



C-533-844

Administrative Review
POR: 01/01/2016 – 12/31/2016

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May 15, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

RE: Countervailing Duty (CVD) Administrative Review: Certain
Lined Paper Products from India

SUBJECT: Decision Memorandum for the Final Results of Administrative
Review; 2016

I. Summary

The Department of Commerce (Commerce) is conducting an administrative review of the *Order* on certain lined paper products from India for the period of review (POR) January 1, 2016, through December 31, 2016.¹ Consistent with our *Preliminary Results*,² and in accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), we continue to find that the use of adverse facts available (AFA) is warranted in determining the countervailable subsidy rates for the sole mandatory respondent, Goldenpalm Manufacturers PVT Limited (Goldenpalm).³ Further, for certain programs, we are applying AFA under sections 776(a) and (b) of the Act to the Government of India (GOI). We address the issues raised by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section, below.

¹ See *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People’s Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People’s Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia*, 71 FR 56949 (September 28, 2006) (*Order*).

² See *Certain Lined Paper Products from India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2016*, 83 FR 50896 (October 10, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

³ Goldenpalm made export sales to the United States through its cross-owned entity, GMC International Limited (GMC). See PDM at 8 (Commerce preliminarily found Goldenpalm and GMC to be cross-owned). Commerce has not changed its determination for these final results.

II. Background

On October 10, 2018, Commerce published the *Preliminary Results* in the *Federal Register*.⁴ On November 6, 2018, the GOI submitted its case brief.⁵ The American Association of School Paper Suppliers (hereinafter referred to as the petitioner) and Goldenpalm submitted their case briefs on November 9, 2018.⁶ The petitioner and Goldenpalm submitted their rebuttal briefs on November 16, 2018.⁷ 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, 2019.⁸ On March 5, 2019, we postponed the final results of review by 57 days, until May 15, 2019.⁹

Below is a complete list of issues raised in this administrative review for which we received comments:

- Comment 1: Whether the Application of AFA with Regard to Goldenpalm was Warranted
- Comment 2: Whether Commerce Upheld its Legal Obligations in Applying AFA with Regard to the GOI
- Comment 3: Whether Commerce's Countervailable Determination Regarding the Duty Drawback Program (DDP) and Advance License Program (ALP) Properly Accounted for Information Submitted by the GOI
- Comment 4: Whether Commerce's Countervailable Subsidy Determination Regarding the Export Promotion Capital Goods Scheme (EPCGS) Properly Accounted for Information Submitted by the GOI
- Comment 5: Whether the Programs Operated by the State Government of Maharashtra (SGOM) and the State Government of Tamil Nadu (SGOTN) are Specific
- Comment 6: Whether it was Lawful for Commerce to Examine Newly Alleged Subsidy Programs
- Comment 7: Whether Commerce's Total AFA Rate for Goldenpalm is Incorrect
- Comment 8: Whether the Calculated Subsidy Rates Commerce Utilized as the Basis of

⁴ See *Preliminary Results*, 83 FR at 50896.

⁵ See Letter from GOI, "Administrative Review of Countervailing Duty on Certain Lined Paper Products from India (Case No. C-533-844) - Case Brief on behalf of Government of India," dated November 6, 2018 (GOI Case Brief).

⁶ See Letter from the petitioner, "Certain Lined Paper from India: Case Brief of the American Association of School Paper Suppliers," dated November 9, 2018 (Petitioner Case Brief); see also Letter from Goldenpalm, "Lined Paper Products from India; C-533-844; Case Brief," dated November 9, 2018 (Goldenpalm Case Brief).

⁷ See Letter from the petitioner, "Certain Lined Paper Products from India: Rebuttal Brief of the Association of American School Paper Suppliers," dated November 16, 2019 (Petitioner Rebuttal Brief); see also Letter from Goldenpalm, "Lined Paper Products from India; C-533-844; Reply Brief," dated November 16, 2019 (Goldenpalm Rebuttal Brief). The Goldenpalm Rebuttal Brief contains a single sentence in which Goldenpalm argues that the petitioner has not correctly characterized the facts of the record. Given the brevity of this filing, we have not referenced the filing in the "Analysis of Comments" section below.

⁸ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "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.

⁹ See Memorandum, "Extension of Deadline for Final Results of Countervailing Duty Review," dated March 5, 2019.

- the AFA Rates Applied to Goldenpalm were Appropriate
- Comment 9: Whether Commerce Should Calculate an Additional AFA Rate for Subsidies Purportedly Discovered During the Course of the Review
- Comment 10: Attribution of Benefits Goldenpalm Received Under the EPCGS Program in the Event Commerce Determines not to Apply Total AFA to Goldenpalm in the Final Results
- Comment 11: Whether Commerce Should Adjust the Assessment Rates Applied to the Importers of Record
- Comment 12: Whether Commerce Should Issue the Final Results on an Expedited Basis

III. Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for loose leaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, loose leaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8-3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or “tear-out” size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as “tablets,” “note pads,” “legal pads,” and “quadrille pads”), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;

- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;
- desk and wall calendars and organizers (including but not limited to such products generally known as “office planners,” “time books,” and “appointment books”);
- telephone logs;
- address books;
- columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationary (including but not limited to products commonly known as “fine business paper,” “parchment paper,” and “letterhead”), whether or not containing a lined header or decorative lines;
- Stenographic pads (“steno pads”), Gregg ruled (“Gregg ruling” consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1" wide elastic fabric band. This band is located 2-3/8" from the top of the

front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

- FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

IV. Use of Facts Otherwise Available and Application of Adverse Inferences¹⁰

A. Legal Standard

Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, use the “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; 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; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the

¹⁰ For the reasons discussed in this section and in the “Analysis of Comments” section of this memorandum, we have determined to rely on facts otherwise available and to apply adverse inferences to Goldenpalm. We have also determined to rely on facts otherwise available and, in certain instances, to apply adverse inferences to the GOI. Our determinations in this regard are unchanged from the *Preliminary Results*. See PDM at 7-13.

Act.

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

Section 776(b) of the Act 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. In doing so, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹¹ Further, section 776(b)(2) 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.¹²

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹³ Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”¹⁴ It is Commerce’s practice to consider information to be corroborated if it has probative value.¹⁵ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.¹⁶ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.¹⁷ Further, Commerce is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.¹⁸

Finally, under section 776(d) of the Act, when applying an adverse inference, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the agency considers reasonable to use, including the highest of such rates.¹⁹ Additionally, when using an adverse inference in

¹¹ See section 776(b)(1)(B) of the Act.

¹² See 19 CFR 351.308(c).

¹³ See 19 CFR 351.308(d).

¹⁴ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) (SAA) at 870.

¹⁵ *Id.*

¹⁶ *Id.* at 869.

¹⁷ *Id.* at 869-870.

¹⁸ See section 776(c)(2) of the Act.

¹⁹ See sections 776(d)(1) and (2) of the Act.

selecting among the facts otherwise available, Commerce is not required, for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality of the interested party.”²⁰

B. Application of AFA: Goldenpalm

In CVD proceedings, we examine whether the producers/exporters of the subject merchandise are cross-owned with other producer/exporters of subject merchandise, parent/holding companies, or with their input suppliers, as outlined in 19 CFR 351.525(b)(6). Accordingly, Commerce requires respondents to disclose the firms with which they are affiliated and cross-owned as part of their initial questionnaire response. This information is necessary for Commerce to decide which entities must submit a complete response, and whether those entities received subsidies that are attributable to the respondent.

In the Initial Questionnaire, we instructed Goldenpalm to identify all companies with which it was affiliated, as provided under section 771(33) of the Act, to provide the name and mailing address of any such affiliates, to describe in detail the nature of the relationship between Goldenpalm and such companies, and to identify those affiliates with whom Goldenpalm was cross-owned, as defined under 19 CFR 351.525(6)(vi).²¹ We further explained in the Initial Questionnaire that Goldenpalm would be required to submit a complete questionnaire response for those affiliates where cross-ownership exists and: (1) the affiliate produces or sells (*e.g.*, a trading company) the subject merchandise; (2) the affiliate is a holding company or a parent company (with its own operations); (3) the affiliate supplies an input product to the respondent firm that is primarily dedicated to the production of the subject merchandise; or 4) the affiliate has received a subsidy and transferred it to the respondent firm.²²

In its initial questionnaire response, Goldenpalm identified GMC, a Hong Kong-based firm through which it made sales during the POR, as its sole affiliate.²³ Goldenpalm further indicated that, despite being cross-owned with GMC, GMC did not meet any of the four criteria that would require it to submit a complete questionnaire response.²⁴ Goldenpalm did not identify any other affiliates in its initial questionnaire response.²⁵ Further, Goldenpalm did not identify additional affiliates or cross-owned entities in any of its five supplemental questionnaire responses.²⁶

²⁰ See section 776(d)(3) of the Act.

²¹ See Letter from Commerce, “Issuance of Initial Questionnaire to Goldenpalm Manufacturers PVT Limited (Goldenpalm),” dated November 24, 2017, Section III at 1-2; *see also* Letter from Commerce, “Issuance of Initial Questionnaire to the Government of the Republic of India (GOI),” dated November 24, 2017 (Initial Questionnaire). The Initial Questionnaire issued to Goldenpalm and the GOI was identical. Hereinafter we use the term Initial Questionnaire to refer to the questionnaire issued to both respondent parties.

²² *Id.*

²³ See Letter from Goldenpalm, “Lined Paper Products from India; C-533-844; Response to Section III of Department’s Countervailing Duty Questionnaire,” dated January 9, 2018 (Goldenpalm IQR) at 1-2.

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Letters from Goldenpalm, “Lined Paper Products from India; C-533-844; Supplemental Questionnaire Response,” dated April 6, 2018 (Goldenpalm Supplemental QR1); “Lined Paper Products from India; C-533-844;

In its fourth supplemental questionnaire response, in which Goldenpalm reiterated its non-use of the new subsidy allegation (NSA) programs at issue, Goldenpalm submitted the approval form received in connection with its involvement in the SGOTN's Industrial Policy (TNIP) program, as well as invoice summaries of its electricity bills for the POR.²⁷ The approval form references Company A and Company B,²⁸ while Goldenpalm's electricity invoice summaries reference Company C.²⁹ Information in the new factual information submission from the petitioner and Goldenpalm's initial and supplemental questionnaire responses indicates that the managing director and sole owner of Goldenpalm (hereinafter referred to as Person A)³⁰ is also the managing director of Company A, that Person A engaged in financial transactions on behalf of Company A and Goldenpalm, and that Goldenpalm and Company A share the same address.³¹ Goldenpalm's fourth questionnaire response also indicates that Goldenpalm has other possible unreported affiliated companies such as Companies B and C that are involved in Goldenpalm's operations and financial transactions.³² Information on the record also indicates that Companies B and C were specifically involved in operational and financial activities that concerned Goldenpalm, many of which deal with the new subsidy allegations at issue in this review.³³ Thus, it was not until the filing of the Petitioner NFI Submission and Goldenpalm's fourth and fifth supplemental questionnaire responses that Commerce became aware of the existence of Company A, Company B, and Company C, as well as Person A's management position in Company A.

We determine that Goldenpalm withheld necessary information that was requested of it, failed to provide information within the deadlines established, and significantly impeded this proceeding by not fully disclosing its affiliate relationship with Company A, and not fully disclosing the involvement of Company B and Company C in its operational and financial dealings as they regard aspects of the SGOTN's TNIP program. By doing so, we determine that Goldenpalm undermined Commerce's ability to investigate fully the universe of cross-owned companies that may have received subsidies attributable to Goldenpalm, as well as Commerce's ability to determine whether Goldenpalm used the alleged subsidy programs at issue in this review. Thus,

Response to Department's NSA Questionnaire," dated May 14, 2018 (Goldenpalm Supplemental QR2); "Lined Paper Products from India; C-533-844; Response to Department Supplemental Questionnaire of June 14, 2018," dated June 18, 2018 (Goldenpalm Supplemental QR3); Lined Paper Products from India; C-533-844; Response to Department's Supplemental Questionnaire," dated July 9, 2018 (Goldenpalm Supplemental QR4); and "Lined Paper Products from India; C-533-844; Response to Department's Supplemental Questionnaire," dated August 15, 2018 (Goldenpalm Supplemental QR5).

²⁷ See Goldenpalm Supplemental QR4 at Exhibit SSNSA-2.

²⁸ The identity of Company A as well as the identities of other affiliated companies are business proprietary. For the identities of the companies discussed herein (e.g., Company A, Company B, and Company C as well as Person A), see Memorandum, "Identities of Companies Discussed in the Preliminary Results Memorandum," dated October 3, 2018 (Identity of Person A and Companies A-C Memorandum).

²⁹ See Goldenpalm Supplemental QR4 at Exhibit SSNSA-2 and Exhibit SSNSA-7.

³⁰ The identity of Person A is business proprietary. See Identity of Person A and Companies A-C Memorandum.

³¹ See Goldenpalm IQR at 3; see also Letter from the petitioner, "Certain Lined Paper Products from India: Submission of Rebuttal Factual Information to Goldenpalm's July 9, 2018, New Subsidy Allegation Supplemental Questionnaire Response," dated July 27, 2018, (Petitioner NFI Submission) at 1-2 and Exhibits 1-4; Goldenpalm Supplemental QR4 at 2 and Exhibits 4-5; and Goldenpalm Supplemental QR5 at 13.

³² See Goldenpalm Supplemental QR4 at Exhibit SSNSA-2 and Exhibit SSNSA-7. The information in these exhibits involving Company B and Company C is business proprietary and cannot be summarized on the public record.

³³ *Id.*

we have relied on facts otherwise available in making our determination with respect to Goldenpalm, pursuant to sections 776(a)(2)(A)-(C) of the Act. Moreover, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by failing to identify Company A as a cross-owned affiliate and by failing to disclose in a timely manner the involvement of Company B and Company C in the financial and operational dealings that were potentially germane to the NSAs alleged under the SGOTN's TNIP program until much later in the review, Goldenpalm deprived Commerce of the opportunity to examine the cross-ownership of Company A and the potential relevance of Company B and Company C.

Accordingly, we determine that Goldenpalm did not cooperate to the best of its ability to comply with the requests for information in this review and that the application of facts available with adverse inferences under sections 776(a) and (b) of the Act is warranted. In drawing an adverse inference, we have not relied on Goldenpalm's reported usage information or its claims of non-use of programs. Rather, in resorting to the use of adverse inferences, we find that Goldenpalm benefited from each of the programs listed in the "Selection of the AFA Rates" section below, as provided under section 771(5)(E) of the Act.

C. Selection of the AFA Rates Assigned to Goldenpalm

In assigning net subsidy rates for each of the programs at issue in this review, we were guided by Commerce's practice applied in prior CVD proceedings.³⁴ Under Commerce's practice, we apply a total AFA rate for a non-cooperating company using the highest calculated program-specific rates determined for the identical or similar programs. Specifically, in an administrative review, Commerce applies the highest calculated above-*de minimis* rate (e.g., above 0.5 percent) for the identical program from any segment of the same proceeding. If there is no identical program match within the same proceeding, or if the rate is *de minimis*, Commerce uses the highest non-*de minimis* rate calculated for a similar program, based on treatment of the benefit. Absent an above-*de minimis* subsidy rate calculated for the identical or similar program from the same proceeding, Commerce looks to other proceedings involving the same country and applies the highest calculated above-*de minimis* subsidy rate for the identical or similar/comparable program. Where no above-*de minimis* rate for an identical or similar program within the country has previously been calculated, Commerce applies the highest calculated rate for any program from any CVD case involving the same country that could conceivably be used by the non-cooperating company. The exception to the methodology described above involves income tax programs. For income tax programs, per our practice, we apply an adverse inference that the non-cooperating respondent paid no income tax during the POR.³⁵

³⁴ See, e.g., *Chlorinated Isocyanates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review*; 2014, 82 FR 27466 (June 15, 2017) and accompanying Issues and Decision Memorandum (IDM) at 4; *Certain Lined Paper Products from India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2010*, 77 FR 61742 (October 11, 2012) (*Lined Paper from India Preliminary Results 2010*) and accompanying PDM at 3; unchanged in *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review*; 2010, 78 FR 22845 (April 17, 2013) (*Lined Paper from India 2010*) and accompanying IDM at 2 and Comment 2.

³⁵ See *Stainless Steel Flanges from India: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 83 FR 40748 (August 16, 2018) (*Flanges from India*) and accompanying IDM at 40.

In assigning an AFA rate to Goldenpalm, we were guided by Commerce's CVD AFA hierarchy described above. The standard income tax rate for corporations in India in effect during the POR was 30 percent.³⁶ Accordingly, we are applying a 30 percent AFA rate for the 801B Tax Program, the sole income tax program at issue in this review.

Programs Identified in the Initial Questionnaire Included in the AFA Rate:³⁷

- Advanced License Program
- Duty Drawback Program
- Export Promotion of Capital Goods Scheme
- Pre and Post-Shipment Financing
- Export Oriented Units
- Market Development Assistance
- Status Certificate Program
- Market Access Initiative
- Loan Guarantees from the GOI
- Income Deduction Program (801B Tax Program)
- SGOM Provided Tax Incentives
- SGOM Electricity Duty Exemptions Under SGOM Package Scheme of Incentives of 1993
- SGOM Refunds of Octroi Under the PSI of 1993, Maharashtra Industrial Policy (MIP of 2001), and Maharashtra Industrial Policy (MIP of 2006)
- SGOM Infrastructure Subsidies to Mega Projects
- SGOM Provision of Land for Less than Adequate Remuneration (LTAR)
- SGOM Loan Guarantees Based on Octroi Refunds

Programs Alleged as New Subsidy Allegations Included in the AFA Rate:³⁸

- Merchandise Export from India Scheme (MEIS)
- Interest Equalization Scheme (IES) for Export Financing
- State Government of Tamil Nadu Subsidy Programs Provided Under the Tamil Nadu Industrial Policy of 2014 (TNIP)³⁹
 - Capital Subsidies and Electricity Tax Exemptions under the TNIP
 - Provision of Land or Land-Use Rights for LTAR

³⁶ See *Flanges from India* IDM at 40. We note that the period of investigation in *Flanges from India* was the same as the POR of the instant review.

³⁷ We note that the Duty Entitlement Passbook Scheme, Export Processing Zone, and State Government of Gujarat Sales Tax Program were included in the Initial Questionnaire. See Initial Questionnaire at II-7, II-13, and II-17. However, Commerce previously determined that the GOI terminated these programs. See *Certain Lined Paper Products from India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 79 FR 60447 (October 7, 2014) (*Lined Paper from India Preliminary Results 2012*) and accompanying PDM at 20-21; unchanged in *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 80 FR 19637 (April 13, 2015) (*Lined Paper from India 2012*) and accompanying IDM. Therefore, we have not included these programs in our analysis in these final results.

³⁸ See Memorandum, "New Subsidy Allegations," dated April 6, 2018 (NSA Memorandum).

³⁹ For purposes of our total AFA calculation, we have assigned a subsidy rate to each sub-program under the TNIP program.

- Stamp Duty Concession
- Employment Intensive Subsidy
- Interest Subsidy Program
- Generator Subsidy

Based on the methodology described above, we determine the net AFA countervailable subsidy rate for Goldenpalm is 197.33 percent *ad valorem*. The Appendix to this memorandum contains a chart detailing the calculation of the AFA rate, including citations to the CVD proceedings that served as the basis for the AFA rates.

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

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."⁴⁰ No legislative history accompanied this provision. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

We find that the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its hierarchy methodology; and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.⁴¹

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures "that the party does

⁴⁰ See section 776(d)(2) of the Act.

⁴¹ This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B) of the Act. Under that provision, "any dumping margin from any segment of the proceeding under the applicable antidumping order" may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴² Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”⁴³ It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.⁴⁴

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

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

If in applying the steps of the CVD AFA hierarchy Commerce were to choose low AFA rates consistently, the result would be to “reward” respondents for a lack of cooperation which, in turn, could lead to a lack of order discipline in the future for non-cooperative producers or exporters that are non-cooperative in a review. Thus, in selecting the highest rate available in each step of Commerce’s CVD AFA hierarchy (which is different from selecting the highest possible rate in the “pool” of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.⁴⁵

Furthermore, we find that section 776(d)(2) of the Act applies as an exception to the selection of an AFA rate under 776(d)(1) of the Act; that is, after “an evaluation of the situation that resulted

⁴² See SAA at 870; see also *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (CAFC 2000) (*De Cecco*) (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate’ with Commerce’s investigation, not to impose punitive damages.”).

⁴³ See *De Cecco*, 216 F.3d at 1032.

⁴⁴ Commerce has adopted a practice of applying its hierarchy in CVD cases. See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 80 FR 41003 (July 14, 2015) and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of CVD administrative review).

in the application of an adverse inference,” Commerce may decide that given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate. There are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy, in accordance with section 776(d)(1) of the Act, should be applied as AFA. As explained above, we are applying AFA, because Goldenpalm chose not to cooperate to the best of its ability by not providing all the necessary information we requested. Therefore, we find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

D. Corroboration of the AFA Rate

As noted above, we have not relied on Goldenpalm’s reported usage information for certain programs or its claims of non-use of certain programs. Rather, in resorting to the use of AFA, we find that Goldenpalm benefited from the each of the programs listed below, as provided under section 771(5)(E) of the Act. Further, we reviewed the information concerning Indian subsidy programs in prior proceedings.⁴⁶ Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this administrative review. The relevance of these rates is that they are actual calculated subsidy rates for Indian programs, from which Goldenpalm could actually receive a benefit. Due to Goldenpalm’s failure to adequately disclose necessary information concerning certain affiliated companies to Commerce in a timely manner and the resulting lack of record information concerning these programs, we have corroborated the rates we selected to use as AFA to the extent practicable for these final results.

E. Application of AFA: The GOI

In this review, despite repeated requests, the GOI failed to respond to our supplemental questionnaires regarding the six sub-programs alleged to be provided by the SGOTN under the TNIP program.⁴⁷ Additionally, the GOI failed to respond to the Initial Questionnaire with respect to the SGOM Electricity Duty Exemptions Under SGOM Package Scheme of Incentives of 1993, SGOM Refunds of Octroi Under the PSI of 1993, Maharashtra Industrial Policy (MIP of 2001), and Maharashtra Industrial Policy (MIP of 2006), SGOM Infrastructure Subsidies to Mega Projects, SGOM Provision of Land for LTAR, and SGOM Loan Guarantees Based on Octroi Refunds.⁴⁸ The information requested in our questionnaires to the GOI is necessary in order for Commerce to determine whether the programs under the TNIP and the SGOM programs constitute a financial contribution and are specific under sections 771(5)(D) and 771(5A) of the Act, respectively.

⁴⁶ See the Appendix to this decision memorandum for the Indian CVD proceedings that served as the basis of the AFA rate assigned to Goldenpalm.

⁴⁷ See Letters from the GOI, “Administrative Review of the Countervailing Duty into Certain Lined Paper Products from India (Case No. C-533-844) – Response to New Subsidy Allegation Questionnaire on Behalf of Government of India,” dated May 11, 2018 (GOI Supplemental QR2) at 15; and , “Administrative Review of Countervailing Duty into Certain Lined Paper from India (Case No. C-533-844) - Response to Supplemental New Subsidy Allegations Questionnaire on behalf of Government of India,” dated July 2, 2018 (GOI Supplemental QR3) at 2-3.

⁴⁸ See Letter from the GOI, “Administrative Review of the Countervailing Duty Order on Certain Lined Paper Products from India (Case No. C-533-844) – Questionnaire Response on Behalf of Government of India,” dated December 26, 2017 (GOI Initial QR), where the GOI provides no mention of these three programs.

Consequently, we determine that the GOI withheld necessary information that was requested of it and, thus, that Commerce must rely on facts otherwise available in making our determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we determine that the GOI failed to cooperate by not acting to the best of its ability to comply with our requests for information. In this regard, the GOI did not explain why it was unable to provide the requested information, nor did it ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In drawing an adverse inference, we find that the six sub-programs under TNIP and the Electricity Duty Exemptions Under the State Government of Maharashtra's Package Scheme of Incentives of 1993, State Government of Maharashtra Provision of Land for LTAR, Refunds of Octroi Under the PSI of 1993, Maharashtra Industrial Policy and Maharashtra Industrial Policy, and Infrastructure Subsidies to Mega Projects programs constitute a financial contribution within the meaning of section 771(5)(D) of the Act and are specific within the meaning of section 771(5A) of the Act.⁴⁹

F. Application of Facts Available: The GOI

In certain sections of its initial questionnaire response, the GOI stated that Goldenpalm was, by virtue of its location, not eligible to participate in certain programs or that Goldenpalm did not use certain programs.⁵⁰ And, on this basis, for these programs, the GOI did not respond to the items contained in the Standard Questions Appendix of our questionnaires that dealt with how the programs operate, their eligibility criteria, and the types of assistance they provide. However, as discussed above, because we find that Goldenpalm failed to disclose its affiliation with Company A, as well as its involvement with Company B and Company C in a timely manner, thereby precluding Commerce from examining the location of those companies' facilities or whether those companies received subsidies that were potentially attributable to Goldenpalm. As a result, we lack sufficient information on the record of this administrative review to determine whether such programs constitute a financial contribution and are specific under sections 771(5)(D) and 771(5A) of the Act, respectively. For the programs at issue that fall under this fact pattern (*i.e.*, the Export Oriented Units Program, Status Certificates Program, Sales Tax Program from Maharashtra, and Merchandise Export from India Scheme), we have resorted to the use of facts available (FA) under section 776(a) of the Act to determine whether the financial contribution and specificity prongs have been satisfied. Thus, for each program for which we are applying FA, we have relied on Commerce's finding in prior Indian CVD proceedings, including the proceeding at issue, to determine whether the programs constitute a financial contribution or are specific under sections 771(5)(D) and 771(5A) of the Act, respectively.

⁴⁹ See NSA Memorandum 3-8.

⁵⁰ See GOI Initial QR at 52 and 55.

V. Analysis of Programs

A. Programs Determined to be Countervailable

In the *Preliminary Results*, we assigned AFA rates to Goldenpalm for each subsidy program contained in the Initial Questionnaire and NSA Memorandum.⁵¹ We have continued to assign AFA rates to Goldenpalm under those same programs in these final results. We also continue to find these programs constitute financial contributions and are specific for the same reasons articulated in the *Preliminary Results*. However, based on comments from interested parties, we have modified the AFA rate assigned to Goldenpalm under the SGOTN's Capital Subsidies and Electricity Tax Exemption program. *See* Comment 8 for further discussion.

VI. Analysis of Comments

Comment 1: Whether the Application of AFA With Regard to Goldenpalm Was Warranted

Goldenpalm's Case Brief

- Commerce based its AFA finding in the *Preliminary Results* on the non-reporting of the entities referred to as Company A and Company C.⁵²
- Company A is not a company, *per se*, but is a holding entity owned by the owner of Goldenpalm, which holds Goldenpalm's real estate and is not involved, in any fashion, in the manufacture of goods.
- The relationship between Company A and Goldenpalm is a legally permitted separation of assets in India for tax purposes. The identity of Company A, the land holding company, was not reported in the initial response because it does not engage in operations, as Goldenpalm confirmed in its supplemental questionnaire responses.
- Company A was simply the alter ego of Goldenpalm's owner, and Goldenpalm accurately reported all the subsidies it received during the POR.⁵³
- The application of AFA because of the failure of Goldenpalm to report full detail for an entity that is not relevant to the calculation of the countervailing duty amount, and for which details would not have been required if it had been identified at the onset of the review, is inappropriate.
- Regarding Company C, which is referenced on Goldenpalm's electricity bill, Goldenpalm explained that it "has not received a subsidy. Goldenpalm pays the bills on line and does not receive a hard copy of the electric bill."⁵⁴
- Further, regarding the electricity payment documents in which Company C is referenced, Goldenpalm provided detail as to what it paid. In addition, the name on the bill, which is not the basis of Goldenpalm's payment in any event, is ultimately irrelevant. The key question is whether Goldenpalm paid certain taxes that were not included on the electricity bill. On this point, the payment information indicates that full payments were made and, thus, that no subsidy was received.

⁵¹ *See* PDM at 10-12.

⁵² The identity of Person A as well as Company A, Company B, and Company C discussed herein are business proprietary. For the identities of these companies, *see* Identity of Person A and Companies A-C Memorandum.

⁵³ *See* Goldenpalm Supplemental QR4 at 2.

⁵⁴ *See* Goldenpalm Supplemental QR4 at 3.

- Goldenpalm provided full and complete information to Commerce and any omissions were, at best, technical in nature and related to entities that were essentially the alter egos of the owners of Goldenpalm. All relevant information was reported and, thus, Commerce’s application of total AFA in the *Preliminary Results* is not warranted.

Petitioner’s Rebuttal Brief

- Commerce’s AFA determination in the *Preliminary Results* was broader than Goldenpalm describes. Commerce found that Goldenpalm failed to disclose its affiliation with Company A and did not disclose the involvement of Company B and Company C in its operational and financial dealings.⁵⁵
- The record of the instant review belies Goldenpalm’s claim that Company A is not a company. Proprietary information from the GOI’s Ministry of Corporate Affairs demonstrates that Goldenpalm’s claim is not accurate.⁵⁶ This information indisputably demonstrates that Company A is, in fact, a company in the eyes of the GOI.
- Goldenpalm’s claim that Company A did not engage in operations is not borne out by the facts on the record. For example, record evidence demonstrates that Company A acquired the land upon which Goldenpalm’s factory resides and has engaged in real estate transactions.⁵⁷
- Further, it is incorrect to argue that the purported lack of operations necessarily frees a respondent from having to provide a complete questionnaire response on behalf of a cross-owned affiliate.⁵⁸
- The record makes clear that Goldenpalm was cross-owned with Company A during the POR, as demonstrated by Goldenpalm’s statement in its briefs that Company A is “simply the alter ego” of Goldenpalm’s owner.⁵⁹
- Therefore, Commerce correctly determined that total AFA was warranted due to Goldenpalm’s failure to submit a complete questionnaire response on behalf of Company A.
- While the exact ownership of Company B and Company C are unclear, record evidence indicates that the companies were involved in the provision of inputs (e.g., land and electricity) to Goldenpalm, and, at a minimum, should have been reported as affiliates of Goldenpalm, as instructed by the Initial Questionnaire.
- Thus, Commerce was justified in applying total AFA due to Goldenpalm’s failure to disclose Company B and Company C as affiliates.

Commerce’s Position: We disagree with Goldenpalm and continue to find that Goldenpalm’s failure to disclose the existence of Company A, Company B, and Company C, and the companies’ relationship to Goldenpalm, constitutes a failure to cooperate to the best of its ability that warrants the application of AFA under sections 776(a) and (b) of the Act. Goldenpalm’s attempts to minimize the relevance of Company A by characterizing it as a “holding entity” and an “alter ego” are unavailing.⁶⁰ Information in the Petitioner NFI Submission and Goldenpalm’s initial and supplemental questionnaire responses indicates that: (1) the managing director and

⁵⁵ See PDM at 9.

⁵⁶ See Petitioner NFI Submission at Exhibits 1 and 3.

⁵⁷ See Goldenpalm Supplemental QR4 at 2 and Exhibits SSNA-4 and SSNA-5.

⁵⁸ See 19 CFR 351.525(b)(6)(ii)-(vi).

⁵⁹ See Goldenpalm Case Brief at 2-3.

⁶⁰ *Id.* at 4.

sole owner of Goldenpalm (hereinafter referred to as Person A) is also the managing director of Company A; (2) Person A engaged in financial transactions on behalf of Company A and Goldenpalm; (3) Goldenpalm and Company A share the same address; and (4) Company A registered with the GOI Ministry of Corporate Affairs.⁶¹ We find this information demonstrates that Company A was, in fact, a legal entity operating as a company.

Goldenpalm also argues that it was not necessary to divulge the existence of Company A because it did not have any operations of its own.⁶² We disagree. In CVD proceedings, we examine whether the mandatory respondents are cross-owned with other producers and/or sellers of subject merchandise, parent/holding companies, or input suppliers, as provided in 19 CFR 351.525(b)(6). Thus, in the Initial Questionnaire, we instructed Goldenpalm to identify all companies with which it was affiliated, as provided under section 771(33) of the Act, to provide the name and mailing address of any such affiliates, describe in detail the nature of the relationship between Goldenpalm and such companies, and to identify those affiliates with which Goldenpalm was cross-owned, as defined under 19 CFR 351.525(6)(vi).⁶³ We further explained in the Initial Questionnaire that Goldenpalm would be required to submit a complete questionnaire response for those affiliates where cross-ownership exists and: 1) the affiliate produces or sells (*e.g.*, a trading company) the subject merchandise; 2) the affiliate is a holding company or a parent company (with its own operations); 3) the affiliate supplies an input product that is primarily dedicated to the production of the subject merchandise; or 4) the affiliate has received a subsidy that it transferred to the respondent.⁶⁴ Therefore, based on record evidence, it is clear that Goldenpalm was obligated to report the existence of Company A because it was cross-owned with Goldenpalm by virtue of the companies being owned by the same owner.⁶⁵

Further, the lack of operations on the part of a cross-owned firm does not remove a respondent's obligation to report the identity of the cross-owned firm to Commerce and to provide to Commerce the nature of the firm's operations and its relationship to the respondent. For example, the *CVD Preamble* and 19 CFR 351.525(b)(6)(iii), which discuss the attribution methodology, make clear that Commerce requires information on parent companies (who have operations) as well as holding companies, which includes "investment companies with no business of their own."⁶⁶

We also disagree with Goldenpalm's claim that the application of AFA was not appropriate because additional details concerning Company A would not have been required by Commerce if Goldenpalm had identified Company A at the onset of the review.⁶⁷ First, Goldenpalm bases its argument on pure speculation. Second, Goldenpalm's failure to identify Company A as a cross-owned affiliate precluded Commerce from deciding for itself whether Company A received any countervailable subsidies that were attributable to Goldenpalm.

⁶¹ See Goldenpalm IQR at 3; see also Petitioner NFI Submission at 1-2 and Exhibits 1-4; Goldenpalm Supplemental QR4 at 2 and Exhibits 4-5; and Goldenpalm Supplemental QR5 at 13.

⁶² See Goldenpalm Case Brief at 4.

⁶³ See Initial Questionnaire, Section III, at 1-2.

⁶⁴ *Id.*

⁶⁵ See 19 CFR 351.525(b)(6)(vi).

⁶⁶ See *Countervailing Duties*, 63 FR 65348, 65402 (November 25, 1998) (*CVD Preamble*).

⁶⁷ See Goldenpalm Case Brief at 4.

Goldenpalm similarly attempts to minimize the importance of Company C by claiming that Company C's appearance on Goldenpalm's electricity bills is irrelevant.⁶⁸ As noted in the *Preliminary Results*, Goldenpalm had operational and financial dealings with Company C as it pertained to Goldenpalm's electricity payments.⁶⁹ As discussed above, Commerce is examining two government programs that involve electricity: SGOM Electricity Duty Exemptions Under SGOM Package Scheme of Incentives of 1993 and SGOTN Capital Subsidies and Electricity Tax Exemptions under the TNIP program. By failing to disclose the existence of Company C and the extent to which it was involved in Goldenpalm's electricity payments, Goldenpalm precluded Commerce from examining whether Company C received electricity subsidies that were attributable to Goldenpalm.

Lastly, concerning Company A and Company B, as explained in the *Preliminary Results*, in its fourth supplemental questionnaire response in which Goldenpalm reiterated its non-use of the NSA programs at issue, Goldenpalm submitted the approval form it received in connection with its involvement in the SGOTN's TNIP program.⁷⁰ The approval form references Company A and Company B.⁷¹ Thus, record evidence indicates that Company A and Company B were listed on the approval document for an NSA program at issue in this review. We find the appearance of these two companies on the approval form should have prompted Goldenpalm to disclose the operations of Company A and Company B and their relation to Goldenpalm. The fact that Goldenpalm did not provide any such information concerning Company A and Company B demonstrates that it failed to cooperate to the best of its ability.

On this basis, we continue to find that the application of total AFA with regard to Goldenpalm is warranted.

Comment 2: Whether Commerce Upheld its Legal Obligations in Applying AFA With Regard to the GOI

GOI's Case Brief

- The World Trade Organization (WTO) panel has previously determined that, when applying AFA, Commerce must distinguish between information that is necessary and that which is merely required or requested, and it has further determined that Commerce may apply AFA when a request for the former is not provided. The WTO panel has also previously determined that Commerce's application of AFA must maintain respondents' due process rights, particularly when it elects to add subsidy programs to an ongoing investigation.⁷²
- The GOI acted to the best of its ability to comply with Commerce's information requests during the entire review. Specifically, the GOI stated that it would provide the requisite assistance in case Commerce decided to verify the information available on record.

⁶⁸ *Id.*

⁶⁹ See PDM at 9 (citing Goldenpalm Supplemental QR4 at SSNSA-2 and Exhibit SSNSA-7).

⁷⁰ *Id.* (citing Goldenpalm Supplemental QR4 at Exhibit SSNSA-2).

⁷¹ *Id.*

⁷² See Panel Report, *United States – Countervailing Measures on Supercalendered Paper from Canada*, WT/DS505/R at para. 7.177.

- Commerce failed to correctly interpret the legal standard for a respondent cooperating to the “best of its ability.” Under this interpretation, Commerce must assess the extent of the respondent’s abilities and cooperation with Commerce’s requests. Further, while the standard does not require perfection, it should recognize that mistakes sometimes occur.⁷³
- The GOI put forth its maximum effort and, thus, met the standard for responding to the “best of its ability,” despite Commerce’s decision to improperly expand the scope of its investigation by adding new subsidy programs to the list of programs under examination in the review.
- Commerce improperly applied AFA against the GOI without availing itself of the opportunity to conduct verification of the information submitted by the GOI. This approach contrasts with Commerce’s actions in *Lined Paper from India 2012*, in which it conducted verification of the GOI’s questionnaire responses despite the respondent choosing not to participate in the review.⁷⁴
- The Supreme Court of the United States has held that Commerce “must examine the relevant data and articulate a satisfactory explanation for its actions including a rational connection between the facts found and the choice made.”⁷⁵
- Such an approach is also consistent with Commerce’s duty of fairness. Namely, the Court of International Trade (CIT) has held that Commerce, as part of its obligation to treat each respondent fairly, may not let one party’s failure to cooperate adversely affect the dumping margin of another interested party who is a cooperative party to the proceeding.⁷⁶
- The WTO Appellate Body has determined that an investigating authority’s AFA determination must have a factual foundation.⁷⁷ Such a factual foundation is clearly missing in the AFA approach applied by Commerce in the *Preliminary Results*.
- Similarly, the WTO Appellate Body has determined that the investigating authority’s AFA determinations cannot be made on the basis of non-factual assumptions or speculation.⁷⁸ The WTO Appellate Body has further found that the explanation and analysis provided by the investigating authority’s reports must be sufficient to allow the WTO panel to assess how and why the facts available employed are reasonable replacements for the missing information.⁷⁹ Commerce’s AFA determination does not meet the standards set forth by the WTO.
- Commerce claims that it made repeated requests for information regarding the SGOTN programs at issue. However, there were no repeated requests. Further, the GOI consistently provided a suitable response to Commerce. Thus, to claim that the GOI failed to respond despite repeated reminders is not accurate.

Petitioner’s Rebuttal Brief

- The GOI inaccurately claims that it fully cooperated with regard to the SGOTN programs.

⁷³ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1373 (Fed. Cir. 2003).

⁷⁴ See *Lined Paper from India 2012* IDM at 2.

⁷⁵ See *Motor Vehicle Mfrs. Association of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983).

⁷⁶ See *SKF USA Inc. v. United States*, 675 F. Supp. 2d 1264, 1275 (CIT 2009) (*SKF*).

⁷⁷ See Appellate Body Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice*, WT/DS295/AB/R, adopted 20 December 2005.

⁷⁸ See Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R, dated December 8, 2014 (DS436).

⁷⁹ See Appellate Body Report, *United States – Countervailing Duty Measures on Certain Products from China*, WT/DS437/AB/R, dated December 18, 2014.

- Commerce instructed the GOI to provide information concerning these programs on three occasions, and each time the GOI failed to respond.⁸⁰ In the first response, the GOI claimed the requested information was not available.⁸¹ In its second and third responses, the GOI claimed a response was not needed because Goldenpalm had not benefited from the SGOTN programs at issue.⁸²
- The reason behind Commerce’s questionnaires is to collect information that enables it to determine the timing of any benefit and to gain an understanding of the program at issue to make informed decisions regarding financial contribution and specificity.
- The GOI’s refusal to provide the requested information regarding the SGOTN programs constitutes a failure to cooperate and warrants the application of AFA.

Commerce’s Position: We disagree with the arguments of the GOI and continue to find that our application of AFA in the *Preliminary Results* for the programs at issue was warranted.

As an initial matter, this proceeding was conducted consistent with U.S. law, which is consistent with our WTO obligations. Furthermore, the Court of Appeals for the Federal Circuit (Federal Circuit) has confirmed that WTO reports are without effect under U.S. law, “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the Uruguay Round Agreements Act (URAA).⁸³ In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.⁸⁴ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to supersede automatically the exercise of Commerce’s discretion in applying the statute.⁸⁵ Accordingly, the WTO panel’s conclusions in *United States – Countervailing Measures on Supercalendered Paper from Canada*, and the Appellate Body’s conclusions in *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* and *United States – Countervailing Duty Measures on Certain Products from China* do not undermine Commerce’s analysis or determinations with respect to the programs under examination in this administrative review.

Regarding the GOI’s claims that it was fully responsive and that it provided the information Commerce needed to conduct its examination, we find that the facts on the underlying record demonstrate otherwise. Specifically, the GOI failed to provide information requested by Commerce – information that was not merely requested but also necessary for Commerce to complete its analysis of the subsidy programs at issue in this review. Despite repeated requests,

⁸⁰ See Letters from Commerce, “New Subsidies Questionnaire for the Government of Republic of India (GOI),” dated April 20, 2018 (GOI NSA QNR); “Supplemental Questionnaire Issued to Government of India (GOI),” dated June 7, 2018 (GOI Supplemental QNR3); and “Supplemental Questionnaire Issued to Government of India (GOI),” dated August 16, 2018 (GOI Supplemental QNR4).

⁸¹ See GOI Supplemental QR2 at 15.

⁸² See GOI Supplemental QR3 at 6-7; see also Letter from the GOI, “Administrative Review of Countervailing Duty into Certain Lined Paper from India (Case No. C-533-844) - Response to 2nd Supplemental NSA Questionnaire dated 16 August 2018 on behalf of Government of India,” dated September 4, 2018 (GOI Supplemental QR4) at 2-3.

⁸³ See *Corus Staal BV v. U.S. Dep’t of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), cert. denied 126 S. Ct. 1023 (2006); accord *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007).

⁸⁴ See, e.g., 19 U.S.C. 3533, 3538 (sections 123 and 129 of the URAA).

⁸⁵ See, e.g., 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary).

the GOI failed to respond to our questionnaires regarding the six NSA programs alleged to be provided by the SGOTN under the TNIP.⁸⁶ For example, rather than responding to our initial NSA questionnaire regarding the six TNIP programs administered by the SGOTN, the GOI merely stated the following:

This scheme is implemented by the state government of Tamil Nadu. The GOI does not have this information readily available. In this regard, responses from the company under investigation may be collected. Should there be any queries, the GOI is willing to respond to the same.⁸⁷

When Commerce asked about these six programs again in a supplemental questionnaire, the GOI responded:

At the outset, based on the sources of State Government of Tamil Nadu which implements the TNIP, GOI submits that the mandatory respondent has not received any benefits under the TNIP during the period of review (“POR”). Thus, the above questions do not require a response. If USDOC requires any specific information or confirmation based on information received from the mandatory respondent, GOI would be happy to cross-verify the same.⁸⁸

In a subsequent supplemental questionnaire issued to the GOI, Commerce explained that information from Goldenpalm indicated that it may have received benefits under the TNIP program and, thus, that the GOI should respond to the subsidy questions and appendices included in the initial NSA questionnaire Commerce issued to the GOI.⁸⁹ Rather than provide the information requested in Commerce’s supplemental questionnaire, the GOI instead reiterated its prior claims concerning Goldenpalm’s purported non-use of the six SGOTN programs and further commented as to how Commerce should conduct its subsidy benefit analysis.⁹⁰ Thus, on three occasions, the GOI failed to provide the basic information on how the alleged subsidy programs operated, the nature of the financial assistance provided, and the methods used for determining eligibility – information that Commerce requires to determine whether the programs at issue constituted a financial contribution and were specific under sections 771(5)(D) and 771(5A) of the Act, respectively. Thus, due to the GOI’s failure to provide the requested information, it is disingenuous for the GOI to claim that it exerted its “maximum effort.”⁹¹

Additionally, the GOI failed to respond to the Initial Questionnaire with respect to the SGOM Electricity Duty Exemptions Under SGOM Package Scheme of Incentives of 1993, SGOM Refunds of Octroi Under the PSI of 1993, Maharashtra Industrial Policy (MIP of 2001), and Maharashtra Industrial Policy (MIP of 2006), SGOM Infrastructure Subsidies to Mega Projects,

⁸⁶ See GOI Supplemental QR2 at 15; *see also* GOI Supplemental QR3 at 6-7; GOI Supplemental QR4 at 2-3.

⁸⁷ See GOI Supplemental QR2 at 15.

⁸⁸ See GOI Supplemental QR3 at 6-7.

⁸⁹ See GOI Supplemental QNR4 at 1 (referencing the appendices contained in the GOI NSA QNR).

⁹⁰ *Id.* at 2-3.

⁹¹ See GOI Case Brief at 14-15; *see also Nippon Steel*, 337 F.3d at 1382 (“the statutory mandate that a respondent act to ‘the best of its ability’ requires the respondent to do the maximum it is able to do”).

SGOM Provision of Land for LTAR, and SGOM Loan Guarantees Based on Octroi Refunds.⁹² The GOI overlooks its failure to respond to these programs in its case brief. Accordingly, we continue find that the application of AFA to the GOI for the programs at issue is warranted.

Furthermore, we disagree that Commerce is precluded from applying AFA to the GOI because of Commerce's decision not to conduct verification in this review.⁹³ Put simply, the GOI failed to respond to our questions regarding the programs at issue and, thus, even if Commerce had sought to conduct verification of the GOI for the programs at issue, there was no record information (in the form of GOI questionnaire responses) for Commerce to verify. Indeed, to the extent the GOI suggests that Commerce could have collected such missing, necessary information at verification, "verification is meant 'to verify what is already on the record, not an opportunity to submit new information.'"⁹⁴

We further note that Commerce's application of AFA to the GOI did not constitute unfair treatment of Goldenpalm. In the absence of requested information from the GOI, and consistent with our practice, we applied AFA to the GOI to determine whether certain subsidy programs constituted financial contributions and were specific under the statute, and separately examined the questionnaire responses of Goldenpalm to determine whether the programs conferred a benefit.⁹⁵ Thus, we did not impute receipt of countervailable benefits to Goldenpalm based on the GOI's failure to cooperate to the best of its ability, but instead to Goldenpalm's independent failure to cooperate to the best of its ability. Indeed, contrary to the GOI's claim, Commerce's determination is consistent with the CIT's holding in *SKF*, in which the Court disallowed Commerce from using an adverse inference in selecting from the facts otherwise available against a cooperating interested party for an unaffiliated party's failure to cooperate in the administrative proceeding.⁹⁶ Specifically, here, unlike in *SKF*, Commerce did not allow the GOI's failure to cooperate to adversely affect the subsidy rate of Goldenpalm (*i.e.*, Commerce did not impute receipt of countervailable benefits to Goldenpalm).⁹⁷

Lastly, we find that the administration of a program by a provincial government does not excuse the central government from responding fully to Commerce's questionnaires. For example, in *Lined Paper from India 2010*, the GOI similarly failed to respond to Commerce's questions regarding certain state government-level programs, and Commerce applied AFA to the GOI and

⁹² See GOI Initial QR, where the GOI provides no mention of these three programs.

⁹³ See GOI Case Brief at 7.

⁹⁴ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Final Results of Countervailing Duty Expedited Review*, 83 FR 34115 (July 19, 2018) (*CTL Plate from China*) and accompanying IDM at 18 ("it is a well-established principle that verification is not an opportunity to submit new factual information").

⁹⁵ See *Lined Paper from India 2012* IDM at 1 (explaining that Commerce relied on information from the GOI to determine whether the subsidies at issue constituted a financial contribution and were specific, and relied on information from Goldenpalm to determine whether the programs conferred a benefit); see also *ArcelorMittal USA LLC v. United States*, 337 F. Supp. 3d 1285, 1303 (CIT 2018) (the CIT concluded that Commerce was justified in applying AFA for its *de facto* specificity finding because the Russian government did not provide information at verification that would allow Commerce to verify the underlying data).

⁹⁶ See *SKF*, 675 F. Supp. 2d at 1275.

⁹⁷ *Id.*

found the state government-level programs at issue to constitute financial contributions that were specific.⁹⁸

Comment 3: Whether Commerce’s Countervailable Determination Regarding the DDP and ALP Properly Accounted for Information Submitted by the GOI

GOI’s Case Brief

- Commerce mechanically relied on its past determinations in the *Preliminary Results* to find that the DDP and ALP were countervailable without properly considering information submitted on the record by the GOI.
- For example, Commerce wrongly determined that the GOI does not have in place a system that is reasonable and effective to confirm which inputs, and in what amounts, are consumed in the production of the exported products, thus wrongly finding the GOI’s duty exemption/remission programs, such as the DDP and ALP, to be countervailable.
- The GOI highlighted in its questionnaire response that the DDP and ALP utilize control mechanisms/monitoring systems at every stage to ensure that companies do not import more than their respective, permissible standard input/output norm allowances.⁹⁹
- Regarding the ALP, the GOI indicated that the authority that administers the program may take penal action against a program participant for failure to complete the requisite export obligation or failure to submit relevant information the GOI requires to enforce its monitoring system.¹⁰⁰
- The GOI also indicated that if a program participant has consumed less quantity of input than it imports, it shall be liable to pay duties on the unutilized value of the imported material along with interest.¹⁰¹
- Regarding the DDB, the GOI indicated that the GOI’s tax authority’s rules, as amended in 2006, provide for a verification procedure to monitor the consumption of the imported input in the production of the exported product.
- Further, the GOI’s questionnaire response indicates that the GOI’s tax authority may require program participants to submit information as to the inputs used in the production of goods to confirm the amount of duty on such materials.
- Commerce should have conducted verification to the extent it had any doubts as to the veracity of the GOI’s submissions.
- Commerce’s mechanical reliance on its past decisions is inconsistent with its practice.¹⁰²
- The CIT has found that Commerce may not simply assume that the ALP is countervailable based solely on its prior findings.¹⁰³

⁹⁸ See *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review*; 2010, 78 FR 22845 (April 17, 2013), and accompanying IDM at 4-5.

⁹⁹ See GOI Initial QR at 4-12.

¹⁰⁰ *Id.* at 16.

¹⁰¹ *Id.*

¹⁰² See GOI Case Brief at 4 (citing *Inland Steel Indus. v. United States*, 967 F. Supp. 1338, 1361 (CIT 1997) (*Inland Steel*) (“{i}t is well-established that Commerce’s findings in a particular case are not binding on it in a subsequent case. Rather, Commerce’s findings in a particular case must be based solely on the facts in the administrative record of that case, regardless of the findings made in an earlier case.”)).

¹⁰³ *Id.* at 24 (citing *Inland Steel*, 967 F. Supp. at 1361 (“{s}econd, it is not a foregone conclusion that the Advance License Program is always a subsidy... subsidy findings are fact-specific, and circumstances often change.”)).

- Based on the information provided by the GOI and Commerce's obligation to examine information submitted during the review, Commerce's countervailable findings in the *Preliminary Results* regarding the DDP and ALP were not warranted.

Petitioner's Rebuttal Brief

- Concerning the ALP, in making its finding, Commerce cited other recent determinations regarding the countervailability of the program, and the record of the instant review does not show any change to the ALP that would warrant reconsideration.
- The GOI has not explained how the record of the instant review is different from the records of previously examined CVD proceedings where Commerce found the ALP to be countervailable.
- Concerning the DDP, Commerce cited prior CVD findings to support its finding that the program was countervailable. Citing to information on the record of the instant review, Commerce also found that the GOI does not have, in place, a system that is reasonable and effective to confirm which inputs, and in what amounts, are consumed in the production of the exported product, as provided under 19 CFR 351.519(a)(4).¹⁰⁴
- Therefore, Commerce properly determined that the ALP and DDP are countervailable.

Commerce's Position: We disagree with the GOI's claim that Commerce ignored record information and, instead, improperly relied on prior determinations to preliminarily conclude that the DDB program constitutes a financial contribution under section 771(5)(D)(ii) of the Act and conferred a benefit under section 771(5)(E) of the Act and 19 CFR.351.519(a)(4).¹⁰⁵ In the *Preliminary Results*, we explained how the DDB program operated during the POR, based on information submitted by the GOI.¹⁰⁶ We next explained the analysis Commerce conducted in prior Indian proceedings to determine whether the DDB program was countervailable.¹⁰⁷ Specifically, we explained that Commerce has countervailed the DDB because:

(1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondent from payment of import duties that would otherwise be due; (2) the GOI 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.¹⁰⁸

Commerce may conclude that a program conferred different levels of benefit during different administrative reviews, even among reviews of the same countervailing duty order. In some reviews, it may conclude that the program conferred no countervailable benefit at all. For that reason, factual findings in past determinations, while often relevant, are not binding in subsequent cases.”)).

¹⁰⁴ See PDM at 15.

¹⁰⁵ *Id.* at 14-15.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* (citing *Polytetrafluoroethylene Resin from India: Preliminary Affirmative Countervailing Duty Determination*, 83 FR 9842 (March 8, 2018) and accompanying PDM at 21-22; unchanged in *Polytetrafluoroethylene Resin from India: Final Affirmative Countervailing Duty Determination*, 83 FR 23422 (May 21, 2018) (*PTFE from India*) and accompanying IDM at 8. We note that the period of investigation examined

Next, citing to information the GOI submitted on the record of the instant review, Commerce explained how the GOI continues to employ a rebate that is not linked to the lined paper product industry and, therefore, we preliminarily determined that the GOI does not have in place a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, in what amounts, are consumed in the production of the exported product, making normal allowance for waste.¹⁰⁹ In particular, Commerce cited to documentation the GOI submitted in response to supplemental questions regarding the DDB program indicating that the GOI derived the drawback rate for the lined paper industry using duty entitlement passbook rebates, because “the industry has not provided any data.”¹¹⁰ Notably, in its case brief, the GOI does not address the fact that the lined paper industry “had not provided any data” for use in the drawback rate applied to the industry during the POR under the DDB program. Furthermore, since the issuance of the *Preliminary Results*, Commerce found, yet again, that the DDB was countervailable because the GOI lacked a system that met the criteria specified under 19 CFR 351.519(a)(4).¹¹¹

Regarding the ALP, Commerce examined the program in *Lined Paper from India*, which included an on-site verification.¹¹² In *Lined Paper from India*, where the period of investigation covered April 1, 2004, through March 31, 2005, Commerce noted that: 1) the GOI was unable to document how it developed the underlying standard-input-output-norm (SION) in effect for the lined paper industry; 2) the GOI was unable to provide source documents concerning the initial formation and subsequent revision of the SION used for the lined paper industry, including the SION in effect during the POI; 3) neither respondents nor the GOI demonstrated that a mechanism existed during the POI to systematically evaluate the underlying SIONs to determine whether they remain reasonable over time; and 4) the ALP allowed participating firms’ export requirements of imported inputs to be satisfied by means of “deemed exports” (e.g., sales of goods that do not leave India).¹¹³ On this basis, Commerce found that “systematic issues continued to exist that demonstrate that the GOI lacks 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,” and, thus, found the program to be countervailable.¹¹⁴

in *PTFE Resin from India* covered April 1, 2016, through March 31, 2017, and, thus, covered three-quarters of the POR examined in the instant review.

¹⁰⁹ See PDM at 15.

¹¹⁰ *Id.* at 15, n.63 (citing to Letter from the GOI, “SUB: Administrative Review of Countervailing Duty into Certain Lined Paper from India (Case No. C-533-844) - Response to Supplemental Questionnaire dated 20 March 2018 on behalf of Government of India,” dated April 6, 2018 at Exhibit G, at 4).

¹¹¹ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 10789 (March 22, 2019) (*PET Film from India 2016*) and accompanying IDM at 11 and 26-29. We note the POR of *PET Film from India 2016* covered calendar year 2016, the same POR as the instant review.

¹¹² See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 45034 (August 8, 2006) (*Lined Paper from India*) and accompanying IDM at 19-21.

¹¹³ *Id.*

¹¹⁴ See *Lined Paper from India* IDM at 7-8, and 19-20.

In *PET Film from India 2016*, where the POR covered calendar year 2016 (the same time-period as the POR of the instant review), Commerce continued to find that the ALP was countervailable because the GOI lacked “a reasonable and effective system for the purposes intended, to confirm which inputs are consumed in the production of the exported products, and in what amounts, making normal allowances for waste, as required under 19 CFR 351.519.”¹¹⁵ In reaching its finding in *PET Film from India 2016*, Commerce noted the following regarding the ALP: (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.¹¹⁶

We find that the concerns noted by Commerce in *Lined Paper from India* and *PET Film from India 2016*, exist with respect to the lined paper industry during the POR of the instant review. The GOI uses industry-specific standard input-output norms as the basis for the duty exemptions provided under the ALP.¹¹⁷ As noted above, in *Lined Paper from India*, Commerce found fault with how the GOI derived the SION applicable to the lined paper industry. In its initial questionnaire response of the instant review, the GOI indicated that the SION in use during the POR of the instant review was last updated on April 8, 2005, which is only eight days after the end of the POI of the underlying investigation.¹¹⁸ Moreover, the sole revision made to the SION in effect during the POR was minimal.¹¹⁹ Thus, information on the record of the instant review demonstrates that the SION with which Commerce found fault in *Lined Paper from India* has remained essentially unchanged as of the end of the POR of the instant review. Further, the fact that the SION for the lined paper industry has remained unchanged for such a long period of time raises the concern that the GOI continues to lack a mechanism to “to systematically evaluate the underlying SIONs to determine whether they remain reasonable over time.”¹²⁰ Also, the GOI did not provide the documentation Commerce requested relating to the most recent formulation of the SION used under the ALP.¹²¹ Lastly, as was the case in *Lined Paper from India*, information on the record indicates that firms participating in the ALP may satisfy the re-export requirements on imported inputs by means of “deemed exports” (e.g., sales of goods that do not leave India).¹²²

Thus, consistent with the holding in *Inland Steel*, our preliminary findings regarding the DDB program and ALP relied on record information submitted by the GOI.¹²³ Accordingly, in these final results, we continue to find the DDB program and the ALP are countervailable based on the record developed in this administrative review.

¹¹⁵ See *PET Film from India 2016* IDM at 32-33.

¹¹⁶ *Id.*

¹¹⁷ See GOI Initial QR at 6 and 15.

¹¹⁸ *Id.* at 11.

¹¹⁹ *Id.* at Exhibit 8, at 2.

¹²⁰ See *Lined Paper from India* IDM at 21.

¹²¹ See GOI Initial QR at 11.

¹²² *Id.* at Exhibit 3, at Article 7.01.

¹²³ See *Inland Steel*, 967 F. Supp. at 1361 (“{i}t is well-established that Commerce’s findings in a particular case are not binding on it in a subsequent case. Rather, Commerce’s findings in a particular case must be based solely on the facts in the administrative record of that case, regardless of the findings made in an earlier case.”).

Comment 4: Whether Commerce’s Countervailable Determination Regarding the EPCGS Properly Accounted for Information Submitted by the GOI

GOI Case Brief

- The EPCGS is a permissible drawback scheme. It allows a partial or full exemption from payment of customs duties upon importation of capital goods that are subject to an export obligation.
- There are no restrictions on the good manufactured by the imported machines in the home market and, thus, it cannot be said that the program is specific.
- Rather than examining the record evidence, Commerce simply reverted to its prior countervailable findings when finding the EPCGS countervailable in the *Preliminary Results*.

Commerce’s Position: We disagree with the GOI. The GOI submitted a response regarding the EPCGS.¹²⁴ The information in the GOI’s response indicates that producers may import capital equipment at a reduced customs duty, subject to an obligation to attain export sales over a six-year period that are six times the value of the duty saved.¹²⁵ If the company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, in addition to an interest penalty.¹²⁶ This information is consistent with the information the GOI has provided regarding this program in prior segments of this proceeding as well as in other Indian CVD proceedings.¹²⁷ Consistent with Commerce’s prior findings, and based on information the GOI has submitted on the record of this review, we continue to find that the EPCGS allows for export-contingent duty exemptions on merchandise (*e.g.*, equipment and machinery) that are not physically incorporated into the re-exported product and, thus, we find that the EPCGS program does not operate as a permissible drawback scheme.¹²⁸ As a result, we continue to find that the program constitutes a financial contribution under section 771(5)(D)(ii) of the Act, and because it is limited to exporters, we find the program is specific under 771(5A)(B) of the Act. Further, because we have applied total AFA to Goldenpalm, we find that the program conferred a benefit under section 771(5)(E) of the Act.

Comment 5: Whether the Programs Operated by the SGOM and SGOTN are Specific

GOI’s Case Brief

- The programs operated by the SGOM and SGOTN employ neutral and objective criteria when determining who qualifies for benefits under the programs. Therefore, there is no factual basis for Commerce to find that the state government programs are specific.

¹²⁴ See GOI IQR at 33.

¹²⁵ *Id.* at 33.

¹²⁶ *Id.*

¹²⁷ See, *e.g.*, *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 18112 (April 17, 2017) (*Lined Paper from India 2014*) and accompanying IDM at 9.

¹²⁸ See *Certain Corrosion-Resistant Steel Products from India: Preliminary Results of the Countervailing Duty Administrative Review; 2015-2016*, 83 FR 39670 (August 10, 2018) and accompanying PDM at 6; unchanged in *Certain Corrosion-Resistant Steel Products From India: Final Results of Countervailing Duty Administrative Review; 2015-2016*, 84 FR 11053 (March 25, 2019) (*CORE from India 2015-2016*) and accompanying IDM at 8.

Commerce’s Position: As explained above, we find that in failing to submit the necessary information Commerce requested regarding the SGOM and SGOTN programs at issue, the GOI failed to act to the best of its ability and, thus, that the application of AFA is warranted as it regards whether the programs constitute financial contributions and are specific under sections 771(5)(D) and 771(5A) of the Act, respectively. On this basis, we have continued to apply AFA under sections 776(a) and (b) of the Act in finding that the SGOM and SGOTN programs are specific under section 771(5A) of the Act.

Comment 6: Whether it Was Lawful for Commerce to Examine Newly Alleged Subsidy Programs

GOI’s Case Brief

- Commerce initiated investigations of the NSAs without providing the GOI an opportunity for consultations as required by Article 13 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement).
- Further, the CIT has held that the plain meaning of 19 CFR 351.311, which deals with the examination of new subsidies discovered during an investigation or review, does not require Commerce to examine all timely-raised allegations. Indeed, the CIT has upheld Commerce’s decision not to initiate on NSAs when Commerce finds it lacks the necessary time or resources.¹²⁹
- In the instant review, Commerce failed to appreciate how the nature of the allegations would be laborious for the GOI and require considerable investigation involving examination of government land pricing policies. Further, the allegations involved several levels of the GOI (e.g., the central government and several state governments) that would add to the time required to develop a proper record. Thus, given the added burden of the NSAs, coupled with the complexity of the programs included in the Initial Questionnaire, Commerce’s decision to initiate investigations of all the NSAs was unreasonable and inconsistent with its practice.¹³⁰

Commerce’s Position: As an initial matter, the WTO Appellate Body disagrees with the GOI’s assertion that an investigating authority is required to provide the opportunity for consultations with respect to the investigation of subsidies in a review that were not included in the original investigation: “we consider that the requirements for carrying out consultations, prescribed in Article 13.1 of the SCM Agreement, do not apply to the conduct of administrative reviews, as governed by Article 21.2 of the SCM Agreement.”¹³¹ More importantly, we note that WTO agreements are not self-executing under U.S. law, unless adopted pursuant to a specified statutory scheme as established in the Uruguay Round Agreements Act.¹³² The authority exercised by Commerce is governed by the Act, as well as Commerce’s regulations. The Act

¹²⁹ See GOI Case Brief at 18 (citing *TMK IPSCO v. United States*, 179 F. Supp. 3d 1328, 1365 (CIT 2016) (*TMK IPSCO*)).

¹³⁰ *Id.*

¹³¹ See DS436 at 4.532.

¹³² See *Cast Iron Soil Pipe Fittings from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 32075 (July 11, 2018) and accompanying IDM at Comment 1; see also *CORE from India 2015-2016* IDM at 13.

itself calls for Commerce to provide the opportunity for consultations to foreign governments only with respect to a new investigation.¹³³

Additionally, the Courts have recognized that Commerce has a general duty to investigate subsidy allegations that arise during the course of an investigation if sufficient time remains before the final determination.¹³⁴ The CIT has further opined that, based “upon the plain meaning of the statute and regulation, it is clear that Commerce has an affirmative duty to investigate subsidies discovered during the course of an investigation....”¹³⁵ Indeed, section 775 of the Act provides, in relevant part, that if, during the course of a CVD proceeding, Commerce “discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition,” then Commerce “shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding.” The relevant legislative history explains that this provision was intended to avoid “unnecessary separate” investigations and “increased expenses and burdens” by “including such practices within the scope of any current investigation. . .”¹³⁶

In the instant review, the petitioner’s NSAs were timely filed – consistent with Commerce’s regulations – providing Commerce with sufficient time to further examine them during the course of this review.¹³⁷ Accordingly, Commerce examined the newly alleged subsidies, determined that they were supported by reasonably available evidence, and, per section 702(b) of the Act and 19 CFR 351.311, initiated investigations of the alleged subsidy programs.¹³⁸ Similar decisions by Commerce, regarding its ability to properly perform its duties, have been recognized by the CIT, and “{t}o find otherwise would put {the} Court in the position of routinely second-guessing Commerce’s decisions regarding its own administrative capacity... {t}his is ‘a role for which courts are ill suited and one that could be quite disruptive of Commerce’s effort to establish enforcement priorities.’”¹³⁹ Given that the courts, themselves, have been reluctant to take on the role of examining Commerce’s self-assessments with respect to its duties, it is inappropriate for the GOI to do so.

We also disagree with the GOI’s assertion that we should have deferred examination of the petitioner’s NSAs. Although the CIT has found that Commerce *may* defer initiating on NSAs in

¹³³ See section 702(b)(4)(A)(ii) of the Act.

¹³⁴ See *Bethlehem Steel Corp. v. United States*, 162 F. Supp. 2d 639, 642-643 (CIT 2001); see also *Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1150 (CIT 2000) (*Allegheny Ludlum*).

¹³⁵ See *Allegheny Ludlum*, 112 F. Supp. 2d at 1150 (“Based upon the plain meaning of this statute and regulation, it is clear that Commerce has an affirmative duty to investigate subsidies discovered during the course of an investigation, even if (for practical reasons) the investigation of the newly discovered subsidies must wait for an administrative review.”); see also *Torrington Co. v. United States*, 68 F. 3d 1347, 1351 (Fed. Cir. 1995) (*Torrington*) (“{A}gencies with statutory enforcement responsibilities enjoy broad discretion in allocating investigative and enforcement resources.”); and *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1353 (CIT 2008) (*Longkou Haimeng Mach. Co.*) (“{A}ny assessment of Commerce’s operational capabilities or deadline rendering must be made by the agency itself.”).

¹³⁶ See *Trade Agreements Act of 1979*, Sen. Rep. No. 96-249, at 98 (1979).

¹³⁷ See NSA Memorandum at 1.

¹³⁸ *Id.* at 2-8.

¹³⁹ See *Torrington*, 68 F. 3d. at 1351.

instances where the agency is faced with unreasonably late or extraordinarily complex subsidy allegations, it has held that Commerce should strive to examine “straightforward” subsidy allegations.¹⁴⁰ Given that we did not find the petitioner’s NSAs to be complex as to warrant deferral to a subsequent administrative review,¹⁴¹ our decision to examine the allegations was reasonable.

Lastly, there is no legal requirement – and the GOI fails to provide any legal basis for its claim that Commerce: (1) consider the potential burden an evaluation of NSAs will pose for a respondent firm or foreign government; and (2) consider the extent to which the NSAs involve provincial-level programs.

Comment 7: Whether Commerce’s Total AFA Rate for Goldenpalm is Incorrect

GOI’s Case Brief

- Commerce’s preliminary calculations indicate a total AFA rate of 180.70 percent for Goldenpalm;¹⁴² however, the *Preliminary Results* indicate a total AFA rate of 188.70 percent. Commerce should explain and correct this discrepancy so that the final notice matches the final calculations.¹⁴³

Commerce’s Position: Commerce should have indicated a total net subsidy rate of 180.70 percent in the *Preliminary Results*, as that was the subsidy rate listed in the Appendix to the PDM. As explained below in Comment 8, based on comments from interested parties, we have revised the AFA rate assigned to Goldenpalm under the GOTN’s Capital Subsidies and Electricity Tax Exemption program. As a result of our revision, the total AFA rate assigned to Goldenpalm is 197.33 percent *ad valorem*.

Comment 8: Whether the Calculated Subsidy Rates Commerce Utilized as the Basis of the AFA Rates Applied to Goldenpalm Were Appropriate

GOI’s Case Brief

- Commerce’s selection of the highest calculated rates as the basis for its AFA rates in the *Preliminary Results* is unjustified because Commerce failed to connect the facts to its selected AFA rates. Specifically, Commerce provided no discussion of what range of rates it considered for the *Preliminary Results* or why the instant review merited application of the highest rates.
- The CIT has remanded Commerce’s decision to apply the highest calculated AFA rate when Commerce has failed to provide a reason for selecting such rates out of all potential countervailable subsidy rates.¹⁴⁴
- Commerce’s application of its CVD AFA hierarchy failed to utilize the most similar programs resulting in an overstatement of the AFA rate. For example, Commerce used the highest calculated rate for the EPCGS program in any Indian CVD proceeding (*i.e.*, 16.63 percent) as

¹⁴⁰ See *Bethlehem Steel Corp. v. United States*, 140 F. Supp. 2d 1354, 1361 (CIT 2001).

¹⁴¹ See NSA Memorandum at 2-8.

¹⁴² See PDM at Appendix I.

¹⁴³ See *Preliminary Results*, 83 FR at 50897.

¹⁴⁴ See GOI Case Brief at 12 (citing *POSCO v. United States*, 337 F. Supp.3d 1265 (CIT 2018) (*POSCO*)).

the basis of the AFA rate for the SGOM provision of land for LTAR program and the SGOTN provision of land for LTAR program without explaining how the EPCGS is similar to the two land for LTAR programs.

- The EPCGS program, a duty exemption program, is not similar to the two programs that allegedly provide land for LTAR. Instead, Commerce should have used the 0.60 percent subsidy rate it previously calculated under the State Government of Gujarat's (SGOG) provision of water for LTAR program as the basis for the land for LTAR programs allegedly administered by the SGOM and SGOTN.¹⁴⁵
- Alternatively, Commerce should have based the AFA rate for the two aforementioned land for LTAR programs on the 5.61 percent subsidy rate that Commerce calculated under the GOI's provision of coal mining rights for LTAR program.¹⁴⁶
- Commerce cannot select unreasonably high rates having no relationship to the respondent's actual subsidy rate.¹⁴⁷
- In determining whether Goldenpalm received a benefit during the POR, Commerce should hold that, unless a benefit under an alleged program is received during the POR, the program should be determined to have been not used and not to have conferred a countervailable benefit upon Goldenpalm. Such an approach would be consistent with Commerce's long-standing practice.¹⁴⁸

Petitioner's Case Brief

- In the *Preliminary Results*, Commerce assigned an 8.07 percent rate to Goldenpalm under the EPCGS program.
- Information Goldenpalm submitted on the record of the instant review indicates that the correct net subsidy rate for Goldenpalm's sole usage of the EPCGS program (*i.e.*, without considering benefits received by Goldenpalm's unreported affiliated parties referred to as Company A, Company B, and Company C) is 9.67 percent.
- Therefore, in applying AFA to Goldenpalm under the EPCGS program, Commerce should not use an AFA rate that is less than 9.67 percent, including the 8.07 percent rate Commerce preliminarily assigned to Goldenpalm under this program pursuant to its CVD AFA hierarchy.
- Assigning a rate that is less than 9.67 percent would permit Goldenpalm to benefit from its failure to report all its affiliated parties and would be contrary to the SAA, which indicates that Commerce may employ AFA to ensure that a party does not obtain a more favorable result by failing to cooperate than if it had cooperated.¹⁴⁹
- There is nothing indicating that Goldenpalm inaccurately reported its usage of this program and Commerce's decision to apply AFA for Goldenpalm's failure to adequately respond on

¹⁴⁵ See GOI Case Brief at 15 (citing *PTFE from India*, 83 FR at 2342, and accompanying IDM at 7).

¹⁴⁶ See GOI Case Brief at 15-16 (citing *Certain Oil Country Tubular Goods from India: Final Results of Countervailing Duty Administrative Review; 2013-2014*, 82 FR 18282 (April 18, 2017) (*OCTG from India*) and accompanying IDM at 6-7).

¹⁴⁷ See GOI Case Brief at 16 (citing *Gallant Ocean (Thailand) Co., Ltd. v. United States*, 602 F. 3d 1319, 1323 (Fed. Cir. 2010)).

¹⁴⁸ See GOI Case Brief at 25 (citing *Notice of Proposed Rule Making and Request for Public Comments*, 54 FR 23366, 23384 (May 31, 1989)).

¹⁴⁹ See Petitioner Case Brief at 5 (citing SAA at 870).

behalf of its affiliates does not undermine the benefits that Goldenpalm reported receiving under the EPCGS program.

- Accordingly, Commerce should use the 9.67 percent rate as the highest rate calculated for this program in this proceeding. Further, Commerce should apply an additional 9.67 percent to Goldenpalm under this program to account for Goldenpalm's failure to adequately report its affiliated parties. Thus, Commerce should assign a total AFA rate of 19.34 to Goldenpalm under the EPCGS program.
- In the *Preliminary Results*, Commerce assigned an AFA rate for loan programs of 1.02 percent, which corresponds to the net countervailable subsidy rate Commerce calculated for the pre- and post-shipment finance programs in the underlying investigation.¹⁵⁰
- However, Commerce should have instead based its AFA rate on the EPCGS program rate that would result from relying on the benefit information submitted by Goldenpalm in the instant review.
- The EPCGS program provides two types of benefits: a loan benefit that exists until a company's export obligation is met, and a grant benefit conferred at the time the GOI formally waives the import duties that it had previously suspended.
- Information submitted by Goldenpalm during this review indicates that the loan portion of Goldenpalm's benefit under the EPCGS program results in a 7.22 percent net countervailable subsidy rate. Thus, Commerce should use this loan-based net subsidy rate for Goldenpalm when assigning AFA rates to the loan programs at issue in the instant review rather than the 1.02 percent rate utilized in the *Preliminary Results*.
- Commerce should revise the subsidy rate assigned to Goldenpalm under the SGOM's infrastructure subsidies to mega projects program because the rate it employed did not account for all types of subsidies provided under the program.
- Commerce's Initial Questionnaire referenced electricity duty exemptions under the program as an example of the benefits provided.¹⁵¹ However, as indicated by Commerce's approach in *HRS from India 2008*, as cited in Commerce's Initial Questionnaire, the SGOM's infrastructure subsidies to mega projects program is, in fact, comprised of an indirect tax subsidy and a grant subsidy.¹⁵²
- Thus, for the SGOM's infrastructure subsidies to mega projects program, Commerce should utilize an AFA rate that reflects both types of these subsidies, specifically a 2.74 percent rate for the indirect tax component and a 16.63 percent rate to account for the grant component of the program.
- If, however, Commerce continues to derive an AFA rate for the SGOM's infrastructure subsidies to mega projects program using a single program type, then it should use the higher 16.63 percent grant rate as the basis for the AFA rate.
- In the *Preliminary Results*, Commerce assigned a single 2.74 percent rate to Goldenpalm under the SGOTN's capital subsidies and electricity tax exemption program, which is the rate Commerce previously calculated under the 80 HHC income tax program.

¹⁵⁰ See Petitioner Case Brief at 12 (citing PDM at Appendix I).

¹⁵¹ See Initial Questionnaire at III-23.

¹⁵² See Petitioner Case Brief at 7 (citing *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) (*HRS from India 2008*) and accompanying IDM).

- Instead, Commerce should assign an AFA rate for each type of benefit provided under SGOTN’s capital subsidies and electricity tax exemption program, namely a tax component for the electricity tax exemptions of 2.74 percent and a grant component for the capital subsidies of 16.63 percent. Such an approach is appropriate because Commerce’s NSA Memorandum recognized that these two programs provide distinct financial contributions and benefits.¹⁵³

Petitioner’s Rebuttal Brief

- The GOI’s citation to *POSCO* is off point. In *POSCO*, the CIT faulted Commerce, in part, because the decision in the underlying proceeding did not indicate how Commerce employed its AFA hierarchy.¹⁵⁴ In contrast, in the *Preliminary Results*, Commerce described in detail the application of the CVD AFA hierarchy for each of the AFA rates assigned to Goldenpalm and, thus, why the application of the highest calculated net subsidy rates was warranted.
- Commerce correctly used the 16.63 percent net subsidy rate calculated for the EPCGS program in *HRS from India* as the AFA rate for the six programs at issue in the review.¹⁵⁵
- Four of the six programs to which the 16.63 percent rate from *HRS from India* was applied in the *Preliminary Results* were grant programs. The remaining two programs involved the provision of land for LTAR.
- The GOI claims that the EPCGS program is not a program that is “similar” to the four grant and two LTAR programs at issue as required by Commerce’s CVD AFA hierarchy.
- However, Commerce has previously used the 16.63 percent rate calculated for the EPCGS program as the AFA rate for same the programs at issue in the instant review.¹⁵⁶
- Further, the EPCGS program provides, in part, benefits in the form of non-recurring grants.¹⁵⁷ Thus, it was appropriate to use the EPCGS program for purposes of assigning an AFA rate to the four grant programs at issue.
- Concerning the two land for LTAR programs, Commerce typically treats land for LTAR programs as non-recurring grants, as opposed to other type of LTAR programs not related to the provision of land, which it treats as recurring benefit programs.¹⁵⁸
- Thus, the land for LTAR programs at issue in the review are more similar to a grant program than any other type of LTAR program. For this reason, Commerce was correct to apply a grant AFA rate of 16.63 percent to the two land for LTAR programs at issue.

¹⁵³ *Id.* at 8 (citing NSA Memorandum at 4).

¹⁵⁴ See Petitioner Rebuttal Brief at 12-13 (citing *POSCO*, 337 F. Supp. 3d at 1278).

¹⁵⁵ *Id.* at 13 (citing *Final Affirmative Countervailing Duty Investigation: Hot-Rolled Steel Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001) (*HRS from India*) and accompanying IDM at “Export Promotion Capital Goods Scheme”).

¹⁵⁶ *Id.* at 14-15 (citing *Lined Paper from India Preliminary Results 2012 PDM* at 19-20; unchanged in *Lined Paper from India 2012 IDM* at 5).

¹⁵⁷ *Id.* (citing *Certain Lined Paper Products from India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2014*, 81 FR 70091 (October 11, 2016) and accompanying PDM at 9; unchanged in *Lined Paper from India 2014 IDM* at 9 and 14-15).

¹⁵⁸ See, e.g., *Common Alloy Aluminum Sheet From the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination With Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018) and accompanying PDM at 45-48.

Commerce’s Position: As an initial matter, *POSCO* is subject to litigation and a final and conclusive decision not been reached in that case. Even so, we disagree with the GOI that *POSCO* stands for the proposition that Commerce is precluded from applying the highest, applicable, calculated AFA rate to an uncooperative respondent without first providing a reason for selecting the highest rate out of all potential countervailable subsidy rates.

In *POSCO*, the CIT examined whether Commerce had given proper meaning to section 776(d)(2) of the Act, which states that, in applying AFA, Commerce “may apply any of the countervailable subsidy rates..., including the highest such rate... based on the evaluation... of the situation that resulted in {Commerce} using an adverse inference in selecting among the facts otherwise available.”¹⁵⁹ Based on the CIT’s interpretation of the facts underlying that case, the CIT remanded Commerce’s determination because Commerce did not “conduct a fact-specific inquiry” and did not “provide its reasons for selecting the highest rate out of all potential countervailable subsidy rates” under section 776(d)(2) of the Act.¹⁶⁰ For example, the CIT reasoned that Commerce did not indicate how it employed its AFA hierarchy.¹⁶¹ Contrary to the GOI’s view, in the instant case, we have explained, in detail, how Commerce employed its AFA hierarchy.

Furthermore, by selecting the highest rate within each prong of the AFA hierarchy, Commerce aims to strike a balance between three necessary variables: inducement, industry relevancy, and program relevancy.¹⁶² For that reason, we have interpreted section 776(d)(2) of the Act to constitute an exception to the selection of an AFA rate under 776(d)(1); that is, after an evaluation of the situation that resulted in the application of an adverse inference, Commerce may decide that given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate. Commerce’s interpretation in this regard has been affirmed – unchallenged – by the CIT.¹⁶³

As explained above, section 776(d)(2) applies as an exception to the selection of an AFA rate under 776(d)(1) of the Act; that is, after “an evaluation of the situation that resulted in the application of an adverse inference,” Commerce may decide that given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate. In this case, Goldenpalm failed to adequately disclose and submit questionnaire responses on behalf of Company A, and also failed to adequately disclose the existence and operations of Company B and Company C. The failure to disclose the existence of these firms precluded Commerce from examining whether the firms should have been required to submit responses to the Initial Questionnaire. We find that Goldenpalm’s failure to act to the best of its ability does not constitute a unique and unusual fact that would warrant Commerce refraining from applying the highest rate within each step of its CVD AFA hierarchy.

¹⁵⁹ See *POSCO*, 337 F. Supp. 3d at 1278.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² See, e.g., Final Results of Redetermination Pursuant to Court Remand, Consol. Court No. 16-00227, ECF No. 100, dated November 13, 2018 at 10-12 (Hot Rolled Final Remand).

¹⁶³ See *POSCO v. United States*, 335 F. Supp. 3d at 1283 (CIT 2018).

We also disagree with the GOI's argument that, in applying the CVD AFA hierarchy, Commerce selected unreasonably high rates that have no relationship to Goldenpalm's actual subsidy rate. The statute states that in selecting from the facts otherwise available, Commerce is not required "to estimate what the countervailable subsidy rate . . . would have been if the interested party found to have failed to cooperate . . . had cooperated or to demonstrate that the countervailable subsidy rate . . . used by {Commerce} reflects an alleged commercial reality of the interested party."¹⁶⁴

The GOI also argues that Commerce incorrectly assigned the highest rate calculated for the ECPGS, 16.63 percent, as the AFA rate for the SGOM and SGOTN provision of land for LTAR programs rather using lower rates calculated under the Indian provision of water and coal mining rights for LTAR programs. We disagree that our application of the CVD AFA hierarchy was in error. As explained in the *Preliminary Results*, under our CVD AFA hierarchy, in selecting the AFA rate for a given program in administrative reviews:

Commerce applies the highest calculated above-*de minimis* rate (e.g., above 0.5 percent) for the identical program from any segment of the same proceeding. If there is no identical program match within the same proceeding, or if the rate is *de minimis*, Commerce uses the highest non-*de minimis* rate calculated for a similar program, based on treatment of the benefit. Absent an above-*de minimis* subsidy rate calculated for the identical or similar program from the same proceeding, Commerce looks to other proceedings involving the same country and applies the highest calculated above-*de minimis* subsidy rate for the identical or similar/comparable program. Where no above-*de minimis* rate for an identical or similar program within the country has previously been calculated, Commerce applies the highest calculated rate for any program from any CVD case involving the same country that could conceivably be used by the noncooperating company. The exception to the methodology described above involves income tax programs. For income tax programs, per our practice, we apply an adverse inference that the non-cooperating respondent paid no income tax during the POR.¹⁶⁵

Commerce has never calculated a net subsidy rate under the SGOM or SGOTN provision of land for LTAR programs in this proceeding and, thus, there is no available subsidy rate for an identical program under the first tier of the hierarchy. Further, Commerce has not calculated a subsidy rate for a land for LTAR program that is similar to the two land for LTAR programs at issue and, thus, no rate is available under the second tier of the hierarchy. Under the third tier of the hierarchy, we look to other Indian CVD proceedings to determine whether we can apply the highest calculated above-*de minimis* subsidy rate for the identical or similar/comparable program. However, we find that Commerce has not calculated a subsidy rate for a land for LTAR program in any Indian CVD proceeding. Thus, we must resort to the final tier of the CVD AFA hierarchy, which is the application of the highest calculated rate for any program from any Indian CVD proceeding that could conceivably be used by Goldenpalm. Under the fourth tier of the CVD AFA hierarchy, we have assigned the subsidy rate of 16.63 percent

¹⁶⁴ See section 776(d)(3) of the Act.

¹⁶⁵ See PDM at 10.

calculated for the EPCGS in *HRS from India* to the SGOM and SGOTN provision of land for LTAR programs at issue.¹⁶⁶

We also disagree with the GOI that, for the SGOM and SGOTN land for LTAR programs at issue, we should have used the 0.60 percent subsidy rate Commerce calculated for the SGOG provision of water for LTAR program in *PTFE from India*.¹⁶⁷ That Commerce, in the *Preliminary Results*, did not consider the SGOG provision of water for LTAR program to be a program that is similar to the SGOM and SGOTN provision of land for LTAR programs at issue under the second and third tiers of the CVD hierarchy is consistent with Commerce's practice. For example, in assigning an AFA rate for the SGOG land for LTAR program in *CORE from India 2015-2016*, Commerce resorted to the fourth tier of its CVD hierarchy¹⁶⁸ rather than apply the 0.60 percent subsidy rate that was calculated under the SGOG provision of water for LTAR program in *PTFE from India*.¹⁶⁹

We also disagree with the GOI's argument that, in the alternative, we should have applied to the SGOM and SGOTN provision of land for LTAR programs the 5.61 percent rate that was calculated under the GOI's provision of coal mining rights for LTAR program in *OCTG from India*.¹⁷⁰ Under the fourth tier of the CVD AFA hierarchy, Commerce may only use a calculated rate that could conceivably be used by the non-cooperating company. It is not conceivable that Goldenpalm, a member of the lined paper industry, could use a provision of coal mining rights program. Therefore, we find the subsidy rate Commerce calculated under the coal mining rights for LTAR program in *OCTG from India* is not appropriate for use when applying the CVD AFA hierarchy to Goldenpalm.

We also disagree with the petitioner's argument that for certain programs we should have relied, in part, on Goldenpalm's questionnaire responses to calculate net subsidy rates that exceed the rates that result from application of the CVD AFA hierarchy. As explained above, we find that Goldenpalm failed to adequately disclose the existence of Company A, a company with whom it was cross-owned, as well as the existence of Company B and Company C and, thus, that the application of facts available under section 776(a) of the Act is warranted. Further, in drawing an adverse inference under section 776(b) of the Act, we have determined not to rely on Goldenpalm's reported usage information or its claims of non-use of programs. Having reached such a conclusion, we cannot therefore rely on any of Goldenpalm's questionnaire responses when determining the AFA rate to be assigned to each of the subsidy programs at issue.

We also disagree with the petitioner that we should have assigned an AFA rate for loan programs at issue using benefit information Goldenpalm reported under the EPCGS rather than the highest rate calculated under the GOI's pre- and post-shipment finance programs in *Lined Paper from India*.¹⁷¹ As noted previously, because we cannot rely on Goldenpalm's questionnaire responses, we cannot, therefore, rely on any of the company's submitted information when determining the

¹⁶⁶ See *id.* at 10-11; see also PDM at Appendix I citing to *HRS from India* IDM at "Export Promotion for Capital Goods (EPCGS) Scheme."

¹⁶⁷ See *PTFE from India* IDM at 7.

¹⁶⁸ See *CORE from India 2015-2016* IDM at 6 and 44.

¹⁶⁹ See *PTFE from India* IDM at 7.

¹⁷⁰ See *OCTG from India*, 82 FR at 18282, and accompanying IDM at 6-7.

¹⁷¹ See PDM at Appendix I, referencing *Lined Paper from India* IDM at 5.

AFA rate to be assigned to each of the subsidy programs at issue. Further, Commerce applied AFA for the loan programs at issue using the second tier of its CVD AFA hierarchy, which calls for the use of the highest non-*de minimis* rate calculated for a similar program, based on treatment of the benefit. The EPCGS is an import duty exemption program and, for this reason, we find that it is not a program that is similar to the loan programs at issue, particularly when calculated rates for actual GOI loan programs are available for use.

We agree with the petitioner that we should assign an AFA rate for each type of benefit allegedly provided under SGOTN's capital subsidies and electricity tax exemption program. We find such an approach is warranted given that the NSA Memorandum notes that the two programs provide distinct financial contributions and benefit types.¹⁷² Accordingly, in the final results, we have relied on the second tier of our CVD AFA hierarchy to assign a rate of 2.74 percent for the electricity tax exemptions under the GOTN program, which is the highest rate calculated for a similar tax program in the lined paper proceeding.¹⁷³ For the capital subsidies under the SGOTN program, we have relied on the fourth tier of the CVD AFA hierarchy to assign a rate of 16.63 percent.¹⁷⁴ Our reliance on the fourth tier of the hierarchy is required because Commerce has not previously calculated an above *de minimis* subsidy rate for a grant program in an Indian CVD proceeding.

Lastly, we disagree with the petitioner that we should revise the subsidy rate that was assigned to Goldenpalm under the SGOM's infrastructure subsidies to mega projects program because the rate we employed did not account for all types of subsidies provided under the program. Commerce's Initial Questionnaire referenced electricity duty exemptions under the program as an example of the benefits provided under the mega projects program and did not explicitly instruct the GOI to respond to whether grants were also provided under the program.¹⁷⁵ Further, we find that, based on this record, a mere citation to *HRS from India* (a CVD proceeding where Commerce examined whether grants were provided under the mega projects program) in the Initial Questionnaire does not constitute a sufficient basis to find that the GOI was notified of a program for which a complete response was required.

Comment 9: Whether Commerce Should Calculate an Additional AFA Rate for Subsidies Purportedly Discovered During the Course of the Review

Petitioner's Case Brief

- In the NSA Memorandum, Commerce initiated an investigation into whether Goldenpalm received electricity tax exemptions under the SGOTN's TNIP program. Goldenpalm's questionnaire responses regarding this program indicate that it received an additional subsidy that was not addressed in the NSA Memorandum, namely that it received electricity for LTAR during the POR.¹⁷⁶
- Commerce should assign an additional AFA rate of 16.63 percent to account for SGOTN's provision of electricity to Goldenpalm for LTAR.

¹⁷² See NSA Memorandum at 4.

¹⁷³ See *Lined Paper from India* IDM at 8.

¹⁷⁴ See *HRS from India* IDM at "Export Promotion for Capital Goods (EPCGS) Scheme."

¹⁷⁵ See Initial Questionnaire at III-23.

¹⁷⁶ See Goldenpalm Supplemental QR4 at SSNSA-7.

Commerce’s Position: As explained above, we determine that Goldenpalm did not cooperate to the best of its ability to comply with the requests for information in this review and that the application of facts available with adverse inferences under sections 776(a) and (b) of the Act is warranted. In drawing an adverse inference, we have not relied on Goldenpalm’s reported usage information or its claims of non-use of programs. Having reached such a conclusion, we cannot therefore rely on any of Goldenpalm’s questionnaire responses to determine whether Goldenpalm received countervailable benefits under subsidy programs beyond those listed in the Initial Questionnaire and the NSA Memorandum. On this basis, we have not assigned additional subsidy rates to Goldenpalm as advocated by the petitioner.

Comment 10: Attribution of Benefits Goldenpalm Received Under the EPCGS Program in the Event Commerce Determines Not to Apply Total AFA to Goldenpalm in the Final Results

Petitioner’s Case Brief

- In *Lined Paper from India 2014*, Commerce attributed certain of the benefits Goldenpalm received under the EPCGS program to its sales of subject merchandise.¹⁷⁷
- Information in Goldenpalm’s EPCGS licenses indicate that its receipt of benefits under the program was contingent upon its exports of subject merchandise.
- Accordingly, if Commerce determines not to apply total AFA to Goldenpalm in the final results, Commerce should attribute all the benefits Goldenpalm received under the EPCGS program to its sales of subject merchandise rather than to its total export sales.

Commerce’s Position: As explained above, we have determined to apply facts available with adverse inferences under sections 776(a) and (b) of the Act. As a result, the petitioner’s comments on this issue are moot.

Comment 11: Whether Commerce Should Adjust the Assessment Rates Applied to the Importers of Record

Goldenpalm’s Case Brief

- Countervailing duty assessment rates based on an application of AFA are more than remedial. They also contain a degree of punishment. Commerce has stated that one of the purposes of applying AFA is to punish uncooperative respondents for their lack of cooperation and to deter future non-cooperation. While punishment is not the only basis for the imposition of duties based on AFA, it is an important consideration.
- It is also well established that if a fine or other financial extraction includes more than a remedial purpose, it falls under the Eighth Amendment and must be assessed to determine whether it is an “excessive fine, penalty or forfeiture.”¹⁷⁸
- The purpose of the application of a rate based on AFA is to “deter” non-cooperation with Commerce and to obtain cooperation in the future. Although a high deposit rate may “deter” non-cooperation, the high assessment rate only falls on the unrelated importers. This assessment falls within the ambit of the Eighth Amendment in this case, and, thus, the question

¹⁷⁷ See Petitioner Case Brief at 12 (citing *Lined Paper from India 2014* IDM at Comment 2).

¹⁷⁸ See Goldenpalm Case Brief at 6 (citing *Austin v. United States*, 509 U.S. 602 (1993) (*Austin*); *United States v. Bajakajian*, 524 U.S. 321 (1998) (*Bajakajian*)).

is whether the application of this sanction to another matter results in an amount which is “excessive.”

- The AFA assessment rate applied to the importers of record is inherently excessive. Consistent with the Supreme Court’s holding in *Bajakajian*, it is unchallenged that the AFA rate Commerce derived was wholly unrelated to the conduct of the unrelated importers. In fact, the unrelated importers did nothing, beyond the legally permitted act of importation. As such, the amount of the duty must be proportional to the gravity of the offense for which it is designed to punish. In this case, punishing the unrelated importers is inappropriate. These unrelated importers were not involved, in any fashion, with the conduct which resulted in the application of AFA.
- Therefore, if Commerce decides to calculate the CVD rate for Goldenpalm based on AFA, it must calculate the assessment rate for the unrelated importers using a non-adverse basis. Any other result is violative of the Eighth Amendment and constitutes an unreasonable fine, penalty of forfeiture.

GOI’s Case Brief

- The subsidy rate Commerce determines for Goldenpalm should not be extended to the “all-other” exporters who are unrepresented before Commerce. Such an extension would be discordant with Commerce’s duty of fairness.

Petitioner’s Rebuttal Brief

- In its case brief, Goldenpalm asserts for the first time that its product is imported into the United States by unrelated importers without citing to any factual information to support its claim. Such a claim constitutes untimely filed new factual information that should be stricken from the record.
- As to Goldenpalm’s argument regarding the importers of record, should it remain on the record before Commerce, the antidumping duty (AD) and CVD provisions of the statute call for assessments on the importer(s) of record. As the Federal Circuit has made clear, as long as Commerce’s AFA finding is “determined in accordance with the statutory requirements,” such a finding “is not a punitive measure.”¹⁷⁹
- Commerce should reject Goldenpalm’s Eighth Amendment claims. Goldenpalm’s citations rely on Supreme Court cases involving statutes other than that governing Commerce’s AD and CVD proceedings and application of AFA.
- Commerce and the Courts have also previously rejected Goldenpalm’s characterization of the AFA statute as punitive.¹⁸⁰

Commerce’s Position: The AD and CVD provisions of the statute call for assessments on the importer(s) of record.¹⁸¹ Goldenpalm cites to no regulation or provision of the statute to support its objection to the assessment of duties on the importers of record. Therefore, we reject

¹⁷⁹ See Petitioner Rebuttal Brief at 3-4 (citing *KYD, Inc. v. United States*, 607 F. 3d 760, 767-768 (Fed. Cir. 2010) (*KYD*)).

¹⁸⁰ *Id.* at 3 (citing e.g., *Xanthan Gum from the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 6513 (February 14, 2018) and accompanying IDM at Comment 5; and *KYD*, 607 F. 3d at 767-768).

¹⁸¹ See section 706 of the Act; 19 CFR 351.212(b) (“{T}he Secretary normally will calculate an assessment rate for each importer of subject merchandise covered by the review.”) (emphasis added).

Goldenpalm’s argument on this point.

We also disagree with Goldenpalm’s argument that the AFA rates assigned to Goldenpalm constitute a punitive form of punishment. Pursuant to our CVD AFA hierarchy, we applied to Goldenpalm subsidy rates calculated for cooperative respondents for identical or similar programs in other segments of this proceeding, as well as other Indian CVD proceedings. In the absence of information from Goldenpalm concerning the rates at which it benefited from the programs at issue, rates previously calculated for cooperative respondents provide a non-punitive and reasonable basis by which to assign rates to Goldenpalm. The Federal Circuit has explained that “an AFA {rate} determined in accordance with the statutory requirements is not a punitive measure.”¹⁸² Further, in deriving AFA rates, the Court has held that Commerce may incorporate “some built-in increase intended as a deterrent to non-compliance.”¹⁸³

We also disagree with Goldenpalm’s Eighth Amendment claims. The Excessive Fines Clause of the Eighth Amendment applies only in the context of punishment,¹⁸⁴ and it is well-established that the CVD law, including the AFA provisions, is remedial and not punitive.¹⁸⁵ Indeed, the CIT has addressed this argument in the past and held that the Eighth Amendment is not applicable in this context because “a statutorily proper AFA rate is remedial rather than punitive.”¹⁸⁶ Because Commerce properly determined an AFA rate pursuant to the Act and its well-established CVD practice, Commerce does not need to perform the Eighth Amendment evaluation as Goldenpalm claims.

We also find off-point the GOI’s argument that the subsidy rate for Goldenpalm should not be extended to the “all-other” exporters who are unrepresented before Commerce. As noted in the “Summary” section of this memorandum, Goldenpalm is the sole respondent subject to the review. As such, the rate determined in this review will apply only to Goldenpalm. Accordingly, for all non-reviewed firms, we will instruct Customs and Border Protection to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate.

¹⁸² See *KYD*, 607 F. 3d at 767-768 (holding that an AFA margin determined in accordance with the statutory requirements is not a punitive measure, and the limitations applicable to punitive damages assessments have no pertinence to duties imposed based on lawfully derived margins).

¹⁸³ See *De Cecco*, 216 F.3d at 1032.

¹⁸⁴ See *Austin*, 509 U.S. at 609-10 (“The Excessive Fines Clause limits the government’s power to extract payments, whether in cash or in kind, ‘as *punishment* for some offense’” quoting *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 265 (1989) (emphasis added by Court)).

¹⁸⁵ See *Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2010, 78 FR 21594 (April 11, 2013), and accompanying IDM at 19.

¹⁸⁶ See *KYD, Inc. v. U.S.*, 779 F. Supp. 2d 1361, 1384 n.24 (CIT 2011) (“The court need not address KYD’s Eighth Amendment claim.... A statutorily proper AFA rate is remedial rather than punitive... and a ‘punitive’ rate is statutorily improper.” (internal cites omitted)); see also *GPX Intern. Tire Corp. v. U.S.*, 893 F. Supp. 2d 1296, 1310 (CIT 2013); and *KYD, Inc. v. U.S.*, 836 F. Supp. 2d 1410, 1415 (CIT 2012).

Comment 12: Whether Commerce Should Issue the Final Results on an Expedited Basis

Petitioner's Case Brief

- Commerce established the current cash deposit rate of 8.30 percent for Goldenpalm as part of the administrative review covering the 2014 POR.¹⁸⁷
- Unambiguous facts led Commerce to apply total AFA to Goldenpalm in the instant review, and these facts also existed during the prior review that covered the 2014 POR.
- Therefore, to prevent Goldenpalm from benefiting from the cash deposit rate established in *Lined Paper from India 2014*, Commerce should issue the final results as soon as possible.

Commerce's Position: Commerce is under no statutory requirement to complete the final results ahead of the extended due date pursuant to our statutory deadlines. Nonetheless, we attempt to complete administrative reviews as quickly as our administrative resources allow. In this particular review, which involved complex AFA issues, as well as lengthy case and rebuttal briefs filed by three interested parties, Commerce was not able to complete the final results ahead of the extended due date.

VII. Recommendation

Based on our analysis of the record, we recommend adopting the above positions. If this recommendation is accepted, we will publish the results of the review in the *Federal Register*.



Agree

Disagree

5/15/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

¹⁸⁷ See Petitioner Case Brief at 8 (citing *Certain Lined Paper Products from India: Amended Final Results of Countervailing Duty Administrative Review, 2014*, 82 FR 28047 (June 20, 2017)).

APPENDIX
DERIVATION OF AFA RATE ASSIGNED TO GOLDENPALM

Lined Paper Products from India (C-533-844)					
Administrative Review: POR 01/01/2016 - 12/31/2016					
Goldenpalm					
Calculations for Final Results					
Public Document					
Attachment I					
No.	Initial or NSA Program	Program	AFA Rate	Basis for Match	Source:
1	Initial QNR Program	Pre- & Post- Shipment Loans	1.02%	Highest Calculated Rate for Identical Program In Lined Paper Proceeding	<i>See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2006) and accompanying Issues and Decision Memorandum, (CLPP Investigation from India I&D Memorandum) at 4-5 for Aero Exports (Aero) for the Pre and Post Shipment Loans, which was the highest of the rates given to the three respondents.</i>
2	Initial QNR Program	Export Promotion of Capital Goods Scheme (EPCGS)	8.07%	Highest Calculated Rate for Identical Program In Lined Paper	<i>See Certain Lined Paper Products from India: Amended Final Results of Countervailing Duty Administrative Review, 2014, 82 FR 28047</i>

				Proceeding	(June 20, 2017) and Memorandum, Response to Ministerial Error Allegations in the Final Results, (CLPP Amended Final 2014) at 1-5.
3	Initial QNR Program	Export Oriented Units (EOU) Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically	2.74%	Highest Calculated Rate for Similar Program in Lined Paper Proceeding	See CLPP Investigation from India I&D Memorandum at 8 for Navneet Publications (Navneet) for Income Tax Exemption Scheme under 80HHC.
4	Initial QNR Program	Market Development Assistance (MDA)	16.63%	Highest Calculated Rate for Similar Program in an Indian CVD Proceeding	See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India, 66 FR 49635 (September 28, 2001) (HRS from India), and accompanying Issues and Decision Memorandum (HRS from India I&D Memorandum) at Export Promotion Capital Goods Scheme.
5	Initial QNR Program	Market Access Initiative (MAI)	16.63%	Highest Calculated Rate for Similar Program in an Indian CVD Proceeding	See HRS from India I&D Memorandum at Export Promotion Capital Goods Scheme.
6	Initial QNR Program	Status Certificate Program	1.02%	Highest Calculated Rate for Similar Program in	See CLPP Investigation from India I&D Memorandum at 4-5 for Aero for the Pre and Post Shipment

				Lined Paper Proceeding	Loans, which was the highest of the rates given to the three respondents.
7	Initial QNR Program	Income Deduction Program (80IB Tax Programs)	30.00%	See IDM for AFA treatment of Income Tax Programs.	<i>See Decision Memorandum for Preliminary Results of 2016 Countervailing Duty Administrative Review: Certain Lined Paper Products from India</i> at 10-11
8	Initial QNR Program	ALP (AAP)	2.55%	Highest Calculated Rate for Identical Program In Lined Paper Proceeding	<i>See CLPP Investigation from India I&D Memorandum at 4-5 for Aero for ALP.</i>
9	Initial QNR Program	Loan Guarantees from GOI	1.02%	Highest Calculated Rate for Similar Program in Lined Paper Proceeding	<i>See CLPP Investigation from India I&D Memorandum at 4-5 for Aero for the Pre and Post Shipment Loans, which was the highest of the rates given to the three respondents.</i>
10	Initial QNR Program	State Government of Maharashtra (SGOM) Tax Incentives	2.74%	Highest Calculated Rate for Similar Program in Lined Paper Proceeding	<i>See CLPP Investigation from India I&D Memorandum at 8 for Navneet for Income Tax Exemption Scheme under 80HHC.</i>
11	Initial QNR Program	SGOM: Electricity Duty Exemptions Under the State Government of Maharashtra Package Program of	2.74%	Highest Calculated Rate for Similar Program in Lined Paper Proceeding	<i>See CLPP Investigation from India I&D Memorandum at 8 for Navneet for Income Tax Exemption Scheme under 80HHC.</i>

		Incentives of 1993			
12	Initial QNR Program	SGOM Land for Less than Adequate Remuneration	16.63%	Highest Calculated Rate for Similar Program in an Indian CVD Proceeding	<i>See HRS from India I&D Memorandum at Export Promotion Capital Goods Scheme.</i>
13	Initial QNR Program	SGOM: Refunds of Octroi Taxes	2.74%	Highest Calculated Rate for Similar Program in Lined Paper Proceeding	<i>See CLPP Investigation from India I&D Memorandum at 8 for Navneet for Income Tax Exemption Scheme under 80HHC.</i>
14	Initial QNR Program	SGOM: Loan Guarantees Based on Octroi Refunds by the State Government of Maharashtra	1.02%	Highest Calculated Rate for Similar Program in Lined Paper Proceeding	<i>See CLPP Investigation from India I&D Memorandum at 4-5 for Aero for the Pre and Post Shipment Loans, which was the highest of the rates given to the three respondents.</i>
15	Initial QNR Program	SGOM: Infrastructure Subsidies to Mega Projects - Electricity Duty Exemptions	2.74%	Highest Calculated Rate for Similar Program in Lined Paper Proceeding	<i>See CLPP Investigation from India I&D Memorandum at 8 for Navneet for Income Tax Exemption Scheme under 80HHC.</i>
16	Initial QNR Program	Duty Drawback Program	8.07%	Highest Calculated Rate for Similar Program in Lined Paper Proceeding	<i>See CLPP Amended Final 2014 at 1-5.</i>

17	NSA Program	Merchandise Export from India Scheme (MEIS)	6.93%	Highest Calculated Rate for Similar Program in Lined Paper Proceeding	<i>See Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review</i> , 74 FR 6573 (February 10, 2009) and Accompanying Issues and Decision Memorandum at 5.
18	NSA Program	Interest Equalization Scheme (IES) for Export Financing	1.02%	Highest Calculated Rate for Similar Program In Lined Paper Proceeding	<i>See CLPP Investigation from India I&D Memorandum at 4-5 for Aero for the Pre and Post Shipment Loans, which was the highest of the rates given to the three respondents.</i>
19	NSA Program	(GOTN) Subsidy Programs Provided Under (TNIP): Electricity Tax Exemptions	2.74%	Highest Calculated Rate for Similar Program In Lined Paper Proceeding	<i>See CLPP Investigation from India I&D Memorandum at 8 for Navneet for Income Tax Exemption Scheme under 80HHC.</i>
20	NSA Program	(GOTN) Subsidy Programs Provided Under (TNIP): Capital Subsidies	16.63%	Highest Calculated Rate for Similar Program in an Indian CVD Proceeding	<i>See HRS from India I&D Memorandum at Export Promotion Capital Goods Scheme.</i>
21	NSA Program	GOTN Provision of Land or Land-Use Rights for LTAR	16.63%	Highest Calculated Rate for Similar Program in an Indian CVD Proceeding	<i>See HRS from India I&D Memorandum at Export Promotion Capital Goods Scheme.</i>

22	NSA Program	GOTN Stamp Duty Concession provided in connection with land purchases	2.74%	Highest Calculated Rate for Similar Program In Lined Paper Proceeding	<i>See CLPP Investigation from India I&D Memorandum at 8 for Navneet for Income Tax Exemption Scheme under 80HHC.</i>
23	NSA Program	GOTN Grants to firms provided to firms employing more than 25 workers	16.63%	Highest Calculated Rate for Similar Program in an Indian CVD Proceeding	<i>See HRS from India I&D Memorandum at Export Promotion Capital Goods Scheme.</i>
24	NSA Program	GOTN Interest subsidies provided on loans issued by the GONT-owned Tamil Nadu Industrial Investment Corporation (TIIC)	1.02%	Highest Calculated Rate for Similar Program In Lined Paper Proceeding	<i>See CLPP Investigation from India I&D Memorandum at 4-5 for Aero for the Pre and Post Shipment Loans, which was the highest of the rates given to the three respondents.</i>
25	NSA Program	GOTN Generator Subsidy	16.63%	Highest Calculated Rate for Similar Program in an Indian CVD Proceeding	<i>See HRS from India I&D Memorandum at Export Promotion Capital Goods Scheme.</i>
Total AFA Rate			197.33%		