



C-533-890
Investigation
POI: 04/01/2018-03/31/2019
Public Document
E&C/OIII: KJ/SM

October 7, 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 in the Countervailing Duty Investigation of Certain
Quartz Surface Products from India

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain quartz surface products (quartz surface products) 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 May 8, 2019, Commerce received antidumping duty (AD) and countervailing duty (CVD) petitions concerning imports of quartz surface products from India and the Republic of Turkey (Turkey), filed in proper form on behalf of Cambria Company LLC (the petitioner).¹ Pursuant to section 702(b)(4)(A)(ii) of the Act, we invited representatives of the Government of India (GOI) for consultations with respect to the CVD Petition on quartz surface products from India.² On May 21, 2019, we held consultations with the GOI.³

¹ See Petitioner's Letter, "Petition for the Imposition of Antidumping and Countervailing Duties: Certain Quartz Surface Products from India and the Republic of Turkey," dated May 8, 2019 (the Petition).

² See Commerce's Letter, "Countervailing Duty Petition on Certain Quartz Surface Products from India: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated May 9, 2019.

³ See Memorandum, "Consultations with Government of India Officials regarding the Countervailing Duty Petition on Certain Quartz Surface Products from India," dated May 21, 2019.



On May 22, 2019, we released the U.S. Customs and Border Protection (CBP) data for entries of subject merchandise under the appropriate subheading of the Harmonized Tariff Schedule of the United States (HTSUS), as listed in the scope, and invited interested parties to submit comments on the CBP data as well as respondent selection.⁴ On May 28, 2019, we initiated the CVD investigation of quartz surface products from India.⁵ On June 6, 2019, Pokarna Engineered Stone Limited (Pokarna) and the Federation of Quartz Surface Industry of India (the Federation) submitted comments on the CBP data and respondent selection.⁶

We stated in the *Initiation Notice* that, if appropriate, we intended to base the selection of mandatory respondents on CBP entry data for U.S. imports of quartz surface products from India during the period of investigation (POI) under the HTSUS subheading listed in the scope of the investigation.⁷ Section 777A(e)(1) of the Act directs Commerce to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if Commerce determines it is therefore not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give Commerce discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise that can reasonably be examined.

On June 18, 2019, pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2), we selected Antique Marbonite Private Limited, India (Antique Marbonite) and Pokarna as the mandatory respondents.⁸ On June 18, 2019, we also issued the initial CVD questionnaire to the GOI with instructions to forward the questionnaire to Antique Marbonite and Pokarna.⁹ On July 2, 2019, we received the respondents' company affiliation responses,¹⁰ and between August 8 and August 15, 2019, we received initial questionnaire responses from the GOI, Antique Marbonite, and Pokarna.¹¹

⁴ See Memorandum, "Countervailing Duty Petition of Certain Quartz Surface Products from India: Release of Customs Data from U.S. Customs and Border Protection," dated May 22, 2019.

⁵ See *Certain Quartz Surface Products from India and the Republic of Turkey: Initiation of Countervailing Duty Investigations*, 84 FR 25524 (June 3, 2019) (*Initiation Notice*). The initial allegations and supplements to the Petition on which Commerce initiated are described in the Initiation Checklist, dated May 28, 2019.

⁶ See Pokarna's Letter, "Certain Quartz Surface Products from India: Comments on CBP Data and Respondent Selection," dated June 6, 2019; see also the Federation's Letter, "Certain Quartz Surface Products from India (C-533-890), Respondent Selection Comments," dated June 6, 2019.

⁷ See *Initiation Notice*, 84 FR at 25527.

⁸ See Memorandum, "Countervailing Duty Investigation of Certain Quartz Surface Products from India: Respondent Selection," dated June 18, 2019.

⁹ See Commerce's Letter, "Countervailing Duty Investigation of Certain Quartz Surface Products from India: Countervailing Duty Questionnaire," dated June 18, 2019 (Initial Questionnaire).

¹⁰ See Antique Marbonite's Letter, "Certain Quartz Surface Products from India (C-533-890): Affiliated Companies Questionnaire Response," dated July 2, 2019 (Antique Marbonite Affiliation Response); see also Pokarna's Letter, "Certain Quartz Surface Products from India: Affiliations Response to Section III of the CVD Questionnaire," dated July 2, 2019 (Pokarna Affiliation Response).

¹¹ See GOI's Letter, "CVD Investigation – Certain Quartz Surface Products from India: Response to the Initial Questionnaire on behalf of the Government of India," dated August 8, 2019 (GOI IQR); see also Antique Marbonite's Letters, "Certain Quartz Surface Products from India (C-533-890): Program Specific Questionnaire Response as a Mandatory Respondent – Antique Marbonite Private Limited," dated August 14, 2019 (Antique Marbonite IQR); and "Certain Quartz Surface Products from India (C-533-890): Program Specific Questionnaire

On June 20, 2019, the petitioner requested that we postpone the preliminary determination in this investigation.¹² On June 28, 2019, the U.S. International Trade Commission (ITC) published in the *Federal Register* a notice of its affirmative determinations in the preliminary phase of the AD and CVD investigations concerning imports of quartz surface products from India and Turkey.¹³ On July 1, 2019, the ITC notified Commerce of its affirmative preliminary determinations.¹⁴

Between July 9 and September 24, 2019, we issued supplemental questionnaires to the GOI,¹⁵ Antique Marbonite,¹⁶ and Pokarna,¹⁷ and between July 25 and October 1, 2019, received timely responses from the GOI,¹⁸ Antique Marbonite,¹⁹ and Pokarna.²⁰

Response as a Mandatory Respondent – Antique Marbonite Private Limited’s Affiliate Prism Johnson Limited,” dated August 14, 2019 (Prism Johnson IQR); and Pokarna’s Letters, “Certain Quartz Surface Products from India: Section III Response of Pokarna Engineered Stone Limited,” dated August 15, 2019 (Pokarna IQR); and “Certain Quartz Surface Products from India: Section III Response of Pokarna Limited (PL),” dated August 15, 2019 (Pokarna Limited IQR).

¹² See Petitioner’s Letter, “Certain Quartz Surface Products from India: Request to Postpone Preliminary Determination,” dated June 20, 2019 (Request for Postponement).

¹³ See *Quartz Surface Products from India and Turkey; Determinations*, 84 FR 31100 (June 28, 2019) (ITC Preliminary Determination); see also ITC Publication 4919 (July 2019), *Quartz Surface Products from India and Turkey: Investigation Nos. 701-TA-624-625 and 731-TA-1450-1451 (Preliminary)* (ITC Publication 4919).

¹⁴ See ITC’s Letter, “Notification of ITC Affirmative Preliminary Determinations,” dated July 1, 2019.

¹⁵ See Letters, “Countervailing Duty Investigation of Certain Quartz Surface Products from India: Supplemental Questionnaire,” dated August 21, 2019; and “Countervailing Duty Investigation of Certain Quartz Surface Products from India: Second Supplemental Questionnaire,” dated August 27, 2019.

¹⁶ See Commerce’s Letters, “Countervailing Duty Investigation of Certain Quartz Surface Products from India: Company Affiliation,” dated July 9, 2019; “Countervailing Duty Investigation of Certain Quartz Surface Products from India: Supplemental Questionnaire on Unaffiliated Producers,” dated August 16, 2019; “Countervailing Duty Investigation of Certain Quartz Surface Products from India: Supplemental Questionnaire,” dated August 22, 2019; and “Countervailing Duty Investigation of Certain Quartz Surface Products from India: Second Supplemental Questionnaire,” dated September 13, 2019.

¹⁷ See Commerce’s Letters, “Countervailing Duty Investigation of Certain Quartz Surface Products from India: Company Affiliation,” dated July 12, 2019; “Countervailing Duty Investigation of Certain Quartz Surface Products from India: Supplemental Questionnaire,” dated August 29, 2019; and “Countervailing Duty Investigation of Certain Quartz Surface Products from India: Second Supplemental Questionnaire,” dated September 24, 2019 (Pokarna Second SQ).

¹⁸ See GOI’s Letters, “CVD Investigation – Certain Quartz Surface Products from India: Response to the First Supplemental Questionnaire on behalf of the Government of India,” dated September 11, 2019 (GOI First SQR); and “Re: CVD Investigation- Certain Quartz Surface Products from India: Response to the 2nd Supplementary Questionnaire on behalf of Government of India,” dated September 16, 2019 (GOI Second SQR).

¹⁹ See Antique Marbonite’s Letters, “Certain Quartz Surface Products from India (C-533-890): Affiliation Supplementary Questionnaire Response – Antique Marbonite Private Limited,” dated August 20, 2019; “Certain Quartz Surface Products from India (C-533-890): Submission of Response to 1st Supplementary QR (Except Sales Questions),” dated August 22, 2019 – Antique Marbonite Private Limited,” dated September 11, 2019 (Antique Marbonite First SQR); “Certain Quartz Surface Products from India (C-533-890): Submission of Response to Sales Information contained in 1st Supplementary QR,” dated August 22, 2019 – Antique Marbonite Private Limited,” dated September 16, 2019; and “Certain Quartz Surface Products from India (C-533-890): Submission of Response to 2nd Supplementary QR,” dated September 13, 2019 – Antique Marbonite Private Limited,” dated September 18, 2019.

²⁰ See Pokarna’s Letters, “Certain Quartz Surface Products from India: Supplemental Affiliation Response,” dated July 25, 2019; “Certain Quartz Surface Products from India: Second Supplemental Response of Pokarna Engineered Stone Limited,” dated September 12, 2019; and “Certain Quartz Surface Products from India: Third Supplemental Response of Pokarna Engineered Stone Limited,” dated October 1, 2019 (Pokarna Third SQR).

On July 3, 2019, based on the requests of Antique Marbonite and Pokarna, we amended the POI from calendar year January 1, 2018 through December 31, 2018, to fiscal year April 1, 2018 through March 31, 2019, which is the most recently completed Indian fiscal year.²¹ No party submitted comments opposing the amended POI.

On August 28, 2019, the petitioner filed new subsidy allegations (NSAs),²² and on September 6, 2019, Commerce issued a questionnaire to the petitioner regarding the NSAs.²³ The petitioner submitted its response to the NSAs questionnaire on September 13, 2019.²⁴ We will address the NSAs after the issuance of this preliminary determination.

On September 9, 2016, the petitioner submitted a benchmark factual information filing.²⁵

On September 24, 2019, we issued to Pokarna a second supplemental questionnaire,²⁶ and received the company's response on October 1, 2019.²⁷ The information contained in the Pokarna Third SQR deals with certain land transactions involving Pokarna Limited. Because we obtained the Pokarna Third SQR shortly before the signature due date of the preliminary determination, we are unable to incorporate the information in the response into our preliminary analysis. We will continue to examine the information in the Pokarna Third SQR and incorporate the information, as appropriate, in the final determination.

On October 1, 2019, the petitioner requested that we align the final CVD determination in this investigation with the final determination in the companion AD investigation of quartz surface products from India.²⁸

B. Postponement of Preliminary Determination

On July 3, 2019, we postponed the deadline for this preliminary determination until no later than 130 days after the initiation of the investigation, based on a request from the petitioner.²⁹ As

²¹ See Memorandum, "Countervailing Duty Investigation of Certain Quartz Surface Products from India: Amended Period of Investigation," dated July 3, 2019 (POI Memorandum); see also Antique Marbonite's Letter, "Certain Quartz Surface Products from India (C-533-890): Antique Marbonite Private Limited Request to Amend POI," dated June 18, 2019; and Pokarna's Letter, "Certain Quartz Surface Products from India: Comments on Period of Investigation," dated June 25, 2019.

²² See Petitioner's Letter, "Certain Quartz Surface Products from India: New Subsidy Allegations," dated August 28, 2019.

²³ See Commerce's Letter, "Countervailing Duty Investigation of Certain Quartz Surface Products from India: New Subsidy Allegations Questionnaire," dated September 6, 2019.

²⁴ See Petitioner's Letter, "Certain Quartz Surface Products from India: Response to New Subsidy Allegations Questionnaire," dated September 13, 2019.

²⁵ See Petitioner's Letter, "Certain Quartz Surface Products from India: Submission of Benchmark Data," dated September 9, 2019 (Petitioner's Benchmark Submission).

²⁶ See Pokarna Second SQ.

²⁷ See Pokarna Third SQR.

²⁸ See Petitioner's Letter, "Certain Quartz Surface Products from India: Request to Align Determinations," dated October 1, 2019 (Request for Alignment).

²⁹ See *Certain Quartz Surface Products from India and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 84 FR 31839 (July 3, 2019) (*Preliminary Determination Postponement*); see also Request for Postponement.

such, we postponed the preliminary determination until October 7, 2019,³⁰ in accordance with sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).

C. Period of Investigation

Consistent with 19 CFR 351.204(b)(2), the POI is April 1, 2018 through March 31, 2019, reflecting the most recently completed Indian fiscal year.³¹

III. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,³² we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage.³³ We received several comments concerning the scope of the AD and CVD investigations of quartz surface products from India and Turkey. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determinations of the companion AD investigations, the deadline for which is December 4, 2019.³⁴ We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in case and rebuttal briefs.

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by the investigation is certain quartz surface products. Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (*e.g.*, quartz, quartz powder, cristobalite, glass powder) as well as a resin binder (*e.g.*, an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the investigation. However, the scope of the investigation only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of this investigation includes surface products of all other sizes, thicknesses, and shapes. In addition to slabs, the scope of this investigation includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles. Certain quartz surface products are covered by the investigation whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or unpackaged, and regardless of the type of surface finish. In addition, quartz surface products are covered by the investigation whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls,

³⁰ See *Preliminary Determination Postponement*, 84 FR at 31839.

³¹ See POI Memorandum.

³² See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³³ See *Initiation Notice*, 84 FR at 25524-25.

³⁴ See *Certain Quartz Surface Products from India and the Republic of Turkey: Postponement of the Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 84 FR 52062 (October 1, 2019) (*AD Postponement Notice*).

vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the quartz surface products.

The scope of the investigation does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the scope of the investigation are crushed glass surface products. Crushed glass surface products must meet each of the following criteria to qualify for this exclusion: (1) the crushed glass content is greater than any other single material, by actual weight; (2) there are pieces of crushed glass visible across the surface of the product; (3) at least some of the individual pieces of crushed glass that are visible across the surface are larger than 1 centimeter wide as measured at their widest cross-section (“Glass Pieces”); and (4) the distance between any single Glass Piece and the closest separate Glass Piece does not exceed three inches.

The products subject to the scope are currently classified in the HTSUS under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080, and 7016.90.1050. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

V. PRELIMINARY AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

The petitioner submitted information alleging that, pursuant to section 703(e)(1) of the Act, and 19 CFR 351.206, critical circumstances exist with respect to imports of quartz surface products from India.³⁵ In accordance with 19 CFR 351.206(c)(2)(i), because the petitioner submitted a critical circumstances allegation 20 days before the scheduled date of this preliminary determination, Commerce must issue a preliminary critical circumstances determination no later than the date of the preliminary determination. Based on information provided by the petitioner,³⁶ and data placed on the record of this investigation by the mandatory respondents³⁷ Commerce preliminarily determines that critical circumstances exist with respect to imports of quartz surface products from India.

Section 703(e)(1) of the Act provides that Commerce will determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect: (A) that “the

³⁵ See Petitioner’s Letter, “Certain Quartz Surface Products from India: Allegation of the Existence of Critical Circumstances,” dated September 17, 2019.

³⁶ *Id.*

³⁷ See Antique Marbonite’s Letter, “Certain Quartz Surface Products from India (A-533-889 / C-533-890), Submission of Response to Quantity & Value Shipment QR, dated September 18, 2019 – Antique Marbonite Private Limited,” dated September 25, 2019; see also Pokarna’s Letter, “Certain Quartz Surface Products from India: Submission of Monthly Quantity and Value Data,” dated September 26, 2019.

alleged countervailable subsidy” is inconsistent with the Agreement on Subsidies and Countervailing Measures (SCM) of the World Trade Organization (WTO); and (B) that “there have been massive imports of the subject merchandise over a relatively short period.”

As discussed in the “Analysis of Programs” section below, we preliminarily determine that the mandatory respondents received countervailable benefits under programs that are contingent upon export performance. Therefore, we preliminarily determine that there is a reasonable basis to believe or suspect that there are programs in this investigation that are inconsistent with the SCM Agreement. Use of an export subsidy program is sufficient to meet the inconsistent-with-the-SCM-Agreement criterion under section 703(e)(1)(A) of the Act.³⁸

In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 703(e)(1)(B) and 19 CFR 351.206(i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the same date (*i.e.*, the “comparison period”). Commerce’s regulations provide that, generally, imports must increase by at least 15 percent during the “comparison period” to be considered “massive.”³⁹

Therefore, to determine whether or not there has been a massive surge of imports with respect to the mandatory respondents, we have used a comparison period starting with the month the petition was filed (*i.e.*, May 2019) and ending with the most recent month for which we have shipping data on the record (*i.e.*, August 2019). We then selected a base period with the same number of months, ending in the month prior to the filing of the petition (*i.e.*, January 2019 through April 2019). Based on the analysis described above, Commerce preliminarily determines that Antique Marbonite had massive imports over a relatively short period.⁴⁰ However, because the preliminary net subsidy rate calculated for Antique Marbonite is *de minimis*, we preliminarily determine that critical circumstances do not exist for Antique Marbonite. The volume of U.S. imports of Pokarna did not increase by 15 percent from the base to the comparison period;⁴¹ therefore, we preliminarily determine that critical circumstances do not exist for Pokarna.

Consistent with our practice,⁴² for “all other” exporters and producers of quartz surface products from India, Commerce compared Global Trade Atlas (GTA) data for the base and comparison periods for which GTA data are currently available (*i.e.*, February 2019 through April 2019 and

³⁸ See *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43189-90 (August 17, 2001) unchanged in *Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, 67 FR 36070 (May 22, 2002)..

³⁹ See 19 CFR 351.206(h)(2).

⁴⁰ See Memorandum, “Preliminary Massive Shipment Analysis for Antique Marbonite,” dated concurrently with this memorandum.

⁴¹ See Memorandum, “Preliminary Massive Shipment Analysis for Pokarna,” dated concurrently with this memorandum.

⁴² See, *e.g.*, *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014) and accompanying Issues and Decision Memorandum (IDM) at 4.

May 2019 through July 2019, respectively), excluding shipments reported by the mandatory respondents. Based on this analysis, we preliminarily determine that all other exporters and producers of quartz surface products had massive imports over a relatively short period.⁴³

Thus, because we are issuing an affirmative preliminary determination that includes countervailable subsidies that are inconsistent with the SCM and because GTA data indicate that “massive shipments” occurred with respect to companies that are subject to the all-others rate, we preliminarily determine that critical circumstances exist for these companies. Commerce will issue its final determination concerning critical circumstances when it issues its final CVD determination. All interested parties will have the opportunity to address this preliminary determination in case briefs submitted prior to the completion of the final CVD determination.

VI. INJURY TEST

Because India is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the 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 June 24, 2019, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of quartz surface products from India that are alleged to be sold at less than fair value and subsidized by the GOI.⁴⁴

VII. ALIGNMENT

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), and based on the petitioner’s request,⁴⁵ we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of quartz surface products from India. Consequently, the final CVD determination will be signed on the same date as the final AD determination, which is currently scheduled to be due no later than February 18, 2020,⁴⁶ unless postponed.

VIII. 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.⁴⁷ In Commerce’s initial questionnaire to the GOI, we notified the respondents to this investigation that the AUL period is 15 years, on the basis of U.S. Internal Revenue Service (IRS) Publication

⁴³ See Memorandum, “Preliminary Massive Shipment Analysis for All Others Rate Companies,” dated concurrently with this memorandum.

⁴⁴ See *ITC Preliminary Determination*, 84 FR at 31100; see also ITC Publication 4919.

⁴⁵ See Request for Alignment.

⁴⁶ See *AD Postponement Notice*.

⁴⁷ See 19 CFR 351.524(b).

946 (2018), “Appendix B – Table of Class Lives and Recovery Periods.”⁴⁸ No parties submitted comments challenging the proposed AUL period, and we therefore preliminarily determine that a 15-year period is appropriate to allocate benefits from non-recurring subsidies.

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 subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than over the AUL. If the amount of the subsidies is greater than 0.5 of the relevant sales value, we used the standard grant allocation methodology described under 19 CFR 351.524(d)(1) to determine the amount of the exemption attributable to the POI.

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 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.

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 the other 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 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.⁴⁹

⁴⁸ See Initial Questionnaire at Section II, page 1, and Section III, page 7; see also Petition Volume IV at Exhibit IV-4 (IRS Publication 946). The 15-year period corresponds to asset class “32.3 – Manufacture of Other Stone and Clay Products.”

⁴⁹ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

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 way it could use its own subsidy benefits.⁵⁰

1. Antique Marbonite

Antique Marbonite responded to Commerce's questionnaires on behalf of itself and its cross-owned affiliated companies Antique Granito Shareholders Trust (Antique Trust), Shivam Enterprises (Shivam), and Prism Johnson Limited (Prism Johnson).

Antique Marbonite is a producer and exporter of quartz surface products.⁵¹ Antique Marbonite is a private limited company incorporated in India and a 50%-50% joint venture between Antique Trust and Prism Johnson.⁵² Antique Trust is an investment trust, which holds interest only in Antique Marbonite and does not carry out any business activities.⁵³ Prism Johnson is a producer of non-subject merchandise (*i.e.*, cement, ready mix concrete, ceramic tiles), but does export subject merchandise produced by Antique Marbonite.⁵⁴ The subject merchandise produced by Antique Marbonite is also exported to the United States through Shivam, which is cross-owned with Antique Marbonite.⁵⁵ During the POI, Shivam also supplied to Antique Marbonite raw materials used for the production of subject merchandise.⁵⁶ We preliminarily determine that Antique Marbonite, Prism Johnson, Shivam, and Antique Trust are cross-owned companies under common control, within the meaning of 19 CFR 351.525(b)(6)(vi).

Because Antique Marbonite is the producer of quartz surface products, we are attributing the benefit from subsidies that it received to its sales (net of intercompany sales), in accordance with 19 CFR 351.525(b)(6)(i). Information on the record indicates that neither Prism Johnson nor Shivam produce subject merchandise or produce a raw material used in the production of subject merchandise. As such 19 CFR 351.525(b)(6)(ii), which provides for the attribution of subsidies received by a cross-owned producer of subject merchandise to the combined sales of the products produced by both companies (*i.e.*, mandatory respondent and cross-owned company), does not apply. Similarly, 19 CFR 351.525(b)(6)(iv), which provides for the attribution of subsidies received by a cross-owned input producer to the combined sales of the input and downstream products produced by both the input supplier and a downstream producer, does not apply. Therefore, to the extent that Prism Johnson and/or Shivam received export subsidies during the POI, we are cumulating the benefits from subsidies that Prism Johnson and/or Shivam received with the benefits provided to Antique Marbonite in accordance with 19 CFR 351.525(c), the trading company rule, and dividing benefits received by the companies' combined total export sales for the POI, net of inter-company sales. The denominators we used

⁵⁰ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁵¹ See Antique Marbonite Affiliation Response at 5.

⁵² See Antique Marbonite IQR at 3-4.

⁵³ *Id.*

⁵⁴ See Prism Johnson IQR at 2-3.

⁵⁵ See Antique Marbonite IQR at 4.

⁵⁶ *Id.*

to calculate the net countervailable subsidy rates for the various subsidy programs described *infra* are explained in further detail in Antique Marbonite’s preliminary calculations memorandum.⁵⁷

We preliminarily find no evidence that Antique Trust received assistance under any of the programs under examination in this investigation.

2. Pokarna

Pokarna responded to Commerce’s questionnaires on behalf of itself and its parent holding company, Pokarna Limited.⁵⁸ Pokarna is the producer/exporter of subject merchandise. Pokarna Limited is involved in the business of quarrying and processing of granites, and manufacturing and retailing of apparel.⁵⁹ Pokarna reported that Pokarna Limited is not involved in the production or sale of subject merchandise and did not supply any inputs to Pokarna during the POI.⁶⁰

Because Pokarna is the producer of quartz surface products, we are attributing the benefit from subsidies that it received to its sales (net of intercompany sales), in accordance with 19 CFR 351.525(b)(6)(i). Under 19 CFR 351.525(b)(6)(iii), we would attribute subsidies received by Pokarna Limited, the parent holding company of Pokarna, to the consolidated sales of Pokarna Limited.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondents’ receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents’ export or total sales, or portions thereof. As discussed in the “Programs Preliminarily Determined to Be Countervailable” section and in the respondents’ preliminary calculations memoranda, where a program is found to be countervailable as a domestic subsidy, we used total product sales as the denominator. Where a program is found to be contingent upon export activities, we used total export sales, net of deemed exports, *i.e.*, the good supplied does not physically leave the country, as the denominator. However, under certain export subsidy programs, a respondent may fulfill its export obligations with deemed exports, *e.g.*, Export Promotion Capital Goods Scheme (EPCGS).⁶¹ Therefore, deemed exports may be included in the denominator for those programs permitting deemed exports to fulfill a respondent’s export obligations.

⁵⁷ See Memorandum, “Countervailing Duty Investigation of Certain Quartz Surface Products from India: Preliminary Determination Calculations for Antique Marbonite Private Limited, India,” dated concurrently with this memorandum (Antique Marbonite Preliminary Calculations).

⁵⁸ See Pokarna Affiliation Response at 2-5.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See GOI IQR at 27-28.

All sales used in the net subsidy rate calculations are net of inter-company sales. For a further discussion of the denominators used, *see* the respondents' preliminary calculations memoranda.⁶²

IX. BENCHMARKS AND INTEREST RATES

Section 771(5)(E)(ii) of the Act provides that the benefit for a loan 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).

Additionally, 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).

Antique Marbonite reported commercial rupee-denominated long-term loans that it received during the AUL.⁶³ We relied on the interest rate that Antique Marbonite paid on its commercial rupee-denominated long-term borrowing to calculate the benefit that the company received under the EPCGS.⁶⁴

Pokarna reported commercial rupee-denominated long-term loans that it received during the AUL period.⁶⁵ Consistent with 19 CFR 351.524(d)(3)(i), we used, as our discount rates, the long-term interest rate for the year in which the government provided non-recurring subsidies. The interest-rate benchmarks and discount rates used in our preliminary calculations for Pokarna are provided in the preliminary calculation memoranda.⁶⁶

⁶² *See* Antique Marbonite Preliminary Calculations; *see also* Memorandum, “Pokarna Preliminary Calculations,” dated concurrently with this memorandum (Pokarna Preliminary Calculations).

⁶³ *See* Antique Marbonite First SQR at 14 and Exhibit CVDA-34.

⁶⁴ *See* Antique Marbonite Preliminary Calculations.

⁶⁵ *See* Pokarna IQR at Exhibit PESL-24(a).

⁶⁶ *See* Pokarna Preliminary Calculations.

X. USE OF FACTS OTHERWISE AVAILABLE

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. Commerce preliminarily determines that the application of facts otherwise available to the financial contribution and specificity aspects of the countervailability determination of the Interest Equalization Scheme (IES) for Export Financing is warranted.

We normally rely on the government to provide information on the administration and specificity of programs. In this investigation, the GOI did not provide a complete response to our questions regarding pre- and post-shipment export financing and the Reserve Bank of India’s (RBI) interest subvention for rupee-denominated export loans.⁶⁷ Antique Marbonite, however, submitted the RBI’s IES Guidelines, which is the government issued guidelines that describe the procedure for passing on the benefit of interest equalization to exporters.⁶⁸ As facts available (FA), we are relying on the IES Guidelines to determine whether the GOI provided a financial contribution that is specific through the IES. Based on the IES Guidelines, as FA, we preliminarily determine that the GOI conferred a financial contribution and that the program is specific, within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act, respectively. *See* “IES for Export Financing,” *infra* for more information on the benefit and program rate calculated.

XI. 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. Duty Drawback (DDB) Scheme

Antique Marbonite and its cross-owned affiliated companies Prism Johnson and Shivam reported that, under the DDB Scheme, they received rebates of duties paid when they exported products manufactured in India.⁶⁹ The GOI explained that the DDB Scheme provides rebates for duty or tax chargeable on any imported or excisable materials used to manufacture exported goods.⁷⁰ Specifically, the duties and tax “neutralized” under the program are the Customs and Central

⁶⁷ See GOI IQR at 44-58; *see also* GOI First SQR at 14-15.

⁶⁸ See Antique Marbonite First SQR at Exhibit CVDP-20.

⁶⁹ See Antique Marbonite IQR at 13-14 and 16-23; *see also* Prism Johnson IQR at 10 and 19-26.

⁷⁰ See GOI IQR at 11.

Excise Duties for inputs used to manufacture exported goods.⁷¹ DDB, which is generally fixed as a percentage of the free-on-board (FOB) price of the exported product, is provided in two ways: (a) on the basis of the actual duty incidence; or (b) on the basis of averages (All Industry Rate (AIR)).⁷² In the absence of an AIR, the GOI will calculate a duty drawback rate on the actual duty.⁷³ During the POI, exports of quartz surface products were subject to an AIR.⁷⁴

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

Regarding the establishment of applicable DDB rates, the GOI explained that a committee exists to review data and recommend DDB rates. Specifically, the GOI stated:

The Central Government determines the All Industry Rate of drawback based on taking essentially averages of values duties on materials used for a class of export goods produced or manufactured and taking into account the extent to which these duties may not have been paid or already rebated or refunded. The All Industry Rates are notified in the form of a schedule every year after a Committee appointed for the purpose has reviewed the data and recommended the rates.⁷⁹

The GOI also stated:

The All Industry Rates of duty drawback are calculated on the basis of the data, pertaining to inputs used in the manufacturing process, provided by the different export promotion councils and are duly verified by the statutory auditors. Based on these verified data, and any additional statutory or non-statutory available from the different government departments, the drawback rates are calculated by the Drawback Committee.

⁷¹ *Id.*

⁷² *Id.* at 11-12.

⁷³ *Id.*

⁷⁴ See Antique Marbonite First SQR at 10; see also GOI First SQR at Exhibit 2. The drawback rate was 1.10 percent from April 1, 2018 to December 18, 2018, and 1.0 percent from December 19, 2018, to March 31, 2019.

⁷⁵ See 19 CFR 351.519(a)(1)(ii).

⁷⁶ 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 12-14.

⁷⁷ *Id.*

⁷⁸ See 19 CFR 351.519(a)(4)(i)-(ii).

⁷⁹ See GOI IQR at 12.

As a second stage verification, the exporter's manufacturing premises and the books of accounts are randomly audited by the field formations as per the audit provisions to ensure that no undue benefits are claimed by the exporters.”⁸⁰

We requested the GOI to describe in detail the analysis conducted by the Drawback Committee to confirm the accuracy of input consumption rates and the derivation of the recommended rates, including an explanation of the data that guided the Committee's recommendations for the DDB rates in effect during the POI for quartz surface products.⁸¹ We also requested the GOI to describe the verification procedures that are followed when an exporter's manufacturing premises are examined and accounts are audited to ensure that no undue benefits are claimed by the exporters.⁸² Specifically, we asked about the verification process that occurred with the mandatory respondents and producers of quartz surface products generally, including the number of audits and site visits that took place at the facilities of producers of quartz surface products.⁸³

The GOI provided no explanation of the data analysis conducted for the derivation of the DDB rates, repeating the information that was provided in its initial questionnaire response.⁸⁴

Concerning the data analysis and verification process that occurred with regard to the mandatory respondents and producers of quartz surface products generally, the GOI stated that “there is no specific data analysis w.e.f. {with effect from} this product or mandatory respondents.”⁸⁵ With regard to audits and site visits at production facilities, the GOI stated that no centralized data is maintained.⁸⁶

Consistent with *Shrimp from India Final Determination*,⁸⁷ we find 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. Consequently, we preliminarily determine that the GOI has not supported its claim that India's DDB system is reasonable or effective for the purposes intended, and that this program confers a countervailable subsidy.

We also preliminarily determine that a financial contribution, pursuant to section 771(5)(D)(ii) of the Act is provided under the DDB program because rebated duties represent revenue forgone by the GOI. Because the program is only available to exporters, we preliminarily determine that DDB is specific under section 771(5A)(B) of the Act. Further, since the GOI has not supported its claim that the DDB system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported product, we preliminarily

⁸⁰ *Id.* at 24.

⁸¹ See Commerce's Letter, “Countervailing Duty Investigation of Certain Quartz Surface Products from India: Supplemental Questionnaire,” dated August 21, 2019 at 3-4 (GOI First Supplemental Questionnaire).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See GOI First SQR at 7-10; see also GOI IQR at 11-25.

⁸⁵ See GOI First SQR at 9.

⁸⁶ *Id.*

⁸⁷ See *Shrimp from India Final Determination*, and accompanying IDM at 12-14.

determine that the entire amount of the import duty rebate earned during the POI constitutes a benefit under 19 CFR 351.519(a)(4).

The GOI reported that DDB is claimed at the time of export.⁸⁸ Pursuant to 19 CFR 351.519(b)(1), we preliminarily 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).

Antique Marbonite, Prism Johnson, and Shivam reported the benefits earned on exports of subject merchandise to the United States under this program on a transaction-specific basis.⁸⁹ In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, Commerce will attribute that subsidy to only that product or market. For Antique Marbonite, Prism Johnson, and Shivam, we divided the DDB rebates earned on exports of subject merchandise to the United States during the POI by the companies' exports of subject merchandise to the United States during the POI. On this basis, we preliminarily determine a net countervailable subsidy rate of 1.05 percent *ad valorem* for Antique Marbonite.⁹⁰

Pokarna reported that it did not use this program.⁹¹

2. EPCGS

The EPCGS provides an exemption from customs duty on imports of capital goods used in the production of exported products.⁹² Manufacturer exporters, merchant exporters tied to a supporting manufacturer, and service providers may obtain EPCGS licenses for use of the program.⁹³ Under the EPCGS, a license holder pays zero custom duty on imported capital equipment subject to an export obligation.⁹⁴ A company's export obligation, which must be met within six years of importing the capital goods, is based on: (1) a calculation equal to six times the duty saved on capital goods imported under this program; and (2) the past three years' export performance.⁹⁵ When a company satisfies the export obligation as indicated on the EPCGS license, the GOI issues an Export Obligation Discharge Certificate to the company.⁹⁶ An EPCGS license is valid for 18 months from the date of issuance.⁹⁷ Antique Marbonite reported that it

⁸⁸ See GOI IQR at 12.

⁸⁹ See Antique Marbonite IQR at Exhibit CVDA-13; see also Prism Johnson IQR at Exhibit 12.3, and Antique Marbonite SQR at Exhibit CVDA-27.

⁹⁰ See Antique Marbonite Preliminary Calculations.

⁹¹ See Pokarna IQR at 17.

⁹² See GOI IQR at 26.

⁹³ *Id.* at 27.

⁹⁴ *Id.* at 26-27.

⁹⁵ *Id.* at 27 and 40-41.

⁹⁶ *Id.* at 41.

⁹⁷ *Id.* at 43.

imported capital goods with exempted customs duties under the EPCGS.⁹⁸ Pokarna reported that Pokarna Limited imported capital goods with exempted customs duties under the EPCGS.⁹⁹ Commerce has previously determined that import duty reductions or exemptions provided under the EPCGS 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 infra*) under section 771(5)(E) of the Act; and (3) are specific pursuant to sections 771(5A)(B) of the Act because the program is contingent upon export performance.¹⁰⁰ Because the evidence on the record with respect to this program has not changed from previous findings, we preliminarily determine that this program is countervailable.

Under the EPCGS, the exempted import duties would have to be paid to the GOI if the accompanying export obligation is not met. Commerce's practice is to treat any balance on an unpaid liability that may be waived in the future as an interest-free contingent-liability loan pursuant to 19 CFR 351.505(d)(1).¹⁰¹ Because the unpaid duties constitute a liability contingent on subsequent events, we treat the amount of unpaid duty liabilities as interest-free contingent-liability loans. We find that the amount a respondent would have paid during the POI had it borrowed the full amount of the duty exemption at the time of importation to constitute the first benefit under the EPCGS. The second benefit arises based on the amount of duty waived by the GOI on imports of capital equipment covered by the EPCGS licenses for which the export requirement has been met. With regard to licenses for which the GOI and a respondent acknowledge that the company has completed the export obligations, we treat the import duty savings as a grant received in the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are approved for the purchase of capital equipment. The *CVD Preamble* states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-

⁹⁸ See Antique Marbonite IQR at 25-33.

⁹⁹ See Pokarna Limited's Letter, "Certain Quartz Surface Products from India: Section III Response of Pokarna Limited," dated August 16, 2019 (Pokarna Limited IQR) at 38-39.

¹⁰⁰ See *Countervailing Duty Investigation of Glycine From India: Affirmative Final Determination*, 84 FR 18482 (May 1, 2019) (*Glycine from India Final Determination*), and accompanying IDM at Export Promotion of Capital Goods Scheme (EPCGS); see also *Shrimp from India Final Determination*, and accompanying IDM at EPCGS; and *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 from India Final Determination*), and accompanying IDM at EPCGS.

¹⁰¹ See *Glycine from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 44859 (September 4, 2018), and accompanying Preliminary Determination Memorandum (PDM) at Export Promotion of Capital Goods Scheme, unchanged in *Glycine from India Final Determination*; see also *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016) (*Steel Flanges from India Preliminary Determination*), and accompanying PDM at 13, unchanged in *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Steel Flanges from India Final Determination*).

recurring.”¹⁰² 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.

Antique Marbonite and Pokarna Limited submitted copies of their respective EPCGS licenses.¹⁰³ On the basis of the information indicated on the licenses, we can reliably determine that, at the point of bestowal, certain licenses were issued for non-subject merchandise.¹⁰⁴ We preliminarily find these licenses to be tied to the production or sale of non-subject merchandise within the meaning of 19 CFR 351.525(b)(5). We, therefore, are not including these licenses within the calculation of the EPCGS subsidy rate for Antique Marbonite, and similarly we are not including in our subsidy calculations any of the licenses for Pokarna Limited.

Concerning Antique Marbonite’s remaining EPCGS licenses, we preliminarily determine that they are not tied to the production or sale of a particular product within the meaning of 19 CFR 351.525(b)(5).¹⁰⁵ As such, we preliminarily find these licenses, which are not tied to the production or sale of a particular product, benefit all of the companies’ exports.

For these licenses, Antique Marbonite reported that it has not fulfilled the export obligation.¹⁰⁶ Therefore, Antique Marbonite received deferrals from paying import duties for the imports of capital goods. As noted above, import duty exemptions that Antique Marbonite received on the imports of capital equipment for which it has not yet met export obligations may have to be repaid to the GOI if the obligations under the license are not met. Consistent with Commerce’s practice and prior determinations, we are treating the unpaid import duty liability as an interest-free loan.¹⁰⁷

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

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

¹⁰² See *CVD Preamble*, 63 FR at 65393.

¹⁰³ See Antique Marbonite First SQR at Exhibit CVDA-29; see also Pokarna Limited IQR at 40-41 and Exhibits PL29(a) and PL29(b).

¹⁰⁴ See Antique Marbonite Preliminary Calculations.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ See, e.g., *Steel Flanges from India Preliminary Determination*, and accompanying PDM at 15, unchanged in *Steel Flanges from India Final Determination*.

imports made during the POI, we calculated a daily interest rate based on the long-term interest rate and the number of days the loan was outstanding during the POI to arrive at a pro-rated contingent liability for those imports.

Thus, the benefit received under the EPCGS is the sum of the interest that would have been due had Antique Marbonite borrowed the full amount of the duty exemption at the time of the importation of capital equipment for which Antique Marbonite had not met export requirements during the POI. Because a company may fulfill its EPCGS export obligations with deemed exports,¹⁰⁸ we have included deemed exports in the denominator. As such, we divided the benefit received by Antique Marbonite under the EPCGS by the sum of its total export sales and deemed exports for the POI. This denominator best reflects the products that Antique Marbonite manufactured with the imported capital equipment and subsequently exported directly and via affiliated and unaffiliated companies. On this basis, we preliminarily determine a net countervailable subsidy rate of 0.31 percent *ad valorem* for Antique Marbonite.¹⁰⁹

3. IES for Export Financing¹¹⁰

Antique Marbonite's cross-owned company Prism Johnson reported use of the IES for pre-shipment financing.¹¹¹ The company also provided the RBI's circular "Interest Equalisation Scheme on Pre and Post Shipment Rupee Export Credit," (IES Guidelines), effective February 2016.¹¹²

Normally, we rely on the government to provide information on the administration and specificity of programs. In this investigation, the GOI did not provide a complete response to our questions regarding pre- and post-shipment export financing and the RBI's interest subvention for rupee-denominated export loans.¹¹³ Antique Marbonite, however, submitted the RBI's IES Guidelines, which describe the procedure for passing on the benefit of interest equalization to exporters.¹¹⁴

Therefore, as FA, we are relying on the IES Guidelines, provided by Antique Marbonite, to determine whether the GOI provided a financial contribution that is specific through the IES. We note that the IES Guidelines state that "From the month of February 2016 onwards, banks shall reduce the interest rate charged to the eligible exporters as per our extant guidelines on interest rates on advances by the rate of interest equalization provided by Government of India."¹¹⁵ The scheme provides for the rate of interest equalization at three percent per annum for pre- and post-shipment rupee-denominated export loans.¹¹⁶ Further, "banks are required to completely pass on the benefit of interest equalization, as applicable, to the eligible exporters

¹⁰⁸ See GOI IQR at 27-28.

¹⁰⁹ See Antique Marbonite Preliminary Calculations.

¹¹⁰ We initiated on this program as "Pre-Shipment and Post-Shipment Export Financing."

¹¹¹ See Antique Marbonite First SQR at 15-16, and Exhibit CVDP-21.

¹¹² *Id.* at Exhibit CVDP-20.

¹¹³ See GOI IQR at 44-58; see also GOI First SQR at 14-15.

¹¹⁴ See Antique Marbonite First SQR at Exhibit CVDP-20.

¹¹⁵ *Id.* at 1 (para. 2(A)(ii)).

¹¹⁶ *Id.* at 4 (para. 2(a)).

upfront and submit the claims to RBI for reimbursement.”¹¹⁷

Based on the IES Guidelines, we preliminarily determine, as FA, that the GOI conferred a financial contribution and this program is specific, within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act, respectively. Relying on Prism Johnson’s submitted pre-shipment loan information, we preliminarily 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 the program are lower than commercially available interest rates. This approach is consistent with Commerce’s practice.¹¹⁸

We are relying on Prism Johnson’s loan data to calculate the benefit received. Because we find, as FA, that the IES is export contingent, and is a recurring benefit, we calculated the total benefit received in the POI for total exports, where the interest equalization was received in the POI. We then divided this sum by the value of Antique Marbonite’s and Prism Johnson’s total exports sales during the POI. On this basis, we preliminarily determine a net countervailable subsidy rate of 0.21 percent *ad valorem* for Antique Marbonite.¹¹⁹

Antique Marbonite, Shivam, Pokarna, and Pokarna Limited did not use the IES.¹²⁰

4. Special Economic Zones (SEZ) Programs

Under the SEZ Act of 2005, an SEZ may be established either jointly or independently by the central government, a state government, or any person to manufacture goods and/or provide services or both and to serve as a Free Trade and Warehousing Zone.¹²¹ Entities that want to set up an SEZ in an identified area may submit their proposal to the relevant state government.¹²² To be eligible under the SEZ Act, the companies inside an SEZ must commit to export their production of goods and/or services.¹²³ Specifically, all products produced, excluding rejects and certain domestic sales, must be exported and must achieve a positive net foreign exchange (NFE), calculated cumulatively for a period of five years from the commencement of production.¹²⁴ In return, the companies inside the SEZ are eligible to receive various benefits.

Companies in a designated SEZ may receive the following benefits: (1) duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and

¹¹⁷ *Id.* at para. 2(e).

¹¹⁸ See *Stainless Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 3118 (January 23, 2018), and accompanying PDM at Interest Equalization Scheme (IES) for Export Financing, unchanged in the *Stainless Steel Flanges from India: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 83 FR 40748 (August 16, 2018), and accompanying IDM at Interest Equalization Scheme for Export Financing.

¹¹⁹ See Antique Marbonite Preliminary Calculations.

¹²⁰ See Antique Marbonite IQR at 33-34; see also Pokarna’s Letter, “Certain Quartz Surface Products from India: Second Supplemental Response of Pokarna,” dated September 12, 2019 at 2.

¹²¹ See GOI IQR at Exhibit- S, SEZ Act of 2005.

¹²² *Id.*

¹²³ See GOI IQR at Exhibit- T, SEZ Rules of 2006; see also Pokarna IQR at 35.

¹²⁴ See Pokarna IQR at 33.

packing material; (2) purchase of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material without the payment of central sales tax (CST) thereon; (3) exemption from the services tax for the services consumed within the SEZ; (4) exemption from stamp duty for all transactions and transfers of immovable property, or documents related thereto within the SEZ; (5) exemption from electricity duty, and cess (tax or levy) thereon, on the sale or supply to the SEZ unit; (6) income tax exemptions under Section 10AA of the Income Tax Exemption Scheme; and (7) discounted land in an SEZ.¹²⁵

Pokarna reported that it produced subject merchandise during the POI in a SEZ unit located in the state of Andhra Pradesh.¹²⁶ Specifically, Pokarna reported using the SEZ program to obtain: (1) duty-free importation of capital goods and raw materials;¹²⁷ (2) exemptions on payment of central sales tax (CST) on purchase of capital goods;¹²⁸ (3) exemption of payment of stamp duty on leased land for the SEZ unit;¹²⁹ (4) income tax exemptions under Section 10AA of the Income Tax Exemption Scheme;¹³⁰ and (5) an allotment of a land from the Andhra Pradesh Industrial Investment Corporation (APIIC).¹³¹ Pokarna reported that Pokarna Limited did not use the SEZ program.¹³² Antique Marbonite, Prism Johnson, and Shivam reported that they did not use the SEZ programs.¹³³

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

Below we address whether each of the following sub-programs under the SEZ constitute a financial contribution and confer a benefit under sections 771(5)(D) and 771(E) of the Act.

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

Companies in SEZs are entitled to import capital goods and raw materials, components, consumables, intermediates, spare parts and packing material duty-free, in exchange for committing to export all of the products they produce, excluding rejects and certain domestic sales.¹³⁴ Additionally, such companies have to achieve a positive NFE calculated cumulatively for a period of five years from the commencement of production.¹³⁵

We determine that the duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material, provides a financial contribution

¹²⁵ *Id.* at 36–59; *see also* GOI IQR at 83.

¹²⁶ *See* Pokarna’s IQR at 28.

¹²⁷ *See* Pokarna’s IQR at 36 and 46.

¹²⁸ *Id.* at 48.

¹²⁹ *Id.* at 59.

¹³⁰ *Id.* at 54.

¹³¹ *Id.* at 66.

¹³² *See* Pokarna Limited IQR at 51.

¹³³ *See* Antique Marbonite IQR at 14 and 36-38.

¹³⁴ *Id.* at 33.

¹³⁵ *Id.*

pursuant to section 771(5)(D)(ii) of the Act through the foregoing of duty payments. The SEZ program confers benefits in the amounts of exemptions of customs duties not collected in accordance with section 771(5)(E) of the Act. Pursuant to 19 CFR 351.510, we preliminarily determine that the time of receipt of this benefit is the time that Pokarna otherwise would be required to pay the indirect tax or import charge.

Normally, uncollected indirect taxes are considered to be recurring benefits. However, a portion of the benefit of this program relates to the purchase of capital goods.¹³⁶ Pursuant to 19 CFR 351.524(c)(2)(iii), we normally treat uncollected taxes due on purchases of capital goods as non-recurring benefits. We performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), on Pokarna’s uncollected import duties that related to its purchases of capital goods in the fiscal years ending March 2007, the year of the first approval of the SEZ through March 2019 and found that, for certain years, uncollected import duties were more than 0.5 percent of total export sales for each year. Therefore, the annual benefit for these years was allocated over the AUL to find the benefit attributable to the POI. Also, in certain years, the amount of uncollected import duties that related to the purchase of capital goods during the POI was less than 0.5 percent of total export sales; therefore, these benefits were expensed to the year of receipt.

We are treating all other import duty exemptions on purchases unrelated to capital goods (e.g., raw material inputs) as recurring benefits pursuant to 19 CFR 351.524. For duty exemptions on such imports, we calculated the amount of benefit for each purchase during the POI based on the amount of import duties that were exempted on each purchase (the value of the purchase multiplied by the applicable import duty rate).

To calculate the benefit, we summed the total value of uncollected import duties for capital goods purchases to the POI and the total value of uncollected import duties due on all other purchases during the POI. We then divided this amount by the total value of Pokarna’s export sales during the POI. On this basis, we determine the countervailable subsidy provided to Pokarna through the import duty exemptions under the SEZ program to be 1.69 percent *ad valorem*.¹³⁷

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

Under this program, Pokarna and Pokarna Limited reported that they were exempt from paying CST on domestically purchased capital goods.¹³⁸ Pokarna and Pokarna Limited also reported that it had no purchases of raw materials, components, consumables, intermediates, spares, packing material or any other material on which the company received CST exemptions.¹³⁹

¹³⁶ *Id.* at 36 and 41.

¹³⁷ See Pokarna Preliminary Calculation Memorandum.

¹³⁸ See Pokarna IQR at 48; see also Pokarna Limited IQR at Exhibit PL27.

¹³⁹ *Id.*

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

Normally, uncollected indirect taxes, such as the CST, are considered to be recurring benefits. However, a portion of the benefit of this program is tied to the purchase of capital goods. Pursuant to 19 CFR 351.524(c)(2)(iii), we normally treat uncollected taxes due on purchases of capital goods as non-recurring benefits. However, we performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2) and found that the amount of uncollected CST that was tied to the purchase of capital goods during each of the fiscal years 2007 through 2019 was less than 0.5 percent of the corresponding total export sales for each year. Therefore, we allocated each annual benefit from 2007 through 2019 to the year of receipt, and the only benefit attributable to the POI was the amount of the uncollected CST on purchases of capital goods that Pokarna received under this program during the POI.¹⁴⁰

To calculate the net subsidy rate, we summed the total value of uncollected CST for capital goods purchased during the POI and divided this amount by the total value of Pokarna’s export sales during the POI. On this basis, we determine the countervailable subsidy provided to Pokarna through the CST exemptions under the SEZ program to be less than 0.005 percent *ad valorem* and, thus, that the program did not confer a measurable benefit.¹⁴¹

The GOI and Pokarna reported that the CST on purchases of raw materials, components, consumables, intermediates, spare parts and packing material was abolished effective July 1, 2017.¹⁴² Since tax benefits from this portion of the CST are normally treated as recurring benefits under 19 CFR 351.524(c)(1), we find that any benefits Pokarna received would have been expensed in the year of receipt, which was prior to the POI.

C) Exemption from Payment of Local Government Taxes and Duties (Sales Tax and Stamp Duties)

The GOI reported that prior to July 1, 2017, excise duty and CST and value added tax (VAT) (for intra-state transactions on goods) was exempt from local taxes. As of July 1, 2017, all of these local taxes have been abolished and subsumed into a single tax, the Goods & Service Tax (GST), which is applicable as local tax on goods and service.¹⁴³

¹⁴⁰ See 19 CFR 351.524(b)(2).

¹⁴¹ See, e.g., *Certain Softwood Lumber Products From Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) and accompanying IDM at 218.

¹⁴² See GOI IQR at 77; see also Pokarna IQR at 48.

¹⁴³ See GOI IQR at 80.

The GOI also reported that the State Government of Andhra Pradesh (SGOAP) has granted exemption of stamp duty and registration fee to the SEZ units. Thus, by virtue of SEZ status, Pokarna was exempted from payment of stamp duty on land leased to it in Andhra Pradesh SEZ (APSEZ) by APIIC.¹⁴⁴ Pokarna reported receiving the stamp duty tax exemption in connection with land lease from APIIC in a year prior to the POI.¹⁴⁵

To calculate the benefit, we first calculated the value of the uncollected stamp duties and taxes, as listed above, which Pokarna did not pay upon registration of the land deed for the SEZ, by multiplying the value of the immovable property by the tax rates provided. Pursuant to 19 CFR 351.524(c)(2)(i), we will treat Pokarna's uncollected stamp duties due on the lease of the SEZ land as non-recurring benefits. We performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2) and found that the value of uncollected stamp duties on the lease of the SEZ land was more than 0.5 percent of total export sales during the year in which the benefit was received. Therefore, we allocated the benefit received on stamp duty tax exemption over the AUL to find the benefit attributable to the POI. We divided this benefit by Pokarna's total export sales during the POI, to determine a countervailable subsidy of 0.02 percent *ad valorem*.

D) SEZ Income Tax Exemption (Section 10AA)

In accordance with Section 10AA of the Indian Income Tax Act, 1961, companies in an SEZ are allowed to deduct profits derived from the export sales of an SEZ, as defined in the Foreign Trade Policy, from its taxable income.¹⁴⁶ The deduction from income is available if the company is situated in a SEZ and begins its production on or after the first day of April, 2006, but before the first day of April, 2021.¹⁴⁷

Pursuant to section 771(5)(D)(ii) of the Act, the GOI provides a financial contribution in the form of revenue forgone. The benefit equals the difference between the amount of income taxes that would be payable absent this program and the actual amount of taxes payable by Pokarna, pursuant to section 771(5)(E) of the Act. We also determined that the SEZ income tax exemption provides a recurring benefit under 19 CFR 351.524(c) because the deduction is available for a total period of 15 years beginning with the assessment year relevant to the previous year in which the unit begins to manufacture or produce products or provide services.¹⁴⁸

To determine the benefit, we calculated the amount of income tax Pokarna would have had to pay on the income tax return filed during the POI less the amount Pokarna actually paid during the POI.¹⁴⁹ We divided this benefit by Pokarna's total export sales during the POI, to determine a countervailable subsidy of 0.58 percent *ad valorem*.

¹⁴⁴ *Id.* at 81.

¹⁴⁵ *Id.*

¹⁴⁶ *See* Pokarna IQR at 50; *see also* Exhibit PESL-30(a).

¹⁴⁷ *Id.* at 53.

¹⁴⁸ *Id.*

¹⁴⁹ *See* Pokarna Preliminary Determination Calculations.

E) APIIC Allotment of Land for Less Than Adequate Remuneration (LTAR)

The GOI reported that Pokarna has leased an industrial plot of land for 33 years in APSEZ from APIIC for an up-front payment and annual rent calculated at a percentage of the upfront payment per acre.¹⁵⁰ The GOI indicates that APIIC “was incorporated in 1973 as a wholly-owned undertaking by the SGOAP with the objective of providing industrial infrastructure through the development of industrial areas.”¹⁵¹ Accordingly, we find that APIIC is a government “authority” under section 771(5)(B) of the Act and, thus, that APIIC’s lease of land to Pokarna constitutes a financial contribution under section 771(5)(D)(iii) of the Act and confers a benefit under 19 CFR 351.511(a)(1) to the extent the rent paid to APIIC during the POI is less than what would have been paid on a comparable benchmark rent price.

To calculate the benefit, we compared the amount of rent Pokarna paid to APIIC during the POI to a benchmark rental payment. In selecting a benchmark, 19 CFR 351.511(a)(ii)(1) states that Commerce shall first seek to compare the government price at issue to a market-determined price for the good or service resulting from actual transactions in the country in question. To that end, both the petitioner and Pokarna submitted proposed land benchmarks that contained information on land rents paid by private Indian parties near the APSEZ during the POI.¹⁵² The information from the petitioner reflects rent prices for industrial land near the APSEZ.¹⁵³ The land rental prices submitted by Pokarna, while reflective of land rentals near the APSEZ, does not definitively indicate whether the transactions were for industrial land plots.¹⁵⁴ Therefore, for purposes of the preliminary determination and in order to ensure that the benchmark is comparable under 19 CR 351.511(a)(2), we have limited our derivation of the land benchmark to the land prices submitted by the petitioner. The petitioner provided a total of three benchmark rental price observations. Therefore, we calculated a single benchmark rent by simple averaging the three rental prices submitted by the petitioner.

Consistent with Commerce’s practice, we allocated Pokarna’s up-front payment over the life its lease and applied the resulting annual, apportioned amount to the rent and taxes that Pokarna paid during the POI.¹⁵⁵ Information from Pokarna indicates that it pays its rent to APIIC on an annual basis. Therefore, to calculate the benefit under we subtracted the total, annual rent Pokarna paid to APIIC during the POI from the annual rent that would have been paid using the benchmark rental rate. To calculate the net subsidy rate, we divided the difference between the benchmark rental payment and the rental payment Pokarna paid to APIIC by Pokarna’s total export sales during the POI. On this basis we calculated a total net subsidy rate of 1.90 percent for Pokarna.

Antique Marbonite, Shivam, and Prism Johnson reported that they did not use the SEZ

¹⁵⁰ See GOI IQR at 13; see also Pokarna IQR at 66 and Exhibit PESL-32.

¹⁵¹ See GOI Second SQR at 11.

¹⁵² See Petitioner’s Benchmark Submission at Exhibit 6; see also Pokarna IQR at Exhibits 33(a) and 33(b).

¹⁵³ See Petitioner’s Benchmark Submission at Exhibit 6.

¹⁵⁴ See Pokarna IQR at Exhibits 33(a) and 33(b).

¹⁵⁵ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016) and accompanying IDM at 31.

programs.¹⁵⁶

5. Export Oriented Units (EOU) Program: Duty-Free Import of Capital Goods and Raw Materials

Under this program, firms designated as EOUs must export their entire production of goods and services, except for permissible sales in the Domestic Tariff Area.¹⁵⁷ Also, an EOU has to achieve a positive net foreign exchange calculated cumulatively for a period of five years from the commencement of production.¹⁵⁸ Under the program, the GOI permits EOUs to import capital goods and raw materials duty-free. Commerce previously found this program to be countervailable.¹⁵⁹ Pokarna reported that its parent company, Pokarna Limited, used this program, but Pokarna claims that the exemptions received by Pokarna Limited were tied to non-subject merchandise.¹⁶⁰ However, we preliminarily determine that the approval form submitted to Pokarna by the GOI indicates that the duty exemptions are contingent upon exports, in general, and not on the exportation of specific products that are outside the scope of the investigation.¹⁶¹ On this basis, we preliminarily determine that the duty exemptions provided under this program constitute a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act and are specific under section 771(5A)(B) of the Act because the exemptions are contingent upon exports. We also preliminarily determine that the program confers a benefit under section 771(5)(E) of the Act in an amount equal to the duty exemptions.

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.”¹⁶² Thus, in accordance with 19 CFR 351.524(c)(2)(iii), we are treating the import duty exemptions Pokarna Limited received on capital equipment under this program as non-recurring benefits. Accordingly, we summed the amount of exemptions Pokarna Limited received under the program in each year of the AUL period. We then applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2), to the amount of annual exemptions. Specifically, we divided the amount of exemptions Pokarna Limited received in a given year by its total export sales. For annual exemption amounts that were greater than 0.5 percent of Pokarna Limited’s total export sales, we used the standard grant allocation methodology, as described under 19 CFR 351.524(d)(1), to determine the amount of the exemption attributable to the POI.

¹⁵⁶ Antique Marbonite, Shivam, and Prism Johnson reported that they do not operate in the state of Andhra Pradesh and did not use the APIIC program. See Antique Marbonite IQR at 38 and 39; see also Prism Johnson IQR at 39 and 40.

¹⁵⁷ See Pokarna Limited’s Letter, “Certain Quartz Surface Products from India: Section III Response of Pokarna Limited,” dated August 15, 2019.

¹⁵⁸ *Id.*

¹⁵⁹ See *Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India*, 70 FR 13460 (March 21, 2005).

¹⁶⁰ See Pokarna Limited IQR at 5 and 22; see also Exhibit PL15(c).

¹⁶¹ *Id.* at Exhibit PL(15)(b).

¹⁶² See *CVD Preamble*, 63 FR at 65393.

For annual exemption amounts that were less than 0.5 percent of total export sales, we expensed the exemption amount to the year of receipt.

To calculate the net subsidy rate, we divided the sum of the exemption amounts allocated to the POI and the exemption amounts expensed to the POI by Pokarna Limited's total export sales for the POI. On this basis, we calculated a net subsidy rate of 0.13 percent for Pokarna.

B. Programs Preliminarily Determined to Be Tied to Non-Subject Merchandise

1. Advance Authorization Scheme (AAS)¹⁶³

Under the AAS exporters may import duty free specified quantities of raw materials required to manufacture products that are subsequently exported.¹⁶⁴ Prism Johnson reported having AAS licenses tied to the production and export of non-subject merchandise and submitted a copy of the licenses.¹⁶⁵ We reviewed Prism Johnson's licenses and noted that the items to be exported under the licenses did not include subject merchandise.¹⁶⁶ We find that, at the point of bestowal, the GOI granted to Prism Johnson the AAS licenses based on the production and export of non-subject merchandise and, therefore, the AAS licenses are tied to non-subject merchandise within the meaning of 19 CFR 351.525(b)(5). Consequently, we preliminarily determine the benefits of the AAS to only be attributable to the specific exported products identified in the licenses, which do not include subject merchandise. As such, we preliminarily determine that exports of subject merchandise did not benefit under this program. This approach is consistent with Commerce's practice.¹⁶⁷

Additionally, Prism Johnson reported that it did not sell or transfer an advance license.¹⁶⁸ Antique Marbonite and Shivam reported non-use of the AAS.¹⁶⁹

Pokarna and Pokarna Limited reported that they did not use this program.¹⁷⁰

2. Merchandise Exports from India Scheme (MEIS)

Under the MEIS, exports of eligible goods to listed markets are rewarded with a duty scrip benefit to offset infrastructural inefficiencies and associated costs involved in the export of goods that are produced in India, especially goods that enhance India's export competitiveness.¹⁷¹ Rewards are calculated on the basis of realized FOB value of certain exports in foreign

¹⁶³ Formerly, the Advance License Program.

¹⁶⁴ See Prism Johnson IQR at 13-16.

¹⁶⁵ See Prism Johnson IQR at 10, 18, Exhibits CVDP-13, 13.1, and 13.2; see also Antique Marbonite First SQR at 9 and Exhibit CVDP-19.

¹⁶⁶ See Prism Johnson IQR at Exhibit CVDP-13.1; see also Antique Marbonite First SQR at Exhibit CVDP-19.

¹⁶⁷ See *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014), and accompanying IDM at Advance License Program/Advance Authorization Program.

¹⁶⁸ See Prism Johnson IQR at 18.

¹⁶⁹ See Antique Marbonite IQR at 14-15.

¹⁷⁰ See Pokarna IQR at 16; see also Pokarna Limited IQR at 17.

¹⁷¹ See Antique Marbonite IQR at 41.

exchange.¹⁷² Rewards are given in the form of a transferable financial instrument known as “scrips” which can be used only for the payment of customs duties.¹⁷³ Prism Johnson and Shivam reported receiving MEIS benefits for exports of non-subject merchandise during the POI.¹⁷⁴ The companies stated that the MEIS does not allow benefits on subject merchandise; specifically, only exports of notified goods with a “ITC HS” code are rewarded under the MEIS.¹⁷⁵

We reviewed the GOI’s “Harmonised and Consolidated Table 2 of Appendix 3B as per Public Notice No. 61/2015-20,” dated March 7, 2017,¹⁷⁶ and noted that quartz surface products are not listed as eligible under the MEIS. We therefore preliminarily find that the MEIS is tied to particular products listed by the GOI for eligibility on generating scrips within the meaning of 19 CFR 351.525(b)(5). Because Prism Johnson and Shivam could not earn any scrips on the export of subject merchandise, we preliminarily determine that exports of subject merchandise did not benefit under this program. This approach is consistent with Commerce’s practice.¹⁷⁷

Pokarna and Pokarna Limited did not report using this program.

3. North East Industrial and Investment Promotion Policy 2007 (NEIIPP 2007)

Prism Johnson, cross-owned with Antique Marbonite, reported that Ready Mix Concrete (RMC), a division of Prism Johnson, received non-recurring (*i.e.*, capital investment subsidy) and recurring (*i.e.*, excise duty exemption and CENVAT refund) benefits for the production of non-subject merchandise under the NEIIPP 2007.¹⁷⁸ Effective from April 1, 2007, the scheme was implemented to boost investment in the states of the North Eastern Region.¹⁷⁹ Prism Johnson stated that the benefits received under the program were for the investment made in a plant established in Guwahati that manufactures readymix concrete.¹⁸⁰

Prism Johnson submitted a copy of the program’s policy, RMC’s application to receive benefits, and grant letter addressed to RMC.¹⁸¹ The application specified the types of plant and machinery in which the investment was made.¹⁸² Prism Johnson stated that the plant and machinery specified in the application are capable of manufacturing readymix concrete products only.¹⁸³ We noted, in the approval letter from the government, that the assistance was granted specifically

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ See Antique Marbonite IQR at 13 and 40; *see also* Prism Johnson IQR at 40. Antique Marbonite’s experience under the MEIS is proprietary information. See Antique Marbonite Preliminary Calculations for more information.

¹⁷⁵ See Antique Marbonite IQR at 41, 42, and Exhibit CVDA-18.

¹⁷⁶ See Antique Marbonite IQR at Exhibit CVDA-18.

¹⁷⁷ See *Polytetrafluoroethylene Resin from India: Final Affirmative Countervailing Duty Determination*, 83 FR 23422 (May 21, 2018), and accompanying IDM at Comment 12.

¹⁷⁸ See Prism Johnson IQR at 44-46.

¹⁷⁹ *Id.* at 44; *see also* GOI First SQR at Exhibit 11.

¹⁸⁰ See Prism Johnson IQR at 45.

¹⁸¹ See Prism Johnson IQR at Exhibits CVDP-15, 15.1, -15.2, and -15.3; *see also* Antique Marbonite First SQR at Exhibit CVDP-24.

¹⁸² See Prism Johnson IQR at Exhibits CVDP-15 and 15.2.

¹⁸³ *Id.* at 46.

for readymix concrete.¹⁸⁴ Based on the record evidence, we preliminarily find that, at the time of bestowal, the benefits provided to Prism Johnson under the NEIIPP 2007, were tied to the manufacture and sale of non-subject merchandise, within the meaning of 19 CFR 351.525(b)(5), and, therefore are not attributable to the manufacture or sale of subject merchandise. We, thus, preliminarily determine that the grant and exemptions provided under the program are limited to readymix concrete and provided no benefit to subject merchandise. This approach is consistent with Commerce's practice.¹⁸⁵

C. Programs Preliminarily Determined to Be Not Used

GOI Subsidy Programs

1. Duty Free Import Authorization Scheme
2. Subsidies for Export Oriented Units
 - a. Duty Drawback on Fuel Procured from Domestic Oil Companies
 - b. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area
3. Market Development Assistance Scheme
4. Market Access Initiative
5. Focus Product Scheme
6. Status Certificate Program
7. Incremental Exports Incentivisation Scheme

SGOAP Subsidy Programs

1. Subsidies Under the Industrial Investment Promotion Policy (IIPP)
 - a. Grant under the IIPP: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas
 - b. Grant under the IIPP: Reimbursement of Power at the Rate of Rs. 0.75 per Unit
 - c. Grant under the IIPP: 50 Percent Subsidy for Expenses Incurred for Quality Certification
 - d. Grant under the IIPP: 50 Percent Subsidy on Expenses Incurred in Patent Registration
 - e. Grant under the IIPP: 25 Percent Subsidy on Cleaner Production Measures
 - f. Tax Incentives under the IIPP: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages

¹⁸⁴ *Id.* at Exhibit 15.3.

¹⁸⁵ See, e.g., *Certain Softwood Lumber Products from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 19657 (April 28, 2017), and accompanying PDM at Programs Preliminarily Determined To Be Tied to Non-Subject Merchandise, unchanged in *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017), and accompanying IDM at Programs Determined To Be Tied to Non-Subject Merchandise.

- g. Tax Incentives under the IIPP: 25 Percent Reimbursement on VAT, CST, and State Goods and Services Tax
- h. Tax Incentives under the IIPP: Exemption from the SGAP Non-agricultural Land Assessment
- i. Provision of Goods and Services for Less than Adequate Remuneration (LTAR) under the IIPP: Provision of Infrastructure for Industries Located More than 10 Kilometers from Existing Industrial Estates or Development Areas
- j. Provision of Goods and Services for LTAR under the IIPP: Guaranteed Stable Prices and Reservation of Municipal Water
- 2. Subsidies provided by the APIIC
 - a. APIIC's Provision of Infrastructure

State Government of Tamil Nadu Subsidy Program

- 1. Provision of Quartz for LTAR

State Government of Gujarat Subsidy Program

- 1. Sales Tax Incentives

XII. DISCLOSURE AND PUBLIC COMMENT

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹⁸⁶ Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.¹⁸⁷

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁸⁸ This summary should be limited to five pages total, including footnotes. Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.¹⁸⁹ Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce,

¹⁸⁶ See 19 CFR 351.224(b).

¹⁸⁷ See 19 CFR 351.309(c)(1)(i) and (d)(1).

¹⁸⁸ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁸⁹ See 19 CFR 351.310(c).

1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined. Prior to the date of the hearing, Commerce will contact all parties that submitted case or rebuttal briefs to determine if they wish to participate in the hearing. Commerce will then distribute a hearing schedule to the parties prior to the hearing and only those parties listed on the schedule may present issues raised in their briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.¹⁹⁰ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹⁹¹ on the due dates established above.

¹⁹⁰ See 19 CFR 351.303(b)(2)(i).

¹⁹¹ See 19 CFR 351.303(b)(1).

XIII. CONCLUSION

We recommend that you approve the preliminary findings described above.

☒

☐

Agree

Disagree

10/7/2019

X



Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance