



C-533-890
Investigation
POI: 4/01/2018 – 3/31/2019
Public Document
E&C/OIII: KJ/SM

April 27, 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: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Certain Quartz Surface
Products from India

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain quartz surface products (quartz surface products) from India, as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The petitioner is Cambria Company LLC. The mandatory respondents subject to this investigation are Antique Marbonite Private Limited (Antique Marbonite) and Pokarna Engineered Stone Limited (Pokarna). The period of investigation (POI) is April 1, 2018 through March 31, 2019.

Below is the complete list of issues in this investigation for which we received comments from interested parties:

- Comment 1: Appropriate *De Minimis* Threshold for India
- Comment 2: Application of Adverse Facts Available (AFA) for the Provision of Natural Gas for Less Than Adequate Remuneration (LTAR)
- Comment 3: Whether Commerce Should Select Imports of Liquefied Natural Gas (LNG) as the Natural Gas Benchmark
- Comment 4: Whether Commerce's Natural Gas AFA Determination Rewards Non-Compliance
- Comment 5: Inclusion of the Integrated Goods and Services Tax (IGST) in the Natural Gas Benchmark
- Comment 6: Whether Commerce Should Countervail the Duty Drawback (DDB) Scheme
- Comment 7: Whether Commerce Should Countervail the Interest Equalization Scheme



- (IES) for Export Financing
- Comment 8: Whether Special Economic Zone (SEZ) Programs Which Pokarna Used Are Countervailable
- Comment 9: Whether Pokarna's Lease of Land from the Andhra Pradesh Industrial Investment Corporation (APIIC) Constitutes a Countervailable Subsidy
- Comment 10: Whether Commerce Used the Correct Benchmark to Determine Whether the APIIC Allotted Land to Pokarna for LTAR
- Comment 11: Whether Pokarna Misrepresented Its Purchase of Land and Fixed Assets Originally Owned by Indo Rock Granite Private Limited (Indo Rock) That Warrants the Application of Adverse Facts Available
- Comment 12: Whether Commerce Used an Incorrect Sales Denominator When Calculating the Net Subsidy Rate for a Countervailable Subsidy Attributable to Pokarna Limited
- Comment 13: Whether Commerce's Initiation of this Investigation Was Contrary to Law

II. BACKGROUND

On October 11, 2019, Commerce published the *Preliminary Determination*.¹ On November 20, 2019, Commerce published the *Amended Preliminary Determination*.² Between December 9 and December 17, 2019, we conducted verification of the questionnaire responses submitted by Antique Marbonite.³ Between February 17 and February 21, 2020, we conducted verification of the questionnaire responses submitted by Pokarna.⁴ On March 12, 2020, we issued a Post-Preliminary Determination.⁵ Interested parties submitted case briefs on March 26, 2020,⁶ and rebuttal briefs on April 2, 2020.⁷ In lieu of a hearing, Commerce held conference calls with the

¹ See *Certain Quartz Surface Products from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, In Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 54838 (October 11, 2019) (*Preliminary Determination*) and accompanying Preliminary Determination Memorandum (PDM).

² See *Certain Quartz Surface Products from India: Amended Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, In Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 64047 (November 20, 2019) (*Amended Preliminary Determination*) and accompanying Amended PDM.

³ See Memorandum, "Verification of the Questionnaire Responses of Antique Marbonite Private Limited and its responding cross-owned affiliated companies," dated January 8, 2020 (Antique Marbonite Verification Report).

⁴ See Memorandum, "Verification of the Questionnaire Responses of Pokarna Engineered Stone Limited and Pokarna Limited," dated March 11, 2020 (Pokarna Verification Report).

⁵ See Memorandum, "Post-Preliminary Analysis Memorandum in the Countervailing Duty Investigation of Certain Quartz Surface Products from India," dated March 11, 2020 (Post-Preliminary Determination).

⁶ See Petitioner's Letter, "Certain Quartz Surface Products from India: Submission of Case Brief," dated March 26, 2020 (Petitioner Case Brief); see also Government of India's (GOI) Letter, "CVD Investigation – Certain Quartz Surface Products from India – Case Brief on behalf of Government of India," dated March 26, 2020 (GOI Case Brief); Antique Marbonite's Letter, "Certain Quartz Surface Products from India (C-533-890): Case Brief," dated March 26, 2020 (Antique Marbonite Case Brief); Federation of Quartz Surface Industry's Letter, "Certain Quartz Surface Products from India (C-533-890): Case Brief on behalf of Federation of Quartz Surface Industry," dated March 26, 2020 (Federation Case Brief); Arizona Tile LLC's and MS International's Letter, "Quartz Surface Products from India: Brief of Arizona Tile LLC and M S International," dated March 26, 2020 (Arizona Tile/MSI Case Brief); and Pokarna's Letter, "Certain Quartz Surface Products from India: Submission of Administrative Case Brief," dated March 26, 2020 (Pokarna Case Brief).

⁷ See Petitioner's Letter, "Certain Quartz Surface Products from India: Submission of Rebuttal Brief," dated April 2, 2020 (Petitioner Rebuttal Brief); see also GOI's Letter, "CVD Investigation – Certain Quartz Surface Products

interested parties to present their case and rebuttal brief arguments.⁸

III. SCOPE COMMENTS

During the course of this investigation, Commerce received scope comments from interested parties. We issued a Preliminary Scope Memorandum to address these comments and set aside a period of time for parties to address scope issues in case and rebuttal briefs.⁹ We did not receive scope case briefs from interested parties. Thus, for this final determination, we have made no changes to the scope of this investigation, as published in the *Preliminary Determination* and the *Amended Preliminary Determination*.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are quartz surface products. For a complete description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

V. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES

Section 705(a)(2) of the Act provides that Commerce will determine that critical circumstances exist if: (A) the alleged countervailable subsidy is inconsistent with the World Trade Organization (WTO) Subsidies and Countervailing Measures (SCM) Agreement;¹⁰ and (B) there have been massive imports of the subject merchandise over a relatively short period. A final determination with respect to critical circumstances may be affirmative even if critical circumstances were found not to exist in the preliminary determination.¹¹ In determining whether there are "massive imports" over a "relatively short period," pursuant to section 705(a)(2)(B) of the Act and 19 CFR 351.206(h) and (i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the

from India – Rebuttal Brief on behalf of Government of India," dated April 2, 2020 (GOI Rebuttal Brief); Antique Marbonite's Letter, "Certain Quartz Surface Products from India (C-533-890): Rebuttal Case Brief on behalf of Antique Group," dated April 2, 2020 (Antique Marbonite Rebuttal Brief); and Pokarna's Letter, "Certain Quartz Surface Products from India: Submission of Administrative Rebuttal Brief," dated April 2, 2020 (Pokarna Rebuttal Brief).

⁸ *See* Memorandum, "Ex Parte Meeting with Pokarna Engineered Stone Limited," dated April 7, 2020; *see also* Memorandum, "Countervailing Duty Investigation of Certain Quartz Surface Products from India: Ex Parte Meeting with the Government of India," dated April 8, 2020; Memorandum, "Ex Parte Meeting with MS International Inc./Arizona Tile LLC," dated April 8, 2020; Memorandum, "Ex Parte Meeting with Petitioner," dated April 8, 2020; and Memorandum, "Countervailing Duty Investigation of Certain Quartz Surface Products from India: Ex Parte Meeting with Antique Marbonite Private Limited and the Federation of Quartz Surface Industry," dated April 10, 2020.

⁹ *See* Memorandum, "Certain Quartz Surface Products from India and Turkey: Preliminary Scope Decision Memorandum," dated December 4, 2019 (Preliminary Scope Memorandum).

¹⁰ Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement). *See, e.g., Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany*, 67 FR 55808, 55809-10 (August 30, 2002) and accompanying Issues and Decision Memorandum (IDM).

¹¹ *See* section 705(a)(2) of the Act.

filing of the petition (*i.e.*, the base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, the comparison period). Imports must increase by at least 15 percent during the comparison period to be considered massive.¹²

For this final determination, we continue to define the base and comparison periods within the bounds of Commerce's normal practice¹³ by including May 2019 (the month in which the petition was filed)¹⁴ within the post-petition period and extending the comparison period up through the month prior to the *Preliminary Determination* (*i.e.*, September 2019). We have not included the month of the *Preliminary Determination* because the *Preliminary Determination* was published in the first half of the month (*i.e.*, October 11, 2019).¹⁵ As such, we compared a 5-month base period (December 2018 to April 2019) and comparison period (May 2019 to September 2019).

We find that Antique Marbonite did not have massive imports over a relatively short period.¹⁶ We also find that Pokarna did not have massive imports over a relatively short period of time.¹⁷ Therefore, we determine that critical circumstances do not exist for Antique Marbonite and Pokarna.

Consistent with our practice,¹⁸ for "all other" exporters and producers of quartz surface products from India, Commerce compared Global Trade Atlas (GTA) data for the 5-month base and comparison periods, excluding shipments reported by the mandatory respondents. Based on this analysis, we determine that all other exporters/producers of quartz surface products had massive imports over a relatively short period.¹⁹ Because we are issuing an affirmative final determination that includes countervailable subsidies that are inconsistent with the SCM, and the GTA data indicate that "massive shipments" occurred with respect to companies that are subject to the all-others rate, we determine that critical circumstances exist for these companies.

No interested party submitted comments on critical circumstances.

¹² See 19 CFR 351.206(h)(2).

¹³ See *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) and accompanying IDM at Comment 11.

¹⁴ See Petitioner's Letter, "Petition for the Imposition of Antidumping and Countervailing Duties: Certain Quartz Surface Products from India and the Republic of Turkey," dated May 8, 2019.

¹⁵ See *Preliminary Determination*.

¹⁶ See Memorandum, "Final Massive Shipment Analysis for Antique Marbonite Private Limited," dated concurrently with this memorandum.

¹⁷ See Memorandum, "Final Massive Shipment Analysis for Pokarna Engineered Stone Limited," dated concurrently with this memorandum.

¹⁸ See, e.g., *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014) and accompanying IDM at 4.

¹⁹ See Memorandum, "Final Massive Shipment Analysis for All Others Rate Companies," dated concurrently with this memorandum.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

In the Post-Preliminary Determination, we preliminarily found that the GOI failed to cooperate in this investigation by not acting to the best of its ability to comply with Commerce's request for information with regard to the Provision of Natural Gas for LTAR program.²⁰ We therefore applied AFA with respect to the GOI to preliminarily find financial contribution, market distortion, and specificity for the Provision of Natural Gas for LTAR.²¹ Interested parties raised issues in their case and rebuttal briefs regarding the application of AFA. *See* Comment 2. For this final determination, we made no changes to our decision to apply AFA to the GOI with regard to the Provision of Natural Gas for LTAR program.

VII. SUBSIDIES VALUATION

A. Allocation Period

We made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation methodology used in the *Preliminary Determination*.

B. Attribution of Subsidies

We made no changes to, and interested parties raised no issues in their case briefs regarding, the methodology underlying our attribution of subsidies in the *Preliminary Determination*.

C. Denominators

No parties raised issues in their case briefs regarding the denominators used for Antique Marbonite in the *Preliminary Determination*. Therefore, we have not revised the sales values used to calculate the subsidy rates for Antique Marbonite in this final determination.²²

Pokarna argued that Commerce incorrectly used the standalone export sales for Pokarna Limited, Pokarna's parent company, as the denominator instead of Pokarna Limited and Pokarna's combined sales. We agree that we should have used the combined total export sales to calculate the benefit received by Pokarna Limited for the Export Import Duty – Capital Goods program. We have revised the calculation and used the combined total export sales denominator to countervail benefits that were bestowed upon Pokarna Limited, the parent company.²³ *See* Comment 12 for additional information.

²⁰ *See* Post-Preliminary Determination at Use of Facts Otherwise Available and Adverse Inferences.

²¹ *Id.*

²² *See* Memorandum, "Countervailing Duty Investigation of Certain Quartz Surface Products from India: Final Determination Calculations for Antique Marbonite Private Limited," dated concurrently with this memorandum (Antique Marbonite Final Calculations).

²³ *See* Memorandum, "Countervailing Duty Investigation of Certain Quartz Surface Products from India: Final Determination Calculations for Pokarna Engineered Stone Limited," dated concurrently with this memorandum (Pokarna Final Calculations).

VIII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. DDB Scheme

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are discussed in Comment 6. Commerce has not modified its analysis or calculation of the subsidy rate for this program from the *Preliminary Determination*.

Antique Marbonite: 1.05 percent *ad valorem*.

2. EPCGS

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Antique Marbonite: 0.31 percent *ad valorem*.

3. IES for Export Financing

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are discussed in Comment 7. Commerce has not modified its analysis or calculation of the subsidy rate for this program from the *Preliminary Determination*.

Antique Marbonite: 0.21 percent *ad valorem*.

4. SEZ Programs

Interested parties submitted comments in their case and rebuttal briefs regarding these programs, which are discussed in Comment 8. Commerce has not modified its analysis or calculation of the subsidy rate for these programs from the *Preliminary Determination*.

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

Pokarna: 1.69 percent *ad valorem*.

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

Pokarna: 0.02 percent *ad valorem*.

C) Income Tax Exemption (Section 10AA)

Pokarna: 0.58 percent *ad valorem*.

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

Pokarna submitted a comment in its case brief regarding the denominator to calculate the benefit for this program, which is discussed in Comment 12, and the Denominators section above.

Pokarna: 0.05 percent *ad valorem*.

B. Program Determined Not to Confer A Measurable Benefit During the POI

1. Provision of Natural Gas for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are discussed in Comments 2 through 5. Commerce has not modified its analysis, benchmark, or calculation of the subsidy rate for this program from the Post-Preliminary Determination. We continue to find that Antique Marbonite did not received a measurable benefit under the program during the POI.

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

Interested parties raised issues in their case and rebuttal briefs regarding the benchmarks we used in the *Amended Preliminary Determination*, which we address in Comments 9 and 10. Commerce has modified the calculation of the APIIC allotted land to Pokarna for LTAR.

In the *Amended Preliminary Determination*, as the benchmark for the APIIC Allotment of Land to Pokarna for LTAR program, we calculated a single rental benchmark by simple averaging the three rental prices submitted by the petitioner.²⁴ On October 2, 2019, we received Pokarna's supplemental questionnaire response that contained information on certain land transactions.²⁵ However, because the response was received shortly before the due date of the *Preliminary Determination*, we were unable to incorporate the information in the response into our preliminary analysis. Therefore, in the *Preliminary Determination*, we stated that we would examine the information submitted in Pokarna's supplemental questionnaire response and incorporate the information, as appropriate, in the final determination.²⁶ We subsequently verified the accuracy and completeness of the information in the supplemental questionnaire.²⁷

Based on the hierarchy of potential benchmarks enumerated under 19 CFR 351.511(a)(2), in the final determination, we first determined whether there are market prices from actual sales transactions that can be used to determine whether APIIC provided land to Pokarna for LTAR. We have determined that Pokarna Limited's land purchase from Laxmi Granites Limited (Laxmi Granites) in 2001 in a private party transaction reflects a market price from an actual sales

²⁴ See PDM at 25.

²⁵ See Pokarna's Letter, "Certain Quartz Surface Products from India: Third Supplemental Response of Pokarna Engineered Steel Limited," dated October 2, 2019 (Pokarna's SQR).

²⁶ See PDM at 4.

²⁷ See Pokarna's Verification Report at 6-7.

transaction. Therefore, we have used this actual sales transaction as the basis of a tier-one benchmark price for land. For the reasons discussed in Comment 10 below, we find the use of Pokarna Limited's land purchase from Laxmi Granites as a tier-one benchmark is superior to the benchmark we relied upon in the *Preliminary Determination* and the *Amended Preliminary Determination*, which does not consist of company-specific rates and represents only offered prices for rental land subsequent to the POI, and is also superior to all other land benchmark information on the record.

Since the sales contract for Pokarna Limited's land purchase from Laxmi Granites was agreed upon in 2001, we indexed the per-acre land price in that contract using the International Monetary Fund's Industrial Production Price Index to arrive at an equivalent price in 2007, which is the year in which Pokarna leased the land at issue from APIIC.²⁸ We then compared the price Pokarna paid to APIIC (excluding the stamp duty and property tax) to the benchmark land price. On this basis, we found no measurable benefit for this program for the POI.

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

Consistent with the *Preliminary Determination*, we continue to find the net subsidy rates provided to Pokarna and Pokarna Limited under this program are less than 0.005 percent and, thus, do not confer a measurable benefit.²⁹

C. Programs Determined to Be Tied to Non-Subject Merchandise

Commerce has made no changes in the analysis of the following programs from the *Preliminary Determination*. Commerce received no comments from interested parties on these programs.

1. Advance Authorization Scheme
2. Merchandise Exports from India Scheme
3. North East Industrial and Investment Promotion Policy 2007
4. EPCGS for Pokarna

Programs Determined Not to Be Used

Commerce has made no changes in the analysis of the following programs from the *Preliminary Determination* and Post-Preliminary Determination. Commerce received no comments from interested parties on these programs.

²⁸ See Pokarna's Final Calculation Memorandum at tab/attachment "Land Benchmark."

²⁹ See Pokarna's Final Calculation Memorandum; see also PDM at 23 (citing *e.g.*, *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) (*Lumber from Canada*) and accompanying IDM at 218).

GOI Subsidy Programs

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

State Government of Andhra Pradesh (SGAP) Subsidy Programs

1. Subsidies Under the Industrial Investment Promotion Policy (IIPP)
 - a. Grant under the IIPP: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas
 - b. Grant under the IIPP: Reimbursement of Power at the Rate of Rs. 0.75 per Unit
 - c. Grant under the IIPP: 50 Percent Subsidy for Expenses Incurred for Quality Certification
 - d. Grant under the IIPP: 50 Percent Subsidy on Expenses Incurred in Patent Registration
 - e. Grant under the IIPP: 25 Percent Subsidy on Cleaner Production Measures
 - f. Tax Incentives under the IIPP: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages
 - g. Tax Incentives under the IIPP: 25 Percent Reimbursement on VAT, CST, and State Goods and Services Tax
 - h. Tax Incentives under the IIPP: Exemption from the SGAP Non-agricultural Land Assessment
 - i. Provision of Goods and Services for LTAR under the IIPP: Provision of Infrastructure for Industries Located More than 10 Kilometers from Existing Industrial Estates or Development Areas
 - j. Provision of Goods and Services for LTAR under the IIPP: Guaranteed Stable Prices and Reservation of Municipal Water
2. Subsidies provided by the APIIC
 - a. APIIC's Provision of Infrastructure

State Government of Tamil Nadu Subsidy Program

1. Provision of Quartz for LTAR

State Government of Gujarat Subsidy Program

1. Sales Tax Incentives

IX. ANALYSIS OF COMMENTS

Comment 1: Appropriate *De Minimis* Threshold for India

*Petitioner's Arguments:*³⁰

- Because India is no longer designated as a developing country, the applicable *de minimis* threshold is now one percent.³¹ Consequently, if the subsidy rate for any respondent in the final determination is one percent or greater, Commerce should consider the subsidy rate not to be a *de minimis* rate.
- The U.S. Trade Representative (USTR) made clear in its final notice that the revised designations of developing countries are applicable as February 10, 2020.³²
- USTR based its determination that India is a developed country on data from 2018, which covers the POI.
- In prior investigations that involved a change in the applicable *de minimis* threshold, Commerce applied the change immediately – even though the POI preceded the date of that change.³³
- Further, the revision to the countries designated as developing countries does not involve a change in the underlying statute, but instead simply involves a change from an interim rule to a final rule.

*Antique Marbonite's Arguments:*³⁴

- At Initiation and in the *Preliminary Determination*, Commerce considered a *de minimis* threshold of two percent for India. A decision by Commerce to retroactively revise the *de minimis* threshold to one percent results in retrospective application of the provisions of section 771(36) of the Act and is illegal.
- USTR's determination should only be applied prospectively, *i.e.*, to cases initiated after February 10, 2020, because the Act does not allow USTR to apply such a designation to countries retrospectively.
- The revision of the *de minimis* threshold is inconsistent with the obligations of the members of the WTO. Any amendments to multilateral treaties between parties shall only be changed once

³⁰ See Petitioner Case Brief at 33 – 39.

³¹ See *Designations of Developing and Least-Developed Countries Under the Countervailing Duty Law*, 85 FR 7613 (February 10, 2020) (*Final Rule*).

³² *Id.*, 85 FR at 7615.

³³ See Petitioner Case Brief at 37, citing to *Final Negative Countervailing Duty Determination: Elastic Rubber Tape from India*, 64 FR 19125, 19126 (April 19, 1999) (applying *de minimis* threshold of 3.0 percent to India following its designation as a last-developed country after the POI); and *Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand from India*, 68 FR 68356 (December 8, 2003) and accompanying IDM at Use of Facts Available (identifying the *de minimis* subsidy rate for developing as 2.0 percent for an investigation covering April 1, 2001 through March 31, 2002 – notwithstanding that the relevant treaty provision expired after the POI).

³⁴ See Antique Marbonite Case Brief at 3 – 5.

the affected parties are consulted, and it does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations.³⁵

- Further, since the SCM Agreement is a multilateral treaty signed by members of the WTO, the changes to the rights and obligations of one country shall be changed only upon consultation.³⁶

*GOI's Rebuttal Arguments:*³⁷

- Because the two percent *de minimis* threshold for India was in place at Initiation and the *Preliminary Determination*, it should not be changed at the time of the final determination.
- A retrospective application of a law endangers the non-retroactivity of laws and regulations as a principle of fair play.
- Commerce must respect the importance of non-retroactivity of treaty obligations as provided under Article 28 of the Vienna Convention on Law of Treaties (Vienna Convention) and Article 32.3 of the SCM Agreement.³⁸
- USTR's country designations are not correct. The parameters analyzed by USTR to reach its *Final Rule* do not conclusively show that India should not have a developing country designation.

*Petitioner's Rebuttal Arguments:*³⁹

- Antique Marbonite cites no legal authority to support its argument that the Act does not allow USTR to apply country designations retrospectively.
- Had USTR intended to make the country designations applicable on a date other than February 10, 2020, it would have expressly stated so.
- Commerce explored the issue of "retroactive" in determining the dates of application of certain amendments to the AD/CVD law pursuant to the *Trade Preferences Extension Act of 2015* (TPEA).⁴⁰ Commerce explained for the TPEA amendments that it would apply the date of application of each amendment as "the earliest date at which each amendment practicably could be implemented."⁴¹ Applying the same guiding principles to the *Final Rule*, Commerce should apply the change in designation to India as developed country in the final determination.
- A WTO member's status as a developing country is not permanent under the SCM Agreement, and USTR's determination that India is not a developing country based on various economic factors is consistent with the SCM Agreement. Moreover, Commerce's proceedings are not governed by the SCM Agreement but by U.S. law.

Commerce's Position: At the *Preliminary Determination*, we determined that Antique Marbonite's subsidy rate of 1.57 percent was *de minimis* because, at that time, India was

³⁵ *Id.* at 4, citing to Article 41 of the United Nations Convention on the Law of Treaties (signed May 23, 1969).

³⁶ *Id.*, citing to Article X, clause 3 of the Marrakesh Agreement Establishing WTO 1994.

³⁷ See GOI Rebuttal Brief at 6 – 9.

³⁸ *Id.* at 6 – 8, citing to the Vienna Convention and its applicability to Article 32.3 of the SCM Agreement and how Article 32.3 of the SCM Agreement is interpreted by the Appellate Body of the WTO in *Brazil – Measures Affecting Desiccated Coconut* (WT/DS22/AB/R), February 21, 1997.

³⁹ See Petitioner Rebuttal Brief at 21 – 26.

⁴⁰ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Dates of Application of TPEA Amendments*).

⁴¹ *Id.* at 46794.

considered to be a developing country by USTR⁴² under its *Interim Final Rule*.⁴³ Subsequently, on February 10, 2020, USTR published in the *Federal Register* its *Final Rule* on designations of developing and least-developed countries under the CVD law.⁴⁴ As indicated in the *Final Rule*, India is ineligible for the two percent *de minimis* standard because it is no longer designated as a developing country.⁴⁵ Further, as noted, in the *Final Rule*, the country designations are applicable as of February 10, 2020.⁴⁶ There are no exceptions to the applicability of the country designations as of February 10, 2020. Nowhere within the *Final Rule* does USTR state that the country designations are effective for CVD investigations initiated, or preliminary determinations made, on or after February 10, 2020. Additionally, there is no language within the Act which states that country designations must be applied only prospectively.

Under section 771(36) of the Act, it is USTR's role to identify and publish in the *Federal Register*, a list of countries determined to be least developed or developing countries that are subject to special thresholds. Pursuant to sections 703(b)(4)(A) and 705(a)(3) of the Act, a countervailable subsidy is *de minimis* if Commerce determines that the aggregate of the net countervailable subsidies is less than one percent *ad valorem* or the equivalent specific rate for the subject merchandise. As an exception, in accordance with section 703(b)(4)(B) of the Act, Commerce will apply a *de minimis* threshold of two percent to a country designated by the USTR to be a developing country. The statute and the SAA clarify that this exception applies only when the USTR has issued a developing country designation for purposes of the CVD law.⁴⁷ Specifically, the SAA states:

{S}ection 267 of the implementing bill provides guidance for designating both least developed and developing countries for purposes of the CVD law. It makes clear that this designation is solely for purposes of the CVD law and has no force or effect for any other purpose. In other words, designation for purposes of the CVD law has no particular weight in determining which countries are developing countries under other Uruguay Round agreements or under other provisions of U.S. law. Section 267 adds a new paragraph 771(36) to the Act, authorizing USTR to designate which countries are developing and least developed countries for purposes of the CVD law⁴⁸

Given that the *Final Rule* is effective February 10, 2020, USTR's country designations are

⁴² See *Preliminary Determination*, 84 FR at 54839.

⁴³ See *Developing and Least-Developed Country Designations under the Countervailing Duty Law*, 63 FR 29945 (June 2, 1998) (*Interim Final Rule*). The higher *de minimis* subsidization rate of 3.0 percent, under Article 27.11 of the SCM Agreement, expired on December 31, 2002.

⁴⁴ See *Final Rule*.

⁴⁵ *Id.*, 85 FR at 7615.

⁴⁶ *Id.*, 85 FR at 7613.

⁴⁷ See section 703(b)(4)(B) of the Act; see also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, vol. 1 (1994) at 873 (SAA) (“{The law} makes clear that this {developing country} designation is solely for purposes of the countervailing duty law and has no force or effect for any other purpose. In other words, designation for purposes of the CVD law has no particular weight in determining which countries are developing countries under other Uruguay Round agreements or under other provisions of U.S. law.”).

⁴⁸ See SAA at 940.

applicable to Commerce's final determination in this CVD investigation. Commerce does not have statutory authority to perform USTR's functions in this area. As stated above, in the *Final Rule*, the USTR did not designate India to be a developing country under the CVD law pursuant to section 771(36) of the Act and, therefore, the two percent *de minimis* threshold exception does not apply. Consequently, for this final determination, consistent with sections 703(b)(4)(A) and 705(a)(3) of the Act, the *de minimis* threshold of one percent applies to India.

Lastly, we disagree with the GOI and Antique Marbonite that multilateral agreements or WTO reports are relevant in this matter. Findings of the WTO are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements (URAA).⁴⁹ Moreover, it is the Act and Commerce's regulations, which are in compliance with our international obligations, that have direct legal effect under U.S. law, not treaties or multilateral agreements. As noted, U.S. law makes clear that USTR has the responsibility to determine which countries are categorized as least developed or developing countries subject to special thresholds, and Commerce has the responsibility to apply the USTR's determination.

Comment 2: Application of AFA for the Provision of Natural Gas for LTAR

*GOI's Arguments:*⁵⁰

- The GOI provided the necessary information on the natural gas program and did not withhold any information or impede the proceeding in any manner. The GOI stated that it would provide requisite assistance in case Commerce decided to verify the information on the record.
- The GOI invited Commerce for verification, but Commerce denied the request. The GOI argues that Commerce's action is in contravention of Article 12.3 of the SCM Agreement.⁵¹
- Article 12.7 of the SCM Agreement mandates that investigating authorities of WTO member countries are to apply facts available only in cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation.
- Because the GOI acted to the best of its ability to comply with request for information in the investigation, Commerce must decide that the GOI's cooperation and the available information on the record should not to be disregarded.
- Commerce must apply AFA in line with the WTO Appellate Body's observations in *Mexico Anti-Dumping Measures on Rice*,⁵² where the Appellate Body observed that in applying facts available, an investigating authority is expected to employ the best information, or facts available. That is, even when applying facts available, an investigating authority's determination must have a factual foundation, which in the present case is missing.⁵³

⁴⁹ See SAA at 659; see also *Corus Staal BV v. United States*, 395 F. 3d 1343, 1347-49 (Fed. Cir. 2005), accord *Corus Staal BV v. United States*, 502 F. 3d 1370, 1375 (Fed. Cir. 2007); and *NSK Ltd. v. United States*, 510 F. 3d 1375, 1379-80 (Fed. Cir. 2007).

⁵⁰ See GOI Case Brief at 5 – 7.

⁵¹ *Id.* at 6, citing to Panel Report, *China – Broiler Products*.

⁵² *Id.* at 7, citing to Appellate Body Report, *Mexico-Anti-Dumping Measures on Rice*, para. 289.

⁵³ *Id.*, citing to Panel Report, *China – GOES*, para. 7.296.

*Federation's Arguments:*⁵⁴

- Commerce should not apply facts available to the Provision of Natural Gas for LTAR program because the GOI cooperated to the best of its ability and Commerce accepted all responses without verification.

*Petitioner's Rebuttal Arguments:*⁵⁵

- The GOI has conjured up an alternate reality in which it “never withheld any information nor impeded the investigation in any manner.” That claim is demonstrably false, and the GOI’s line of argument should be rejected because it is simply untrue.

Commerce Position: We continue to find that necessary information is not available on the record, that the GOI withheld information that was requested of it, and that the GOI has significantly impeded this investigation, under sections 776(a)(1), 776(a)(2)(A) and (C) of the Act. Additionally, we continue to find that the GOI did not cooperate to the best of its ability to comply with Commerce’s requests for information on the Provision of Natural Gas for LTAR program. Thus, in accordance with sections 776(a) and 776(b) of the Act, we continue to find that the application of AFA is warranted in our analysis of whether the program provides a financial contribution and is specific, and whether the Indian natural gas market is distorted.

We disagree with the GOI’s and Federation’s contention that the application of AFA is not appropriate in this investigation, where the GOI failed to provide the requested natural gas information. In response to Commerce’s natural gas questions, the GOI stated that it was in the process of obtaining the requested information and sought to submit the relevant information to Commerce at a later time of its choosing, such as verification.⁵⁶ By stating that it was unable to obtain or submit the requested information because of the nature of the information requested and/or waiting to receive the information from the relevant agencies, the GOI was substantially non-responsive and granted itself an extension to submit the requested information. This is despite Commerce granting two extension requests,⁵⁷ that provided 17 days to the GOI to submit its NSA supplemental questionnaire response. Further, contrary to the GOI’s assertions, the purpose of verification is not to collect new information, but rather to confirm the accuracy and completeness of submitted factual information on the record of the proceeding.⁵⁸ Commerce never denied the GOI’s request for verification. In fact, there was no basis for Commerce to verify the Provision of Natural Gas for LTAR with the GOI as the necessary program information was not provided on the record by the GOI. Simply put, there was no record information for Commerce to verify with the GOI with respect to this program.

⁵⁴ See Federation Case Brief at 8.

⁵⁵ See Petitioner Rebuttal Brief at 26 – 27.

⁵⁶ See GOI’s Letter, “CVD Investigation – Certain Quartz Surface Products from India: Response to the New Subsidy Supplemental Questionnaire on behalf of Government of India,” dated November 15, 2019 (GOI NSA SQR) at Provision of Natural Gas for LTAR.

⁵⁷ See Commerce’s Letters, “Countervailing Duty Investigation of Certain Quartz Surface Products from India: Extension of Time to Submit Response to New Subsidy Allegations Questionnaire,” dated November 5, 2019; and “Countervailing Duty Investigation of Certain Quartz Surface Products from India: Second Extension of Time to Submit Response to New Subsidy Allegations Questionnaire,” dated November 11, 2019.

⁵⁸ See 19 CFR 351.307(d); see also *Lumber from Canada* IDM at Comment 4.

We, thus, determine that necessary information for the Provision of Natural Gas for LTAR program is not available on the record and that the GOI withheld information that was requested of it. Further, we determine that the GOI's lack of a response to the Provision of Natural Gas for LTAR questions significantly impeded this investigation. Thus, Commerce must rely on "facts available" in making its final determination, in accordance with sections 776(a)(1), 776(a)(2)(A) and (C) of the Act. Moreover, we determine that the GOI failed to cooperate by not acting to the best of its ability to comply with Commerce's request for information by not providing the information requested of it despite multiple extensions of time. Consequently, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. Consistent with the Post-Preliminary Determination, we are applying facts available with an adverse inference in this final determination to the circumstances discussed *infra*.

GOI – Gujarat Gas Limited (Gujarat Gas) is a Government Authority

We requested ownership information for Gujarat Gas and information on government industry plans and policies for natural gas in addition to asking the GOI to provide a response to the Input Producer Appendix.⁵⁹ Such information is necessary for Commerce to determine whether Gujarat Gas is majority owned by the government or a government entity as controlled by the government and, hence, an "authority" within the meaning of section 771(5)(B) of the Act. The GOI did not provide a response to the Input Producer Appendix and repeated that the requested information would "immediately be provided to the USDOC upon obtaining the same," and "Government of India seeks liberty to submit the relevant information during the verification process conducted by the USDOC or at the ease of USDOC."⁶⁰ The GOI did provide the shareholding pattern of Gujarat Gas, but such information was as of September 30, 2019, which is outside of the POI.⁶¹

As AFA, we continue to determine that Gujarat Gas is an "authority" within the meaning of section 771(5)(B) of the Act and that Gujarat Gas provides a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.

GOI – Provision of Natural Gas is Specific to the Quartz Surface Products Industry

For the natural gas industry and the ceramic industry, Commerce requested the GOI to provide government plans, industry-specific plans or policies, investment guides, and any other government planning or policy documents that are relevant to the POI.⁶² In response to this request, the GOI stated that it was in "the process of gathering further information and the same would be intimated to the USDOC immediately upon receiving."⁶³

⁵⁹ See Commerce's Letter, "Countervailing Duty Investigation of Certain Quartz Surface Products from India: New Subsidy Supplemental Questionnaire," dated October 29, 2019 (GOI NSA SQ) at Provision of Natural Gas for LTAR.

⁶⁰ See GOI NSA SQR at Questions Regarding Gujarat Gas Ltd./Gujarat State Petroleum Corporation.

⁶¹ *Id.*

⁶² See GOI NSA SQ at 6.

⁶³ See GOI NSA SQR at Response to Question 3 of Questions Regarding Gujarat Gas Ltd./Gujarat State Petroleum Corporation.

Commerce also requested the GOI to provide a list of industries in Gujarat that purchased natural gas directly and to provide the amounts (volume and value) purchased by each of the industries, including the quartz surface products industry for the POI.⁶⁴ Commerce requested such information for purposes of its specificity analysis. In response to this request, the GOI stated that “the process of extracting information is still in progress and would be furnished to the USDOC in due time. The Government of India seeks liberty to submit the relevant information during the verification process conducted by the USDOC or at the ease of USDOC.”⁶⁵

As AFA, we continue to determine that the GOI’s provision of natural gas to producers of quartz surface products is specific within the meaning of section 771(5A) of the Act.

GOI – Natural Gas Market Is Distorted by Significant Government Presence

Commerce requested the GOI to provide information concerning natural gas in Gujarat for the POI and the prior two years, including, but not limited to: total number of producers; total volume and value of domestic consumption of natural gas; total volume and value of domestic production of natural gas; total volume and value of domestic production that is accounted for by companies in which the GOI maintains an ownership/management interest either directly or through other government entities; and laws, plans or policies that address the pricing of natural gas and the levels of production of natural gas.⁶⁶ Commerce requested such information to determine the government’s role in the natural gas market and whether the GOI is the predominant provider of natural gas in Gujarat and whether its significant presence in the market distorts all domestic transaction prices. In response to Commerce’s request for information, the GOI stated that it “will be able to provide such information to the USDOC only in the course of due time. . . The Government of India seeks liberty to submit the relevant information during the verification process conducted by the USDOC or at the ease of USDOC.”⁶⁷

As AFA, we continue to determine that Indian natural gas prices from actual transactions involving Indian buyers and sellers are significantly distorted by the involvement of the GOI in the natural gas market.⁶⁸ Therefore, we determine that the use of an external benchmark is warranted for calculating the benefit for the Provision of Natural Gas for LTAR.

Commerce’s determination to apply AFA with regard to financial contribution (including, Gujarat Gas as a government authority), specificity, and market distortion is based on the facts of this investigation. As discussed above, the facts demonstrate that the GOI failed to cooperate by not acting to the best of its ability to comply with Commerce’s request for information with regard to the provision of natural gas in India. Therefore, an adverse inference is warranted in the application of facts available.

With respect to the GOI’s argument that the application of AFA in this case is inconsistent with the SCM Agreement, as we explained in *Carbon Steel Flanges from India*, Commerce conducts

⁶⁴ See GOI NSA SQ at 5.

⁶⁵ See GOI NSA SQR at Response to Question 2 of Questions Regarding the Natural Gas Industry in Gujarat.

⁶⁶ See GOI NSA SQ at 4 – 5.

⁶⁷ See GOI NSA SQR at Response to Question 1.

⁶⁸ See *Countervailing Duties: Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*CVD Final Rule*).

its investigations in accordance with the Act and our regulations, and U.S. law is fully compliant with our WTO obligations.⁶⁹

Further, we disagree with the GOI's claim that certain WTO reports have any bearing to this investigation. WTO panel and Appellate Body conclusions are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.⁷⁰ Congress was very clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent the United States agreeing to such application. In no case do WTO panel or Appellate Body dispute reports limit automatically Commerce's discretion in applying the statute in an AD or CVD proceeding.⁷¹ Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."⁷²

Comment 3: Whether Commerce Should Select Imports of LNG as the Natural Gas Benchmark

*Petitioner's Arguments:*⁷³

- LNG pricing is the appropriate benchmark to apply, because it represents a world market price under tier two that is available to purchasers in India, or alternatively, a price under tier three that is consistent with market principles.
- Although LNG may not be completely identical to piped (*i.e.*, gaseous) natural gas, the petitioner provided conversions to allow Commerce to draw an accurate comparison with Antique Marbonite's actual purchases of natural gas from Gujarat Gas.
- Record evidence indicates that at least a portion of the natural gas which Gujarat Gas sold to Antique Marbonite during the POI was re-gasified LNG.
- India does not participate in the world market for piped natural gas, but does import LNG at world market prices, and over half of all Indian consumption of natural gas is comprised of re-gasified imports of LNG.⁷⁴ Thus, converting prices of LNG imports to a comparable unit of measure represents world market prices that would be available to purchasers in India as a tier-two benchmark.
- Further, even under a tier-three analysis, imports of LNG are a more suitable benchmark than the world export prices for piped natural gas because such product is not available to purchasers in India.
- Commerce's reasons for rejecting imports of LNG as a benchmark are not supported by the record and reliance on *Turkey Rebar Final 2016*⁷⁵ is misplaced.

⁶⁹ See *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Carbon Steel Flanges from India*) and accompanying IDM at 12 – 15.

⁷⁰ See *Corus Staal BV v. United States*, 395 F. 3d 1343, 1347-49 (Fed. Cir. 2005), accord *Corus Staal BV v. United States*, 502 F. 3d 1370, 1375 (Fed. Cir. 2007); and *NSK Ltd. v. United States*, 510 F. 3d 1375, 1379-80 (Fed. Cir. 2007).

⁷¹ See 19 USC § 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).

⁷² See SAA at 659.

⁷³ See Petitioner Case Brief at 10 – 18.

⁷⁴ *Id.* at 12, referencing Petitioner's Letter, "Certain Quartz Surface Products from India: Submission of Factual Information to Rebut, Clarify, or Correct Factual Information Placed on the Record by Commerce," dated December 4, 2019 (Petitioner's December 4th Comments) at 2 and Exhibit 2.

⁷⁵ *Id.* at 17 – 18, citing to *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of*

- First, Commerce stated that, because it found the Indian natural gas market to be distorted, it could not use actual imports in India as a benchmark price under tier one.
- Evidence shows that the prices for domestic natural gas that is piped domestically are established through government policies, but that prices for imported LNG are determined by world market forces. Therefore, there is no reason that Commerce could not use imports of LNG as a benchmark under tier two. Even assuming, *arguendo*, that imports of LNG must be analyzed as a benchmark under tier one, there is no evidence that the government distortion in the Indian gas market extends to imports of LNG.⁷⁶
- The GOI accounts for a minority of the total natural gas market in India, and the record shows no evidence of market-distortive export or import restraints on natural gas.⁷⁷
- Given the minority share of government production, the substantial levels of imports, and the lack of other record evidence indicative of distortion, Commerce should find that the natural gas market in India is not distorted by the government's presence such that it cannot use a tier-one benchmark.
- Second, Commerce preliminarily found that LNG is not identical to natural gas (gaseous) but, rather, is a downstream product derived from natural gas through an industrial production process. This is not a distinction that should make a difference in determining whether LNG imports can serve as a benchmark for natural gas. Natural gas and LNG compete in the same markets and are used for every category of gas consumption.
- Third, Commerce preliminarily rejected the LNG prices because LNG requires adjustments to serve as a benchmark for piped natural gas. However, the petitioner provided conversions to allow Commerce to draw a comparison with Antique Marbonite's actual purchases of natural gas from Gujarat Gas.
- The record shows that the majority of India's demand for natural gas is met by re-gasified LNG and 71 percent of the gas consumed by Indian industry demand is re-gasified LNG.⁷⁸ This evidence shows that at least a portion of the natural gas consumed by Antique Marbonite originated with imported LNG that was re-gasified and transported by pipeline. The GOI failed to provide information on where Gujarat Gas sourced its natural gas.⁷⁹ Thus, use of LNG data as the benchmark under tier two would be consistent with Commerce's regulations and the appropriate choice.

Countervailing Duty Administrative Review and Intent to Rescind the Review in Part; 2016, 83 FR 63472 (December 10, 2018) (*Turkey Rebar Prelim 2016*) and accompanying PDM at 21 – 24; and *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review*; 2016, 84 FR 36051 (July 26, 2019) (*Turkey Rebar Final 2016*) and IDM at 16 – 17.

⁷⁶ *Id.* at 14, citing to *Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*; 2017, 84 FR 68115 (December 13, 2019) and accompanying IDM at Comment 2, where Commerce explained that it normally examines government involvement in the market through the ownership of production and the share of domestic apparent consumption accounted for by government production; and, whether the government has taken action that affects supply, by on the one hand, imposing export taxes, export quotas or other restraints on exports, which leads to an artificial, distortive, oversupply in the domestic market, or on the other hand, by imposing import duties or quotas which may constrain domestic supply; and where Commerce explained that the level of imports is a key factor in determining market distortion.

⁷⁷ *Id.* at 15, referencing the GOI NSA SQR at 9.

⁷⁸ *Id.* at 18, referencing Petitioner's December 4th Comments at Exhibit 2.

⁷⁹ *Id.*, referencing GOI NSA SQR.

*Antique Marbonite's Rebuttal Arguments:*⁸⁰

- The use of imports of natural gas (gaseous) is the appropriate basis for measuring the benefit under the Provision of Natural Gas for LTAR.
- Antique Marbonite does not purchase natural gas in liquefied form, but purchases natural gas in gaseous form supplied through pipelines.
- LNG and natural gas are not identical products. LNG is a downstream product requiring additional processing and is not transported via a pipeline. LNG and natural gas have different production processes, chemical compositions, energy content, density, and working pressure.
- The petitioner points to incomplete facts that only indicate that India imports LNG and those facts do not establish that LNG is a suitable comparative for natural gas.
- The petitioner's argument that India does not import piped natural gas ignores the fact that there is domestic production of natural gas, which is transported via pipelines.
- The conversions provided by the petitioner to compute the cost of gaseous natural gas from LNG are not consistent with industrial supply of natural gas in India. The petitioner's benchmark conversion does not take into consideration that the supply of natural gas is being made to industrial customers and uses the supply and distribution costs for supply to retail customers for domestic consumption as a conversion parameter.

*GOI's Rebuttal Arguments:*⁸¹

- LNG and natural gas are not "like products" (different production processes, different chemical compositions, different energy content, etc.), and, therefore, prices of LNG cannot be considered as a natural gas benchmark price.
- Commerce rightly found that LNG cannot be transported in pipelines, and bringing LNG to a comparable level to natural gas requires many adjustments, which create serious distortions in derivation of a benchmark price.
- The argument that the prices of natural gas are distorted due to the presence of the GOI in the gas market is baseless. The GOI provided a description of Gujarat Gas' natural gas prices, which establish that natural gas prices are not distorted, and the GOI is not providing any natural gas for LTAR.
- Commerce correctly found that no countervailable benefit is conferred on Antique Marbonite.

Commerce's Position: After considering the arguments raised by the interested parties regarding the appropriate benchmark for measuring the adequacy of remuneration for Antique Marbonite's natural gas purchases from Gujarat Gas, we conclude it is appropriate to continue to apply the Global Trade Information Services (GTIS) world market prices for natural gas (gaseous) as a proxy for a market-based natural gas benchmark under tier three of the hierarchy.⁸² For the reasons discussed, *infra*, we do not find the petitioner's arguments for use of an LNG benchmark persuasive.

Under 19 CFR 351.511(a)(2), Commerce sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales,

⁸⁰ See Antique Marbonite Rebuttal Brief at 3 – 7.

⁸¹ See GOI Rebuttal Brief at 2 – 5.

⁸² See 19 CFR 351.511(a)(2)(iii).

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 discussed in Comment 2, we continue to apply AFA to the GOI finding that Indian natural gas prices from actual transactions involving Indian buyers and sellers are significantly distorted by the involvement of the GOI in the natural gas market. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where Commerce finds, whether based on AFA or not, that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.⁸³

When Commerce finds a market to be distorted, it cannot use market prices from actual transactions within the country under investigation as a benchmark under tier one of 19 CFR 351.511(a)(2). Consequently, because of the GOI's involvement in the India gas market, based on AFA, the use of private transaction prices in India to calculate a benefit would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government's presence in the market).⁸⁴ Because we find the Indian natural gas market to be distorted, we cannot apply actual domestic sales or imports in India as a benchmark price under tier one. For this reason, we did not consider as a potential tier-one benchmark the pricing data that Antique Marbonite placed on the record for natural gas and propane gas from Indian suppliers. Likewise, we did not consider the imports of LNG into India, which are actual transactions involving Indian buyers, as a potential tier-one benchmark price. No argument was raised by the interested parties to warrant a reconsideration of Commerce's finding.

Further, there is no basis to the petitioner's argument that government distortion in the Indian natural gas market does not extend to imports of LNG. As discussed in prior investigations, Commerce has found that the input under examination is natural gas (gaseous), a separate and distinct product from LNG. Therefore, we continue to find all LNG prices not to be comparable benchmarks for Antique Marbonite's purchases of natural gas. Furthermore, as discussed in Comment 2, the GOI was non-responsive to Commerce's requests for information regarding the government's role in the natural gas market. Because the GOI did not cooperate, there is no information regarding the nature and operation of the natural gas market nor the overall gas market in India and the role and influence of the GOI in the market. Therefore, there is no evidence on the record that the government's distortion in the Indian natural gas market does not extend to imports of LNG.

The "evidence" to which the petitioner points for support that prices for imported LNG are determined by world market forces and there is no market distortion are various articles and news releases, which the petitioner placed on the record, and not information provided by the

⁸³ See *CVD Final Rule*, 63 FR at 65377.

⁸⁴ See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) and accompanying IDM at 38-39 (stating that such an analysis "would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.").

GOI. To conduct its market distortion analysis, Commerce primarily relies on information it requests from the government and can use third-party sources as a replacement for information that should have been submitted by government. Such information however would still need to be supported by government provided information. In this investigation, as noted, the GOI was non-responsive to Commerce's natural gas questions and, therefore, an AFA finding that the natural gas market is distorted is appropriate.

The petitioner also proposes that we use the LNG import prices as a tier-two benchmark, but to do so would be outside the regulatory scheme under 19 CFR 351.511. Under the regulation and our practice, the fundamental task is to compare the government price to a world market price for *the good* being provided by the government.⁸⁵ When selecting a comparable benchmark price, it is Commerce's preference to select the pricing data for the input under examination (here – natural gas (gaseous)). LNG is not the good being provided by the GOI to Antique Marbonite. We verified that Antique Marbonite purchased natural gas (gaseous) from Gujarat Gas via a pipeline.⁸⁶ Commerce has found that LNG is not identical to natural gas (gaseous) but, rather, is a downstream product derived from natural gas through an industrial production process.⁸⁷ Further, Commerce has determined that natural gas (*e.g.*, gas in gaseous form) has inherent supply limitations because it can be transported only by pipeline and not shipped via canisters like LNG.⁸⁸ Record evidence shows that India has no pipelines leading outside the country and therefore cannot export/import gas in gaseous form. Commerce has found that pipeline connections are salient facts to consider when applying a tier-two benchmark price for natural gas.⁸⁹ No argument was presented by the petitioner to warrant a reconsideration of Commerce's findings.

Also, in a prior proceeding, Commerce considered whether a natural gas (gaseous) benchmark can be derived from LNG pricing data and concluded that it cannot.⁹⁰ Commerce found that LNG pricing requires significant adjustments to serve as a benchmark for piped natural gas (gaseous).⁹¹ While, in this investigation, the petitioner provided data and conversions for making adjustments, we find that the cumulative effect of making such adjustments risks introducing distortions to the benchmark and those risks can be avoided by relying on pricing data for natural gas (gaseous), the input under examination, that is on the record of the investigation.⁹² The petitioner presented no argument that warrants a reconsideration of Commerce's finding that a natural gas (gaseous) benchmark cannot be derived from LNG.

For the same reasons, we disagree with the petitioner that the LNG prices can be used as a tier-three benchmark. As discussed, the input under examination is natural gas (gaseous), a separate

⁸⁵ See 19 CFR 351.511(a)(2)(ii) (emphasis added).

⁸⁶ See Antique Marbonite Verification Report at 13.

⁸⁷ See *Turkey Rebar Prelim 2016 PDM* at 23, unchanged in *Turkey Rebar Final 2016 IDM* at Comment 1.

⁸⁸ See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015*, 83 FR 16051 (April 13, 2018) (*Turkey Rebar Final 2015*) and accompanying IDM at 12.

⁸⁹ *Id.*

⁹⁰ See *Turkey Rebar Final 2016 IDM* at Comment 1.

⁹¹ *Id.*

⁹² This approach is consistent with Commerce's decisions in prior cases. See *Turkey Rebar Final 2016 IDM* at 17.

and distinct product from LNG, and there are world market prices for natural gas, on the record, that can serve as a tier-three benchmark. As such, we continue to rely on the GTIS natural gas (gaseous) pricing data, which can be used as a proxy for a market-based natural gas benchmark under tier three of the hierarchy (19 CFR 351.511(a)(2)(iii)).

Additionally, the petitioner argues that evidence indicates that at a portion of the natural gas which Gujarat Gas sold to Antique Marbonite during the POI was re-gasified LNG and, therefore, the appropriate benchmark is LNG. At Antique Marbonite's verification, we were informed by the company that Gujarat Gas has LNG tanks at the Gujarat port.⁹³ We verified that the good that moves from the port via pipelines to Antique Marbonite's facility is natural gas.⁹⁴ The purchase agreement between Antique Marbonite and Gujarat Gas is for the supply of natural gas (gaseous) and not natural gas in liquified form.⁹⁵ As such, there is no basis to use LNG for benchmarking the government-provided natural gas. Contrary to the petitioner's assertions, LNG is not the same class of product as the government-provided natural gas.

Assuming that the natural gas purchased by Antique Marbonite is re-gasified LNG, the petitioner's argument to use the LNG import prices is flawed because it advocates that Commerce compare the price at which the government (*i.e.*, Gujarat Gas) paid for imported LNG to the price at which the government (*i.e.*, Gujarat Gas) sold the LNG re-gasified as natural gas to Antique Marbonite. Even if we could use LNG pricing as a comparison for natural gas (which we cannot for the reasons stated above), such an analysis would result in comparing the benchmark price to itself (*e.g.*, comparing a government price to a government price) and that is not a methodology Commerce applies when conducting an LTAR analysis for a commodity product.

Consistent with the Post-Preliminary Determination, we continue to find that there are no viable tier-one or tier-two benchmarks⁹⁶ on the record for natural gas in India and, therefore, we must continue to apply a tier-three benchmark under 19 CFR 351.511(a)(2)(iii), which is reserved for when world market prices are not available in the country under investigation and undistorted domestic and import prices are likewise unavailable. Under 19 CFR 351.511(a)(2)(iii), Commerce assesses whether the pricing of natural gas by Gujarat Gas is consistent with market principles and, if not, derives a market-consistent price using any relevant source from the record. As discussed *supra*, the GOI was non-responsive to Commerce's questions regarding the Provision of Natural Gas for LTAR program. We, therefore, do not have any information on the record to assess whether the prices charged by Gujarat Gas are set in accordance with market principles through an evaluation of Gujarat Gas' price-setting methods. Consequently, we

⁹³ See Antique Marbonite Verification Report at 13.

⁹⁴ *Id.*

⁹⁵ *Id.* and 14 – 15 and Verification Exhibits 13, 14, and 15.

⁹⁶ There are no natural gas pipelines connecting India with any foreign supplier of natural gas in gaseous state and, thus, India does not import any natural gas. See PDM at 9. As noted, Commerce has found that pipeline connections are salient facts to consider when applying a tier-two benchmark price for natural gas. Consequently, on the basis of the record evidence, we find that natural gas in gaseous state on the world market is not available to purchasers in India, within the meaning of 19 CFR 351.511(a)(2)(ii) and, thus, we cannot apply the GTIS world market price for natural gas as a tier-two benchmark.

determine, based on AFA, that the government price for natural gas in India is not consistent with market principles within the meaning of 19 CFR 351.511(a)(2)(iii).

For all the reasons outlined above, we conclude that the most appropriate proxy for a market-based natural gas benchmark under a tier-three analysis remains the GTIS world market natural gas pricing data, which Commerce placed on the record.⁹⁷ The application of a GTIS natural gas (gaseous) tier-three benchmark to the Provision of Natural Gas for LTAR benefit calculations indicates that Antique Marbonite did not receive countervailable benefits from its purchases of natural gas from Gujarat Gas during the POI.

Comment 4: Whether Commerce’s Natural Gas AFA Determination Rewards Non-Compliance

*Petitioner’s Arguments:*⁹⁸

- Commerce must consider whether its selection of benchmark data is consistent with the statute, in light of the GOI’s failure to cooperate in this investigation. The application of AFA should result in some increase in the subsidy rate, commensurate with the extent of non-cooperation. As such, Commerce’s Post-Preliminary Determination, where no countervailable benefits were found for the Provision of Natural Gas for LTAR, fails to meet the statutory intent of applying AFA.
- Congress’s purpose in providing Commerce with AFA authority was to “ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁹⁹ The U.S. Court of Appeals for the Federal Circuit (CAFC) affirmed that the purpose of the AFA provision is “to provide respondents with an incentive to cooperate” and to “ensure that a respondent does not obtain a more favorable antidumping rate by failing to cooperate.”¹⁰⁰
- To accomplish the statutory goals, Commerce must apply facts that are actually adverse to the party. The application of facts that are neutral or favorable to a non-cooperative respondent would encourage gamesmanship and allow a respondent to benefit from non-cooperation.
- The CAFC stated that it is clear from the statute that Congress intended an AFA rate to include “some built-in increase intended as a deterrent to noncompliance.”¹⁰¹
- Also, the CAFC held that it would be improper to incentivize a non-cooperative respondent by applying a rate that is not adverse (*i.e.*, was not sufficiently increased) where Commerce determined that it is appropriate to apply AFA.¹⁰²
- Thus, Commerce should not apply a benchmark that does not result in the calculation of a positive subsidy rate for Antique Marbonite under the Provision of Natural Gas for LTAR.¹⁰³

⁹⁷ See Memorandum, “Countervailing Duty Investigation of Certain Quartz Surface Products from India: Placing Natural Gas Pricing Data on the Record,” dated November 27, 2019 (GTIS Data Memorandum).

⁹⁸ See Petitioner Case Brief at 18 – 23.

⁹⁹ *Id.* at 19, citing to SAA at 870.

¹⁰⁰ *Id.*, citing to *F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000) (*De Cecco*); and *Mukand, Ltd. v. United States*, 767 F. 3d 1300, 1307 (Fed. Cir. 2014).

¹⁰¹ *Id.* at 20, citing to *De Cecco*, 216 F. 3d at 1032; see also *Essar Steel Ltd. v. United States*, 678 F. 3d 1268, 1276 (Fed. Cir. 2012), and *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F. 3d 1330, 1340 (Fed. Cir. 2002) (quoting *De Cecco*).

¹⁰² *Id.* at 21, citing to *Viet I-Mei Frozen Foods Co. v. United States*, 839 F. 3d 1099, 1110 (Fed. Cir. 2016).

¹⁰³ *Id.* at 21 – 22, citing to *Papierfabrik August Koehler AG v. United States*, 180 F. Supp. 3d 1211, 1231 (CIT

Using flawed benchmark data to arrive at a subsidy rate of zero cannot be sufficiently adverse to deter the GOI's misconduct in failing to cooperate to the best of its ability during this investigation.

- To the extent there is any doubt regarding the issue of whether Gujarat Gas purchased imported LNG and supplied it to Antique Marbonite in re-gasified form, this doubt only exists because the GOI failed to respond fully to Commerce's natural gas questions.
- The only appropriate way to resolve this gap in the record, and ensure that the GOI does not benefit from its non-cooperation, is to apply an adverse inference that all of the natural gas supplied by Gujarat Gas to Antique Marbonite was re-gasified imports of LNG and apply an LNG benchmark.

*Antique Marbonite's Rebuttal Arguments:*¹⁰⁴

- Because Commerce applied adverse inferences to the Provision of Natural Gas for LTAR, Commerce did not consider as a benchmark the prices of natural gas and propane gas in India between private parties and actual prices of propane gas paid by Antique Marbonite, which the company placed on the record.
- If Commerce applied further adverse inferences, as suggested by the petitioner, such action would be inconsistent with the provisions of Article 12.7 of the SCM Agreement.
- Under Article 12.7, when an authority lacks information it will rely on the facts which are otherwise available to it¹⁰⁵ and the purpose of replacing necessary information that may be missing should not be to punish non-cooperating parties by intentionally drawing an adverse inference.¹⁰⁶
- In order for Commerce to draw adverse inferences, it must establish whether the respondent has failed to respond to the best of its ability.¹⁰⁷
- Where Commerce has not requested additional information, and relied on the information provided by the respondent, no adverse inferences have been drawn.¹⁰⁸
- Commerce must reject the petitioner's argument and not apply any further adverse inference to measure the benefit from the Provision of Natural Gas for LTAR. The application of total AFA would punish cooperating parties to this investigation.

Commerce's Position: Contrary to the petitioner's assertion, Commerce met the statutory intent of applying AFA based on the facts of this investigation. In accordance with sections 776(a) and (b) of the Act, Commerce applied facts available with an adverse inference to the non-cooperating party – *the GOI*, finding financial contribution (including that Gujarat Gas is a government authority), market distortion, and specificity based on the GOI's lack of cooperation. *See Comment 2.* By doing so, Commerce ensured that the GOI, and Antique Marbonite, did not

2016).

¹⁰⁴ See Antique Marbonite Rebuttal Brief at 7 – 10

¹⁰⁵ *Id.* at 8, citing to Panel Report, *EC – Countervailing Measures on DRAM Chips*.

¹⁰⁶ *Id.*, citing to Panel Report, *U.S. – Pipes and Tubes (Turkey)*.

¹⁰⁷ *Id.* at 9, citing to *Nippon Steel Corp. v. U.S.*, 337 F. 3d 1373 (Fed. Cir. 2003); *see also Rebar Trade Action Coalition v. United States*, 398 F. Supp. 3d 1359 (CIT 2019); *Shandong Rongxin Import & Export Co., Ltd. v. United States*, 355 F. Supp. 3d 1365 (CIT 2019); and *Stanley Works (Langfang) Fastening Systems Co., Ltd. v. U.S.*, 964 F. Supp. 2d 1311, 35 ITRD 2435 (CIT 2013)

¹⁰⁸ *Id.* at 10, citing to *Stanley Works (Langfang) Fastening Systems Co., Ltd. v. U.S.*, 964 F. Supp. 2d 1311, 35 ITRD 2435 (2013).

obtain a more favorable result as a result of the government's failure to cooperate. As Antique Marbonite states, Commerce did not consider the private prices that the company provided because we preliminarily found, based on AFA applied to the GOI, that the Indian gas market is distorted and, thus, actual domestic and import purchases in India cannot be used as a benchmark price under tier one of the hierarchy.¹⁰⁹

Further, we preliminarily countervailed all of Antique Marbonite's purchases of natural gas from Gujarat Gas because we preliminarily found, based on AFA applied to the GOI, that Gujarat Gas is an "authority" within the meaning of section 771(5)(B) of the Act, providing a financial contribution within the meaning of section 771(5)(D)(iii) of the Act. We also preliminarily found, based on AFA applied to the GOI, that the provision of natural gas is specific to producers of quartz surface products within the meaning of section 771(5A) of the Act. No arguments were presented by the interested parties in their case briefs to warrant a reconsideration of Commerce's preliminary determination for this final. *See* Comment 2. Hence, Commerce's application of AFA to the GOI and, thus, the countervailability determination for the Provision of Natural Gas for LTAR program does not reward non-compliance as suggested by the petitioner.

Contrary to the petitioner's assertions, there is no basis to apply total AFA to the Provision of Natural Gas for LTAR program and find that all of the natural gas supplied by Gujarat Gas to Antique Marbonite was re-gasified imports of LNG. Unlike the GOI, Antique Marbonite was fully responsive to Commerce's natural gas questions. When a company respondent is cooperative, it is Commerce's practice to use that respondent's reported information to determine whether a benefit was conferred by a subsidy program – even though AFA is applied to the government.¹¹⁰ In this investigation, we used the verified natural gas purchase data provided by Antique Marbonite to calculate the benefit to the company under the Provision of Natural Gas for LTAR program. There is no basis to apply total AFA to the program finding that all of the natural gas supplied by Gujarat Gas to Antique Marbonite was re-gasified imports of LNG.

Further, because there is no basis to apply total AFA to the program finding that the natural gas purchases were re-gasified imports of LNG, there is no justification to select as the benchmark imports of LNG into India. When conducting the benefit analysis, we cannot dismiss the methodology described in 19 CFR 351.511(a)(2) to identify the appropriate market-determined benchmark for measuring the adequacy of remuneration for a government-provided good because we applied AFA to a non-cooperative government. As discussed further in Comment 3, we applied the benchmark hierarchy in accordance with 19 CFR 351.511(a)(2) and determined, based on the evidence, that a tier-three benchmark based on GTIS natural gas (gaseous) world market export prices is the most suitable benchmark price available on the record to apply to the natural gas benefit calculations.

¹⁰⁹ *See* 19 CFR 351.511(a)(2).

¹¹⁰ *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 14463 (March 12, 2020) and accompanying IDM at Use of Facts Otherwise Available and Adverse Inferences, Section 32 for Investments into new Plants and Machinery (Section 32 Capital Investment Deductions) of the Income Tax Act, 1961, Section 35 R&D Deductions of the Income Tax Act, 1961, Services from India Scheme, Services Export from India Scheme, and Comment 2.

Commerce's application of facts available, including the use of adverse inferences, with respect to the countervailability determination for the Provision of Natural Gas for LTAR, applied to the GOI and its failure to fully respond to Commerce's questionnaires. Commerce resorts to applying AFA only to select accurate information as a proxy for the missing information, and to be able to complete the necessary analysis where the requested party has not provided the information that is necessary for Commerce to make its determination. The use of facts available, including the reliance upon adverse inferences, will not necessarily result in a subsidy rate greater than zero in all instances, as the petitioner opines.

Comment 5: Inclusion of the IGST in the Natural Gas Benchmark

*Antique Marbonite's Arguments:*¹¹¹

- Commerce inadvertently added the amount of IGST to the constructed tier-three benchmark price compared to Antique's purchase price of natural gas.
- Section 2(62) and section 2(63) of the *Central Goods and Services Act, 2017* states that any IGST charged on sales of goods or services in India is an allowed input tax credit. The IGST paid on purchases by businesses in India that are engaged in the supply of goods or services are eligible for input tax credit of IGST paid on purchases.
- The IGST paid on imports should not be part of the purchase cost of gas from suppliers in India.

*GOI's Rebuttal Arguments:*¹¹²

- Commerce should not add the amount of IGST payable on imports to the constructed benchmark price of natural gas.

*Petitioner's Rebuttal Arguments:*¹¹³

- Antique Marbonite cites no law, regulation, or record evidence to support its argument.
- Antique Marbonite's argument is without merit and Commerce has rejected similar arguments in other CVD cases.¹¹⁴

Commerce's Position: We have not included IGST in the benefit calculation for EPCGS, as the GOI reported that imports of capital goods under the EPCGS are exempt from IGST.¹¹⁵ As discussed *supra*, the GOI was non-responsive to Commerce's questions regarding the Provision of Natural Gas for LTAR program. Therefore, we are not excluding IGST from the natural gas benchmark in the final determination. We further note that the argument to exclude IGST from the benchmark is a moot issue because, even with the inclusion of the IGST in the benchmark, the Provision of Natural Gas for LTAR program did not confer a measurable benefit to Antique

¹¹¹ See Antique Marbonite Case Brief at 5 – 6.

¹¹² See GOI Rebuttal Brief at 4 – 5.

¹¹³ See Petitioner Rebuttal Brief at 31.

¹¹⁴ *Id.*, citing *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review: 2014–2015*, 82 FR 42792 (December 12, 2017) and accompanying IDM at Comment 8.

¹¹⁵ See GOI's Letter, "CVD Investigation – Certain Quartz Surface Products from India: Response to the Initial Questionnaire on behalf of the Government of India," dated August 8, 2019 (GOI IQR) at 26 – 27; *see also* Antique Marbonite Final Calculations.

Marbonite during the POI. If this investigation goes to order, and a first administrative review is requested, we will examine the IGST in the context of the Provision of Natural Gas for LTAR program.

Comment 6: Whether Commerce Should Countervail the DDB Scheme

*GOI's Arguments:*¹¹⁶

- The DDB is non-countervailable and Commerce must reconsider its decision to countervail the program.
- Contrary to Commerce's claim that the GOI's response lacks documentation to support a finding that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products, and in what amounts, the GOI provided all available documents and never withheld any information.
- Further the duty exemption and remission programs are not inconsistent with SCM Agreement.¹¹⁷ The DDB is not countervailable as per the SCM Agreement unless it can be shown that drawback of indirect taxes or import charges are in excess of the amount of such taxes or charges actually levied on inputs that are consumed in the production of the exported product, and even in such cases, only the excess drawback can be countervailed.¹¹⁸
- In line with the SCM Agreement, the GOI's *Customs, Central Excise Duties & Service Tax Rules, 1995* (Drawback Rules) provide for a verification procedure under the DDB, which is outlined in the Drawback Rules and Customs Manual of 2015.
- As provided in the Drawback Rules, the government has an effective verification system to ensure that the quantity of inputs for which drawback is claimed by exporters does not exceed the quantity of similar goods exported. The Drawback Rules provide for special check/audits to be conducted to ensure that there is no drawback of import charges in excess of those originally levied on the imported inputs in question and excessive drawback (if any) is recovered. As such, the GOI has a verification system in place and applies that system to confirm which inputs are consumed in the production of the exported product and in what amounts.

*Petitioner's Rebuttal Arguments:*¹¹⁹

- The GOI failed to provide the specific information requested by Commerce concerning the data analysis and verification process for the DDB Scheme.
- Consistent with other CVD India proceedings, Commerce should find that the GOI failed to demonstrate that the DDB Scheme is limited to inputs used in the production of products for exports and, therefore, is countervailable.

¹¹⁶ See GOI Case Brief at 7 – 11.

¹¹⁷ *Id.* at 7 – 9, citing to para. (h) and (i) of Annex I, para. 1 and 2 of Section I of Annex II, and Section II of Annex III of the SCM Agreement.

¹¹⁸ *Id.* at 10 – 11, citing to Panel Report, *European Union – Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan*, WT/DS486/R, para. 7.53 and 7.54.

¹¹⁹ See Petitioner Rebuttal Brief at 27 – 29.

Commerce's Position: We disagree with the GOI's arguments that the DDB Scheme is not countervailable and that the GOI has a mechanism in place to account for the type and amount of inputs used in the production of subject merchandise that is exported to the United States.

Pursuant to 19 CFR 351.519(a)(1)(ii), import duty exemptions on inputs for exported products are not countervailable, so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste. 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.¹²⁰ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.¹²¹ 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.¹²²

According to the GOI, the DDB Scheme provides rebates for duty or tax chargeable on any imported or excisable materials used to manufacture exported goods.¹²³ Regarding its establishment of DDB rates, the GOI explained that a committee exists to review data and recommend DDB rates. Specifically, the GOI stated:

The Central Government determines the All Industry Rate of drawback based on taking essentially averages of values duties on materials used for a class of export goods produced or manufactured and taking into account the extent to which these duties may not have been paid or already rebated or refunded. The All Industry Rates are notified in the form of a schedule every year after a Committee appointed for the purpose has reviewed the data and recommended the rates.¹²⁴

The GOI also stated:

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

As a second stage verification, the exporter's manufacturing premises and the books of accounts are randomly audited by the field formations as per the audit provisions to ensure that no undue benefits are claimed by the exporters."¹²⁵

¹²⁰ See *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India Final Determination*) and IDM at 12 – 14.

¹²¹ *Id.*

¹²² See 19 CFR 351.519(a)(4)(i)-(ii).

¹²³ See GOI IQR at 11.

¹²⁴ *Id.* at 12.

¹²⁵ *Id.* at 24.

We requested the GOI to describe in detail the analysis conducted by the Drawback Committee to confirm the accuracy of input consumption rates and the derivation of the recommended rates, including an explanation of the data that guided the Committee's recommendations for the DDB rates in effect during the POI for quartz surface products.¹²⁶ We also requested the GOI to describe the verification procedures that are followed when an exporter's manufacturing premises are examined and accounts are audited to ensure that no undue benefits are claimed by the exporters.¹²⁷ Specifically, we asked about the verification process that occurred with the mandatory respondents and producers of quartz surface products generally, including the number of audits and site visits that took place at the facilities of producers of quartz surface products.¹²⁸ The GOI however provided no explanation of the data analysis conducted for the derivation of the DDB rates.¹²⁹

Concerning the data analysis and verification process that occurred with regard to the mandatory respondents and producers of quartz surface products generally, the GOI stated that "there is no specific data analysis w.e.f. {with effect from} this product or mandatory respondents."¹³⁰ With regard to audits and site visits at production facilities, the GOI stated that no centralized data is maintained.¹³¹

The GOI claims that, it not only has a reasonable and effective system in place, but that its Drawback Rules allow for verification of inputs consumed in the exported subject merchandise. However, the GOI has not demonstrated on the record of this investigation that it has a system that is reasonable or effective or how the DDB rates are derived. While the GOI maintains that its Drawback Rules provide for a verification procedure, the GOI provided no record evidence that it has conducted such verifications. In addition, we verified that Antique Marbonite has never been audited or had an on-site visit by the GOI.¹³²

To merely state or point to a system is not enough to demonstrate that such a system actually exists in practice; that system must also be implemented and supported with documentation.¹³³ Thus, contrary to the GOI's claim, we do not find that the GOI has a reasonable or effective system in place that implements the monitoring of the inputs consumed in the production of the exported product.

We, therefore, 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. Since the GOI has not supported its claim that the DDB system is reasonable and effective

¹²⁶ See Commerce's Letter, "Countervailing Duty Investigation of Certain Quartz Surface Products from India: Supplemental Questionnaire," dated August 21, 2019 at 3-4 (GOI First SQ).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ See GOI's Letter, "CVD Investigation – Certain Quartz Surface Products from India: Response to the First Supplemental Questionnaire on behalf of the Government of India," dated September 11, 2019 (GOI First SQR); see also GOI IQR at 11 – 25.

¹³⁰ See GOI First SQR at 9.

¹³¹ *Id.*

¹³² See Antique Marbonite Verification Report at 10.

¹³³ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 10789 (March 22, 2019) (*Film, Sheet, and Strip from India*) and accompanying IDM at Comment 4.

in confirming which inputs, and in what amounts, are consumed in the production of the exported product, we determine that the entire amount of the import duty rebate earned during the POI constitutes a benefit under 19 CFR 351.519(a)(4). Because the program is only available to exporters, we determine that the DDB is specific under section 771(5A)(B) of the Act. Accordingly, we determine that the DDB Scheme confers a countervailable subsidy.

Finally, although the GOI purports that the DDB Scheme cannot be countervailable under the SCM Agreement, we have conducted this investigation in accordance with U.S. CVD laws under the Act and Commerce's regulations. We disagree with the GOI that certain WTO panel and Appellate Body reports are relevant in this investigation. DS486, the WTO report cited by the GOI, was between Pakistan and the European Union, not the United States. Even if the United States were a party to that dispute, findings of the WTO dispute panels and Appellate Body are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.¹³⁴ The Act and legislative history of the URAA clearly indicate that Congress did not intend for WTO dispute panel and Appellate Body reports to undermine the exercise of Commerce's discretion in applying the AD and CVD law, and even in the cases in which those challenges applied to agency determinations, not to apply automatically.¹³⁵ In other words, WTO dispute panel reports "do not have any power to change U.S. law or to order such a change."¹³⁶

Comment 7: Whether Commerce Should Countervail the IES for Export Financing

*GOI's Arguments:*¹³⁷

- Interest rates on advances were deregulated as of October 18, 1994, and, therefore, interest rates are determined by commercial banks by themselves with the approval of their boards.
- Thus, no benefit or financial contribution is granted to any person using loans under the IES for Export Financing given the deregulation of interest rates.

*Petitioner's Rebuttal Arguments:*¹³⁸

- Given the GOI's failure to provide requested information for the IES for Export Financing, Commerce properly considered the Reserve Bank of India's (RBI) circular "Interest Equalisation Scheme on Pre and Post Shipment Rupee Export Credit," (IES Guidelines) as facts available and preliminarily found the program to be countervailable.
- The GOI's assertion that interest rates are deregulated conflicts with the IES Guidelines which demonstrate that the GOI, through the RBI, retains control over interest rates available to exporters by providing a rate of interest equalization of three percent per annum for pre- and post-shipment rupee-denominated export loans.
- Commerce should continue to find the program countervailable in the final determination.

¹³⁴ See *Corus Staal BV v. United States*, 395 F. 3d 1343, 1347-49 (Fed. Cir. 2005), accord *Corus Staal BV v. United States*, 502 F. 3d 1370, 1375 (Fed. Cir. 2007); and *NSK Ltd. v. United States*, 510 F. 3d 1375, 1379-80 (Fed. Cir. 2007).

¹³⁵ See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary).

¹³⁶ See SAA at 659.

¹³⁷ See GOI Case Brief at 11 – 12.

¹³⁸ See Petitioner Rebuttal Brief at 27 – 29.

Commerce’s Position: We agree with the GOI that the RBI eliminated the interest rate cap with respect to rupee-denominated export financing and allowed participating commercial banks to set the interest rates for export loans based on the bank’s own operating and lending costs. However, we disagree with the GOI that there is no benefit or financial contribution provided to a company through loans provided under the IES for Export Financing. In prior cases, Commerce determined that the RBI instituted an interest subvention program for certain exporting companies.¹³⁹

In the instant case, Antique Marbonite’s cross-owned company Prism Johnson used the IES for pre-shipment financing and provided the RBI’s IES Guidelines, which were effective February 2016.¹⁴⁰ As discussed in the *Preliminary Determination*,¹⁴¹ we normally rely on the government to provide information on the administration of a program. However, the GOI did not provide a complete response to our questions regarding pre- and post-shipment export financing and the RBI’s interest subvention for rupee-denominated export loans.¹⁴² Therefore, we relied on the IES Guidelines, provided by Antique Marbonite, as facts available.

The IES Guidelines state that “From the month of February 2016 onwards, banks shall reduce the interest rate charged to the eligible exporters as per our extant guidelines on interest rates on advances by the rate of interest equalization provided by Government of India.”¹⁴³ The scheme provides for the rate of interest equalization at three percent per annum for pre- and post-shipment rupee-denominated export loans.¹⁴⁴ Further, “banks are required to completely pass on the benefit of interest equalization, as applicable, to the eligible exporters upfront and submit the claims to RBI for reimbursement.”¹⁴⁵ At the verification of Antique Marbonite, we verified the process by which the benefit of three percent interest equalization (*i.e.*, reduction) was passed on to Prism Johnson from the commercial bank in accordance with the IES Guidelines.¹⁴⁶

We, thus, determine that loans provided under the IES for Export Financing confer countervailable subsidies because: (1) the provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act, as a direct transfer of funds in

¹³⁹ See, e.g., *Large Diameter Welded Pipe from India: Final Affirmative Countervailing Duty Determination*, 83 FR 56819 (November 14, 2018) and accompanying IDM at 18 – 19; see also *Stainless Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 3118 (January 23, 2018) and accompanying PDM at 23 – 24, unchanged in the *Stainless Steel Flanges from India: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 83 FR 40748 (August 16, 2018) and accompanying IDM at 6; and *Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) and accompanying IDM at 10 – 11.

¹⁴⁰ See Antique Marbonite’s Letter, “Certain Quartz Surface Products from India (C-533-890): Submission of Response to 1st Supplementary QR (Except Sales Questions), dated August 22, 2019 – Antique Marbonite Private Limited,” dated September 11, 2019 (Antique Marbonite First SQR) at 15-16, Exhibits CVDP-20 and CVDP-21.

¹⁴¹ See PDM at 19 – 20.

¹⁴² See GOI IQR at 44 – 58; see also GOI First SQR at 14 – 15.

¹⁴³ See Antique Marbonite First SQR at Exhibit CVDP-20 at 1 (para. 2(A)(ii)).

¹⁴⁴ *Id.* at 4 (para. 2(a)).

¹⁴⁵ *Id.* at para. 2(e).

¹⁴⁶ See Antique Marbonite Verification Report at 15 – 16.

the form of loans; and (2) these loans give rise to a benefit because the interest rates are lower than the interest rates on comparable commercial loans pursuant to section 771(5)(E)(ii) of the Act. We also determine that IES Export Financing is specific under section 771(5A)(B) of the Act because the financing is contingent upon export performance.

Comment 8: Whether SEZ Programs Which Pokarna Used Are Countervailable

*Pokarna's Arguments:*¹⁴⁷

- Commerce erred in concluding that duties not levied under the SEZ program, including all customs duties and taxes foregone, were countervailable.
- The SEZ Act of 2005 designates an SEZ as a territory outside the customs territory of India, and any duties and taxes not paid by Pokarna on imports into its SEZ location are not dutiable. Therefore, there are no customs duties and taxes foregone by the GOI as a result of these exemptions.
- Commerce has held that duties and taxes not levied in a territory outside the customs territory of a country do not constitute a benefit, since the government had no right to collect those duties and taxes in the first place.¹⁴⁸
- Commerce's regulations provide that duties and indirect tax exemptions on inputs that are used in the production of merchandise for export are countervailable only to the extent that the amounts exempted exceed the amount of duties and taxes exempted on the inputs actually used in the production of merchandise for export. However, in most cases involving Indian companies operating in the SEZ areas, Commerce is unable to apply this rule as stated, because it has found that the GOI maintains insufficient monitoring controls.
- The instant case presents new legal and factual arguments to challenge and distinguish it from Commerce's prior precedent. In *CWP from Vietnam*, which dealt with a non-tariff area, Commerce found that 19 CFR 351.518 and 351.519 apply to situations in which duties on raw materials are not required to be paid.¹⁴⁹
- In prior cases where Commerce has countervailed India's SEZ programs, Commerce's decision has hinged on a finding that the GOI did not have in place a reliable monitoring system. In the instant case, however, the GOI has full control mechanisms to ensure that the duty exempted goods are only consumed in production and export of the goods, and that if any domestic sale is made, then the customs duty must be paid at the full rate.
- Had Commerce verified the GOI in this case, it would have confirmed that the systemic recordkeeping problems found in other cases are not present in the SEZ program used by Pokarna and this fact would fundamentally change the basis for Commerce's subsidy calculation.

¹⁴⁷ See Pokarna Case Brief at 19 – 22.

¹⁴⁸ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013) (*CWP from Turkey*) and accompanying IDM at 21. See also, *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016) (*Uncoated Paper from Indonesia*) and accompanying IDM at pages 20 - 21.

¹⁴⁹ See *Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination*, 78 FR 64471 (October 22, 2012) (*CWP from Vietnam*), and accompanying IDM at Comment 3.

- The GOI ensures that all products that entered the Customs territory of India from Pokarna's SEZ unit were charged the applicable customs duty. The facts on the record demonstrate that the GOI's SEZ systems are reasonable and effective at confirming which inputs were used in the production of the exported merchandise.
- Given that Pokarna paid all applicable duties on goods sold within the customs territory of India, coupled with the rigor of the restrictions imposed by the GOI on Pokarna's SEZ unit, Commerce must revise its calculation to exclude any duties and taxes not levied on raw materials or capital goods that were used to produce merchandise for export.
- In the final determination, Commerce should find that this case is highly distinguishable from prior cases involving SEZ operations in India in which countervailable subsidies have been found. In this case, Pokarna makes only a miniscule quantity of sales in the Customs territory of India, and the GOI imposes extremely tight controls on Pokarna's SEZ unit.

*Petitioner's Rebuttal Arguments:*¹⁵⁰

- Commerce should continue to countervail the SEZ programs in the final determination.

Commerce's Position: We disagree with Pokarna that the SEZ program is not countervailable because it is akin to a free trade zone to be considered outside India's customs territory. We, therefore, continue to find that the uncollected taxes and duties otherwise due and the provision of goods in the SEZ constitute financial contributions that confer a benefit and are export-specific in a manner that is countervailable under the statute.

We disagree with Pokarna's assessment that the SEZ at issue is located outside of India's customs territory and, as such, the assistance provided under the SEZ program does not provide a financial contribution. As stated in the *Preliminary Determination*, to be eligible under the SEZ Act, the companies inside an SEZ must commit to export their production of goods and/or services.¹⁵¹ Specifically, all products produced, excluding rejects and certain domestic sales, must be exported and must achieve a positive net foreign exchange (NFE), calculated cumulatively for a period of five years from the commencement of production.¹⁵² In return, the companies inside the SEZ are eligible to receive various benefits, that include import duties.¹⁵³ The SEZ Rules also indicate that companies that fail to meet the export requirement will be subject to a penalty under the Foreign Trade (Development and Regulation) Act of 1992 and will be held liable for exempted duties if export obligations are not met.¹⁵⁴ We also note that record evidence supports the fact that SEZs are not deemed to be territories outside the customs territory of India because the GOI continues to regulate SEZs. For example, the "Special Economic Zones Act, 2005" confirm the GOI's ultimate control, including granting it the power to review any letter of approval for an SEZ.¹⁵⁵

¹⁵⁰ See Petitioner Case Brief at 21.

¹⁵¹ See PDM at 20.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ See Certain Quartz Surface Products from India: Section III Response of Pokarna Engineered Steel Limited (Pokarna IQR), dated August 15, 2019 at 31.

¹⁵⁵ See GOI IQR at Exhibit-S.

Accordingly, we continue to find that the GOI is entitled to collect duties and taxes from companies located inside the SEZ and that if SEZs were operated outside of the customs territory of India, there would be nothing to exempt or refund unless duties are applicable in the first place. On this basis, we disagree with Pokarna's contention that the SEZ is akin to a free trade zone to be considered outside India's customs territory and, thus, assistance provided under the SEZ program is not countervailable. We note our finding in this regard is consistent with Commerce's practice.¹⁵⁶

As stated in the *Preliminary Determination*, Pokarna reported using the SEZ program to obtain: (1) duty-free importation of capital goods and raw materials; (2) exemptions on payment of central sales tax (CST) on purchases of capital goods; (3) exemption of payment of stamp duty on leased land for the SEZ unit; and (4) income tax exemptions under Section 10AA of the Income Tax Exemption Scheme.¹⁵⁷ Pokarna's eligibility to receive these forms of assistance was contingent upon export performance and its location within the SEZ area. Further, the duty-free importation of raw materials is the only form of SEZ assistance that Pokarna used during the POI that related to tax exemptions on inputs that were used in the production of merchandise for export.

Pursuant to 19 CFR 351.519(a)(1)(ii), import duty exemptions on inputs for exported products are not countervailable, so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.¹⁵⁸ However, 19 CFR 351.519(a)(4)(i) and (ii) specify that the GOI 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.¹⁵⁹ The regulation further states that the system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.¹⁶⁰ If such a system does not exist, if it is not applied effectively, or the GOI does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission, or drawback is countervailable.¹⁶¹

Pokarna speaks in general terms of the SEZ when arguing that the GOI's monitoring system renders benefits associated with the SEZ program to be not countervailable. However, whether the GOI has an adequate monitoring system to track the imported inputs and re-exported merchandise is only relevant to SEZ benefits that involve the duty-free importation of inputs. Concerning the inputs that Pokarna imported duty-free under the SEZ program, there is no record evidence to demonstrate that the GOI has in place and applies a system to confirm which imported raw material inputs are consumed in the production of the exported products, and in

¹⁵⁶ See *Film, Sheet, and Strip from India* IDM at Comment 5; see also *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 19, 2017) (*Off-the-Road Tires from India*) and accompanying IDM at Comment 1.

¹⁵⁷ See PDM at 21.

¹⁵⁸ See 19 CFR 351.519(a)(1)(ii).

¹⁵⁹ See 19 CFR 351.519(a)(4).

¹⁶⁰ See 19 CFR 351.519(a)(4)(i).

¹⁶¹ See 19 CFR 351.519(a)(4)(i)-(ii)

what amounts. For example, under the terms of the SEZ, Pokarna may import raw materials duty free, provided that it meets certain export targets in the future.¹⁶² Under this arrangement, exemptions of duties on a certain amount of imported inputs are contingent on the subsequent export of a specified value of exports. In other words, there is no method (*e.g.*, a standard input/output ratio) that links the volume of the imported inputs on which exemptions are received to a corresponding volume of exported merchandise that physically incorporates the inputs. Therefore, under the terms of the SEZ, there is no link between the volume of imported inputs and the volume of exported finished merchandise that confirms which inputs are consumed in the production of the exported products, and in what amounts. As a result, we find the duty exemptions provided on imported inputs under the SEZ program do not meet the criteria specified under 19 CFR 351.519(a)(1)(ii) and 19 CFR 351.519(a)(4)(i) and (ii) for a properly functioning drawback program.

Regarding the proceedings cited by Pokarna to support its argument that Commerce has previously determined that duty exemptions provided to enterprises in duty-free zones are not countervailable, those proceedings are distinguishable from the instant case. In each case cited by Pokarna, Commerce found that the countries in question maintained reasonable and effective drawback systems to confirm which, and the amount of, imported inputs, are consumed in the production of the exported products after allowing for waste.¹⁶³ By contrast, as discussed above, there is no record evidence in this case to demonstrate that the GOI has in place and applies an effective drawback system.

As for the remaining benefits Pokarna received under the SEZ program (*e.g.*, (1) duty-free importation of capital goods; (2) exemptions on payment of central sales tax (CST) on purchases of capital goods; (3) exemption of payment of stamp duty on leased land for the SEZ unit; and (4) income tax exemptions under Section 10AA of the Income Tax Exemption Scheme), none of these benefits relate to imported items that are physically incorporated into the production of the re-exported merchandise. Therefore, these benefits are not relevant to the duty exemptions addressed under 19 CFR 351.519(a)(1)(ii) and 19 CFR 351.519(a)(4)(i) and (ii). As a result, Pokarna's arguments concerning the monitoring system established under the SEZ program are not relevant to these forms of assistance.

Pokarna faults Commerce for not verifying the information the GOI placed on the record regarding countervailability of the SEZ program. Commerce previously determined that the SEZ programs are countervailable.¹⁶⁴ The laws and regulations on the SEZ programs that were previously verified and which we found countervailable in *Film, Sheet, and Strip from India* are the same laws and regulations that were submitted on this record. Therefore, there was no new information on the eligibility or requirements of the SEZ programs that warranted a verification at the GOI.

Thus, we continue to find that assistance provided under various SEZ sub-programs provide a financial contribution pursuant to sections 771(5)(D)(ii) and (iii) of the Act, a benefit is

¹⁶² See Pokarna's IQR at 37.

¹⁶³ See *CWP from Vietnam* IDM at 15; see also *CWP from Turkey* IDM at 21; and *Uncoated Paper from Indonesia* IDM at 22-23.

¹⁶⁴ See *Film, Sheet, and Strip from India* IDM at Comment 5.

conferred under section 771(5)(E) of the Act, and the SEZ program is specific under section 771(5A)(B) of the Act because participants must achieve a positive NFE requirement to maintain eligibility.

Comment 9: Whether Pokarna's Lease of Land from the APIIC Constitutes A Countervailable Subsidy

*GOI's Arguments:*¹⁶⁵

- Pokarna's upfront lease payment was based on the current cost incurred and future cost estimated to be incurred by APIIC in the development of the specific industrial park.
- The costs included land acquisition and building internal infrastructure, such as road, water supply, power supply, administrative charges of APIIC to be incurred for management of the industrial zone, and any enhancement in the cost of land acquisition or rehabilitation cost to be paid by APIIC.
- APIIC's costs were recoverable from all "allotees" as part of the cost-plus model in accordance with SEZ rules. Therefore, land allotted under the APIIC was on commercial terms and not for LTAR.

*Pokarna's Arguments:*¹⁶⁶

- The provision of land by APIIC to Pokarna does not constitute a countervailable subsidy because it does not provide a benefit and is not specific. A large number of enterprises in a variety of industries lease land from APIIC. APIIC does not extend special leasing provisions or exhibit a pricing preference to any particular industry, and thus, the program is not specific.
- Pokarna's payment for the leased land in question (which was structured as a one-time premium payment plus annual rental payments) was substantially higher than the actual private transaction values submitted by Pokarna, which demonstrates that Pokarna did not receive a countervailable benefit when it leased the land from APIIC.
- The facts of this case are nearly identical to those in the countervailing duty investigation of *Off-the-Road Tires from India*.¹⁶⁷ In that case, Commerce reversed its position in the final determination and found that the land allotment program did not provide a benefit and was not specific based on the respondent's location in an SEZ. The following facts were critical in Commerce's final determination concerning the countervailability of the program:
 1. the lease rates were based on costs for land acquisition, acquisition, infrastructure development and overhead;
 2. the lease rates were adjusted based on current market conditions;
 3. the lease rates charged to a particular party vary with demand for land and its market value in a particular location; and
 4. other recipients under the land allotment program were in industries other than respondent.
- An analysis of these same factors, based on the current administrative record, leads to the conclusion that the APIIC land allotment is not preferential and not specific, and therefore is not countervailable.

¹⁶⁵ See GOI Case Brief 2-3.

¹⁶⁶ See Pokarna Case Brief 5-8.

¹⁶⁷ See *Off-the-Road Tires from India* IDM at Comment 6.

- Similarly, in *Certain Iron-Metal Castings from India*, Commerce determined that the West Bengal’s government land allotment program was not specific and therefore not countervailable, because it provided land to a large number of enterprises in a variety of industries at non-preferential leasing terms and prices.¹⁶⁸
- Likewise, in the current case, Pokarna did not receive a preferential lease rate from APIIC. APIIC provides land to diversified industries and does not extend special leasing provisions to any particular industry; therefore, it is not specific. Moreover, the administrative record indicates that the lease prices cover all costs associated with developing the leased land and are based on market principles. Therefore, Pokarna is paying the same rent for the land as it would pay if the land was leased from a private party.

*Petitioner’s Rebuttal Arguments:*¹⁶⁹

- Pokarna’s argument that companies operating in the Andhra Pradesh Special Economic Zone (APSEZ) span a variety of industries and, thus, the land is not being provided to only a particular industry ignores the fact that the APSEZ is itself regionally specific under section 771(5A)(D)(iv) of the Act. The degree of diversity inside a zone specially designated by a government is not relevant under this provision.
- Pokarna mischaracterize Commerce’s findings in *Off-the-Road Tires from India*. In *Off-the-Road Tires from India*, Commerce did not inexplicably ignore the existence of section 771(5A)(D)(iv) of the Act to find that an SEZ was not regionally specific. Rather, Commerce found the SEZ did not exist at the time of the transactions at issue and “the terms of {the} leases were not based on the company’s SEZ or EOU designation by the central government.”¹⁷⁰
- Likewise, Pokarna’s reference to *Iron-Metal Castings from India* is mistaken. In that case, the allegation did not involve land in a specially designated zone but rather scattershot “underdeveloped areas in West Bengal.”¹⁷¹ In the current case, the allegation relates to a zone specially designated by the state of Andhra Pradesh, which is the very essence of specificity under section 771(5A)(D)(iv) of the Act.
- There is no documentary evidence to support Pokarna’s argument that the APIIC covered its costs, charges market-based rents, and does not offer preferential pricing for favored companies or industries.

Commerce’s Position: We disagree with Pokarna. As stated in the *Preliminary Determination*, the GOI reported that APIIC was incorporated in 1973 as a wholly-owned undertaking by the SGAP with the objective of providing industrial infrastructure through the development of industrial areas, and as a result, we found the APIIC to be a government “authority” under section 771(5)(B) of the Act and APIIC’s lease of land to Pokarna constitutes a financial contribution under section 771(5)(D)(iii) of the Act.¹⁷² Further, as explained in the *Preliminary Determination*, APIIC limits allotments of land to firms located in the boundaries of the SEZ

¹⁶⁸ See *Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 65 FR 31315 (May 18, 2000) (*Iron-Metal Castings from India*) and accompanying IDM at Comment 2.

¹⁶⁹ See Petitioner Case Brief at 4 – 5.

¹⁷⁰ See *Off-the-Road Tires from India* IDM at Comment 6.

¹⁷¹ See *Iron-Metal Castings from India* IDM Comment 2.

¹⁷² See PDM at 25 (citing GOI Second SQR at 11).

and, thus, the program is regionally-specific under section 771(5A)(D)(iv) of the Act.¹⁷³ Additionally, in the *Preliminary Determination* we found that any company located in an industrial estate in a SEZ remains contingently liable for import duties until it demonstrates that it has fully met its export obligations, and therefore, the program is specific under section 771(5A)(B) of the Act.¹⁷⁴ We find no new information or arguments from interested parties warrants reconsideration of these findings.

We find Pokarna's citation to *Off-the-Road Tires from India* is not on point. In that case, Commerce did not determine that a land sale within an SEZ or EOU was not regionally specific. Rather, Commerce determined not to countervail the program because it found that an SEZ or EOU did not exist at the time the respondent acquired the land in question.¹⁷⁵

We also find that Pokarna's citation to *Iron-Metal Castings from India* is distinct from the facts of the present case. In *Iron-Metal Castings from India*, Commerce noted that the government "authority" at issue, the Asanol Durgapur Development Authority (ADDA), developed "rural and urban areas of the Indian State of West Bengal through the construction of infrastructure, such as roads, bridges, and sewage/drainage systems, and the establishment of schools and medical facilities," managed and leased large tracts of land in "both residential and industrial land throughout West Bengal," and did not charge preferential land prices in less developed regions in the state.¹⁷⁶ Therefore, in *Iron-Metal Castings from India*, Commerce found that the ADDA's leasing of land was available throughout the entire state of West Bengal and, as such, there was no basis for Commerce to conclude that the ADDA limited its leases to a designated, geographic area within the meaning of section 771(5A)(D)(iv) of the Act.¹⁷⁷ In contrast, and as discussed above, APIIC, the administering authority, limited its lease of land to firms located within the SEZ, thereby limiting eligible program participants to a designated, geographic region that results in benefits under the program being specific under section 771(5A)(D)(iv) of the Act.

Accordingly, we continue to find that APIIC is a government "authority" under section 771(5)(B) of the Act, APIIC's lease of land to Pokarna constitutes a financial contribution under section 771(5)(D)(iii) of the Act, and the lease confers a benefit under 19 CFR 351.511(a)(1) to the extent the rent paid to APIIC is less than what would have been paid on a comparable benchmark rent price.

Comment 10: Whether Commerce Used the Correct Benchmark to Determine Whether the APIIC Allotted Land to Pokarna for LTAR

*GOI's Arguments:*¹⁷⁸

- The benchmark that Commerce used in the *Preliminary Determination* to determine whether APIIC leased land to Pokarna for LTAR is inconsistent with the rates provided by Pokarna and

¹⁷³ *Id.* at 21.

¹⁷⁴ *Id.* (citing GOI IQR at Exhibit-T, SEZ Rules of 2006; *see also* Pokarna IQR at 35).

¹⁷⁵ *See Off-the-Road Tires from India* IDM at Comment 6.

¹⁷⁶ *See Iron-Metal Castings from India* IDM at Comment 2.

¹⁷⁷ *Id.*

¹⁷⁸ *See* GOI Case Brief at 3-5.

have prejudiced Pokarna's case. Therefore, Pokarna's claims require just and fair consideration by Commerce in the final determination.

- The benchmark rate used by Commerce is arbitrary and not in accordance with the SCM Agreement. Commerce simply utilized the rates submitted that the petitioner sourced from an unreliable website. The petitioner's benchmarks do not represent actual transactions.
- The land benchmark Commerce used in the *Preliminarily Determination* is inconsistent with its own past practices. In *Polyester Textured Yarn from India*, Commerce found in the preliminary determination a subsidy rate of 0.12 percent in connection with the State Government of Gujarat's provision of land for LTAR.¹⁷⁹ However, in the instant case, Commerce adopted a methodology that resulted in a much larger and illogical subsidy rate.
- Pokarna submitted details of its leased land and details of land purchased by private parties, which was verified by Commerce. Therefore, Commerce should consider such details when computing the benchmark rate for the land under APIIC and not some other presumptuous basis.

*Pokarna's Arguments:*¹⁸⁰

- A comparison of prices Pokarna paid to lease land from APIIC to the actual transaction land transactions Pokarna and its cross-owned affiliates conducted with private parties demonstrates that its lease of land from APIIC was not at LTAR. Pokarna's proposed benchmarks reflect actual prices for land plots that are comparable to the land leased by Pokarna (both in terms of location and in terms of size).
- The petitioner's price information constitutes speculative offer prices that were advertised on the internet. The petitioner's prices do not constitute evidence of actual prices paid for a comparable tract of land. In *Zhaoqing New Zhongya Aluminum Co.*, the Court of International Trade (CIT) expressed skepticism regarding the reliability of advertised land prices for use as LTAR land benchmarks.¹⁸¹
- The petitioner's benchmark prices are not comparable. The prices post-date the POI. Further, two of the three listings are for non-industrial plots, while the area of the third listing covers only 33.45 square meters, which is too small to be comparable to the acres of land Pokarna leased from APIIC.
- Commerce should exclude the patently aberrational and unreliable benchmark data submitted by the petitioner. Given the exorbitant range of the offer prices (and not actual transactions), mere common sense shows that it is highly unlikely that any of these prices would have been paid for a small lot in India.
- One of private land transactions that Pokarna proposes for use as the land benchmark was an agriculture land plot at the time of purchase. However, this fact does not disqualify the land transaction from serving as a land benchmark because Pokarna used the purchased land for its granite processing operations.
- The petitioner has not provided any evidence demonstrating that the actual transaction prices submitted by Pokarna are distorted or otherwise unusable.
- In lieu of the petitioner's unreliable and aberrational benchmarks, Commerce should use the actual land prices between private parties not related to Pokarna for industrial land in the State

¹⁷⁹ See *Polyester Textured Yarn From India: Final Affirmative Countervailing Duty Determination (Polyester Textured Yarn from India)*, 84 FR 63848 (November 19, 2019), and accompanying IDM at 9.

¹⁸⁰ See Pokarna Case Brief at 8 - 19.

¹⁸¹ See *Zhaoqing New Zhongya Aluminum Co. v. United States*, 929 F. Supp. 2d 1324 (CIT 2013).

of Andhra Pradesh. Alternatively, Commerce should use the tier-one land transaction data Pokarna submitted on the record; specifically, the land prices Pokarna paid to Indo Rock Granite Private Limited (Indo Rock) in 1995 in a public auction, and the price for the land that Pokarna Limited acquired from Laxmi Granite Private Limited (Laxmi Granite) in 2001, both of which are private entities.

- Using the Indian producer price index (PPI), Commerce should index the tier-one land purchase prices provided by Pokarna to the year in which Pokarna signed its lease agreement.

*Arizona Tile's Arguments:*¹⁸²

- The governing statute, regulations, Commerce's consistent prior practice, and CIT precedent all demonstrate that land benchmarks must reflect prevailing market conditions based on actual transactions for comparable land.
- Purported benchmark prices for non-comparable land or benchmarks that are not based on actual transactions (*e.g.*, advertisements or aspirational prices) are not appropriate and contrary to law.
- The petitioner's advertisement benchmarks reflect highly populated urban areas, and they are all small plots that are more suitable for high-rise, high-density office buildings than a manufacturing facility. These proposed benchmarks are definitively unlike the land area Pokarna leased from APIIC, which is larger, located in a rural area, and used for industrial/manufacturing purposes.
- The benchmarks provided by Pokarna reflect actual transactions involving land that is reflective of that leased by Pokarna in both terms of location and size. Therefore, Pokarna's benchmarks constitute the most suitable benchmark available and should be used by Commerce in its final determination.

*Federation's Arguments:*¹⁸³

- Commerce calculated Pokarna's benchmark rate based on the quotations for renting of industrial land in Andhra Pradesh from an online advertising website, which does not satisfy the requirements under 19 CFR 351.511(a)(2) as a tier-one benchmark.
- Commerce must seek to compare the price paid by Pokarna with the tier-one benchmarks provided by Pokarna. Commerce did not consider this factual evidence in the *Preliminary Determination*. Commerce has subsequently verified the accuracy of Pokarna's private land transactions. Therefore, Commerce should determine that the land purchase documents contain the market-determined prices for purchase of land in India and may serve as a tier-one benchmark for the purpose of determining whether APIIC conferred land for LTAR.
- The petitioner's proposed benchmark is greater than 75 percent of Pokarna's total revenue for the financial year ended March 31, 2019. This comparison demonstrates that the petitioner's proposed benchmark methodology is illogical and unreasonable with the industry norms under which other producers of quartz operate in India.

*Petitioner's Rebuttal Arguments:*¹⁸⁴

¹⁸² See Arizona Tile Case Brief at 11 – 17.

¹⁸³ See Federation Case Brief at 2 – 7.

¹⁸⁴ See Petitioner Rebuttal Brief at 6 – 21.

- The petitioner’s proposed benchmarks reflect lease rates for industrial land, and the area of the proposed land benchmarks is comparable to the area of Pokarna’s leased land.
- Commerce has used offer prices for land as its benchmark in prior countervailing duty proceedings because such information is representative of market-determined prices between private parties.¹⁸⁵
- Although the CIT found that Commerce’s inclusion of two clearly aberrational listings was not supported by substantial evidence, it upheld on remand Commerce’s use of the remaining 12 listings as evidence of market-determined prices.¹⁸⁶
- Where Commerce has determined that the record does not contain useable data representing actual transactions, it has routinely relied upon public price offers as evidence of market-determined prices. The benchmark data submitted by the petitioner is the best information available to value the price of land for lease.
- In the instant case, Pokarna rented land from APIIC for a specified period, subject to the terms of a lease agreement. The land was not purchased outright and, therefore, no ownership interest in the land passed from the buyer to seller in the transaction. Under these circumstances, it would be inappropriate for Commerce to select as its benchmark information Pokarna’s previous purchases of land.
- Commerce has specifically recognized in prior proceedings that a benchmark for purchased land must involve other purchased land and that a benchmark for leased land must involve leased land. For example, in *Solar Cells from China*, Commerce countervailed both purchased and leased land as part the same investigation.¹⁸⁷ As a benchmark for purchased land, Commerce relied on “rates paid for land purchased in industrial parks,” and as a benchmark for leased land, Commerce relied on “rental rates for land in industrial parks.”¹⁸⁸
- Similarly, in *Hot-Rolled Steel from India*, Commerce selected as its benchmark for iron fines publicly available offers for sale in India, rejecting actual prices from transactions involving the GOI and third-country purchasers.¹⁸⁹
- Comparing land rental rates to land purchase prices, as the Indian parties advocate in this case, would be inappropriate because it ignores the distinct market conditions present in each type of transaction. Therefore, it is inappropriate to compare land purchase prices to land lease rates.
- Commerce should select as its benchmark the best available record information concerning land rental rates in Andhra Pradesh and decline to use record information concerning land purchase prices as a benchmark for this program.

¹⁸⁵ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*HWRPT from Turkey*) and accompanying IDM at 15.

¹⁸⁶ See *Özdemir Boru San. ve Tic. Ltd. Sti. v. United States*, 273 F. Supp. 3d 1225, 1251-52 (CIT 2017) (*Özdemir I*); see also *Özdemir Boru San. ve Tic. Ltd. Sti. v. United States*, 282 F. Supp. 3d 1352 (CIT 2018) (*Özdemir II*) (upholding on remand Commerce’s selection of 12 land sale advertisements as comparable benchmark data to weigh the government’s provision of land).

¹⁸⁷ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China*) and accompanying IDM at 6.

¹⁸⁸ *Id.*

¹⁸⁹ See *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) (*Hot-Rolled Steel from India*) and accompanying IDM at 33-34.

- Pokarna's proposed benchmarks reflect land purchases for agricultural land and not industrial land. The fact that Pokarna may have purchased agricultural dry land and developed it into industrial land is irrelevant. If the land was agricultural dry land at the time of purchase, it is not an appropriate benchmark to measure whether Pokarna's leased industrial land from the Provincial Government for LTAR.
- Pokarna's proposed benchmarks involving the Indo Rock and Laxmi Granite land purchases do not involve private transactions. Rather, these transactions involve purchases of land under distressed conditions in which government authorities were involved as either the seller (as was the case involving the sale with Indo Rock's land) or a third party (as was the case involving the sale of Laxmi's land). Therefore, the transactions cannot serve as viable land benchmarks.
- Pokarna did not state that it was submitting factual information to measure the adequacy of remuneration under 19 CFR 351.511(a)(2). As a result, the petitioner did not have an opportunity under 19 CFR 351.301(c)(3)(iv) to submit information to rebut, clarify, or correct Pokarna's benchmark information.
- Because Pokarna never properly submitted its proposed benchmark data, Commerce should not use them in the final determination. Instead, Commerce should continue to calculate the subsidy rate for APIIC's land lease for LTAR program using the land lease benchmark data submitted by the petitioner.
- Further, the fact that Pokarna's proposed benchmarks reflect transactions that are in a completely different Indian state disqualifies them for use as benchmarks.

Commerce's Position: Under 19 CFR 351.511(a)(2), Commerce sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (i) Market prices from actual transactions within the country under investigation;¹⁹⁰ (ii) World market prices that would be available to purchasers in the country under investigation; or (iii) an assessment of whether the government price is consistent with market principles. Thus, under this hierarchy, the most preferable means of determining whether the government provided adequate remuneration is a comparison with private transactions for a comparable good or service in the country. Our preference for a tier-one benchmark is based on the expectation that such prices would generally reflect most closely the commercial environment of the purchaser under investigation.¹⁹¹

In the *Preliminary Determination*, we used the three land rental prices submitted by the petitioner as the land benchmark.¹⁹² We also stated in the *Preliminary Determination* that we would examine the benchmark information submitted in Pokarna's third supplemental questionnaire response including a land transaction involving Pokarna Limited, and incorporate the information, as appropriate, in the final determination.¹⁹³ Having reviewed the land purchase information contained in Pokarna's supplemental questionnaire response and verified its

¹⁹⁰ Such a price could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions

¹⁹¹ See *Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review*, 82 FR 18896 (April 24, 2017) (*Supercalendered Paper*) and accompanying IDM at Comment 23.

¹⁹² See PDM at 25.

¹⁹³ See PDM at 4.

accuracy and reliability, we have determined to use the land purchase that Pokarna Limited conducted with Laxmi Granite in 2001 as the benchmark to determine whether APIIC allotted land to Pokarna for LTAR.

Pokarna leased the land at issue from APIIC for a term of 33 years and, per the terms of the lease agreement, Pokarna made a substantial upfront, non-refundable payment as well as additional, smaller payments on an annual basis over the life of the lease.¹⁹⁴ As an initial matter, we lack any benchmark information for a private land transaction that exactly matches the terms of the transaction at issue, namely a long-term lease established between private parties that included a large, non-refundable, upfront payment and additional annual payments. Rather, the benchmark information available on the record reflects land rental offer prices for the POI as advertised by parties unrelated to Pokarna, land purchase information for parties unrelated to Pokarna, a land purchase involving Pokarna Limited and Laxmi Granite, and land originally owned by Indo Rock that Pokarna purchased from APIIC via auction. Thus, we must select from the available information a transaction that most closely reflects the terms of the lease between Pokarna and APIIC.

We find the terms of the lease between Pokarna and APIIC are more similar to a land purchase rather than a lease or land rental. As part of its 33-year lease with the APIIC, Pokarna agreed to make a substantial, non-refundable, upfront payment where the value of the payment was almost equivalent to a purchase.¹⁹⁵ The upfront payment was much larger than the annual payments that Pokarna was required to pay under the lease agreement.¹⁹⁶ By treating Pokarna's lease with APIIC as a purchase, we therefore find that the petitioner's rental information obtained via the internet is not suitable for the final determination. We also find the petitioner's land rental information is not suitable for use as land benchmarks because it: (1) reflects offer prices rather than actual transactions; and (2) is so high as to be aberrant (*e.g.*, the petitioner's proposed benchmark is approximately 70 percent of Pokarna's annual revenue).¹⁹⁷

However, we find the certain benchmark information placed on the record by Pokarna immediately before the *Preliminary Determination* is suitable for use as a tier-one benchmark. Specifically, we refer to an actual purchase price of land that Pokarna Limited, a cross-owned affiliate of Pokarna, paid to an unrelated party, Laxmi Granite, in January 2001 that we find can serve as a comparable tier-one land benchmark.¹⁹⁸ Prior to the sale, Laxmi Granite used the site in its industrial operations, and upon purchasing the land, Pokarna Limited used the land in its manufacturing operations.¹⁹⁹ These facts demonstrate that the land Pokarna Limited acquired from Laxmi Granite was suitable for industrial use and therefore is comparable to the land that Pokarna leased from APIIC for purposes of its industrial operations. As part of the terms of sale,

¹⁹⁴ See Pokarna's IQR at 60, and Exhibit PESL-31(b); see also GOI's IQR at 80.

¹⁹⁵ See Pokarna's IQR at 60, and Exhibit PESL-31(b).

¹⁹⁶ *Id.*

¹⁹⁷ See Petitioner's Letter, "Certain Quartz Surface Products from India: Submission of Benchmark Data," dated September 9, 2019 at Exhibit 6; see also Pokarna's IQR at Exhibit PESL-9(c); see also *Özdemir I*, 273 F. Supp. 3d at 1251-52; and *Özdemir II*, 282 F. Supp. 3d at 1352, where the CIT held that Commerce could not include two land benchmarks because their values were aberrant.

¹⁹⁸ See Pokarna's SQR at S3-3, and Exhibit S3-2(a), S3-2(b), and S3-2(c).

¹⁹⁹ *Id.*, at Exhibit S3-2(a).

Laxmi Granite directed Pokarna Limited to transmit the payment to the provincial government as a means of Laxmi Granite retiring government debt.²⁰⁰ However, the deed of sale specifies Laxmi Granite as the seller and Pokarna Limited as the purchaser.²⁰¹ Thus, the fact that Laxmi Granite directed Pokarna Limited to transmit the payment to the provincial government does not negate the fact that Laxmi Granite and Pokarna Limited (identified in the sales documentation as the seller and buyer, respectively) established the terms of sale. Further, at verification, Commerce confirmed the accuracy of the information Pokarna provided concerning the land Pokarna purchased from Laxmi Granite.²⁰²

As for the second land transaction involving Pokarna that Pokarna proposes using as a land benchmark, the sale involved a plot of land originally owned by Indo Rock, a private entity, that the provincial government repossessed and sold via auction to Pokarna in 1995. Under 19 CFR 351.511(a)(2)(ii), Commerce will consider tier-one benchmarks to include, in certain circumstances, prices stemming from actual sales from competitively run government auctions. However, the *CVD Final Rule* states that:

The circumstances where such prices would be appropriate are where the government sells a significant portion of the goods or services through competitive bid procedures that are open to everyone, that protect confidentiality, and that are based solely on price.²⁰³

We lack information as to whether APIIC conducted the auction of the land in a manner that meets the criteria set forth under 19 CFR 351.511(a)(2)(ii) and the *CVD Final Rule*. Therefore, we have not incorporated this transaction into our land benchmark.

Additionally, we find the additional land purchase information Pokarna placed on the record involving third parties unrelated to Pokarna are not suitable for use in the land benchmark calculation. While the benchmark information involves actual land transactions, they do not involve Pokarna itself and, thus, do not reflect an actual price that Pokarna itself paid for land.²⁰⁴ All things being equal, we find that a viable, tier-one price paid by Pokarna or Pokarna Limited provides the most accurate means of determining whether Pokarna leased land from APIIC for LTAR. Further, Commerce confirmed that Pokarna Limited used the land it acquired from Laxmi Granite in its operations, thereby demonstrating that the land was comparable to the industrial land Pokarna leased from the APIIC.²⁰⁵

We disagree with the petitioner's contention that it is appropriate to only compare the terms of leased land to a benchmark that reflects a lease or rental agreement. In support of this contention, the petitioner cites to *Solar Cells from China* in which Commerce used benchmark purchase information to determine whether the respondent purchased land from the Government

²⁰⁰ *Id.*

²⁰¹ *Id.*, at Exhibit S3-2(c).

²⁰² See Pokarna's Verification Report at 6 – 7.

²⁰³ See *CVD Final Rule*, 63 FR at 65377.

²⁰⁴ See Pokarna's Letter, "Certain Quartz Surface Products from India: Section III Response of Pokarna Limited," dated August 16, 2019 (Pokarna Limited IQR) at 8.

²⁰⁵ See Pokarna's Verification Report at 6 – 7.

China (GOC) for LTAR and benchmark rental information to determine whether the respondent leased land from the GOC for LTAR.²⁰⁶ We find the facts of *Solar Cells from China* are distinct from those of the instant investigation. In *Solar Cells from China*, Commerce determined that the GOC owns all the land in China, thereby making the use of a tier-one benchmark untenable. As a result, Commerce used tier-two land benchmark information from Thailand as its benchmark.²⁰⁷ In contrast, tier-one benchmark information specific to the respondent (*e.g.*, land that Pokarna Limited purchased from Laxmi Granite) is available for use on the record of the instant investigation. Further, there is no discussion in *Solar Cells from China* as to whether the countervailable leases between the GOC and the respondent involved a large, non-refundable, upfront payment,²⁰⁸ as is the case concerning the long-term lease established between APIIC and Pokarna. As explained above, the facts of this investigation lead us to conclude that APIIC's lease to Pokarna, which includes a large, non-refundable, upfront payment, is more similar to a land purchase agreement than a land lease or rental agreement.

We also disagree with the petitioner that *HWRPT from Turkey* stands for the proposition that for benchmark purposes Commerce prefers offer prices or otherwise considers them equal to prices stemming from actual transactions.²⁰⁹ Under 19 CFR 351.511(a)(2), Commerce employs a hierarchy to select LTAR benchmarks. Under 19 CFR 351.511(a)(2)(i), Commerce states that the first, and most preferable, LTAR benchmark shall reflect "prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions." Thus, it is simply incorrect to claim that, for benchmark purposes, Commerce places offer prices and actual transaction data on equal footing. Further, as is clear from *HWRPT from Turkey*, Commerce only used the land rental offer data because it was the land benchmark information that was available on the record.²¹⁰

We also find that the petitioner mischaracterizes Commerce's finding in *Hot-Rolled Steel from India*. In that case, Commerce switched from using data involving the GOI and foreign parties as the benchmark to using as the benchmark prices that the respondent paid to third parties in private transactions:

We agree that in accordance with 19 CFR 351.511(a)(2)(i), the first tier of the benchmark hierarchy for determining the adequacy of remuneration calls for comparing the government price with a market-determined price resulting from actual transactions in the country in question. There is no information on the record that suggests that private supplier prices, including import prices into India, do not reflect actual market-determined prices in India for comparable ore, or that such private-supplier prices have been distorted by GOI control of or other involvement in the market. Therefore, we determine that Essar's purchases of DR-CLO iron ore from a non-affiliated foreign

²⁰⁶ See Petitioner Rebuttal Brief at 17 (citing *Solar Cells from China* IDM at 6).

²⁰⁷ *Id.*

²⁰⁸ See *Solar Cells from China* IDM at 6.

²⁰⁹ See Petitioner Rebuttal Brief at 11(citing *HWRPT from Turkey* IDM at 15).

²¹⁰ See *HWRPT from Turkey* IDM at 15.

company are the preferable benchmark for comparison with Essar's purchases of DR-CLO from NMDC under this section.²¹¹

Therefore, our approach in the instant case is consistent with *Hot-Rolled Steel from India* in that we are using an actual land transaction that Pokarna Limited paid to a private party.

We also do not find that, because Pokarna's proposed benchmarks reflect land purchases for agricultural land and not industrial land, it is not an appropriate benchmark to measure whether Pokarna's leased industrial land from APIIC for LTAR to be persuasive. The provincial government approved Laxmi Granite's EOU status to produce granite for land that was originally designated as agricultural land.²¹² It was this same land that Laxmi Granite later sold to Pokarna Limited and that Pokarna Limited used in its operations.²¹³ These facts demonstrate that the land Pokarna Limited purchased from Laxmi Granite was compatible with manufacturing activities and, thus, is comparable to the land APIIC leased to Pokarna.

Based on the hierarchy of potential benchmarks enumerated under 19 CFR 351.511(a)(2), we determine that Pokarna Limited's land purchase from Laxmi Granite in 2001 reflects a market price stemming from an actual sales transaction that can be used to determine whether APIIC provided land to Pokarna for LTAR.²¹⁴

We also disagree with the petitioner's argument that because Pokarna did not state that it was submitting the information concerning its purchase of private land from Laxmi Granite as factual information to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), Commerce should determine that Pokarna precluded the petitioner from submitting rebuttal factual information and prevented Commerce from adequately vetting the facts concerning Pokarna's land transaction involving Laxmi Granite. As explained below in Comment 11, we find that Pokarna acted to the best of its ability when responding to Commerce's questionnaires. Further, concerning its purchase of land from Laxmi Granite in its initial questionnaire response, Pokarna indicated that it acquired land from private parties in 1995 and 2001.²¹⁵ Commerce issued a supplemental questionnaire seeking details and source documentation concerning the private sales, to which Pokarna timely filed a questionnaire response.²¹⁶ Thus, Pokarna submitted the information concerning the Laxmi Granite land purchase in response to a questionnaire issued by Commerce and, as a result, its information constitutes properly and timely filed factual information under 19 CFR 351.102(b)(21)(i).

Accordingly, under 19 CFR 351.301(c)(1)(v), the petitioner had 10 days to submit factual information to rebut, clarify, or correct the land purchase information contained in Pokarna's supplemental questionnaire response. Additionally, to the extent there was any doubt as to the nature of the information contained in Pokarna's supplemental questionnaire response or Commerce's intentions regarding that information, Commerce stated the following in the

²¹¹ See *Hot-Rolled Steel from India* IDM at 34.

²¹² See Pokarna's Verification Report at 6 - 7.

²¹³ *Id.*

²¹⁴ See Pokarna Final Calculation Memo.

²¹⁵ See Pokarna IQR at 55.

²¹⁶ See Pokarna SQR at 2-4 and Exhibits S3-2(a) through S3-2(c).

Preliminary Determination:

The information contained in the Pokarna Third SQR deals with certain land transactions involving Pokarna Limited. Because we obtained the Pokarna Third SQR shortly before the signature due date of the preliminary determination, we are unable to incorporate the information in the response into our preliminary analysis. We will continue to examine the information in the Pokarna Third SQR and incorporate the information, as appropriate, in the final determination.²¹⁷

Therefore, the petitioner should have been on notice as to the private land purchase information as of the date Pokarna submitted its supplemental questionnaire response and, moreover, most certainly should have been on notice in light of Commerce's statements in the *Preliminary Determination* regarding the private land purchase information.

Lastly, as discussed above in the "APIIC Allotment of Land for Less Than Adequate Remuneration (LTAR)" section of this memorandum, we have indexed the purchase price that Pokarna Limited paid Laxmi Granite in 2001 to the year of the lease agreement between Pokarna and APIIC. We then compared the indexed purchase price Pokarna Limited paid to Laxmi Granite to the upfront payment Pokarna paid APIIC to determine whether APIIC allotted the land to Pokarna for LTAR.²¹⁸

Comment 11: Whether Pokarna Misrepresented Its Purchase of Land and Fixed Assets Originally Owned by Indo Rock Granite Private Limited (Indo Rock) That Warrants the Application of Adverse Facts Available

*Petitioner's Arguments:*²¹⁹

- Pokarna misrepresented its land transaction with Indo Rock as a private sale that occurred outside of the 15-year average useful life (AUL) of assets. In fact, the transaction involved Pokarna and the provincial government for the purchase of Indo Rock's seized assets (comprising of land, building and plant & machinery). Furthermore, based on the 2007 deed, the transaction occurred well within the 15-year AUL period.
- Pokarna's misrepresentation of Pokarna Limited's acquisition of land and assets related to Indo Rock involved a non-governmental seller and was made prior to the AUL, which precluded the petitioner from submitting comments and new factual information on benchmark data to value the benefit of land that was purchased by Pokarna Limited from government authorities.
- This misrepresentation also impeded the investigation because Commerce never received all the information regarding this acquisition requested in the standard questions appendix. In addition, Pokarna's misrepresentations impeded the investigation by depriving Commerce of the ability to further explore this land acquisition through the issuance of additional supplemental questionnaires. As a result, Commerce was precluded from adequately investigating the transaction.
- In its third supplemental questionnaire response—which was submitted just a week before the *Preliminary Determination*, after the time to submit new subsidy allegations, and after the time

²¹⁷ See PDM at 4.

²¹⁸ *Id.*

²¹⁹ See Petitioner Case Brief at 23 – 33.

to submit benchmark data, Pokarna for the first time provided information revealing that its claims regarding the acquisition of land from government authorities was inaccurate. In particular, Pokarna revealed that Pokarna Limited's purchase of the Indo Rock assets was, in fact, a purchase from government authorities and had been made within the AUL for this investigation.

- Commerce should apply an adverse inference in selecting from the facts available. Pokarna did not cooperate to the best of its ability when it falsely represented that the acquisition of land related to Indo Rock was a private acquisition outside of the AUL period. As the CAFC has found, these types of material misrepresentations warrant the application of AFA.
- Consistent with prior Indian proceedings (*e.g.*, *Lined Paper from India 2016*)²²⁰ where the respondent misrepresented record evidence, Commerce should conclude that Pokarna received a countervailable subsidy in the form of provision of land to Pokarna Limited for LTAR and apply AFA to calculate a subsidy rate of 16.63 percent for this program in the final determination.
- Because there is no itemized list of fixed assets included in the sale and, therefore, no way to assess the magnitude of the subsidy, Commerce should also apply to Pokarna for the purchase of Indo Rocks fixed assets, the highest rate calculated for any other subsidy program in India, or 16.63 percent.

*GOI's Rebuttal Arguments:*²²¹

- Commerce should reject the petitioner's argument for application of AFA to Pokarna for the Indo Rock land purchase, because it is baseless, as Pokarna never withheld any information from Commerce.
- Pokarna's submissions were in accordance with the provisions of section 776(a)(1) and (2) of the Act. Further, Pokarna offered full cooperation in the investigation to the maximum effort possible. Therefore, application of AFA and will be unjustified and in contravention of the Article 12.7 of the SCM Agreement.

*Pokarna's Rebuttal Arguments:*²²²

- The petitioner claims incorrectly that Pokarna revealed the transaction involving Indo Rock only one week before the *Preliminary Determination* and such timing prevented the petitioner from submitting benchmark data and a new subsidy allegation in a timely manner.
- The petitioner's false assertions are belied by the administrative record, which clearly shows that Pokarna Limited disclosed its acquisition of land and fixed assets of Indo Rock in its initial questionnaire response. Moreover, Pokarna has been forthright and transparent about the acquisition of the land and other fixed assets from Indo Rock throughout this proceeding. Thus, it is incorrect for the petitioner to claim that Pokarna misrepresented the transaction or otherwise failed to act to the best of its ability.
- Pokarna further supplemented the facts on October 2, 2019, in its response to Commerce's third supplemental questionnaire, in which Commerce specially noted that Pokarna had

²²⁰ See *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 23765 (May 23, 2019) (*Lined Paper from India 2016*) and accompanying IDM at Comment 1.

²²¹ See GOI's Rebuttal Brief at 5.

²²² See Pokarna's Rebuttal Brief at 1 – 9.

obtained land and other fixed assets through a competitive public bidding process, not from any allotment of land by APIIC.

- There is no evidence that would suggest that the government auction, at which Pokarna won a competitive bid, constituted a sale at LTAR. In fact, Commerce's regulations at 19 CFR 351.511(a)(2)(i), under defining the term "adequate remuneration" recognize that a "competitively run government auction" is itself a suitable source for a tier-one benchmark for determining whether a good has been provided at LTAR.
- The record evidence is also clear that the land and other fixed assets for Unit 1 of Pokarna Limited was acquired prior to the AUL. The 1995 purchase date is evident from the fact that the letter of permission granting Export Oriented Unit status was received after the purchase, and prior to May 2007.
- The petitioner's allegation of a new subsidy is untimely and should not be taken into account for purposes of the final determination. Therefore, the petitioner's argument for application of AFA should be rejected.
- The companies cooperated fully in the verification process and with every other aspect of this investigation. There are no gaps in the administrative record with regard to Pokarna Limited's purchase of the land and other fixed assets from Indo Rock. The details of the Indo Rock transaction were provided accurately and in timely fashion in the initial questionnaire response and in a subsequent supplemental response. Moreover, all the facts and details of the transaction were ultimately subject to scrutiny at verification. Thus, there is no basis for Commerce to apply AFA to Pokarna.

*Federation's Rebuttal Arguments:*²²³

- Pokarna submitted to Commerce all the information regarding land acquired and registered to it in a transparent manner and to the best of its ability within Commerce's deadlines.
- At no point did Pokarna impede the proceeding. For Commerce to draw adverse inferences, it must be established that the respondent has failed to respond to the best of its ability.
- The facts available on the record prove that Pokarna has not acted inconsistently with the provisions of section 776(a)(1) and (2) of the Act. Therefore, Commerce should reject the petitioner's request to apply AFA for the purchase of land at LTAR for Pokarna Limited's purchase of Indo Rock.

Commerce's Position: We disagree with the petitioner. We find that the application of partial adverse facts available to Pokarna Limited is not warranted. Section 776(a) of the Act provides that Commerce shall apply facts otherwise available if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information in the form and manner requested by Commerce; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified. Section 776(b) of the Act provides that Commerce may apply an adverse inference when selecting from among the facts otherwise available if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

The issues raised by the petitioner concerning Pokarna's purported misrepresentation are mischaracterized and do not meet the criteria for facts otherwise available, as provided in section

²²³ See Federation's Rebuttal Brief at 2- 6.

776(a) of the Act, much less demonstrate that Pokarna has failed to comply to the best of its ability, as provided in section 776(b) of the Act. Pokarna and Pokarna Limited have complied with Commerce's requests for information and acted to the best of their ability.

In its initial questionnaire response, Pokarna Limited (formerly, Pokarna Granites Limited) indicated that, in 1995, it acquired the assets of Indo Rock from Andhra Pradesh Infrastructure Development Corporation Limited (APIDCLTD) through a bidding process when Indo Rock, an existing EOU Unit, defaulted on the repayment of loans advanced to it by APIDCLTD.²²⁴ It further explained that the land was not allocated by the provincial government and that the transaction was "much prior to AUL period" (*i.e.*, outside of the 15-year AUL period).²²⁵

In a supplemental questionnaire response, Pokarna provided additional information concerning this transaction. Pokarna stated that in November and December 1995, under a bidding process the provincial government entities agreed, in writing, to the sale of Indo Rock's seized assets to Pokarna Limited.²²⁶ Further in pursuant of this sale, the deed was executed in 2007.²²⁷ As stated in the verification report, Pokarna officials explained that issues concerning the payment of stamp taxes delayed the formal issuance of the deed.²²⁸ In support of this statement, we reviewed the source documents from 1995, as well as the 1995 letter of permission granting EOU status to Indo Rock prior to May 2007, and found no discrepancies.²²⁹

While the provincial government formally issued the deed of sale to Pokarna Limited in 2007, the sales documentation indicates that the provincial government and Pokarna Limited established the terms of sale in 1995 and that Pokarna Limited made the initial payment in 1995.²³⁰ Under 19 CFR 351.511(b), Commerce will consider an LTAR benefit as having been received as of the date on which the firm pays or, in the absence of payment, was due to pay for the government-provided good or service. Therefore, any potential benefit associated with Pokarna Limited's purchase of the land in question occurred during a time period that falls outside of Pokarna's 15-year AUL period.

Pokarna and Pokarna Limited responded to all of Commerce's questionnaires, and Commerce verified the accuracy of the information Pokarna and Pokarna Limited submitted regarding this transaction. Thus, we do not find that the application of AFA, as proposed by the petitioner, is warranted for this program.

Comment 12: Whether Commerce Used an Incorrect Sales Denominator When Calculating the Net Subsidy Rate for a Countervailable Subsidy Attributable to Pokarna Limited

Pokarna's Argument:

²²⁴ See Pokarna's Letter, "Certain Quartz Surface Products from India: Section III Response of Pokarna Limited," dated August 16, 2019 (Pokarna Limited IQR) at 8.

²²⁵ *Id.*, at 55.

²²⁶ See Pokarna SQR at S3-2.

²²⁷ *Id.*

²²⁸ See Pokarna Verification Report at 6.

²²⁹ *Id.*, and Exhibit VE-12; see also Pokarna Limited's IQR at Exhibit PL15 (a).

²³⁰ See Pokarna's SQR at S3-2 and Exhibits S3-1(a) through S3-1(e).

- In the *Preliminary Determination*, Commerce stated that it would attribute subsidies received by Pokarna Limited, the parent holding company of Pokarna, to the consolidated sales of Pokarna Limited. However, in its actual calculation of Pokarna Limited's subsidy, Commerce used the standalone sales of Pokarna Limited in the denominator, instead of the combined sales of Pokarna Limited and Pokarna. Therefore, in calculating the subsidy of Pokarna Limited in the final determination, Commerce should use the combined sales of Pokarna Limited and Pokarna.

The petitioner did not comment on this issue.

Commerce's Position: We agree with Pokarna. Under 19 CFR 351.525(b)(6)(iii), if the firm that received a subsidy is a holding company, including a parent company with its own operations, Commerce will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries. In this case, Pokarna Limited is the parent holding company of Pokarna. Thus, in calculating the net subsidy rate for a countervailable benefit attributable to Pokarna Limited in the *Preliminary Determination* we should have used a consolidated sales denominator. Thus, in accordance with 19 CFR 351.525(b)(6)(iii), in the final determination, we have used a consolidated sales denominator, specifically, the combined sales for Pokarna Limited and Pokarna, when calculating the net subsidy rate for countervailable benefits received by Pokarna Limited.

Comment 13: Whether Commerce's Initiation of this Investigation Was Contrary to Law

*Arizona Tile/MSI's Arguments:*²³¹

- Commerce's statute requires that a petition be filed on behalf of a U.S. industry, and Commerce is directed to look to U.S. producers and workers as a whole that produce the domestic like product. Commerce accepted that the domestic like product is coextensive with the scope of the investigation, which covers not only "slabs" but also "other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles."²³² Thus, the domestic like product includes fabricated slabs, which are products manufactured by U.S. fabricators, who purchase quartz surface slabs and then further process them into fabricated quartz surface products, like countertops and backsplashes.
- Commerce erroneously disregarded the views of U.S. fabricators at initiation, who challenged the definition of the domestic industry. Commerce determined that U.S. fabricators were not members of the domestic industry for industry support purposes, because they did not "perform sufficient production-related activities." However, evidence on the record indicates that fabricators constitute an important part of the U.S. industry. Further, the views of the domestic industry as a whole must be considered unless producers are related to foreign producers or are importers. Commerce did not make a finding at initiation that U.S. fabricators fall into either of those categories.
- Commerce neglected its obligation under the Act to poll the industry or determine support among U.S. fabricators. Thus, Commerce initiated this investigation contrary to the wishes of

²³¹ See Arizona Tile/MSI Case Brief at 6 – 11.

²³² See Countervailing Duty Investigation Initiation Checklist: Certain Quartz Surface Products from India, dated May 28, 2019 (Initiation Checklist) at Attachment I.

the majority of the industry and the investigation should be terminated or suspended pending Commerce's polling of the industry.

*Petitioner's Rebuttal Arguments:*²³³

- The statute prohibits Commerce from reconsidering industry support after the initiation of an antidumping duty (AD) or CVD investigation, which the CIT has recognized.²³⁴
- Commerce rejected similar arguments by Arizona Tile and MSI in *Quartz Surface Products from China AD*, explaining that “Commerce is statutorily precluded from reconsidering its industry support determination at this stage of the investigation.”²³⁵
- Assuming Commerce is able to reconsider its industry support determination, Commerce properly rejected Arizona Tile and MSI's challenge at initiation and nothing in the companies' case brief warrants a change to Commerce's analysis.
- There was no need for Commerce to poll the industry, as Commerce properly found that the Petition was supported by domestic producers and workers which account for more than 50 percent of the total production of the domestic like product.

Commerce's Position: Section 702(c)(4)(E) of the Act directs Commerce as follows regarding the consideration of comments regarding industry support:

Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. *After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.*²³⁶

Therefore, Commerce is statutorily precluded from reconsidering its industry support determination at this stage of the investigation. As a result, we continue to rely on our determination of industry support provided in the Initiation Checklist.²³⁷

As stated in the Initiation Checklist for India, the information contained in the petition met the requirements of sections 702(c)(4)(A)(i) and (ii) of the Act. Therefore, it was unnecessary for Commerce to poll the industry or rely on other information to determine industry support for the India Petitions.²³⁸

Further, with respect to the inclusion of fabricators, Commerce addressed MSI and Arizona

²³³ See Petitioner Rebuttal Brief at 32 – 36.

²³⁴ See *P.T. Pindo Deli Pulp & Paper Mills v. United States*, 825 F. Supp. 2d 1310, 1323 (CIT 2012).

²³⁵ See *Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019) (*Quartz Surface Products from China AD*) and accompanying IDM at Comment 1.

²³⁶ See section 702(c)(4)(E) of the Act (emphasis added); see also *Certain Uncoated Groundwood Paper from Canada: Final Determination of Sales at Less Than Fair Value*, 83 FR 39412 (August 9, 2018) and accompanying IDM at Comment 1.

²³⁷ See Initiation Checklist at Attachment II.

²³⁸ *Id.* at Attachment II, p. 8.

Tile's arguments in detail at the initiation stage of the investigation.²³⁹ Specifically, we stated:

{W}e have analyzed the information provided by the petitioner and find that there is reason to again conclude that fabricators do not perform sufficient production-related activities to be included in the domestic industry for industry support purposes. The petitioner provided detailed information to support its argument that fabricators should not be considered part of the domestic industry for standing, making it clear that there are significant differences in the level of complexity and capital investment, employment, training and technical expertise, production processes, and type of equipment, between quartz surface product slab producers and fabricators.²⁴⁰ Based on the information provided by the petitioner, quartz slab production involves highly complex and interconnected machinery and engineering processes, and, as a result, requires specialized equipment dedicated to quartz surface products production and a significantly greater amount of capital investment, training and technical expertise, and number of employees than the fabrication process.²⁴¹ In contrast, information provided by the petitioner indicates that the fabrication process requires limited equipment that is not dedicated solely to quartz surface products, fewer employees, much less technical expertise, and significantly less capital investment.²⁴² Information provided by the petitioner further indicates that the fabrication process does not change the fundamental physical characteristics imparted during the slab production process, as fabricators simply convert an existing slab into a geometrical form for its end use or application.²⁴³ In addition, many fabricators rely on imported slabs to produce final fabricated products.^{244, 245}

Thus, we determined not to include fabricators in the domestic industry and industry support calculation at the initiation stage of this investigation, which we are not revisiting for purposes of the final determination.

²³⁹ *Id.* at Attachment II, pp. 14 – 16.

²⁴⁰ See Petitioner's Letter, "Certain Quartz Surface Products from India and the Republic of Turkey: Petitioner's Response to MSI's Comments on Standing," dated May 28, 2019, at 4 – 18 and Exhibits 2 – 8.

²⁴¹ *Id.* at 6-12 and Exhibits 2 – 8.

²⁴² *Id.*

²⁴³ *Id.* at 6 and Exhibit 2.

²⁴⁴ *Id.* at 13, 20, and Exhibit 7.

²⁴⁵ See Initiation Checklist at Attachment II, p. 14.

RECOMMENDATION

We recommend approving all of the above positions. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.



Agree

Disagree

4/27/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance