C-533-886
Investigation
POI: 4/1/2017 – 3/31/2018
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November 13, 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: Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Polyester Textured Yarn from India

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I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of polyester textured yarn (yarn) from India, as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The mandatory respondents subject to this countervailing duty (CVD) investigation are JBF Industries Limited (JBF) and Reliance Industries Limited (Reliance).

After analyzing the comments submitted by interested parties, and based on our verification findings, we have made changes to the *Preliminary Determination*, as amended, and the Post-Preliminary Determination.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from interested parties:

[1] *See Polyester Textured Yarn from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 19036 (May 3, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM); *see also Polyester Textured Yarn From India: Amended Preliminary Determination of Countervailing Duty Determination*, 84 FR 27240 (June 12, 2019) (*Amended Preliminary Determination*); and Memorandum, "Post-Preliminary Analysis of Countervailing Duty Investigation of Polyester Textured Yarn from India," dated August 22, 2019 (Post-Preliminary Analysis).

Issues

General Issues

Comment 1: Whether to Revise the All-Others Rate
Comment 2: Whether the New Subsidy Allegations Were Appropriately Initiated
Comment 3: Whether to Countervail the Advanced Authorization (AAP), Duty Drawback (DDB), and Export Promotion of Capital Goods Scheme (EPCGS) Programs
Comment 4: Whether to Countervail the Merchandise Export Incentive Scheme (MEIS) Program
Comment 5: Whether Certain Subsidies Are Tied to Subject Merchandise or Non-Subject Merchandise
Comment 6: Whether Upstream Subsidy Provisions Are Applicable to Subsidies Provided Directly to Mandatory Respondents

GOI Issues

Comment 7: Whether the Government of India (GOI) Failed to Cooperate to the Best of Its Ability

Reliance Issues

Comment 8: Whether the SEZ Import Duty Exemption[2] Is Countervailable
Comment 9: Whether to Recalculate the Benefits from the EPCGS Program and the SEZ Import Duty Exemption Program
Comment 10: Whether to Apply Adverse Facts Available (AFA) to Reliance's Unreported Benefits from the SGOG Electricity Program
Comment 11: Whether to Apply Different Benchmarks in the Calculation of Land Benefits Received by Reliance Under the Gujarat Industrial Development Corporation (GIDC)
Comment 12: State Government of Gujarat (SGOG) Provision of Water for Less Than Adequate Renumeration (LTAR)
Comment 13: Whether the Reliance Verification Report Contains Errors

JBF Issues

Comment 14: Whether JBF Received a Benefit Under the State and Union Territory Sales Tax Incentive Program (State and Union Territory Sales Tax Program)
Comment 15: Whether to Countervail the GOI Policy Lending and GOI Export Financing[3] Programs and Whether to Revise the Calculation of Benefits Received by JBF Under These Programs
Comment 16: Whether to Apply AFA to JBF' Reporting of Subject Merchandise and Whether to Revise the Calculation of Benefits Received Under the DDB Program
Comment 17: Whether to Accept JBF's Ministerial Error Comments
Comment 18: Whether to Accept JBF's Minor Corrections Regarding the AAP Program

[2] Special Economic Zones (SEZ) Programs Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material (SEZ Import Duty Exemption)
[3] GOI Policy Lending to the Polyester Textured Yarn Industry (GOI Policy Lending) and Export Financing from GOI-Controlled Entities (GOI Export Financing).

II. BACKGROUND

A. Case History

On May 3, 2019, Commerce published the *Preliminary Determination*. In the *Preliminary Determination*, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), we aligned the final CVD determination with the final antidumping duty (AD) determination.[4]

From July 15 through July 25, 2019, we conducted verifications at the offices of the GOI, JBF, and Reliance, in accordance with section 782(i) of the Act.[5]

On August 22, 2019, Commerce released the Post-Preliminary Analysis regarding programs alleged in the petitioners' new subsidy allegations.[6] We invited parties to comment on the *Preliminary Determination* and Post-Preliminary Analysis.[7] Between September and October, we received case and rebuttal briefs from Nan Ya Plastics Corporation, America and Unifi Manufacturing, Inc. (collectively, the petitioners),[8] the GOI,[9] JBF,[10] and Reliance.[11] On October 2, 2019, Commerce rejected JBF's and the GOI's untimely requests for a hearing.[12] On October 8, 2019, Commerce also rejected the GOI's case brief, which contained untimely and unsolicited

[4] *See Preliminary Determination*.
[5] *See* Memoranda, "Verification of the Questionnaire Responses of the Government of India" (GOI Verification Report); "Verification of the Questionnaire Responses of JBF Industries Limited" (JBF Verification Report); and "Verification of the Questionnaire Responses of Reliance Industries Limited" (Reliance Verification Report), all dated August 22, 2019.
[6] *See* Post-Preliminary Analysis.
[7] *See* Memorandum, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Case and Rebuttal Briefs," dated August 27, 2019; *see also* Memorandum "Countervailing Duty Investigation of Polyester Textured Yarn from India: Revised Case and Rebuttal Brief Schedule," dated August 29, 2019.
[8] *See* Petitioners' Case Brief, "Polyester Textured Yarn from India: Petitioners' Case Brief," dated September 6, 2019 (Petitioners' Case Brief); *see also* Petitioners' Rebuttal Brief, "Polyester Textured Yarn from India: Petitioners' Rebuttal Brief," dated September 11, 2019 (Petitioners' Rebuttal Brief).
[9] *See* GOI's Case Brief, "Polyester Textured Yarn (C-533-886), POI (04/31/2017 – 03/31/2018)," dated September 6, 2019.
[10] *See* JBF's Case Brief, "CVD Investigation of Polyester Textured Yarn from India (C-533-886): Submission of 'Case Brief' by JBF Industries Limited," dated September 6, 2019 (JBF's Case Brief); *see also* JBF's Rebuttal Brief, "CVD Investigation of Polyester Textured Yarn from India (C-533-886): Submission of 'Rebuttal Brief to Petitioners' Case Brief' by JBF Industries Limited," dated September 11, 2019 (JBF's Rebuttal Brief).
[11] *See* Reliance's Case Brief, "Countervailing Investigation of Polyester Textured Yarn from India: Reliance Industries Limited's Case Brief," dated September 6, 2019 (Reliance's Case Brief); *see also* Reliance's Rebuttal Brief, "Countervailing Investigation of Polyester Textured Yarn from India: Reliance Industries Limited's Rebuttal Brief," dated September 11, 2019 (Reliance's Rebuttal Brief).
[12] *See* Memorandum, "Untimely Requests for a Hearing," dated October 2, 2019; *see also* JBF's Letter, "JBF Industries Limited Request for a Public Hearing," dated July 28, 2019; JBF's Letter, "JBF's 2nd Time (*sic*) Request for a Public Hearing," dated September 19, 2019; GOI's Letter, "Request for Hearing on behalf of GOI," dated September 11, 2019; and Reliance's Letter, "Reliance Industries Limited's Letter in Support of Hearing Request from the Government of India and JBF Industries Ltd.," dated September 24, 2019 (all untimely requests for a hearing).

new factual information (NFI), and requested that the GOI redact the NFI from its submission and refile its case brief.[13] On October 11, 2019, the GOI refiled its redacted case brief.[14]

B. Postponement of Final Determination

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.[15] The revised deadline for the final determination of this investigation was July 10, 2019. In the *Preliminary Determination*, Commerce aligned the final determination of this investigation with the final determination of the companion AD investigation of polyester textured yarn from India, which was September 9, 2019.[16] Subsequently, Reliance and the petitioners filed requests to postpone the deadline for the final determination on the record of the companion antidumping duty investigation.[17] On July 1, 2019, Commerce postponed the deadline of the final determination to November 13, 2019.[18]

C. Period of Investigation

The period of investigation (POI) is April 1, 2017 through March 31, 2018.

D. Scope of the Investigation

The product covered by this investigation is yarn from India. For a full description of the scope of this investigation, *see* the accompanying *Federal Register* notice at Appendix I.

III. SUBSIDIES VALUATION

A. Allocation Period

For the preliminary determination, Commerce calculated the 8-year allocation period to be April 1, 2009 through March 31, 2018. However, this allocation period is nine years, including the POI. Though Commerce made no changes to, and interested parties raised no issues in their case

[13] *See* Commerce's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Rejection of New Factual Information," dated October 8, 2019; *see also* Memorandum, "Reject and Remove Document from the Record," dated October 8, 2019.
[14] *See* GOI's Refiled Case Brief, "Polyester Textured Yarn (C-533-886), POI (04/31/2017 – 03/31/2018)," dated October 11, 2019 (GOI's Case Brief).
[15] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.
[16] *See Preliminary Determination* at "Alignment."
[17] *See* Reliance's Letter, "Antidumping Duty Investigation of Polyester Textured Yarn from India – Request for Postponement of Final Determination and Provisional Measure Period," dated June 13, 2013; *see also* Petitioners' Letter, "Polyester Textured Yarn from India and China – Petitioners' Request to Extend the Antidumping Duty Final Determination," June 18, 2019.
[18] *See Polyester Textured Yarn from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 84 FR 31301 (July 1, 2019).

briefs regarding the allocation period or the allocation methodology used in the *Preliminary Determination* and Post-Preliminary Analysis, we have corrected the allocation, or average useful life (AUL), period to be April 1, 2010 through March 31, 2018 in the final determination. Thus, we removed from our final calculations any benefits allocated to the fiscal year 2009-2010. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination* and Final Calculation Memoranda.[19]

B. Attribution of Subsidies

Commerce made no changes, and interested parties raised no issues in their case briefs regarding, the methodology underlying our attribution of subsidies used in the *Preliminary Determination* and Post-Preliminary Analysis. For a description of the methodologies used for this final determination, *see* the PDM[20] and the Final Calculation Memoranda.

C. Denominators

Interested parties raised no issues in their case briefs regarding the denominators used in the *Preliminary Determination* and Post-Preliminary Analysis and Commerce made no changes to those denominators. For a description of the denominators used for this final determination, *see* the PDM[21] and the Final Calculation Memoranda.

D. Loan Interest Rate Benchmarks and Discount Rates

Interested parties raised no issues in their case briefs regarding the loan interest rate benchmarks and discounts rates used in the *Preliminary Determination* and Post-Preliminary Analysis and Commerce made no changes to those benchmarks and rates. For a description of the loan interest rate benchmarks and discount rates used for this final determination, *see* the PDM[22] and the Final Calculation Memoranda.

IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall select from "facts otherwise available" if: (1) necessary information is not on the record; or (2) 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)

[19] *See* the PDM at 5-6; *see also* Memoranda, "Final Determination Calculations for JBF," dated concurrently with this memorandum (JBF Final Calculation Memorandum); "Final Determination Calculations for Reliance," dated concurrently with this memorandum (Reliance Final Calculation Memorandum) (together, Final Calculation Memoranda), and "Countervailing Duty Investigation of Polyester Textured Yarn from India: Final Determination Calculation of All Others' Rate," dated concurrently with this memorandum (All Others Final Calculation Memorandum).
[20] *See* PDM at 5-6.
[21] *Id*.
[22] *Id.*

significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the CVD investigation, a previous administrative review, or other information placed on the record.[23] When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."[24] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[25]

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[26] Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[27] It is Commerce's practice to consider information to be corroborated if it has probative value.[28] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[29] However, the SAA emphasizes that Commerce need not prove that the selected facts are the best alternative information.[30] Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.[31]

Finally, under the section 776(d) of the Act, when using an adverse inference when selecting from the facts otherwise available, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.[32] The Act also makes clear that, when

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[23] *See* 19 CFR 351.308(c).
[24] *See, e.g., Drill Pipe from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 4275 (August 4, 2013), and the accompanying Issues and Decision Memorandum (IDM) at "Use of Facts Otherwise Available and Adverse Inferences;" *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909 (February 23, 1998).
[25] *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) at 870.
[26] *See* 19 CFR 351.308(d).
[27] *See* SAA at 870.
[28] *Id*.
[29] *Id*. at 869.
[30] *Id*. at 869-870.
[31] *See* section 776(c)(2) of the Act.
[32] *See* section 776(d)(1) of the Act.

selecting from the facts otherwise available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[33]

Commerce relied on facts available, including AFA, for several findings in the *Preliminary Determination* and the Post-Preliminary Analysis. For a description of these decisions, *see* the PDM and the Post-Preliminary Analysis.[34] Except as discussed below with regards to Reliance's SGOG electricity duty exemptions, Commerce has not made any changes to its decisions in the *Preliminary Determination* and the Post-Preliminary Analysis to use facts otherwise available and AFA. For further discussions of these determinations regarding the GOI, JBF, and Reliance, see Comments 7, 16, and 10, respectively.

V. ANALYSIS OF PROGRAMS

We have made changes to our *Preliminary Determination* and the Post-Preliminary Analysis with respect to the methodology used to calculate the subsidy rates for certain programs used by JBF and Reliance. For further details, *see* the specific program section below and the Final Calculation Memoranda. For the descriptions, analyses, and calculation methodologies of these programs, *see* the PDM. Interested parties raised issues regarding several of these programs in their case briefs, as discussed below. The final program rates for the mandatory respondents are identified below.

A. Programs Determined to Be Countervailable

1. AAP, also known as Advance License Program

As discussed in Comment 3, we made no changes to the *Preliminary Determination* with regard to the countervailability of this program. JBF's final subsidy rate continues to be 19.22 percent *ad valorem*.

2. DDB Program

As discussed in Comment 3, we made no changes to the *Preliminary Determination* with regard to the countervailability of this program. However, as the result of verification, we have modified our calculation of the subsidy rate for JBF and for Reliance. As discussed in Comment 16, JBF's final subsidy rate is now *de minimis*.[35] Reliance's final subsidy rate continues to be 1.98 percent *ad valorem*. The details of these modified calculations are detailed in the Final Calculation Memoranda.

[33] *See* section 776(d)(3) of the Act.
[34] *See* PDM at 10-13; *see also* Post-Preliminary Analysis at 5-6.
[35] *See* JBF Verification Report.

3. EPCGS

As discussed in Comment 3, we changed our methodology for calculating Reliance's subsidy rate under this program from the *Preliminary Determination* based on our verification findings. As a result, Reliance's final subsidy rate changed to 0.35 percent *ad valorem*.[36] JBF's final subsidy rate continues to be *de minimis*.

4. MEIS[37]

As discussed in Comment 4, we made no changes to the *Preliminary Determination* with regard to the countervailability of this program. However, at verification, Reliance presented a different value for its benefits under this program as part of a minor correction.[38] This correction did not have an impact on Reliance's MEIS subsidy rate. Reliance's final subsidy rate continues to be 0.20 percent *ad valorem*.[39] JBF's final subsidy rate continues to be to be 1.01 percent *ad valorem*.[40]

5. SEZ Import Duty Exemption

As discussed in Comment 9, we changed our methodology for calculating Reliance's subsidy rate under this program from the *Preliminary Determination*. As a result, Reliance's final subsidy rate for the SEZ Import Duty Exemption changed to 1.47 percent *ad valorem* [41]

6. State and Union Territory Sales Tax Program

As discussed in Comment 14, we made no changes to the *Preliminary Determination* with regard to the countervailability of this program. JBF's final subsidy rate continues to be 0.06 percent *ad valorem*.[42]

7. SGOG Subsidy Programs
    a. SGOG Land for LTAR
    b. SGOG Water for LTAR
    c. SGOG Electricity Duty Exemption

As discussed in Comment 11, we are making no changes to the benchmarks for SGOG Land for LTAR. Thus, Reliance's subsidy rate for this program continues to be 0.12 percent *ad valorem*.[43] As discussed in Comment 10, we are applying facts available to the SGOG Electricity Duty Exemption program. As a result, Reliance's final subsidy rate for this program is now 0.03 percent *ad valorem*.[44] As discussed in Comment 12 we have not changed our methodology for

[36] *See* Reliance Final Calculation Memorandum.
[37] This program was formerly called the Focus Product Scheme (FPS).
[38] *See* Reliance Verification Report at VE-1.
[39] *See* Reliance Final Calculation Memorandum.
[40] *See* JBF Final Calculation Memorandum.
[41] *See* Reliance Final Calculation Memorandum.
[42] *See* JBF Final Calculation Memorandum.
[43] *See* Reliance Final Calculation Memorandum.
[44] *Id*.

calculating a subsidy rate for the SGOG Water for LTAR program from the *Preliminary Determination*. Reliance's final subsidy rate for this program continues to be 0.01 percent *ad valorem*.

8. GOI Policy Lending

As discussed in Comment 15, we made no changes to the Post-Preliminary Analysis with regard to the countervailability of this program. However, we have modified our calculation of the subsidy rate for JBF to correct a clerical error. As a result, JBF's final subsidy rate continues to be 0.71 percent *ad valorem*.[45] Reliance's final subsidy rate continues to be non-measurable.

9. GOI Export Financing

As discussed in Comment 15, we made no changes to the Post-Preliminary Analysis with regard to the countervailability of this program. JBF's final subsidy rate continues to be 0.83 percent *ad valorem*.[46] Reliance's final subsidy rate continues to be non-measurable.

B. Programs Determined to Be Not Countervailable or Not Conferring a Measurable Benefit

We made no changes to the *Preliminary Determination* and Post-Preliminary Analysis with respect to the non-countervailability or measurability of the following programs. For a description and analysis of the programs, *see* the PDM and Post-Preliminary Analysis.

1. Technology Upgradation Fund Scheme (TUFS)[47]
2. Focus Product Scheme
3. Status Holders Incentive Scrip Scheme
4. Income Tax Deduction for Research and Development Expenses
5. SEZ Income Tax Exemption Scheme (10A)
6. Income Tax Exemption Scheme (80-IA)
7. State Government of Uttar Pradesh (SGUP) Value Added Tax (VAT) Refund

C. Programs Determined Not to Be Used

We made no changes to the *Preliminary Determination* and the Post-Preliminary Analysis with regard to the programs listed below determined not to be used by the mandatory respondents.

National Programs:

1. Duty Free Import Authorization Scheme
2. Incremental Export Incentive Scheme
3. SEZ Programs

[45] *See* JBF Final Calculation Memorandum.
[46] *Id.*
[47] Comments were filed regarding TUFS; however, as the program does not confer a measurable benefit, the issues regarding this program are moot. *See* Reliance's Case Brief at 8-9.

a. Exemption from Stamp Duty All Transactions and Transfers of Immovable Property within the SEZ
b. Discounted Land Fees in an SEZ

8. Subsidies for Export Oriented Units
   a. Duty-Free Imports of Goods, Including Capital Goods and Raw Materials
   b. Reimbursement of Central Sales Tax Paid on Goods Manufactured in India
   c. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured through a Domestic Tariff Area
   d. Duty Drawback on Furnace Oil Procured from Domestic Companies
9. Market Access Initiative
10. Market Development Assistance Scheme
11. GOI Loan Guarantees
12. Renewable Energy Certificate
13. Amended Technology Upgradation Fund Scheme
14. Basic Customs Duty Reductions

State Programs:

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

VI. ANALYSIS OF COMMENTS

Comment 1: Whether to Revise the All-Others Rate

Petitioners' Case Brief[48]

- In the *Preliminary Determination*, Commerce calculated the all-others' rate using the weighted-average of the company-specific subsidy rates using each company's reported sales value for total sales. At the time, Reliance had not reported a public sales value for its sales of subject merchandise during the POI. Instead, Commerce relied on Reliance's sales value for total sales, which represents 99 percent of both JBF's and Reliance's sales values combined.

[48] *See* Petitioners' Case Brief at 5-7.

- During verification, Reliance provided a publicly-ranged sales value for its sales of subject merchandise during the POI. Reliance's publicly-ranged sales value represents 77 percent of the combined sales value whereas JBF's publicly reported sales value represents the remaining 23 percent. Reliance's publicly-ranged sales value is more representative of the actual weighted average based on Reliance's proprietary sales values than is the simple average of the respondents' subsidy rates.
- Commerce should recalculate the all-others rate by weight averaging Reliance's and JBF's rates using the publicly available values for those companies' sales of subject merchandise during the POI.

Reliance's Rebuttal Brief[49]

- Commerce should calculate the all-others rate in the manner suggested by the petitioners.

Commerce's Position: We agree with the petitioners and Reliance. In calculating the all-others rate, when the sales values on the record are business proprietary information (BPI), we compare the simple average of the subsidy rates to the weighted average of the rates using the publicly-ranged sales values of subject merchandise as the weighting factor. We select the rate that is closer to the BPI weighted-average rate, so as not to disclose BPI information. In the Ministerial Error Memo, however, we noted that Commerce did not have the publicly-ranged subject merchandise sales values for Reliance necessary to do this comparison.[50] Thus, we preliminary elected to use the totals sales figures, which were public for both companies.[51] During verification we obtained the missing publicly-ranged subject merchandise sales values.[52] Thus, for the final determination, we utilized the public information now on the record regarding sales of subject merchandise for both companies in calculating the all-others rate.[53]

Comment 2: Whether the New Subsidy Allegations were Appropriately Initiated

GOI's Case Brief[54]

- Article 11.2 of the Agreement on Subsidies and Countervailing Measures (ASCM) requires that an allegation of countervailable subsidies include sufficient evidence of the existence of a subsidy, injury, and a causal link between the subsidized imports and alleged injury.
- Article 11.3 of the ASCM requires that an investigating authority review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify initiation of an investigation.
- The petitioners have not established that the alleged programs constitute countervailable subsidies, are specific within the meaning of the ASCM, and confer a benefit to the recipient. The petitioners have not established that the authorities administering the alleged programs constitute public bodies within the meaning of ASCM.

[49] *See* Reliance's Rebuttal Brief at 2.
[50] *See* Memorandum, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Allegations of Significant Ministerial Errors in the Preliminary Determination," dated June 6, 2019 (Ministerial Error Memo) at 5-6.
[51] *Id*.
[52] *See* Reliance Verification Report at VE-1.
[53] *See* All Others Final Calculation Memorandum.
[54] *See* GOI's Case Brief at 26-27.

- The allegations concerning the "GOI Policy Lending to the Polyester Textured Yarn Industry," "Export Financing from GOI-Controlled Entities," and "Basic Customs Duty Reductions" are without merit and are not in line with the existing provisions of the ASCM. Accordingly, the GOI disputes that the investigation may be extended to the new subsidy allegations.
- Commerce correctly determined that none of the mandatory respondents used the Basic Customs Duty Reduction program during POI.

Petitioners' Rebuttal Brief[55]

- The GOI's claim that the petitioners failed to properly support their new subsidy allegations is incorrect.
- Commerce may investigate "what *appears* to provide a countervailable subsidy" based on reasonably available information.
- Information contained in JBF's and Reliance's initial questionnaire responses indicates that they are benefiting from additional subsidies.
- Commerce should reject the GOI's arguments and continue to apply AFA in determining, with respect to the new subsidy allegations, that the GOI provides financial contributions and that the programs are specific, based on record evidence.

Commerce's Position: We disagree with the GOI's argument that the petitioners' new subsidy allegations were without merit, based on conjectures, and were not sufficient for initiation. We analyzed the new subsidy allegations and found that the evidence the petitioner presented met the requirements of section 702 of the Act with regard to all five of the programs alleged.[56]

We are conducting this investigation pursuant to U.S. CVD law, specifically the Act and Commerce's regulations. To the extent that the GOI is raising arguments concerning certain provisions of the ASCM in this proceeding, the U.S. CVD law fully implements the United States' obligations under the ASCM. As we explained in *Steel Flanges from India*, Commerce has conducted this investigation in accordance with the Act and Commerce's regulations, and U.S. law is fully compliant with our WTO obligations:

> {O}ur CVD laws are consistent with our WTO obligations. Moreover, it is the Act and {Commerce's} regulations that have direct legal effect under U.S. law, and not the WTO Agreements or WTO reports. In this regard, WTO reports "do not have any power to change U.S. law or to order such a change."[57]

Therefore, because our decisions here are consistent with the Act and our regulations, they are also consistent with our obligations under the ASCM.

Comment 3: Whether to Countervail the AAP, DDB, and EPCGS Programs

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[55] *See* Petitioners' Rebuttal Brief at 50-52.

[56] *See* Memorandum, "Decision Memorandum on New Subsidy Allegations," dated April 8, 2019.

[57] *See Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Steel Flanges from India*) and accompanying IDM at Comment 1 (internal citations omitted).

GOI's Case Brief

- Commerce is required to calculate the benefits on exported product or subject merchandise only to the extent the duty exempted on imports is in excess of the inputs consumed in the production of the exported product. Therefore, Commerce must reconsider its calculation of the AAP, DDB, and EPCGS benefits. In this context, the GOI refers to the principles set out in DS523/R; United States – Countervailing Measures On Certain Pipe And Tube Products From Turkey.[58]

AAP[59]

- A program does not confer a subsidy if it provides exemption from duties or taxes born by the like product when destined for domestic consumption or if the remission of duties or taxes is not in excess of those which have accrued.
- Commerce incorrectly determined that there is no effective and reasonable verification system in place in India. India has an effective control mechanism at every stage of the process.
- JBF claimed that it received AAP benefits for drawn texturized yarn, texturized yarn, and filament yarn, which are not subject merchandise. Therefore, Commerce has incorrectly determined a program subsidy rate of 19.22 percent for JBF.
- Commerce stated that, pursuant to 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, it will be attributed to only that product or market. Because this benefit is tied to non-subject merchandise, Commerce should reconsider whether it should levy a subsidy rate for JBF's AAP benefits.
- Commerce erred in not considering the submissions made by JBF as minor corrections with regard to AAP benefits, stating that the submission is "New Factual Information."

DDB[60]

- Unless it can be shown that the drawback of indirect taxes or import charges are in excess of the amount of such taxes or charges actually levied on inputs, this program cannot be considered countervailable.[61]
- The GOI described its control mechanism on pages 19-62 and in Exhibit 6 of its initial questionnaire response.

EPCGS[62]

- Because there are no restrictions on the goods manufactured by imported machines and parts, this scheme is not "specific" as defined under Article 2 of the ASCM and, thus, cannot be considered countervailable as defined in Article 1 of the ASCM.
- Exemptions under the EPCGS fall within the scope of Annex I (i) of the ASCM, which permit remission or drawback of import charges that are not in excess of the value accrued.

[58] *See* GOI's Case Brief at 16 (citing Appellate Body Report, United States – Countervailing Measures on Certain Pipe and Tube Products from Turkey, WT/DS523/R (adopted Dec. 18, 2018)).
[59] *See* GOI's Case Brief at 12-14.
[60] *Id*. at 14-15.
[61] *Id*. (citing to the European Union Panel Report, "Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan," May 16, 2018; and to India's Customs, Central Excise Duties & Service Tax Rules, 1995).
[62] *Id*. at 15-17

- Because they are critical to the production of export products, the capital goods imported under the EPCGS fall within the meaning of Annex I(g) of the ASCM, which permits certain indirect tax exemptions.
- Commerce incorrectly determined that there is no effective and reasonable verification system in place in India. India has an effective control mechanism at every stage of the process.
- Commerce is required to calculate the benefits on exported product or subject merchandise only to the extent the duty exempted on imports is in excess of the inputs consumed in the production of the exported product. Therefore, Commerce must reconsider its calculation of EPCG benefits.

JBF's Case Brief[63]

- Commerce should reconsider its decision on the AAP and DDB program benefits calculated for JBF to conform with 19 CFR 351.519(a)(1)(i) and Annex II(I)(1) of the ASCM.
- Indirect tax rebate and drawback schemes may only constitute an export subsidy if the benefit received from the scheme is in excess of the taxes or charges actually levied on the inputs that are consumed in the production of the exported product.
- Commerce's calculation of AAP benefits is incorrect because only a portion of the imported raw materials are consumed in producing inputs for subject merchandise.

Petitioners' Rebuttal Brief[64]

AAP and DDB

- The GOI does not maintain an effective and reasonable verification system for tracking inputs consumed in the production of exported products for the AAP and DDB programs.
- The GOI failed to adequately respond to Commerce's questionnaires requesting information regarding the AAP and DDB program operations and verification system.
- Commerce has determined in several previous cases that the AAP and DDB programs are countervailable pursuant to 19 CFR 351.519(a)(4) due to the GOI's failure to demonstrate that it has implemented an effective enforcement and verification system.[65]
- Commerce properly determined that the GOI's explanations are insufficient and should continue to find in the final determination that both programs are countervailable.

EPCGS

- The GOI is incorrect to challenge Commerce's decision to countervail the EPCGS program.

[63] *See* JBF's Case Brief at 6-7.

[64] *See* Petitioners' Rebuttal Brief at 13-18, 23-25, and 26-29.

[65] *See* Petitioners' Rebuttal Brief at 14 (citing, *e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 6634 (February 10, 2010) and accompanying IDM at 5-8; Certain New Pneumatic Off-the-Road Tires from India: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, 82 FR 4848 (January 17, 2017) and accompanying IDM at 28; *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination*, 83 FR 3122 (January 23, 2018) (*Fine Denier from India*) and accompanying IDM (*Fine Denier from India* IDM) at Comment 1; and *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) and accompanying IDM at Comment 2).

- The GOI previously stated in its questionnaire responses that the EPCGS program provides a partial exemption of customs duties incurred upon the importation of capital goods, subject to an obligation to attain export sales over a six-year period that have six times the value of the duty saved. As capital equipment is not consumed in the production of the exported product, EPCGS does not qualify as a permissible scheme under 19 CFR 351.519(a)(4).
- Further, the GOI's claim that a verification system is in place is incorrect because it would be unable to verify the consumption of capital equipment in the production of an export product where capital goods are not incorporated in the re-exported product.
- Thus, as in previous determinations, Commerce should continue to find that EPCGS is a countervailable subsidy.

Commerce's Position: As explained in Comment 2, Commerce has conducted this investigation in accordance with the Act and Commerce's regulations, which are fully compliant with our WTO obligations. Thus, the GOI's WTO-related arguments have no merit.

We disagree with the GOI that JBF's AAP benefits are tied to non-subject merchandise. In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we will attribute that subsidy to only that product or market. However, the burden of producing relevant evidence belongs with the respondents, not Commerce.[66] JBF did not provide evidence supporting its assertion that it only used the AAP for the export of non-subject merchandise. In fact, JBF concedes that,

> "{t}he Directorate General of Foreign Trade (DGFT) issued the notifications from time to time to notify the products which are eligible to avail the benefit of advance authorization. The Product of our Company i.e. Polyester Textured Yarn (Subject Merchandise under Investigation) falls under this notification. Therefore, we are eligible to avail the benefit of advance authorization on the basis of export."[67]

We also disagree with JBF that only a portion of the imported raw materials is consumed in producing inputs for subject merchandise. All of JBF's imported raw materials for which it reported benefits are inputs to subject merchandise.[68] JBF also did not provide any evidence to support the claim that the inputs for which it received benefits were used to produce non-subject merchandise. Thus, we reject JBF's request that we recalculate its benefits received under the AAP program and the GOI's argument that the AAP program is tied to non-subject merchandise.

[66] *See Fine Denier from India* IDM at 56.
[67] *See* JBF's Letter, "CVD Investigation of Polyester Textured Yarn from India: Revised Response for CVD Section III," dated March 5, 2019 (JBF IQR) at 14.
[68] *See* JBF's Letter, "CVD Investigation of Polyester Textured Yarn from India: Response for CVD Second Supplemental Questionnaires," dated March 27, 2019 (JBF March 27 SQR) at Exhibit-CVD-JBF-2S-04; *see also* JBF IQR at 14-15 (listing the inputs of subject merchandise for which JBF received a benefit under the AAP program).

Further, we agree with the petitioners that the GOI has not identified any record information that would contradict our findings in the *Preliminary Determination*, and previous investigations,[69] with regard to the AAP, DDB, and EPCGS programs.[70] Specifically, we disagree with the GOI's claim that it maintains an adequate control or verification system in place for the AAP, DDB, EPCGS programs such that these programs would not be found to provide a countervailable benefit within the meaning of 19 CFR 351.519(a)(4). As discussed in the *Preliminary Determination* with regard to the AAP and DDB programs, 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.[71] Therefore, we continue to find the AAP, DDB, and EPCGS programs are countervailable for the final determination.

Comment 4: Whether to Countervail the MEIS Program

Reliance's Case Brief[72]

- Subject merchandise is not included in the list of eligible products under the laws that govern the administration of the program.
- Reliance provided sample scrips and licenses at verification that list the products it must export in order to receive the benefit. Commerce noted in Reliance's verification report that it "observed that this program is tied to non-subject merchandise."
- The GOI bestowed MEIS provisions pursuant to its legal eligibility requirements, which means that at the time scrips were bestowed, the GOI was aware of the specific products for which Reliance must export to receive benefits. The subject merchandise was not listed as an eligible product; therefore, the GOI was aware that benefits from MEIS would not support the production of subject merchandise.

GOI's Case Brief[73]

- Commerce incorrectly determined subsidy rates with regard to the MEIS.
- MEIS is in line with provisions of paragraph (g) and paragraph (h) of Annex I and with provisions of Annex II of the ASCM. However, the subject merchandise is out of the MEIS scope, and there is no MEIS authorization issued to any of the mandatory respondents.
- Commerce correctly noted in Reliance's verification report that the benefit is tied to non-subject merchandise. Therefore, these scrips cannot be earned on exports of subject merchandise, and the duty considered under MEIS should be removed.

[69] *See, e.g.*, *Fine Denier from India* and *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 23765 (May 23, 2019).
[70] *See* PDM at 13-21 (explaining the countervailability of the AAP, DDB, and EPCGS programs).
[71] *See* PDM at 13-15 (discussing the AAP program) and 15-16 (discussing the DDB program).
[72] *See* Reliance's Case Brief-at 7-8.
[73] *See* GOI's Case Brief at 21-22.

JBF's Case Brief[74]

- Commerce should recalculate the MEIS program to only include the benefit JBF received from the export of subject merchandise.
- The purpose of 701(a)(2) of the Act is to offset the effects of subsidies provided for subject merchandise. Commerce's calculation of subsidy benefits is not related to JBF's export of subject merchandise and is therefore contrary to the intention of the statute.

Commerce's Position: We continue to find that the MEIS program is countervailable. We normally attribute domestic subsidies to all products sold by a firm. However, 19 CFR 351.525(b)(5) provides that if a subsidy is tied to a certain product, we will attribute that subsidy to that product only. The burden of producing relevant evidence belongs with the respondents, not Commerce.[75] Whether a subsidy is tied to a particular product is a fact-specific inquiry in each case. Further, as the *CVD Preamble* explained,

> we are extremely sensitive to potential circumvention of the countervailing duty law. We intend to examine all tying claims closely to ensure the attribution rules are not manipulated to reduce countervailing duties. If the Secretary determines as a factual matter that a subsidy is tied to a particular product, then the Secretary will attribute that subsidy to sales of that particular product, in accordance with (b)(5). If subsidies allegedly tied to a particular product are in fact provided to the overall operations of a company, the Secretary will attribute the subsidy to sales of all products by the company.[76]

In our verification report, we noted our observation that this program appeared to be tied to non-subject merchandise.[77] However, after considering the totality of the record evidence, we do not find the MEIS program to be tied to non-subject merchandise. The respondents submitted conflicting and insufficient information to demonstrate that this program is tied to non-subject merchandise.

The respondents argue that subject merchandise is not included in the list of eligible products under the laws that govern the administration of the program; thus, the program is tied to non-subject merchandise. The GOI provided sections of the Foreign Trade Policy (FTP) of 2015-2020, which stated that the eligible products for MEIS are listed in Appendix 3B. However, the GOI did not provide this appendix, and the FTP did not list subject merchandise in the "Ineligible Categories under MEIS" section.[78] Reliance, in its questionnaire response, provided a copy of Appendix 3B, which did not list the subject merchandise.[79] Furthermore, at verification, Reliance provided a copy of the FTP documents, including the appendices, apparently

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[74] JBF's Case Brief at 15.
[75] *See Fine Denier from India* IDM at 56.
[76] *See Countervailing Duties; Final Rule*, 63 FR 56348 (November 25, 1998) (*CVD Preamble*) at 65400.
[77] *See* Reliance Verification Report at 7.
[78] *See* GOI's Letter, "Polyester Textured Yarn (C-533-886), POI (4/1/2017-3/31/2018), Initial Questionnaire Response to Section-II on Behalf of the Government of India," March 4, 2019 (GOI IQR) at 67 and Exhibit 13.
[79] *See* Reliance's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Reliance Industries Limited Section III General Questionnaire Response, dated March 4, 2019 (Reliance IQR) at Exhibit MEIS-01.

corroborating the information presented in the company's questionnaire response.[80] However, JBF conceded that it used the benefits of this scheme for "other products manufactured . . . (which may be an intermediate product for subject merchandise *i.e.* yarn)."[81] We note that Reliance used MEIS benefits in relation to intermediate products as well.[82] In addition to providing applications and licenses showing that it had used the benefits for the export of upstream products, JBF also provided three public notices dated October 29, 2015, May 4, 2016, and August 21, 2017, which included what appeared to be updates to the list of eligible products in Appendix 3B.[83] We note that this document included products not listed in the Appendix 3B from Reliance's questionnaire response. Furthermore, the copy of the FTP that the GOI provided was updated to June 30, 2015, which predates the public notices that JBF submitted in its questionnaire responses.[84] Therefore, Commerce concludes that the GOI did not provide the most updated regulations regarding this program.

Thus, we disagree with the respondents and find that they did not provide sufficient evidence supporting the claim that the benefits are tied to non-subject merchandise and cannot be transferred or used in the production or sale of subject merchandise. Moreover, based on inconsistencies in the record, we do not believe that the GOI provided a complete record of all legislation relevant to the MEIS (*e.g.*, amendments, public notices, and revisions). Furthermore, while the mandatory respondents provided some additional policy documents outlining eligible products, these documents each included product lists that differed from one another. The record evidence shows that both JBF and Reliance received benefits under this program and that both companies earned these licenses for the production of inputs to subject merchandise. Therefore, without a full accounting of all the relevant legislation regarding this program and a comprehensive, up-to-date list of eligible products from the respondents, including the GOI, we cannot reliably determine that the MEIS program is tied to non-subject merchandise or even what products are eligible for this benefit.

Comment 5: Whether Certain Subsidies Are Tied to Subject or Non-Subject Merchandise

Reliance's Case Brief

SEZ programs[85]

- The application and approval documents indicate the products that Reliance must produce in order to operate in the SEZ. None of these products are subject merchandise.
- At the time of bestowal, the GOI did not intend for benefits under the SEZ program to be applied to the production of subject merchandise; therefore, the SEZ benefits are not tied to Reliance's production of subject merchandise.

[80] *See* Reliance Verification Report at 7-8.
[81] *See* JBF's Letter, "CVD Investigation of Polyester Textured Yarn from India: Response for CVD Supplemental Questionnaire," dated March 7, 2019 (JBF's March 7 SQR) at 13-14.
[82] *See* Reliance Verification Report at Exhibit VE-10.
[83] *Id*. at Exhibit JBF-CVD-S-13 through 15.
[84] *See* GOI IQR at Exhibit 13.
[85] *See* Reliance's Case Brief at 7.

State Government of Gujarat Programs[86]

- Reliance does not produce the subject merchandise in Gujarat, and it was impossible for Reliance to use any of the benefits for the production of subject merchandise. These subsidies can only be tied to specific products produced in Gujarati plants.
- The SGOG authorities, at the time of bestowal, only intended for the land and utilities that Reliance purchased from the SGOG to be used to produce non-subject merchandise.
- The machinery used to produce such products cannot be used to produce and process subject merchandise, and Reliance has maintained that the subject merchandise can only be produced at its Silvassa plant.

TUFS[87]

- Appendix I of the underlying loan agreement shows that the loan was used to purchase equipment for the production of non-subject merchandise *(i.e.*, looms) in a facility that does not produce subject merchandise.
- Looms are used to produce fabric, which is a value-added product and not an input of subject merchandise.
- The application and approval documents show that the GOI intended for the TUFS benefits to be used in the production of Reliance's non-subject merchandise; therefore, any benefit Reliance received under this program is tied to non-subject merchandise and is not countervailable.

GOI's Case Brief[88]

- The GOI and the mandatory respondents in their response have informed Commerce that there is no manufacturing unit of subject merchandise in the SEZ location. Therefore, Commerce should not consider these exemptions countervailable.

Petitioners' Rebuttal Brief[89]

- Commerce determines whether a subsidy is tied to a program by examining "the purpose of the subsidy based on information available at the time of bestowal," not how a firm actually uses the subsidy. Thus, for each program, Commerce must evaluate the purpose of the subsidy at the time it was bestowed and may attribute subsidies in a variety of manners based on the nature of the subsidy.
- Reliance's SEZ and SGOG benefits are not tied to the production of any specific product. Reliance's contention that subsidies cannot be countervailed if they are not tied to subject merchandise is based on an incorrect recitation of the law.

SEZ Benefits

- Reliance's argument that SEZ programs are not countervailable because they are not tied to subject merchandise is incorrect. A subsidy is not countervailable if the respondent demonstrates that a subsidy is tied to a particular non-subject product. Thus, Reliance's argument that subsidies under the SEZ programs are not tied to subject merchandise is insufficient to prove the subsidies are not countervailable.

[86] *Id.* at 9-10.
[87] *Id.* at 8-9.
[88] *See* GOI's Case Brief at 22.
[89] *See* Petitioners' Rebuttal Brief at 8-13.

- Reliance mischaracterized the "bestowal of benefits" documents referenced in its case brief. As Commerce confirmed at verification, the "bestowal of benefits" documents did not bestow benefits to Reliance based on production of any product, but rather bestowed benefits to Reliance based on its facilities location in an SEZ and agreement to meet certain export requirements. The verification report's reference to documents, which cite certain products, authorizes Reliance to produce certain products at its facility, but do not make Reliance's receipt of benefits contingent upon the production of those products.
- Therefore, Commerce should affirm its preliminary determination regarding SEZ benefits.

SGOG Benefits

- Reliance's argument that the SGOG programs are not countervailable because they are not tied to subject merchandise is incorrect as a matter of law. In order for Commerce to find that the SGOG program is not countervailable, Reliance must demonstrate that the SGOG benefits are tied to non-subject merchandise.
- Further, it is Commerce's practice to attribute subsidies received under state and regional programs to total sales, inclusive of subject and non-subject merchandise.
- Reliance has not demonstrated that SGOG benefits are tied to a particular non-subject product. Thus, Commerce should affirm its preliminary determination regarding SGOG benefits.

Commerce's Position: We disagree with Reliance and the GOI's arguments that the SEZ and SGOG programs are not countervailable because the factories that receive these benefits do not produce subject merchandise. We normally attribute domestic subsidies to all products sold by a firm. However, 19 CFR 351.525(b)(5) provides that if a subsidy is tied to a certain product, we will attribute that subsidy to only that product. In making this determination, we analyze the purpose of the subsidy based on information available at the time of bestowal.[90] A subsidy is tied only when the intended use is known to the subsidy provider and so acknowledged prior to, or concurrent with, the bestowal of the subsidy.[91] For example, in determining whether a loan is tied to a particular product, Commerce examines the loan approval documents. Whether a subsidy is tied to a particular product is an inquiry depending on the facts of a particular case.

Consistent with the *CVD Preamble*, we have generally stated that we will not trace how subsides are used by companies but, rather, analyze the purpose of the subsidy based on the information available at the time of bestowal.[92] The courts have previously upheld Commerce's analysis in this regard.[93] Further, as the *CVD Preamble* explains,

> "we are extremely sensitive to potential circumvention of the countervailing duty law. We intend to examine all tying claims closely to ensure the attribution rules are not manipulated to reduce countervailing duties. If the Secretary determines as a factual

[90] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65403 (November 25, 1998).
[91] *Id.*
[92] *See CVD Preamble* at 64 FR 65403.
[93] *See Maverick Tube Corp. v. United States*, Slip Op. 16-16, Consol. Court No. 14-00229 (CIT 2016), *aff'd, Maverick Tube Corp. v. United States*, 857 F.3d 1353 (Fed. Cir. 2017).

> matter that a subsidy is tied to a particular product, then the Secretary will attribute that subsidy to sales of that particular product, in accordance with (b)(5). If subsidies allegedly tied to a particular product are in fact provided to the overall operations of a company, the Secretary will attribute the subsidy to sales of all products by the company".[94]

In regard to the SEZ programs (SEZ Electricity Duty Exemption, SEZ Import Duty Exemption, and the SEZ central sales tax (CST) and VAT exemptions), the eligibility criteria provided by the GOI state that the programs are available to any company that is located within the SEZ and achieves a cumulative positive net foreign exchange earnings within five years from the commencement of production.[95] In its questionnaire responses, the GOI stated, "Any unit manufacturing goods or providing services or both is eligible to receive entitlement under this program."[96] Furthermore, the SEZ rules indicate that project proposals are approved if: (1) the proposal meets the positive net foreign exchange requirements; (2) there is availability of space and infrastructure support; (3) the applicant agrees to meet the environmental and pollution control standards; and (4) the applicant submits proof of residence and income tax returns.[97] Continued operations in an SEZ are contingent upon meeting the positive net foreign exchange earnings requirements within five years. When asked whether the industry or sector in which the applicant operates is taken into account, the GOI in its questionnaire response stated that this was not the case.[98] When asked if any other eligibility criteria is taken into account or whether the authority has any discretion that goes beyond the criteria laid out in the law, the GOI stated that this was not the case.[99] Furthermore, the GOI stated at verification that granting a company approval for establishing a plant within an SEZ is largely dependent upon the project's viability.[100] Thus, the participating Reliance plant is eligible to receive these benefits because of its ability to meet the SEZ net foreign exchange requirement, not because the plant produces specific products.[101] Therefore, Reliance's claim that the bestowal documents "indicate the products that Reliance must produce in order to operate in the SEZ" is inaccurate, as there is no indication in the administering regulations that Reliance is required to produce certain products in order to operate within the SEZ.

In regard to the three SEZ benefits, there is no information on the record indicating that there is an additional application process to receive these benefits. Based on the verification documents, companies located within the SEZ receive certain tax exemptions automatically. For the SEZ Electricity Duty Exemption, SEZ plants or companies are not required to show any further documentation. They simply are not charged any electricity duty.[102] For the SEZ CST and VAT exemptions, companies must provide to their suppliers a form listing the company's VAT and CST ID numbers in order to avoid CST or VAT charges on their purchases of raw materials and

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[94] *Id.* at 63 FR 65400.
[95] *See* GOI Verification Report at 2-3.
[96] *See* GOI IQR at 141.
[97] *Id*. at 141-142.
[98] *Id*. at 144-145.
[99] *Id*. at 145-146.
[100] *See* GOI Verification Report at 2-3.
[101] *See* GOI's IQR at Exhibits 20 and 21.
[102] *See* Reliance's Verification Report at VE-13.

capital goods.[103] There are no other application procedures. Additionally, this form does not ask for any specific product information, but only requires the value of the purchase. For the SEZ Import Duty Exemption, Reliance's commercial invoices note that the purchases are exempt from import duties under the import laws, and the bills of entry note Reliance's SEZ online request number.[104] Therefore, the SEZ program does not require eligible companies to complete another application or identify the products to be manufactured, and there is no indication that these tax exemptions are restricted to certain industries, sectors, or company classifications.

Further, with respect to respondents' argument that Reliance's factories in the SEZ and in Gujarat do not produce subject merchandise, we find that this is an insufficient basis on which to establish that the programs are tied to non-subject merchandise. The issue of tying regional subsidies to the production in a particular region or to a particular factory or mill of a respondent, has previously been raised before Commerce. Our subsidy attribution regulations explicitly rejected the concept that benefits from regional subsidies are tied to the production in that particular region and to the particular factory located in that region.[105] In addition, Commerce does not tie subsidies on a plant- or factory-specific basis.

Reliance's plants within the SEZ and in Gujarat are not separate entities, but are subdivisions of Reliance, as evidenced by the fact that Reliance files its taxes as one corporate entity.[106] Neither the statute nor the regulations provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm.[107] Reliance and the GOI are misguided in concluding that, because subsidies were provided to a plant that does not produce subject merchandise, the subsidies are tied to the production of non-subject merchandise, though the plant is a *division* of a subject merchandise producer *(i.e.*, Reliance).

With respect to the TUFS program, Reliance's arguments are moot, as the benefit conferred is non-measurable and will not have an impact on its CVD rate.

Comment 6: Whether Upstream Subsidy Provisions are Applicable to Subsidies Provided Directly to Mandatory Respondents

Reliance's Case Brief[108]

- Commerce should not find any upstream subsidies (*i.e.*, SEZ, SGOG, TUFS, and MEIS programs) countervailable because Commerce did not allege any upstream subsidies or adequately allege or provide any evidence that the *ad valorem* countervailable subsidy rates for such programs, multiplied by the proportion of the total production costs of the

[103] *Id*.
[104] *Id*.
[105] *See CVD Preamble* at 65404.
[106] *See* Reliance Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Reliance Industries Limited Section III General Questionnaire Response," dated March 4, 2019 (Reliance's IQR) at Exhibit GQ-05.
[107] *See Coated Paper from China* and accompanying IDM at Comment 18; *see also* Final Results and Partial Rescission of Countervailing Duty Expedited Reviews: Softwood Lumber from Canada, 67 FR 67638 (November 5, 2002) and accompanying IDM at Comment 8.
[108] *See* Reliance's Case Brief at 10-12.

subject merchandise accounted for by the input product, are greater than, or equal to, one percent, pursuant to 19 CFR 351.523(a)(iii).

- According to section 771A(a)(1) of the Act, any countervailable subsidy with respect to a product that is used in the production of subject merchandise is an upstream subsidy. Furthermore, Commerce must provide additional evidence, outlined in 19 CFR 351.523(a)(iii), for alleging and proving subsidies related to upstream products.
- As a vertically-integrated company, Reliance produces petrochemical products that are either sold on the open market or used as inputs for downstream manufacturing. Therefore, any subsidy provided to Reliance's plants that do not produce subject merchandise, but which may produce inputs for subject merchandise, are covered by the provisions in section 771A(a)(1) of the Act.
- The petitioners must allege upstream subsidies no later than 60 days after the date of the preliminary determination, pursuant to 19 CFR 351.301(C)(2)(iv). No such allegation was made in this case. In *Certain Pasta from Italy*, Commerce required such an allegation and refused to investigate upstream subsidies.[109]

Petitioners' Rebuttal Brief[110]

- Reliance's argument that Commerce cannot countervail subsidies on inputs produced by Reliance for the production of subject merchandise is incorrect.
- Commerce's practice is to countervail subsidies that confer benefits on producers of subject merchandise, regardless of whether the subsidy itself is specifically for the subject merchandise. Specifically, Commerce attributes subsidies to the input and downstream products rather than tracing subsidies through the production process. Thus, if the intended use of the subsidy is for the production of an input of subject merchandise, Commerce will attribute the subsidy to the respondent's sales of inputs and the downstream product.
- Reliance's contention that benefits received in plants that do not produce subject merchandise should be excluded from Commerce's benefit calculation is incorrect. Commerce does not exclude GOI-provided subsidies to plants that may produce non-subject merchandise from the attribution of benefits.

Commerce's Position: We disagree with Reliance's interpretation of 19 CFR 351.523(a)(iii), 19 CFR 351.301(C)(2)(iv), and section 771A(a)(1) of the Act. We are not making any determinations with respect to upstream subsidies, as it is not necessary to initiate or investigate an upstream subsidy in this case. As stated in the *Preliminary Determination* and the attribution section above, Reliance responded to Commerce's questionnaire on behalf of itself, reporting that it did not have any affiliated companies involved or engaged in the sale, purchase, marketing and production of subject merchandise.[111] Reliance also acknowledged that it is a vertically-integrated company and there is no evidence on the record showing the Reliance's plants are separately incorporated companies.[112] It is Commerce's long-standing practice to consider

[109] *Id*. (citing *Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") From Italy*, 61 FR 30288, (June 14, 1996) (*Certain Pasta from Italy*)).
[110] *See* Petitioners' Rebuttal Brief at 23.
[111] *See* Reliance's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Reliance Industries Limited Section III Affiliate Response," dated January 28, 2019, at 5-6.
[112] *See* Reliance's IQR at Exhibit GQ-03; *see also* Reliance Verification Report at 4 and at VE-2.

benefits bestowed on the firm as a whole, not on a factory-specific basis.[113] Because Reliance's upstream production occurs within the company, it is not necessary to initiate or investigate an upstream subsidy. Further, in past cases in which Commerce initiated and investigated upstream subsidies, the mandatory respondents purchased inputs from unaffiliated third-party suppliers, and the upstream subsidy investigation was initiated to assess whether the subsidies that had been bestowed to these unaffiliated suppliers were passed through to the mandatory respondents.[114] These facts do not exist in this case.

Comment 7: Whether the GOI Failed to Cooperate to the Best of its Ability

GOI's Case Brief[115]

- Commerce applied AFA for five programs even though the GOI provided the necessary information required under section 776(a) of the Act for those five programs. The GOI never withheld any information, nor impeded the proceeding in any manner. In fact, the GOI stated that it would provide requisite assistance in case Commerce desires more information or decides to verify the information.
- Commerce's verification report stated that there were no discrepancies with the information reported in either the GOI's or mandatory respondents' questionnaire responses.
- Commerce can apply adverse inferences pursuant to section 776(b) of the Act only when "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information." GOI maintains that it has acted to the best of its ability to comply with every request for information in the entire proceeding.
- Commerce's preliminary conclusion that the GOI has not provided the necessary information for five programs is legally and factually untenable.

Petitioners' Rebuttal Brief[116]

- Commerce correctly determined that the GOI failed to cooperate to the best of its ability in providing the necessary information requested concerning a variety of programs. Therefore, Commerce should continue to apply AFA in the final determination.

Commerce's Position: We agree with the petitioners. As explained in the *Preliminary Determination*, the GOI failed to provide certain requested necessary information regarding five programs. On March 19 and 22, 2019, we issued supplemental questionnaires to the GOI to correct certain deficiencies in its March 4, 2019, initial questionnaire response.[117] In these supplemental questionnaires, we requested information that we had previously requested and that the GOI had failed to provide. This information included key program procedures and

[113] *See CVD Preamble* at 65404.
[114] *See e.g.*, *Final Affirmative Countervailing Duty Determination: Certain Agricultural Tillage Tools from Brazil*, 50 FR 34525 (August 26 1985)*; Preliminary Affirmative Countervailing Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Oil Country Tubular Goods ("OCTG") from Austria*, 60 FR 4600 (January 24, 1995), unchanged in the final determination.
[115] *See* GOI's Case Brief at 27-28.
[116] *See* Petitioners' Rebuttal Brief at 31-34.
[117] *See* Commerce's Letter "First Supplemental Questionnaire," dated March 19, 2019 ; *see also* Commerce's Letter, "Second Supplemental Questionnaire," dated March 22, 2019.

guidelines pertaining to assistance provided under the State and Union Territory Sales Tax Incentive; SGOG Provision of Land for LTAR, Provision of Water for LTAR, and Electric Duty Exemption; and SGUP VAT Refund programs. Commerce would typically review this information to understand how the program works, how the benefit is distributed, and what the eligibility criteria are. Thus, the GOI failed to provide necessary information in response to the supplemental questions pertaining to those programs.[118] Furthermore, regarding the SGOG programs and the SGUP VAT Refund program, the GOI claimed that none of the mandatory respondents had applied or received benefits from this program.[119] However, Reliance had reported receiving these benefits in its initial questionnaire, which was on the record when Commerce issued its supplemental questionnaire to the GOI.[120] Given that such necessary information was withheld by the GOI, Commerce's ability to investigate those programs was significantly impeded.

Therefore, based on the above, we continue to find that the GOI withheld information that was requested for the above-mentioned five programs, thereby significantly impeding the conduct of the investigation. Thus, Commerce must rely on "facts available" in making its final determination in accordance with sections 776(a)(1) and 776(a)(2)(A), (B) and (C) of the Act. Moreover, we continue to determine that the GOI failed to cooperate by not acting to the best of its ability by failing to comply with any of the multiple requests for information with respect to these five programs. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the programs outlined above constitute a financial contribution within the meaning of section 771(5)(D) of the Act and are specific within the meaning of section 771(5A) of the Act.

Comment 8: Whether the SEZ Import Duty Exemption Is Countervailable

Reliance's Case Brief[121]

- Because Reliance imports inputs that are being used for exported products, the import duty exemptions for inputs do not provide a countervailable subsidy under 19 CFR 351.519(a)(4). The GOI has a reasonable and effective monitoring system in place that confirms which inputs are consumed in the production of the exported products and in what amounts.
- The GOI, through its net foreign exchange rule, requires companies within the SEZ to export a sufficient number of products from the SEZ to foreign countries and applies penalties to companies that do not meet these requirements. The companies must sign an agreement stating that they will be liable for such penalties, that they will export and manufacture pursuant to the Special Economic Zones Act, and that they do not pay duties on goods and services sold in the domestic tariff area (DTA).

[118] *See* GOI's Letter, "Polyester Textured Yarn (C-533-886), POI (04/31/2017 – 03/31/2018), Supplementary Questionnaire Response to Section-II on Behalf of Government of India," dated March 29, 2019 (GOI SQR); *see also* GOI's Letter, "Polyester Textured yarn (C-533-886), POI (04/31/2017 – 03/31/2018), Additional Information on Supplementary Questionnaire Response Issued to Section-II on Behalf of Government of India," dated April 1, 2019 (GOI SQR2).
[119] *See* GOI SQR at 44; *see also* GOI SQR2 at 129 and at 155-156.
[120] *See* Reliance IQR at III-81 through III-93.
[121] *See* Reliance's Case Brief at 14-20.

- Companies are required to pay import duties on any "deemed exports" from an SEZ to the DTA, including the Reliance plants that purchase inputs from the SEZ plant.
- Customs officials sign-off on each bill of entry and maintain a "closed system" that ensures items cannot move into or out of the SEZ facility without their knowledge. Furthermore, Reliance is required to maintain wholly separate accounts consumed in and sold from an SEZ. Reliance must also provide a yearly certified performance report to SEZ authorities.
- The requirement under 19 CFR 351.519(a)(4) that there is a reasonable and effective system of monitoring only addresses import duty remission or drawback programs. The SEZ programs at issue only include input duty exemption programs and CST and VAT exemption programs.
- Unlike in *Off-the-Road Tires from India*,[122] where Commerce decided there was not sufficient evidence to conclude that there was a reasonable and effective monitoring system in place, there is sufficient record evidence in this investigation that Reliance and the GOI had a full system in place to confirm which inputs, and in what amounts, are consumed in the production of the exported products. Reliance provided evidence showing that the GOI requires any company importing from an SEZ into the DTA to pay applicable import duties, VAT, and Integrated Goods and Services Tax (IGST).
- The GOI is not providing a contribution for import duty and VAT/CST exemptions because imports are not being made or sold in the Indian DTA. Thus, there are no taxes or duties to be forgone.
- In an SEZ, a duty-free zone, the government does not have the right to receive revenue in the first place. Commerce has found in previous cases that enterprises in duty-free zones are not liable to pay duties and taxes and, therefore, the exemption from such duties and taxes does not constitute a financial contribution.[123]

Petitioners' Rebuttal Brief[124]

- Reliance's claim that the SEZ programs are not countervailable is incorrect.
- The record does not establish that the GOI maintained a reasonable and effective verification system to track inputs consumed in the production of subject merchandise.
- The GOI failed to provide Commerce with necessary information concerning these SEZ programs.
- Similar to the EPCGS, Reliance imported capital goods under this program. These capital goods are not incorporated in the re-exported product; therefore, the government

[122] *See Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 2946 (January 10, 2017) (*Off-the-Road Tires from India*) and accompanying IDM at 23.
[123] *See Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination*, 77 FR 64471 (October 22, 2012); *see also Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013), and *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016).
[124] *See* Petitioners' Rebuttal Brief at 37-38

would not be able to verify that producers consume capital equipment in the production of an export product.
- As the facts in this investigation are similar to *PET Film from India*, Commerce should continue to countervail the SEZ programs.[125]

Commerce's Position: We disagree with Reliance's arguments regarding the countervailability of the SEZ Import Duty Exemption program. Commerce has previously found that the GOI does not have in place, and does not apply, a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported product, making normal allowance for waste. There is no new information on the record of this investigation to suggest that the GOI has updated these programs.[126]

Comment 9: Whether to Recalculate the Benefits from the EPCGS Program and the SEZ Import Duty Exemption Program

Petitioners' Case Brief

Applying AFA to Reliance's Unreported Benefits from the EPCGS and the SEZ Import Duty Exemption Program[127]

- Commerce is unable to calculate accurately a rate under these programs, because Reliance failed to act to the best of its ability in reporting its benefits.
- Reliance also initially reported the applicable duty rates in effect during the AUL period. At verification, however, Reliance informed Commerce that its reported duty rates were incorrect due to the GOI's implementation of the Integrated Goods and Services Tax (IGST). Therefore, Commerce was unable to verify the individual duty rates needed to calculate Reliance's benefits under these programs.
- Commerce also discovered during verification that Reliance had failed to report all imports (*i.e.*, crude oil imports) for which the duties were exempted under the SEZ import duty exemption program. Commerce correctly declined to accept additional information at verification regarding the crude oil imports benefits.
- In a supplemental questionnaire, Reliance submitted a sample calculation of countervailable duty benefits received under the EPCGS program, indicating that duties are in some instances applicable to a compounded value and, in other instances, the duty rate is not applicable to the assessable value. At verification, however, Reliance clarified that the applicable duty rates on a line-item basis "should be sequentially applied to the summation of the assessable value and the value paid for the previous duty" (*i.e.*, compounded), and submitted a calculation worksheet in support of its clarification.

[125] *See* Petitioners' Rebuttal Brief at 38 (citing to *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 10789 (March 22, 2019) *(PET Film from India*), and accompanying IDM at 30).
[126] *See, e.g., Fine Denier Polyester Staple Fiber from India: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 51387 (November 6, 2017) at 15-17, unchanged in *Fine Denier from India*.
[127] *See* Petitioners' Case Brief at 7-24.

- Commerce should assign Reliance an AFA rate for benefits received under these two programs because Reliance did not provide the formulas necessary for calculating the benefits received under each program and failed to accurately report the individual duty rates in effect during the POI.
- Since JBF's use of each program was non-measurable, Commerce should apply, as AFA, the highest rate calculated for each identical program in accordance with its CVD hierarchy. For the EPCGS program, Commerce should apply 16.63 percent calculated in *Hot-rolled Steel from India*.[128] For the SEZ program, Commerce should apply 18.6 percent calculated in *Bottle-Grade PET Resin India 2005*.[129]

Reliance's Case Brief

Calculation of Applicable Duties[130]

- Commerce incorrectly summed the duty rates to determine the total amount of duties exempted from certain programs, thereby inflating the total amount of Reliance's duties exempted. The correct methodology is to first multiply the general duty rate by the value of the imported product, and then each subsequent duty rate is multiplied by the assessable value plus the prior duty amounts.

Values of the Duties Paid and Forgone[131]

- The values of the duty forgone were originally reported in Reliance's initial questionnaire response, and Reliance only added the import duty percentages after Commerce requested that Reliance do so in a supplemental questionnaire.
- Commerce verified that the values of duties forgone under the SEZ Import Duty Exemption program and the EPCGS, as reported by Reliance, reflect the accurate accounting of benefits received by Reliance under this program.
- Even if Reliance incorrectly reported each duty rate, Commerce should not have used the import duty percentages and incorrectly applied those duties in its calculation of benefits.
- Commerce should have used the reported values of the duties paid and forgone in calculating the benefits for the SEZ Import Duty Exemption and EPCGS programs.

Petitioners' Rebuttal Brief[132]

- Reliance failed to cooperate to the best of its ability in reporting its information for EPCGS. As a result, Commerce should assign Reliance a rate based on AFA for benefits received under EPCGS.
- Reliance's claims are incorrect or unsupported by record evidence.

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[128] *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001) (*Hot-Rolled Steel from India*), and accompanying IDM at section "Export Promotion of Capital Goods Scheme (EPCGS)."

[129] *See Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India*, 70 FR 13460 (March 21, 2005) (*Bottle-Grade PET Resin India 2005*), and accompanying IDM at section "Export-Oriented Unit (EOU) Program: Duty-Free Import of Capital Goods and Raw Materials."

[130] *See* Reliance's Case Brief at 12-14.

[131] *See* Reliance's Case Brief at 20-21.

[132] *See* Petitioners' Case Brief at 26-31.

- Commerce was unable to verify the individual duty rates reported by Reliance, including rates Reliance claimed were no longer applicable. Commerce was, however, able to reconcile Reliance's reported duty exemption amount under the EPCGS (*i.e.*, inclusive of cenvatable duties) to data in its accounting system. Thus, either Reliance's statement to Commerce that the duty rates were no longer applicable was false, or Reliance's books and records are inaccurate.
- Reliance's claim that Commerce incorrectly included cenvatable duties in the preliminary benefits calculation is incorrect. Commerce explained in its preliminary calculation memo that for EPCGS it did not include cenvatable duties as part of the total duties that the company would normally pay, absent the program.[133]
- The GOI contends that crude oil imports maintain a "zero" import duty rate; however, the GOI fails to address certain additional duties applicable on crude oil imports. Therefore, Reliance received countervailable benefits under this program.

Reliance's Rebuttal Brief[134]

- Commerce cannot apply AFA to the SEZ Import Duty Exemption and the EPCGS programs.
- Commerce should use the amounts of the duties forgone that Reliance reported. Although Commerce noted in its verification report that Reliance reported inaccurate duty rates for the EPCGS and the SEZ Import Duty Exemption programs, it verified that the total value of the exemptions was recorded in the bills of entry which it tied to the accounting system without discrepancy.
- Pursuant to 19 U.S.C. 1677m, Commerce does not have the necessary preconditions for applying facts available because the duties paid and exempted are clearly on the record and were verified, and the responses were filed within the applicable deadlines.
- Even when applying total AFA, Commerce cannot ignore record information when it is credible, and it must adhere to the corroboration requirements in 19 U.S.C. 1677e(c). In a previous case, the CIT rejected arguments for a total AFA rate when the application of total AFA "required Commerce to ignore evidence on the record unfavorable to its desired outcome and to act in the absence of required findings of fact."[135]
- Reliance cooperated to the best of its ability when it provided responses to these programs, and Commerce cannot find that Reliance's clerical errors in entering duty rate percentages warrant the application of AFA. Reliance did not withhold information or significantly impede the proceeding.
- Before applying AFA, Commerce must find that a respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information, pursuant to 19 U.S.C. 1677e(b). Furthermore, the U.S. Court of Appeals for the Federal Circuit (CAFC) decided in a previous case that Commerce cannot apply AFA solely because of a failure to respond: there must also be a reasonable conclusion that the respondent did not fully cooperate.[136] The CAFC has also stated that the imposition of adverse facts can be inappropriate if overly punitive.[137]

[133] *Id*. at 30 (citing Memorandum, "Preliminary Determination Calculations for Reliance," dated April 26, 2019).
[134] *See* Reliance's Rebuttal Brief at 2-13.
[135] *See Gerber Food (Yunnan) Co., Ltd. v. United States*, 387 F. Supp. 2d 1270 (Ct. Int'l Trade 2005) at 1284.
[136] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373,1383 (Fed. Cir. 2003).
[137] *See Xiping Opeck Food Co. v. United States*, 34 F. Supp. 3d 1331, 1346-47 (Ct. Int'l Trade 2014).

- The petitioners' statement that Commerce's reconciliation of the values of the exemptions contradicts Reliance's claim that certain duty rates were no longer applicable is unfounded and misstates Commerce's findings in the verification report. Reliance's statement was related to a change in the categories of import duties after the implementation of the IGST system in July 2017. The sample EPCGS import documentation and accounting entries provided during verification were from years preceding this implementation. Furthermore, Commerce examined the government regulations regarding the tax regime change, as noted in the verification report. Therefore, it is impossible to conclude that Reliance's books are inaccurate or that certain duty rates are still applicable.
- The petitioners incorrectly stated that Reliance failed to report benefits received under the SEZ Import Duty Exemption Program for imports of crude oil. Reliance correctly reported the benefits received under this program when it reported the values of the import duties actually paid and the import duties forgone, which Commerce verified.

Commerce's Position: As an initial matter, companies are required to use the Import Tariff and VAT Exemptions template to report the duty rates and the values of duties paid for each transaction where the company may have received import duty or VAT exemptions. We attached this template to our February 6, 2019, supplemental questionnaire[138] and requested that Reliance use this template to report its EPCGS and SEZ Import Duty Exemption benefits so that we could understand the programs and the basis for calculating Reliance's benefits.

In its questionnaire responses, Reliance reported both the value of its exemptions and the duty rates that would have been applied to their imports absent these programs. In the preliminary calculations, we derived the benefit for the programs by multiplying the reported duty rates by the value of the imported goods. At verification, Reliance stated that many of the reported duty rates, which we used to calculate the exemptions, were incorrect because of changes in the duty rate structure that it had not accounted for in its reporting.[139] Reliance also clarified the methodology that should be used to apply the duty rates to the values of the imports. Because the duty rate corrections resulted in a significant change from the reported rates, we did not accept them as minor corrections and did not verify them.[140] Instead, we verified the values of the duty exemptions that Reliance reported in its questionnaire response.[141]

As an initial matter, it is a respondent's responsibility to ensure that the information it provided in its questionnaire responses is accurate. Reliance was given multiple opportunities to provide an accurate response. The purpose of verification is to verify the responses provided by a respondent. Reliance should have provided accurate information in its questionnaire responses with respect to the two programs at issue. However, we disagree with the petitioners' assertion that Commerce cannot calculate an accurate subsidy rate for these two programs. Contrary to the petitioners' arguments, we were able to verify the information on the record that is necessary to calculate the benefits for these programs without relying on the duty rates. Thus, because the

[138] *See* Commerce's Letter, "Polyester Textured Yarn from India: Supplemental Questionnaire for All Respondents," dated February 6, 2019.
[139] *See* Reliance Verification Report at 10-12.
[140] *Id*.
[141] *Id*.

record contains the verified information necessary to calculate benefits for the two programs, despite the fact that Reliance should have provided accurate responses on the duty rates, AFA is not warranted. Therefore, for the final determination we relied upon the verified values of the duty exemptions for the subsidy rate calculations. Because we are not relying on Reliance's reported duty rates, its comments regarding the use of the duty rates in our preliminary calculations are moot.

Comment 10: Whether to Apply AFA to Reliance's Unreported Benefits from the SGOG Electricity Program

Petitioners' Case Brief[142]

- Commerce should assign Reliance an AFA rate for benefits received under the SGOG electricity duty exemption scheme because Reliance failed to report all benefits received under the program.
- Reliance previously reported that the electricity duties exempted under the SGOG's Electricity Duty Exemption Scheme were the duties normally applied to electricity that is "captively generated and consumed." Commerce discovered at verification, however, that Reliance failed to completely report all electricity duty exemptions at its Dahej facility and its auxiliary electricity consumption and diesel power-generated consumption for the POI.
- Given Reliance's failure to accurately report the benefits received under this program, the application of AFA is warranted. Because Commerce did not calculate a rate for this program for JBF, Commerce should assign as AFA for Reliance the rate of 1.30 percent from *PTFE Resin from India*, which is the highest rate for the SGOG program in another proceeding.[143]

Reliance's Case Brief[144]

- The omission of "auxiliary power" from the power generated by the Dahej plant was a very minor omission that did not affect the total subsidy rate.
- This inconsistency was for only one of the three plants receiving the exemption. Furthermore, the difference between what Reliance did not report in February 2018[145] and what it should have reported for that month, compared to the total amount of benefits received during the POI was not great enough to change the program duty rate.
- If Commerce applies facts available because of this omission, Commerce should add the proportion of omitted auxiliary power consumption in February 2018 to the total amount of power reported during the POI to derive the benefit.

Petitioners' Rebuttal Brief[146]

- Commerce should assign Reliance a rate based on AFA for the benefits received under this program.

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[142] *See* Petitioners' Case Brief at 24-26.
[143] *Id.* at 26, (citing to *Polytetrafluoroethylene Resin from India: Final Affirmative Countervailing Duty Determination*, 83 FR 23422 (May 21, 2018) (PTFE Resin from India), and accompanying IDM at 7).
[144] *See* Reliance's Case Brief at 21-22.
[145] JBF refers to a particular invoice included as an exhibit in Commerce's verification report.
[146] *See* Petitioners' Rebuttal Brief at 48-50.

- Commerce discovered at verification that Reliance failed to completely report all electricity duty exemptions received from the GOI, specifically on the auxiliary electricity consumption at the Dahej facility.
- Though Reliance characterizes this omission as a "clerical error," Reliance disclosed seven errors to Commerce at the beginning of verification, but the company failed to report this omission.
- According to the statute regarding the application of AFA, section 776(a) of the Act, the significance of the change is irrelevant, as the statute is satisfied if (1) the necessary information is not on the record; or (2) Reliance withheld information; or (3) Reliance failed to provide information requested by the applicable deadlines.
- This information was readily available at the Reliance facility, as Commerce discovered this discrepancy through a simple examination of receipts.
- Commerce only has information on Reliance's unreported consumption for a single month, and it is unclear the extent to which this consumption deviated from month to month.
- Applying neutral facts available would not satisfy Commerce's need to induce cooperation. Thus, Commerce should assign Reliance a rate based on AFA and should follow standard practice in selecting the appropriate rate.

Reliance's Rebuttal Brief[147]

- Commerce cannot apply AFA to the SGOG Electricity Duty Exemption program.
- The CIT has decided in a previous case that the imposition of adverse facts can be inappropriate if it is overly punitive.[148] Applying AFA would be extremely punitive for what amounts to a very minor error, because the suggested AFA rate of 1.30 percent is 130 times greater than the current rate of 0.01 percent.
- Commerce should alternatively apply facts otherwise available by calculating the proportion of auxiliary power consumed at the Dahej plant in February 2018 compared to electricity reported in the other three plants and adding that proportion to the total amount of power reported during the POI.

Commerce's Position: At verification we discovered that Reliance had not reported its auxiliary power consumption at one of its plants. The benefit for the SGOG Electricity Duty Exemption program is calculated by multiplying the total power consumption (general and auxiliary) by the applicable electricity duty rate. Thus, having accurate and complete information on the total power consumption is necessary to calculate the benefit that had been conferred under this program. We collected a sample electricity bill from February to document the fact that Reliance had underreported its power consumption.[149]

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[147] *See* Reliance's Rebuttal Brief 13-15.

[148] *Id.* at 15 (citing to *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276-79 (Fed. Cir. 2012) (citing *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319, 1324 (Fed. Cir. 2010))).

[149] *See* Reliance Verification Report at 15-16 and at VE-16. Regarding diesel-generated electricity consumption, Commerce misstated the treatment of diesel electricity consumption in the formula used to calculate Reliance's electricity duty exemptions. Per the sample electricity bill collected at verification, Reliance is not exempt from paying electricity duties on diesel-powered consumption. *See* Comment 13 for further discussion.

It is a respondent's responsibility to ensure that the information it had provided in its questionnaire responses is accurate. The purpose of verification, which frequently occurs after Commerce's preliminary determination, is to verify the questionnaire responses provided by a respondent. Here, Reliance was given opportunities to provide accurate and complete information, yet it did not disclose the Dahej plant's auxiliary power consumption until Commerce noted the discrepancy during verification.[150] Thus, we find that necessary information is not available on the record and that Reliance withheld information that was requested by Commerce. Given Reliance's failure to provide complete and accurate information despite having the ability and opportunity to do so, we find that it is appropriate to apply AFA to this program. We disagree with Reliance that the omission of the auxiliary power consumption is minor. Because Reliance did not report the auxiliary electricity consumption in its questionnaire responses, Commerce could not asses the total auxiliary consumption during the POI or the impact that this consumption would have on the overall benefit for this program. What is at issue is the fact that Reliance did not provide accurate information which is necessary to assess the actual benefit conferred to Reliance under this program. Moreover, we find that Reliance did not cooperate to the best of its ability by failing to provide the Dahej plant's auxiliary power consumption after being given opportunities to report accurate information before the *Preliminary Determination*; it was not until Commerce noted the discrepancy during verification that Reliance acknowledged it had not reported the consumption despite the fact that Reliance clearly had the ability to disclose and report this information prior to verification.[151] Thus, we determine that the application of AFA in accordance with sections 776(a) and (b) of the Act is warranted.

However, after evaluating the record, we disagree with the petitioners' arguments that we should assign Reliance an AFA rate by selecting the highest calculated subsidy rate from another case because we were able to verify the portion of Reliance's electricity consumption that it reported. Thus, after evaluating the record evidence, as AFA for the unreported auxiliary electricity consumption at the Dahej plant, we increased the reported consumption amounts by the highest level reported (and verified) for general electricity consumption at the plant during the POI. For the month of February, we added to the reported general consumption amount the auxiliary consumption amount shown in the sample invoice that we collected at verification.[152]

[150] *See* Reliance's IQR at III-82 through III-88; *see also* Reliance's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Reliance Industries Limited Section III Supplemental Questionnaire Response," dated April 2, 2019 at Exhibit SGOG-CVD-1.
[151] *See* Reliance Verification Report at 15-16 and at VE-16.
[152] *See* Reliance Final Calculation Memorandum.

Comment 11: Whether to Apply Different Benchmarks in the Calculation of Land Benefits Received by Reliance under the GIDC

Reliance's Case Brief[153]

- Commerce should use different benchmarks in its calculation of benefits under the SGOG for LTAR from the GIDC.
- Under 19 CFR 351.511(a)(2), Commerce will normally use actual transactions between private parties and will consider product similarity and other factors affecting comparability (*e.g.*, geographic proximity and contemporaneity).
- Commerce should not have used the petitioners' benchmark because these prices were incomparable to the land at issue. The first benchmark price was derived from land purchased by Reliance in 2007 (*i.e.*, outside of the AUL period) and was located in a populous urban area in Madhya Pradesh. Furthermore, the petitioners stated that the land was possibly used for retail operations, which is not comparable to land used for industrial purposes. The petitioners' second benchmark price was derived from private land transactions between other private Indian companies, and these transactions involved land purchases in heavily urban, densely-populated areas in Maharashtra, which fetch much higher prices for land.
- None of the petitioners' benchmark prices were derived from land transactions in Gujarat. Because the land program is for the SGOG provision of land for LTAR, any tier-one benchmark should be derived from land transactions in Gujarat.
- Commerce's May 29, 2019, letter, specifically asking interested parties to submit additional benchmark proposals for industrial land in the state of Gujarat, memorializes Commerce's dissatisfaction with the petitioners' proposed benchmarks.
- Commerce should use the most comparable benchmark prices on the record: Reliance's actual transactions for industrial land in Gujarat between private parties or Reliance's June 10, 2019, benchmark submission, showing actual land transactions between private parties for industrial land in Gujarat.

GOI's Case Brief[154]

- Commerce has not considered information in the GOI's questionnaire responses regarding the basis for calculating the allotment price of GIDC-owned land *(i.e.*, cost of land, overhead charges, cost of development, cost of development of infrastructure). The allotment price of the land is reviewed on a yearly basis and is revised based on the market situation. The allotment of land to industrial units in GIDC is based on sound economic practice and on a cost plus basis. Therefore, the GIDC land has not been allotted at LTAR.

Petitioners' Rebuttal Brief[155]

- Commerce correctly found that the GOI failed to cooperate to the best of its ability in supplying information concerning the SGOG provision of land for LTAR. Specifically, the GOI did not provide a complete response to Commerce's questionnaire and indicated

[153] *See* Reliance's Case Brief at 22-26.
[154] *See* GOI's Case Brief at 23.
[155] *See* Petitioners' Rebuttal Brief at 40-46.

that none of the mandatory respondents received assistance under any SGOG subsidy programs, even though Reliance reported that it had received allotments from the GIDC.
- None of Reliance's proposed benchmarks are usable.
- Commerce already explained why Reliance's reported "actual land transactions" are not usable benchmarks.
- According to the verification report, certain land transactions were either leased from the GIDC or transferred from another company through the GIDC.
- It is impossible for Commerce to calculate a benchmark price based on the information in Reliance's June 10, 2019, benchmark submission. Reliance does not explain how it calculated the per square meter figures, and there is no information on the record indicating that these transactions are comparable.
- The information in Reliance's June 10, 2019, submission was privately obtained through a GOI entity, and there is no way for Commerce to corroborate the information or determine whether it is representative.
- The transactions in Reliance's June 10, 2019, benchmark submission all involved Essar Oil Limited, a large company. Because of this company's economic power and the uniformity of the per square meter rate, these transactions cannot be considered representative rates.
- Commerce should continue to use the benchmark transactions provided by the petitioners because these transactions are publicly derived, are based on private transactions between entities with level bargaining power, involve industrial land, and are corroborated by public annual reports.

Commerce's Position: Commerce preliminarily used the petitioners' submitted land benchmark to calculate the benefit of Reliance's SGOG Land for LTAR transactions. We allowed parties the opportunity to submit additional benchmark information.[156] On June 10, 2019, Reliance submitted information on industrial land transactions in Gujarat involving private sellers that occurred during 2012.[157] We received no other submissions from interested parties, though the petitioners submitted comments on June 17, 2019.[158]

With respect to Reliance's submission, we agree with the petitioners that Reliance did not sufficiently explain how it derived the price per square meter. First, the records of the transactions at issue show that the land areas could be in a different unit of measure (*i.e.*, hectares).[159] Second, the land areas are notated in an unconventional fashion, which Reliance did not explain.[160] Therefore, we do not find this benchmark to be reliable.

[156] *See* PDM at 8-9; *see also* Memorandum, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Land Benchmark Information," dated May 29, 2019.
[157] *See* Reliance's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India - Reliance Industries Limited's Factual Information to Measure the Adequacy of Remuneration of the SGOG's Provision of Land for LTAR," dated June 10, 2019 (Reliance's Land Benchmark Submission).
[158] *See* Petitioners' Letter, "Polyester Textured Yarn from India – Petitioners' Submission of Rebuttal Factual Information and Deficiency Comments on Reliance's Supplemental Questionnaire Responses," dated June 17, 2019, at pdf pages 2-6.
[159] *See* Reliance's Land Benchmark Submission at Exhibit Gujarat-Benchmark-1.
[160] *Id*.

The adequacy of remuneration for government-provided goods or services is determined pursuant to 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2), Commerce measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services for LTAR. It is Commerce's preference to use a transaction-specific (tier-one) benchmark derived from the country under investigation. Therefore, we must rely on actual transaction prices paid by private entities in India. In our final determination, we have continued to use the petitioners' benchmark submission because the underlying transactions involve industrial land purchases between private parties in India. With no evidence showing that the prices paid in these transactions are aberrational, there is no reason to conclude that these transactions are not comparable to Reliance's land transactions. Thus, they are usable benchmarks in accordance with 19 CFR 351.511(a)(2).

Comment 12: SGOG Provision of Water for LTAR

GOI's Case Brief[161]

- Commerce has not considered the GOI's statements that companies located on GIDC land use the same water supply, and that costs incurred by these companies are not based on preferential pricing. At the time of allotment, the industry has to pay the cost which includes the basic infrastructure for water supply.
- The rate for water supply on GIDC land is revised according to a "no-profit no-loss" mechanism. For example, the cost of the water supply for fiscal year 2018-19 would be the actual cost incurred by the GIDC for supplying water in 2017-2018 divided by the total water supplied by the GIDC in 2017-2018.
- The GOI provided the water rates and a water cost calculation for the GIDC location in a supplemental questionnaire. Hence, there is no issue of providing water for LTAR, and the GOI reiterates that Commerce incorrectly applied AFA to Reliance.

Petitioners' Rebuttal Brief[162]

- Commerce correctly countervailed the SGOG Provision of Water for LTAR program.
- Commerce correctly found in its preliminary determination that the GOI failed to cooperate to the best of its ability in supplying information regarding this program.
- The GOI did not provide a complete response to Commerce's questions concerning this program, and the GOI indicated that none of the mandatory respondents received assistance under any SGOG programs despite contradictory information from Reliance that the company did purchase water from the GIDC.
- It is Commerce, rather than the GOI, that determines whether a program confers a benefit.
- Commerce should continue to find this program countervailable.

Commerce's Position: We disagree with the GOI's claim that Commerce has not properly considered information the GOI submitted regarding the SGOG Provision of Water for LTAR. For the reasons explained in the *Preliminary Determination* and in Comment 7 above, we

[161] *See* GOI's Case Brief at 25-26.
[162] *See* Petitioners' Rebuttal Brief at 46-48.

continue to find that the GOI failed to cooperate to the best of its ability to provide sufficient responses regarding certain programs, including the SGOG programs, and we continue to apply AFA in regard to the specificity and financial contribution of those programs.[163] Therefore, the question at issue is whether to consider information that the GOI provided for measuring the adequacy of remuneration in our final determination.

For the *Preliminary Determination*, Commerce decided that no reliable benchmark for water supply rates had been submitted to the record of this investigation to measure the adequacy of remuneration. Though the GOI provided a narrative explanation of the "no-profit-no-loss" calculation methodology in its initial questionnaire response, the GOI did not link this calculation methodology to any legal or policy documents concerning the administration of GIDC-owned land or to the GIDC Water Supply Regulation of 1991.[164] The GIDC Water Supply Regulation's paragraphs 5-7, which address the establishment of water supply charges, do not mention the no-profit-no-loss methodology.[165] Furthermore, in the questionnaire response, the GOI insisted, "{t}he water charge is same for all the GIDC locations. Hence, the benefit is not countervailable under the Agreement of Subsidies and Countervailing Measures."[166] This assertion is incorrect. As an initial matter, it is Commerce that determines whether a program confers a benefit. In this case, Commerce must determine whether the GIDC-provided water supply confers a benefit when compared to water supplied by non-GIDC authorities. As explained in the *Preliminary Determination*, we did not have general rate schedules for comparison purposes or water supply contracts to understand how the rates that Reliance pays to non-GIDC entities were established.[167] We also had no explanation of how water supply rates are established in India, generally, and in Gujarat, specifically.[168] Thus, we preliminarily decided to rely on a benchmark from previous cases and to seek more information for consideration in the final determination.[169]

For the final determination, we have several pieces of new information to consider. First, the GOI's June 11, 2019, supplemental questionnaire response provides a statement from a GIDC representative regarding the pricing of water on GIDC properties and the water rates for these properties during the POI.[170] Second, Reliance's supplemental questionnaire response includes sample invoices for water purchased from each of its suppliers during the POI, along with a list

[163] *See* PDM at 10-13.
[164] *See* GOI IQR at 260- Exhibit 36
[165] *Id*. at Exhibit 36.
[166] *See* GOI IQR at 261.
[167] *See* PDM at 9.
[168] *Id*.
[169] *Id.* (citing to *Polytetrafluoroethylene Resin from India: Preliminary Affirmative Countervailing Duty Determination*, 83 FR 9842 (March 8, 2018) (*PTFE Resin Prelim*), and the accompanying PDM at 17-18; and *Glycine from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 44859 (September 4, 2018) (*Glycine Prelim*), and the accompanying PDM at 15-16).
[170] *See* GOI's Letter, "Second Supplementary Questionnaire Response on Behalf of Government of India," dated June 11, 2019, (GOI NSA SQR) at 26-28 and at Exhibit A.

of Reliance's non-GIDC suppliers and a reference to a water resource notification.[171] Finally, during verification, we collected a partially translated excerpt of the SGOG water rate schedule.[172]

Regarding the GIDC representative's statement in the GOI's June 11, 2019 supplemental questionnaire response, we find this statement is unsupported because the GOI failed to provide Commerce with a general rate schedule or an explanation of how non-GIDC water supply rates are established. When asked to provide a water supply rate schedule for each state and province in India, the GOI responded, "{A}ny formulations on water supply and the rates thereof are under the control of regional authorities, and GOI has no control upon the same."[173] Also, when asked to describe the process and the formulas for establishing water supply rates, the GOI only provided an explanation of the GIDC water supply rate calculation, and did not explain how water supply rates are established outside of GIDC-owned properties.[174] The GOI also stated, "{C}alculating the price adjustments and the sales/retail price adjustments for each state/province and the same formulas to determine the retail price is not in the {purview} of GOI."[175] We do not consider these to be sufficient responses to our questions. While it is true that the GOI provided a copy of the water rates and the calculation of water cost for GIDC-owned properties, this does not address the water supply rates, or the calculation thereof, for the non-GIDC properties. Furthermore, what the GOI provided were not policy documents, but rather an unpublished statement and spreadsheet from a GIDC official. Thus, we still do not have the necessary information to measure the adequacy of remuneration for this program despite the fact that we provided the GOI with another opportunity to provide this information after our preliminary determination.

Due to the insufficiency of the GOI's responses, we cannot assume that Reliance's non-GIDC rates comprise an adequate benchmark to calculate a benefit for this program. Though Reliance submitted corresponding invoices for the non-GIDC water purchases and water resource notifications, we do not have enough information on the record to analyze how non-GIDC water supply rates are established and, thus, cannot assume that these rates can be used as a benchmark for measuring the adequacy of remuneration. In its response, Reliance indicated that "mandatory water supply rates are notified by the government {through} water resource notifications." Though Reliance did provide a copy of the SGOG water rate schedule at verification, without corroboration from the GOI and an explanation for how these rates are established, we cannot rely on this document in our final determination.

For the reasons stated above, we continued to use the water benchmarks from the *Preliminary Determination* to measure the adequacy of remuneration for this program in the final determination.

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[171] *See* Reliance's Letter, "Countervailing Duty Investigation of Polyester Textured Yarn from India: Reliance Industries Limited New Subsidy Allegations Partial Supplemental Questionnaire Response," dated June 5, 2019, at SQR-2 to SQR-3 and at Exhibit SNSA-SGOG-Water-1.
[172] *See* Reliance Verification Report at 15 and at VE-15.
[173] *See* GOI NSA SQR at 26.
[174] *Id*. at 26-27.
[175] *Id*.

Comment 13: Whether the Reliance Verification Report Contains Errors

Reliance's Case Brief[176]

- In its verification report for Reliance, Commerce mischaracterized a statement about duties on a bill of entry from the Jamnegar SEZ unit to the DTA. Reliance did not pay basic customs duty on the import because of an exemption on petrochemical products, but rather because the basic customs duty rate for the import was set to zero percent. Therefore, importers of these products do not owe duties regardless of whether the products were imported from an SEZ or another country.
- Commerce misstated the formula the GOI uses to calculate the total amount of duties owed. The auxiliary electricity consumed should be deducted, while total diesel power consumed, "D," should be added to the calculation of duties owed.

Commerce's Position: We agree with Reliance that the formula for calculating Reliance's electricity duty payment is 0.55 INR x (A – B – C +D), where "A" is total generation, "B" is total auxiliary consumption, "C" is additional unit plant exemption, and "D" is diesel generator set consumption.[177]

As for Reliance's comment regarding petrochemical products, we find there is no practical difference in stating that these products are exempt from basic customs duties versus stating that the basic customs duty rate for these products has been set to zero. Furthermore, in light of Commerce's position in regard to Comment 9, our characterization of the import duty rates for petrochemical products in the verification report does not affect the subsidy rate calculations for the affected programs.

Comment 14: Whether JBF Received a Benefit Under State and Union Territory Sales Tax Program

JBF's Case Brief[178]

- JBF did not receive any benefits under the State and Union Territory Sales Tax Program/ CST program. The CST program is an indirect tax benefit to JBF's domestic customers. Therefore, Commerce should not calculate a rate for the program as it does not provide a benefit to manufacturers such as JBF.

Commerce's Position: We disagree with JBF that it did not receive a benefit under this program. As discussed in the *Preliminary Determination*, we were not able to confirm either respondents' description of this program because the GOI did not provide Commerce with the requested necessary information.[179] JBF and Reliance, however, reported not having to pay state sales tax and CST for purchases of inputs and supplies from certain locations within India for both subject and non-subject merchandise, and we relied on this information for our *Preliminary*

[176] *See* Reliance's Case Brief at 26-27.
[177] *See* Reliance Verification Report at VE-16.
[178] *See* JBF's Case Brief at 16.
[179] *See* PDM at 26.

Determination.[180] At verification, we confirmed the existence of the program and noted that the exemption of the CST is granted to JBF's customers.[181]

Commerce has previously found that state sales tax exemptions and deferrals on purchases constitute a financial contribution provided under section 771(5)(D)(ii) of the Act in the form of revenue forgone.[182] In addition, in accordance with section 771(5)(E) of the Act, a benefit was conferred to the extent that the taxes paid as a result of these programs are less than the taxes that would otherwise have been paid. Finally, pursuant to section 771(5A)(D)(iv) of the Act, we find these programs to be *de jure* specific because they are limited to certain regions within their respective states.[183] There is no new information that warrants reconsideration of our determination that this program is countervailable. Accordingly, we made no changes to our preliminary countervailability analysis of this program.

Comment 15: Whether to Countervail the GOI Policy Lending and GOI Export Financing Programs and Whether to Revise the Calculation of Benefits Received by JBF Under the Programs

GOI's Case Brief[184]

- No such schemes exist. None of the mandatory respondents have received benefits under the programs. JBF has also submitted that it did not receive benefits under the programs, though it received general loans, which JBF reported. Therefore, the GOI has provided the necessary information for this program and fully cooperated during the course of the investigation.
- Mere ownership by the government does not establish status as a public body under Article 1(a)(1) of the ASCM. Holding the borrowings by the respondent companies from banks on commercial terms cannot be a "benefit" under Article 1 of the ASCM. In view of the deregulation of interest rates, no benefit or financial contribution is granted to any person availing itself of a loan under this program by the GOI or any public body.
- The borrowing by mandatory respondents is on commercial terms - as agreed between the lending bank and the borrower - with interest incurred at a commercial market rate. Hence, no benefit has been given by the GOI under the financial transactions between mandatory respondents and the commercial banks.
- The GOI and Reserve Bank of India (RBI) have no role in granting loans to the borrowers. Each bank's board is authorized to frame suitable policies for the management of loan sanctioning and recovery activities.
- Banks have been advised to prepare a well-defined loan policy approved by their Board of Directors subject to the instructions contained in RBI's master Circular on "Loans and Advances-statutory and Other Restrictions," which the GOI provided in a supplemental

[180] *Id.*
[181] *See* JBF's Verification Report at 2 and 9-11.
[182] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2016*, 83 FR 39677 (August 10, 2018) and accompanying PDM at State Sales Tax Incentive Programs (unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 10789 (March 22, 2019)).
[183] *See* JBF's Verification Report at 9-11.
[184] *See* GOI's Case Brief at 17-21.

questionnaire response. Accordingly, neither the GOI nor the RBI provide preferential interest rates specifically to the polyester textile yarn industry. Loans are being provided by commercial banks wherein the GOI might hold majority shares; however, these banks are commercial banks, operating independently, competing with other commercial banks (including private, foreign and other nationalized banks), obtaining business based on their own criteria and internal decisions without any direction by the RBI.

- The RBI created the "Base Rate System," which prohibits banks from going below the minimum rate. This policy also removed the upper limit on interest rates, allowing banks to determine the interest rate on export credit denominated in foreign currency. Thus, the interest rates are market-driven.
- As of April 1, 2016, the RBI gave directives for an internal interest rate benchmark based on the Marginal Cost of Funds Linked Rates (MCLR), and there is no lending below the base rate and MCLR of all loans linked to these benchmarks. When the commercial banks determine the base rate under this policy, no priority is given to export loans. The GOI and the mandatory respondents have informed Commerce that there is no lending below the benchmarks.
- Commerce stated that GOI has not provided any information with regard to the "Make in India" policy, but the GOI has already provided sufficient evidence and cooperated throughout the course of this investigation and at the time of verification.
- "Make in India" is a "campaign" or an initiative and not a "policy" that launched in 2014 to facilitate ease of doing business for foreign producers, attract foreign direct investments and make Indians recognize their own intellectual property.
- The petitioners have incorrectly alleged that the "Make in India" campaign explicitly identifies the textile and garment industry as a key promoted industry. Specifically, it provides "focused" and "favorable" government policies and incentives for textile manufacturers in order to promote the growth of the textile industry.
- The petitioners have not provided any credible information, document or evidence with regard to the alleged programs. Further, Commerce has not undertaken a substantive analysis of these allegations. "Make in India" has nothing to do with the domestic producers but rather facilitates foreign investments.
- Policy loans to Indian producers of subject merchandise are *de jure* specific as these loans are provided at preferential rates to certain enterprises, namely the textile and petrochemical sectors.

JBF's Case Brief[185]

- All loans provided to JBF by either the GOI-owned or the private banks were provided at market rates. Further, JBF did not receive any concessionary treatment in its procurement of loans from GOI-owned or private banks.
- None of the loans were allocated for the production or export of subject merchandise.
- Commerce should make three corrections to its calculation of the GOI Policy Lending and Export Financing programs. First, Commerce should incorporate the interest charged to the profit and loss account, rather than the interest actually paid by JBF, in calculating the total benefits during the POI under both programs. Second, Commerce should revise its benefit calculation to limit the number of days to 365, the duration of the POI, rather

[185] *See* JBF's Case Brief at 21-23.

than exceeding the number of days in the POI. Finally, Commerce should calculate the interest incurred in the "Buyers Credits" loans based on U.S. dollars instead of Indian rupees.
- Commerce should also permit JBF to submit updated calculations incorporating the aforementioned corrections for the GOI Policy Lending and Export Financing programs.

Petitioners' Rebuttal Brief[186]
- JBF's concedes in its case brief that it incorrectly reported its lending data to Commerce.
- The benefit calculation should be based on interest debited in the profit and loss statement.
- JBF failed to report accurately the days on which its loans terms were established.
- JBF contends that Commerce should use a U.S. dollar-denominated interest rate to calculate the benefit for the GOI Export Financing program; however, JBF reported its interest payments using the incorrect currency (*i.e.*, Indian rupees). Thus, Commerce does not have the appropriate loan data to calculate JBF's interest payments.
- As Commerce attributed the benefits for the GOI Policy Lending and Export Financing programs to total sales and total export sales, respectively, JBF's argument that the loans are not tied to subject merchandise has no impact on Commerce's benefit calculation.
- Given the issues in JBF's reported lending data, Commerce should assign JBF AFA rates for the GOI Policy Lending and Export Financing programs.

JBF's Rebuttal Brief[187]
- JBF has fully cooperated with Commerce and has not withheld any information which would be necessary to conduct its CVD investigation. Further, all the information provided by JBF has been verified by Commerce.
- The petitioners' allegation regarding unreported interest payments is misguided. JBF records its accounting records on a mercantile basis of accounting, which justifies the distinction in interest charged in the profit and loss account and interest actually paid on its loans.
- Commerce should calculate the benefit received for this program using the reported amount of interest charged to the profit and loss account rather than the reported amount of interest actually paid. Further, any interest charged to the profit and loss account, but not yet paid, is the deferral of interest charged to JBF and not a write-off of JBF's interest obligations.
- Commerce should reject the petitioners' allegations and unsubstantiated request for the application of AFA to JBF for the GOI Policy Lending and Export Financing program as JBF has fully participated in this proceeding and has put forth maximum efforts to obtain the requested information.

Commerce's Position: As explained in Comment 2, Commerce has conducted this investigation in accordance with the Act, Commerce's regulations, and is fully compliant with its WTO obligations. Thus, the GOI's WTO-related arguments have no merit.

[186] *See* Petitioners' Rebuttal Brief at 31-36.
[187] *See* JBF's Rebuttal Brief at 5-10.

We disagree with the GOI. After our initiation of the new subsidy allegations in this investigation, we issued questionnaires to the respondents and to the GOI regarding the newly-alleged programs.[188] As explained in our Post-Preliminary Analysis, the GOI did not respond to our questions regarding the GOI Policy Lending to the Polyester Textured Yarn Industry program, the Export Financing from GOI-Controlled Entities program, and the loans that Reliance and JBF received from the GOI-affiliated banks. The GOI, instead, claimed that the programs do not exist and that the investigation of them should be terminated.[189] On May 31, 2019, we issued another supplemental questionnaire, requesting that the GOI fully explain and provide supporting documentation regarding its claim that the programs do not exist or respond to the questions in the appendices as previously requested.[190] Once again, the GOI did not respond to the questions or appendices, and it did not provide further information to support its claim that these programs do not exist.[191]

On June 21, 2019, we issued a third supplemental questionnaire, specifically asking the GOI to provide information about the "Make in India" initiative.[192] In this questionnaire, we also asked the GOI to provide documents relating to the ownership structures of the GOI-affiliated banks from which the respondents had received loans and export financing. On July 2, 2019, the GOI responded to this questionnaire by explaining that the "Make in India" initiative is designed to facilitate investment, foster innovation, enhance skill development, protect intellectual property, and improve manufacturing infrastructure in India.[193] The GOI further maintained that the initiative is a "concept" that provides global manufacturers with opportunities to start businesses in India and that there is no lending component to the initiative.[194] However, the GOI did not provide any supporting documentation on the "Make in India" initiative or any details on the GOI-affiliated banks in its response or an explanation of how this "concept" produces business opportunities in India.[195]

Regarding our questions about the "Make in India" program, the GOI did not provide accurate, complete, and verifiable information to support its claim that the respondents in this investigation did not use the programs. Despite Commerce's repeated requests for supporting documentation, the current record indicates that the GOI's responses regarding "Make in India" are unverifiable assertions that lack supporting evidence to back up the GOI's claims.

Therefore, based on the above, we continue to find that the GOI withheld requested necessary information, thereby significantly impeding the conduct of this investigation. Thus, Commerce

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[188] *See* Commerce's Letter, "Polyester Textured Yarn from India: Countervailing Duty Investigation, New Subsidy Allegations Questionnaire for the Government of India (GOI)," dated April 8, 2019.
[189] *See* Post-Preliminary Analysis at 5-6; *see also* GOI's Letter, "Polyester Textured Yarn (C-533-886), POI (04/31/2017 – 03/31/2018) Questionnaire Response Filed on Behalf of Government of India to Respond to New Subsidy Allegation Questionnaire," dated May 7, 2019.
[190] *See* Commerce Letter, "Polyester Textured Yarn from India: Countervailing Duty Investigation," dated May 31, 2019 (regarding the NSA Supplemental Questionnaire).
[191] *See* GOI NSA SQR.
[192] *See* Commerce's Letter, "Polyester Textured Yarn from the India: Countervailing Duty Investigation," dated June 21, 2019.
[193] *See* GOI July 2 SQR at 7.
[194] *Id*. at 7-8.
[195] *Id*.

must rely on "facts available" in making its final determination in accordance with sections 776(a)(1), 776(a)(2)(A) and (C) of the Act. Moreover, we continue to determine that the GOI failed to cooperate by not acting to the best of its ability in failing to comply with and fully respond to Commerce's multiple requests for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the programs outlined above constitute a financial contribution within the meaning of section 771(5)(D) of the Act and are specific within the meaning of sections 771(5A)(B) and 771(5A)(D) of the Act. As part of our adverse inference, we also continue to find that the banks that the respondents identified as GOI-affiliated institutions are authorities.

We also disagree with JBF's proposed corrections to our calculations and the claim that the loans it reported were provided at market rates. As indicated in the Post-Preliminary Analysis, JBF reported receiving policy loans and export financing from GOI-affiliated banks.[196] Pursuant to 19 CFR 351.505(c), we calculated the benefit from these programs by comparing the amounts of interest JBF paid (*i.e.*, interest actually paid during the POI) on the government-provided loans to the amounts they would have paid on comparable commercial loans.[197] We made this comparison for each interest payment made by JBF on its loans. We then calculated the total benchmark interest payment by multiplying the appropriate loan principle by the benchmark interest rate and by the total number of days between interest payments (for each loan principle amount) and divided the product by 365 days. Based on the information JBF reported, and consistent with our calculation methodology, we continue to find that a benefit exists, for both the GOI Policy Lending and Export Financing programs, to the extent that the interest JBF paid on a government-provided loan is less than the interest that JBF would have paid on a comparable loan from a non-government-owned bank.[198]

Additionally, JBF argued for the first time in its case brief that, given the opportunity, it wished to submit "updated calculations" to incorporate "corrections" to the GOI Policy Lending and Export Financing programs. Pursuant to 19 CFR 351.301(c)(5), the deadline to submit NFI is 30 days prior to the preliminary determination or 14 days before verification, whichever is earlier. Factual information, pursuant to 19 CFR 351.102(b)(21), is defined as "evidence, including statements of fact, documents, and data, submitted either in response to initial and supplemental questionnaires, or, to rebut, clarify or correct such evidence submitted by any other interested party." We solicited information in our questionnaire concerning the GOI Policy Lending and Export Financing programs after the initiation of the petitioners' new subsidy allegations. Thus, JBF had multiple opportunities to submit "updated calculations." Any information JBF provided at this time would be considered as untimely filed NFI. As such, Commerce has continued to utilize the necessary information currently on the record of this investigation.

[196] *See* Post-Preliminary Analysis at 6-7; *see also* JBF March 27 SQR at Exhibit-CVD-JBF-2S-11-LOAN TEMPLATE-BPI.
[197] *See* Post-Preliminary Analysis at 6-7.
[198] *See* JBF Final Calculation Memo; *see also* JBF's March 27 SQR at Exhibit-CVD-JBF-2S-11-LOAN TEMPLATE-BPI.

Lastly, we disagree with the petitioners that Commerce should assign JBF AFA rates in regard to the benefits it received for the GOI Policy Lending and Export Financing programs because of JBF's alleged failure to accurately report its loan data.[199] Although JBF did not provide any information specifically regarding the use of the GOI Policy Lending and Export Financing programs, it did report its loans from GOI-affiliated banks. At the Post-Preliminary Analysis, after we examined the record, we determined that the necessary information was on the record. Specifically, the loan information JBF reported was sufficient to analyze its use, and any benefits received, under the GOI Policy Lending and Export Financing programs.[200] We also verified the loan data JBF reported and noted no discrepancies.[201] Accordingly, we made no changes to our preliminary countervailability analysis with respect to the GOI Policy Lending and Export Financing programs.

Comment 16: Whether to Continue to Apply AFA to JBF's Reporting of Subject Merchandise and Whether to Revise the Calculation of Benefits Received under the DDB Program

JBF's Case Brief[202]

- Commerce's verification report stated that the shipping bills tied to DDB scrolls (*i.e.*, approval of DDB claims) 20392/2017 and 22069/2017 were destined for Mexico and not to the United States. Thus, Commerce should exclude the associated export sales to Mexico from its calculation of the DDB program.
- Twisted yarn is not within the scope of this investigation, as the product has a separate production process and is physically different than subject merchandise.
- Commerce should not apply facts otherwise available, with an adverse inference, with respect to JBF's reporting of subject merchandise.

Petitioners' Rebuttal Brief[203]

- JBF failed to include sales of polyester twisted yarn (*i.e.*, a product considered within the scope of this investigation) in its reporting of subject merchandise. Due to this reporting failure, Commerce calculated the DDB program benefit on the basis of AFA in the *Preliminary Determination*. Therefore, JBF's claims that Commerce should exclude certain export transactions destined for Mexico, instead of the United States, from the DDB benefit calculation is a moot point. Commerce should instead assign JBF an AFA rate for benefits conferred under the DDB program pursuant to the CVD hierarchy.

[199] *See* Petitioners' Case Brief at 31-36.
[200] *See* JBF's March 27 SQR at Exhibit-CVD-JBF-2S-11-LOAN TEMPLATE-BPI.
[201] *See* JBF Verification Report at 10.
[202] *See* JBF's Case Brief at 13.
[203] *See* Petitioners' Rebuttal Brief at 26.

JBF's Rebuttal Brief[204]

- The petitioners' claims are baseless. Commerce should find that the DDB program does not constitute a countervailable subsidy.
- If Commerce utilizes secondary sources in calculating JBF's benefit under the DDB program, Commerce should corroborate the secondary information from independent sources.

Commerce's Position: As discussed in the *Preliminary Determination*, JBF's reported subject merchandise sales did not include sales of polyester twisted yarn despite the fact that polyester twisted yarn was never excluded from the investigation[205] In a supplemental questionnaire response, JBF explained that polyester twisted yarn is, in fact, produced from polyester textured yarn.[206] The scope language includes all forms of polyester textured yarn, regardless of surface texture or appearance.[207] Thus, we do not consider either JBF's reported sales of subject merchandise or its export sales of subject merchandise to be accurate sales denominators in calculating the DDB program's benefits.[208] For our preliminary subsidy rate calculation, we relied on "facts available" in accordance with sections 776(a)(1) and 776(a)(2)(A), (B) and (C) of the Act. In drawing an adverse inference under section 776(b) of the Act, with respect to the sales denominator, we divided the value of DDB benefits attributable to both polyester textured yarn and polyester twisted yarn produced for export to the United States by the reported value of export sales of subject merchandise to the United States, which does not include export sales of twisted yarn to the United States. We maintained this methodology for the denominator of the DDB subsidy rate for the final determination.

With respect to the numerator, we found no discrepancies at verification with JBF's reporting of its DDB benefits, and we have no reason to find that JBF failed to cooperate in providing information about the DDB program. Moreover, we agree with JBF, in part, that DDB scrolls 201392/2017 and 22069/2017 should be excluded from the benefit calculation under the DDB program. At the *Preliminary Determination*, we calculated the benefits derived from the DDB program based on JBF's transaction-specific reporting of DDB rebates earned on exports of yarn to the United States or Mexico (with a final destination to the United States) during the POI.[209] In its questionnaire responses, documentation provided for certain DDB scrolls included JBF's tax invoices that indicated the goods were destined to a customer in Mexico, but these tax invoices also appeared to indicate that the final destination of the goods was the United States.[210] At verification, however, we noted that for DDB scrolls 201392/2017 and 22069/2017, Indian customs documentation and the bill of lading/airway bill indicated that the final destination of

[204] *See* JBF's Rebuttal Brief at 11.
[205] *See* PDM at 12-13.
[206] *See* JBF's Letter, "CVD Investigation of Polyester Textured Yarn from India: Response for CVD Third Supplemental Questionnaire," dated April 10, 2019.
[207] As explained in the "Scope Comments" section of the accompanying *Federal Register* notice, pursuant to the petitioners' request, to which no party objected, we have included in the scope an additional HTS number covering polyester twisted yarn.
[208] *Id.*
[209] *See* PDM at 15-17.
[210] *See* JBF's SQR at 3-13, JBF-CVD-S-1, and JBF-CVD-S-2.

the exported goods was Mexico.[211] This documentation clarified the aforementioned information provided in the company's questionnaire responses. Therefore, for the final determination, we revised the DDB benefit calculation by excluding DDB scrolls 201392/2017 and 22069/2017. Based on the revised benefit calculation, JBF's final subsidy rate for DDB is now *de minimis*.

Comment 17: Whether to Accept JBF's Ministerial Error Comments

JBF's Case Brief[212]

- Commerce should correct the ministerial errors JBF alleged after the *Preliminary Determination.*
- In *Softwood Lumber from Canada*, Commerce amended its final determination after it reviewed the record and agreed that it committed a ministerial error.[213]

Petitioners' Rebuttal Brief[214]

- Commerce should reject JBF's general claims regarding methodological adjustments to it preliminary calculations.

Commerce's Position: As indicated in the Ministerial Error Memo, Commerce examined JBF's ministerial error allegations regarding the AAP, DDB, State and Union Territory Sales Tax, and MEIS programs and found each of its allegations to be methodological, rather than clerical, in nature and not ministerial errors within the meaning of 19 CFR 351.224(f).[215] We addressed the substance of JBF's allegations regarding these programs in Comments 2, 4, 14, 16, and 18. Accordingly, we made no changes to our countervailability analysis for the above-mentioned programs based on JBF's ministerial allegations.

Comment 18: Whether to Accept JBF's Minor Corrections Regarding the AAP

JBF's Case Brief[216]

- JBF submitted minor corrections related to the AAP program during Commerce's verification in Silvassa, India on July 18, 2019. Commerce, however, decided not to accept JBF's proposed minor corrections.
- The proposed minor corrections by JBF are not "New Factual Information" but, are additional details for exported products in calculating the AAP program benefits.
- JBF also submitted the aforementioned minor corrections to ACCESS on July 25, 2019, but the submission was rejected by Commerce as "New Factual Information not filed within time limit," which constitutes a misinterpretation of the statute.
- In its second supplemental questionnaire, Commerce did not specify whether JBF should submit its AAP benefit information only for subject merchandise or only for total export sales.

[211] *See* JBF's Verification Report at 6-7.
[212] *See* JBF's Case Brief at 11-12.
[213] *Id.* at 11 (citing *Certain Softwood Lumber Products: Amended Final Affirmative Countervailing Duty Determination, and Countervailing Duty Order*, 83 FR 347 (January 3, 2018).
[214] *See* Petitioners' Case Brief at 52-53.
[215] *See* Ministerial Error Memo.
[216] *See* JBF's Case Brief at 8-10.

- JBF requests that Commerce treat details regarding its exported products relating to the AAP benefits calculation as minor corrections or allow JBF to re-upload an updated calculation file.

Petitioners' Rebuttal Brief[217]

- Commerce correctly rejected JBF's submission of NFI.
- JBF argues that Commerce's AAP benefit reporting template did not specify how to completely report its benefits, and thus, Commerce incorrectly calculated JBF's AAP benefit calculation. JBF, however, should have notified Commerce prior to the preliminary determination if it needed to adjust the reporting template to include relevant information for calculating the AAP program or it could have reported the information in the previous opportunities offered by Commerce to report AAP benefits.
- The information regarding AAP benefits that JBF attempted to submit to Commerce at verification was not a minor correction as it altered the entire program reporting; therefore, Commerce was justified in rejecting the information.
- Commerce should continue to calculate JBF's AAP program benefits as it did in the *Preliminary Determination*.

Commerce's Position: We disagree with JBF. The information presented by JBF at Commerce's verification and submitted on ACCESS on July 25, 2019, is NFI that was properly rejected by Commerce.[218] Pursuant to 19 CFR 351.301(c)(5), the deadline to submit NFI is 30 days prior to the preliminary determination or 14 days before verification, whichever is earlier. Factual information, pursuant to 19 CFR 351.102(b)(21), is defined as "evidence, including statements of fact, documents, and data, submitted either in response to initial and supplemental questionnaires, or, to rebut, clarify or correct such evidence submitted by any other interested party."

At verification, JBF attempted to submit as a minor correction an entirely new Excel workbook that included new information regarding JBF's own calculation of AAP program benefits, export information, and application/license details previously requested in Commerce's initial and supplemental questionnaires. The data JBF attempted to submit at verification was not already on the record. For this reason, Commerce determined that such information was not a minor correction to information already on the record and did not accept this information.[219] On July 25, 2019, JBF attempted to submit for the record the information previously rejected at verification, and we rejected this information once again.[220]

In its case brief, JBF requests for a third time to be permitted to submit new data regarding the AAP program. Again, we decline to accept this new information consisting of completely revised data regarding its benefits under the AAP program. As such, this information is not a minor correction as permitted by Commerce, but rather, constitutes NFI pursuant to 19 CFR 351.102(b)(21) that is untimely at this point in the investigation.

[217] *See* Petitioners' Rebuttal Brief at 24-25.
[218] *See* JBF Verification Report at 2; *see also* Commerce's Letter, "Rejection of New Factual Information," dated August 1, 2019 (Letter re: Rejection of JBF's NFI) (rejecting JBF"s NFI submission to ACCESS).
[219] *See* JBF Verification Report at 2.
[220] *See* Letter re: Rejection of JBF's NFI.

VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation in the *Federal Register* and will notify the International Trade Commission of our determination.

☒	☐
Agree	Disagree

11/13/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance