial banks during the AUL. For allocating the benefit from Reliance’s non-recurring subsidies, we have used the yearly average long-term lending rate in India from the IMF’s IFS for the year in which the government agreed to provide the subsidy, consistent with 19 CFR 351.524(d)(3)(i)(A). The interest-rate benchmarks and discount rates from the IMF’s IFS used in our preliminary calculations are provided in the preliminary calculation memoranda.³⁵

³³ See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*PET Film Final Results 2003 Review*), and accompanying Issues and Decision Memorandum (IDM) at Comment 3; see also *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008) (*PET Film Final Results 2005 Review*), and accompanying IDM at Benchmark Interest Rates and Discount Rates.

³⁴ See Petitioners’ Letter, “Polyester Textured Yarn from India – Petitioners’ Submission of Factual Information to Measure the Adequacy of Remuneration,” dated March 27, 2019 (Petitioners’ Benchmark Information); see also Reliance’s Letter, “Countervailing Duty Investigation of Polyester Textured yarn from India: Reliance Industries Limited Interest Rate Benchmark Information,” dated March 27, 2019; see also Petitioners’ Letter, “Polyester Textured Yarn from India – Petitioners’ Rebuttal Comments Concerning Reliance’s Submission of Factual Information to Measure the Adequacy of Remuneration,” dated April 8, 2019.

³⁵ See JBF Preliminary Calculation Memorandum and Reliance Preliminary Calculation Memorandum.

C. Land Benchmark

Commerce identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services, in accordance with 19 CFR 351.511(a)(2). This section of Commerce's regulations specifies potential benchmarks in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided at 19 CFR 351.511(a)(2), the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation. This is because such prices generally reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving Indian buyers and sellers that can be used to determine whether the government authority sold land to the respondent for less than adequate remuneration (LTAR). Notwithstanding the regulatory preference for the use of prices from actual transactions in the country, where Commerce finds that the government owns or controls the majority or, in certain circumstances, a substantial portion of the market for the good or service, Commerce will consider such prices to be significantly distorted and not an appropriate basis of comparison for determining whether there is a benefit.

The petitioners submitted two potential benchmarks, the first of which is based on a news article that identifies Reliance purchasing land through a commercial bidding process in 2007 and the second of which is based on two news articles identifying several private industrial land transactions in Maharashtra in 2017 and 2018.³⁶ According to the petitioners' submission, in 2007 Reliance purchased commercial land from the Indore Development Authority in Indore, Madhya Pradesh.³⁷ Although this transaction involves Reliance purchasing land through the open market, the land in question is described as commercial land, which we do not consider to be a comparable benchmark for Reliance's purchases of industrial land from the government authority (*i.e.*, the Gujarat Industrial Development Corporation (GIDC)).³⁸

In a supplemental response, Reliance reported that four of its plants are situated on land allotted from the GIDC and that one plant in Jamnagar is situated on land purchased on the open market.³⁹ We examined the contracts associated with the Jamnagar land purchase, and without more information on how these land prices were established, we do not consider the Jamnagar purchase to be a suitable benchmark.

³⁶ See Petitioners' Letter, "Polyester Textured Yarn from India – Petitioners' Submission of Factual Information to Measure the Adequacy of Remuneration of the SGOG's Provision of Land at LTAR," dated April 3, 2019 (Petitioners' Land Benchmark) at Attachments 1A and 4A.

³⁷ *Id.* at Attachment 1A.

³⁸ *Id.*

³⁹ See Reliance's SQR1.2 at 7-12.

For the preliminary determination, we consider the industrial land transactions in Maharashtra to be the most suitable benchmark prices on the record, notwithstanding the location of the parcels outside of the state of Gujarat, because these land parcels were sold for industrial purposes through private transactions. We will use the average rupee-per-square-meter price paid for these land parcels and adjust it for inflation or deflation using India's Consumer Price Index, as published by the IMF. Following the preliminary determination, we will determine whether there is a more suitable benchmark for industrial land purchases in Gujarat.

D. Water Benchmark

As discussed above, Commerce's regulations specify potential benchmarks in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three).

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving Indian buyers and sellers that can be used to determine whether the government authority supplied water to the respondent for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where Commerce finds that the government owns or controls the majority, or in certain circumstances a substantial portion, of the market for the good or service, Commerce will consider such prices to be significantly distorted and not an appropriate basis of comparison for determining whether there is a benefit.

Reliance has reported the purchase of water supply from commercial entities.⁴⁰ Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one, Commerce will normally adjust the benchmark price to reflect the price that a firm actually paid. However, we do not have enough information on the record to determine whether Reliance's water suppliers outside of the GIDC are government authorities. Furthermore, we do not have general rate schedules for comparison purposes or water supply contracts to understand how the rates that Reliance pays to non-GIDC entities were established. We also have no information to determine how water supply rates are established in India, generally, and in Gujarat, specifically.

Therefore, for this preliminary determination, we will rely on the benchmark used in previous cases to calculate the benefit for Reliance's purchases of water supplies from the GIDC.⁴¹ Following the preliminary determination, we will seek information regarding whether there might be a more suitable benchmark for water supply purchases in Gujarat.

⁴⁰ See Reliance's SQR1.2 at Exhibit 5; *see also* Reliance's SQR4.1 at Exhibit SGOG-Water-CVD-1.

⁴¹ See Petitioners' Benchmark Information (citing to *Polytetrafluoroethylene Resin from India: Preliminary Affirmative Countervailing Duty Determination*, 83 FR 9842 (March 8, 2018) (*PTFE Resin Prelim*), and the accompanying PDM at 17-18); *see also* *Glycine from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 44859 (September 4, 2018) (*Glycine Prelim*), and the accompanying PDM at 15-16.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the AFA rule to induce respondents to provide Commerce with complete and accurate information in a timely manner.”⁴² Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴³ At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

For the reasons explained below, Commerce preliminarily determines that application of facts otherwise available, with an adverse inference, to the financial contribution and specificity aspects of the countervailability determination of certain programs is warranted, pursuant to section 776(b) of the Act. This is warranted because, by not responding to our requests for information, the GOI repeatedly failed to provide information in the manner requested and therefore failed to cooperate by not acting to the best of its ability.

⁴² See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from the PRC*); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

⁴³ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

B. Application of AFA

Government of India

On March 19, 2019 and March 22, 2019, we issued supplemental questionnaires⁴⁴ to the GOI in response to certain deficiencies that we identified in its initial and supplemental questionnaire responses submitted on March 4, 2019, March 29, 2019, and April 1, 2019.⁴⁵ In these supplemental questionnaires, we requested information that we had previously requested and the GOI had failed to provide. This information included key program procedures and guidelines pertaining to assistance provided under the State and Union Territory Sales Tax Incentive; State Government of Gujarat's (SGOG) Provision of Land for LTAR, Provision of Water for LTAR, and Electric Duty Exemption; and State Government of Uttar Pradesh's (SGUP) Value-Added Tax (VAT) Refund programs. As such, we requested official documentation and program operation information to determine the countervailability of these programs.

For the State and Union Sales Territory Sales Tax Incentive, we requested that the GOI provide information regarding the use of the program by the mandatory respondents; however, the GOI stated that the requested information was not available but could be collected from the mandatory respondents.⁴⁶ In its supplemental responses, the GOI reiterated that the requested information regarding this program is not readily available to the GOI.⁴⁷

In addition, the GOI did not provide a substantive response to Commerce's questions regarding the SGOG's Water for LTAR, Land for LTAR and Electricity Duty Exemption programs.⁴⁸ In its initial response, the GOI provided only a brief description of each program and either indicated that no mandatory respondents received assistance under the programs or that the information was unavailable to them because the programs were administered by the SGOG. Reliance, however, reported the receipt of assistance under the SGOG Water for LTAR, SGOG Land for LTAR and SGOG Electricity Duty Exemption programs.⁴⁹ Because of the deficiencies in GOI's responses, we issued supplemental questionnaires; however, in its supplemental questionnaire responses, the GOI reiterated its previous answers and failed to respond substantively.⁵⁰

Lastly, the GOI did not provide a substantive response to Commerce's questions regarding the SGUP VAT Refund program.⁵¹ In its supplemental questionnaire response, the GOI stated that no mandatory respondents received assistance from the program without providing any

⁴⁴ See Commerce Letter to the GOI, "Polyester Textured Yarn from India: Countervailing Duty Investigation," dated March 19, 2019 (GOI's First Supplemental Questionnaire); and Commerce Letter to the GOI, "Polyester Textured Yarn from India: Countervailing Duty Investigation," dated March 22, 2019 (GOI's Second Supplemental Questionnaire).

⁴⁵ See GOI IQR; GOI SQR, and GOI SQR2.

⁴⁶ See GOI's IQR at 204.

⁴⁷ See GOI's SQR at 123-24, and

⁴⁸ *Id.* at 127-164.

⁴⁹ *Id.* at 138-153 and 153-164; see also Reliance's IQR at III-81 to III-92 and Reliance's SQR1.2 1-12.

⁵⁰ See GOI's First Supplemental Questionnaire and GOI's Second Supplemental Questionnaire; see also GOI SQR, and GOI SQR2.

⁵¹ See GOI IQR, GOI SQR, GOI SQR2.

additional information.⁵² Reliance, however, reported the receipt of assistance under the SGUP VAT Refund program in its supplemental questionnaire response.⁵³

Therefore, as noted above, the GOI failed to provide necessary information in response to questions pertaining to State and Union Territory Sales Tax Incentive, SGOG Provision of Land LTAR, SGOG Provision of Water for LTAR, SGOG Electric Duty Exemption, and SGUP VAT Refund programs. Given that such necessary information has been withheld by the GOI, Commerce's ability to investigate those programs is significantly impeded.

On this basis, we preliminarily determine that necessary information is not available on the record and that the GOI withheld information that was requested of it. Further, the fact that the GOI did not cooperate to the best of its ability significantly impeded the investigation. Thus, Commerce must rely on "facts available" in making our preliminary determination, in accordance with sections 776(a)(1), 776(a)(2)(A) and (C) of the Act. Moreover, we preliminarily determine that the GOI failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In applying AFA, we find that the programs relating to the: (1) State and Union Territory Sales Tax Incentive; (2) SGOG's Provision of Land LTAR; (3) SGOG's Provision of Water for LTAR; (4) SGOG's Electric Duty Exemption; and (5) SGUP's VAT Refund constitute a financial contribution within the meaning of section 771(5)(D) of the Act and that these programs are specific within the meaning of section 771(5A) of the Act. We are preliminarily relying on AFA, because we find that the GOI has not cooperated to the best of its ability. However, because the respondents have reported their usage of the aforementioned programs, we are relying on the respondents' reported information to calculate the benefit, within the meaning of section 771(5)(E) of the Act.

Duty Drawback Program (DDB Program)

We preliminarily determine that the application of facts otherwise available, with an adverse inference, is warranted with respect to JBF and its reporting of subject merchandise.

On March 15, 2019, and April 5, 2019, we sent out supplemental questionnaires asking JBF to confirm whether it included polyester twisted yarn in its reporting of subject merchandise sales and requesting that JBF report its total sales quantity and value for polyester twisted yarn. In its responses to these supplemental questionnaires, JBF confirmed that it did not include polyester twisted yarn in calculating sales of subject merchandise, and the company chose not to report revised sales data, maintaining that this merchandise is outside of the scope of this investigation.

As an initial matter, polyester twisted yarn that is produced from polyester textured yarn is currently within the scope of this investigation.⁵⁴ In its April 10, 2019, supplemental questionnaire response, JBF explained that its polyester twisted yarn is, in fact, produced from

⁵² See GOI SQR at 44.

⁵³ See Reliance's SQR1.2 at 12-18.

⁵⁴ The scope of the investigation includes "all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness (as measured in denier), number of filaments, number of plies, finish (luster), cross section, color, dye method, texturing method, or packing method (such as spindles, tubes, or beams)."

polyester textured yarn. JBF did not file an exclusion request for this product, and to date, the company has not reported its sales of polyester twisted yarn.

Because JBF's reported subject merchandise sales do not include sales of polyester twisted yarn, we do not consider its reported sales of subject merchandise and reported export sales of subject merchandise to be accurate sales denominators for the calculation of subsidy benefits, where applicable. As the DDB scheme is an export subsidy, JBF reported its benefits under this scheme on a transaction-specific basis. From JBF's reported benefits, we can determine which inputs were used to produce subject merchandise (including polyester twisted yarn) and, therefore, what portion of the benefits are tied to the production and export of subject merchandise. Though our normal practice would be to divide the total benefit tied to exports of subject merchandise by the total value of export sales of subject merchandise, the reported export sales value of subject merchandise in this case appears to be underreported.

Accordingly, we preliminarily determine that necessary information is not available on the record for us to calculate accurately JBF's DDB benefits tied to subject merchandise. Thus, we must rely on "facts available" in making our preliminary determination, in accordance with sections 776(a)(1) and 776(a)(2)(A), (B) and (C) of the Act. Moreover, we preliminarily determine that JBF failed to cooperate by not acting to the best of its ability in failing to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act.

In drawing an adverse inference, we divided the value of DDB benefits attributable to both polyester textured yarn and polyester twisted yarn produced for export to the United States by the reported value of export sales of subject merchandise to the United States, which does not include export sales of twisted yarn to the United States.

VII. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following:

A. Programs Preliminarily Determined to Be Countervailable

1. Advance Authorization Program (AAP), also known as Advance License Program (ALP)

Under the AAP/ALP exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported. The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled their export requirement.⁵⁵ The quantities of imported materials and exported finished products are linked through standard input-output norms (SIONs) established by the GOI.⁵⁶ During the POI, JBF and Reliance used advance licenses to import certain materials duty free.⁵⁷

⁵⁵ See GOI's SQR at 48-74.

⁵⁶ *Id.*

⁵⁷ See GOI's SQR at 74; see also JBF's IQR at 13-19 and Reliance's IQR at III-8 through III-16.

Import duty exemptions on inputs for exported products are not countervailable, as long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.⁵⁸ 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.⁵⁹ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁶⁰ If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission or drawback is countervailable.⁶¹

In *PET Film India AR 2005*, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the AAP/ALP during 2005.⁶² Commerce acknowledged that certain improvements to the AAP/ALP system were made. However, Commerce found that, based on the information submitted by the GOI and examined during previous reviews of that proceeding, and no information having been submitted for that review demonstrating that the GOI had revised its laws or procedures governing this program since those earlier reviews, systemic issues continued to exist in the AAP/ALP system during that period of review.⁶³ Specifically, in the 2005 review, Commerce stated that it continued to find the AAP/ALP countervailable based on:

the GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. Specifically, we still have concerns with regard to several aspects of the ALP including (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET Film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports.⁶⁴

Since the *2005 Review of PET Film from India*, Commerce has in several other proceedings made determinations consistent with this treatment of the AAP/ALP.⁶⁵ In this investigation,

⁵⁸ See 19 CFR 351.519(a)(1)(ii).

⁵⁹ See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India Final Determination*), and accompanying IDM at "Duty Drawback (DDB)."

⁶⁰ *Id.*

⁶¹ See 19 CFR 351.519(a)(4)(i)-(ii).

⁶² See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 73 FR 7708 (February 11, 2008) (*PET Film India AR 2005*), and accompanying IDM at Comment 3.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See, e.g., *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) (*Oil Country Tubular Goods from India Final*) and accompanying IDM; see also *Certain Lined Paper Products from India: Final*

record evidence shows⁶⁶ there has been no change to the AAP/ALP program and, therefore, we preliminarily find that the program confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from payment of import duties that would otherwise be due; (2) the GOI does not have in place, and does not apply, a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported product, making normal allowance for waste, nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus, the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act; and (3) this program is specific under section 771(5A)(B) of the Act, because it is contingent upon exportation.

Pursuant to 19 CFR 351.524(c)(1), the exemption of import duties on raw material inputs normally provides a recurring benefit.⁶⁷ Reliance reported the benefits earned under this program on a transaction-specific basis, whereas JBF reported the benefits earned by bill of entry and advanced authorization number.⁶⁸ In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we will attribute that subsidy to only that product or market. Reliance's data show that the company only used this program for export of non-subject merchandise.⁶⁹ Therefore, we preliminarily determine that Reliance has not received benefits tied to subject merchandise during the POI under this program. In the case of JBF, we divided the AAP benefits earned on exports of subject merchandise during the POI by JBF's POI sales value for exports of subject merchandise. On this basis, we preliminarily determine a countervailable subsidy rate of 19.22 *ad valorem* for JBF.⁷⁰

2. DDB Program

Reliance and JBF reported that they received duty rebates under this program.⁷¹ The GOI explained that the DDB program provides rebates for duty or tax chargeable on any: (a) imported or excisable materials; and (b) input services used in the manufacture of export goods.⁷² Specifically, the duties and tax "neutralized" under the program are the (i) Customs and Union Excise Duties for inputs and (ii) Service Tax for services.⁷³ The duty drawback is generally fixed as a percentage of the free-on-board (FOB) price of the exported product.⁷⁴

Results of Countervailing Duty Administrative Review; Calendar Year 2012, 80 FR 19637 (April 13, 2015), and accompanying IDM.

⁶⁶ See GOI's SQR at 48-74.

⁶⁷ See, e.g., *Oil Country Tubular Goods from India Final*, and accompanying IDM.

⁶⁸ See JBF's IQR at 13-19 and JBF's 2SQR at Exhibit JBF-2S-04; see also Reliance's IQR at III-8 through III-15.

⁶⁹ See Reliance's IQR at Exhibit AAP-03 and Exhibit AAP-04.

⁷⁰ See JBF Preliminary Calculation Memorandum.

⁷¹ See JBF's IQR at 19-26 and Reliance's IQR at III-15 – III-21.

⁷² See GOI IQR at 21.

⁷³ *Id.*

⁷⁴ *Id.*

Import duty exemptions on inputs for exported products are not countervailable, as long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.⁷⁵ 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.⁷⁶ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁷⁷ If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission of drawback is countervailable.⁷⁸

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

The rates are determined following a specified procedure that is undertaken by an independent committee appointed by GOI. The committee makes its recommendations after discussions with all stakeholders including Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of exports products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analyzed and this information is used to form the basis for the rate of DDB.⁷⁹

Rule 3(2) of the Drawback Rules 1995 states that in determining the amount of drawback, the “Central Government shall have regard to” the average quantity and value of an input, component or intermediate product, whether produced in India or imported, the import duties or excise duties paid thereon, as well as account for waste, re-use or sale of a by-product, and packing and input services rendered.⁸⁰

We requested that the GOI provide a copy of the recommendations and supporting documents (*e.g.*, accounting records, company-specific files, databases, budget authorizations, *etc.*) for the drawback rates in effect during the POI.⁸¹ The GOI did not provide documentation enabling Commerce to determine whether the GOI has a system in place.⁸² Thus, consistent with *Shrimp from India*, we are determining that the GOI’s response lacks the documentation to support a finding that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products, and in what amounts. Therefore, we preliminarily

⁷⁵ See 19 CFR 351.519(a)(1)(ii).

⁷⁶ See *Shrimp from India Final Determination* and accompanying IDM at “Duty Drawback (DDB).”

⁷⁷ *Id.*

⁷⁸ See 19 CFR 351.519(a)(4)(i)-(ii).

⁷⁹ See GOI IQR at 37.

⁸⁰ *Id.* at 37-38.

⁸¹ See CVD Questionnaire at 3-4 and 16-20.

⁸² See GOI IQR at 19; *see also* GOI SQR at 14.

determine that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended.⁸³

Accordingly, we preliminarily determine that the DDB program confers a countervailable subsidy. Under the DDB program, 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 program system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported product. Therefore, under 19 CFR 351.519(a)(4), the entire amount of the import duty rebate earned during the POI constitutes a benefit. Finally, this program is only available to exporters; therefore, it is specific under sections 771(5A)(A) and (B) of the Act.

Pursuant to 19 CFR 351.519(b)(1), we find that benefits from the DDB program are conferred as of the date of exportation of the shipment for which the pertinent drawbacks are earned. We calculated the benefit on an as-earned basis upon export because drawback under the program is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, it is at this point that recipients know the exact amount of the benefit (*i.e.*, the value of the drawback).

Reliance and JBF both reported the benefits earned on exports of subject merchandise to the United States under this program on a transaction-specific basis. In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we will attribute that subsidy to only that product or market.⁸⁴ For Reliance, we divided the DDB rebates earned on exports of subject merchandise to the United States during the POI by Reliance's POI exports of subject merchandise to the United States. For JBF, we divided the DDB rebates earned on exports of subject merchandise (polyester textured yarn and polyester twisted yarn) to the United States during the POI by its POI exports of subject merchandise to the United States (exclusive of polyester twisted yarn), as discussed above in the section "Use of Fact Otherwise Available and Adverse Inference."

On this basis, we preliminarily determine a countervailable subsidy rate of 0.16 *ad valorem* for JBF and 1.98 percent *ad valorem* for Reliance.⁸⁵

3. *Export Promotion of Capital Goods Scheme (EPCG Program)*

The GOI reported that the EPCG program allows a partial exemption from payment of customs duties upon importation of capital goods. The EPCG program allows the importation of capital goods including spares for pre-production, production, and post-production at zero duty subject to an export obligation.⁸⁶ Manufacturer exporters, merchant exporters tied to a supporting

⁸³ See *Shrimp from India Final Determination* and accompanying IDM at "Duty Drawback (DDB)."

⁸⁴ *Id.*

⁸⁵ See JBF Preliminary Calculation Memorandum and Reliance Preliminary Calculation Memorandum.

⁸⁶ See GOI IQR at 96.

manufacturer, and service providers may use the program. Eligibility is not limited to a particular sector or region.⁸⁷

The GOI reported that the EPCG program, administered by the Directorate General of Foreign Trade (DGFT), exempts producers from paying the customs duty on imports of capital goods, subject to an export obligation.⁸⁸ The export obligation is based on: (1) a calculation equal to six times the duty saved on capital goods imported under this program; and (2) the past three years' export performance. Importers must meet this obligation within six years.⁸⁹ Furthermore, within six months after importing the capital goods, the producers must install the capital goods in their manufacturing facilities.⁹⁰ The GOI did not provide information on penalties for companies that fail to meet the export obligation. However, in previous cases we have found that companies are subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, in addition to an interest penalty.⁹¹

Commerce has previously determined that import duty reductions or exemptions provided under the EPCG program are countervailable export subsidies because they: (1) provide a financial contribution pursuant to section 771(5)(D)(ii) of the Act; (2) provide two different benefits (*see* below) under section 771(5)(E) of the Act; and (3) are specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is contingent upon export performance.⁹² Because the evidence on the record with respect to this program has not changed from previous findings, we preliminarily determine that this program is countervailable.⁹³

Under the EPCG program, the exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. Commerce's practice is to treat any balance on an unpaid liability that may be waived in the future as an interest-free contingent-liability loan pursuant to 19 CFR 351.505(d)(1).⁹⁴ Because the unpaid duties constitute a liability contingent on subsequent events, we treat the amount of unpaid duty liabilities as interest-free contingent-liability loans. We find the amount respondents would have paid during the POI had they borrowed the full amount of the duty reduction or exemption at the time of importation to constitute the first benefit under the EPCG program. The second benefit arises based on the

⁸⁷ *Id.* at 97.

⁸⁸ *Id.*

⁸⁹ *Id.* at 118

⁹⁰ *Id.* at 107.

⁹¹ *See Fine Denier Polyester Staple Fiber from India: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 51387 (November 6, 2017) (*Fine Denier Preliminary Determination*) and accompanying PDM (Fine Denier PDM) at 20, unchanged in *Fine Denier Polyester Staple Fiber from India: Final Affirmative Countervailing Duty Determination*, 83 FR 3122, January 23, 2018.

⁹² *See, e.g., Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film Final Determination*), and accompanying IDM at "EPCGS" section; *see also Shrimp from India Final Determination*, and accompanying IDM at 14.

⁹³ *See Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination (Steel Flanges from India Preliminary Determination)*, 81 FR 85928 (November 29, 2016), and accompanying PDM at 13, affirmed in *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Steel Flanges from India Final Determination*); *see also Fine Denier Preliminary Determination*, and accompanying PDM at 20.

⁹⁴ *Id.*

amount of duty waived by the GOI on imports of capital equipment covered by those EPCG licenses for which the export requirement had already been met. With regard to licenses for which the GOI and the respondents have acknowledged that the companies have completed their export obligations, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are approved for the purchase of capital equipment. The *CVD Preamble* 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 tied to capital assets, the benefits from such duty exemptions should be considered non-recurring...”⁹⁵ In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.

Reliance and JBF both reported that they imported capital goods with waived import duty rates under the EPCG program.⁹⁶ Based on the information and the documentation submitted by these companies, we cannot reliably determine that the EPCG licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we preliminarily find that all of JBF’s and Reliance’s EPCG licenses benefit all of the companies’ exports.⁹⁷ JBF and Reliance reported that they met several export requirements for the EPCG program prior to the last day of the POI.⁹⁸

Reliance also reported that it did not meet the export requirements for many EPCG licenses prior to the last day of the POI.⁹⁹ Therefore, Reliance received final waivers of the obligation to pay duties for some imports of capital goods while receiving deferrals from paying import duties for other imports of capital goods. For those deferrals, the final waiver of the obligation to pay the duties has not yet been granted. Reliance has also reported that, after the POI, it filed for redemption applications for several of the EPCG licenses; however, Reliance has not yet received redemption certificates for these licenses.¹⁰⁰ Therefore, we preliminarily determine that Reliance has not yet met the export requirements for these licenses.

To calculate the benefit received from JBF’s and Reliance’s formal waivers of import duties on capital equipment imports where their export obligations were met prior to the end of the POI, we considered the total amount of duties waived, *i.e.*, the calculated duties payable less the duties actually paid in the year, net of required application fees, in accordance with section 771(6) of the Act, to be the benefit, and treated these amounts as grants, pursuant to 19 CFR 351.504. Further, consistent with the approach followed in previous investigations, we preliminarily determine the year of receipt of the benefit to be the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2).¹⁰¹ Next,

⁹⁵ See *CVD Preamble*, 63 FR at 65393.

⁹⁶ See Reliance’s IQR at III-45 through III-53; see also JBF’s SQR1 at 20.

⁹⁷ See Reliance’s SQR4 at Exhibits SEPCGS-CVD-1; see also JBF’s SQR1 at Exhibits JBF-CVD-S18-a to JBF-CVD-S-20.

⁹⁸ See Reliance’s IQR at III-45 through III-53; see also JBF’s SQR1 at 20.

⁹⁹ See Reliance’s IQR at III-45 through III-53.

¹⁰⁰ See Reliance’s SQR2 at 3.

¹⁰¹ See *PET Film Final Determination*, and accompanying IDM at Comment 5.

we performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), for the total value of duties waived, for each year in which the GOI granted the respondents an import duty waiver. For any years in which the value of the waived import duties was less than 0.5 percent of the respondents’ total export sales, we expensed the value of the duty waived to the year of receipt. For each year of the AUL, JBF’s and Reliance’s licenses had values of less than 0.5 percent of JBF’s and Reliance’s total export sales (and deemed exports) and were expensed in the year of receipt. JBF did not receive any benefits during the POI. For Reliance’s benefits that were received during the POI, we divided the benefit by the total exports (and deemed exports) during the POI.

As noted above, import duty reductions that Reliance received on the imports of capital equipment for which it had not yet met export obligations may have to be repaid to the GOI if the obligations under the license are not met. Consistent with our practice and prior determinations, we are treating the unpaid import duty liability as an interest-free loan.¹⁰²

The amount of unpaid duty liabilities to be treated as an interest-free loan is the amount of import duty reduction or exemption for which the respondent applied, but had not been officially waived by the GOI, as of the end of the POI. Accordingly, we find the benefit to be the interest that the respondent would have paid during the POI, had it borrowed the full amount of the duty reduction or exemption at the time of importation.

As discussed above, the time period for fulfilling the export requirement expires a certain number of years after importation of the capital good. As such, pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate, because the event upon which repayment of duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the long-term interest rate, as discussed in the “Benchmark and Discount Rates” section above. We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the capital good was imported and summed these amounts to determine the total benefit. For EPCG licenses with duty-free imports made during the POI, we calculated a daily interest rate based on the long-term interest rate and the number of days the loan was outstanding during the POI to arrive at a prorated contingent liability for those imports.

The benefit received under the EPCG program is the sum of: (1) the benefit attributable to the POI from the formally-waived duties for imports of capital equipment for which the respondents met export requirements by the end of the POI; and (2) the interest that would have been due had the respondents borrowed the full amount of the duty reduction or exemption at the time of the importation for imports of capital equipment for which respondents had not met export requirements during the POI. We then divided the total benefit received by Reliance under the EPCG Program by the total exports sales of Reliance, during the POI, as described above.

¹⁰² See, *e.g.*, *Steel Flanges from India Preliminary Determination*, and accompanying PDM at 15, affirmed in *Steel Flanges from India Final Determination*; see also *Fine Denier PDM* at 20-21.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.19 percent *ad valorem* for Reliance and that JBF did not receive any benefits under the EPCG program during the POI.¹⁰³

4. *Merchandise Export Incentive Scheme (MEIS)/Focus Product Scheme (FPS)*

MEIS

The GOI explained that the MEIS was introduced on April 1, 2015, in the Foreign Trade Policy (FTP) 2015-2020. Its purpose is to offset infrastructural inefficiencies and associated costs involved in the export of goods that are produced in India, especially those having high export intensity, employment potential and, thereby, enhancing India's export competitiveness.¹⁰⁴ The FPS, along with other subsidy programs, was merged into a single program to form the MEIS.¹⁰⁵ Under this program, the GOI issues a scrip (duty credit) worth either two, three, or five percent of the FOB value of the exports in free foreign exchange realized or received, or on the "FOB value of exports in free foreign exchange, as given on the shipping bills in free foreign exchange, whichever is less."¹⁰⁶ To receive the scrip, a recipient must file an electronic application and supporting shipping documentation for each port of export with the DGFT. Each application can only comprise a maximum of 50 shipping bills. After a recipient receives and registers the scrip, it may either use it for the payment of future customs duties for importing goods or transfer it to another company.¹⁰⁷

The program is specific within sections 771(5A)(A) and (B) of the Act, because eligibility to receive the scrips is contingent upon export. This program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, because the scrips provide exemptions for paying duties associated with the import of goods, which represents revenue forgone by the GOI.

JBF and Reliance reported that they submitted applications and received approval under the MEIS program.¹⁰⁸ Each company reported that it met the requirements of this program and obtained the requisite scrips from the DGFT, which can be either used for a company's own consumption or sold in the market.¹⁰⁹

This program provides a recurring benefit because, unlike the scrips in the Status Holders Incentive Scrips (SHIS) scheme, the scrips provided under this program are not tied to capital assets. Furthermore, recipients can expect to receive additional subsidies under this same program on an ongoing basis from year to year under 19 CFR 351.524(c)(2)(i). We calculated the benefit to JBF and Reliance to be the total value of scrips granted (*i.e.*, the MEIS license value) during the POI. Normally, in cases where the benefits are granted based on a percentage

¹⁰³ See Reliance Preliminary Calculation Memo; *see also* JBF Preliminary Calculation Memorandum.

¹⁰⁴ See GOI IQR at 67-88.

¹⁰⁵ See JBF's SQR1 at 13.

¹⁰⁶ See GOI IQR at 67-88.

¹⁰⁷ *Id.*

¹⁰⁸ See Reliance's IQR at III-23 to III-27; *see also* JBF's SQR1 at 13-19.

¹⁰⁹ *Id.*

value of a shipment, Commerce calculates the benefit as having been received at the date of exportation;¹¹⁰ however, because the MEIS benefit, *i.e.*, the scrip, amount is not automatic and is not known to the exporter until well after the exports are made, the MEIS 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.¹¹¹

On this basis, we preliminarily determine the countervailable subsidy provided to JBF and Reliance under the MEIS to be 1.01 percent *ad valorem* and 0.20 percent *ad valorem*, respectively.¹¹²

FPS

Much like the MEIS, the FPS entitles exporters to duty credit scrips equivalent to two or five percent of the FOB value of exports in free foreign exchange made from August 27, 2009, onward, unless a specific date of export/period is specified by public notice/notification.¹¹³ This program is governed under the provision of Chapter 3.15 of the FTP 2009-2014 and paragraphs 3.9 of the Handbook of Procedures 2009-2014.¹¹⁴ This program is also administered by the DGFT.¹¹⁵

The GOI and the mandatory respondents have claimed that the FPS was terminated on March 31, 2015 and merged with other programs to form the MEIS.¹¹⁶ However, neither the GOI, nor the respondents, have provided a public notice of termination, as mentioned in paragraph 3.9.1 of the 2009-2014 Handbook of Procedures. Furthermore, although the GOI has stated that this program was discontinued under the FTP of 2015-2020, it did not provide the relevant sections of this law to confirm that the FPS has been discontinued.¹¹⁷ Therefore, Commerce cannot reasonably make a determination regarding the termination of this program based on the information on the record.

As with the MEIS, this program is specific within sections 771(5A)(A) and (B) of the Act because eligibility to receive the scrips is contingent upon export. This program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act because the scrips provide exemptions for paying duties associated with the import of goods which represents revenue forgone by the GOI. For the same reasons discussed in the “MEIS” section above, we consider this program to be a recurring benefit. JBF did not report any usage of this program. Reliance reported that it received benefits under this program throughout the

¹¹⁰ See 19 CFR 351.519(b)(1).

¹¹¹ See, e.g., *Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014), and accompanying IDM at VI.A.5., page 17.

¹¹² See JBF Preliminary Calculation Memorandum; see also Reliance Preliminary Calculation Memorandum.

¹¹³ See GOI IQR at 88-89; see also GOI SQR at 78-79.

¹¹⁴ See GOI IQR at 79 and Exhibit 15.

¹¹⁵ *Id.* at 80.

¹¹⁶ See GOI IQR at 93; see also Reliance’s IQR at III-27; see also JBF SQR1 at 13.

¹¹⁷ See GOI SQR at 91-92.

AUL until 2016 (*i.e.*, before the POI).¹¹⁸ Therefore, we preliminarily determine that neither JBF, nor Reliance, received benefits from this program during the POI.

5. *Special Economic Zones (SEZ) Programs*

Under the SEZ Act of 2005, an SEZ may be established jointly or individually by the central government, a state government or an individual or entity, to manufacture goods and/or provide services and to serve as a Free Trade and Warehousing Zone.¹¹⁹ Entities that want to set up an SEZ in an identified area may submit their proposal to the relevant state government.¹²⁰ To be eligible under the SEZ Act, the companies inside an SEZ must commit to export their production of goods and/or services.¹²¹ Specifically, all products produced, excluding rejects and certain domestic sales, must be exported and must achieve a positive net foreign exchange (NFE), calculated cumulatively for a period of five years from the commencement of production.¹²² In return, the companies inside the SEZ are eligible to receive various benefits.

Companies in a designated SEZ may receive the following benefits: (1) duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (2) purchase of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material without the payment of central sales tax (CST) thereon; (3) exemption from the services tax for the services consumed within the SEZ; (4) exemption from stamp duty for all transactions and transfers of immovable property, or documents related thereto within the SEZ; (5) exemption from electricity duty, and cess (tax or levy) thereon, on the sale or supply to the SEZ unit; (6) income tax exemptions under Section 10A of the Income Tax Exemption Scheme; and (7) discounted land in an SEZ.¹²³

Reliance reported that it produced non-subject merchandise in an SEZ unit located in Jamnagar, Gujarat during the POI.¹²⁴ Specifically, Reliance reported using the SEZ program to obtain: (1) duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (2) exemption from payment of CST of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (3) exemption from electricity duty, and cess thereon, on the sale or supply to the SEZ unit; and (4) income tax exemptions under Section 10A of the Income Tax Exemption Scheme.¹²⁵

Reliance did not provide any evidence to support its claim that benefits under these six SEZ programs are tied to non-subject merchandise, including citing to past cases where Commerce determined that the programs were tied to merchandise other than subject merchandise. Therefore, for the preliminary determination, we find that subsidies provided within the Jamnagar SEZ are not tied to production of any particular merchandise and benefit all of

¹¹⁸ See Reliance's SQR2 at 1-2.

¹¹⁹ See GOI IQR at Exhibit 20, SEZ Act of 2005.

¹²⁰ *Id.*

¹²¹ *Id.* at Exhibit 21, SEZ Rules of 2006.

¹²² *Id.*

¹²³ *Id.* at 127 and Exhibits 20 and 21.

¹²⁴ See Reliance's SQR1 at 20-21.

¹²⁵ See Reliance's IQR at III-54 to III-71.

Reliance's production. Because eligibility for the SEZ program is contingent upon export performance and location within the SEZ area, we find that the assistance provided under the SEZ program is specific, within the meaning of sections 771(5A)(B) and (D)(iv) of the Act.

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

Companies in SEZs are entitled to import capital goods and raw materials, components, consumables, intermediates, spare parts and packing material duty-free, in exchange for committing to export all of the products they produce, excluding rejects and certain domestic sales.¹²⁶ Additionally, such companies have to achieve a positive NFE calculated cumulatively for a period of five years from the commencement of production.¹²⁷

We determine that the duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material, provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act through the foregoing of duty payments. This SEZ program confers benefits in the amounts of exemptions of customs duties not collected in accordance with section 771(5)(E) of the Act. Pursuant to 19 CFR 351.510, we preliminarily determine that the time of receipt of this benefit is the time that Reliance otherwise would be required to pay the indirect tax or import charge.

Normally, uncollected indirect taxes are considered to be recurring benefits. However, a portion of the benefit of this program relates to the purchase of capital goods.¹²⁸ Pursuant to 19 CFR 351.524(c)(2)(iii), we normally treat uncollected taxes due on purchases of capital goods as non-recurring benefits. We performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), on Reliance's uncollected import duties that related to its purchases of capital goods in the fiscal years 2009 through 2018 and found that, for certain years, uncollected import duties were more than 0.5 percent of total export sales for each year. Therefore, the annual benefit for these years was allocated over the AUL to find the benefit attributable to the POI. Also, in certain years, the amount of uncollected import duties that related to the purchase of capital goods during the POI was less than 0.5 percent of total export sales; therefore, these benefits were expensed to the year of receipt.

To calculate the benefit, we summed the total value of uncollected import duties for capital goods purchases and other purchases attributed to the POI and the total value of uncollected import duties due on all other purchases during the POI. We then divided this amount by the total value of Reliance's export sales during the POI. On this basis, we determine the countervailable subsidy provided to Reliance through the import duty exemptions under the SEZ program to be 4.45 percent *ad valorem*.¹²⁹

¹²⁶ See GOI IQR at Exhibit 21.

¹²⁷ *Id.*

¹²⁸ See Reliance's SQR4 at Exhibit SEPCGS-CVD-1.

¹²⁹ See Reliance Preliminary Calculation Memorandum.

B) Exemption from Payment of CST on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material

Under this program, Reliance was exempt from paying CST on capital goods, raw materials, and other goods, such as packaging materials procured domestically. We determine that the exemption from payment of CST on purchases of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act through the foregoing of CST payments. This SEZ program confers benefits in the amount of CST not collected, in accordance with section 771(5)(E) of the Act. Specifically, the benefit associated with domestically purchased materials is the amount of CST due and uncollected on those purchases by SRF during that period.

Normally, uncollected indirect taxes are considered to be recurring benefits. However, a portion of the benefit of this program is tied to the purchase of capital goods.¹³⁰ Pursuant to 19 CFR 351.524(c)(2)(iii), we normally treat uncollected taxes due on purchases of capital goods as non-recurring benefits. We performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), on Reliance's uncollected CST that related to its purchases of capital goods in the fiscal years 2009 through 2018 and found that, for each year, uncollected CST were less than 0.5 percent of total sales for each year. Therefore, these benefits were expensed to the year of receipt.

To calculate the benefit, we summed the total value of uncollected CST for capital goods purchases and other purchases attributed to the POI and the total value of uncollected CST due on all other purchases during the POI. We then divided this amount by the value of Reliance's total export sales during the POI. On this basis, we determine the countervailable subsidy provided to Reliance through the CST exemptions under the SEZ program to be 0.01 percent *ad valorem*.¹³¹

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

The GOI and Reliance reported that under Rule 5 of the SEZ Rules of 2006, the supply of self-generated or purchased electric power for use in the processing area of an SEZ is exempt from electricity duty and cess, as long as the unit for which electricity duty is exempted, is located within the SEZ, as approved by the GOI.¹³² Reliance claims that its plant in the Jamnagar SEZ generates its own power; therefore, its exemptions are based on the total units generated "captively" by the company from its own power plant.¹³³

The electricity duty and cess exemptions provide a financial contribution in the form of revenue forgone by the SGOG, pursuant to section 771(5)(D)(ii) of the Act. It confers a benefit equal to

¹³⁰ See Reliance's SQR4 at Exhibit SSEZ-CVD-2.

¹³¹ See Reliance Preliminary Calculation Memorandum.

¹³² See GOI IQR at Exhibit 21.

¹³³ See Reliance's SQR2 at 4.

the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. The SEZ exemption from electricity duty and cess provides a recurring benefit under 19 CFR 351.524(c).

To calculate the benefit, we first calculated the uncollected (*i.e.*, not paid by Reliance during the POI) electricity duty and cess by multiplying the total amount of captively generated electricity by the tax rates provided. We then divided this amount by Reliance's total export sales during the POI to calculate a countervailable subsidy of 0.12 percent *ad valorem*.¹³⁴

6. State and Union Territory Sales Tax Incentive Programs

JBF and Reliance both reported the use of the State and Union Territory Sales Tax Incentive programs.¹³⁵ As noted above in the "Use of Facts Otherwise Available" section, however, we normally rely on the government to provide information on the administration and specificity of programs. Because the GOI did not provide any information regarding this program, we are not able to confirm Reliance's and JBF's descriptions of how this program is administered. Therefore, as discussed above, we are finding that an adverse inference in selecting from the facts otherwise available is warranted in determining whether the GOI provided a financial contribution through this program. Consequently, as AFA, we preliminarily determine that the GOI conferred a financial contribution and we find this program specific, within the meaning of sections 771(5)(D) and 771(5A)(D) of the Act, respectively.

Because JBF and Reliance reported not having to pay state sales tax and CST for certain purchases of inputs and supplies from certain locations within India for both subject- and non-subject merchandise, we are relying on this information to calculate the countervailable subsidy rate. To calculate the benefit received, we multiplied the applicable taxable rate, as reported, by the applicable sales value. We then divided this amount by total sales during the POI to calculate the countervailable subsidy. On this basis, we preliminarily determine the countervailable subsidy provided to JBF under the State and Union Territory Sales Tax Incentive programs to be 0.06 percent.¹³⁶ For Reliance, this program did not confer a measurable benefit.¹³⁷

7. State Government of Gujarat Subsidy Programs

Reliance did not provide any evidence to support its claim that benefits under these programs are tied to non-subject merchandise, including citing to past cases where Commerce determined that the programs were tied to merchandise other than subject merchandise. We note evidence on whether the government knew the intended use of these subsidies at the time of bestowal is particularly lacking, given the GOI's failure to provide information concerning the operation of the programs. Therefore, for the preliminary determination, we find that subsidies provided within Gujarat is not tied to production of any particular merchandise and benefit all of Reliance's production.

¹³⁴ See Reliance Preliminary Calculation Memorandum.

¹³⁵ See JBF's IQR at 39, and JBF's SQR2 at 21-22; see also Reliance's IQR at Exhibit CST-02, and Reliance's SQR1 at 21.

¹³⁶ See JBF Preliminary Calculation Memorandum.

¹³⁷ See Reliance Preliminary Calculation Memorandum.

A) SGOG Land for LTAR

Reliance reported that it leases land in Gujarat through the GIDC, which is an agency of the SGOG.¹³⁸ Specifically, Reliance acquired several parcels of land through a 99-year leasehold for a minimum price, or “jantri,” which is what the government believes is the market price of the land.¹³⁹ These leases are renewable for another 99 years. For one parcel, Reliance claims that it paid a premium price (30 percent of the minimum leasing price) to convert the land to freehold land.¹⁴⁰

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding this program, in part, on AFA. Therefore, we determine that these land purchases confer a financial contribution as a provision of a good under section 771(5)(D)(ii) of the Act, and are specific under section 771(5A)(D) of the Act.

The adequacy of remuneration for government-provided goods or services is determined pursuant to 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2), Commerce measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services for LTAR. These potential benchmarks are listed in hierarchical order by preference as noted in the “Land Benchmark” section. Additionally, it is Commerce’s preference to use a transaction-specific (tier-one) benchmark derived from the country under investigation. Therefore, we relied on actual transaction prices paid by private entities in India.¹⁴¹

To calculate the benefit, we compared the private land transaction benchmark with the prices at which Reliance leased or purchased land from the GIDC. We conducted the “0.5 percent test,” as instructed by 19 CFR 351.524(b)(2), for the years of the relevant GIDC leases and purchases by dividing the total unallocated benefit for the tracts of land for the corresponding years by the appropriate sales denominator. If more than one tract was provided in a single year, we combined the total unallocated benefits from the tracts before conducting the “0.5 percent test.” For certain years, we found that the benefits were greater than 0.5 percent of the relevant sales for the particular years; therefore, we allocated these benefits over the AUL to determine the amount attributable to the POI.

On this basis, we preliminarily determine the countervailable subsidy provided to Reliance under this program to be 0.12 percent *ad valorem*.

B) SGOG Water for LTAR

¹³⁸ See Reliance’s SQR1.2 at 7-12.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ See Petitioners’ Land Benchmark at Attachment 4A.

Under the GIDC Water Supply Regulation of 1991, all companies located in a GIDC estate where the GIDC provides access to water are required to use that water.¹⁴² The regulations stipulate that water is supplied through the GIDC, which controls the supply and sets and alters the rates charged and can be made available to companies located outside of the estates.¹⁴³ The regulation also states that if consumers allow other parties located outside of the limits of the designated estate to use the GIDC-provided water or if consumers establish water connection to premises outside the limits of the estate, water charges shall be calculated at double the prevailing rates for water in the estate, as a penalty.¹⁴⁴ Reliance reported that it procured water from the GIDC for its Dahej plant, and it has provided the water purchase information for all of its Gujarat plants.¹⁴⁵

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding this program, in part, on AFA. Therefore, we determine that these water purchases confer a financial contribution as a provision of a good under section 771(5)(D)(ii) of the Act, and are specific under section 771(5A)(D) of the Act.

The adequacy of remuneration for government-provided goods or services is determined pursuant to 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2), Commerce measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services for LTAR. These potential benchmarks are listed in hierarchical order by preference as noted in the “Land Benchmark” section. As noted above in the “Water Benchmark” section, we relied on the benchmark used in *PTFE Resin Prelim* to determine Reliance’s benefit under this program.¹⁴⁶

To calculate the benefit, we compared the actual amount Reliance paid for water during the POI at its Dahej plant, which is located in a GIDC industrial estate, to the amount it would have paid were it not located within the estate. We then divided that difference by Reliance’ total sales during the POI and calculated an estimated net subsidy of 0.01 percent *ad valorem* for Reliance.¹⁴⁷

C) SGOG Electricity Duty Exemption

Under the Gujarat Electricity Duty Exemption Scheme (GEDES), which is established by the Gujarat Electricity Duty Act of 1958, an entity that establishes a new or additional unit of an industrial undertaking in Gujarat is entitled to an exemption from the electricity duty under the program for energy consumed for industrial purposes.¹⁴⁸ This exemption is available for up to

¹⁴² See Reliance’s SQR1.2 at Exhibit SGOG-CVD-2.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ See SQR1.2 at 3-5.

¹⁴⁶ See *PTFE Resin Prelim* PDM at 17-18; see also *Glycine Prelim* PDM at 15-16.

¹⁴⁷ See Reliance Preliminary Calculation Memorandum.

¹⁴⁸ See Reliance’s IQR at III-82 to III-89; see also SQR1.2 at 6; see also GOI SQR at 138-142.

five years after the start of the industrial undertaking.¹⁴⁹ Reliance has reported that three of its plants in Jamnagar, Hazira, and Dahej have availed of these electricity duty exemptions for both captively-generated and purchased electricity supply.¹⁵⁰

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding this program, in part, on AFA. Therefore, we determine that these electricity supply purchases confer a financial contribution as a provision of a good under section 771(5)(D)(ii) of the Act and are specific under section 771(5A)(D) of the Act.

To calculate the benefit, we first calculated the uncollected (*i.e.*, not paid by Reliance during the POI) electricity duty and cess by multiplying the total amount of captively-generated and purchased electricity by the tax rates provided. We then divided this amount by Reliance’s total export sales during the POI to calculate a countervailable subsidy of 0.01 percent *ad valorem*.¹⁵¹

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

1. SHIS Scheme

According to the GOI, SHIS was introduced in 2009 with the objective of promoting investment in upgrading technology in specific sectors.¹⁵² “Status Holders” under the GOI’s listing of specified exported products receive incentive scrip (or credit) equal to one percent of the FOB value of the exports in the form of a duty credit. The SHIS license can only be used for imports of capital goods and it can be transferred to another Status Holder for the import of capital goods.¹⁵³

According to the GOI, the SHIS scheme has been terminated for exports made since April 1, 2013, and no new licenses were issued to the respondents during the POI.¹⁵⁴ Furthermore, Chapter 3 of the 2009-2014 Handbook of Procedures states that the last date for filing a SHIS application was March 31, 2014.¹⁵⁵

This program is countervailable because it provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, because duty-free import of goods represents revenue forgone by the GOI.¹⁵⁶ Further, it is specific under section 771(5A)(A) and (B) of the Act, because it is limited to exporters.¹⁵⁷ A benefit is also provided under the SHIS

¹⁴⁹ See GOI SQR at 138-142.

¹⁵⁰ See Reliance’s IQR at Exhibit GEDES-03; *see also* Reliance’s SQR2 at Exhibit SGOG-CVD-1.

¹⁵¹ See Reliance Preliminary Calculation Memorandum.

¹⁵² See GOI IQR at 94; *see also* GOI SQR at 98.

¹⁵³ *Id.*

¹⁵⁴ See GOI IQR at 94.

¹⁵⁵ *Id.* at Exhibit 15.

¹⁵⁶ *Id.* at 94.

¹⁵⁷ *Id.*

program pursuant to section 771(5)(E) of the Act and 19 CFR 351.519 in the amount of exempted duties on imported capital equipment.¹⁵⁸

The GOI reported that import duty exemptions under this program are provided for the purchase of capital equipment.¹⁵⁹ The *CVD Preamble* 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 tied to capital assets, the benefits from such duty exemptions should be considered non-recurring....”¹⁶⁰ In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.¹⁶¹

Reliance reported that it received SHIS license scrips to import capital goods duty-free during the AUL. Information provided by Reliance indicates that its SHIS license scrips were issued for the purchase of capital goods used for the production of exported goods, so we are attributing the SHIS benefits received by Reliance to its total exports.¹⁶²

The SHIS scrip represents a non-recurring benefit that is not automatically received, and the amount of said benefit is not known to the recipient at the time of receipt of the scrip.¹⁶³ Although Commerce’s regulations stipulate that we will normally consider the benefit as having been received as of the date of exportation, *see* 19 CFR 351.519(b)(1), because the SHIS benefit amount is not automatic and is not known to the exporter until well after the exports are made, the SHIS licenses, which contain the date of validity and the duty exemption amount, as issued by the GOI, are the best method to determine and account for when the benefit is received.¹⁶⁴

We performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), for the total value of the exempted customs duties for the year in which Reliance received such SHIS licenses and determined to allocate the benefits across the AUL. However, Reliance’s licenses had values of less than 0.5 percent of Reliance’s total export sales and were, therefore, expensed in the year of receipt. On this basis, we determine that Reliance did not receive any benefits from this program during the POI.¹⁶⁵

2. *Income Tax Deduction for Research and Development (R&D) Expenses*

According to the GOI, Section 35(2AB) of the Income Tax Act of 1961 provides a tax deduction to cover expenses related to scientific research for Indian companies engaged in the bio-

¹⁵⁸ See *Steel Flanges from India Preliminary Determination*, and accompanying PDM at 18 (citing *Steel Threaded Rod from India Final*, and accompanying IDM, at “Status Holder Incentive Scrip”).

¹⁵⁹ See GOI IQR at 94; *see also* GOI SQR at 98.

¹⁶⁰ See *Countervailing Duties*, 63 FR at 65393.

¹⁶¹ See *Steel Threaded Rod from India*, and accompanying IDM at “Status Holder Incentive Scrip.”

¹⁶² See Reliance’s IQR at III-31 to III-44.

¹⁶³ See *Steel Threaded Rod from India*, and accompanying IDM at “Status Holder Incentive Scrip.”

¹⁶⁴ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11163 (March 2, 2015) (*PET Film Final Results 2012 Review*), and accompanying IDM at 21 and Comment 3.

¹⁶⁵ See Reliance Preliminary Calculation Memorandum.

technology sector or in a business not involved in sectors listed in the Eleventh Schedule of the Income Tax Act of 1961.¹⁶⁶

Reliance reported that it received benefits under this income tax deduction program.¹⁶⁷ In responding to our questionnaire, the GOI also reported that Reliance made deduction claims under Section 35(i)(iv), Section 35(1)(ii), Section 35(1)(i), and Section 35(2AB) of the Income Tax Act.¹⁶⁸

We preliminarily determine that the tax deductions provide a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act. Further, we preliminarily determine that income tax deduction under Section 35(2AB) is *de jure* specific under section 771(5A)(D)(i) of the Act, because the law expressly limits the receipt of the benefit to certain enterprises or industries or a certain group of enterprises or industries.

Despite the fact that the GOI and Reliance state that Reliance claimed deductions under these programs, Reliance notes that its income tax return shows that its taxable income is derived from the greater of the “(1) Income Tax computed as per normal provisions of income tax act and (2) Income Tax computed as per provision of section 115JB of the income tax act” or the “Minimum, Alternate Tax (MAT).”¹⁶⁹ Based on our review of the income tax return, it appears that Reliance has utilized profit under MAT to derive taxable income.¹⁷⁰ Pursuant to Indian tax laws, a company cannot receive benefits from any tax deductions or exemptions if it realizes a profit under MAT.¹⁷¹ According to Reliance’s tax return, the profit under the MAT calculation does not appear to include the following deductions:

- (1) 35(2AB) of the Income Tax Act of 1961;
- (2) 35(1)(iv) of the Income Tax Act of 1961,
- (3) 35(1)(ii) of the Income Tax Act of 1961;
- (4) 35 (1)(i) of the Income Tax Act of 1961;
- (5) SEZ Income Tax Exemption (10A);
- (6) Income Tax Exemption Scheme (80-IA); and
- (7) State Government of Uttar Pradesh Income Tax Exemption Scheme.

Based on the information on the record, we preliminarily determine that Reliance has not received benefits under these income tax programs, within the meaning of section 771(5)(E) of the Act and 19 CFR 351.509. After the preliminary determination, we will seek clarification and examine this issue at verification.

¹⁶⁶ See GOI IQR at 188.

¹⁶⁷ See Reliance’s IQR at III-95.

¹⁶⁸ See GOI IQR at Exhibit 27.

¹⁶⁹ See Reliance’s IQR at III-94 to III-95 and Exhibits GQ-05 and R&D-01.

¹⁷⁰ *Id.* at Exhibit GQ-05.

¹⁷¹ *Id.* at Exhibit R&D-01.

3. SEZ Income Tax Exemption Scheme (10A)

The GOI states that this program allows newly-established ventures to deduct their profits and gains from export sales for a period of ten consecutive years after the company began to manufacture the exported products.¹⁷² In order to receive this benefit, the newly-established ventures must be located in a free trade zone or export processing zone.¹⁷³ Alternatively, if the free trade zone or export processing zone was converted into a special economic zone, the venture must have been initially located in the free trade zone or export processing zone.¹⁷⁴

Reliance reported that it claimed this tax exemption on its 2017-2018 tax returns.¹⁷⁵ We preliminarily determine that the tax deductions provide a financial contribution in the form of revenue forgone, under section 771(5)(D)(ii) of the Act.

As noted above in section “Income Tax Deduction for Research and Development (R&D) Expenses,” it appears that Reliance has utilized profit under MAT to derive taxable income.¹⁷⁶ Therefore, we preliminarily determine that Reliance has not received benefits under this income tax program within the meaning of section 771(5)(E) of the Act and 19 CFR 351.509. After the preliminary determination, we will seek clarification and examine this issue at verification.

4. Income Tax Exemption Scheme (80-IA)

The GOI states that this program allows industrial enterprises to claim deductions on their infrastructure investments for the purposes of reducing India’s infrastructural deficit.¹⁷⁷ This exemption is available to enterprises that operate infrastructure facilities, provide telecommunication services, develop special economic zones, generate power, or operate and upgrade power transmission and distribution lines.¹⁷⁸ Section 80-IA of the Income Tax Act states that the deduction is available to industrial undertakings or enterprises engaged in infrastructure development.¹⁷⁹ Reliance reported that it claimed these tax deductions when filing its 2017-2018 tax returns.¹⁸⁰

We preliminarily determine that the tax deductions provide a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act. Further, we preliminarily determine that the income tax deduction under Section (80-IA) is *de jure* specific under section 771(5A)(D)(i) of the Act because the law expressly limits the receipt of the benefit to certain enterprises or industries or a certain group of enterprises or industries.

¹⁷² See GOI IQR at 152.

¹⁷³ *Id.* at 153.

¹⁷⁴ *Id.*

¹⁷⁵ See Reliance’s IQR at III-57 to III-63 Exhibit GQ-05.

¹⁷⁶ *Id.* at Exhibit GQ-05.

¹⁷⁷ See GOI SQR at 14.

¹⁷⁸ *Id.* at 15.

¹⁷⁹ *Id.*

¹⁸⁰ See Reliance’s IQR at III-104 to III-109.

As noted above in section “Income Tax Deduction for Research and Development (R&D) Expenses,” it appears that Reliance has utilized profit under MAT to derive taxable income.¹⁸¹ Therefore, we preliminarily determine that Reliance has not received benefits under this income tax program within the meaning of section 771(5)(E) of the Act and 19 CFR 351.509. After the preliminary determination, we will seek clarification and examine this issue at verification.

5. *SGUP VAT Refund*

Under Section 42(4A) of the SGUP VAT Act, certain industrial units that obtain a certificate of entitlement can receive a refund of the Earned Input Tax Credit.¹⁸² Though this program was not included in the petitioners’ allegation, Reliance reported that it received benefits under this program during the AUL.

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding this program, in part, on AFA. Therefore, we determine that this refund confers a financial contribution as a provision of a good under section 771(5)(D)(ii) of the Act, and is specific under section 771(5A)(D) of the Act.

Reliance did not provide any evidence to support its claim that benefits under this program are tied to non-subject merchandise, including citing to past cases where Commerce determined that the programs were tied to merchandise other than subject merchandise. We note that evidence on whether the government knew the intended use of this subsidy at the time of bestowal is particularly lacking, given the GOI’s failure to provide information concerning the operation of the program. Therefore, for the preliminary determination, we find that this subsidy within the Uttar Pradesh is not tied to production of any particular merchandise and benefits all of Reliance’s production.

Pursuant to 19 CFR 351.509(a)(1), we would normally determine this program to confer a benefit to the extent that the tax paid by a firm is less than the tax the firm would have paid in the absence of the program. However, Reliance has reported that it has not received a refund under this program since June 2014.¹⁸³ Because this direct tax exemption is a recurring benefit under 19 CFR 351.524(c)(1), we preliminarily determine that Reliance has not received benefits from this program during the POI.

C. Programs Preliminarily Determined to Be Not Used

We preliminarily determine that JBF and Reliance did not apply for, or receive, benefits during the POI under the programs listed below:

¹⁸¹ *Id.* at Exhibit GQ-05.

¹⁸² See Reliance’s IQR at III-93; see also Reliance’s SQR1.2 at 14-17.

¹⁸³ See Reliance’s SQR1.2 at 13.

National Programs:

- 1.) Duty Free Import Authorization Scheme
- 2.) Incremental Export Incentive Scheme
- 3.) Special Economic Zone (SEZ) Programs
 - a. Exemption from Stamp Duty All Transactions and Transfers of Immovable Property within the SEZ
 - b. Discounted land Fees in an SEZ
- 4.) Subsidies for Export Oriented Units (EOU)
 - a. Duty-Free Imports of Goods, Including Capital Goods and Raw Materials
 - b. Reimbursement of Central Sales Tax Paid on Goods Manufactured in India
 - c. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured through a Domestic Tariff Area
 - d. Duty Drawback on Furnace Oil Procured from Domestic Companies
- 5.) Market Access Initiative
- 6.) Market Development Assistance Scheme
- 7.) GOI Loan Guarantees
- 8.) Renewable Energy Certificate

State Programs:

- 1.) State Government of Maharashtra Subsidies Under the Package Scheme of Incentives
 - a. Industrial Promotion Subsidy/Sales Tax Program
 - b. Interest Subsidy
 - c. Electricity Duty Exemption
 - d. Waiver of Stamp Duty
 - e. Incentives for Mega/Ultra Mega Projects
- 2.) State Government of Gujarat (SGOG) Subsidies
 - a. SGOG Plastics Industry Scheme: Interest Subsidy
 - b. SGOG Plastics Industry Scheme: VAT Incentive
 - c. SGOG Industry Policy 2009 Programs
- 3.) State Government of Uttar Pradesh Subsidies
 - a. Investment Promotion Scheme
 - b. Special Assistance for Mega Projects
 - c. Electricity Duty Exemption
 - d. Stamp Duty Exemption

VIII. CONCLUSION

We recommend that you approve the preliminary findings described above.



Agree



Disagree

4/26/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance