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Investigation
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August 7, 2020

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

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Countervailing Duty Investigation of Common Alloy Aluminum
Sheet from India

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of common alloy aluminum sheet (aluminum sheet) from India, as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On March 9, 2020, the Aluminum Association Common Alloy Aluminum Sheet Working Group and its individual members, Aleris Rolled Products, Inc., Arconic, Inc., Constellium Rolled Products Ravenswood, LLC, JW Aluminum Company, Novelis Corporation, and Texarkana Aluminum, Inc. (collectively, the petitioners) filed a petition with Commerce seeking the imposition of countervailing duties (CVD) on imports of aluminum sheet from India.¹ On March 30, 2020, Commerce initiated an investigation of aluminum sheet from India.²

¹ See Petitioners' Letter, "Petition for the Imposition of Antidumping and Countervailing Duties: Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey," dated March 9, 2020 (the Petition).

² See *Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey: Initiation of Countervailing Duty Investigations*, 85 FR 19449 (April 7, 2020) (*Initiation Notice*); see also CVD Initiation Checklist, "Common Alloy Aluminum Sheet from India," dated March 30, 2020 (CVD Initiation Checklist). Prior to initiation, Commerce provided an opportunity for consultations. See Commerce's Letter, "Countervailing Duty Petition on Common Alloy Aluminum Sheet from India: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated March 13, 2020. However, on March 23, 2020, the Government of India (GOI) requested an



We stated in the *Initiation Notice* that, if appropriate, we intended to base the selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ We released the CBP entry data under administrative protective order on March 24, 2020.⁴ On April 10, 2020, the petitioners submitted comments on the CBP data.⁵

On April 22, 2020, we selected Hindalco Industries Limited (Hindalco) and Manaksia Aluminium Company Limited (MALCO), the two largest publicly-identifiable producers/exporters of subject merchandise by volume, for individual examination as mandatory respondents in this investigation.⁶ Also on April 22, 2020, we issued the initial questionnaire to the GOI, and instructed the GOI to forward the questionnaire to the selected mandatory respondents.⁷ Between May 12, 2020 and July 22, 2020, we received timely responses to our initial and supplemental CVD questionnaires from the GOI,⁸ Hindalco,⁹ and MALCO.¹⁰

indefinite postponement of consultations. See Memorandum, “Countervailing Duty Petition on Common Alloy Aluminum Sheet from India: Government Consultations,” dated March 23, 2020.

³ See *Initiation Notice*, 85 FR at 19452.

⁴ See Memorandum, “Countervailing Duty Petition on Common Alloy Aluminum Sheet from India: Release of U.S. Customs and Border Protection Data,” dated March 24, 2020.

⁵ See Petitioners’ Letter, “Countervailing Duty Investigation of Common Alloy Aluminum Sheet from India – Petitioners’ Comments on CBP Data and Respondent Selection,” dated April 10, 2020.

⁶ See Memorandum, “Countervailing Duty Investigation of Common Alloy Aluminum Sheet from India: Respondent Selection,” dated April 22, 2020.

⁷ See Commerce’s Letter, “Countervailing Duty Investigation on Common Alloy Aluminum Sheet from India: Countervailing Duty Questionnaire,” dated April 22, 2020 (Initial Questionnaire).

⁸ See GOI’s Letter, “Countervailing Duty Investigation on Common Alloy Aluminum Sheet from India: Questionnaire: Request for Extension of Time to File Response,” dated June 15, 2020 (GOI June 15, 2020 IQR); see also GOI’s Letter, “Countervailing Duty Investigation on Common Alloy Aluminum Sheet from India: Questionnaire: Request for Extension of Time to File (Partial) Response,” dated June 22, 2020 (GOI June 22, 2020 IQR); GOI’s Letter, “Countervailing Duty Investigation on Common Alloy Aluminum Sheet from India: Questionnaire: Request for Extension of Time to File (Partial) Response,” dated June 25, 2020 (GOI June 25, 2020 IQR); and GOI’s Letter, “Countervailing Duty Investigation on Common Alloy Aluminum Sheet from India: Supplemental Questionnaire: Request for Extension of Time to File Response,” dated July 20, 2020 (GOI July 20, 2020 SQR).

⁹ See Hindalco’s Letter, “Common Alloy Aluminum Sheet from India: Response to Section III Regarding Affiliated Companies and Cross-Owned Affiliates,” dated May 12, 2020 (Hindalco May 12, 2020 AQR); see also Hindalco’s Letter, “Common Alloy Aluminum Sheet from India: Response to Section III First Supplemental Questionnaire Regarding Affiliated Companies and Cross-Owned Affiliates,” dated June 11, 2020; Hindalco’s Letter, “Common Alloy Aluminum Sheet from India: Hindalco Industries Limited’s Response to Remainder of Section III Questionnaire,” dated June 15, 2020 (Hindalco June 15, 2020 IQR); Hindalco’s Letter, “Common Alloy Aluminum Sheet from India: Hindalco Industries Limited’s Response to EPCG, SEZ, Land, and Reconciliation Section III Questions,” dated June 22, 2020 (Hindalco June 22, 2020 IQR); Hindalco’s Letter, “Common Alloy Aluminum Sheet from India: Supplemental Section III Questionnaire Response of Hindalco Industries Limited,” dated June 29, 2020 (Hindalco June 29, 2020 SQR); Hindalco’s Letter, “Common Alloy Aluminum Sheet from India: Second Supplemental Section III Questionnaire Response of Hindalco Industries Limited,” dated July 13, 2020 (Hindalco July 13, 2020 SQR); Hindalco’s Letter, “Common Alloy Aluminum Sheet from India: Third Supplemental Section III Questionnaire Response of Hindalco Industries Limited,” dated July 17, 2020 (Hindalco July 17, 2020 SQR); and Hindalco’s Letter, “Common Alloy Aluminum Sheet from India: Hindalco Industries Limited’s Response to Questions 9, 11, 12, and 13 of the Third Supplemental Section III Questionnaire,” dated July 22, 2020 (Hindalco July 22, 2020 SQR).

¹⁰ See MALCO’s Letter, “Common Alloy Aluminium Sheet from India: Submission of Affiliation Response

On July 2, 2020, the petitioners timely submitted new subsidy allegations for two programs.¹¹ On July 8, 2020 and July 13, 2020, the petitioners submitted benchmark information.¹² On July 13, 2020, Hindalco submitted benchmark information.¹³ On July 23, 2020, the petitioners submitted rebuttal benchmark information.¹⁴

On July 17, 2020, the petitioners requested that we align the final CVD determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of aluminum sheet from India.¹⁵

B. Postponement of Preliminary Determination

On May 19, 2020, based on a request from the petitioners,¹⁶ Commerce postponed the deadline for issuance of the preliminary determination until August 7, 2020, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).¹⁷

of Countervailing Duty Investigation,” dated May 12, 2020 (MALCO May 12, 2020 AQR); *see also* MALCO’s Letter, “Common Alloy Aluminium Sheet from India: Submission of Affiliation Supplemental Response of Countervailing Duty Investigation,” dated June 15, 2020; MALCO’s Letter, “Common Alloy Aluminium Sheet from India: Submission of Section III Response of Countervailing Duty Investigation,” dated June 15, 2020 (MALCO June 15, 2020 IQR); MALCO’s Letter, “Common Alloy Aluminium Sheet from India: Submission of AUL Sale for Section III Response of Countervailing Duty Investigation,” dated June 25, 2020; MALCO’s Letter, “Common Alloy Aluminium Sheet from India: Submission of CVD Supplemental Response of Countervailing Duty Investigation,” dated July 6, 2020; MALCO’s Letter, “Common Alloy Aluminium Sheet from India: Submission of CVD Supplemental Response to question 27 & 28 of Countervailing Duty Investigation,” dated July 13, 2020; MALCO’s Letter, “Common Alloy Aluminium Sheet from India: Submission of CVD 3rd Supplemental Response of Countervailing Duty Investigation,” dated July 15, 2020; and MALCO’s Letter, “Common Alloy Aluminium Sheet from India: Submission of CVD Supplemental Response to question 1 & 2 of Countervailing Duty Investigation,” dated July 21, 2020.

¹¹ *See* Petitioners’ Letter, “Countervailing Duty Investigation of Common Alloy Aluminum Sheet from India – New Subsidy Allegations,” dated July 2, 2020.

¹² *See* Petitioners’ Letter, “Countervailing Duty Investigation of Common Alloy Aluminum Sheet – Petitioners’ Submission of Factual Information to Measure the Adequacy of Remuneration and Additional Deficiency Comments,” dated July 8, 2020 (Petitioners July 8, 2020 Benchmark Submission); *see also* Petitioners’ Letter, “Countervailing Duty Investigation of Common Alloy Aluminum Sheet from India – Petitioners’ Submission of Factual Information to Measure the Adequacy of Remuneration; Provision of Coal for LTAR,” dated July 13, 2020 (Petitioners July 13, 2020 Benchmark Submission).

¹³ *See* Hindalco’s Letter, “Common Alloy Aluminum Sheet from India: Hindalco Industries Limited’s Submission of Coal Benchmark Information,” dated July 13, 2020.

¹⁴ *See* Petitioners’ Letter, “Countervailing Duty Investigation of Common Alloy Aluminum Sheet from India – Petitioners’ Submission of Factual Information to Rebut Hindalco’s Benchmark Submission,” dated July 23, 2020 (Petitioners Rebuttal Benchmark Comments).

¹⁵ *See* Petitioners’ Letter, “Countervailing Duty Investigations of Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey – Petitioners’ Request to Align Final Countervailing Duty Determinations with the Companion Antidumping Duty Final Determinations,” dated July 17, 2020.

¹⁶ *See* Petitioners’ Letter, “Countervailing Duty Investigations Concerning Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey – Petitioners’ Request to Postpone Preliminary Determinations,” dated May 6, 2020.

¹⁷ *See Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 85 FR 29930 (May 19, 2020).

C. Period of Investigation

The period of investigation (POI) is January 1, 2019 through December 31, 2019. This period corresponds to the most recently-completed calendar year in accordance with 19 CFR 351.204(b)(2).

D. Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioners' request,¹⁸ we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of aluminum sheet from India. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than December 21, 2020, unless postponed.

E. Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On April 29, 2020, the ITC preliminarily determined that there is a reasonable indication that an industry in the U.S. is materially injured by reason of imports of aluminum sheet from India.¹⁹

F. New Subsidy Allegations

On July 2, 2020, the petitioners timely submitted two NSAs. We are still considering the NSAs and intend to issue a decision regarding initiation of the NSAs after this preliminary determination. For any programs for which we decide to initiate, we intend to issue NSA questionnaires to the relevant parties and will consider that information for purposes of examining these programs in a post-preliminary determination.

III. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²⁰ we set aside a period of time in the *Initiation Notice* for parties to raise issues regarding product coverage (*i.e.*, scope).²¹ We received several comments concerning the scope of the concurrent AD and CVD investigations of aluminum sheet as it appeared in the *Initiation Notice*. We are currently evaluating the scope comments filed by interested parties. We intend to issue our preliminary decision regarding the

¹⁸ See Petitioners' Letter, "Countervailing Duty Investigations of Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey – Petitioners' Request to Align Final Countervailing Duty Determinations with the Companion Antidumping Duty Final Determinations," dated July 17, 2020.

¹⁹ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey*, 85 FR 23842 (April 29, 2020).

²⁰ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²¹ See *Initiation Notice*, 85 FR at 19450.

scope of the AD and CVD investigations in the preliminary determinations of the companion AD investigations, the deadline for which is October 6, 2020.²² We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.²³

IV. SCOPE OF THE INVESTIGATION

The product covered by this investigation is common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a IXXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209-14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under HTSUS subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be

²² See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 45576, 45577 (July 29, 2020).

²³ The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

V. PRELIMINARY NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

The petitioners alleged that, pursuant to section 703(e)(1) of the Act, and 19 CFR 351.206, critical circumstances exist with respect to imports of aluminum sheet from India.²⁴ In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted a critical circumstances allegation 20 days before the scheduled date of this preliminary determination, Commerce must issue a preliminary critical circumstances determination no later than the date of the preliminary determination. Based on information placed on the record of this investigation by the mandatory respondents,²⁵ Commerce preliminarily determines that critical circumstances do not exist with respect to imports of aluminum sheet from India.

Section 703(e)(1) of the Act provides that Commerce will determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect: (A) that “the alleged countervailable subsidy” is inconsistent with the Agreement on Subsidies and Countervailing Measures (SCM) of the World Trade Organization; and (B) that “there have been massive imports of the subject merchandise over a relatively short period.”

As discussed in the “Analysis of Programs” section below, we preliminarily determine that the mandatory respondents received countervailable benefits under programs that are contingent upon export performance. Therefore, we preliminarily determine that there is a reasonable basis to believe or suspect that there are programs in this investigation that are inconsistent with the SCM Agreement. Use of an export subsidy program is sufficient to meet the inconsistent-with-the-SCM-Agreement criterion under section 703(e)(1)(A) of the Act.²⁶

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

²⁴ See Petitioners’ Letter, “Countervailing Duty Investigations of Common Alloy Aluminum Sheet from India and the Republic of Turkey – Petitioners’ Allegation of Critical Circumstances,” dated July 14, 2020.

²⁵ See Hindalco’s Letter, “Common Alloy Aluminum Sheet from India: Response to the Department’s Request for Critical Circumstances Monthly Quantity and Value Shipment Data,” dated July 27, 2020; *see also* MALCO’s Letter, “Common Alloy Aluminium Sheet from India: Manaksia Aluminium Company Limited (MALCO) Response to the Department’s Request for Monthly Quantity & Value Shipment Data,” dated July 27, 2020.

²⁶ See *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43189-90 (August 17, 2001), unchanged in *Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products from Canada*, 67 FR 36070 (May 22, 2002).

imports must increase by at least 15 percent during the “comparison period” to be considered “massive.”²⁷

Therefore, to determine whether there has been a massive surge of imports with respect to the mandatory respondents, we have used a comparison period starting with the month the petition was filed (*i.e.*, March 2020) and ending with the most recent month for which we have shipping data on the record (*i.e.*, June 2020). We then selected a base period with the same number of months, ending in the month prior to the filing of the petition (*i.e.*, November 2019 through February 2020). Based on the analysis described above, Commerce preliminarily determines that imports of subject merchandise by Hindalco and MALCO were not massive, and, thus, critical circumstances do not exist for Hindalco or MALCO.²⁸

With regard to whether imports of subject merchandise by the “all other” producers/exporters of aluminum sheet from India were massive, we preliminarily determine that, because there is evidence of the existence of countervailable subsidies that are inconsistent with the SCM Agreement, an analysis is warranted as to whether there was a massive increase in shipments by the “all other” companies, in accordance with section 703(e)(1)(B) of the Act and 19 CFR 351.206(h). Therefore, we attempted to analyze, in accordance with 19 CFR 351.206(i), monthly shipment data for the period December 2019 through May 2020, using shipment data from Global Trade Atlas (GTA), adjusted to remove shipments reported by Hindalco and MALCO.²⁹ However, we find the resulting data unusable for purposes of our massive increase analysis.³⁰ Therefore, we based our analysis for “all other” producers/exporters of aluminum sheet from India on Hindalco’s and MALCO’s data. As a result, we determine that there was not a massive increase in shipments from these remaining companies, as defined by 19 CFR 351.206(h).³¹

As a result, in accordance with section 703(e)(2)(A) of the Act, we preliminarily find that critical circumstances do not exist for Hindalco, MALCO, or “all other” producers/exporters of aluminum sheet from India.

²⁷ See 19 CFR 351.206(h)(2).

²⁸ See Memorandum, “Countervailing Duty Investigation on Common Alloy Aluminum Sheet from India: Critical Circumstances Analysis” dated concurrently with this memorandum.

²⁹ See *Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Determination*, 81 FR 39900 (June 20, 2016), unchanged in *Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Final Affirmative Countervailing Duty Determination, and Final Determination of Critical Circumstances*, 82 FR 2949 (January 10, 2017); see also, *e.g.*, *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014), and accompanying Issues and Decision Memorandum (IDM) at 4.

³⁰ Because Commerce’s analysis that the GTA data are unusable for purposes of determining whether the “all others” companies had massive imports over a relatively short period involves business proprietary information, see the Critical Circumstances Memorandum for our analysis; see also Critical Circumstances Memorandum at Attachment I.

³¹ *Id.*

VI. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.³² In Commerce's initial questionnaires to the GOI and the mandatory respondents, we notified the respondents to this proceeding that the AUL period would be 14 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service Publication 946 (2017).³³ We preliminarily determine that a 14-year period is appropriate to allocate benefits from non-recurring subsidies.³⁴

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of the subsidy approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidy is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL period.

B. Attribution of Subsidies

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

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

³² See 19 CFR 351.524(b).

³³ See U.S. Internal Revenue Service Publication 946 (2017), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

³⁴ See Memorandum, "Countervailing Duty (CVD) Investigation of Common Alloy Aluminum Sheet (Aluminum Sheet) from India: Average Useful Life (AUL)," dated August 7, 2020.

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits). . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.³⁵

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.³⁶

Hindalco

As discussed above, we selected Hindalco as a mandatory respondent. Hindalco responded to Commerce’s questionnaire on behalf of itself and its cross-owned affiliates: Hindalco-Almex Aerospace Limited (HAAL); Minerals & Minerals Limited (MML); Utkal Alumina International Limited (Utkal); and Suvas Holding Limited (Suvas).³⁷

Hindalco produces the subject merchandise.³⁸ Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Hindalco to its own sales.

Utkal is an input supplier for production of the subject merchandise.³⁹ Hindalco reported that Utkal supplied alumina to Hindalco in the POI,⁴⁰ and is a 100 percent owned subsidiary of Hindalco.⁴¹ Based on the totality of the evidence regarding the relationship between Hindalco and Utkal, we preliminarily determine that Hindalco and Utkal are cross-owned pursuant to 19 CFR 351.525(b)(6)(vi) because record evidence indicates that Hindalco is in a position to use or direct the assets of Utkal in essentially the same way that it can use its own assets. Because Utkal is providing an input that is primarily dedicated to the production of downstream products, we have preliminarily attributed Utkal’s subsidies to Hindalco in accordance with 19 CFR 351.525(b)(6)(iv), *i.e.*, by attribution the benefit to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

MML and Suvas reported not receiving any subsidies during the POI or during the AUL period.⁴² Therefore, it is unnecessary to decide whether to attribute subsidies received by MML

³⁵ See *Countervailing Duties; Final Rule*, 63 FR 65347, 65401 (November 25, 1998) (*CVD Preamble*).

³⁶ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).

³⁷ See Hindalco June 15, 2020 IQR at 1.

³⁸ See Hindalco May 12, 2020 AQR at 1.

³⁹ *Id.* at 2.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See Hindalco June 15, 2020 IQR.

and Suvas to Hindalco. With regard to HAAL, we preliminarily determine that HAAL did not provide inputs that are primarily dedicated to the production of downstream products to Hindalco. Accordingly, we are not attributing subsidies received by HAAL to Hindalco.

MALCO

As discussed above, we selected MALCO as a mandatory respondent. MALCO is a producer and exporter of subject merchandise.⁴³ MALCO reported that it had no parent company during the POI and that it is the sole producer of subject merchandise.

Prior to 2013, present-day MALCO operated as a unit within Manaksia Limited (Manaksia). For a portion of the AUL period, it was not an independent entity but, instead, was an undertaking within Manaksia, *i.e.*, Manaksia Aluminium.⁴⁴ In 2010, MALCO was incorporated, and it operated as a wholly-owned subsidiary of Manaksia from 2010-2013. Therefore, we have attributed any non-recurring subsidies to MALCO for the 2010-2013 period to its sales in accordance with 19 CFR 351.525(b)(6)(i). For the AUL period prior to 2010, we have attributed subsidies to Manaksia Aluminium to its sales in accordance with 19 CFR 351.525(b)(5)(i).

For subsidies received after 2013, we are attributing subsidies received by MALCO to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

C. Denominators

When selecting an appropriate denominator for use in calculating an *ad valorem* subsidy rate, Commerce considers the basis for the respondents' receipt of benefits under each program at issue.⁴⁵ As discussed in further detail below under "Programs Preliminarily Determined to be Countervailable," where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. Where the program has been found to be contingent upon export performance, we used the recipient's total export sales or export sales of subject merchandise to the United States as the denominator, in accordance with 19 CFR 351.525(b)(4). All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, *see* the Hindalco Analysis Memorandum and the MALCO Analysis Memorandum.⁴⁶

VII. BENCHMARKS AND DISCOUNT RATES

Section 771(5)(E)(ii) of the Act provides that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market," indicating

⁴³ See MALCO May 12, 2020 AQR at 1.

⁴⁴ *Id.*

⁴⁵ See 19 CFR 351.525(b)(1)-(5).

⁴⁶ See Memorandum, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from India: Hindalco Preliminary Determination Calculations," dated concurrently with this memorandum (Hindalco Analysis Memorandum), *see also* Memorandum, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from India: MALCO Preliminary Determination Calculations," dated concurrently with this memorandum (MALCO Analysis Memorandum).

that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that, when selecting a comparable commercial loan that the recipient “could actually obtain on the market,” Commerce will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans during the period, Commerce “may use a national average interest rate for comparable commercial loans,” pursuant to 19 CFR 351.505(a)(3)(ii).

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

A. Discount Rates

For allocating the benefit from non-recurring subsidies, we have used the yearly average long-term lending rate in India from the International Monetary Fund’s (IMF)’s International Financial Statistics (IFS) for the year in which the government agreed to provide the subsidy, consistent with 19 CFR 351.524(d)(3)(i)(A). The discount rates used in our preliminary calculations are provided in the respective preliminary calculation memoranda.⁴⁷

B. Land Benchmark

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

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

As benchmark data, the petitioners submitted information pertaining to a 2014 private land transaction in Mumbai that occurred between Tata Steel and Oberoi Realty, both of which are private companies.⁴⁸ According to the article submitted by the petitioners, Oberoi Realty purchased the 25 acre parcel of land from Tata Steel after several rounds of bidding for Rs. 1,155 crore.⁴⁹

⁴⁷ See Hindalco Analysis Memorandum and MALCO Analysis Memorandum.

⁴⁸ See Petitioners July 8, 2020 Benchmark Submission at 4 and Exhibits 2A-2C.

⁴⁹ *Id.* at Exhibit 2A. One crore is equivalent to 10,000,000.

No other land tier one benchmark data are available on the record. Therefore, for the preliminary determination, we consider the land transaction in Mumbai to be the most suitable benchmark price on the record because the sale of this land parcel was an actual private transaction in the country of the investigation. For the preliminary determination, we will use the average rupee-per-square-meter price paid for these land parcels and adjust it for inflation or deflation using India's Consumer Price Index, as published by the IMF.

C. Coal Benchmark

We selected benchmarks for determining the benefit from the provision of coal for LTAR in accordance with 19 CFR 351.511. Section 351.511(a)(2) of Commerce's regulation sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. As noted above, 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, 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).⁵⁰

Here, the domestic market for coal is distorted. The GOI owns 69.05 percent of Coal India Limited (CIL), and CIL is identified as "a Central Public Sector Enterprise ... responsible for production and marketing of planned quantity of coal and coal products efficiently and economically."⁵¹ Through a memorandum of understanding (MOU), the GOI and CIL set annual targets for production and profit.⁵² The company has a designated representative responsible for representing the GOI,⁵³ and multiple other board members have held, or currently do hold, posts in government ministries.⁵⁴ Additionally, the GOI controls certain aspects of CIL's auction process.⁵⁵ Given that CIL represents over 80 percent of domestic production and supplies nearly two-thirds of the coal consumed in India, we preliminarily find that the Indian Coal market is distorted. Accordingly, we determine that there are no undistorted "tier one" prices on the record that are suitable for use as a tier one benchmark,⁵⁶ including the auction prices and import prices submitted by Hindalco. Consequently, we are relying on "tier two" (world market) prices for calculating the benchmark for the provision of coal, in accordance with 19 CFR 351.511(a)(2)(ii).

⁵⁰ See 19 CFR 351.511(a)(2).

⁵¹ See GOI June 25, 2020 IQR at 8.

⁵² *Id.* at Exhibit 5.

⁵³ *Id.*

⁵⁴ *Id.* at Exhibit 7.

⁵⁵ See Petitioners Rebuttal Benchmark Comments at Attachments 1-5.

⁵⁶ See, *e.g.*, *Guizhou Tyre Co., Ltd. v. United States*, 389 F. Supp. 3d 1315, 1324 (CIT 2019) (citing *Countervailing Duties*, 63 FR 65348, 65377 (November 25, 1998); and *Borusan v. United States*, 61 F. Supp. 3d 1306, 1327 (CIT 2015)) ("[I]f the market in that country is distorted by government involvement—such that the "government provider constitutes a majority or. . . a substantial portion of the market"—the prices "may no longer be concluded the result of a 'competitive' market-pricing mechanism.")).

The petitioners provided UN Comtrade price data for certain HTS categories covering coal.⁵⁷ We preliminarily calculated the benchmark for coal using the data submitted by the petitioners with certain adjustments explained below. For certain countries, the underlying UN Comtrade data, submitted by the petitioners, included data that were double-counted; for example, the UN Comtrade data submitted include exports for the European Union as a whole, as well as for individual member countries. Therefore, we excluded the European Union aggregated data in order to avoid double-counting.

Pursuant to 19 CFR 351.511(a)(2)(iv), benchmarks should reflect “delivered prices” and include import and delivery charges. Accordingly, we added international freight charges, goods and services tax (GST), and custom duties on applicable purchases, to calculate the price that a respondent would have paid on the world market for these inputs. The petitioners provided ocean freight rates to be considered as benchmarks. For the preliminary determination, we relied on the simple average of the public monthly ocean freight data provided by the petitioners.

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the AFA rule to induce respondents to provide Commerce with complete and accurate information in a timely manner.”⁵⁸ Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁵⁹ At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the

⁵⁷ See Petitioners July 13, 2020 Benchmark Submission.

⁵⁸ See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

⁵⁹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

interested party would have provided if the interested party had complied with the request for information.

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁶⁰ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁶¹ It is Commerce's practice to consider information to be corroborated if it has probative value.⁶² In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.⁶³ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.⁶⁴ Furthermore, Commerce is not required to corroborate any subsidy rate applied in a separate segment of the same proceeding.⁶⁵

Under section 776(d) of the Act, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates.⁶⁶ Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.⁶⁷

For purposes of this preliminary determination, we are applying facts available (FA) and AFA for the circumstances outlined below.

B. Application of FA: GOI

1. Provision of Coal for LTAR (Whether Purchases from Unidentified Suppliers were from "Authorities")

With respect to the respondents' input suppliers, we asked the GOI to "provide a complete list of each company's coal producers, including the producers of coal purchased by the respondent through a supplier. Be sure to include full names and addresses of these producers."⁶⁸ The GOI identified the producer for the majority of Hindalco's sales, CIL, but did not identify the producer for the remainder of its sales, because the underlying producer was unknown to

⁶⁰ See 19 CFR 351.308(d).

⁶¹ See SAA at 870.

⁶² *Id.* at 870.

⁶³ *Id.* at 869.

⁶⁴ *Id.* at 869-870.

⁶⁵ See section 776(c)(2) of the Act.

⁶⁶ See section 776(d)(1) of the Act.

⁶⁷ See section 776(d)(3) of the Act.

⁶⁸ See Initial Questionnaire at "Provision of Coal for Less than Adequate Remuneration."

Hindalco.⁶⁹ Furthermore, the GOI did not identify the producers for any of MALCO's coal purchases; instead, it simply stated that MALCO did not purchase coal from state-owned producers, and did not provide evidence supporting its conclusory statement.⁷⁰ Accordingly, the necessary information is not on the record of this investigation, and, after evaluation of the record evidence, as facts available, we find that – for any purchases for which we do not have an input producer identified – 63.5 percent of the purchases were from a GOI source, which represents the CIL/GOI share of the coal supply in India.

Accordingly, we preliminarily find that “authorities” within the meaning of section 771(5)(B) of the Act produced the percentage of coal supplied to Hindalco and MALCO by unknown producers at the same ratio as coal is supplied by GOI-suppliers to the Indian market. Accordingly, for 63.5 percent of Hindalco's and MALCO's coal purchases from unidentified producers, we find that these coal purchases represent financial contributions in the form of a governmental provision of a good within the meaning of section 771(5)(D)(iii) of the Act.

2. State Government of Gujarat (SGOG) Subsidy Program – Provision of Water for LTAR

As described in the section below, “Application of AFA: GOI – SGOG Subsidy Programs,” we are applying partial AFA to the GOI with respect to the SGOG Provision of Water program. With respect to benefit, the GOI failed to provide us with information that would allow us to calculate benefit, *i.e.*, the regulations setting forth the applicable water duty rate and the applicable discount. Hindalco provided partial information about benefit, *i.e.*, its water purchases. After examining the record, we find the record contains information that would allow us to establish the rate that Hindalco would have paid in the absence of the program.⁷¹ Relying on this information, as FA, in conjunction with the water payment information submitted by Hindalco, we find that the program confers a benefit pursuant to section 771(5)(E) of the Act.

C. Application of AFA: GOI

1. Provision of Coal for LTAR (Specificity)

The GOI failed to provide necessary information related to the industries that purchase coal, or trade publications specifying the price of coal. We requested data on coal consumption, by industry, to allow us to assess whether the program is *de facto* specific, *e.g.*, whether the industry to which the respondents belong is a predominant user of coal.⁷² Specifically, we asked:

Provide a list of the industries in India that purchase coal directly, using a consistent level of industrial classification. Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies

⁶⁹ GOI June 25, 2020 IQR at 8.

⁷⁰ *Id.*

⁷¹ See the Petition at Volume XXII at 62-63 and Exhibit CVD-IND-42.

⁷² GOI June 25, 2020 IQR at 16.

operate, as well as the totals purchased by every other industry. ... Please clearly identify the industry in which the companies under investigation are classified.⁷³

Although the GOI sought numerous extensions of the deadline to respond to this request, the GOI did not raise any specific difficulties with providing the information as requested.⁷⁴ However, when the GOI submitted its questionnaire response, the GOI did not respond to the question. Instead the GOI stated:

The number of industries are many, and the data if required to be provided would be extremely voluminous, therefore, if USDOC wants the data with respect to specific industries, the same may be and sought from GOI and the GOI would provide the same.

Therefore, the GOI did not provide the requested information that is necessary for us to determine whether the program is *de facto* specific.

As a result of the GOI's refusal to provide the necessary information, we preliminarily determine, in accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, that necessary information is not available on the record, that the GOI withheld information that was requested of it, and that the GOI significantly impeded this proceeding. Thus, we are relying on "facts available" in making our preliminary determination. Moreover, we preliminarily determine that the GOI failed to cooperate by not acting to the best of its ability to comply with our requests for information, and that an adverse inference is warranted in selecting from among the facts available pursuant to section 776(b) of the Act, because the GOI did not respond to our request for information. The GOI acknowledged that it had the necessary information in its possession, and it did not notify Commerce of any specific difficulties in providing that information within 14 days of receipt of the questionnaire, as required by section 782(c)(1) of the Act. Instead, after receiving multiple, and generous, extensions of the deadline to provide the necessary information, the GOI merely made an untimely statement that the information was "voluminous" and offered to provide a narrow portion of it. In drawing an adverse inference from among the facts available, we find that the purchasers of coal for LTAR are limited in number, and, thus, this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

2. Export-Oriented Unit (EOU) Scheme – Reimbursement of Central Sales Tax (CST) Paid on Good Manufactured in India

The GOI did not provide a substantive response to Commerce's questions regarding the EOU scheme.⁷⁵ Commerce asked the GOI to respond to all questions in the standard questions'

⁷³ See Initial Questionnaire at "Information Regarding Input Producers in India Appendix."

⁷⁴ See GOI's Letter, "Common Alloy Aluminum sheet from India: Request for an Extension of Time to Submit Questionnaire Response," dated May 24, 2020; *see also* GOI's Letter, "Common Alloy Aluminum Sheet from India: Request for an Extension of Time to Submit Partial Questionnaire Response," dated June 12, 2020; and GOI's Letter, "Countervailing Duty Investigation on Common Alloy Aluminium Sheet from India: Countervailing Duty Questionnaire: Request for Extension of Time to File Response," dated June 20, 2020.

⁷⁵ See GOI June 22, 2020 IQR at 59.

appendix, allocation appendix, and tax program appendix for this program, which included information necessary for determining whether financial contribution and specificity existed. In its initial response, the GOI did not provide any information that Commerce requested and instead only indicated that “no manufacturing units of mandatory respondents and its cross-owned companies are notified as EOU.”⁷⁶

However, MALCO reported receiving reimbursements for the CST it paid on capital goods and raw materials procured domestically during the AUL period.⁷⁷ Because of the deficiencies in the GOI’s responses, we issued a supplemental questionnaire to it and again requested that the GOI provide us with complete responses to the initial questionnaire regarding the EOU scheme; in response the GOI only stated that the “provisions of EOU may not arise for the {POI} as all the above are recurring in nature and not qualified for {AUL} period. However, if USDOC have any query, GOI may cross-verify the same.”⁷⁸ We note that, under the Commerce regulations, because the tax exemption in question is related to the acquisition of capital goods, we may consider the exemptions to be non-recurring.⁷⁹

Instead of attempting to answer our questionnaires, the GOI withheld necessary information that would allow Commerce to examine this program. On this basis, we preliminarily determine that necessary information is not available on the record and that Commerce must rely on facts available in making our preliminary determination, in accordance with sections 776(a)(1), 776(a)(2)(A) and (a)(2)(C) of the Act. We also preliminarily determine that the GOI failed to cooperate by not acting to the best of its ability to comply with our request for information, because the GOI had the information in its possession but failed to provide it to Commerce. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In applying AFA, we find that the program constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act and is specific within the meaning of section 771(5A)(B) of the Act.

3. *SGOG Subsidy Programs*

The GOI did not provide a necessary response to Commerce’s questions regarding the SGOG’s Water for LTAR, Land for LTAR, and Electricity Duty Exemption programs.⁸⁰ In our initial questionnaire, we asked that the GOI provide a description regarding the nature of these programs and to respond to the relevant appendices for each program.⁸¹ In its initial response, the GOI indicated that none of mandatory respondents and their cross-owned companies received assistance under the programs because none of the mandatory respondents or cross-owned affiliates manufacture aluminum sheet, *i.e.*, subject merchandise, in the State of Gujarat.⁸² Specifically, the GOI stated:

⁷⁶ *Id.*

⁷⁷ See MALCO’s June 15, 2020 IQR at 65.

⁷⁸ See GOI July 20, 2020 SQR at 31.

⁷⁹ See 19 CFR 351.524(c).

⁸⁰ See GOI June 15, 2020 IQR at 124.

⁸¹ *Id.*

⁸² *Id.*

None of the Mandatory Respondents and its cross-owned companies have manufacturing unit of Common Aluminum Alloy Sheets *i.e.*, PUC in the State Govt. of Gujarat. Hence, the mandatory respondents are not eligible to avail the Schemes of State Govt. of Gujarat for the PUC. Hence, the mandatory respondents have not availed the schemes of State Government of Gujarat (SGOG) during the POI for the PUC, therefore GOI is not submitting response to questions of this scheme. If USDOC have any query, GOI will provide the response as needed.⁸³

Hindalco, however, did in fact report the receipt of water and land under the SGOG Water for LTAR and SGOG Land for LTAR programs.⁸⁴ As a consequence, Commerce issued a supplemental questionnaire to the GOI, which stated: “{a}lthough the GOI identifies certain programs as non-used or not applicable to the mandatory respondents and their cross-owned affiliates, please provide a full and complete response to all programs referenced in the questionnaire ... regardless of whether the companies under investigation or their “cross-owned” companies, as defined in Section III, applied for, used, or benefited from that program during the POI.”⁸⁵ In response the GOI, once again, did not provide the information regarding SGOG Land for LTAR and SGOG Water for LTAR that Commerce requested and instead only stated that it “already provided the response to the Standard Question Appendix, other appendices and program Specific Questions to the alleged schemes,” with regard to the SGOG Water for LTAR and the SGOG Land for LTAR programs.⁸⁶ The GOI failed to provide necessary responses, despite our repeated requests for information. Accordingly, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act, we determine, as AFA, that these programs provide financial contributions under section 771(5)(D)(iii) of the Act and are specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

For the SGOG Electricity Duty Exemption, after evaluating the record, we find that the GOI did provide some of the information that we requested in response to our supplemental questionnaire. However, it did not provide necessary information that would allow us to assess whether the program is *de facto* specific. Specifically, we asked:

Please provide the following information, in table form, regarding the number of recipient companies and industries and the amount of assistance approved under this program for the year in which any mandatory respondent company was approved for assistance, as well as each of the preceding three years (*e.g.*, if a respondent was approved for assistance in 2010 and 2011, provide this information, by year, for 2007 through 2011). If this information is not available on the basis of year of approval, then provide the information based on the year of bestowal.

...

(b) The total amount of assistance approved for all companies under the program.

⁸³ *Id.*

⁸⁴ See Hindalco June 15, 2020 IQR at 66-74; see also Hindalco June 22, 2020 IQR at 25-27.

⁸⁵ See GOI July 20, 2020 SQR at 13.

⁸⁶ *Id.*

(c) The total number of companies that were approved for assistance under this program.

(d) The total amount of assistance approved for the industry in which the mandatory respondent companies operate, as well as the totals for every other industry in which companies were approved for assistance under this program.⁸⁷

In multiple past CVD proceedings in which the GOI was a party, Commerce asked these questions to ascertain usage by industries or firms for the purpose of Commerce *de facto* specificity analysis. Based on Commerce's experience, information regarding usage by firms or industries is usually in the possession of the administrator of the program, *i.e.*, the government. The GOI should have known the purpose of these questions. Instead of responding to these questions, the GOI stated that:

GOI submits that the details regarding all other companies, which are not parties to the present investigation (neither being cross-owned by mandatory respondents nor being companies which the mandatory respondents themselves are required to address), is neither relevant nor necessary for the record purposes of the present investigation.

...

GOI's duty to cooperate in terms of its obligations under SCM Agreement only extends until USDOC exercises its investigatory powers in a manner that is consistent with the SCM Agreement. Since the demand for information regarding third party entities is inconsistent with the SCM Agreement, as evident from Article 12.6 above, GOI cannot be obliged to cooperate in providing such information.⁸⁸

Thus, due to the GOI's refusal to answer questions that seek necessary information for our *de facto* specificity information, necessary information is missing from the record.

On this basis, we preliminarily determine that necessary information is not available on the record and that Commerce must rely on "facts available" in making our preliminary determination, in accordance with sections 776(a)(1), 776(a)(2)(A) and (a)(2)(C) of the Act. We also preliminarily determine that the GOI failed to cooperate by not acting to the best of its ability to comply with our request for information which was in its possession. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. Accordingly, we find that the users of this program are limited in number, and, thus, the program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

4. State Government of Uttar Pradesh (SGUP) – Electricity Duty Exemption

In its initial response, the GOI indicated that none of the mandatory respondents and their cross-owned companies claimed "any of the subsidy under {SGUP} subsidy programs during the POI, therefore GOI is not submitting response to questions of this scheme."⁸⁹ However, Hindalco

⁸⁷ See GOI July 20, 2020 SQR at 38-40.

⁸⁸ *Id.*

⁸⁹ See GOI June 22, 2020 IQR at 60.

reported that it received exemptions at applicable rates of electricity duty payable for its electricity unit in Renukoot, Uttar Pradesh.⁹⁰ Because of the deficiencies in the GOI's responses, we issued supplemental questions. We solicited a variety of information necessary to our *de facto* specificity analysis, including information on consumption by industry/firm. The GOI failed to provide such information.⁹¹ Specifically the GOI stated that "the exemption is granted automatically, therefore, no records as such are maintained by the State Government. However, the company specific details may be sought {from the mandatory respondents}."⁹²

The solicited information is, in fact, relevant for us to determine if the respondents, or (in the alternative) particular industries, including the industries in which respondents operate, are predominant users of the program. This information is a necessary component of our analysis in determining whether a program is *de facto* specific. In multiple past CVD proceedings in which the GOI was a party, Commerce asked these questions to ascertain usage by industries or firms for the purpose of Commerce's *de facto* specificity analysis. Based on Commerce's experience, information regarding usage by firms or industries is usually in the possession of the administrator of the program, *i.e.*, the government. As a result of the GOI's refusal to respond, and act to the best of its ability in doing so, we apply AFA to determine that this program is specific.

On this basis, we preliminarily determine that necessary information is not available on the record and that Commerce must rely on "facts available" in making our preliminary determination, in accordance with sections 776(a)(1), 776(a)(2)(A) and (a)(2)(C) of the Act. We also preliminarily determine that the GOI failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. Accordingly, we find that the users of this program are limited in number and is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

IX. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined to be Countervailable

*1. Advance Authorization Program (AAP/ALP)*⁹³

Under the AAP/ALP exporters may import, duty free, specified quantities of raw materials required to manufacture products that are subsequently exported.⁹⁴ As we have found in the past, the exporting companies, however, remain contingently liable for the unpaid duties until

⁹⁰ See Hindalco June 15, 2020 IQR at 74-79.

⁹¹ See GOI July 20, 2020 SQR at 63-71.

⁹² *Id.* at 71.

⁹³ The AAP has also been referenced as the Advance License Program (ALP). See, e.g., *Certain Corrosion-Resistant Steel Products from India: Final Affirmative Determination of the Countervailing Duty Investigation*, 81 FR 35323 (June 2, 2016), and accompanying IDM at 9.

⁹⁴ See GOI June 22, 2020 IQR at 7-11.

they have fulfilled their export requirement.⁹⁵ The quantities of imported materials and exported finished products are linked through standard input-output norms established by the GOI.⁹⁶ During the POI, Hindalco and MALCO reported using advance licenses to import certain materials duty free.⁹⁷

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.⁹⁸ 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.⁹⁹ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.¹⁰⁰ 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, remission, or drawback is countervailable.¹⁰¹

In *PET Film India AR 2005*, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the AAP/ALP during 2005.¹⁰² Commerce acknowledged that certain improvements to the AAP/ALP system were made. However, Commerce found that, based on the information submitted by the GOI and examined during previous reviews of that proceeding, and lacking information that the GOI had revised its laws or procedures governing this program since those earlier reviews, systemic issues continued to exist in the AAP/ALP system during that period of review.¹⁰³ Specifically, in the 2005 review, Commerce stated that it continued to find the AAP/ALP countervailable based on:

the GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. Specifically, we still have concerns with regard to several aspects of the ALP including: (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET Film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export

⁹⁵ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2017*, 84 FR 48105 (September 12, 2019) (*PET Film from India 2017*), and accompanying Preliminary Decision Memorandum (PDM) at 19-21, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 14463 (March 12, 2020).

⁹⁶ See GOI June 22, 2020 IQR at 7-11.

⁹⁷ See Hindalco June 15, 2020 IQR at 16-17; see also MALCO June 15, 2020 IQR at 17.

⁹⁸ See 19 CFR 351.519(a)(1)(ii).

⁹⁹ See *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India*), and accompanying IDM at "Duty Drawback."

¹⁰⁰ *Id.*

¹⁰¹ See 19 CFR 351.519(a)(4)(i)-(ii).

¹⁰² See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 73 FR 7708 (February 11, 2008) (*PET Film India AR 2005*), and accompanying IDM at Comment 3.

¹⁰³ *Id.*

requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of “deemed” exports.¹⁰⁴

Since *PET Film India AR 2005*, Commerce has in several other proceedings made determinations consistent with this treatment of the AAP/ALP.¹⁰⁵

In this investigation, record evidence shows¹⁰⁶ there has been no change to the AAP/ALP program and, therefore, we preliminarily find that the program confers a countervailable subsidy. First, we find that the program provides a financial contribution, as defined under section 771(5)(D)(ii) of the Act, as the GOI exempts the respondents from payment of import duties that would otherwise be due. Second, we find that this program is specific under section 771(5A)(B) of the Act, because it is contingent upon exportation. Third, we find that the GOI does not have in place, and does not apply, a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported product, making normal allowance for waste. Moreover, the GOI did not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts.¹⁰⁷ Thus, the entire amount of the import duty deferral or exemption provided to the respondents constitutes a benefit under section 771(5)(E) of the Act.

Pursuant to 19 CFR 351.524(c)(1), the exemption of import duties on raw material inputs normally provides a recurring benefit.¹⁰⁸ MALCO reported the benefits earned under this program on a transaction-specific basis.¹⁰⁹ In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we will attribute that subsidy to only that product or market. MALCO’s data show that the company used this program for export of subject merchandise. Therefore, we preliminarily determine that MALCO has received benefits tied to subject merchandise during the POI under this program. We divided the AAP/ALP benefits earned on exports of subject merchandise during the POI by MALCO’s POI sales value for exports of subject merchandise. On this basis, we preliminarily determine a countervailable subsidy rate of 2.10 *ad valorem* for MALCO.¹¹⁰

Hindalco reported having AAP/ALP licenses tied to the production and export of non-subject merchandise and submitted a copy of these licenses.¹¹¹ We reviewed Hindalco’s licenses and noted that the items to be exported under the licenses did not include subject merchandise.¹¹² We find that, at the point of bestowal, the GOI granted Hindalco the AAP/ALP licenses based on

¹⁰⁴ *Id.*

¹⁰⁵ See, e.g., *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) (*OCTG from India Final*), and accompanying IDM; see also *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 80 FR 19637 (April 13, 2015), and accompanying IDM.

¹⁰⁶ See GOI June 22, 2020 IQR at 7-20.

¹⁰⁷ See GOI July 20, 2020 SQR at 14-15.

¹⁰⁸ See *OCTG from India Final* IDM.

¹⁰⁹ See MALCO June 15, 2020 IQR at Exhibit 21.

¹¹⁰ See MALCO Analysis Memorandum.

¹¹¹ See Hindalco July 13, 2020 SQR at 4 and Exhibit SuppII-6.

¹¹² *Id.*

the production and export of non-subject merchandise and, therefore, the AAP/ALP licenses are tied to non-subject merchandise within the meaning of 19 CFR 351.525(b)(5). Consequently, we preliminarily determine that the benefits of the AAP are attributable to the specific exported products identified in the licenses, which do not include subject merchandise. As such, we preliminarily determine that exports of subject merchandise did not benefit under this program. This approach is consistent with Commerce's practice.¹¹³

2. Duty Drawback (DDB) Program

According to the GOI, the DDB program provides rebates for duty or tax chargeable on any imported or excisable materials used to manufacture exported goods.¹¹⁴ Specifically, the duties and tax "neutralized" under the program are the Customs and Central Excise Duties for inputs used to manufacture exported goods.¹¹⁵ The duty drawback is generally fixed as a percentage of the free-on-board (FOB) price of the exported product.¹¹⁶ Drawback rates are calculated based on averages known as the "All Industry Rates" or AIRs for a given product. In the absence of an AIR, GOI will calculate DDB on the actual duty.¹¹⁷ AIRs exist for the product at issue in this investigation.¹¹⁸

Import duty exemptions on inputs for exported products are not countervailable, as long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.¹¹⁹ 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, remission of drawback is countervailable.¹²² Commerce has determined, in numerous proceedings, that the DDB scheme does not apply an adequate system for determining the quantity of inputs used in production.¹²³ We continue to find that such a system is not in place.

¹¹³ See *OCTG from India* Final IDM at "Advance License Program/Advance Authorization Program."

¹¹⁴ See GOI June 15, 2020 IQR at 17-18.

¹¹⁵ *Id.* at 12.

¹¹⁶ *Id.* at 22-23.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 13-14.

¹¹⁹ See 19 CFR 351.519(a)(1)(ii).

¹²⁰ See *Shrimp from India* IDM at "Duty Drawback."

¹²¹ *Id.*

¹²² See 19 CFR 351.519(a)(4)(i)-(ii).

¹²³ See, e.g., *Shrimp from India* IDM at "Duty Drawback"; see also *Certain Quartz Surface Products Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, In Part*, 85 FR 25398 (May 1, 2020) (*Quartz from China*), and accompanying IDM at Comment 6 (noting that "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."); and *Polyester Textured Yarn from India: Final Affirmative Countervailing Duty Determination*, 84 FR 63848 (November 19, 2019) (*Yarn from India*), and accompanying IDM at Comment 3 (finding the DDB program countervailable because "the GOI's response lacks the documentation to support a finding that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products, and in what amounts.").

Consistent with previous proceedings, such as *Shrimp from India*, the record of this investigation indicates that the GOI continues to employ universal rates based on aggregate data collected from various sources, rather than attempting to determine a recipient's actual consumption, production, and waste in granting a drawback amount. This fixed, "one size fits all" approach is elsewhere made clear on the record of this investigation by the GOI. For example, the GOI stated:

{the GOI} has been appointing a Drawback Committee to review and recommend AIRs of Duty Drawback on an annual basis. These AIRs are worked out by the Committee based on factors such as average prices of inputs, their import-indigenous ratio, duty rates, average FOB value of export goods, *etc.* as provided by the Export Promotion Councils (EPCs), Trade and Industry Associations, *etc.* For certain export items, the committee provides a residuary rate which are broad assessment of unrebated incidence (direct and embedded) of the duties. These rates are notified by the Government after the acceptance of recommendations of the committee.¹²⁴

The GOI further explained that, in setting the applicable drawback rate:

The Committee undertakes analysis of data which includes the data on procurement process of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products, submitted on representative basis by EPCs/commodity boards/trade bodies.¹²⁵

In a supplemental questionnaire, we asked for additional information to determine whether the GOI's input tracking system was adequate. We asked:

Please describe, if any, the specific data analysis and verification process that occurred with regard to (a) the mandatory respondents and (b) producers of aluminum sheet products generally.

Report the number of (a) audits and (b) site visits that took place at the facilities of producers of aluminum sheet during the POI. In your response, detail the data that were gathered from the visits and provide a copy of all documents/reports that were generated based on the visits. If no audits or site visits occurred during the POI, then provide the requested information for the most recent audits and site visits.

The entirety of the GOI's response to these questions was: "The All Industry Rate (AIR) is residuary rate therefore data analysis and verification process, site visit and audit are not required during the {POI}."¹²⁶ The GOI provided no explanation of the data analysis conducted for the derivation of the DDB rates applicable to this investigation. While the GOI maintains that its

¹²⁴ See GOI July 20, 2020 SQR at 17.

¹²⁵ *Id.* at 22.

¹²⁶ *Id.* at 19.

Drawback Rules provide for a verification procedure, the GOI provided no record evidence that it has conducted such verifications during, or prior to, the POI.

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.¹²⁷ For the reasons stated, we disagree with the GOI's claims that it has a reasonable and effective system in place to track inputs consumed in production.

For the reasons stated, we preliminarily determine that a financial contribution, pursuant to section 771(5)(D)(ii) of the Act, is provided under the DDB program because rebated duties represent revenue forgone by the GOI. Because the program is only available to exporters, we preliminarily determine that the DDB program is specific under section 771(5A)(B) of the Act. As explained above, under 19 CFR 351.519(a)(4), in the absence of an adequate drawback system, the entire amount of customs and excise duties and service taxes rebated during the POI constitutes a benefit. Pursuant to 19 CFR 351.519(b)(1), we find that benefits from the DDB program are conferred on the date of exportation of the shipments for which the pertinent drawbacks were earned.¹²⁸ We calculated the benefit on an as-earned basis. Drawbacks under the program are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, it is at the time of exportation that recipients know the exact amount of the benefit (*i.e.*, the value of the drawback).

Hindalco and Utkal reported the benefits earned on exports to the United States under this program on a transaction-specific basis.¹²⁹ In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we will attribute that subsidy to only that product or market. For Hindalco, we divided the DDB rebates earned on exports to the United States during the POI by Hindalco's POI exports to the United States. Utkal's data show that the company only used this program for exports of non-subject merchandise.¹³⁰ Therefore, we preliminarily determine that Utkal has not received benefits tied to subject merchandise during the POI under this program.

MALCO reported the benefits earned on exports of subject merchandise to the United States under this program on a transaction-specific basis.¹³¹ In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we will attribute that subsidy to only that product or market. For MALCO, we divided the DDB rebates earned on exports of subject merchandise to the United States during the POI by MALCO's POI exports of subject merchandise to the United States.

¹²⁷ 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), and accompanying IDM at Comment 4.

¹²⁸ See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Cut-To-Length Carbon Quality Steel Plate from India*, 64 FR 73131, 73134, 73140 (December 29, 1999).

¹²⁹ See Hindalco June 15, 2020 IQR at Exhibit DDB-3 and DDB-4.

¹³⁰ *Id.* at Exhibit DDB-4.

¹³¹ See MALCO June 15, 2020 IQR at Exhibit 28.

On this basis, we preliminarily determine subsidy rates of 1.14 percent and 0.30 percent *ad valorem*, for Hindalco,¹³² and MALCO,¹³³ respectively.

3. *Export Promotion of Capital Goods Scheme (EPCGS)*

The EPCGS provides for a reduction or exemption of customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to six times the value of the capital goods within a period of six years.¹³⁴ Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, plus a penalty interest.¹³⁵

Commerce has previously determined that import duty reductions or exemptions provided under the EPCGS program are countervailable export subsidies because: (1) the scheme provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act; (2) recipients receive two different benefits under section 771(5)(E) of the Act; and (3) the program is contingent upon export performance, and is specific under section 771(5A)(A) and (B) of the Act.¹³⁶ The evidence on the record with respect to this program is consistent with these prior proceedings; accordingly, we preliminarily determine that this program provides a financial contribution, pursuant to section 771(5)(D)(ii) of the Act, because reduced duties represent revenue forgone by the GOI, and that the EPCGS program is specific under section 771(5A)(B) of the Act because it is contingent on export performance.¹³⁷

Under the EPCGS, the exempted import duties would have to be paid to the GOI if the accompanying export obligation is not met. Commerce's practice is to treat any balance on an unpaid liability that may be waived in the future as an interest-free contingent-liability loan pursuant to 19 CFR 351.505(d)(1).¹³⁸ Because the unpaid duties constitute a liability contingent on subsequent events, we treat the amount of unpaid duty liabilities as interest-free contingent-liability loans. We find the amount a respondent would have paid during the POI, had it borrowed the full amount of the duty exemption at the time of importation, to constitute the first

¹³² See Hindalco Analysis Memorandum.

¹³³ See MALCO Analysis Memorandum.

¹³⁴ See GOI June 15, 2020 IQR at 37.

¹³⁵ *Id.*

¹³⁶ See, e.g., *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film Final Determination*), and accompanying IDM at "EPCGS"; see also *Shrimp from India* IDM at 14.

¹³⁷ See *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016) (*Steel Flanges from India Prelim*), and accompanying PDM at 13, unchanged in *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Steel Flanges from India Final*).

¹³⁸ See *Glycine from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 44859 (September 4, 2018), and accompanying PDM at "Export Promotion of Capital Goods Scheme," unchanged in *Countervailing Duty Investigation of Glycine from India: Affirmative Final Determination*, 84 FR 18482 (May 1, 2019); see also *Steel Flanges from India Prelim* PDM at 13, unchanged in *Steel Flanges from India Final*.

benefit under the EPCGS. The second benefit arises based on the amount of duty waived by the GOI on imports of capital equipment covered by the EPCGS licenses for which the export requirement has been met. With regard to licenses for which the GOI and a respondent acknowledge that the company has completed the export obligations, we treat the import duty savings as a grant received in the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2).

As noted above, import duty exemptions under this program are approved for the purchase of capital equipment. The *CVD Preamble* states that, if a government provides an import duty exemption tied to major equipment purchases, “it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring ...”¹³⁹ In accordance with 19 CFR 351.524(c)(2)(iii), and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.

Hindalco, Utkal, and MALCO submitted copies of their respective EPCGS licenses.¹⁴⁰ Based on the information and the documentation submitted by Hindalco and MALCO, we cannot reliably determine that the EPCGS license is tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5), because they did not identify the particular export good associated with the license, or state whether the merchandise could have been used in the production of subject merchandise. As such, we preliminarily find that Hindalco’s and MALCO’s EPCGS licenses benefited all of the companies’ respective exports.¹⁴¹ However, based on the information and the documentation submitted by Utkal, we can reliably determine that, at the point of bestowal, Utkal’s licenses were issued for non-subject merchandise.¹⁴² We preliminarily find these licenses to be tied to the production or sale of non-subject merchandise within the meaning of 19 CFR 351.525(b)(5). We, therefore, are not including these licenses within the calculation of the EPCGS subsidy rate for Hindalco.

For their licenses, Hindalco and MALCO reported that they have not fulfilled the export obligation,¹⁴³ *i.e.*, Hindalco and MALCO received deferrals from paying import duties for the imports of capital goods. As noted above, import duty exemptions that Hindalco and MALCO received on the imports of capital equipment for which they have not yet met export obligations may have to be repaid to the GOI if the obligations under the licenses are not met. Consistent with Commerce’s practice and prior determinations, we are treating the unpaid import duty liabilities as interest-free loans.¹⁴⁴

The amount of unpaid duty liabilities to be treated as an interest-free loan is the amount of import duty exemption for which the respondent applied, but which had not been officially waived by the GOI, as of the end of the POI. Accordingly, we find the benefit to be the interest

¹³⁹ See *CVD Preamble*, 63 FR at 65393.

¹⁴⁰ See Hindalco June 22, 2020 IQR at Exhibits EPCG-1 and EPCG-2; *see also* MALCO June 15, 2020 IQR at Exhibits 32(a)-32(c).

¹⁴¹ See Hindalco June 22, 2020 IQR at Exhibits EPCG-1 and EPCG-2; *see also* MALCO June 15, 2020 IQR at Exhibits 32(a)-32(c).

¹⁴² See Hindalco July 13, 2020 SQR at Exhibit SUPPII-8.

¹⁴³ *Id.*

¹⁴⁴ See, e.g., *Steel Flanges from India Prelim PDM* at 15, unchanged in *Steel Flanges from India Final*.

that the respondent would have paid during the POI, had it borrowed the full amount of the duty exemption at the time of importation.

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

To calculate the benefit received from formal waivers of import duties on capital equipment imports, we considered the total amount of duties waived, *i.e.*, the calculated duties payable less the duties actually paid in the year, net of required application fees, in accordance with section 771(6) of the Act. Additionally, the respondents indicated that several duties applied to their purchases of capital goods were “countervailing duties” applied under Indian law to imported goods in order to counterbalance excise duty and state taxes charged on domestic sales.¹⁴⁵ These duties did not confer a benefit because they are refundable to Hindalco and MALCO as Central Value-Added Tax (CENVAT) credits, independent of the EPCGS program.¹⁴⁶ We consider the amount of duties waived, less the “CENVATable”¹⁴⁷ duties and the application fees, to be the benefit, and treated these amounts as grants, pursuant to 19 CFR 351.504.

Further, we preliminarily determine the year of receipt of the benefit to be the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2).¹⁴⁸ We performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), for the total value of duties waived, for the year in which the GOI granted the respondents the import duty waiver during the AUL period. We found that, for certain years, uncollected import duties were more than 0.5 percent of total export sales for each year. Therefore, the annual benefit for these years was allocated over the AUL period to determine the benefit attributable to the POI. Also, in certain years, the amount of uncollected import duties that related to the purchase of capital goods during the POI was less than 0.5 percent of total export sales; therefore, these benefits were expensed to the year of receipt.

On this basis, we preliminarily determine subsidy rates of 0.54 percent and 0.20 percent *ad valorem* for Hindalco¹⁴⁹ and MALCO,¹⁵⁰ respectively.

¹⁴⁵ See Hindalco June 22, 2020 IQR at Exhibits EPCG-1 and EPCG-2; *see also* MALCO June 15, 2020 IQR at Exhibits 32(a)-32(c).

¹⁴⁶ See *Carbon and Alloy Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination*, 85 FR 8828 (February 18, 2020) (*Steel Threaded Rod from India*), and accompanying IDM at 15.

¹⁴⁷ “CENVAT refers to one of India’s value-added tax systems, in which certain duties, *e.g.*, the “Excise Duty,” are refundable. See Hindalco June 22, 2020 IQR at 11.

¹⁴⁸ See *PET Film Final Determination* IDM at Comment 5.

¹⁴⁹ See Hindalco Analysis Memorandum.

¹⁵⁰ See MALCO Analysis Memorandum.

4. *Merchandise Export from India Scheme (MEIS)*

The GOI explained that the MEIS, as detailed in the Foreign Trade Policy (FTP) 2015-2020, was created to promote the manufacture and export of certain goods to specified markets.¹⁵¹ Under this program, the GOI issues a scrip (duty credit) worth either two, three, or five percent of FOB values of certain exports.¹⁵² To receive the scrip, a recipient must file an electronic application and supporting shipping documentation for each port of export with the Directorate General of Foreign Trade (DGFT).¹⁵³ After a recipient receives and registers the scrip, it may either use it for the payment of future customs duties for importing goods or transfer it to another company.

We preliminarily determine that this program is specific within the meaning of sections 771(5A)(A) and (B) of the Act, because eligibility to receive the scrips is contingent upon export.¹⁵⁴ This program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, because the scrips provide exemptions for paying duties associated with the import of goods, which represents revenue forgone by the GOI.

Hindalco and MALCO both reported that they submitted applications and received approval under the MEIS program.¹⁵⁵ Hindalco and MALCO also indicated that they met the requirements of this program and obtained the requisite scrips from the DGFT.¹⁵⁶ MALCO also reported that it primarily sold its scrips and did not use them for the importation of inputs.¹⁵⁷ We preliminarily determine that this program provides a recurring benefit because the scrips provided under this program are not tied to capital assets. Furthermore, recipients can expect to receive additional subsidies under this same program on an ongoing basis from year to year, within the meaning of 19 CFR 351.524(c)(2)(i).

We calculated the benefit to be the total value of scrips granted (*i.e.*, the MEIS license value) during the POI.¹⁵⁸ Normally, in cases where the benefits are granted based on a percentage value of a shipment, Commerce calculates the benefit as having been received as of the date of export;¹⁵⁹ however, because the MEIS benefit, *i.e.*, the scrip, amount is not automatic and is not known to the exporter until well after the exports are made, the MEIS licenses, which contain the date of validity and the duty exemption amount as issued by the GOI, are the best method to determine and account for when the benefit is received.¹⁶⁰ For Hindalco, to determine the benefit from this program, we summed Hindalco's reported scrip amounts. We divided this sum by Hindalco's total export sales. For MALCO, to determine the benefit from this program, we summed MALCO's reported scrip amounts of exports of subject merchandise, less the application fees. We divided this sum by MALCO's total export sales of subject merchandise.

¹⁵¹ See GOI June 15, 2020 IQR at 53-65.

¹⁵² *Id.* at 56.

¹⁵³ *Id.* at 61.

¹⁵⁴ *Id.*

¹⁵⁵ See Hindalco June 15, 2020 IQR at 33-38; *see also* MALCO June 15, 2020 IQR at 50-56.

¹⁵⁶ *Id.*

¹⁵⁷ See MALCO June 15, 2020 IQR at 53.

¹⁵⁸ See Hindalco Analysis Memorandum; *see also* MALCO Analysis Memorandum.

¹⁵⁹ See 19 CFR 351.519(b)(1).

¹⁶⁰ See, e.g., *Steel Threaded Rod from India* IDM at 17; *see also Cold-Drawn Mechanical Tubing* IDM at 22-23.

On this basis, we preliminarily determine subsidy rates of 1.65 percent and 1.91 percent *ad valorem*, for Hindalco¹⁶¹ and MALCO¹⁶² respectively.

5. EOU Scheme – Reimbursement of CST Paid on Goods Manufactured in India

MALCO reports receiving reimbursements for the CST it pays on capital goods and raw materials procured domestically during the AUL period.¹⁶³

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we determine that the reimbursement of CST on capital goods through this program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act. We also find, on the basis of AFA, that the program is specific within the meaning of sections 771(5A)(A) and (B) of the Act. This EOU program confers benefits in the amount of CST not collected, in accordance with section 771(5)(E) of the Act. Specifically, the benefit associated with domestically-purchased capital goods is the amount of CST that was reimbursed on those purchases by MALCO during that period.

Although MALCO’s benefits under the program were received prior to the POI, because the tax exemption related to the acquisition of capital goods, we consider the benefits from such duty exemptions as non-recurring.¹⁶⁴ To calculate the benefit, we summed the amount of exemptions MALCO received under the program in each year of the AUL period. We then applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2), to the amount of annual exemptions. Specifically, we divided the amount of exemption MALCO received in a given year by its total export sales. For annual exemption amounts that were less than 0.5 percent of total export sales, we expensed the exemption in the year of receipt.

For annual exemption amounts that were greater than 0.5 percent of MALCO’s total export sales, we used the standard grant allocation methodology, as described in 19 CFR 351.524(d)(1), to determine the amount of the exemption attributable to the POI. To calculate the net subsidy rate, we divided the sum of the exemption amounts allocated to the POI and the exemption amounts expensed to the POI by MALCO’s total export sales for the POI. On this basis, we calculated a net subsidy rate of 0.04 percent for MALCO.

6. Provision of Coal for LTAR

Hindalco, and its cross-owned affiliate Utkal, reported purchases of coal from state-owned CIL.¹⁶⁵ Additionally, Hindalco, Utkal, and MALCO reported purchasing coal sourced from unknown producers.¹⁶⁶

¹⁶¹ See Hindalco Analysis Memorandum.

¹⁶² See MALCO Analysis Memorandum.

¹⁶³ See MALCO’s June 15, 2020 IQR at 65.

¹⁶⁴ See 19 CFR 351.524(c).

¹⁶⁵ See Hindalco July 22, 2020 SQR at Exhibits SuppIII-20 and SuppIII-22.

¹⁶⁶ *Id.*; see also MALCO June 15, 2020 IQR at Exhibit 50.

We preliminarily find that CIL is a public body. To determine if an entity constitutes a public body, and therefore can provide a financial contribution, Commerce considers whether the government exercises meaningful control over the entity based on the totality of the circumstances.¹⁶⁷ The GOI owns 69.05 percent of CIL, and CIL is identified as “a Central Public Sector Enterprise ... responsible for production and marketing of planned quantity of coal and coal products efficiently and economically.”¹⁶⁸ Through an MOU, the GOI and CIL set annual targets for production and profit.¹⁶⁹ The company has a “Government Director” on its board who is “a Director of the company and representative of the Government.”¹⁷⁰ This director must “Safeguard the interest of the Government of India in the company” and “{t}ake formal instructions from the Government on critical issues and ... voice them in the meetings of the Board of the company.”¹⁷¹ Beyond the individual that is explicitly identified as a “Government Director,” multiple other board members have held, or currently do hold, posts in government ministries.¹⁷² Taken together, the record supports a determination that CIL is a public body. Accordingly, we preliminarily find that CIL is an “authority” within the meaning of section 771(5)(B) of the Act and that coal purchases from CIL represent financial contributions within the meaning of section 771(5)(D)(iii) of the Act.

As discussed above in the section “Use of Facts Otherwise Available,” based on AFA, we find that the program is specific within the meaning of sections 771(5A)(B) and 771(5A)(D) of the Act, respectively.

Under 19 CFR 351.511(a)(2), Commerce determines 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 of the good within the country under investigation (*e.g.*, actual sales, actual imports, or competitively-run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in the regulations, the preferred benchmark in the hierarchy is an observed market price for the good at issue from actual transactions within the country under investigation.

As discussed above under “Coal Benchmark” section, because we find that the Indian market for coal was distorted by government involvement, we are selecting external benchmark prices, *i.e.*, tier two or world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the *CVD Preamble*.¹⁷³ Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, we will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and custom duties.

¹⁶⁷ See, *e.g.*, *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016), and accompanying IDM at Comment 1.

¹⁶⁸ GOI June 25, 2020 IQR at 8.

¹⁶⁹ *Id.* at Exhibit 5.

¹⁷⁰ *Id.* at Exhibit 4.

¹⁷¹ *Id.*

¹⁷² *Id.* at Exhibit 7.

¹⁷³ See *CVD Preamble*, 63 FR at 65401.

Accordingly, to derive the benchmark prices we included, as appropriate, any ocean freight and inland freight that would be incurred to deliver the inputs to the respondents' production facilities. We then added to the benchmark prices the appropriate custom duties applicable to imports of coal, and the appropriate GST. We compared these monthly benchmark prices to the purchase prices that the respondents reported for individual domestic transactions, including GST. We determined the benefit to be the difference between the benchmark prices and the prices reported by the respondents. We divided the total benefits received by the appropriate sales denominators, as described in the "Subsidies Valuation" section above.

On this basis, we preliminarily determined a countervailable subsidy rate of 30.27 percent *ad valorem* for Hindalco.¹⁷⁴ In addition, we preliminarily determine that this program did not confer a measurable benefit for MALCO.¹⁷⁵

7. State Government of Maharashtra (SGOM) Subsidy Programs

a. Electricity Duty Exemption

The GOI stated that SGOM provides a Package Scheme of Incentives (PSI), which encourages investments in new units and/or the expansion of existing production capacity located in specified underdeveloped areas in accordance with the terms and conditions specified by the SGOM.¹⁷⁶ The PSI 2019 classifies regions within Maharashtra according to their level of development.¹⁷⁷ New Units in Group C, D, and D+ areas, No-Industry District(s), Aspirational Districts and Naxalism affected Area are eligible to be exempted from payment of electricity duty.¹⁷⁸ We preliminarily determine that this program provides a financial contribution, in the form of revenue forgone under section 771(5)(D)(ii) of the Act. Further, we preliminarily determine this program is regionally-specific under section 771(5A)(D)(iv) of the Act because it is limited to enterprises in a designated geographical region within the jurisdiction of the administering authority (*i.e.*, only "C, D, and D+" classified areas within Maharashtra).

Hindalco reported that its manufacturing unit in Mouda, Maharashtra, located in Nagpur district of Vidharba region, was exempted from the payment of electricity duties during the POI,¹⁷⁹ thus conferring a benefit pursuant to section 771(5)(E) of the Act. To calculate the subsidy rate, we divided the benefit by the total sales during the POI. On this basis, we preliminarily determined a countervailable subsidy rate of 0.01 percent *ad valorem* for Hindalco.¹⁸⁰

¹⁷⁴ See Hindalco Analysis Memorandum.

¹⁷⁵ See MALCO Analysis Memorandum.

¹⁷⁶ See GOI July 20, 2020 SQR at 49-57.

¹⁷⁷ *Id.* at Exhibit 23.

¹⁷⁸ *Id.* at Exhibit 22 (part 4) and Exhibit 23.

¹⁷⁹ See Hindalco June 15, 2020 IQR at 61-66.

¹⁸⁰ See Hindalco Analysis Memorandum.

8. SGOG Subsidy Programs

a. SGOG Water for LTAR

Hindalco reported that it procured water from the Gujarat Industrial Development Corporation (GIDC) for its Dahej plant, and it provided water purchase information.¹⁸¹ For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding this program, in part, on AFA. Therefore, we determine that these water purchases confer a financial contribution as a provision of a good under section 771(5)(D)(ii) of the Act and are specific under section 771(5A)(D) of the Act.

With respect to our calculation of a benefit Hindalco, as facts available, we relied on the record information to establish the rate that a user would pay in the absence of the program. The record demonstrates that water was provided to customers outside of industrial estate at twice the rate.¹⁸² Accordingly, we find that this program confers a benefit, *i.e.*, the 50 percent discounted rate, within the meaning of section 771(5)(E) of the Act.

To calculate the benefit to Hindalco, we compared the actual amount it paid for water during the POI at its Dahej Plant, which is located in a GIDC industrial estate, to the amount it would have paid were it not located within the estate. We then divided that difference by Hindalco’s total sales during the POI.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.07 percent *ad valorem* for Hindalco.¹⁸³

b. SGOG Land for LTAR

Hindalco reported that it was provided land in Gujarat through the GIDC, which is an agency of the SGOG.¹⁸⁴ Specifically, Hindalco acquired land through an offer-cum-allotment agreement, which has pre-determined industrial/residential land allotment rates that are approved by the GIDC board.¹⁸⁵

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding this program, in part, on AFA. Therefore, we determine that these land purchases confer a financial contribution as a provision of a good under section 771(5)(D)(ii) of the Act, and are specific under section 771(5A)(D) of the Act.

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

¹⁸¹ See Hindalco June 15, 2020 IQR at 17 and Exhibit WATER-1.

¹⁸² *Id.* at 17 and Exhibit WATER-1.

¹⁸³ See Hindalco Analysis Memorandum.

¹⁸⁴ See Hindalco June 22, 2020 IQR at 25-27.

¹⁸⁵ *Id.* at Exhibits Land-1 and Land-2.

prices to determine whether the government provided goods or services for LTAR. These potential benchmarks are listed in hierarchical order by preference as noted in the “Land Benchmark” section. Additionally, it is Commerce’s preference to use a transaction-specific (tier-one) benchmark derived from the country under investigation. Therefore, we relied on actual transaction prices between private entities in India.¹⁸⁶

To calculate the benefit, we compared the private land transaction (tier-one) benchmark with the prices at which Hindalco purchased land from the GIDC. We conducted the “0.5 percent test,” as instructed by 19 CFR 351.524(b)(2), for the relevant year of purchase from the GIDC by dividing the total unallocated benefit for the tracts of land for the corresponding year by the appropriate sales denominator. We found that the benefits were greater than 0.5 percent of the relevant sales for the particular year; therefore, we allocated the benefit over the AUL period to determine the amount attributable to the POI.

On this basis, we preliminarily determine the countervailable subsidy provided to Hindalco under this program to be 0.04 percent *ad valorem*.¹⁸⁷

c. Electricity Duty Exemption

Under the Gujarat Electricity Duty Exemption Scheme, which is established by the Gujarat Electricity Duty Act of 1958, an entity that establishes a new or additional unit of an industrial undertaking in Gujarat is entitled to an exemption from the electricity duty under the program for energy consumed for industrial purposes.¹⁸⁸ This exemption is available for up to five years after the start of the industrial undertaking.¹⁸⁹ Hindalco has reported that its plant in Dahej has availed itself of these electricity duty exemptions.¹⁹⁰

We preliminarily determine that this program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, because the local electricity authority provides an exemption from an electricity duty, which represents revenue forgone by the GOI. Additionally, for the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding specificity for this program on AFA, and finding the program specific under section 771(5A)(D) of the Act.

We also preliminarily find this program confers a tax benefit, in accordance with 19 CFR 351.510(a)(1). To calculate the benefit, we divided the benefit by the total sales during the POI. On this basis, we preliminarily determined a countervailable subsidy rate of 0.01 percent *ad valorem* for Hindalco.¹⁹¹

¹⁸⁶ See Petitioners July 8, 2020 Benchmark Submission at Exhibit 2A.

¹⁸⁷ See Hindalco Analysis Memorandum.

¹⁸⁸ See GOI July 20, 2020 SQR at Exhibit 19.

¹⁸⁹ *Id.*

¹⁹⁰ See Hindalco June 29, 2020 SQR at 7 and Exhibit Supp-11.

¹⁹¹ See Hindalco Analysis Memorandum.

9. SGUP Subsidy Programs

a. Electricity Duty Exemption

Hindalco reported that it received exemption at applicable rates of electricity duty payable for its unit in Renukoot, Uttar Pradesh.¹⁹² Under this program, the exemption in electricity duty is allowed for all new units for a period of 10 years and, as per para 4.5 of the Uttar Pradesh Industrial and Service Sector Policy 2004, for the units which are declared as “pioneer units” for a period of 15 years.¹⁹³

We preliminarily determine that this program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, because the local electricity authority provides an exemption from an electricity duty, which represents revenue forgone by the GOI. As discussed under the section “Use of Facts Otherwise Available and Adverse Inferences,” as AFA, we preliminarily determine that this program to be specific, within the meaning of sections 771(5)(D) and 771(5A)(D) of the Act, respectively.

We relied on Hindalco’s submissions to calculate a benefit under this program. Hindalco reported that one of its units was exempted from the payment of electricity duty during the POI, thus conferring a benefit pursuant to section 771(5)(E) of the Act.¹⁹⁴ To calculate the subsidy rate, we divided the benefit by Hindalco’s total sales during the POI. On this basis, we preliminarily determine a countervailable subsidy rate of 0.05 percent *ad valorem* for Hindalco.¹⁹⁵

10. Other Subsidies

a. Electricity Duty Exemption in the State of Madhya Pradesh

The Industrial Promotion Policy (IPP) of the State Government of Madhya Pradesh (SGOMP) promotes growth through sustainable industrialization, increased employment, skill enhancements, balanced regional development, and ease of business and environmentally-friendly practices in enterprise development.¹⁹⁶ Under this program, certain captive power plants can receive exemptions from electricity duty from the SGOMP.¹⁹⁷ Hindalco reported that it is exempted from paying electricity duty and cess taxes for a period of ten years.¹⁹⁸ According to Hindalco, the electricity duty rate otherwise due would be 12 percent tariff per unit.¹⁹⁹ The cess exemption rate represents a value of 15 paise (*i.e.*, Rs. 0.15) per unit.²⁰⁰

¹⁹² See Hindalco June 15, 2020 IQR at 74-79.

¹⁹³ See GOI July 20, 2020 SQR at 64.

¹⁹⁴ *Id.*

¹⁹⁵ See Hindalco Analysis Memorandum.

¹⁹⁶ See GOI July 20, 2020 SQR at 57 and Exhibit-25.

¹⁹⁷ *Id.*

¹⁹⁸ See Hindalco June 15, 2020 IQR at 79-84.

¹⁹⁹ See Hindalco June 29, 2020 SQR at 6.

²⁰⁰ *Id.*

We preliminarily find that this program provides a financial contribution in the form of revenue forgone by the SGOMP pursuant to section 771(5)(D)(ii) of the Act. We preliminarily find this program is *de jure* specific pursuant to section 771(5A)(D)(i) of the Act because the program is expressly limited to captive power plants with the industrial projects which they complete an investment of permanent capital of more than 25 crore, and, in case of an Industrial Group, when they complete an investment of permanent capital of more than 20,000 crore.²⁰¹

We also preliminarily find this program confers a tax benefit, in accordance with 19 CFR 351.510(a)(1). To calculate the benefit for the electricity duty and cess tax exemptions, we divided the total amount of the exemptions Hindalco received during the POI by its total sales during the POI. On this basis, we determined a countervailable subsidy rate of 1.06 percent *ad valorem* for Hindalco.²⁰²

B. Programs Preliminarily Determined Not to Have Conferred a Measurable Benefit During the POI

We have preliminarily determined that the following programs did not confer a measurable benefit during the POI. Therefore, we do not reach a preliminary determination as to whether there is financial contribution or specificity for these programs.

1. Renewable Energy Certificates (RECs) Program²⁰³
2. Other Subsidies
 - a. Electric Duty Exemption in the State of Jharkhand²⁰⁴

C. Programs Preliminarily Determined Not to Be Used During the POI

We preliminarily determine that Hindalco and MALCO did not apply for benefits during the POI under the programs listed below:

GOI Programs:

1. Duty Free Import Authorization Scheme
2. Status Holders Incentive Script Scheme
3. Incremental Exports Incentive Scheme
4. Special Economic Zone (SEZ) Programs
 - a. Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material
 - b. Exemption from Payment of CST on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
 - c. Exemption from Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ

²⁰¹ See Hindalco June 15, 2020 IQR at 80.

²⁰² See Hindalco Analysis Memorandum.

²⁰³ *Id.* (reported used but demonstrated no measurable benefit).

²⁰⁴ *Id.* (reported used but demonstrated no measurable benefit).

- d. Exemption from Electricity Duty and Cess on the Sale and Supply of Electricity to an SEZ Unit
- e. Unit SEZ Income Tax Exemption Scheme (10A)
- f. Discounted Land Fees in an SEZ
- 5. EOU Scheme
 - a. Duty-Free Imports of Goods, Including Capital Goods and Raw Materials
 - b. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured through a Domestic Tariff Area
 - c. Duty-Drawback on Furnace Oil Procured from Domestic Companies
- 6. Market Access Initiative
- 7. Market Development Assistance Program
- 8. GOI Loan Guarantees
- 9. Income Tax Deductions for Research and Development Expenses

State Programs:

- 10. State and Union Territory Sales Tax Incentive
- 11. SGOM Programs
 - a. Industrial Promotion Subsidy/Sales Tax Program
 - b. Interest Subsidy under the SGOM Package Scheme of Incentives
 - c. Exemption of Stamp Duty
 - d. Incentives to Strengthen Micro to Large-Scale Industries
 - e. Subsidies for Mega Projects under the Package Scheme of Incentives
- 12. SGOG Subsidy Programs
 - a. SGOG Industrial Policy 2009
- 13. SGUP Subsidy Programs
 - a. Investment Promotion Scheme
 - b. Special Assistance for Mega Projects
 - c. Stamp Duty Exemption
- 14. State Government of Chhattisgarh (SGOC) Subsidy Programs
 - a. Stamp Duty Exemption
 - b. Exemption of Entry Tax
- 15. State Government of Odisha (SGOO) Subsidy Programs
 - a. SGOO Industrial Policy 2015

X. CONCLUSION

We recommend that you approve the preliminary findings described above.



Agree



Disagree

8/7/2020

X



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