



C-533-876  
Administrative Review  
POR: 11/06/2017 – 12/31/2018  
**Public Document**  
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March 30, 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 Preliminary Results of 2018  
Countervailing Duty Administrative Review: Fine Denier  
Polyester Staple Fiber from India

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on fine denier polyester staple fiber (PSF) from India for the period of review (POR) November 6, 2017 through December 31, 2018. We preliminarily determine that Reliance Industries Limited (Reliance) benefitted from countervailable subsidies during the POR.

## II. BACKGROUND

### A. Case History

On March 20, 2018, Commerce published in the *Federal Register* the *Orders* for PSF from India and the People's Republic of China.<sup>1</sup> On March 5, 2019, Commerce published a notice of opportunity to request an administrative review of these CVD orders.<sup>2</sup> In response, on March 29,

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<sup>1</sup> See *Fine Denier Polyester Staple Fiber From the People's Republic of China and India: Amended Final Affirmative Countervailing Duty Determination for the People's Republic of China and Countervailing Duty Orders for the People's Republic of China and India*, 83 FR 12149 (March 20, 2018); see also *Fine Denier Polyester Staple Fiber From the People's Republic of China and India: Amended Final Affirmative Countervailing Duty Determination for the People's Republic of China and Countervailing Duty Orders for the People's Republic of China and India*, 83 FR 11681 (March 16, 2018) (*Orders*).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 84 FR 7877 (March 5, 2019).

2019, Reliance filed a timely request for review of the Indian order.<sup>3</sup> We received no additional requests for an administrative review. On June 13, 2019, Commerce published the *Initiation Notice* in the *Federal Register*.<sup>4</sup>

On June 5, 2019, Commerce issued initial questionnaires to Reliance and the Government of India (GOI).<sup>5</sup> The GOI and Reliance submitted timely responses to the Initial Questionnaire on July 15, 2019, and August 5, 2019, respectively.<sup>6</sup> On August 26, 2019, the petitioners<sup>7</sup> submitted comments on Reliance's initial questionnaire response.<sup>8</sup> Commerce issued a supplemental questionnaires to Reliance and the GOI. On November 1, 2019, Reliance submitted a response to Commerce's supplemental questionnaire.<sup>9</sup> On November 15, 2019, the petitioner submitted new factual information (NFI) and deficiency comments concerning Reliance's supplemental questionnaire response.<sup>10</sup> On November 20, 2019, Commerce issued a second supplemental questionnaire to Reliance.<sup>11</sup> On November 21, 2019, Commerce issued an additional supplemental questionnaire to the GOI.<sup>12</sup> On December 2, 2019, Reliance responded to Commerce's second supplemental questionnaire.<sup>13</sup> On December 13, 2019, the GOI responded to Commerce's supplemental questionnaire.<sup>14</sup> Also on December 13, 2019, Commerce issued an

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<sup>3</sup> See Reliance's Letter, "Fine Denier Polyester Staple Fiber from India – Reliance Industries Limited Request for Administrative Review," dated March 29, 2019.

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 27587 (June 13, 2019) (*Initiation Notice*).

<sup>5</sup> See Commerce's Letter, "Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Countervailing Duty Questionnaire," dated June 4, 2019 (Initial Questionnaire). The Initial Questionnaire issued to Reliance and the GOI was identical. Hereinafter we use the term Initial Questionnaire to refer to the questionnaire issued to both entities.

<sup>6</sup> See Reliance's Letter, "Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber ("Fine Denier PSF") from India– Reliance Industries Limited's Section III Affiliate Companies Response," dated June 26, 2019 (Reliance Affiliations IQR); see also GOI's Letter, "Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Filing of Questionnaire Response," dated July 15, 2019 (GOI IQR); and Reliance's Letter, "Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber ("Fine Denier PSF") from India– Reliance Industries Limited's Response to Section II and Section III," dated August 2, 2019 (Reliance's IQR).

<sup>7</sup> Auriga Polymers Inc., DAK Americas LLC, and Nan Ya Plastics Corporation, America (collectively, petitioners).

<sup>8</sup> See Petitioner's Letter, "Fine Denier Polyester Staple Fiber from India - Petitioners' Comments On Reliance's Initial Questionnaire Response," dated August 26, 2019 (Petitioner's Comments).

<sup>9</sup> See Reliance's Letter, "Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber ("Fine Denier PSF") from India– Reliance Industries Limited's Response to Supplemental Questionnaire," dated November 1, 2019 (Reliance's SQR).

<sup>10</sup> See Petitioner's Letter, "Fine Denier Polyester Staple Fiber from India – Petitioners' Submission of New Factual Information and Deficiency Comments Concerning Reliance's Supplemental Questionnaire Response," dated November 15, 2019.

<sup>11</sup> See Commerce's Letter, "Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Third Supplemental Questionnaire for Reliance Industries Limited," dated November 20, 2019.

<sup>12</sup> See Commerce's Letter, "Fine Denier Polyester Staple Fiber from India: Countervailing Duty Supplemental Questionnaire," dated November 21, 2019.

<sup>13</sup> See Reliance's Letter, "Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber (Fine Denier PSF) from India– Reliance Industries Limited's Response to Supplemental Questionnaire," dated December 2, 2019 (Reliance Second SQR).

<sup>14</sup> See GOI's Letter, "Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Filing of Supplementary Questionnaire Response," dated December 12, 2019.

additional questionnaire to Reliance.<sup>15</sup> On December 23, 2019, Commerce issued a second supplemental questionnaire to the GOI.<sup>16</sup> On January 2, 2020, Commerce issued a third supplemental questionnaire to Reliance.<sup>17</sup> On January 6, 2020, the GOI responded to Commerce's second supplemental questionnaire.<sup>18</sup> Reliance responded to the third supplemental questionnaire on January 9, 2020.<sup>19</sup>

On March 2, 2020, the petitioner submitted new factual information related to measuring the adequacy of remuneration of, and benefit from, the Provisions of Water and Land for Less Than Adequate Remuneration (LTAR) from the State Government of Gujarat (SGOG).<sup>20</sup> On March 10, 2020, the petitioner submitted pre-preliminary comments.<sup>21</sup>

## **B. Extension of Time Limit for Preliminary Results**

On November 7, 2019, Commerce extended the time period for issuing these preliminary results by 120 days, until March 31, 2020, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).<sup>22</sup>

## **III. SCOPE OF THE ORDER**

The merchandise covered by this order is fine denier PSF, not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

- (1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under HTSUS subheadings 5503.20.0045 and 5503.20.0065.
- (2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable under HTSUS subheading 5503.20.0015.

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<sup>15</sup> See Commerce's Letter, "Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Third Supplemental Questionnaire for Reliance Industries Limited," dated December 13, 2019.

<sup>16</sup> See Commerce's Letter, "Fine Denier Polyester Staple Fiber from India: Countervailing Duty Supplemental Questionnaire," dated December 23, 2019.

<sup>17</sup> See Commerce's Letter, "Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Fourth Supplemental Questionnaire for Reliance Industries Limited," dated January 2, 2020.

<sup>18</sup> See GOI's Letter, dated January 6, 2020 (GOI Second SQR).

<sup>19</sup> See Reliance's Letter, "Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber ("Fine Denier PSF") from India— Reliance Industries Limited's Response to Fourth Supplemental Questionnaire," dated January 9, 2020 (Reliance's Third SQR).

<sup>20</sup> See Petitioner's Letter, "Fine Denier Polyester Staple Fiber from India – Petitioners' Submission of Factual Information to Measure the Adequacy of Remuneration," dated March 2, 2020 (Petitioners' New Factual Information).

<sup>21</sup> See Petitioner's Letter, "Fine Denier Polyester Staple Fiber from India – Petitioners' Pre-Preliminary Comments," dated March 10, 2020.

<sup>22</sup> See Memorandum, "2017-2018 Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Extension of Deadline for Preliminary Results," dated November 7, 2019.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.<sup>23</sup>

#### **IV. PERIOD OF REVIEW**

The POR is November 6, 2017 through December 31, 2018.

While the POR covers part of 2017, and calendar year 2018, we have analyzed data for the period January 1, 2018 through December 31, 2018, to determine the countervailable subsidy rate for exports of subject merchandise made during the periods in 2017 when liquidation of entries was suspended.<sup>24</sup> No parties submitted comments regarding the limited reporting period.

#### **V. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF ADVERSE INFERENCES**

##### **A. Legal Standard**

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

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>25</sup> 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

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<sup>23</sup> See *Orders* at Appendix.

<sup>24</sup> See Memorandum, “Limited Reporting Period for the First Administrative Review,” dated June 5, 2019.

<sup>25</sup> See section 776(b)(1)(B) of the Act.

record.<sup>26</sup>

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>27</sup> 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>28</sup> It is Commerce’s practice to consider information to be corroborated if it has probative value.<sup>29</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>30</sup> However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.<sup>31</sup> Further, Commerce is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.<sup>32</sup>

Finally, under section 776(d) of the Act, when applying an adverse inference, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the agency considers reasonable to use, including the highest of such rates.<sup>33</sup> Additionally, when using an adverse inference in selecting among the facts otherwise available, Commerce is not required, for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality of the interested party.”<sup>34</sup>

## **B. Application of Adverse Facts Available (AFA)**

### **Government of India**

On November 21, 2019 and December 23, 2019,<sup>35</sup> we issued supplemental questionnaires to the GOI in response to certain deficiencies that we identified in its initial questionnaire responses submitted on July 15, 2019.<sup>36</sup> In these supplemental questionnaires, we requested information that we had previously requested and the GOI had failed to provide. This

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<sup>26</sup> See 19 CFR 351.308(c).

<sup>27</sup> See 19 CFR 351.308(d).

<sup>28</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. No. 103-316, vol. 1 at 870 (1994).

<sup>29</sup> See SAA at 870.

<sup>30</sup> See, e.g., SAA at 869.

<sup>31</sup> See SAA at 869-870.

<sup>32</sup> See section 776(c)(2) of the Act.

<sup>33</sup> See section 776(d)(1) and (2) of the Act.

<sup>34</sup> See section 776(d)(3) of the Act.

<sup>35</sup> See Commerce’s Letter, “Fine Denier Polyester Staple Fiber from India: Countervailing Duty Supplemental Questionnaire,” dated November 21, 2019; see also Letter from Commerce, “Fine Denier Polyester Staple Fiber from India: Countervailing Duty Supplemental Questionnaire,” dated December 23, 2019.

<sup>36</sup> See generally GOI IQR.

information included key program procedures, official documentations, and guidelines in order for us to determine the countervailability of the Special Economic Zone (SEZ) Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials Scheme. Instead of responding to our questionnaire and supplemental questionnaire, the GOI stated that “there is no specific program formulated by the GOI bearing the name”<sup>37</sup> and did not provide necessary information pertaining to the program.

For the SGOG Provision of Land for LTAR, and Electric Duty Exemption, the GOI did not provide necessary information to allow Commerce to assess the specificity of Land for LTAR and Electricity Duty Exemption programs.<sup>38</sup> In its initial questionnaire response, the GOI failed to list the SGOG’s Land for LTAR, and Electricity Duty Exemption programs under ‘Other Programs,’ instead requesting that Commerce obtain the necessary information from Reliance.<sup>39</sup> In its supplemental responses, the GOI did not answer necessary questions that would allow us to assess whether the programs are *de facto* specificity. Even though the GOI was given a second chance to provide necessary information, the GOI not only failed to provide the information, it also did not provide any explanation as to why it could not provide the requested, necessary information. Further, despite the record evidence shows that Reliance received benefits under the programs, in its supplemental questionnaire response, the GOI stated that the “GIDC does not provide land or infrastructure as a grant or benefit to any entity or manufacturing unit,” and that Reliance did not receive benefits under these programs during the POR.<sup>40</sup>

Therefore, as noted above, the GOI failed to provide necessary information in response to questions pertaining to the SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials Scheme; and the SGOG Provision of Land for LTAR and Electric Duty Exemption. Given that such necessary information has been withheld by the GOI, Commerce’s ability to investigate those programs is significantly impeded.

On this basis, we preliminarily determine that necessary information is not available on the record and that the GOI withheld information that was requested of it. Further, the fact that the GOI did not cooperate to the best of its ability significantly impeded the review. Thus, Commerce must rely on “facts available” in making our preliminary determination, in accordance with sections 776(a)(1), 776(a)(2)(A) and (C) of the Act. Moreover, we preliminarily determine that the GOI failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the selection of facts available, pursuant to section 776(b) of the Act. In applying AFA, we find that the SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials Scheme constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and that these programs are specific within the meaning of section 771(5A) of the Act.

Further, we find that SGOG’s Provision of Land for LTAR; and SGOG’s Electric Duty

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<sup>37</sup> See GOI SQR at 48.

<sup>38</sup> *Id.* at 34-51.

<sup>39</sup> See GOI IQR at 48.

<sup>40</sup> See GOI SQR at 35, 43-44.

Exemption are specific within the meaning of section 771(5A) of the Act . However, because the respondents have reported their usage of the aforementioned programs, we are not applying AFA to the GOI for determining the benefit for these programs, rather, we are relying on the respondents' reported information to calculate the benefit, within the meaning of section 771(5)(E) of the Act.

## **Reliance**

We preliminarily determine that the application of an adverse inference in selecting from the facts otherwise available is warranted with respect to Reliance and its reporting of benefits received under the Export Promotion of Capital Goods (EPCG) Scheme and the SEZ Duty-Free Importation of Capital Goods and Raw Material Components, Consumables, Intermediates, Spare Parts, and Packing Materials.

As discussed in the “Programs Preliminarily Determined to be Countervailable” section, Commerce has analyzed various programs with benefits related to the purchase of capital goods. Commerce considers programs related to the acquisition of capital goods to provide non-recurring subsidies. As such, we asked Reliance to provide data for the entirety of the 10-year average useful life. In its questionnaire responses, Reliance provided benefits related to “outstanding” EPCG Scheme licenses for the years 2009 to 2018 but failed to provide benefits related to “redeemed” EPCG licenses for the final three years of the average useful life (AUL), 2009 to 2011.<sup>41</sup> Reliance failed to provide benefits related to “redeemed” EPCG licenses for the years 2009 to 2011, despite being aware of the 10-year AUL period and reporting benefits related to “outstanding” EPCG Scheme licenses for all years of the AUL. Reliance also failed to report data related to benefits received under the SEZ Duty-Free Importation of Capital Goods and Raw Material Components, Consumables, Intermediates, Spare Parts, and Packing Materials for the years 2009 to 2011.<sup>42</sup> Reliance failed to provide an explanation or a reason why it did not report benefits related to “redeemed” EPCG licenses and the SEZ Duty-Free Importation of Capital Goods and Raw Material Components, Consumables, Intermediates, Spare Parts, and Packing Materials for the years 2009 to 2011.

Accordingly, we preliminarily determine that necessary information is not available on the record for us to calculate accurately Reliance's EPCG and SEZ Duty-Free Importation of Capital Goods and Raw Material Components, Consumables, Intermediates, Spare Parts, and Packing Materials benefits received during the first three years of the AUL. Thus, we must rely on “facts available” in making our preliminary determination, in accordance with sections 776(a)(1) and 776(a)(2)(A), (B) and (C) of the Act. Moreover, we preliminarily determine that Reliance failed to cooperate by not acting to the best of its ability in failing to comply with our request for information for the AUL period. By withholding necessary information requested by Commerce, Reliance significantly impeded this review. Thus, we must rely on facts otherwise available, in accordance with sections 776(a)(1) and 776(a)(2)(A), (B) and (C) of the Act.

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<sup>41</sup> See Reliance's IQR at Exhibit EPCG.7; *see also* Reliance's SQR at Exhibit EPCG.7-P10-01AUG19; and Reliance Second Supplemental Response at Exhibit CVD2-20-EPCG Benefits.

<sup>42</sup> *Id.* at Exhibit SEZ 3.2-Import Duty on Capital Goods; *see also* Reliance's SQR at Exhibit SEZ 3.2-Imports-CapitalGoods-AUL-22oct19.

## **Selection of the AFA Rate**

As discussed above, we are applying AFA to Reliance for the EPCG Scheme and the SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Materials Scheme. For each program, we calculated an estimate of the benefits received for each of the unreported years in which Reliance received benefits. Because Reliance has provided information related to benefits received through redeemed EPCG licenses and duties saved through the SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Materials Scheme for the years 2012 to 2018, when applying AFA, we are using the highest yearly reported amount of benefit Reliance received during the AUL as a plug for the years 2009 to 2011 to calculate the benefit.<sup>43</sup> Because we are not relying on secondary information as defined by section 776(b)(2) and (c)(1) of the Act, the statute does not require further corroboration of this rate.

## **VI. SUBSIDIES VALUATION INFORMATION**

### **A. Allocation Period**

Commerce normally allocates the benefits from non-recurring subsidies over the AUL of renewable physical assets used in the production of subject merchandise. Commerce finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. Commerce notified the respondents of the 10-year AUL in the initial 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 over the AUL.

### **B. Attribution of Subsidies**

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides 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.

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<sup>43</sup> See Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Preliminary Determination Calculation for Reliance Industries Limited, dated concurrently with this memorandum, at Attachment 2.



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

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.<sup>44</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 way it could use its own subsidy benefits.<sup>45</sup>

Reliance responded to Commerce's questionnaire on behalf of itself, reporting that it did not have any affiliated companies involved or engaged in the sale, purchase, marketing and production of subject merchandise.<sup>46</sup> Therefore, we will attribute subsidies received by Reliance in accordance with 19 CFR 351.525(b)(6)(i), using the sales data that Reliance reported.

### **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. The denominators we used to calculate the countervailable subsidy rate for the various subsidy programs are the respondent's export sales, as described below, and which are also explained in further detail in the preliminary calculations memoranda prepared for these preliminary results.<sup>47</sup>

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<sup>44</sup> See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

<sup>45</sup> See *Fabrique de Fer de Charleroi S.A. v. United States*, 166 F. Supp. 2d 593, 603 (CIT 2001).

<sup>46</sup> See Reliance's Letter, "Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber ("Fine Denier PSF") from India– Reliance Industries Limited's Section III Affiliate Companies Response," dated June 26, 2019 at 2.

<sup>47</sup> See Memorandum, "Preliminary Results Calculations for Reliance Industries Limited," dated concurrently with this memorandum (Reliance's Preliminary Calculation Memorandum).

## **VII. BENCHMARKS AND DISCOUNT RATES**

### **A. Interest Rates**

Section 771(5)(E)(ii) of the Act provides that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,” indicating that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient “could actually obtain on the market” Commerce will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans during the period, Commerce “may use a national average interest rate for comparable commercial loans,” pursuant to 19 CFR 351.505(a)(3)(ii). In addition, 19 CFR 351.505(a)(2)(ii) states that Commerce will not consider a loan provided by a government-owned special-purpose bank for purposes of calculating benchmark rates. Commerce has previously determined that the Industrial Development Bank of India (IDBI), the Industrial Finance Corporation of India (IFCI), and the Export-Import Bank of India (EXIM) are government-owned special-purpose banks. As such, Commerce does not use loans from the IDBI, the IFCI, or the EXIM as a basis for a commercial loan benchmark.<sup>48</sup> Also, in the absence of reported long-term commercial loan interest rates, we use the national average interest rates from the International Monetary Fund’s (IMF) International Financial Statistics (IFS) as discount rates for purposes of allocating non-recurring benefits over time pursuant to 19 CFR 351.524(d)(3)(i)(B).

### **B. Discount Rates**

For allocating the benefit from Reliance’s non-recurring subsidies, we have used the yearly average long-term lending rate in India from the IMF’s IFS for the year in which the government agreed to provide the subsidy, consistent with 19 CFR 351.524(d)(3)(i)(A). The interest-rate benchmarks and discount rates from the IMF’s IFS used in our preliminary calculations are provided in the preliminary calculation memoranda.<sup>49</sup>

### **C. Land Benchmark**

Commerce identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services, in accordance with 19 CFR 351.511(a)(2). This section of Commerce’s regulations specifies potential benchmarks in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided at 19 CFR 351.511(a)(2), the preferred benchmark in

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<sup>48</sup> See *Final Results of the Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*PET Film Final Results 2003 Review*), and accompanying Issues and Decision Memorandum (IDM) at Comment 3; see also *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2018) (*PET Film Final Results 2005 Review*), and accompanying IDM at Benchmark Interest Rates and Discount Rates.

<sup>49</sup> See Reliance Preliminary Calculation Memorandum, dated concurrently with this memorandum.

the hierarchy is an observed market price from actual transactions within the country under investigation. This is because such prices generally reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving Indian buyers and sellers that can be used to determine whether the government authority sold land to the respondent for less than adequate remuneration (LTAR).

As benchmark data, the petitioners submitted information pertaining to a 2014 private land transaction in Mumbai that occurred between Tata Steel and Oberoi Realty, both of which are private companies.<sup>50</sup> According to the article submitted by the petitioners, Oberoi Realty purchased the 25 acre parcel of land from Tata Steel after several rounds of bidding for Rs. 1,155 crore.<sup>51</sup>

Reliance submitted public information about land transactions to Essar Oil Ltd. within the state of Gujarat in the adjacent villages of Zakhar and Mithoi made during the AUL period.<sup>52</sup> Reliance states that the transactions involved land that was noted as “irrigated land for industrial purposes(s),” between several private sellers to a private company.<sup>53</sup> We examined the record information associated with the land transaction to Essar Oil Ltd., and without information confirming Essar Oil Ltd. is a private company, or how the land prices were established, we do not consider the Gujarat purchases to be a suitable benchmark.

For the preliminary determination, we consider the land transaction in Mumbai to be the most suitable benchmark prices on the record, notwithstanding the location of the parcel outside of the state of Gujarat, because the sale of this land parcel was an actual private transaction in the country of the investigation. For the preliminary results, we will use the average rupee-per-square-meter price paid for these land parcels and adjust it for inflation or deflation using India’s Consumer Price Index, as published by the IMF.

## **VIII. DISCUSSION AND ANALYSIS OF PROGRAMS**

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

### **A. Programs Preliminarily Determined to be Countervailable**

#### **1. Duty Drawback Program (DDB)**

Reliance reported receiving duty rebates under this program.<sup>54</sup> The GOI explained that the DDB program provides rebates for duty or tax chargeable on any imported or excisable materials used

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<sup>50</sup> See Petitioners’ New Factual Information at 4 and Exhibit 2A – 2C.

<sup>51</sup> *Id.* at Exhibit 2A.

<sup>52</sup> See Reliance’s IQR at 95-96 and Exhibit SGOG Land Benchmark.

<sup>53</sup> *Id.* at 95-96.

<sup>54</sup> *Id.* at 24 and Exhibit DDB.4; *see also* Petitioners’ New Factual Information at 3.

in the manufacture of export goods.<sup>55</sup> Specifically, the duties and tax “neutralized” under the program are the Customs and Integrated Tax and Compensation Cess and Central Excise duty on items specified in the Fourth Schedule of the Central Excise Tax Act of 1944.<sup>56</sup>

Regarding its establishment of applicable duty drawback rates, the GOI explained that “Duty Drawback... is provided in two ways: (i) on the basis of actual duty incidence (Brand Rate); and (ii) on the basis of averages (All Industry Rate (AIR)).”<sup>57</sup> The AIRs are generally fixed as a percentage of the free-on-board (FOB) price of the exported product or as specific rates.<sup>58</sup> The GOI specifies that a company may be subject to a Brand Rate, rather than an AIR, when the exporter feels that drawback as determined under the AIRs is less than 80 percent of the duty or taxes paid on the materials, components, or input services used in the manufacture of goods.<sup>59</sup>

The GOI reported no substantive changes having taken place to the DDB since the investigation.<sup>60</sup> As such, we will not re-examine the countervailability of this program in the current review. Our findings are consistent with prior India CVD proceedings.<sup>61</sup>

We calculated the subsidy rate using the value of all DDB Program duty rebates that Reliance received on U.S. sales during the POR. We divided the total amount of the benefit Reliance received by its total sales of U.S. exports of subject merchandise during the POR.

On this basis, we preliminarily determine a countervailable subsidy rate of 1.47 percent *ad valorem* for Reliance.

## 2. *Export Promotion of Capital Goods (EPCG) Program*

The EPCG scheme allows for the import of capital goods for preproduction, production and post-production at zero, 3% and 5% basic customs duty. Under the EPCG scheme, an importer gets an exemption from customs duties on imports of capital goods. The scheme allows for the import of capital goods at zero duty, subject to fulfilment of the export obligation, equivalent to six times the duty saved on capital goods. The export obligation must be met within six years, beginning from the authorization date.<sup>62</sup>

The GOI reported no substantive changes having taken place to the EPCG scheme since the investigation.<sup>63</sup> As such, we will not re-examine the countervailability of this program in the current review.

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<sup>55</sup> See GOI IQR at 9.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 9-10.

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

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 19. The GOI reported that after the implementation of the Goods and Services Tax (GST) regime in July 2017, DDB was restricted to customs duties on imported materials used in manufacture of export goods.

<sup>61</sup> See, e.g., *Countervailing Duty Investigation of Glycine from India: Affirmative Final Determination*, 84 FR 18482 (May 1, 2019) (*Glycine from India*), and accompanying issues and decision memorandum at Comment 4.

<sup>62</sup> *Id.* at 18-19.

<sup>63</sup> See GOI IQR at 3.

Under the EPCG scheme, the exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. Commerce's practice is to treat any balance on an unpaid liability that may be waived in the future as an interest-free contingent-liability loan pursuant to 19 CFR 351.505(d)(1). Because the unpaid duties constitute a liability contingent on subsequent events, we treat the amount of unpaid duty liabilities as interest-free contingent-liability loans. We find the amount respondents would have paid during the POR had they borrowed the full amount of the duty reduction or exemption at the time of importation to constitute the first benefit under the EPCG program. The second benefit arises based on the amount of duty waived by the GOI on imports of capital equipment covered by those EPCG licenses for which the export requirement had already been met. With regard to licenses for which the GOI and the respondents have acknowledged that the companies have completed their export obligations, 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 CVD Preamble states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring..." In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.

Reliance reported that it imported capital goods with waived import duty rates under the EPCG scheme.<sup>64</sup> Based on the information and the documentation Reliance submitted, Reliance has not demonstrated that the EPCG licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we preliminarily find that Reliance's EPCG licenses benefit all of the companies' exports.

To calculate the benefit received from Reliance's formal waivers of import duties on capital equipment imports where their export obligations were met prior to the end of the POR, we considered the total amount of duties waived, *i.e.*, the calculated duties payable less the duties actually paid in the year, net of required application fees, in accordance with section 771(6) of the Act, to be the benefit, and treated these amounts as grants, pursuant to 19 CFR 351.504. Further, consistent with the approach followed in previous investigations, we preliminarily determine the year of receipt of the benefit to be the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2).<sup>65</sup> Because Reliance failed to report benefits for "redeemed" license for the years 2009 to 2011, we used, as AFA, the highest benefit amount received from redeemed licenses during the AUL for each of these years. Next, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the total value of duties waived. For each year of the AUL, Reliance's licenses had values of less than 0.5 percent of Reliance's total export sales (and deemed exports) and were expensed in the year of receipt. For Reliance's benefits that were received during the POR, we divided the benefit by the total exports (and deemed exports)

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<sup>64</sup> See Reliance's SQR at Exhibit EPCG.7-P10--01AUG19.

<sup>65</sup> See, *e.g.*, *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film Final Determination*), and accompanying IDM at Comment 5 (*PET Film from India*).

during the POR.

Reliance also reported that it did not meet the export requirements for the EPCG licenses prior to the last day of the POR.<sup>66</sup> Therefore, Reliance received final waivers of the obligation to pay duties for some imports of capital goods while receiving deferrals from paying import duties for other imports of capital goods. For those deferrals, the final waiver of the obligation to pay the duties has not yet been granted. Reliance has also reported that, after the POR, it filed for redemption applications for several of the EPCG licenses; however, Reliance has not yet received redemption certificates for these licenses.<sup>67</sup> Therefore, we preliminarily determine that Reliance has not yet met the export requirements for these licenses. Consistent with our practice and prior determinations, we are treating the unpaid import duty liability as an interest-free loan.<sup>68</sup>

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

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

The benefit received under the EPCG program is the sum of: (1) the benefit attributable to the POR from the formally-waived duties for imports of capital equipment for which the respondents met export requirements by the end of the POR; and (2) the interest that would have been due had the respondents borrowed the full amount of the duty reduction or exemption at the time of the importation for imports of capital equipment for which respondents had not met export requirements during the POR. We then divided the total benefit received by Reliance under the EPCG scheme by the total exports sales of Reliance, during the POR, as described above.

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<sup>66</sup> See Reliance’s SQR at Exhibit EPCG.7-P10--01AUG19.

<sup>67</sup> *Id.*

<sup>68</sup> See *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination (Steel Flanges from India Preliminary Determination)*, 81 FR 85928 (November 29, 2016), and accompanying PDM at 15, affirmed in *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Steel Flanges from India Final Determination*).

On this basis, we preliminarily determine a countervailable subsidy rate of 0.06 percent *ad valorem* under the EPCG scheme during the POR.<sup>69</sup>

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

The GOI explained that the MEIS was introduced in the Foreign Trade Policy (FTP) 2015-2020 to “offset infrastructural inefficiencies and associated costs and promote the manufacture and export of notified goods/products to notified markets.”<sup>70</sup> Under this program, the GOI issues a scrip (duty credit) worth either two, three, or five percent of the FOB value of the exports in free foreign exchange realized or received, or on the “FOB value of exports in free foreign exchange, as given on the shipping bills in free foreign exchange, whichever is less,” that can be used towards the payment of customs duties.<sup>71</sup> The calculation of scrips is based on the “FOB value of exports in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in freely convertible foreign currencies, whichever is less.”<sup>72</sup>

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

Because Reliance reported benefits received under the MEIS program, we are relying on the total MEIS Certificate Value minus the application fee paid to determine the benefit amount.<sup>73</sup> To calculate the countervailable subsidy rate, we divided the benefit amount by the value of Reliance’s total export sales during the POR. On this basis, we preliminarily determine the countervailable subsidy provided to Reliance under the MEIS to be 0.24 percent *ad valorem*.

### 4. *SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials*

As discussed above, we are finding that an adverse inference in selecting from the facts otherwise available is warranted in determining whether the GOI provided a financial contribution through this program. As AFA, we preliminarily determine that the GOI conferred a financial contribution and we find this program specific, within the meaning of sections 771(5)(D) and 771(5A)(D) of the Act, respectively.

Pursuant to 19 CFR 351.510, we preliminarily determine that the time of receipt of this benefit is the time that Reliance otherwise would be required to pay the indirect tax or import charge. In the investigation, Commerce applied a total AFA rate because both the GOI and Reliance withheld information regarding Reliance receipt of benefits under this program.<sup>74</sup> In the instant

<sup>69</sup> See Reliance Preliminary Calculation Memo.

<sup>70</sup> See GOI IQR at 36.

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

<sup>72</sup> *Id.*

<sup>73</sup> See Reliance’s SQR at Exhibit MEIS Rcpt Details.

<sup>74</sup> See *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber From India: Final Affirmative*

review, Reliance reported benefits received under SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials.<sup>75</sup>

Because Reliance reported not having to pay duties on imports of capital goods and certain purchases of inputs and supplies, we are relying on this information to calculate the countervailable subsidy rate.<sup>76</sup> Because a portion of the benefit of this program relates to the purchase of capital goods,<sup>77</sup> pursuant to 19 CFR 351.524(c)(2)(iii), we are treating uncollected taxes due on purchases of capital goods as non-recurring benefits. We performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), on Reliance’s uncollected import duties that related to its purchases of capital goods in the calendar years 2012 through 2018 and found that uncollected import duties did not exceed 0.5 percent of total export sales for each year. For calendar years 2009 through 2012, we used, as AFA, the highest benefit amount received during the AUL, and also found that uncollected import duties did not exceed 0.5 percent of total export sales for those years. Therefore, the annual benefit for the POR alone was used.

To calculate the benefit, we summed the total value of uncollected import duties for capital goods purchases other purchases during the POR.<sup>78</sup> We then divided this amount by the value of Reliance’s total export sales during the POR to determine the countervailable rate. As stated above, because Reliance failed to report benefits for part of the AUL, we used, as AFA, the highest benefit amount received from redeemed licenses during the AUL for each of these years. On this basis, we preliminarily determine the countervailable subsidy provided to Reliance under the SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials program to be 1.46 percent *ad valorem*.

5. *Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit*

The GOI and Reliance reported that under Rule 5 of the SEZ Rules of 2006, the supply of self-generated or purchased electric power for use in the processing area of an SEZ is exempt from electricity duty and cess, as long as the unit for which electricity duty is exempted, is located within the SEZ, as approved by the GOI.<sup>79</sup> Reliance reported exemptions from electricity duty or taxes on sale on self-generated or purchased electric power for use in the SEZ.<sup>80</sup> Reliance submitted information demonstrating duty exemptions received based on the total units generated from its powerplant in an SEZ.<sup>81</sup>

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*Determination*, 83 FR 3122 (January 23, 2018) (*PSF Inv Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at Comment 11.

<sup>75</sup> See Reliance Second SQR at 6-7 and Exhibit SEZ 3.2.

<sup>76</sup> See Reliance’s IQR at 17-18.

<sup>77</sup> *Id.* at 43.

<sup>78</sup> See Reliance’s SQR at Exhibit EPCG.7-P10--01AUG19.

<sup>79</sup> See GOI IQR at 45-46; *see also* Reliance’s IQR at 45.

<sup>80</sup> See Reliance’s IQR at 45.

<sup>81</sup> See Reliance’s SQR at Exhibit SEZ 3.3.



The electricity duty and cess exemptions provide a financial contribution in the form of revenue forgone by the SGOG, pursuant to section 771(5)(D)(ii) of the Act. It confers a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. The SEZ exemption from electricity duty and cess provides a recurring benefit under 19 CFR 351.524(c) and is specific under section 771(5A)(D) of the Act because it is available only to industrial undertakings in the State of Gujarat.<sup>82</sup>

To calculate the benefit, we first calculated the uncollected (*i.e.*, not paid by Reliance during the POR) electricity duty and cess by multiplying the total amount of captive generated electricity by the tax rates provided. We then divided this amount by Reliance's total sales during the POR to calculate a countervailable subsidy of 0.05 percent *ad valorem*.<sup>83</sup>

## 6. SGOG Subsidy Programs

### a. Preferential Water Rates

Under the Gujarat Industrial Development Corporation (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>84</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>85</sup> The regulation also states that if consumers allow other parties located outside of the limits of the designated estate to use the GIDC-provided water or if consumers establish water connection to premises outside the limits of the estate, water charges shall be calculated at double the prevailing rates for water in the estate.<sup>86</sup> Reliance reported that it procured water from the GIDC for its Dahej plant, and it has provided the water purchase information for all of its Gujarat plants.<sup>87</sup>

The GIDC is an agency established under the Gujarat Industrial Development Act, 1962.<sup>88</sup> GIDC has been established to assist and facilitate the establishment of industries in the state of Gujarat.<sup>89</sup> We preliminarily determine that the GIDC is the "authority" and these water purchases confer a financial contribution in the form of revenue foregone section 771(5)(D)(ii) of the Act and are specific under section 771(5A)(D) of the Act, because in setting the rates for water in the industrial estates, GIDC charged companies located outside the estate double the rate for water that it charges to companies located inside the industrial estates. We also find that this program confers a benefit, *i.e.* the 50% discounted rate,<sup>90</sup> within the meaning of section

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<sup>82</sup> See GOI's SQR at 39.

<sup>83</sup> See Reliance's Preliminary Calculation Memorandum.

<sup>84</sup> See Reliance's IQR at Exhibit SGOG-Water-2.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 13-14, Exhibit SGGJ-water-HMD, Exhibit SGGJwater-VMD, Exhibit SGGJ-water-JMD, and Exhibit SGGJ-water-DMD.

<sup>88</sup> See GOI's SQR at 43.

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

<sup>90</sup> See Reliance IQR at Exhibit SGOG-Water-2; see also Petitioners' New Factual Information at 3.

771(5)(E) of the Act.

To calculate the benefit, we compared the actual amount Reliance paid for water during the POR at its Dahej plant, which is located in a GIDC industrial estate, to the amount it would have paid were it not located within the estate. We then divided that difference by Reliance's total sales during the POR and calculated an estimated net subsidy of 0.02 percent *ad valorem*.<sup>91</sup>

*b. SGOG Electricity Duty Exemption*

Under the Gujarat Electricity Duty Exemption Scheme (GEDES), which is established by the Gujarat Electricity Duty Act of 1958, an entity that establishes a new or additional unit of an industrial undertaking in Gujarat is entitled to an exemption from the electricity duty under the program for energy consumed for industrial purposes.<sup>92</sup> This exemption is available for up to five years after the start of the industrial undertaking.<sup>93</sup> Reliance has reported that three of its plants in Jamnagar, Hazira, and Dahej availed themselves of these electricity duty exemptions.<sup>94</sup>

Therefore, we determine that these electricity supply purchases confer a financial contribution as a provision of a good under section 771(5)(D)(ii) of the Act. For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we determine the program are specific under section 771(5A)(D) of the Act.

To calculate the benefit, we first calculated the uncollected (*i.e.*, not paid by Reliance during the POR) electricity duty and cess by multiplying the total amount of captively-generated and purchased electricity by the tax rates provided. We then divided this amount by Reliance's total export sales during the POR to calculate a countervailable subsidy of 0.02 percent *ad valorem*.<sup>95</sup>

*c. SGOG Provision of Land for LTAR*

Reliance reported that it leases land in Gujarat through the GIDC, which is an agency of the SGOG.<sup>96</sup> Specifically, Reliance acquired several parcels of land through a 99-year leasehold from the GIDC.<sup>97</sup> We preliminarily determine that the GIDC is an "authority" and that these land purchases confer a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act. For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" are specific under section 771(5A)(D) of the Act.

The adequacy of remuneration for government-provided goods or services is determined pursuant to 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2), Commerce measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services for LTAR. These

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<sup>91</sup> See Reliance Preliminary Calculation Memorandum.

<sup>92</sup> See Reliance's IQR at 91.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 91-93.

<sup>95</sup> See Reliance Preliminary Calculation Memorandum.

<sup>96</sup> See Reliance's IQR at 94-95.

<sup>97</sup> *Id.*

potential benchmarks are listed in hierarchical order by preference as noted in the “Land Benchmark” section. Additionally, it is Commerce’s preference to use a transaction-specific (tier-one) benchmark derived from the country under investigation. Therefore, we relied on actual transaction prices paid by private entities in India.<sup>98</sup>

To calculate the benefit, we compared the private land transaction benchmark with the prices at which Reliance leased or purchased land from the GIDC. We conducted the “0.5 percent test,” as instructed by 19 CFR 351.524(b)(2), for the years of the relevant GIDC leases and purchases by dividing the total unallocated benefit for the tract of land for the corresponding years by the appropriate sales denominator. For certain years, we found that the benefits were greater than 0.5 percent of the relevant sales for the particular years; therefore, we allocated these benefits over the AUL to determine the amount attributable to the POR.

On this basis, we preliminarily determine the countervailable subsidy provided to Reliance under this program to be 0.69 percent *ad valorem*.<sup>99</sup>

## **B. Programs Preliminarily Determined to Not Confer a Measurable Benefit During the POR**

### *1. Income Tax Reductions for Research and Development (R&D) Expenses*

According to the GOI, Section 35 of the Income Tax Act of 1961 provides a tax deduction to cover expenses related to scientific research for Indian companies engaged in research and development either “in-house” or through other research or educational organizations.<sup>100</sup>

Reliance reported that it received benefits under this income tax deduction program.<sup>101</sup> In responding to our questionnaire, the GOI also reported that Reliance made deduction claims under Section 35 of the Income Tax Act.<sup>102</sup>

We preliminarily determine that the tax deductions provide a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act. Further, we preliminarily determine that income tax deduction under Section 35(2AB) is *de jure* specific under section 771(5A)(D)(i) of the Act, because the law expressly limits the receipt of the benefit to certain enterprises or industries or a certain group of enterprises or industries.

Despite the fact that the GOI and Reliance state that Reliance claimed deductions under these programs, Reliance notes that its income tax return shows that its taxable income is derived from the greater of the “(1) Income Tax computed as per normal provisions of income

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<sup>98</sup> *Id.* at 95-96 and Exhibit SGOG Land Benchmark.

<sup>99</sup> See Reliance Preliminary Calculation Memorandum.

<sup>100</sup> See GOI’s Letter, “Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Filing of Supplementary Questionnaire Response,” dated December 12, 2019 (GOI SQR) at 1.

<sup>101</sup> See Reliance’s IQR at 60-70.

<sup>102</sup> See GOI IQR at 3.

tax act and (2) Income Tax computed as per provision of section 115JB of the income tax act” or the “Minimum, Alternate Tax (MAT).”<sup>103</sup> Based on our review of the income tax return, it appears that Reliance has utilized profit under MAT to derive taxable income.<sup>104</sup> Pursuant to Indian tax laws, a company cannot receive benefits from any tax deductions or exemptions if it realizes a profit under MAT.<sup>105</sup> Thus, Reliance’s does not appear to have received the following tax deductions:

- (1) 35(2AB) of the Income Tax Act of 1961; 35(1)(i), 35(1)(ii), 35(1)(iv);
- (2) 35(1)(iv) of the Income Tax Act of 1961;
- (3) 35(1)(ii) of the Income Tax Act of 1961;
- (4) 35 (1)(i) of the Income Tax Act of 1961;
- (5) SEZ Income Tax Exemption (10A);
- (6) Income Tax Exemption Scheme (80-IA); and
- (7) State Government of Uttar Pradesh Income Tax Exemption Scheme.

Based on the information on the record, we preliminarily determine that Reliance has not received benefits under these income tax programs, within the meaning of section 771(5)(E) of the Act and 19 CFR 351.509.

## 2. *Focus Product Scheme (FPS)*

Much like the MEIS, the FPS program entitles exporters to duty credit scrips equivalent to two or five percent of the FOB value of exports in free foreign exchange made from August 27, 2009, onward, unless a specific date of export/period is specified by public notice/notification.<sup>106</sup> This program is governed under the provision of Chapter 3.15 of the Foreign trade Policy (FTP) 2009-2014 and paragraphs 3.9 of the Handbook of Procedures 2009-2014 and is administered by the Directorate General of Foreign Trade (DGFT).<sup>107</sup>

The GOI and the mandatory respondents have claimed that the FPS was discontinued in 2015,<sup>108</sup> however neither the GOI, nor the respondents, have provided a public notice of termination. Furthermore, although the GOI has stated that this program was discontinued under the FTP of 2015-2020, it did not provide the relevant sections of this law to confirm that the FPS has been discontinued. Therefore, Commerce cannot reasonably make a determination regarding the termination of this program based on the information on the record.

As with the MEIS, this program is specific within sections 771(5A)(A) and (B) of the Act because eligibility to receive the scrips is contingent upon export. This program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act because the scrips provide exemptions for paying duties associated with the import of goods which represents revenue forgone by the GOI. For the same reasons discussed in the “MEIS” section above, we consider this program to be a recurring benefit.

<sup>103</sup> See Reliance’s IQR at 65, 68-69.

<sup>104</sup> *Id.* at Exhibit B-5 and B-5.1.

<sup>105</sup> *Id.* at Exhibit R&D-01.

<sup>106</sup> See GOI’s IQR at 37-38.

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

<sup>108</sup> *Id.* at 38; see also Reliance’s IQR at 54.

Because Reliance reported benefits received under the FPS program, we are relying on the total FPS duty credit to determine the benefit amount. To calculate the countervailable subsidy rate, we divided the benefit amount by the value of Reliance's total export sales during the POR. On this basis, we preliminarily determine that the FPS does not confer a measurable benefit to Reliance.<sup>109</sup>

### 3. *Technology Upgradation Funds Scheme (TUFS)*

The GOI reported that Ministry of Textiles administers this program, which was introduced in fiscal year 1999-2000 to support the modernization of India's textile industry.<sup>110</sup> TUFS provides one-time capital subsidies, as well as partial interest rate reimbursements on loans that finance purchases of upgraded textile manufacturing machinery.<sup>111</sup> Technology levels for the machinery are benchmarked relative to each sector of the textile industry. Machinery with technology levels lower than the specified benchmarks are not eligible for funding under this scheme.<sup>112</sup>

According to the GOI, the program was initially approved to provide assistance from April 1, 1999 through March 31, 2004, but the length of the program has been extended, and the procedures modified, through a series of resolutions (*e.g.*, Resolution No. 6/19/2013-TUFS, Resolution No. 6/5/2015-TUFS, and Resolution No.6/18/2016-TUFS).<sup>113</sup>

After the lending institutions assess the eligibility of the projects associated with the loans, the Textile Commissioner at the Ministry of Textiles reviews the applications and approves the reimbursements. The funds are disbursed through the lending institutions.<sup>114</sup>

We preliminarily determine that the benefits provided under the TUFS are countervailable because they: (1) provide a financial contribution through a direct transfer of funds, pursuant to section 771(5)(D)(ii) of the Act, and (2) are specific pursuant to section 771(5A)(D)(iii) of the Act, because the above-mentioned resolutions expressly limit access to the subsidy to an industry (*i.e.*, the textile industry).

Reliance reported receiving reimbursement for interest payments on sanctioned loans from the Industrial Development Bank of India, effectively reducing Reliance's interest rates.<sup>115</sup> Reliance reported receiving funds from 2009 through the POR.<sup>116</sup>

Benefits under this program are tied to the purchase of capital equipment and consist of direct transfers of funds. Therefore, we preliminarily determine that these benefits are non-recurring, pursuant to 19 CFR 351.524(c). To calculate Reliance's TUFS benefits, we summed the amount

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<sup>109</sup> See Reliance Preliminary Calculation Memorandum.

<sup>110</sup> See GOI's IQR at 24-26.

<sup>111</sup> See Reliance's IQR at 23.

<sup>112</sup> See GOI's IQR at 30.

<sup>113</sup> *Id.* at 24-26.

<sup>114</sup> *Id.* at 23.

<sup>115</sup> See Reliance's IQR at 36.

<sup>116</sup> *Id.* at Exhibit-TUFS.3.

of reimbursements that Reliance received in each fiscal year of the AUL.<sup>117</sup> Next, we performed “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), for the total value of the reimbursements in each year in which the Reliance received these reimbursements.<sup>118</sup> For any years in which the value of the reimbursements was less than 0.5 percent of the respondents’ total sales, we expensed the value of the reimbursements to the year of receipt. For each year of the AUL, the values of Reliance’s reimbursements were less than 0.5 percent of Reliance’s total sales and, therefore, were expensed in the years of receipt (*i.e.*, prior to the POR). On this basis, we preliminarily determine that Reliance did not receive any benefits from this program attributable to the POR.

### **C. Programs Preliminarily Determined to be Not Used**

We preliminarily determine that respondents did not apply for or receive countervailable benefits during the POR under the following programs:

#### **National Programs:**

1. Advance Authorization Program (AAP)
2. Sections 35(1)(i), 35(1)(ii), 35(1)(iv) of the Income Tax Act of 1961
3. Section 35(2)(AB) of the Income Tax Act of 1961
4. GOI Loan Guarantees
5. Renewable Energy Certificates
6. Income Tax Exemption under Section 80-IA
7. Interest Subsidy
8. Incentives to Strengthening Micro, Small, and Medium-Sized & Large Scale Industries
9. Market Access Initiative
10. Market Development Program
11. Status Holder Incentive Scheme (SHIS)
12. Market-Linked Focus Product Scheme (MLFPS)
13. Incremental Exports Incentive Scheme (IEIS)
14. Special Economic Zones (SEZ) Programs
  - a. Income Tax Exemption for Companies Located in a SEZ
  - b. Exemption of Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ
  - c. Discounted Land Fees in an SEZ
15. State and Union Territory Sales Tax Incentive
16. Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
17. Duty Drawback on Furnace Oil Procured from Domestic Companies
18. Reimbursement of Central Sales Tax Paid on Goods Manufactured in India
19. Duty Free Import Authorization Scheme (DFIA)

#### **State Programs:**

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<sup>117</sup> See Reliance’s IQR at Exhibit-TUFS.3.

<sup>118</sup> See Reliance Preliminary Calculation Memorandum.

1. State Government of Maharashtra (SGOM) Subsidy Programs
  - a. SGOM Stamp Duty Exemption
  - b. SGOM Electricity Duty Exemption
2. State Government of Gujarat (SGOG) Subsidy Programs
  - a. SGOG IPS
  - b. SGOG Industry Policy 2009: Reimbursement of Stamp Duty
  - c. SGOG Plastics Industry Scheme: Interest Subsidy
  - d. SGOG Plastics Industry Scheme: VAT Incentive
  - e. SGOG Industry Policy 2009: Financial Benefits for Mega Projects
  - f. SGOG Industry Policy 2009: Promotion for Textiles and Apparel
  - g. SGOG Industry Policy 2009: Promotion of Non-Conventional Energy
3. State Government of Uttar Pradesh (SGUP) Subsidy Programs
  - a. SGUP Special Assistance for Mega Projects
  - b. SGUP Stamp Duty Exemption
  - c. SGUP VAT Exemption
  - d. SGUP Electricity Duty Exemption

## IX. Recommendation

We recommend that you approve the preliminary findings described above.

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\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

3/30/2020

X



Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance