



C-533-892  
Investigation  
**Public Document**  
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March 23, 2020

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

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

**SUBJECT:** Decision Memorandum for the Preliminary Determination in the  
Countervailing Duty Investigation of Forged Steel Fittings from  
India

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## **I. SUMMARY**

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

## **II. BACKGROUND**

### **A. Initiation and Case History**

On October 23, 2019, we received antidumping duty (AD) and countervailing duty (CVD) petitions concerning forged steel fittings from India, filed in proper form, on behalf of Bonney Forge Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers (collectively, the petitioners).<sup>1</sup> Pursuant to section 702(b)(4)(A)(ii) of the Act, we invited representatives of the Government of India (GOI) for consultations with respect to the Petition.<sup>2</sup> On November 7, 2019, we held consultations with the GOI.<sup>3</sup> We describe the supplements to the Petition in the *Initiation Notice* and accompanying

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<sup>1</sup> See Petitioners' Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Forged Steel Fittings from India and the Republic of Korea," dated October 23, 2019 (Petition).

<sup>2</sup> See Commerce's Letter, "Countervailing Duty Petition on Forged Steel Fittings from India: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated October 24, 2019.

<sup>3</sup> See Memorandum, "Consultations with the Government of India Regarding the Countervailing Duty Petition on Forged Steel Fittings from India," dated November 8, 2019.

CVD Initiation Checklist.<sup>4</sup> On November 21, 2019, we published the initiation of the CVD investigation of forged steel fittings from India.<sup>5</sup>

On November 7, 2019, we released the U.S. Customs and Border Protection (CBP) entry data under Administrative Protective Order and requested comments regarding the data and respondent selection.<sup>6</sup> We stated in the *Initiation Notice* that, if appropriate, we intended to base the selection of mandatory respondents on CBP entry data for the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.<sup>7</sup> The petitioners and Shakti Forge Pvt. Ltd. (SFIPL) timely submitted comments on the CBP data and companies shown therein.<sup>8</sup>

On December 3, 2019, Commerce issued quantity and value (Q&V) questionnaires to the ten largest producers/exporters identified in the CBP entry data.<sup>9</sup> Between December 13, 2019, and December 20, 2019, Commerce received Q&V responses from Shakti Forge Pvt. Ltd., Pan International, Nikoo Forge Pvt. Ltd. (Nikoo Forge), and Sigma Electric Manufacturing Corporation Pvt. Ltd. (Sigma).<sup>10</sup> Sigma reported that it made no sales of subject merchandise to the United States during the POI.<sup>11</sup> On January 3, 2020, pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2), we selected Nikoo Forge and Pan International as mandatory respondents.<sup>12</sup> We issued our CVD questionnaire to the GOI, with instructions to forward the questionnaire to the mandatory respondents.<sup>13</sup> On January 13, 2020, Nikoo Forge and Pan

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<sup>4</sup> See *Forged Steel Fittings from India and the Republic of Korea: Initiation of Countervailing Duty Investigation*, 84 FR 64270 (November 21, 2019) (*Initiation Notice*) and accompanying CVD Initiation Checklist.

<sup>5</sup> See *Initiation Notice*.

<sup>6</sup> See Memorandum, “Forged Steel Fittings from India; Release of Customs Data from U.S. Customs and Border Protection,” dated November 7, 2019 (CBP Data Memo).

<sup>7</sup> See *Initiation Notice*, 84 FR at 64272.

<sup>8</sup> See Petitioners’ Letter, “Forged Steel Fittings from India: Respondent Selection Comments,” dated November 26, 2019 (Petitioners’ Respondent Selection Comments), and Shakti’s Letter, “Forged Steel Fittings from India: Comments on CBP Data,” dated November 25, 2019 (Shakti Respondent Selection Comments).

<sup>9</sup> See Commerce’s Letter, “Quantity and Value Questionnaire,” dated December 3, 2019 (Q&V Questionnaire); see also Memorandum, “Countervailing Duty Investigation of Forged Steel Fittings from India: Issuance of Quantity and Value Questionnaire to Exporters/Producers,” dated December 4, 2019 (Q&V Issuance Memo); and Memorandum, “Countervailing Duty Investigation of Forged Steel Fittings from India: Confirmed Delivery of Quantity and Value Questionnaires,” dated December 16, 2019 (Proof of Delivery Memo).

<sup>10</sup> See Shakti’s Letter, “Forged Steel Fittings from India: Shakti Forge Industries Pvt. Ltd. Response to Quantity & Value Questionnaire,” dated December 13, 2019 (Shakti Q&V Response); Pan International’s Letter, “Forged Steel Fittings from India: Pan International’s Response to Quantity & Value Questionnaire,” dated December 13, 2019; Nikoo Forge’s Letter, “Forged Steel Fittings from India: Nikoo Forge Pvt. Ltd. Response to Quantity & Value Questionnaire,” dated December 12, 2019; and Sigma’s Letter, “Forged Steel Fittings from India: Quantity and Value Questionnaire,” dated December 20, 2019 (Sigma Q&V Response).

<sup>11</sup> See Sigma Q&V Response at Attachment 1.

<sup>12</sup> See Memorandum, “Countervailing Duty Investigation of Forged Steel Fittings from India: Selection of Respondents for Individual Examination,” dated January 3, 2020 (Initial Respondent Selection Memo).

<sup>13</sup> See Commerce’s Letters, “Countervailing Duty Questionnaire,” dated January 8, 2020 (Initial Questionnaire), and “Supplemental Instructions for Initial Countervailing Duty Questionnaire,” dated January 10, 2020 (Supplemental Questionnaire Instructions).

International withdrew their cooperation in these proceedings.<sup>14</sup> On January 15, 2020, we selected SFIPL as an additional mandatory respondent in this investigation.<sup>15</sup>

On January 15, 2020, we received timely responses to the affiliation section of the initial questionnaire from SFIPL, which filed its response on behalf of itself and its cross-owned affiliate, Shakti Forge (collectively, Shakti).<sup>16</sup> On February 20, 2020, SFIPL requested an extension<sup>17</sup> to file Section III of its initial questionnaires response, which was granted in part by Commerce on the same day.<sup>18</sup> On February 24, 2020, we received a timely questionnaire response from the GOC.<sup>19</sup> On February 27, 2020, Commerce received copies of Shakti's financial statements and a list of programs used during the AUL as requested by Commerce.<sup>20</sup> On March 4, 2020, Commerce received a timely questionnaire response from Shakti.<sup>21</sup> The petitioners submitted deficiency comments regarding Shakti's questionnaire responses on March 9, 2020.<sup>22</sup>

The petitioners filed new subsidy allegations (NSAs) on February 12, 2020, concerning the provision of land, water, and natural gas for less-than-adequate remuneration (LTAR) by the Gujarat Industrial Development Corporation (GIDC) of the State Government of Gujarat (SGOG).<sup>23</sup> On February 21, 2020, Commerce issued a supplemental questionnaire to the petitioners regarding certain elements of the NSA concerning natural gas, but did not receive a response.<sup>24</sup> Commerce initiated on two of the programs alleged by the petitioners on March 4, 2020.<sup>25</sup> Specifically, Commerce initiated on the allegations that land and water were provided at LTAR.

## **B. Postponement of Preliminary Determination**

On January 10, 2020, Commerce postponed the deadline for this preliminary determination until

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<sup>14</sup> See Nikoo Forge's Letter, "Forged Steel Fittings from India: Notice of Withdrawal from Investigation," dated January 13, 2020 (Nikoo Forge Withdrawal Notice), and Pan International, "Forged Steel Fittings from India: Notice of Withdrawal from Investigation," dated January 13, 2020 (Pan International Withdrawal Notice).

<sup>15</sup> See Commerce's Letters, "Countervailing Duty Investigation of Forged Steel Fittings from India: Selection of Additional Respondent for Individual Examination," dated January 15, 2020; and "Countervailing Duty Questionnaire for Additional Respondent," dated January 17, 2020.

<sup>16</sup> See Shakti's January 15, 2020 Affiliation Response (Shakti AFFQR).

<sup>17</sup> See Shakti's Letter, "Shakti Forge Industries Pvt. Ltd. Extension Request for Section III of Questionnaire Response: Forged Steel Fittings from India (C-533-892)," dated February 20, 2020.

<sup>18</sup> See Commerce's Letter, "Extension for Filing Initial Questionnaire in the Countervailing Duty Investigation of Forged Steel Fittings from India," dated February 20, 2020.

<sup>19</sup> See GOI's February 24, 2020 Initial Questionnaire Response (GOI IQR).

<sup>20</sup> See Shakti's Letter, "Shakti Forge Industries Pvt. Ltd. Submission of List of Program Aailed and Financial Statement for Section III of Questionnaire Response: Forged Steel Fittings from India (C-533-892)," dated February 27, 2020 (Shakti Program List).

<sup>21</sup> See Shakti's March 4, 2020 Initial Questionnaire Response (Shakti IQR).

<sup>22</sup> See Petitioners' Letter, "Forged Steel Fittings from India: Deficiency Comments," dated March 9, 2020.

<sup>23</sup> See Petitioners' Letter, "Forged Steel Fittings from India: New Subsidy Allegations," dated February 12, 2020.

<sup>24</sup> See Commerce's Letter, "Countervailing Duty Investigation on Forged Steel Fittings from India: New Subsidy Allegations Supplemental Questionnaire," dated February 21, 2020 (NSA Submission).

<sup>25</sup> See Memorandum, "Forged Steel Fittings from India: New Subsidy Allegations in Countervailing Duty Investigation," dated March 4, 2020.

no later than 130 days after the initiation of the investigation, based on a request from the petitioners.<sup>26</sup> As such, we postponed the preliminary determination until March 23, 2020, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(e).<sup>27</sup>

### C. Period of Investigation

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

## III. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,<sup>28</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, the scope, of forged steel fittings.<sup>29</sup> We received comments on the scope of the investigation from Templar Industries, LLC (Templar), a foreign manufacturer, producer, or exporter of subject merchandise, and Titus PVF Group Inc. (Titus), a U.S. importer of subject merchandise.<sup>30</sup> We also received rebuttal comments from Bonney Forge,<sup>31</sup> and clarification comments from Titus.<sup>32</sup>

In its comments, Templar asked Commerce to clarify that the scope of the investigation does not encompass low-pressure and high-pressure "oil field hammer unions," which the company describes as assemblies used in oil and gas production to join steel pipes at (or near) the well-head.<sup>33</sup> According to Templar, merchandise classified as an "oil field hammer union" is recognized in the market as a distinct product with specifications, physical characteristics, and applications that differ from those of the forged steel fittings produced by Bonney Forge (which are described by Templar, Titus, and Bonney Forge as "lug nut unions").<sup>34</sup> Templar then listed a number of alleged differences between the "lug nut unions" produced by Bonney Forge and the low- and high-pressure "oil field hammer unions" for which the exclusion is requested. Templar claimed that Bonney Forge's "lug nut unions" are produced and marked in accordance with Standard Practices 25 and 83 of the Manufacturers Standardization Society (MSS) of the Valve and Fittings Industry, in contrast to "oil field hammer unions" that they claim are traditionally

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<sup>26</sup> See Petitioners' Letter, "Forged Steel Fittings from India: Request to Postpone Preliminary Determination," dated November 27, 2019.

<sup>27</sup> See *Forged Steel Fittings From India: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 85 FR 1300 (January 10, 2020).

<sup>28</sup> See *Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>29</sup> See *Initiation Notice*, 84 FR at 64270.

<sup>30</sup> See Templar's Letter, "Antidumping Investigation of Forged Steel Fittings from India and Korea, and Countervailing Duty Investigation of Forged Steel Fittings from India – Scope Comments," dated December 9, 2019 (Templar Scope Comments), *see also* Titus's Letter, "Forged Steel Fittings from India and the Republic of Korea: Comments on Scope of Investigations," dated December 9, 2019 (Titus Scope Comments).

<sup>31</sup> See Bonney Forge's Letter, "Forged Steel Fittings from India and Korea: Scope Rebuttal Comments," dated December 19, 2019 (Bonney Forge Scope Rebuttal Comments).

<sup>32</sup> See Titus's Letter, "Forged Steel Fittings from India and the Republic of Korea: Response to Comments on Scope of Investigations," dated December 19, 2019 (Titus Scope Clarification Comments).

<sup>33</sup> See Templar Scope Comments at 2.

<sup>34</sup> *Id.* at 1-2.

categorized by Well Equipment Company (WECO) standards.<sup>35</sup> Templar further claimed that “oil field hammer unions” and Bonney Forge’s “lug nut unions” can be differentiated based on their nominal sizes, pressure ratings, color schemes, apparatus sealing methods, steel content, connective threading, wall thicknesses, and temperature tolerances.<sup>36</sup>

In Titus’s comments, the company argued that Commerce should further clarify the term “unions” in order to allow for easier differentiation between various types of forged steel unions that may or not fall within the scope of the investigation.<sup>37</sup> Titus requested that Commerce add an explicit reference to “hammer unions” in the scope, and specify whether they fall within the scope of the investigation. According to Titus, the term “hammer union” can be used interchangeably with “lug nut union” or “Weco union.”<sup>38</sup> Titus argued that while “hammer unions” are not manufactured to any specification listed in the scope of the investigation, their operating characteristics and manufacturing methods are identical to a number of in-scope products, leading Titus to believe that they fall within the scope of the investigation.<sup>39</sup> In its comments, Titus described a “hammer union” as a three-part coupling apparatus intended for low-pressure or high-pressure applications (the former utilizing a metallic seal, and the latter utilizing either an elastomeric seal or a combination of elastomeric and metallic sealing elements).<sup>40</sup> According to Titus, low-pressure or generally smaller “hammer unions” perform in a manner that is identical to the in-scope unions manufactured under specification MSS-SP83. Titus claims that the only difference between a “hammer union” and a MSS-SP83-compliant union is that a hammer union has a lug nut that is struck by a hammer to tighten and seal the assembly, while the MSS-SP83 union has a hex nut that is tightened by a wrench to seal and complete the assembly.<sup>41</sup> Titus also claims that “hammer unions” are largely imported under HTSUS subheadings that already fall under the scope of the investigation, including 7307.99.1000, 7307.99.3000, 7307.92.9000, 7307.93.3040, 7307.92.3010, and 7307.92.3030.<sup>42</sup>

In response to these comments, the petitioner, Bonney Forge, submitted rebuttal comments requesting that Commerce not clarify the scope of the investigations to exclude certain “oil field hammer unions” or “hammer unions.”<sup>43</sup> Bonney Forge argued that the forged steel fittings they produce have similar physical and performance characteristics as “hammer unions,” as well as the same manufacturing process and applications. In its comments, Bonney Forge claimed that its “lug nut unions” are similar to the “hammer unions” described by Templar and Titus, in that they are three-part assemblies that have wings or flanges that can be tightened by striking them with a hammer, and are routinely used in the oil and gas industry to join steel pipes together.<sup>44</sup> Bonney Forge also cited a portion of Titus’s comments arguing that “the assembly of {Bonney Forge’s} components is ‘installed, operates, and performs in an identical manner’ to the Hammer

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<sup>35</sup> *Id.* at 2.

<sup>36</sup> *Id.* at 3-5.

<sup>37</sup> *See* Titus Scope Comments at 1.

<sup>38</sup> *Id.* at 2.

<sup>39</sup> *Id.* at 2-5.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 2-3.

<sup>42</sup> *Id.* at 5.

<sup>43</sup> *See* Bonney Forge Scope Rebuttal Comments at 1.

<sup>44</sup> *Id.* at 1-3.

Unions for which a scope exclusion is being requested.”<sup>45</sup> As part of its scope rebuttal submission, Bonney Forge included an affidavit from the company’s vice president of product engineering, specialties, and China operations stating that “hammer unions” and Bonney Forge’s unions are both classified as “forged steel fittings,” and undergo a similar manufacturing process involving the same type of input steel (ASME SA105).<sup>46</sup> The affidavit claimed that these two union types share similar threading and temperature tolerance, and may be offered in overlapping sizes, pressure ratings, and seal types.<sup>47</sup> The affidavit also argued that certain painted coatings applied to “hammer unions” do not impart any performance properties, but rather help to identify the model characteristics in the same way as the markings applied to Bonney Forge’s unions.<sup>48</sup> Finally, Bonney Forge labeled Templar’s claims regarding the specifications (MSS vs. WECO) to which both unions are made as misleading, arguing that both types of union share similar manufacturing processes, physical characteristics, and applications, and that Bonney Forge could produce unions based on a WECO catalogue for any customer inquiry.<sup>49</sup> Bonney Forge thus claimed that no basis exists by which to exclude “hammer unions” from the scope of the investigation.

Titus also submitted comments refuting Templar’s claim that “oil field hammer unions” are not encompassed by the scope of the investigation. Titus argued that the “lug nuts” manufactured by Bonney Forge and “hammer unions” share many of the same design features and technical principles, and are virtually identical in terms of construction and proportionality.<sup>50</sup> According to Titus, both unions share a similar three-part assembly featuring a “male sub,” “female sub,” and a “nut” that transfers energy from hammer blows into rotational motion that tightens the assembly.<sup>51</sup> Titus also argued that Templar’s claims regarding differences in pressure ratings, temperature ratings, sealing methods, and material inputs between “hammer unions” and Bonney Forge’s “lug nut unions” were oversimplified and misleading, and that the technical features and operating principles of both unions are ultimately the same.<sup>52</sup> Titus asserted that “hammer unions” appear to qualify as subject merchandise due to these inherent properties and general applications, but again requested that Commerce clarify whether “hammer unions made of carbon or alloy steel” fall within the scope of the investigation.<sup>53</sup>

After examining the information on the record, including the exhibits submitted by all parties, we find that “hammer unions” appear to share many of the same physical characteristics, manufacturing processes, industry applications, material compositions, design specifications, and HTSUS classifications as the merchandise covered by the scope, including certain lug nuts produced by petitioner Bonney Forge. Based on their descriptions, “hammer unions” made of carbon or alloy steel would qualify as merchandise covered by the scope of this investigation. In order to avoid ambiguity regarding the status of this merchandise, Commerce is clarifying the scope language to confirm that “hammer unions” are encompassed by the scope of this

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<sup>45</sup> *Id.* at 3.

<sup>46</sup> *Id.* at Exhibit 1.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See Titus Scope Clarification Comments at 2.

<sup>51</sup> *Id.* at 2-3.

<sup>52</sup> *Id.* at 3-9.

<sup>53</sup> *Id.* at 10.

investigation. Specifically, we have added the parenthetical “(including hammer unions)” to the first paragraph of the scope.

The revised scope language is provided below.

#### **IV. SCOPE OF THE INVESTIGATION**

The merchandise covered by this investigation is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions (including hammer unions), and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections. The scope includes integrally reinforced forged branch outlet fittings, regardless of whether they have one or more ends that is a socket welding, threaded, butt welding end, or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP-79, MSS SP-83, MSS-SP-97, ASTM A105, ASTM A350 and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards, and it does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casings. Pursuant to the applicable standards, fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of forged steel fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class rating (expressed in pounds of pressure, *e.g.*, 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, nipples, and all fittings that have a maximum pressure rating of 300 pounds per square inch/PSI or less.

Also excluded from the scope are fittings certified or made to the following standards, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP-79, MSS SP-83, MSS SP-97, ASTM A105, ASTM A350 and ASTM A182:

- American Petroleum Institute (API) 5CT, API 5L, or API 11B;
- American Society of Mechanical Engineers (ASME) B16.9;
- Manufacturers Standardization Society (MSS) SP-75;
- Society of Automotive Engineering (SAE) J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAE J1231, SAE J1453, SAE J1926, J2044 or SAE AS 35411;
- Hydraulic hose fittings (*e.g.*, fittings used in high pressure water cleaning applications, in the manufacture of hydraulic engines, to connect rubber dispensing hoses to a dispensing nozzle or grease fitting) made to ISO 12151-1, 12151-2, 12151-3, 12151-4, 12151-5, or

12151-6;

- Underwriter’s Laboratories (UL) certified electrical conduit fittings;
- ASTM A153, A536, A576, or A865;
- Casing conductor connectors made to proprietary specifications;
- Machined steel parts (*e.g.*, couplers) that are not certified to any specifications in this scope description and that are not for connecting steel pipes for distributing gas and liquids;
- Oil country tubular goods (OCTG) connectors (*e.g.*, forged steel tubular connectors for API 5L pipes or OCTG for offshore oil and gas drilling and extraction);
- Military Specification (MIL) MIL-C-4109F and MIL-F-3541; and
- International Organization for Standardization (ISO) ISO6150-B.

To be excluded from the scope, products must have the appropriate standard or pressure markings and/or be accompanied by documentation showing product compliance to the applicable standard or pressure, *e.g.*, “API 5CT” mark and/or a mill certification report.

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.92.3010, 7307.92.3030, 7307.92.9000, 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They may also be entered under HTSUS 7307.93.3010, 7307.93.3040, 7307.93.6000, 7307.93.9010, 7307.93.9040, 7307.93.9060, and 7326.19.0010.

The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

## **V. INJURY TEST**

Because India is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On December 12, 2019, the ITC determined that there is reasonable indication that an industry in the United States is materially injured by reason of imports of forged steel fittings from India.<sup>54</sup>

## **VI. ALIGNMENT**

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioners’ request,<sup>55</sup> we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of forged steel fittings from India. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than August 3, 2020, unless postponed.<sup>56</sup>

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<sup>54</sup> See *Forged Steel Fittings from India and Korea: Determinations*, 84 FR 67959 (December 12, 2019).

<sup>55</sup> See Petitioners’ Letter, “Forged Steel Fittings from India: Request for Alignment,” dated March 5, 2020.

<sup>56</sup> See *Forged Steel Fittings From India and the Republic of Korea: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 11965 (February 28, 2020).

## VII. SUBSIDIES VALUATION

### A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.<sup>57</sup>

Commerce finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service 946 (2016), “Appendix B – Table of Class Lives and Recovery Periods” (IRS Pub. 946).<sup>58</sup> Commerce notified the respondents of this 15-year AUL in the initial CVD questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

Furthermore, for non-recurring subsidies, we applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL. If the amount of the subsidies is greater than 0.5 percent of the relevant sales value, we used the standard grant allocation methodology described under 19 CFR 351.524(d)(1) to determine the amount of the exemption attributable to the POI.

### B. Attribution of Subsidies

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

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

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<sup>57</sup> See 19 CFR 351.524(b).

<sup>58</sup> See U.S. Internal Revenue Service Publication 946 (2016), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.<sup>59</sup>

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.<sup>60</sup>

### *Shakti*

SFIPL identified a number of affiliated companies, but no subsidiaries or holding companies.<sup>61</sup> Of these identified companies, we determined that Shakti Forge was SFIPL’s only affiliate that both met Commerce’s cross-ownership regulatory definition and was also involved in the production of subject merchandise. In particular, SFIPL and Shakti Forge are cross-owned, pursuant to 19 CFR 351.525(b)(6)(vi), through the common control of the Pipaliya family, which owns 100 percent of both companies and constitutes the entire board of directors of both companies.<sup>62</sup> SFIPL provides raw materials to Shakti Forge which Shakti Forge then forges into semi-finished FSF on SFIPL’s behalf. SFIPL then finishes the semi-finished products into both subject and non-subject merchandise.<sup>63</sup> Both companies submitted full CVD questionnaire responses.

SFIPL is a producer/exporter of subject merchandise during the POI that was forged by Shakti Forge on a tolling basis. According to its questionnaire response, SFIPL did not export any subject merchandise produced by unaffiliated Indian companies to any country, including the United States, during the POI.<sup>64</sup> SFIPL also reported that it did not sell subject merchandise to an export trading company that subsequently sold the merchandise to the United States during the POI.<sup>65</sup> The company has four manufacturing units that are responsible for machining, finishing, cleaning, and packing both subject and non-subject merchandise, as well as purchasing activities, finance, and administration.<sup>66</sup> SFIPL reported that the company was first formed as a proprietorship firm called “Shakti Industries” in the year 2005, which was converted to a

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<sup>59</sup> See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

<sup>60</sup> See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).

<sup>61</sup> See Shakti IQR at 6.

<sup>62</sup> See Shakti AFFQR at Exhibits SFIPL-1 (b) and (c).

<sup>63</sup> *Id.* at 4-5.

<sup>64</sup> See Shakti AFFQR at 2.

<sup>65</sup> *Id.*

<sup>66</sup> See Shakti IQR at 5.

partnership firm in 2009 as “Shakti Forge Industries” before becoming a private limited company in 2015 under the name “Shakti Forge Industries Private Limited.”<sup>67</sup> According to SFIPL, these conversions only involved changes in the company’s legal status, and the company did not obtain any assets, change ownership, or merge with another company during the AUL.<sup>68</sup>

Shakti Forge is a cross-owned affiliate of SFIPL that is involved in the forging of steel fittings on a tolling basis.<sup>69</sup> According to its questionnaire response, Shakti Forge did not sell any subject merchandise, but rather performed tolling services (namely, the forging and heat treatment of subject merchandise) using steel inputs that were supplied by SFIPL.<sup>70</sup> As noted in its response, Shakti Forge’s administrative, financial, and purchasing matters are handled at SFIPL’s main offices.<sup>71</sup> Shakti Forge reported that the company was first founded as a partnership firm in 2010 under its current name, and that no changes in ownership or company mergers occurred during the AUL.<sup>72</sup>

For this preliminary determination, we preliminarily find that SFIPL and Shakti Forge meet the cross-ownership definition set forth in 19 CFR 351.525(b)(6)(vi).<sup>73</sup> We also find that Shakti Forge is a cross-owned input supplier, as the production of input products supplied by Shakti Forge are primarily dedicated to the production of the downstream product. Therefore, we will attribute subsidies received by Shakti Forge to the combined sales of Shakti Forge and SFIPL (excluding intercompany sales), in accordance with 19 CFR 351.525(b)(6)(iv). We will attribute subsidies received by SFIPL to its own sales in accordance with 19 CFR 351.525(b)(6)(i).

### **C. Denominators**

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondent’s receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent’s export or total sales, or portions thereof. As discussed in the “Programs Preliminarily Determined to Be Countervailable” section and in the respondent’s preliminary calculation memoranda, where a program is found to be countervailable as a domestic subsidy, we used total product sales as the denominator. Where a program is found to be contingent upon export activities, we used total export sales.<sup>74</sup>

All sales used in the net subsidy rate calculations are net of inter-company sales. For a further discussion of the denominators used, *see* the respondent’s preliminary calculations memoranda.<sup>75</sup>

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<sup>67</sup> See Shakti AFFQR at 5.

<sup>68</sup> *Id.* at 5-6.

<sup>69</sup> See Shakti IQR at SF-4 through SF-5.

<sup>70</sup> *Id.* at SF-5.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at SF-6.

<sup>73</sup> See Shakti Calculation Memorandum.

<sup>74</sup> Proceedings concerning India often involve so-called “deemed exports” (shipments indirectly exported through a domestic third party). However, deemed exports are not at issue in this investigation.

<sup>75</sup> *Id.*

## VIII. BENCHMARKS AND INTEREST RATES

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

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

Both SFIPL and Shakti Forge reported rupee-denominated long-term, variable rate loans that they received during the AUL from commercial lenders (*i.e.*, not state lenders).<sup>76</sup> We relied on the interest rate that SFIPL paid on its rupee-denominated long-term, variable rate borrowing as a benchmark interest rate to calculate the benefit that the company received under the Export Promotion Capital Goods Scheme and as a discount rate to allocate a grant received by the company under a program for micro, small, and medium enterprises.<sup>77</sup> We did not require a discount rate or benchmark loan rate for Shakti Forge.

## IX. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to

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<sup>76</sup> See Shakti IQR at Exhibit SFIPL-19(a)-(b) and Exhibit SF-12(a)-(b).

<sup>77</sup> See Shakti Calculation Memorandum.

induce respondents to provide {Commerce} with complete and accurate information in a timely manner.”<sup>78</sup> 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.”<sup>79</sup>

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>80</sup> It is Commerce’s practice to consider information to be corroborated if it has probative value.<sup>81</sup> In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.<sup>82</sup> However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.<sup>83</sup>

Finally, under section 776(d) of the Act, Commerce may use any 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 CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>84</sup>

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

#### **A. Application of Total AFA: Non-Cooperative and Non-Responsive Companies**

##### *Non-Cooperative Companies: Nikoo Forge and Pan International*

As noted in the “Initiation and Case History” section above, Commerce issued Q&V questionnaires to the ten largest exporters/producers identified in the CBP data placed on the record and confirmed that each of the mailed Q&Vs was successfully delivered.<sup>85</sup> Seven of these companies did not provide a response to Commerce’s Q&V questionnaire: Patton International

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<sup>78</sup> See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China Final*); and *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>79</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 870.

<sup>80</sup> See, e.g., SAA at 870.

<sup>81</sup> See SAA at 870.

<sup>82</sup> See, e.g., SAA at 869.

<sup>83</sup> See SAA at 869-870.

<sup>84</sup> See section 776(d)(3) of the Act.

<sup>85</sup> See Q&V Issuance Memo and Proof of Delivery Memo.

Limited, Sage Metals Limited, Kirtanlal Steel Private Limited, Disha Auto Components Private Limited, Dynamic Flow Products, Sara Sae Private Limited, and Parveen Industries Private Limited. Commerce selected Nikoo Forge and Pan International as mandatory respondents in this investigation.<sup>86</sup> Subsequent to their selection, Nikoo Forge and Pan International withdrew their cooperation in these proceedings.<sup>87</sup> Accordingly, we preliminarily determine that Nikoo Forge and Pan International, as well as Patton International Limited, Sage Metals Limited, Kirtanlal Steel Private Limited, Disha Auto Components Private Limited, Dynamic Flow Products, Sara Sae Private Limited, and Parveen Industries Private Limited, withheld necessary information that was requested of them, failed to provide information within the deadlines established, and significantly impeded this proceeding. Thus, Commerce is relying on facts otherwise available in making our preliminary determination with respect to the aforementioned non-cooperative companies, pursuant to sections 776(a)(2)(A)-(C) of the Act. Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b)(1) of the Act, because, by either not responding to Commerce's Q&V questionnaire or not responding to Commerce's Initial CVD Questionnaire, these companies did not cooperate to the best of their abilities to comply with the requests for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that the non-cooperative companies do not obtain a more favorable result by failing to cooperate than if they had fully complied with our requests for information.

All programs included in this investigation and the initiated NSAs are included in determining the AFA rate. Therefore, we are adversely inferring from the non-responsive companies' decisions not to participate in this investigation that they used all the programs on which we initiated an investigation, and we are applying an AFA rate for each program.

### *The GOI*

In its initial questionnaire response, the GOI provided information on the programs used by Shakti but did not provide information regarding any other programs on which Commerce initiated, despite explicit instructions from Commerce to do so.<sup>88</sup> In particular, Commerce informed the GOI:

Commerce is requesting that the government of India provide full responses regarding financial contribution and specificity for *all* programs on which Commerce initiated an investigation. Commerce requires this information in the event that the application of facts available is deemed appropriate in determining subsidy usage for uncooperative companies, including companies to whom Commerce issued quantity and value questionnaires, but who were ultimately nonresponsive. If the application of facts available to such companies is deemed appropriate, Commerce may determine that the uncooperative companies used all programs under investigation. Our decisions regarding the countervailability of all programs will be made on the basis of information received during this

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<sup>86</sup> See Initial Respondent Selection Memorandum.

<sup>87</sup> See Nikoo Forge Notice of Withdrawal and Pan International Notice of Withdrawal.

<sup>88</sup> See Supplemental Questionnaire Instructions.

proceeding, including information regarding financial contribution and specificity received from your government in response to the questionnaire.<sup>89</sup>

Therefore, we find that necessary information is missing from the record regarding these programs, within the meaning of section 776(a)(1) of the Act. Moreover, by not responding to our questions regarding these programs, we find that the GOI withheld necessary information that was requested of them, failed to provide information within the deadlines established, and significantly impeded this proceeding, within the meaning of section 776(a)(2)(A)-(C) of the Act, respectively. Moreover, by not responding to the relevant questions regarding financial contribution and specificity for these programs at all, despite our explicit instructions, we find that the GOI failed to cooperate to the best of its ability, within the meaning of section 776(b)(1) of the Act. That is, the GOI did not expend its “maximum effort” to be responsive to our inquiry.<sup>90</sup> Therefore, we are resorting to AFA to determine whether the programs at issue constitute financial contributions and are specific. As AFA, we determine that the following programs, for which we lack a response from the GOI, constitute financial contributions and are specific within the meaning of section 771(5)(D) and (5A) of the Act, respectively:

- 1. GIDC Provision of Land for LTAR**
- 2. Advance Authorization Scheme (AAS)**
- 3. Duty Free Import Authorization Scheme (DFIA Scheme)**
- 4. Duty-Free Import of Goods, Including Capital Goods and Raw Materials**
- 5. Reimbursements of Central Sales Tax (CST) Paid on Goods Manufactured in India**
- 6. Duty Drawback on Fuel Procured from Domestic Oil Companies**
- 7. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area (DTA)**
- 8. Market Development Assistance (MDA) Scheme**
- 9. Market Access Initiative (MAI)**
- 10. Focus Product Scheme (FPS)**
- 11. Status Certificate Program (SCP)**
- 12. Steel Development Fund Loans**
- 13. Provision of Steel for Less Than Adequate Remuneration (LTAR)**
- 14. Incremental Exports Incentivization Scheme**
- 15. Grant Under the IIPP: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas**
- 16. Grant Under the IIPP: Reimbursement of Power at the Rate of Rs. 0.75 per Unit**
- 17. Grant Under the IIPP: 50 Percent Subsidy for Expenses Incurred for Quality Certification**
- 18. Grant Under the IIPP: 50 Percent Subsidy on Expenses Incurred in Patent Registration**
- 19. Grant Under the IIPP: 25 Percent Subsidy on Cleaner Production Measures**
- 20. Tax Incentives Under the IIPP: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages**
- 21. Tax Incentives Under the IIPP: 25 Percent Reimbursement of Value Added Tax**

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<sup>89</sup> *Id.* at 1.

<sup>90</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

- (VAT), CST, and State Goods and Services Tax)
22. Tax Incentives Under the IIPP: Exemption from the State Government of Andhra Pradesh (SGAP) Non-Agricultural Land Assessment
  23. Provision of Goods and Services for LTAR Under the IIPP: Provision of Infrastructure for Industries Located More Than 10 Kilometers from Existing Industrial Estates or Development Areas
  24. Provision of Goods and Services for LTAR Under the IIPP: Guaranteed Stable Prices and Reservation of Municipal Water
  25. Andhra Pradesh Industrial Investment Corporation's (APIIC) Allotment of Land for LTAR
  26. State Government of Gujarat (SGOG): Sales Tax Incentives
  27. SGOG: Gujarat Industrial Development Corporation Subsidized Financing
  28. State Government of Maharashtra (SGOM) Sales Tax Program
  29. Electricity Duty Exemptions
  30. Waiving of Loan Interest by SICOM
  31. Investment Subsidies
  32. Infrastructure Assistance for Mega Projects Under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects
  33. Subsidies for Mega Projects Under the Package Scheme of Incentives
  34. Other Subsidies Under the Package Scheme of Incentives (2013)
  35. SGOM Provision of Land for LTAR

Despite our determination that these programs are countervailable as AFA, we intend to send a supplemental questionnaire to the GOI to solicit information regarding these programs.

*Selection of the AFA Rate for Non-Cooperative Company Respondents*

Based on the above discussion, we are adversely inferring from the decisions of aforementioned companies not to participate or cooperate with this investigation that these companies used all the programs which Commerce is investigating.

We will compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.<sup>91</sup> When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a countervailable duty

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<sup>91</sup> See, e.g., *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008), unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009) and accompanying IDM Memorandum at "Application of Facts Available, Including the Application of Adverse Inferences"; and *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from China Final*), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.<sup>92</sup> Accordingly, when selecting AFA rates, if we have cooperating respondents, as we do in this investigation, we first determine if there is an identical program in the investigation and use the calculated rate above zero for the identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate above *de minimis* for the identical program.<sup>93</sup> If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.<sup>94</sup>

Commerce's methodology is consistent with section 776(d)(1)(A) of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, Commerce may (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce's existing practice of using an AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection. Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."<sup>95</sup> No legislative history accompanied this provision. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

We find that the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its hierarchy methodology; and (2) Commerce may apply

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<sup>92</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

<sup>93</sup> For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

<sup>94</sup> See *Shrimp from China Final IDM* at 13-14.

<sup>95</sup> See section 776(d)(2) of the Act.

the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.<sup>96</sup>

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>97</sup> Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”<sup>98</sup> It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.<sup>99</sup>

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

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a “pool” of available rates that Commerce can rely upon for purposes of identifying an AFA rate for a particular program. In investigations, for example, this “pool” of rates could include the rates for the same or similar programs used in either that same investigation, or prior CVD

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<sup>96</sup> This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B). Under that provision, “any dumping margin from any segment of the proceeding under the applicable antidumping order” may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

<sup>97</sup> See SAA at 870; see also *Essar Steel*, 678 at 1276 (citing *F. Lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000) (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate’ with Commerce’s investigation, not to impose punitive damages.”)) (*De Cecco*).

<sup>98</sup> See *De Cecco*, 216 F. 3d at 1032.

<sup>99</sup> Commerce has adopted a practice of applying its hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at 28-31 (applying the AFA hierarchical methodology within the context of CVD investigation); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among that “pool” of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

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

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

Finally, if no such rate exists, under the third step of Commerce’s investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any noncompany-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.<sup>100</sup>

In all three steps of Commerce’s AFA investigation hierarchy, if Commerce were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the “reward” for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce’s investigation AFA hierarchy (which is different from selecting the highest possible rate in the “pool” of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.<sup>101</sup>

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<sup>100</sup> In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

<sup>101</sup> It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. See, e.g., *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60632 (October 25, 2007), and accompanying IDM at 2 (“As AFA in the instant case, Commerce is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did not receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed...”). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as AFA under its hierarchy.

Furthermore, we find that section 776(d)(2) applies as an exception to the selection of an AFA rate under 776(d)(1); that is, after “an evaluation of the situation that resulted in the application of an adverse inference,” Commerce may decide that given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate.

There are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy, in accordance with section 776(d)(1) of the Act, should be applied as AFA. As explained above, we are preliminarily applying AFA to Nikoo Forge, Pan International, Patton International Limited, Sage Metals Limited, Kirtanlal Steel Private Limited, Disha Auto Components Private. Limited, Dynamic Flow Products, Sara Sae Private Limited, and Parveen Industries Private Limited. In applying AFA to determine a net subsidy rate for the non-cooperating companies, we are guided by Commerce’s methodology detailed above. We begin by selecting, as AFA, the calculated program-specific above-zero rates determined for the cooperating respondent in the instant investigation. Accordingly, we are applying the highest applicable subsidy rate calculated for Shakti for the following programs:

- Duty Drawback Program
- Export Promotion of Capital Goods Scheme
- Merchandise Export from India Scheme
- State Government of Gujarat Scheme of Assistance to Micro, Small and Medium Enterprises: Assistance of One-Time Capital Investment Subsidy
- State Government of Gujarat Scheme of Assistance to Micro, Small and Medium Enterprises: Assistance for Interest Subsidy
- Provision of Water by the Gujarat Industrial Development Corporation for Less Than Adequate Remuneration

For all other programs not identified above, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a CVD investigation or administrative review involving India. For this preliminary determination, we are able to match, based on program names, descriptions, and benefit treatments, the following programs to the same or similar programs from other CVD proceedings involving India:

- GIDC Provision of Land for LTAR
- Advance Authorization Scheme (AAS)<sup>102</sup>
- Duty Free Import Authorization Scheme (DFIA Scheme)<sup>103</sup>
- Duty-Free Import of Goods, Including Capital Goods and Raw Materials<sup>104</sup>

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<sup>102</sup> See *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) (*Oil Country Tubular Goods from India*) and accompanying IDM at 19.

<sup>103</sup> See *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016) (*PET Resin*), and accompanying IDM at 27.

<sup>104</sup> See *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India*, 67 FR 34905 (May 16, 2002) (*PET Film from India Investigation*), at “DEPS.”

- Reimbursements of Central Sales Tax (CST) Paid on Goods Manufactured in India<sup>105</sup>
- Duty Drawback on Fuel Procured from Domestic Oil Companies<sup>106</sup>
- Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area (DTA)<sup>107</sup>
- Market Development Assistance (MDA) Scheme<sup>108</sup>
- Market Access Initiative (MAI)<sup>109</sup>
- Focus Product Scheme (FPS)<sup>110</sup>
- Status Certificate Program (SCP)<sup>111</sup>
- Steel Development Fund Loans<sup>112</sup>
- Provision of Steel for Less Than Adequate Remuneration (LTAR)<sup>113</sup>
- Incremental Exports Incentivization Scheme<sup>114</sup>
- Grant Under the IIPP: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas<sup>115</sup>
- Grant Under the IIPP: Reimbursement of Power at the Rate of Rs. 0.75 per Unit<sup>116</sup>
- Grant Under the IIPP: 50 Percent Subsidy for Expenses Incurred for Quality Certification<sup>117</sup>
- Grant Under the IIPP: 50 Percent Subsidy on Expenses Incurred in Patent Registration<sup>118</sup>
- Grant Under the IIPP: 25 Percent Subsidy on Cleaner Production Measures<sup>119</sup>
- Tax Incentives Under the IIPP: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages<sup>120</sup>

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<sup>105</sup> See *Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India*, 71 FR 28665 (May 17, 2006), and accompanying IDM at “State Government of Gujarat (SGOG) Tax Incentives.”

<sup>106</sup> See *PET Film from India Investigation*, at “DEPS.”

<sup>107</sup> *Id.*

<sup>108</sup> See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001) (*HRS from India Investigation*), and accompanying IDM at “Export Promotion of Capital Goods Scheme.”

<sup>109</sup> *Id.*

<sup>110</sup> See *PET Resin* IDM at 18-19.

<sup>111</sup> See *PET Film from India Investigation* IDM at “Pre-Shipment and Post-Shipment Export Financing.”

<sup>112</sup> See *HRS from India* at “Loans from the Steel Development Fund (SDF) Fund.”

<sup>113</sup> See *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) (*Circular Welded Steel Pipe from India*), and accompanying IDM at 12-13.

<sup>114</sup> See *PET Film from India Investigation* IDM at “Pre-Shipment and Post-Shipment Export Financing.”

<sup>115</sup> See *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) (*Hot-Rolled Carbon Steel Flat Products from India*), and accompanying IDM at 29-30.

<sup>116</sup> *Id.* at 30.

<sup>117</sup> *Id.* at 30-31.

<sup>118</sup> *Id.* at 31-32.

<sup>119</sup> *Id.* at 31.

<sup>120</sup> *Id.* at 32.

- Tax Incentives Under the IIPP: 25 Percent Reimbursement of Value Added Tax (VAT), CST, and State Goods and Services Tax)<sup>121</sup>
- Tax Incentives Under the IIPP: Exemption from the State Government of Andhra Pradesh (SGAP) Non-Agricultural Land Assessment<sup>122</sup>
- Provision of Goods and Services for LTAR Under the IIPP: Provision of Infrastructure for Industries Located More Than 10 Kilometers from Existing Industrial Estates or Development Areas<sup>123</sup>
- Provision of Goods and Services for LTAR Under the IIPP: Guaranteed Stable Prices and Reservation of Municipal Water<sup>124</sup>
- Andhra Pradesh Industrial Investment Corporation's (APIIC) Allotment of Land for LTAR<sup>125</sup>
- State Government of Gujarat (SGOG): Sales Tax Incentives<sup>126</sup>
- SGOG: Gujarat Industrial Development Corporation Subsidized Financing<sup>127</sup>
- State Government of Maharashtra (SGOM) Sales Tax Program<sup>128</sup>
- Electricity Duty Exemptions<sup>129</sup>
- Waiving of Loan Interest by SICOM<sup>130</sup>
- Investment Subsidies<sup>131</sup>
- Infrastructure Assistance for Mega Projects Under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects<sup>132</sup>
- Subsidies for Mega Projects Under the Package Scheme of Incentives<sup>133</sup>
- Other Subsidies Under the Package Scheme of Incentives (2013)<sup>134</sup>
- SGOM Provision of Land for LTAR<sup>135</sup>

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for the non-responsive and non-cooperative companies to be 284.91 percent *ad valorem*. The Appendix contains a chart summarizing our calculation of this rate.

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 33.

<sup>123</sup> *Id.* at 33-34.

<sup>124</sup> *Id.* at 34.

<sup>125</sup> *Id.* at 29-30.

<sup>126</sup> *See Hot-Rolled Carbon Steel Flat Products from India* at 21-22.

<sup>127</sup> *See Circular Welded Steel Pipe from India* at 30-31, where Commerce calculated a rate for a similar program.

<sup>128</sup> *Id.* at 26-27.

<sup>129</sup> *Id.* at 28.

<sup>130</sup> *Id.* at 31-32.

<sup>131</sup> *Id.* at 30-31.

<sup>132</sup> *Id.* at 29-30.

<sup>133</sup> *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination*, 81 FR 49932 (July 29, 2016) and accompanying IDM at 11-12.

<sup>134</sup> *See Circular Welded Steel Pipe from India* at 28, where Commerce calculated a rate for a similar program.

<sup>135</sup> *Id.* at 30.

### *Corroboration of the AFA Rate*

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>136</sup> The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.<sup>137</sup>

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.<sup>138</sup> Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>139</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>140</sup>

In the absence of reliable record evidence concerning the non-cooperative companies’ usage of the subsidy programs at issue due to their decision not to participate or provide complete information in the investigation, we have reviewed the information concerning Indian subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this investigation. The relevance of these rates is that they are actual calculated subsidy rates for Indian programs, from which the non-responsive companies could actually receive a benefit. Accordingly, we have corroborated the rates we selected to use as AFA to the extent practicable pursuant to section 776(c)(1) of the Act for this preliminary determination.

## **X. ANALYSIS OF PROGRAMS**

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

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<sup>136</sup> See SAA at 870.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 869-870.

<sup>139</sup> See section 776(d) of the Act.

<sup>140</sup> See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

## A. Programs Preliminarily Determined to Be Countervailable

### 1. Duty Drawback (DDB) Scheme

SFIPL reported that it received rebates of duties paid when it exported products manufactured in India under the DDB scheme.<sup>141</sup> The GOI explained that the DDB scheme provides rebates of duties or taxes chargeable on any imported or excisable materials used in the manufacture of exported goods.<sup>142</sup> Specifically, the duties and taxes “neutralized” under the program are (i) the customs duties and integrated tax and compensation cess paid on imported goods that are re-exported, and (ii) customs duties on imported inputs and central excise duty on certain items used as inputs or fuel for captive power generation.<sup>143</sup> DDB is generally fixed as a percentage of the free-on-board (FOB) price of the exported product, and is provided one of two ways: (1) on the basis of actual duty incidence; or (2) on the basis of averages (All Industry Rate).<sup>144</sup>

Import duty exemptions on inputs for exported products are not countervailable, as long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.<sup>145</sup> However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products and in what amounts.<sup>146</sup> This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.<sup>147</sup> If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of *actual* inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, or remission of drawback is countervailable.<sup>148</sup>

Regarding its establishment of applicable DDB rates, the GOI stated the following in *Shrimp from India*:<sup>149</sup>

The rates are determined following a specified procedure that is undertaken by an independent committee appointed by the Government. The committee makes its recommendations after discussions with all stake holders including Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products. Corroborating data is also collected from Central Excise and Customs field formations.

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<sup>141</sup> See Shakti IQR at SFIPL-15.

<sup>142</sup> See GOI IQR at 12.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> See 19 CFR 351.519(a)(1)(ii).

<sup>146</sup> See *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India Final Determination*), and accompanying IDM at 12-14.

<sup>147</sup> *Id.*

<sup>148</sup> See 19 CFR 351.519(a)(4)(i)-(ii).

<sup>149</sup> See *Shrimp from India*, and accompanying IDM at 12-13, “Duty Drawback.”

This data is analyzed and this information is used to form the basis for the rate of Duty Drawback.<sup>150</sup>

However, “based on the GOI’s questionnaire responses and lacking the documentation to support that the GOI has a system in place,” we concluded in that investigation that “the GOI had not supported its claim that its system is reasonable or effective for the purposes intended.”<sup>151</sup>

The GOI has not reported any changes to the program during the course of this proceeding.<sup>152</sup>

Similar to what it stated in *Shrimp from India*, the GOI once again reported:

The drawback rates are calculated on the basis of the data, pertaining to inputs and input services used in the manufacturing process, provided by the different export promotion councils and are duly verified by the statutory auditors. The data is also sought from the Customs, Central Excise and Service tax Commissionerate regarding the inputs used, their prices and the duty incidence on the inputs or the input services. Based on these verified data, and any additional statutory or non-statutory data available from the different government departments, the drawback rates are calculated by the Drawback Committee.<sup>153</sup>

Thus, as seen in previous proceedings, such as *Shrimp from India*, the record of this investigation indicates the GOI continues to employ universal rates based on aggregate data collected from various sources rather than attempting to determine the respondent’s actual consumption, production, and waste. This fixed, “one size fits all” approach is elsewhere made clear on the record of this investigation by the GOI. For example, it explains:

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

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<sup>150</sup> *Id.* at 12-13.

<sup>151</sup> *Id.*

<sup>152</sup> *See* GOI IQR at 22.

<sup>153</sup> *Id.*

Drawback is generally *fixed* as a percentage of FOB price of the export product. The applicable rates are notified in the Duty Drawback Schedule.<sup>154</sup>

Likewise, the GOI explained that: “The rates provided to the goods in question represent a *broad assessment* of unrebated incidence (direct and embedded) of the duties which for ease of implementation are together extended as the drawback rate.”<sup>155</sup>

We preliminarily determine that a financial contribution, pursuant to section 771(5)(D)(ii) of the Act, is provided under the DDB program because rebated duties represent revenue forgone by the GOI. Because the program is only available to exporters, we preliminarily determine that the DDB program is specific under section 771(5A)(B) of the Act. As explained above, under 19 CFR 351.519(a)(4), in the absence of an adequate drawback system, the entire amount of customs and excise duties and service taxes rebated during the POR constitutes a benefit. Pursuant to 19 CFR 351.519(b)(1), we find that benefits from the DDB program are conferred on the dates of exportation of the shipments for which the pertinent drawbacks were earned.<sup>156</sup> We calculated the benefit on an as-earned basis. Drawbacks under the program are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, it is at the time of exportation that recipients know the exact amount of the benefit (*i.e.*, the value of the drawback).

SFIPL reported the benefits earned on exports of subject merchandise to the United States under this program on a transaction-specific basis.<sup>157</sup> In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, Commerce will attribute that subsidy to only that product or market. For SFIPL, we divided the DDB rebates earned on exports of subject merchandise to the United States during the POI by the company’s exports of subject merchandise to the United States during the POI. On this basis, we preliminarily determine a net countervailable subsidy rate of 1.59 percent *ad valorem* for SFIPL.<sup>158</sup>

## **2. Export Promotion of Capital Goods Scheme (EPCGS)**

The GOI explained in its questionnaire response that the EPCGS provides an exemption from customs duties on imports of capital goods used in the pre-production, production, and post-production of exported products.<sup>159</sup> Under the EPCGS, a license holder pays zero custom duty on imported capital equipment subject to an export obligation.<sup>160</sup> To fulfill the program’s obligation, a company must commit to export a multiple of the CIF value of the imported capital goods, or a multiple of the duty saved, within a specific time period (*e.g.*, six times the duty saved over six years, applicable for the period 2015-2020).<sup>161</sup> Once a company has met its

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<sup>154</sup> *Id.* at 12 (emphasis added).

<sup>155</sup> *Id.* at 24 (emphasis added).

<sup>156</sup> See, *e.g.*, *Final Affirmative Countervailing Duty Determination: Certain Cut-To-Length Carbon Quality Steel Plate from India*, 64 FR 73131, 73134 and 73140 (December 29, 1999) (Steel Plate Final Determination).

<sup>157</sup> See Shakti’s IQR at SGIPL-18 and Exhibit SFIPL-10(f).

<sup>158</sup> See Shakti Calculation Memorandum.

<sup>159</sup> See GOI IQR at 25.

<sup>160</sup> *Id.*

<sup>161</sup> See Shakti’s IQR at SFIPL 22-23.

export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is liable for the payment of residual duties and an interest penalty.<sup>162</sup>

The EPCGS provides a financial contribution in the form of revenue forgone, pursuant to section 771(5)(D)(ii) of the Act, and is specific pursuant to sections 771(5A)(B) of the Act because the program is contingent upon export performance. Moreover, in several prior investigations, Commerce has determined that import duty reductions or exemptions provided under the EPCGS are countervailable export subsidies.<sup>163</sup>

Under the EPCGS program, the exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. It is Commerce's practice to treat any balance on an unpaid liability that may be waived in the future as a contingent-liability interest-free loan pursuant to 19 CFR 351.505(d)(1).<sup>164</sup> Since the unpaid duties are a liability contingent on subsequent events, these interest-free contingent-liability loans constitute the first benefit under the EPCGS program. The second benefit arises when the GOI waives the duty on imports of capital equipment covered by those EPCG licenses for which the export requirement has already been met. For those licenses for which the GOI has acknowledged that the company has completed its export obligation, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are approved for the purchase of capital equipment. The preamble to our regulations states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring . . . ."<sup>165</sup> In accordance with 19 CFR 351.524(c)(2)(iii) and past

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<sup>162</sup> See GOI IQR at SFIPL-37 and SFIPL-38.

<sup>163</sup> See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India*) and accompanying IDM at 14-17; and *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film from India*) and accompanying IDM at "EPCGS."

<sup>164</sup> See *Shrimp from India* and accompanying IDM at 14-17; see also *PET Film From India* and accompanying IDM at "EPCGS"; see also *Glycine from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 44859 (September 4, 2018), and accompanying Preliminary Determination Memorandum (PDM) at Export Promotion of Capital Goods Scheme, unchanged in *Glycine from India Final Determination*; see also *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016) (*Steel Flanges from India Preliminary Determination*), and accompanying PDM at 13, unchanged in *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Steel Flanges from India Final Determination*).

<sup>165</sup> See *Countervailing Duties*, 63 FR 65348, 65393 (November 25, 1998).

practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.<sup>166</sup>

Information provided by SFIPL indicates that they only received one EPCGS license during the AUL, and that their EPCGS license was issued for the purchase of capital goods for the production of both subject and non-subject merchandise.<sup>167</sup> Accordingly, this information does not allow us to tie particular EPCGS licenses to particular products within the meaning of 19 CFR 351.525(b)(5). As such, we are attributing the EPCGS benefits received by the respondent on its EPCGS to their total exports. SFIPL reported that it did not receive a formal waiver from the GOI during the POI.<sup>168</sup>

For its license, SFIPL reported that it has not fulfilled its export obligations.<sup>169</sup> Therefore, SFIPL received deferrals from paying import duties for the imports of capital goods. As noted above, import duty exemptions that SFIPL received on the imports of capital equipment for which it has not yet met export obligations may have to be repaid to the GOI if the obligations under the license are not met. Consistent with Commerce's practice and prior determinations, we are treating the unpaid import duty liability as an interest-free loan.<sup>170</sup>

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

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

Thus, the benefit received under the EPCGS is the sum of the interest that would have been due had SFIPL borrowed the full amount of the duty exemption at the time of the importation of capital equipment for which SFIPL had not met export requirements during the POI. As such, we divided

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<sup>166</sup> See, e.g., *PET Film from India 2007 Review* and accompanying IDM at Comment 9.

<sup>167</sup> See Shakti's IQR at SFIPL-25 and Exhibit SFIPL-11(a)-(d).

<sup>168</sup> *Id.* at SFIPL-28.

<sup>169</sup> *Id.* at Exhibit SFIPL-11(d).

<sup>170</sup> See, e.g., *Steel Flanges from India Preliminary Determination*, and accompanying PDM at 15, unchanged in *Steel Flanges from India Final Determination*.

the benefit received by SFIPL under the EPCGS by the sum of its total export sales for the POI. This denominator best reflects the products that SFIPL manufactured with the imported capital equipment and subsequently exported. On this basis, we preliminarily determine a net countervailable subsidy rate of 0.01 percent *ad valorem* for SFIPL.<sup>171</sup>

### **3. Merchandise Exports from India Scheme (MEIS)**

SFIPL reported participating in the MEIS during the POI.<sup>172</sup> The MEIS was introduced in India's Foreign Trade Policy (FTP) covering 2015-2020.<sup>173</sup> According to the GOI, the purpose of this program is to offset infrastructural inefficiencies and associated costs involved in the export of goods and products that are manufactured in India, especially those that have high export intensity, employment potential and, thereby, enhance India's export competitiveness.<sup>174</sup> Eligibility is also dependent on the products and the foreign markets to which the products are exported.<sup>175</sup> Under this program, the GOI issues a scrip worth a certain percentage of the FOB value of the export.<sup>176</sup> To receive the scrip, a recipient must file an electronic application and supporting shipping documentation for each port of export with the Director General of Foreign Trade (DGFT).<sup>177</sup> The DGFT reviews the data on the application and shipment and will issue the MEIS scrip.<sup>178</sup> SFIPL reported that it can use the issued scrip for payment of customs duties for importation of goods, payment of taxes for purchases of domestically sourced inputs, or it can transfer or sell the scrip to another company.<sup>179</sup> SFIPL also reported that the company has always chosen to sell its MEIS licenses, and has not used them for importation.<sup>180</sup> We have examined the MEIS in other CVD cases involving India,<sup>181</sup> and record evidence provided by the GOI in this review does not demonstrate that changes have been made to this program.

Accordingly, we determine that the MEIS program confers a countervailable subsidy.<sup>182</sup> The MEIS program is specific within section 771(5A)(B) of the Act because eligibility to receive

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<sup>171</sup> See Shakti Calculation Memorandum.

<sup>172</sup> See Shakti AFFQR at Appendix 1.

<sup>173</sup> See GOI IQR at 58.

<sup>174</sup> See Shakti IQR at SFIPL-39 and Exhibit SFIPL-15(a).

<sup>175</sup> *Id.* at SFIPL-39.

<sup>176</sup> See GOI IQR at 64.

<sup>177</sup> *Id.* at 58.

<sup>178</sup> *Id.* at 62.

<sup>179</sup> See Shakti IQR at SFIPL-40 and SFIPL-41.

<sup>180</sup> *Id.*

<sup>181</sup> See, e.g., *Certain New Pneumatic Off-the-Road Tires from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 39903 (June 20, 2016), and accompanying Preliminary Decision Memorandum (PDM) at 16, unchanged in *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) (*OTR Tires from India Final Determination*), and accompanying IDM.

<sup>182</sup> Commerce has found this program to be countervailable in prior CVD proceedings involving India. See, e.g., *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), and accompanying PDM at 21, unchanged in *Polyester Textured Yarn from India: Final Affirmative Countervailing Duty Determination*, 84 FR 63848 (November 19, 2019) (*Textured Yarn from India*), and accompanying Issues and Decision Memorandum (IDM) at Comment 4.

scrips from this program is contingent upon export performance.<sup>183</sup> This program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, because the scrips provide exemptions of paying duties associated with the import of goods, which represents revenue forgone by the GOI.

This program provides a recurring benefit, as the scrips from this program are not tied to capital assets. Furthermore, recipients can expect to receive additional subsidies under this same program on an ongoing basis from year to year under 19 CFR 351.524(c)(2)(i). We calculated the benefit to SFIPL to be the total value of the scrips received during the POI. Normally, in cases where the benefits are granted based on a percentage value of the shipment, Commerce calculates the benefit as having been received as of the date of exportation.<sup>184</sup> However, because the benefit (the scrip) amount is not automatic and is not known to the exporter until well after the exports are made, the MEIS licenses, which contain the date of validity and the duty exemption amount as issued by the GOI, are the best method to determine and account for when the benefit is received.<sup>185</sup> Therefore, for our subsidy rate calculation, we divided the value of the scrips SFIPL received during the POI by its total export sales. On this basis, we preliminarily determine the countervailable subsidy rate of 0.93 percent *ad valorem* for SFIPL.

#### **4. SGOG Scheme of Assistance to Micro, Small and Medium Enterprises (MSME)**

SFIPL and Shakti Forge reported their usage of benefits under the SGOG's Scheme of Assistance to MSME, which is administered under the SGOG's Industrial Policy 2015 by the Industries & Mines Department.<sup>186</sup> The GOI reported that the scheme to provide assistance to MSMEs came into force beginning on January 1, 2015, and is intended to improve the sophistication of MSMEs through various measures, including interest subsidies for the manufacturing and service sector, venture capital assistance, quality certification, the technology acquisition funding, national and international patent assistance, energy and water conservation audits, market development assistance and support, credit rating support, state awards, and more.<sup>187</sup> Shakti explains that companies which satisfy the conditions of "micro," "small" or "medium" enterprises, per the definitions laid out under the GOI's MSMED Act of 2006 concerning the extent of a company's plant and machinery investments, are eligible for this program.<sup>188</sup> Qualifying companies must meet a number of program conditions laid out in the SGOG Industrial Policy 2015 for capital investment subsidies and interest subsidies, including the annual provision of sales, production, and employment data to government-sponsored district industries centers (DIC), local employment quotas, and pollution control requirements.<sup>189</sup>

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<sup>183</sup> See GOI IQR at 64 ("The entitlement under MEIS is contingent upon export of notified products to notified countries and on realisation {sic} of export proceedings within a stipulated time.").

<sup>184</sup> See 19 CFR 351.519(b)(1).

<sup>185</sup> See, e.g., *Carbon and Alloy Steel Threaded Rod Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 36570 (July 29, 2019) and accompanying PDM at 23 (unchanged in *Carbon and Alloy Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination*, 85 FR 8828 (February 18, 2020)).

<sup>186</sup> See SFIPL IQR at SFIPL-43 and SF-26.

<sup>187</sup> See GOI IQR at 48 and Exhibit O.

<sup>188</sup> See Shakti IQR at SFIPL-44 and Exhibit SFIPL-16(a).

<sup>189</sup> *Id.* at SFIPL-16(a).

Under the scheme, companies inside of municipal corporation areas can receive a capital investment subsidy at 10 percent of the value of a loan disbursed by a bank or financial institution with a maximum amount of Rs. 15 lakhs, while companies outside of these areas can receive a capital investment subsidy at 15 percent of the value of a loan disbursed by a bank or financial institution with a maximum amount of Rs. 25 lakhs.<sup>190</sup> In other words, companies receive a grant that is equal to 10 percent or 15 percent of the value of a loan. The companies are not actually receiving a loan from the GOI under this program. MSMEs can receive various interest subsidies to various degrees depending on their circumstances, including: (1) an interest subsidy at five percent with the maximum amount of RS. 25 lakhs per annum for a period of five years within municipal corporation areas; (2) an interest subsidy at seven percent with the maximum amount of Rs. 30 lakhs per annum for a period of five years for businesses located outside municipal corporation areas; (3) a one percent additional interest subsidy to scheduled caste (SC) or scheduled tribe (ST) entrepreneurs, physically challenged entrepreneurs, and women entrepreneurs in manufacturing and service sectors; and (4) a one percent additional interest subsidy to young entrepreneurs below 35 years of age on the date a loan is sanctioned.<sup>191</sup> The GOI reported that both SFIPL and Shakti Forge have availed themselves of the capital subsidy and interest subsidy available under this scheme.<sup>192</sup>

The capital and interest subsidies provided under the SGOG's Scheme of Assistance to MSMEs are specific within section 771(5A)(D)(iv) of the Act because eligibility to receive capital and interest subsidies under this scheme is contingent, in part, upon a company's geographic location. As explained above, the scheme is "tiered," providing different levels of subsidization depending on the region in which the MSME is located. SFIPL, for instance, receives higher capital investment subsidies and interest subsidies because it is located outside a municipal corporation area. This program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act as a one-time capital subsidy or a recurring interest subsidy transferred to the company utilizing the scheme from the SGOG. Finally, this program provides a benefit in the form of grants; grants that either offset the principal costs of capital investments or the recurring interest costs. Accordingly, we determine that the capital subsidy and interest subsidy available under the SGOG's Scheme of Assistance to MSMEs confer countervailable subsidies.

*a. Assistance of One-Time Capital Investment Subsidy*

In their questionnaire responses, both SFIPL and Shakti Forge reported applying for, and receiving, a one-time capital subsidy under the SGOG's Scheme of Assistance to MSMEs.<sup>193</sup> Citing paragraph 2.1 of the SGOG MSME scheme, SFIPL explained that the company qualified for a subsidy worth 15 percent of a term loan disbursed by a bank or financial institution because it is located outside a "municipal corporation" as defined by the scheme.<sup>194</sup> Furthermore, citing

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<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> See GOI IQR at 49-51.

<sup>193</sup> See Shakti IQR at SFIPL-47 and SF-26, and Exhibits SFIPL-18 and SF-11.

<sup>194</sup> *Id.* at SFIPL-44 and

paragraph 2.2.3 of the SGOG MSME scheme, Shakti Forge explained that it qualified for a capital investment subsidy of 17 percent of a term loan disbursed by a bank or financial institution because it is located outside a “municipal corporation” as defined by the scheme and because it holds between Rs. 50 lakhs and Rs. 2 crore in plant and machinery investments.<sup>195</sup>

Because payments under this aspect of the program are one-time grants tied to a company’s capital structure, we treated the capital investment subsidy as a non-recurring subsidy pursuant to 19 CFR 351.524(c). We then applied the 0.5 percent test of 19 CFR 351.524(b)(2). As such, we divided the total amount of the single payment by SFIPL’s total sales for the year in which the subsidy was approved.<sup>196</sup> Because the result was greater than 0.5 percent, we allocated the total amount of the disbursement across the 15-year AUL. We divided the amount allocable to the POI by the total sales of SFIPL in the POI. On this basis, we preliminarily determine the countervailable subsidy rate of 0.03 percent *ad valorem* for SFIPL.<sup>197</sup> We did not countervail the capital investment subsidy received by Shakti Forge because the subsidy was both approved and disbursed after the POI.<sup>198</sup>

#### *b. Assistance for Interest Subsidy*

In their questionnaire responses, both SFIPL and Shakti Forge reported applying for, and receiving, recurring interest subsidies under the SGOG’s Scheme of Assistance to MSMEs. Citing paragraph 3.1 of the SGOG MSME scheme, SFIPL and Shakti Forge explained that both companies qualified for an interest subsidy worth seven percent of the maximum amount of Rs. 30 lakhs per annum for a period of five years because they are located outside of a “municipal corporation” as defined by the scheme.

Because payments under this aspect of the program are received automatically on a recurring basis throughout the life of the loan – up to five years, we treated the interest subsidy as a recurring benefit pursuant to 19 CFR 351.524(a). We determined the benefit by dividing the amount of the payment offset (*i.e.*, the grant) received during the POI by the total value of SFIPL’s sales during the POI. On this basis, we preliminarily determine the countervailable subsidy rate of 0.08 percent *ad valorem* for SFIPL.<sup>199</sup> We did not countervail the value of the interest subsidy payments received by Shakti Forge because the subsidy was both approved and disbursed after the end of the POI.<sup>200</sup>

### **5. GIDC Provision of Water for LTAR**

SFIPL and Shakti reported that they procured water from the GIDC.<sup>201</sup> According to the GOI, the GIDC is the agency created by the SGOG for facilitating industrial development in the state of Gujarat. The GIDC establishes industry-ready land, referred to as “industrial estates,” with

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<sup>195</sup> *Id.* at SF-27 and SF-28.

<sup>196</sup> *Id.* at Exhibit SFIPL-18(a).

<sup>197</sup> See Shakti Calculation Memorandum.

<sup>198</sup> See Shakti IQR at SF-26.

<sup>199</sup> See Shakti Calculation Memorandum.

<sup>200</sup> See Shakti IQR at SF-30.

<sup>201</sup> See Shakti Program List at Appendix 1 and Shakti IQR at SFIPL-51 and SFIPL-52, and SF-39 and SF-40.

basic infrastructure, such as roads, water and power availability, which is then leased out to manufacturers.<sup>202</sup> The GIDC is a statutory body that functions in accordance with SGOG statutes and regulations.<sup>203</sup> The framework for development is set forth in the Gujarat Industrial Development Act 1962, which created the GIDC, and which is executed, in part, via the GIDC Water Supply Regulation of 1991.<sup>204</sup> We thus preliminarily find that the GIDC is an authority within the meaning of section 771(5)(B) of the Act.

Under the GIDC Water Supply Regulation of 1991, all companies located in a GIDC estate where the GIDC provides access to water are required to use that water.<sup>205</sup> The regulations stipulate that water is supplied through the GIDC, which controls the supply and sets and alters the rates charged, and can be made available to companies located outside of the estates.<sup>206</sup> The regulation also states that if a water connection is given to premises outside the limits of the estate, water charges shall be calculated at double the prevailing rates for water inside the estate.<sup>207</sup>

Because the GIDC is the dispensing agency for funds appropriated by the SGOG for the development of industrial estates, builds estates in locations directed by the SGOG, and administers them according to directives and policies set by the SGOG, the jurisdiction of the authority providing the subsidy is the entire state of Gujarat.<sup>208</sup> The water rates set by the GIDC only apply to those enterprises located within its estates.<sup>209</sup> Thus, the record indicates that the GIDC estates are a designated area under the jurisdiction of the SGOG, and that the provision of water at the discounted rate is limited by law to enterprises or industries within a designated geographical region within the jurisdiction of the authority providing the subsidy.<sup>210</sup>

Therefore, we preliminarily find that this program is regionally specific in accordance with section 771(5A)(D)(iv) of the Act, and consistent with Commerce's prior determinations.<sup>211</sup> The

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<sup>202</sup> See GOI IQR at Exhibit O.

<sup>203</sup> *Id.* at 41.

<sup>204</sup> See Shakti IQR at SFIPL-52 and Exhibit SFIPL- 21(c), and SF-40 and Exhibit SF-13(c).

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* at Exhibits SFIPL-21(c) and SF-13(c).

<sup>207</sup> *Id.*

<sup>208</sup> See GOI IQR at 41 and Exhibit O.

<sup>209</sup> See Shakti IQR at Exhibit SFIPL-21(c).

<sup>210</sup> *Id.*

<sup>211</sup> See, e.g., *Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Final Affirmative Determination*, 81 FR 23575 (September 29, 2016) and accompanying Issues and Decision Memorandum at Comment 7 (where enterprises or industries located within a designated geographical region within the jurisdiction of the authority are deemed to be regionally specific); see also *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28755 (May 21, 2010), and accompanying Issues and Decision Memorandum, at the "Provision of Land Use Rights for LTAR to FIEs in Jiangxi and the City of Xinyu" section (where eligibility for a program was limited to as Economic Development Zone under the jurisdiction of a city); *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at the "Provision of Electricity for Less than Adequate Remuneration" section (where eligibility for a program was limited to users outside the Bangkok metropolitan area); *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) and accompanying Issues and Decision Memorandum

GIDC Water Supply Regulation of 1991 provides that companies located outside of the GIDC estates are charged double the rate for water as companies located inside the GIDC industrial estates.<sup>212</sup> We preliminarily find the 50 percent price discount for enterprises within the GIDC industrial estates to constitute a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act.

Additionally, we find that this program confers a benefit within the meaning of section 771(5)(E) of the Act in the amount of the 50 percent discount. We divided the amount saved by SFIPL pursuant to the 50 percent discount during the POI by SFIPL total sales during the POI. We divided the amount saved by Shakti Forge during the POI by the combined sales of SFIPL and Shakti Forge (exclusive of intercompany sales) during the POI in order to determine the subsidy rate from Shakti Forge's water purchases attributable to SFIPL. We calculated an estimated net subsidy of 0.01 percent *ad valorem* for SFIPL.<sup>213</sup>

## **B. Programs Preliminarily Determined Not to Be Used By Shakti**

### **1. GIDC Provision of Land for LTAR**

Shakti reported obtaining land from private third party sources. Because no land was obtained from the GIDC or any other authority of the GOI or SGOG, we are preliminarily finding the program not used.

- 2. Advance Authorization Scheme (AAS)**
- 3. Duty Free Import Authorization Scheme (DFIA Scheme)**
- 4. Duty-Free Import of Goods, Including Capital Goods and Raw Materials**
- 5. Reimbursements of Central Sales Tax (CST) Paid on Goods Manufactured in India**
- 6. Duty Drawback on Fuel Procured from Domestic Oil Companies**
- 7. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area (DTA)**
- 8. Market Development Assistance (MDA) Scheme**
- 9. Market Access Initiative (MAI)**
- 10. Focus Product Scheme (FPS)**
- 11. Status Certificate Program (SCP)**
- 12. Steel Development Fund Loans**
- 13. Provision of Steel for Less Than Adequate Remuneration (LTAR)**
- 14. Incremental Exports Incentivization Scheme**
- 15. Grant Under the IIPP: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas**
- 16. Grant Under the IIPP: Reimbursement of Power at the Rate of Rs. 0.75 per Unit**
- 17. Grant Under the IIPP: 50 Percent Subsidy for Expenses Incurred for Quality Certification**
- 18. Grant Under the IIPP: 50 Percent Subsidy on Expenses Incurred in Patent**

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at Comment 8, (where eligibility for a program was limited to companies located in an industrial park within the provider's (e.g., county's or municipality's) jurisdiction).

<sup>212</sup> See Shakti IQR at Exhibit SFIPL-21(c).

<sup>213</sup> See Shakti Calculation Memorandum.

#### **Registration**

- 19. Grant Under the IIPP: 25 Percent Subsidy on Cleaner Production Measures**
- 20. Tax Incentives Under the IIPP: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages**
- 21. Tax Incentives Under the IIPP: 25 Percent Reimbursement of Value Added Tax (VAT), CST, and State Goods and Services Tax)**
- 22. Tax Incentives Under the IIPP: Exemption from the State Government of Andhra Pradesh (SGAP) Non-Agricultural Land Assessment**
- 23. Provision of Goods and Services for LTAR Under the IIPP: Provision of Infrastructure for Industries Located More Than 10 Kilometers from Existing Industrial Estates or Development Areas**
- 24. Provision of Goods and Services for LTAR Under the IIPP: Guaranteed Stable Prices and Reservation of Municipal Water**
- 25. Andhra Pradesh Industrial Investment Corporation's (APIIC) Allotment of Land for LTAR**
- 26. State Government of Gujarat (SGOG): Sales Tax Incentives**
- 27. SGOG: Gujarat Industrial Development Corporation Subsidized Financing**
- 28. State Government of Maharashtra (SGOM) Sales Tax Program**
- 29. Electricity Duty Exemptions**
- 30. Waiving of Loan Interest by SICOM**
- 31. Investment Subsidies**
- 32. Infrastructure Assistance for Mega Projects Under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects**
- 33. Subsidies for Mega Projects Under the Package Scheme of Incentives**
- 34. Other Subsidies Under the Package Scheme of Incentives (2013)**
- 35. SGOM Provision of Land for LTAR**

#### **XI. Calculation of the All-Others Rate**

Sections 703(d) and 705(c)(5)(A) of the Act state that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. Because Shakti is the only respondent in this investigation to receive a calculated rate that is not zero, *de minimis*, or based entirely on facts available, we are assigning Shakti's net countervailable subsidy rate, 2.65 percent *ad valorem*, as the all-others rate.

#### **XII. ITC Notification**

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such

information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance. In accordance with section 705(b)(2) of the Act, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after Commerce makes its final affirmative determination.

### **XIII. VERIFICATION**

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to Commerce's questionnaires.

### **XIV. DISCLOSURE AND PUBLIC COMMENT**

We intend to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.<sup>214</sup> Case briefs or other written comments for all non-scope issues may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>215</sup> Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of this preliminary determination in the *Federal Register*, and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for the case briefs. For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for the other concurrent countervailing duty and antidumping duty investigations. Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>216</sup> This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.<sup>217</sup> Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using Commerce's electronic records system, ACCESS.<sup>218</sup> Electronically filed documents must be

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<sup>214</sup> See 19 CFR 351.224(b).

<sup>215</sup> See 19 CFR 351.309(c)-(d); see also 19 CFR 351.303 (for general filing requirements).

<sup>216</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>217</sup> See 19 CFR 351.310(c).

<sup>218</sup> See 19 CFR 351.303(b)(2)(i).

received successfully in their entirety by 5:00 p.m. Eastern Time,<sup>219</sup> on the due dates established above.

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<sup>219</sup> See 19 CFR 351.303(b)(1).

## XV. RECOMMENDATION

We recommend that you approve the preliminary findings described above.



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

3/23/2020

X



Signed by: JEFFREY KESSLER

\_\_\_\_\_  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**APPENDIX**  
**AFA Rate Calculated**

<b>Program Name</b>	<b>AFA Rate</b>	<b>Source of AFA Rate or Precedent for Previous Use of the AFA Rate Under the Hierarchy</b>
<i>Duty Exemption/Remission Schemes</i>		
Advance Authorization Scheme (AAS) (formerly, Advance License Program)	11.95%	<i>See Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances</i> , 79 FR 41967 (July 18, 2014) and accompanying IDM at 19.
Duty Free Import Authorization Scheme (DFIA)	14.80%	<i>See Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part</i> , 81 FR 13334 (March 14, 2016) ( <i>PET Resin</i> ), and accompanying IDM at 27.
Duty Drawback Scheme (DDB)	1.59%	Rate calculated for Shakti in this proceeding
<i>Subsidies for Export Oriented Units (EOUs):</i>		
Duty-Free Import of Goods, Including Capital Goods and Raw Materials	14.80%	<i>See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India</i> , 67 FR 34905 (May 16, 2002) ( <i>PET Film from India Investigation</i> ), at “DEPS.”
Reimbursements of Central Sales Tax (CST) Paid on Goods Manufactured in India	3.09%	<i>See Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India</i> , 71 FR 28665 (May 17, 2006), and accompanying IDM at “State Government of Gujarat (SGOG) Tax Incentives.”
Duty Drawback on Fuel Procured from Domestic Oil Companies	14.80%	<i>See PET Film from India Investigation</i> , at “DEPS.”
Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area (DTA)	14.80%	<i>See PET Film from India Investigation</i> , IDM at “DEPS.”
Export Promotion of Capital Goods Scheme (EPCGS)	0.01%	Rate calculated for Shakti in this proceeding
Market Development Assistance Scheme (MDA)	16.63%	<i>See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India</i> , 66 FR 49635 (September 28, 2001) ( <i>HRS from India Investigation</i> ), and accompanying IDM at “Export Promotion of Capital Goods Scheme.”

Market Access Initiative (MAI)	16.63%	<i>See HRS from India Investigation</i> , at “Export Promotion of Capital Goods Scheme.”
Focus Product Scheme	1.99%	<i>See PET Resin IDM</i> at 18-19.
Status Certificate Program	2.90%	<i>See PET Film from India Investigation IDM</i> at “Pre-Shipment and Post-Shipment Export Financing.”
Steel Development Fund Loans	0.99%	<i>See HRS from India Investigation</i> at “Loans from the Steel Development Fund (SDF) Fund.”
Provision of Steel for LTAR	16.14%	<i>See Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination</i> , 77 FR 64468 (October 22, 2012) ( <i>Circular Welded Steel Pipe from India</i> ), and accompanying IDM at 24-25.
Incremental Exports Incentivization Scheme (IEIS)	2.90%	<i>See PET Film from India Investigation IDM</i> at “Pre-Shipment and Post-Shipment Export Financing.”
<i>State Government of Andhra Pradesh (SGAP) Subsidy Programs:</i>		
Grant under the Industrial Investment Promotion Policy (IIPP): 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas	6.06%	<i>See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review</i> , 75 FR 43488 (July 26, 2010) ( <i>HRS from India AR</i> ), and accompanying IDM at 29-30.
Grant under the IIPP: Reimbursement of Power at the Rate of Rs. 0.75 per Unit	6.06%	<i>See HRS from India AR</i> at 30.
Grant under the IIPP: 50 Percent Subsidy for Expenses Incurred for Quality Certification	6.06%	<i>See HRS from India AR</i> at 30-31.
Grant under the IIPP: 50 Percent Subsidy on Expenses Incurred in Patent Registration	6.06%	<i>See HRS from India AR</i> at 31-32.
Grant under the IIPP: 25 Percent Subsidy on Cleaner Production Measures	6.06%	<i>See HRS from India AR</i> at 31.
Tax Incentives under the IIPP: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages	3.09%	<i>See HRS from India AR</i> at 32.
Tax Incentives under the IIPP: 25 Percent Reimbursement on Value Added Tax (VAT), CST, and State Goods and Services Tax	3.09%	<i>See HRS from India AR</i> at 32.

Tax Incentives under the IIPP: Exemption from the SGAP Nonagricultural Land Assessment	3.09%	<i>See HRS from India AR at 33.</i>
Provision of Goods and Services for Less than Adequate Remuneration (LTAR) under the IIPP: Provision of Infrastructure for Industries Located More than 10 Kilometers from Existing Industrial Estates or Development Areas	18.08%	<i>See HRS from India AR at 33-34.</i>
Provision of Goods and Services for LTAR under the IIPP: Guaranteed Stable Prices and Reservation of Municipal Water	18.08%	<i>See HRS from India AR at 34.</i>
Andhra Pradesh Industrial Corporation's Allotment of Land for LTAR	6.06%	<i>See HRS from India AR at 29-30.</i>
<i>State Government of Maharashtra (SGOM) Subsidy Programs:</i>		
SGOM Sales Tax Program	0.59%	<i>See Circular Welded Steel Pipe from India at 26-27.</i>
Electricity Duty Exemptions	3.09%	<i>See Circular Welded Steel Pipe from India at 28.</i>
Waiving of Loan Interest by SICOM	2.90%	<i>See Circular Welded Steel Pipe from India at 31-32.</i>
Investment Subsidies	6.06%	<i>See Circular Welded Steel Pipe from India at 30-31.</i>
Infrastructure Assistance for Mega Projects Under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects	6.06%	<i>See Circular Welded Steel Pipe from India at 29-30.</i>
Subsidies for Mega Projects Under the Package Scheme of Incentives	0.95%	<i>See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination, 81 FR 49932 (July 29, 2016), and accompanying IDM at 11-12.</i>
Other Subsidies Under the Package Scheme of Initiatives	3.09%	<i>See Circular Welded Steel Pipe from India at 28, where Commerce calculated a rate for a similar program.</i>
Provision of Land for LTAR	18.08%	<i>See Circular Welded Steel Pipe from India at 30.</i>
Merchandise Export from India Scheme (MEIS)	0.93%	Rate calculated for Shakti in this proceeding
<i>State Government of Gujarat (SGOG) Subsidy Program</i>		

Sales Tax Incentives	3.09%	<i>See Hot-Rolled Carbon Steel Flat Products from India at 21-22.</i>
Gujarat Industrial Development Corporation (GIDC) Subsidized Financing	6.06%	<i>See Circular Welded Steel Pipe from India at 30-31, where Commerce calculated a rate for a similar program.</i>
GIDC Provision of Land for LTAR	18.08%	<i>See Circular Welded Steel Pipe from India at 30, where Commerce calculated a rate for a similar program.</i>
GIDC Provision of Water for LTAR	0.01%	Rate calculated for Shakti in this proceeding
<i>Gujarat Government's Scheme for Assistance to Small, Micro and Medium Enterprises (MSME)</i>		
Capital Investment Subsidy	0.03%	Rate calculated for Shakti in this proceeding
Interest Subsidy	0.08%	Rate calculated for Shakti in this proceeding
<b>Total AFA Rate:</b>	<b>284.91%</b>	