



C-533-888
Investigation
POI: 01/01/2018 – 12/31/2018
Public Document
E&C/V: GC/HF

July 22, 2019

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

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination: Countervailing Duty Investigation of Carbon and
Alloy Steel Threaded Rod from India

I. SUMMARY

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

II. BACKGROUND

A. Initiation and Case History

On February 21, 2019, Commerce received petitions filed in proper form by Vulcan Threaded Products Inc. (the petitioner), a domestic producer of steel threaded rod, seeking the imposition of antidumping duties (AD) and countervailing duties (CVD) on imports of steel threaded rod from India.¹ In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleged that the Government of India (GOI) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of steel

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Carbon and Alloy Steel Threaded Rod from the People's Republic of China, India, Taiwan, and Thailand," dated February 21, 2019 (the Petitions); see also Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Carbon and Alloy Steel Threaded Rod from the People's Republic of China, India, Taiwan, and Thailand: Clarification of Petitioner Name," dated March 1, 2019.

threaded rod in India and that imports of such products are materially injuring, or threatening material injury to, the domestic steel threaded rod industry in the United States.

On March 13, 2019, Commerce initiated an investigation with respect to 19 alleged countervailable subsidy programs provided by the GOI to the steel threaded rod industry.²

We stated in the *Initiation Notice* that, if appropriate, we intended to base the selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ We released the CBP entry data under administrative protective order (APO) on March 11, 2019.⁴ No party filed comments on the CBP entry data.

On April 10, 2019, we selected Daksh Fasteners (Daksh) and Mangal Steel Enterprises Ltd. (Mangal), the two largest publicly identifiable producers/exporters of subject merchandise by volume, for individual examination as mandatory respondents in this investigation.⁵

On April 10, 2019, we issued the initial questionnaire to the GOI.⁶ In that letter, Commerce instructed the GOI to forward the questionnaire to the selected mandatory respondents.⁷

Between May 1, 2019, and July 12, 2019, we received timely questionnaire responses from the GOI and Mangal regarding our initial and supplemental CVD questionnaires.⁸ Daksh did not respond to our initial questionnaire.

² See CVD Initiation Checklist: Carbon and Alloy Steel Threaded Rod from India, dated March 13, 2019 (CVD Initiation Checklist); see also *Carbon and Alloy Steel Threaded Rod from India and the People's Republic of China: Initiation of Countervailing Duty Investigations*, 84 FR 10040 (March 19, 2019) (*Initiation Notice*).

³ See *Initiation Notice*, 84 FR at 10042.

⁴ See Memorandum, "Release of Customs and Border Protection ("CBP") Data," dated March 11, 2019.

⁵ See Memorandum, "Countervailing Duty Investigation of Steel Threaded Rod from India: Respondent Selection," dated April 10, 2019.

⁶ See Commerce's Letter, "Countervailing Duty Investigation Steel Threaded Rod from India: Countervailing Duty Questionnaire," dated April 10, 2019 (Initial Questionnaire).

⁷ *Id.*

⁸ See Mangal's Letter, "Countervailing Duty Investigation of Carbon and Alloy Steel Threaded Rod from India; Response to Section III of the Countervailing Duties Questionnaire: Identifying Affiliated Companies," dated May 1, 2019 (Mangal's Affiliation QR); Mangal's Letter, "Countervailing Duty Investigation of Carbon Alloy Steel Threaded Pipe from India; Response to Supplemental Section III Affiliations Questionnaire," May 16, 2019; GOI's Letter, "CVD Investigation- Carbon and Alloy Steel Threaded Rod from India: Initial Questionnaire Response on behalf of Government of India (GOI)," dated May 25, 2019 (GOI IQR); Mangal's Letter, "Countervailing Duty Investigation of Carbon Alloy Steel Threaded Rod from India; Response to Section III of the Countervailing Duty Questionnaire," dated May 29, 2019 (Mangal IQR); Mangal's Letter, "Countervailing Duty Investigation of Carbon Alloy Steel Threaded Rod from India; Response to Supplemental Countervailing Duty Questionnaire," dated July 10, 2019 (Mangal Supplemental); and GOI's Letter, "CVD Investigation- Carbon and Alloy Steel Threaded Rod from India: Response to Supplemental Questionnaire on behalf of Government of India (GOI)," dated July 12, 2019 (GOI Supplemental).

On June 11, 2019, the petitioner timely submitted new subsidy allegations for nine programs.⁹ We are still examining the new subsidy allegations and will consider whether to initiate an investigation with respect to these alleged subsidy programs after this preliminary determination.

On June 21, 2019, the petitioner submitted benchmark information.¹⁰

B. Postponement of Preliminary Determination

On April 19, 2019, based on a request by the petitioner,¹¹ Commerce postponed the preliminary determination in this investigation to July 22, 2019, in accordance with section 703(c)(1) and (2) of the Act and 19 CFR 351.205(e).¹²

C. Period of Investigation

The period of investigation (POI) is January 1, 2018 through December 31, 2018. This period corresponds to the most recently completed calendar year in accordance with 19 CFR 351.204(b)(2).

III. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,¹³ we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of that notice.¹⁴ We received several comments concerning the scope of the concurrent AD and CVD investigations of steel threaded rod. *See* the scope memorandum issued concurrently with this preliminary determination for our consideration of the parties' comments.¹⁵

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by the scope of this investigation is carbon and alloy steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon or alloy steel, having a solid, circular cross section of any diameter, in any straight length. Steel threaded rod is normally drawn, cold-rolled, threaded, and straightened, or it may be hot-rolled. In addition, the steel threaded rod, bar, or studs subject to this investigation are non-headed and threaded along greater than 25 percent of their total actual length. A variety of finishes or coatings, such as

⁹ *See* Petitioner's Letter, "Carbon and Alloy Steel Threaded Rod from India: New Subsidy Allegations," dated June 11, 2019.

¹⁰ *See* Petitioner's Letter, "Carbon and Alloy Steel Threaded Rod from India: Benchmark Factual Information," dated June 21, 2019.

¹¹ *See* Petitioner's Letter, "Carbon and Alloy Steel Threaded Rod from India: Request to Extend Preliminary Determination Deadline," dated March 29, 2019.

¹² *See Carbon and Alloy Steel Threaded Rod from India and the People's Republic of China: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 84 FR 1779 (April 25, 2019).

¹³ *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹⁴ *See Initiation Notice*, 84 FR at 10040-41.

¹⁵ *See* Memorandum, "Carbon and Alloy Steel Threaded Rod from India, Taiwan, Thailand, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," dated July 22, 2019.

plain oil finish as a temporary rust protectant, zinc coating (*i.e.*, galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Steel threaded rod is normally produced to American Society for Testing and Materials (ASTM) specifications ASTM A36, ASTM A193 B7/B7m, ASTM A193 B16, ASTM A307, ASTM A320 L7/L7M, ASTM A320 L43, ASTM A354 BC and BD, ASTM A449, ASTM F1554-36, ASTM F1554-55, ASTM F1554 Grade 105, American Society of Mechanical Engineers (ASME) specification ASME B18.31.3, and American Petroleum Institute (API) specification API 20E. All steel threaded rod meeting the physical description set forth above is covered by the scope of this investigation, whether or not produced according to a particular standard.

Subject merchandise includes material matching the above description that has been finished, assembled, or packaged in a third country, including by cutting, chamfering, coating, or painting the threaded rod, by attaching the threaded rod to, or packaging it with, another product, or any other finishing, assembly, or packaging operation that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the threaded rod.

Carbon and alloy steel threaded rod are also included in the scope of this investigation whether or not imported attached to, or in conjunction with, other parts and accessories such as nuts and washers. If carbon and alloy steel threaded rod are imported attached to, or in conjunction with, such non-subject merchandise, only the threaded rod is included in the scope.

Excluded from the scope of this investigation are: (1) threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total actual length; and (2) stainless steel threaded rod, defined as steel threaded rod containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

Excluded from the scope of the antidumping investigation on steel threaded rod from the People's Republic of China is any merchandise covered by the existing antidumping order on Certain Steel Threaded Rod from the People's Republic of China. *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order*, 74 FR 17154 (April 14, 2009).

Specifically excluded from the scope of this investigation is threaded rod that is imported as part of a package of hardware in conjunction with a ready-to-assemble piece of furniture.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, and 7318.15.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 7318.15.2095 and 7318.19.0000 of the HTSUS. The HTSUS subheadings are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

V. INJURY TEST

Because India is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On April 8, 2019, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of steel threaded rod from India.¹⁶

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the AFA rule to induce respondents to provide Commerce with complete and accurate information in a timely manner.”¹⁷ Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁸ At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

¹⁶ See *Carbon and Alloy Steel Threaded Rod from China, India, Taiwan, and Thailand*, 84 FR 14971 (April 12, 2019).

¹⁷ See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

¹⁸ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹⁹ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.²⁰ It is Commerce's practice to consider information to be corroborated if it has probative value.²¹ In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.²² However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.²³ Furthermore, Commerce is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.²⁴

Under section 776(d) of the Act, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates.²⁵ Additionally, when selecting AFA rate, Commerce is not required for purposes of section 776(c) of the Act, 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.²⁶

For purposes of this preliminary determination, we are applying AFA for the circumstances outlined below.

B. Application of AFA

Application of Total AFA for the Non-Responsive Company: Daksh

As noted in the "Case History" section above, Daksh was selected as a mandatory respondent, but failed to participate in this investigation. Therefore, under section 776(a) of the Act, we preliminarily find that by not responding to all sections of Commerce's questionnaire, the company withheld information that had been requested and failed to provide information within the deadlines established. Furthermore, because the company did not respond to the questionnaire, it significantly impeded this proceeding. Thus, in reaching a preliminary determination, pursuant to sections 776(a)(2)(A)-(C) of the Act, we based the CVD rate for Daksh on facts otherwise available.

¹⁹ See 19 CFR 351.308(d).

²⁰ See SAA, H.R. Doc. No. 103-316, Vol. 1 at 870, reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (1994).

²¹ *Id.* at 870.

²² *Id.* at 869.

²³ *Id.* at 869-870.

²⁴ See section 776(c)(2) of the Act.

²⁵ See section 776(d)(1) of the Act.

²⁶ See section 776(d)(3) of the Act.

Moreover, we preliminarily determine that AFA is warranted, pursuant to section 776(b) of the Act. By not responding to the CVD Initial Questionnaire, Daksh did not cooperate to the best of its ability to comply with Commerce's request for information in this investigation. Accordingly, we preliminarily find that the use of AFA is warranted for Daksh to ensure that it does not obtain a more favorable result by failing to cooperate than if it had fully complied with our request for information.

Accordingly, as AFA, Commerce preliminarily finds that Daksh did, in fact, use all the programs Commerce initiated on during the POI, as well as five of the subsidies discovered during this investigation. As such, we selected an AFA rate for each of these programs pursuant to the hierarchy set out below and included them in the determination of the AFA rate applied to Daksh.²⁷ We note that Commerce has previously countervailed identical or similar programs.²⁸ Additionally, we find that current record information provides additional basis to infer, as AFA, that these programs constitute financial contributions and meet the specificity requirements of the Act.²⁹

Application of AFA: Government of India

On June 27, 2019, we issued a supplemental questionnaire to the GOI in response to certain deficiencies that we identified in its initial questionnaire response.³⁰ In this supplemental questionnaire, we requested information that we had previously requested and that the GOI had failed to provide. This information included key program procedures and guidelines pertaining to assistance provided under several programs Mangal reported it had used, such as the Duty Drawback (DDB) and the provision of steel wire and rod for less than adequate remuneration (LTAR) programs. As such, we requested official documentation and program operation information to determine the countervailability of these programs.

For the DDB program, we requested that the GOI provide information regarding the setting of DDB rates and processes in place to ensure that all inputs are consumed, with reasonable manufacturing loss, during the production process. However, the GOI failed to provide the information on how the rate committee created its recommendations, and failed to provide information on how the committee vetted consumption across the steel sector or with regard to mandatory respondents.³¹ In addition, we requested that the GOI describe in detail how the standard input-output norm (SION) is applied to derive the DDB rate(s), and to explain why there are no differences in rates, even where different production processes are utilized, and

²⁷ See Appendix I.

²⁸ *Id.*

²⁹ See CVD Initiation Checklist; *see also infra* for the Target Plus Scheme and Duty Free Credit Entitlement Scheme programs, for which financial contribution and specificity are based on AFA. For the following programs, the GOI did submit a response to the standard questions appendix, and it provided a short narrative describing the program, and it indicated that each program provides a financial contribution and is specific: Advance Authorization Scheme, Duty Free Import Authorization Scheme, Pre-Shipment and Post-Shipment Export Financing, Market Development Assistance Scheme, Market Access Initiative, Status Certificate Program, and the Steel Development Fund programs. See GOI IQR at 8-11, 11, 41-56, 56-58, 58-66, and 66, respectively.

³⁰ See GOI Supplemental.

³¹ See GOI Supplemental at 6-7

provide complete documentation to support its response.³² The GOI provided no documentary support and, instead, reaffirmed that although the SIONs are taken into consideration, the rates are based on an average of the duty incidences in the all industry level, so a common DDB rate is assigned to all exporters.³³ We preliminarily find that the GOI has not provided documentation enabling Commerce to determine that its system is reasonable or effective for the purposes intended.³⁴ We find, as AFA, that the GOI has not supported its claim that the DDB system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported products.

In addition, the GOI did not provide a substantive response to Commerce's questions regarding the provision of steel wire and rod for LTAR program.³⁵ In its initial response, the GOI stated that no goods or services were provided by the GOI for LTAR and failed to answer Commerce's questions about this program. Because of these deficiencies, Commerce reiterated these questions in a supplemental questionnaire, and the GOI again stated that no goods or services were provided by the GOI for LTAR, and failed to substantively answer Commerce's specific questions about the program.³⁶ We requested specific information in the *Input Producers Appendix* if the "GOI seeks to argue that these steel producers {Rashtriya Ispat Nigam Limited (RINL) and the Steel Authority of India (SAIL)} are not an 'authority.'"³⁷ Record evidence demonstrates that the GOI "intervenes in steel price setting in four ways: through an Inter-Ministerial Group that monitors and coordinates major steel investments; by adopting fiscal and policy measures based on its assessment of steel market conditions; by requiring steel produced for the domestic market be sold in accordance with the "Steel and Steel Products (Quality Control) Order, 2018"; and by establishing a Steel Price Monitoring Committee that analyzes price fluctuations and advises parties regarding any irrational price behavior of steel commodity."³⁸ The GOI did not provide complete responses to our requests for information with respect to wire rod and steel bar producers that are government owned, which the GOI claimed it does not regulate or control.³⁹ Such information is necessary to our determination of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act. Therefore, we determine that necessary information is not available on the record, and that the GOI withheld information that was requested of it with regard to the input purchases by Mangal, and impeded this investigation.⁴⁰ Accordingly, pursuant to sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, Commerce must rely on "facts otherwise available" in reaching a determination in this respect.⁴¹ Further, we find that the GOI failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the producers of the wire rod and steel bar from which Mangal purchased during the POI because the GOI did not provide

³² See Initial Questionnaire.

³³ See GOI IQR at 12.

³⁴ See Initial Questionnaire.

³⁵ *Id.* at 16; see also GOI IQR at 66-69.

³⁶ See GOI Supplemental at 6-7.

³⁷ See Initial Questionnaire, Section II, at 21.

³⁸ See Initiation Checklist at 18.

³⁹ See e.g., GOI IQR at 67-68; Initial Questionnaire Section II, at 21; GOI Supplemental at 16.

⁴⁰ See sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act.

⁴¹ Mangal stated that it "purchased a steel wire rod /round from Steel Authority of India ("SAIL") and Rashtriya Ispat Nigam Limited ("RINL"), entities in which GOI has majority shares." See Mangal IQR at 46-47.

the requested information.⁴² Consequently, we find that an adverse inference is warranted in the application of facts available.⁴³ Therefore, we preliminarily determine that these enterprises are “authorities” within the meaning of section 771(5)(B) of the Act and that Mangal received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

For purposes of Commerce’s *de facto* specificity analysis, we asked the GOI to provide a list of industries in India that purchase wire rod and steel bar directly, and to provide the amounts (volume and value) purchased by each of the industries.⁴⁴ Specifically, our questionnaire asked the GOI to provide lists of the industries in India that purchase wire rod and steel bar directly, using consistent levels of industrial classification, and to:

Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use whatever resource or classification scheme your government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.⁴⁵

The GOI did not provide this information, nor did it explain the efforts it made to compile this information. Instead, the GOI provided a narrative stating that “pricing, production, and capacity are decisions taken based on independent commercial principles by the various participants in the market. GOI does not regulate any steel input association in India.”⁴⁶ When we reiterated our requests for this information in a supplemental questionnaire, the GOI did not provide it, and again simply stated that “no goods or services were provided by the Government of India for less than adequate remuneration.”⁴⁷

This information submitted by the GOI, however, is insufficient because it does not report the actual Indian industries that purchased wire rod and steel bar, or the volume and value of each industry’s respective purchases for the POI and the prior two years, as we requested. Consequently, and consistent with past proceedings,⁴⁸ we preliminarily determine, in accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, that necessary information is not available on the record, that the GOI withheld information that was requested of it, and that the

⁴² See sections 776(a) and (b) of the Act.

⁴³ See section 776(b) of the Act.

⁴⁴ See Initial Questionnaire, Section II, at 21-22.

⁴⁵ *Id.*

⁴⁶ See GOI IQR at 67.

⁴⁷ See GOI Supplemental at 16.

⁴⁸ See, e.g., *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 44562 (September 25, 2017), and accompanying Preliminary Decision Memorandum (PDM) at 22-24, unchanged in *Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017)(*Cold-Drawn Mechanical Tubing*).

GOI significantly impeded this proceeding, respectively. Thus, we are relying on “facts available” in making our preliminary determination.

Moreover, we preliminarily determine that the GOI failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we preliminarily determine that an adverse inference is warranted in selecting from among the facts available pursuant to section 776(b) of the Act. In drawing an adverse inference from among the facts available, we find that the purchasers of wire rod and steel bar provided for LTAR are limited in number, within the meaning of section 771(5A)(D)(iii)(I) of the Act.

In its initial questionnaire response, the GOI indicated that the following programs were not used, and that therefore, the GOI was not answering the standard questions appendix: Subsidies for Export Oriented Units (EOU), Focus Product Scheme, GOI Loan Guarantees, Incremental Exports Incentivization Scheme (IEIS), and State Government of Maharashtra (SGOM) Programs.⁴⁹ Additionally, in the Initial Questionnaire, we asked the GOI to report any other forms of assistance it provided to producers or exporters of steel threaded rod.⁵⁰ In its response, the GOI stated that it was not aware of other subsidies received by the mandatory respondent, even though in its initial questionnaire response, Mangal reported using several other subsidies.⁵¹ We asked the GOI again to provide information relating to these other subsidies, and while the GOI was responsive to some programs, for the Target Plus Scheme and the Duty Free Credit Entitlement (DFCE) Scheme, the GOI merely confirmed that Mangal received the assistance over the AUL, but provided no further response.⁵² Given that such necessary information has been withheld by the GOI, Commerce’s ability to investigate these programs is significantly impeded.

On this basis, we preliminarily determine that necessary information is not available on the record and that the GOI withheld information that was requested of it. Further, the GOI significantly impeded the investigation. Thus, Commerce must rely on “facts available” in making our preliminary determination, in accordance with sections 776(a)(1), 776(a)(2)(A) and (a)(2)(C) of the Act. We preliminarily determine that the GOI failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In applying AFA, we find that the following programs constitute a financial contribution within the meaning of section 771(5)(D) of the Act and that these programs are specific within the meaning of section 771(5A) of the Act: Subsidies for Export Oriented Units (EOU); Focus Product Scheme; GOI Loan Guarantees; Incremental Exports Incentivization Scheme (IEIS); State Government of Maharashtra (SGOM) Programs; Provision of Steel Wire and Rod for LTAR; Target Plus Scheme; and DFCE Scheme. We are preliminarily relying on AFA, because we find that the GOI has not cooperated to the best of its ability. However, where Mangal has

⁴⁹ See GOI IQR at 27, 58, 69, and 70, respectively.

⁵⁰ See Initial Questionnaire at 23.

⁵¹ See GOI IQR at 70; *see also* Mangal IQR at 51; and Initial Questionnaire at 11-12, stating, “The government is responsible for providing the information requested below for each company respondent...it is the responsibility of the GOI to provide full and complete responses to questions on all programs under investigation.”

⁵² See GOI Supplement at 46-46.

reported its usage of the aforementioned programs, we are relying on the respondent's reported information to calculate the benefit, if any, within the meaning of section 771(5)(E) of the Act.

C. Calculation of AFA Rates for Daksh

It is our practice in CVD proceedings to determine an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.⁵³ When selecting AFA rates, section 776(d) of the Act provides that we may use a countervailable subsidy rate determined for the same or a similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates.⁵⁴ Accordingly, when selecting AFA rates, if we have cooperating respondent(s), as in this investigation, we first determine if there is an identical program in the instant investigation and use the highest calculated rate for the identical program. If there is no identical program for which we calculated a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country and apply the highest calculated rate for the identical program (excluding *de minimis* rates).⁵⁵ If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in any CVD proceeding involving the same country, and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.⁵⁶

Commerce's methodology is consistent with section 776(d)(1)(A) of the Act, which states that when applying an adverse inference in selecting from the facts otherwise available, we 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

⁵³ 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 "X: Use of Facts Otherwise Available and Adverse Inferences: A. Application of Total AFA: Chalco Ruimin and Chalco-SWA," unchanged in *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018), and accompanying Issues and Decision Memorandum (IDM); see also *Large Diameter Welded Pipe from India: Final Affirmative Countervailing Duty Determination*, 83 FR 56819 (November 14, 2018), and accompanying IDM at 4 and Comment 1.

⁵⁴ See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Warmwater Shrimp*) and accompanying IDM at 12-14; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

⁵⁵ For purposes of selecting AFA program rates, we normally consider rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at "E. Various Grant Programs: 1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

⁵⁶ See *Warmwater Shrimp* IDM at 13-14.

subsidy for a subsidy rate from a proceeding that we consider reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for our 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 we “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.”⁵⁷ No legislative history accompanied this provision. Accordingly, we are 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.

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.⁵⁸

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, we seek to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁵⁹ 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.”⁶⁰ It is pursuant to this knowledge and experience that we have implemented our AFA hierarchy in CVD cases to select an appropriate AFA rate.⁶¹

⁵⁷ See section 776(d)(2) of the Act.

⁵⁸ This differs from AD 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.

⁵⁹ See SAA at 870; see also *Essar Steel*, 753 F. 3d at 1373 (citing *F.Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000) (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, aberrational, or uncorroborated margins.”) (*De Cecco*)).

⁶⁰ See *De Cecco*, 216 F. 3d at 1032.

⁶¹ We have adopted a practice of applying this hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Steel Flanges from India Final Determination*), and accompanying IDM at 28-31 (applying the adverse facts available hierarchical methodology within the context of CVD investigation); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Countervailing Duty*

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

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

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

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

Finally, if no such rate exists, under the third step of Commerce's investigation hierarchy, we apply the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.⁶²

Administrative Review; 2012, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the adverse facts available hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, we may not always apply the AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the adverse facts available hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

⁶² In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

In all three steps of Commerce’s AFA investigation hierarchy, if we were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the “reward” for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce’s investigation AFA hierarchy (which is different from selecting the highest possible rate in the “pool” of all available rates), we strike a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.⁶³

Furthermore, we find that section 776(d)(2) of the Act applies as an exception to the selection of an AFA rate under section 776(d)(1) of the Act; that is, after “an evaluation of the situation that resulted in the application of an adverse inference,” we 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 applied in accordance with section 776(d)(1) of the Act should be applied as AFA.

In applying AFA to Daksh, we are guided by Commerce’s methodology detailed above. Accordingly, we began by selecting, as AFA, the highest calculated program-specific above-zero rates determined for Mangal in the instant investigation. Accordingly, we applied the subsidy rate calculated for Mangal for the following programs:

- DDB
- Provision of Steel Wire Rod and Bar for LTAR
- Merchandise Export from India Scheme (MEIS)
- Interest Equalization Scheme (IES) for Export Financing
- Status Holder Incentive Scrip Scheme (SHIS)

For all other programs not identified above, we are applying, where available, the highest above *de minimis* subsidy rate calculated for the same or, if lacking such rate, for a similar program in an India CVD investigation or administrative review. For this preliminary determination, we are able to match, based on program name, description, and treatment of the benefit, the following programs to identical or similar programs from other India CVD proceedings:

⁶³ It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. *See, e.g., Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying IDM at 2 (“As AFA in the instant case, the Department is relying on the highest calculated final subsidy rates for income taxes, VAT and policy lending programs of the other producer/exporter in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did not receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed...”). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as adverse facts available under its hierarchy.

1. Advance Authorization Scheme (AAS/AAP/ALP)
2. Duty Free Import Authorization Scheme (DFIA Scheme)
3. Subsidies for Export-Oriented Units (EOU)
4. Export Promotion of Capital Goods Scheme (EPCGS)
5. Pre-Shipment and Post-Shipment Export Financing
6. Market Development Assistance Scheme (MDA Scheme)
7. Market Access Initiative (MAI)
8. Focus Product Scheme
9. GOI Loan Guarantees
10. Status Certificate Program
11. Steel Development Fund Loans (SDF)
12. Incremental Exports Incentivisation Scheme (IEIS)
13. State Government of Maharashtra (SGOM) Programs
14. Target Plus Scheme
15. Duty Free Credit Entitlement Scheme (DFCE)

Accordingly, we preliminarily determine the AFA countervailable subsidy rate for Daksh to be 155.03 percent *ad valorem*. Appendix I to this memorandum contains a chart summarizing our calculation of this rate.

D. Corroboration of AFA Rate

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁶⁴ The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.⁶⁵

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.⁶⁶ Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁶⁷

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits

⁶⁴ See SAA at 870.

⁶⁵ *Id.*

⁶⁶ *Id.* at 869-70.

⁶⁷ See section 776(d) of the Act.

resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.⁶⁸

In the absence of responses from Daksh concerning the alleged programs, due to its decision not to participate in this investigation, Commerce reviewed the information concerning Indian subsidy programs in this and other cases.⁶⁹ Where we have a program-type match, we find that, because these are the same or similar programs, that information is relevant to the programs in this case. Additionally, the relevance of the rates applied is that they are actual calculated CVD rates for the GOI programs, from which Daksh could actually receive a benefit. Due to the lack of participation by Daksh and its failure to provide a response concerning each of these programs, Commerce has corroborated the rates it selected to use as AFA to the extent practicable for this preliminary determination.

VII. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.⁷⁰ In Commerce's initial questionnaires to the GOI and the mandatory respondents, we notified the respondents to this proceeding that the AUL period would be 12 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service Publication 946 (2017).⁷¹ No parties submitted comments challenging this AUL period, and we, therefore, preliminarily determine that a 12-year period is appropriate to allocate benefits from non-recurring benefits.

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

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject

⁶⁸ See, *e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

⁶⁹ Specifically, Commerce examined information in the Petition regarding each alleged program and compared its description with that of programs examined in other cases. See the Petition; and CVD Initiation Checklist.

⁷⁰ See 19 CFR 351.524(b).

⁷¹ See U.S. Internal Revenue Service Publication 946 (2017), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

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

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.⁷²

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.⁷³

Mangal

Mangal stated that it is both a producer and exporter of subject merchandise.⁷⁴ Mangal indicated that in 1993, the original company split into two separate entities: Mangal, run by Bishwanath Garodia; and Corona Steel Industry, Pvt. Ltd. (Corona), run by a younger brother of Mr. Garodia.⁷⁵ While Corona also produced a similar line of products, including steel threaded rod, Mangal states that it and its affiliates have had no business affiliation with Corona since 1993. Commerce has previously determined that cross-ownership between Mangal and Corona, as

⁷² See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

⁷³ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).

⁷⁴ See Mangal's Affiliation QR at 1.

⁷⁵ *Id.* at 4.

defined under 19 CFR 351.525(b)(6)(vi), does not exist.⁷⁶ Additionally, we reviewed documentation provided by Mangal, and preliminarily determine that Mangal and Corona do not have any common directors or common owners; they share no facilities, managers, or board of directors; nor are there any transactions (*i.e.*, sales or purchases) between the two companies.⁷⁷ Therefore, based on the record evidence, we find that Mangal and Corona do not meet our standard for cross ownership. We are attributing subsidies received by Mangal to its own sales, in accordance with 19 CFR 351.525(b)(6)(ii).

Finally, Mangal identified other companies with which it was affiliated during the POI.⁷⁸ However, Mangal stated that these affiliates were not parent companies, nor were they involved in either the production or export of subject merchandise, nor the production of inputs primarily dedicated to the production of subject merchandise, during the POI.⁷⁹ Therefore, we preliminarily determine that these affiliated companies do not meet any of the conditions set forth in 19 CFR 351.525(b)(6)(ii)-(iv).

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents' receipt of benefits under each program at issue.⁸⁰ As discussed in further detail below under "Programs Preliminarily Determined to be Countervailable," where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. Where the program has been found to be contingent upon export performance, we used the recipient's total export sales or export sales of subject merchandise to the United States as the denominator, in accordance with 19 CFR 351.525(b)(4). All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, *see* the Mangal Preliminary Calculation Memorandum.⁸¹

VIII. BENCHMARKS AND DISCOUNT RATES

Section 771(5)(E)(ii) of the Act provides that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market," indicating that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient "could actually obtain on the market" Commerce will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans during the period, Commerce "may use a national average interest rate for comparable commercial loans," pursuant to 19 CFR 351.505(a)(3)(ii).

⁷⁶ See *Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) (*Steel Threaded Rod from India*), and accompanying IDM at 5.

⁷⁷ See Mangal's Affiliation QR at 6 and Exhibit 1.

⁷⁸ *Id.* at Exhibit 1.

⁷⁹ *Id.*

⁸⁰ See 19 CFR 351.525(b)(1)-(5).

⁸¹ See Memorandum, "Preliminary Determination Calculations for Mangal Steel Enterprises Limited," dated concurrently with this memorandum (Mangal Analysis Memorandum).

In addition, 19 CFR 351.505(a)(2)(ii) states that Commerce will not consider a loan provided by a government-owned special-purpose bank for purposes of calculating benchmark rates. In the absence of reported long-term loan interest rates, we use the above-discussed interest rates as discount rates for purposes of allocating non-recurring benefits over time pursuant to 19 CFR 351.524(d)(3)(i)(B).

Discount Rates

Mangal did not report any commercial rupee-denominated long-term borrowing during the AUL.⁸² In the absence of reported commercial loan interest rates, we use the national average interest rates from the International Monetary Fund (IMF) International Financial Statistics (IFS) as discount rates for purposes of allocating non-recurring benefits over time, pursuant to 19 CFR 351.524(d)(3)(i)(B). The discount rates used in our preliminary calculations are provided in the respective preliminary calculation memoranda.⁸³

IX. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined to be Countervailable

1. GOI Subsidies

a. Duty Drawback Scheme (DDB)

Mangal reported that it received duty rebates under this program.⁸⁴ The GOI explained that the DDB program provides rebates for duty or tax chargeable on any imported or excisable materials used to manufacture exported goods.⁸⁵ Specifically, the duties and tax “neutralized” under the program are the Customs and Central Excise Duties for inputs used to manufacture exported goods.⁸⁶ The duty drawback is generally fixed as a percentage of the free-on-board (FOB) price of the exported product.⁸⁷ Drawback rates are calculated based on averages known as the “All Industry Rate” or AIRs for a given product. In the absence of an AIR, GOI will calculate DDB on the actual duty.⁸⁸ AIRs exist for the product at issue in this investigation.⁸⁹

Import duty exemptions on inputs for exported products are not countervailable, as long as the exemption extends only to inputs consumed in the production of the exported product, making

⁸² See Mangal IQR at 31.

⁸³ See Mangal Analysis Memorandum.

⁸⁴ See Mangal IQR at 14.

⁸⁵ See GOI IQR at 12.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 26.

normal allowances for waste.⁹⁰ However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products and in what amounts.⁹¹ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁹² If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission of drawback is countervailable.⁹³

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

The All Industry Rates (AIR) are notified, generally every year, by the Government in the form of a Drawback Schedule based on the average quantity and value of inputs and duties (both Customs & Central Excise) borne by export products....These AIRs are recommended by a Drawback Committee which is set up by the Government. AIRs are fixed after extensive discussions with stakeholders like Export Promotion Councils, Trade Associations, individual exporters so as to obtain relevant data, which includes procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products. Data is also sought from Customs and Central Excise field formations and Ministries which is taken into account.⁹⁴

We requested that the GOI describe in detail what kind of data analysis the Drawback Committee undertakes to confirm the accuracy of input consumption rates specifically with regard to the mandatory respondents (including whether visits were made to production facilities and what data was collected if so), and more generally across the steel threaded rod industry.⁹⁵ The GOI provided no explanation of these items in its response.⁹⁶ Thus, consistent with *Shrimp from India Final Determination*, and as discussed *supra*, we determine that the GOI's response lacks the documentation to support a finding that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products, and in what amounts. Therefore, we preliminarily determine, as AFA, that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended, and that this program confers a countervailable subsidy.⁹⁷

⁹⁰ See 19 CFR 351.519(a)(1)(ii).

⁹¹ See *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India Final Determination*), and accompanying IDM at "Duty Drawback."

⁹² *Id.*

⁹³ See 19 CFR 351.519(a)(4)(i)-(ii).

⁹⁴ See GOI Supplemental at 5.

⁹⁵ *Id.* at 6.

⁹⁶ *Id.* at Exhibit A, at 49, stating only the computed rates for iron and steel and failing to explain methodology, data sources, or any other component of the decision-making process.

⁹⁷ See *Shrimp from India Final Determination* IDM at "Duty Drawback."

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

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

Mangal reported the benefits earned on exports of subject merchandise to the United States under this program on a transaction-specific basis.⁹⁸ In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we will attribute that subsidy to only that product or market. For Mangal, we divided the DDB rebates earned on exports of subject merchandise to the United States during the POI by Mangal's POI exports of subject merchandise to the United States.

On this basis, we preliminarily determine a countervailable subsidy rate of 1.99 percent *ad valorem* for Mangal.⁹⁹

b. Provision of Steel Wire Rod and Bar for Less Than Adequate Remuneration (LTAR)

Mangal reported purchases of steel wire rod and bar from government-owned and controlled producers RINL and SAIL.¹⁰⁰ As discussed above in the section "Use of Facts Otherwise Available," based on AFA, we preliminarily find that these entities are "authorities" within the meaning of section 771(5)(B) of the Act and that they conferred a financial contribution through the provision of steel wire rod and bar under section 771(5)(D)(iii) of the Act, and we find that the program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Under 19 CFR 351.511(a)(2), Commerce determines the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions of the good within the country under investigation (*e.g.*, actual sales, actual imports, or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with

⁹⁸ See Mangal IQR at Exhibit 9(c) and 9(f).

⁹⁹ See Mangal Analysis Memorandum at Attachment II.

¹⁰⁰ See Mangal IQR at 46-47 and Exhibits 15(a)-15(c).

market principles (tier three). As provided in the regulations, the preferred benchmark in the hierarchy is an observed market price for the good at issue from actual transactions within the country under investigation.¹⁰¹ As Mangal provided actual sales transactions of purchases of steel wire rod and steel round inputs from unaffiliated, non-government suppliers in India, we will rely on this information as tier one benchmark prices pursuant to 19 CFR 351.511(a)(2).

To calculate the benefit for Mangal's purchases from RINL and SAIL, we used a monthly average of the prices Mangal paid for each grade of steel wire rod and mild round from private sources, *i.e.*, sources other than authorities. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, Commerce will adjust the benchmark price that a firm actually paid for the product, including delivery charges. We determined the benefit as the difference between the benchmark prices and the prices reported. We summed the transaction benefits to determine the total benefit, which we then divided by Mangal's total sales for the POI.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.59 percent *ad valorem* for Mangal.¹⁰²

2. Other Subsidies

a. Merchandise Export from India Scheme (MEIS)

The GOI explained that the MEIS, as detailed in the Foreign Trade Policy (FTP) 2015-2020, was created to promote the manufacture and export of certain goods to specified markets.¹⁰³ Under this program, the GOI issues a scrip (duty credit) worth either two, three, or five percent of certain FOB values of the exports.¹⁰⁴ To receive the scrip, a recipient must file an electronic application and supporting shipping documentation for each port of export with the DGFT.¹⁰⁵

We preliminarily determine that this program is specific within the meaning of sections 771(5A)(A) and (B) of the Act, because eligibility to receive the scrips is contingent upon export.¹⁰⁶ This program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, because the scrips provide exemptions for paying duties associated with the import of goods, which represents revenue forgone by the GOI.

¹⁰¹ See, e.g., *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2003) and accompanying IDM at "Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark" ("Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier").

¹⁰² See Mangal Analysis Memorandum at Attachment II.

¹⁰³ See GOI Supplemental at 16-24.

¹⁰⁴ *Id.* at 16.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

Mangal reported that it submitted applications and received approval under the MEIS program.¹⁰⁷ Mangal indicated that it met the requirements of this program and obtained the requisite scrips from the Directorate General of Foreign Trade (DGFT), which can be either used for a company's own consumption or sold in the market.¹⁰⁸ Mangal has always sold its scrip on the market.¹⁰⁹ We preliminarily determine that this program provides a recurring benefit because the scrips provided under this program are not tied to capital assets. Furthermore, recipients can expect to receive additional subsidies under this same program on an ongoing basis from year to year, within the meaning of 19 CFR 351.524(c)(2)(i).

We calculated the benefit to Mangal to be the total value of scrips granted (*i.e.*, the MEIS license value) during the POI, less application fees.¹¹⁰ Normally, in cases where the benefits are granted based on a percentage value of a shipment, Commerce calculates the benefit as having been received at the date of export;¹¹¹ however, because the MEIS benefit, *i.e.*, the scrip, amount is not automatic and is not known to the exporter until well after the exports are made, the MEIS licenses, which contain the date of validity and the duty exemption amount as issued by the GOI, are the best method to determine and account for when the benefit is received.¹¹² To determine the benefit from this program, we summed Mangal's reported scrip amounts, less the application fee. We divided this sum by Mangal's total sales of subject merchandise to the United States.

On this basis, we preliminarily determine a countervailable subsidy rate of 2.99 percent *ad valorem* for Mangal.¹¹³

b. Interest Equalization Scheme (IES) for Export Financing

The GOI introduced the IES program effective April 1, 2015, which centers on rupee export financing, or pre-shipment and post-shipment export financing in rupee denomination. Under this program, the RBI provides a refund of three percent (and up to five percent as of November 2, 2018) of interest charged by the bank on pre-shipment and post-shipment export finance in Rupees.¹¹⁴ According to Mangal, this scheme is available to certain products that are exported under specific tariff codes, as identified by the RBI for exports made by Micros, Small & Medium (MSMEs) across all "ITC (HS) codes."¹¹⁵ Mangal states that the three percent interest equalization, as charged by the bank, is specific to the merchandise under investigation and is contingent upon exports.¹¹⁶

¹⁰⁷ See Mangal IQR at 51-53.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 54.

¹¹⁰ See Mangal Analysis Memorandum at Attachment II.

¹¹¹ See 19 CFR 351.519(b)(1).

¹¹² See, e.g., *Steel Threaded Rod from India* IDM at VI.A.5., page 17; see also *Cold-Drawn Mechanical Tubing* IDM at 22-23.

¹¹³ See Mangal Analysis Memorandum at Attachment II.

¹¹⁴ See GOI Supplemental at 24-25; see also Mangal IQR at 55-56.

¹¹⁵ See Mangal IQR at 56-57.

¹¹⁶ *Id.* at 57.

In order to avail itself of benefits under this program, Mangal explains that it must first submit a formal application to its local commercial bank identifying the “ITC HS code” of the product to be, or that has been, exported and for which it is requesting a refund under the IES. Mangal further explained that once the bank is satisfied with the information submitted in the company’s application, the bank issues a credit to the company’s bank account equivalent to the three percent refund under this scheme. According to Mangal, thereafter, the bank credits the interest refund on a monthly basis.¹¹⁷

Mangal reported the use of the IES program under “other subsidies” in its initial questionnaire response and provided supporting documentation. It is Commerce’s practice to rely on governments to provide financial contribution and specificity information. Thus, we asked for information on the IES program from the GOI in a supplemental questionnaire, in which the GOI concurred with Mangal’s explanation of how this program operates.¹¹⁸ Therefore, we preliminarily determine that the GOI conferred a financial contribution and that this program is specific within the meaning of sections 771(5)(D) and 771(5A)(A) and (B) of the Act, respectively.

Based on the information provided on the record of this investigation, we find that a benefit was conferred under section 771(5)(E)(ii) of the Act in as much as the interest rates, which are determined by the RBI, provided under these programs are lower than commercially available interest rates. We are using information on the record as provided by Mangal to calculate the benefit received. We preliminarily determine that Mangal is able to tie the benefits for subject merchandise to specific markets, in accordance with 19 CFR 351.525(b)(4), for its post-shipment transactions.¹¹⁹ Because the IES program is contingent upon exports, and is a recurring benefit, for the post-shipment transactions, we calculated the total benefits received in the POI for shipments to the United States of subject merchandise, where the date of interest equalization received was in the POI. We divided this sum by the value of Mangal’s total exports to the United States of subject merchandise during the POI. For the pre-shipment transactions, we followed the same method to determine the amount of interest equalization for each transaction, and summed these transactions to determine the total benefit, which we divided by Mangal’s total exports during the POI. We then summed these two program rates to determine the subsidy rate for this scheme.

On this basis we preliminarily determine a countervailable subsidy rate of 0.26 percent *ad valorem* for Mangal.¹²⁰

c. Status Holder Incentive Scrip Scheme (SHIS)

The GOI reported that the SHIS scheme was introduced in 2009 with the objective to promote investment in upgrading technology in specific sectors. Status Holders under the GOI’s listing of specific exported products receive incentive scrip (or credit) equal to one percent of the FOB

¹¹⁷ *Id.*

¹¹⁸ See GOI Supplemental at 25-46.

¹¹⁹ See Mangal IQR at Exhibit 17.

¹²⁰ See Mangal Analysis Memorandum at Attachment II.

value of the exports in the form of a duty credit. The SHIS license can only be used for imports of capital goods and it can be transferred to another Status Holder for the import of capital goods.¹²¹ The GOI stated that this program was discontinued in April 2013.¹²² Companies may apply for licenses for up to three years after the program has ended (*i.e.*, through 2016).¹²³ Additionally, because this program applies to capital goods and the AUL in this proceeding is twelve years, companies may receive residual benefits from this program through at least 2025.

Based on the information provided by the GOI,¹²⁴ we preliminarily determine that this program provides a financial contribution, pursuant to section 771(5)(D)(ii) of the Act, in the form of revenue forgone. This program is also contingent upon exports, which we find to be specific within the meaning of section 771(5A)(A) and (B) of the Act.¹²⁵ In addition, the GOI and Mangal reported that this program conferred a benefit within the meaning of section 771(5)(E) of the Act in the amount of the scrip granted to the recipient, *i.e.*, the value of the SHIS license.¹²⁶ Specifically, Mangal reported that it received the SHIS during the AUL period, prior to the POI.¹²⁷

Import duty exemptions under this program are solely provided for the purchase of capital goods.¹²⁸ The preamble of Commerce's regulations states that, if a government provides an import duty exemption tied to major capital goods purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring..."¹²⁹ Therefore, in accordance with 19 CFR 351.524(c)(2)(iii), and past practice, we are treating these import duty exemptions on capital goods as non-recurring benefits.¹³⁰ The SHIS scrip represents a non-recurring benefit that is not automatically received and is known to the recipient at the time of receipt of the scrip.¹³¹ Although 19 CFR 351.519(b)(1) stipulates that we will normally consider the benefit as having been received as of the date of exportation, because the SHIS benefit amount is not automatic and is not known to the exporter until well after the exports are made, the SHIS licenses, which

¹²¹ See GOI IQR, Exhibits E at 136; GOI Supplemental at 36; *see also, e.g., Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016) (*Steel Flanges from India Prelim*), and accompanying PDM at 18, unchanged in *Steel Flanges from India Final Determination; Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 81 FR 51186 (August 3, 2016) (*Prelim PET Film 2014 Review*), and accompanying PDM at 8-10, unchanged in *Polyethylene Terephthalate Film, Sheet and Strip from India: Countervailing Duty Administrative Review; 2014*, 81 FR 89056 (December 9, 2016) (*Final PET Film 2014 Review*); *Steel Threaded Rod from India* IDM at VI.A.5., at 17.

¹²² See GOI Supplemental at 36.

¹²³ See *Prelim PET Film 2014 Review* PDM at 8-10, unchanged in *Final PET Film 2014 Review*; *see also Steel Threaded Rod from India* IDM at VI.A.5., page 17.

¹²⁴ See GOI IQR at Exhibit E; *see also* GOI Supplemental at 36.

¹²⁵ *Id.*

¹²⁶ See GOI Supplemental at 36; *see also* Mangal IQR at 58-59, 64, consistent with *Final PET Film 2014 Review* IDM at 14.

¹²⁷ See Mangal IQR at Exhibit 18(e) and Exhibit 18(f).

¹²⁸ See Mangal IQR at 62-63.

¹²⁹ See *CVD Preamble*, 63 FR at 65393.

¹³⁰ See *Final PET Film 2014 Review* IDM at 4; and *Steel Threaded Rod from India* IDM at VI.A.5., at 17.

¹³¹ See *Steel Threaded Rod from India* IDM at VI.A.5., page 17.

contain the date of validity and the duty exemption amount, as issued by the GOI, are the best method to determine and account for when the benefit is received.¹³²

Mangal reported that it received SHIS license scrips to import capital goods duty-free during the AUL.¹³³ Consistent with *Steel Flanges from India Preliminary Determination*, we are attributing the SHIS benefits received by Mangal to the company's total exports.¹³⁴ We performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the total value of the exempted customs duties for the year in which Mangal received the SHIS scrip and determined to allocate the benefits across the AUL.¹³⁵ We then calculated the benefits according to the calculation provided for in 19 CFR 351.524(d)(1). We summed the benefits and divided the results by Mangal's total export sales in the POI.

On this basis, we preliminary determine a countervailable subsidy rate of 0.24 percent *ad valorem* for Mangal.¹³⁶

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

Export Promotion of Capital Goods Scheme (EPCGS)

The GOI reported that the EPCGS allows a partial exemption from payment of customs duties upon importation of capital goods.¹³⁷ The EPCGS program allows the importation of capital goods including spares for pre-production, production, and post-production at zero duty subject to an export obligation.¹³⁸ Manufacturer exporters, merchant exporters tied to a supporting manufacturer, and service providers may use the program. Eligibility is not limited to a particular sector or region.¹³⁹

Commerce has previously determined that import duty reductions or exemptions provided under the EPCGS program are countervailable export subsidies because they: (1) provide a financial contribution pursuant to section 771(5)(D)(ii) of the Act; (2) provide two different benefits (*see* below) under section 771(5)(E) of the Act; and (3) are specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is contingent upon export performance.¹⁴⁰ Because the

¹³² Commerce determined and upheld by the CIT in *Essar Steel v. United States*, 395 F. Supp. 2d 1275, 1278 (CIT 2005) (*Essar Steel*) in the similar but discontinued GOI program, the Duty Entitlement Passbook Scheme (DEPS) in which similar benefits were conferred when earned, rather than when the credits were used.

¹³³ *See* Mangal IQR at 63.

¹³⁴ *Id.*; *see also Steel Flanges from India Prelim PDM* at 16.

¹³⁵ *See* Mangal Analysis Memorandum at Attachment II.

¹³⁶ *Id.*

¹³⁷ *See* GOI IQR at 29.

¹³⁸ *Id.* at 27-28.

¹³⁹ *Id.* at 39.

¹⁴⁰ *See, e.g., Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film Final Determination*), and accompanying IDM at "EPCGS" section; *see also Shrimp from India Final Determination* IDM at 14.

evidence on the record with respect to this program has not changed from previous findings, we preliminarily determine that this program is countervailable.¹⁴¹

Under the EPCGS program, Commerce has found two benefits: first, any balance on an unpaid liability that may be waived in the future is considered an interest-free contingent-liability loan pursuant to 19 CFR 351.505(d)(1).¹⁴² Mangal did not have any portion of the unpaid duty outstanding, as the GOI waived the full amount of the unpaid liability in 2016.¹⁴³ As such, there is no amount to consider as an interest-free loan. Second, Commerce treats the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2). Mangal's benefit is, therefore, based on the amount of duty waived by the GOI on imports of capital equipment covered by the EPCGS license for which the export requirement was met and the duties waived. The GOI and Mangal have acknowledged completion of their export obligations under the applicable EPCGS license.

Import duty exemptions under this program are approved for the purchase of capital equipment. The *CVD Preamble* states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring..."¹⁴⁴ In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.

Mangal reported that it imported capital goods with waived import duty rates under the EPCGS program.¹⁴⁵ Based on the information and the documentation submitted by Mangal, we cannot reliably determine that the EPCGS license is tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we preliminarily find that Mangal's EPCGS license benefited all of the company's exports.¹⁴⁶

To calculate the benefit received from Mangal's formal waivers of import duties on capital equipment imports, we considered the total amount of duties waived, *i.e.*, the calculated duties payable less the duties actually paid in the year, net of required application fees, in accordance with section 771(6) of the Act. Additionally, Mangal indicated that several duties applied to its purchase of capital goods were "countervailing duties" applied under Indian law to imported goods in order to counterbalance excise duty and state taxes charged on domestic sales.¹⁴⁷ Consistent with Commerce's practice in prior cases, these duties did not confer a benefit because they are refundable to Mangal as Central Value-Added Tax (CENVAT) credits, independent of

¹⁴¹ See *Steel Flanges from India Prelim PDM* at 13, unchanged in *Steel Flanges from India Final Determination*.

¹⁴² *Id.*

¹⁴³ See Mangal IQR at Exhibit 10(e).

¹⁴⁴ See *CVD Preamble*, 63 FR at 65393.

¹⁴⁵ See Mangal IQR at 25 and Exhibits 10(b)-10(e).

¹⁴⁶ *Id.* at 25-30 and Exhibits 10(b)-10(e).

¹⁴⁷ See Mangal IQR at 26-29, discussing the Additional or Countervailing Duty tax, Education and Higher Education Cess on countervailing duty, Custom Cess and Higher Education Cess on countervailing duty, the Special Additional Duty, and the Integrated Goods and Services Tax; see also Exhibit 10(d).

the EPCGS program.¹⁴⁸ We consider the amount of duties waived, less the “cenvatable” duties and the application fees, to be the benefit, and treated these amounts as grants, pursuant to 19 CFR 351.504.

Further, consistent with the approach followed in previous investigations, we preliminarily determine the year of receipt of the benefit to be the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2).¹⁴⁹ We performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), for the total value of duties waived, for the year in which the GOI granted the respondents the import duty waiver, 2016.¹⁵⁰ The value of the waived import duties was less than 0.5 percent of the respondent’s total export sales. As such, we expensed the value of the duty waived to the year of receipt, which was prior to the POI, and find that Mangal did not receive any measurable benefits under the EPCGS program during the POI.

C. Programs Preliminarily Determined to Not Be Countervailable

Pradhan Mantri Rojgar Protsahan Yojna (PMRPY) Scheme

This program was reported initially by Mangal in its questionnaire response.¹⁵¹ The GOI reported that the PMRPY program has been created to provide security for new employees and incentivize hiring.¹⁵² Under the program, companies must register with the Employees’ Provident Fund Organization (EPFO) and hire employees that have not previously worked for an EPFO-registered employer.¹⁵³ The employee must meet certain salary cutoffs to receive benefits, which entails the GOI making contributions to the Employees’ Pension Scheme (EPS) of 8.33 percent of the employee’s salary and contributions to the Employees Providential Fund (EPF) of 3.67 percent of the employee’s salary on the employer’s behalf for a period of three years.¹⁵⁴

The PMRPY program represents a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, because the GOI is directly providing funds to employees that would otherwise be paid by Mangal. Based on the information initially provided by GOI in its supplemental response, Commerce preliminarily finds that this program is not specific within the meaning of section 771(5A) of the Act because EPFO registration is open to public- and private-sector employers and is not limited to a particular industry or enterprise. Therefore, we preliminarily determine that this program is not countervailable. Commerce intends to seek more information on actual use of the program from the GOI after issuance of the preliminary determination.

¹⁴⁸ See *Steel Threaded Rod from India* IDM at 15.

¹⁴⁹ See *PET Film Final Determination* IDM at Comment 5.

¹⁵⁰ See Mangal Analysis Memorandum at Attachment 2.

¹⁵¹ See Mangal IQR at 69-71 and Exhibit 19(b)-19(d).

¹⁵² See GOI Supplemental at 37.

¹⁵³ *Id.* at 38.

¹⁵⁴ *Id.*

D. Programs Preliminarily Determined to Not be Used by Mangal During the POI

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

GOI Programs:

1. Advance Authorization Scheme (AAS)
2. Duty Free Import Authorization Scheme (DFIA Scheme)
3. Subsidies for Export Oriented Units (EOU)
4. Pre- and Post-Shipment Export Financing
5. Market Development Assistance Scheme (MDA Scheme)
6. Market Access Initiative (MAI)
7. Focus Product Scheme
8. GOI Loan Guarantees
9. Status Certificate Program
10. Steel Development Fund Loans (SDF)
11. Incremental Exports Incentivisation Scheme (IEIS)

State Programs:

12. State Government of Maharashtra (SGOM) Programs

Other Programs:

13. Target Plus Scheme
14. Duty Free Credit Entitlement Scheme (DFCE)

Consistent with prior determinations, we continue to find that these two programs each provide recurring benefits, and that the benefits were received by Mangal prior to the POI (*i.e.*, in 2007).¹⁵⁵ Therefore, we preliminarily determine that Mangal did not receive any benefits from these programs in the POI.

X. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance. In accordance with section 705(b)(2) of the Act, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after Commerce makes its final affirmative determination.

¹⁵⁵ See *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008), and accompanying IDM at 27-28.

XI. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

☒

Agree

☐

Disagree

7/22/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

APPENDIX
AFA Rate Calculated for Daksh

Program Name	AFA Rate	Source
Advance Authorization Scheme (formerly, Advance License Program)	11.95%	<i>See Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances</i> , 79 FR 41967 (July 18, 2014) and accompanying IDM at 19.
Duty Free Import Authorization Scheme (DFIA)	14.61%	<i>See Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part</i> , 81 FR 13334 (March 14, 2016) (<i>PET Resin</i>), and accompanying IDM at 27.
Duty Drawback Scheme (DDB)	1.99%	Rate calculated for Mangal in this proceeding
Subsidies for Export Oriented Units (EOU):		
Duty-Free Import of Goods, Including Capital Goods and Raw Materials	14.61%	<i>See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India</i> , 67 FR 34905 (May 16, 2002) (<i>PET Film from India Investigation</i>), at “DEPS.”
Reimbursements of Central Sales Tax (CST) Paid on Goods Manufactured in India	3.09%	<i>See Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India</i> , 71 FR 28665 (May 17, 2006), and accompanying IDM at “State Government of Gujarat (SGOG) Tax Incentives.”
Duty Drawback on Fuel Procured from Domestic Oil Companies	14.61%	<i>See PET Film from India Investigation</i> , at “DEPS.”
Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area	14.61%	<i>See PET Film from India Investigation</i> , IDM at “DEPS.”
Export Promotion of Capital Goods Scheme (EPCGS)	16.63%	<i>See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India</i> , 66 FR 49635 (September 28, 2001) (<i>HRS from India</i>), and accompanying IDM at “Export Promotion of Capital Goods Scheme.”
Pre-Shipment and Post-Shipment Export Financing	2.90%	<i>See PET Film from India Investigation</i> at “Pre- and Post-Shipment Export Financing.”

Market Development Assistance Scheme (MDA)	16.63%	<i>See HRS from India</i> , at “Export Promotion of Capital Goods Scheme.”
Market Access Initiative (MAI)	16.63%	<i>See HRS from India</i> , at “Export Promotion of Capital Goods Scheme.”
Focus Product Scheme	1.99%	<i>See PET Resin</i> IDM at 18-19.
Government of India Loan Guarantees	2.90%	<i>See PET Film from India Investigation</i> IDM at “Pre-Shipment and Post-Shipment Export Financing.”
Status Certificate Program	2.90%	<i>See PET Film from India Investigation</i> IDM at “Pre-Shipment and Post-Shipment Export Financing.”
Steel Development Fund Loans	0.99%	<i>See HRS from India</i> at “Loans from the Steel Development Fund (SDF) Fund.”
Provision of Steel Wire Rod and Bar for LTAR	0.59%	Rate calculated for Mangal in this proceeding
Incremental Exports Incentivization Scheme (IEIS)	2.90%	<i>See PET Film from India Investigation</i> IDM at “Pre-Shipment and Post-Shipment Export Financing.”
State Government of Maharashtra (SGOM) Subsidy Programs:		
Infrastructure Assistance for Mega Projects Under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects	6.06%	<i>See HRS from India</i> , at “GOI Forgiveness of SDF Loans Issued to SAIL” where Commerce calculated a rate for a similar program.
Subsidies for Mega Projects Under the Package Scheme of Incentives	0.95%	<i>See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination</i> , 81 FR 49932 (July 29, 2016) and accompanying IDM at 12.
Merchandise Export from India Scheme (MEIS)	2.99%	Rate calculated for Mangal in this proceeding
Interest Equalization Scheme (IES) for Export Financing	0.26%	Rate calculated for Mangal in this proceeding
Status Holder Incentive Scheme (SHIS)	0.24%	Rate calculated for Mangal in this proceeding
Target Plus Scheme	2.00%	<i>See PET Resin</i> IDM at “Focus Product Scheme.”
Duty Free Credit Entitlement (DFCE)	2.00%	<i>See PET Resin</i> IDM at “Focus Product Scheme.”
Total AFA Rate:	155.03%	