



C-533-878
Administrative Review
POR: 01/23/2018-12/31/2018
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August 20, 2021

MEMORANDUM TO: Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2018 Administrative Review of the Countervailing Duty Order on
Stainless Steel Flanges from India

I. SUMMARY

We analyzed the comments filed by interested parties in the 2018 administrative review of the countervailing duty (CVD) *Order*¹ on stainless steel flanges from India. As a result of our analysis, we made no changes to the calculations from the *Preliminary Results*.²

We recommend that you approve the positions described in the “Discussion of Issues” section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from interested parties:

- Comment 1: Whether Commerce Should Apply Total Adverse Facts Available (AFA) to Kisaan
- Comment 2: Whether Commerce Should Countervail the Provision of Stainless Steel, Billet, and Bar by Steel Authority of India Ltd. (SAIL) for Less Than Adequate Renumeration (LTAR) Program for Kisaan
- Comment 3: Whether Commerce Should Countervail the Advance Authorization Program (AAP)/Advance License Program (ALP) Scheme for Chandan

¹ See *Stainless Steel Flanges from India: Countervailing Duty Order*, 83 FR 50336 (October 5, 2018) (*Order*).

² See *Stainless Steel Flanges from India: Preliminary Results of Countervailing Duty Administrative Review; 2018* 86 FR 11231 (February 24, 2021) (*Preliminary Results*), and a accompanying Preliminary Decision Memorandum (PDM).



II. BACKGROUND

On February 24, 2021, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review.³ The period of review (POR) is January 23, 2018, through December 31, 2018.

On March 26, 2021, we received a case brief on behalf of the Coalition of American Flange Producers (the petitioner).⁴ On April 7, 2021, we received rebuttal briefs on behalf of Chandan Steel Limited, India (Chandan)⁵ and Kisaan Die Tech Pvt. Ltd. (Kisaan), the two mandatory respondents.⁶

On April 28, 2021, the petitioner requested to submit NFI to the record.⁷ We subsequently granted the petitioner's request. We also invited interested parties to file NFI to rebut, clarify, or correct the petitioner's submission.⁸ We received no comments on the NFI submitted by the petitioner.

On June 2, 2021, we extended the deadline for these final results.⁹ The deadline for the final results of this review is now August 20, 2021.

III. SCOPE OF THE ORDER

The scope of the *Order* covers certain forged stainless steel flanges, whether unfinished, semi-finished, or finished (certain forged stainless steel flanges). Certain forged stainless steel flanges are generally manufactured to, but not limited to, the material specification of ASTM/ASME A/SA182 or comparable domestic or foreign specifications. Certain forged stainless steel flanges are made in various grades such as, but not limited to, 304, 304L, 316, and 316L (or combinations thereof). The term "stainless steel" used in this scope refers to an alloy steel containing, by actual weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

Unfinished stainless steel flanges possess the approximate shape of finished stainless steel flanges and have not yet been machined to final specification after the initial forging or like operations. These machining processes may include, but are not limited to, boring, facing, spot

³ *Id.*

⁴ See Petitioner's Letter, "Case Brief," dated March 26, 2021 (Petitioner Case Brief).

⁵ Chandan submitted a rebuttal brief on April 7, 2021, but Commerce found that this submission contained new factual information (NFI). Although we rejected the NFI, we permitted Chandan to refile its brief with the NFI redacted. See Chandan's Letter, "Resubmission of Rebuttal Brief dated 7th April 2021," dated April 26, 2021 (Chandan Rebuttal Brief).

⁶ See Kisaan's Letter, "Rebuttal to Petitioners Pre-Preliminary Comment," dated April 7, 2021 (Kisaan Rebuttal Brief). We note that, while the title of this letter indicates Kisaan is submitting comments to rebut the petitioner's pre-preliminary comments, the letter in fact contains Kisaan's rebuttal brief.

⁷ See Petitioner's Letter, "Request to Submit New Factual Information," dated April 28, 2021 (Petitioner April 28, 2020 NFI Request).

⁸ See Memoranda, "Permitting Petitioner's Request to File New Factual Information" and "Clarification of Request to File New Factual Information" dated June 11, 2021 (collectively, NFI Memoranda).

⁹ See Memorandum, "Stainless Steel Flanges from India: Extension of Deadline for Final Results of Countervailing Duty Administrative Review, 2018," dated June 2, 2021.

facing, drilling, tapering, threading, beveling, heating, or compressing. Semi-finished stainless steel flanges are unfinished stainless steel flanges that have undergone some machining processes.

The scope includes six general types of flanges. They are: (1) weld neck, generally used in butt-weld line connection; (2) threaded, generally used for threaded line connections; (3) slip-on, generally used to slide over pipe; (4) lap joint, generally used with stub-ends/butt-weld line connections; (5) socket weld, generally used to fit pipe into a machine recession; and (6) blind, generally used to seal off a line. The sizes and descriptions of the flanges within the scope include all pressure classes of ASME B16.5 and range from one-half inch to twenty-four inches nominal pipe size. Specifically excluded from the scope of the *Order* are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A351.

The country of origin for certain forged stainless steel flanges, whether unfinished, semi-finished, or finished is the country where the flange was forged. Subject merchandise includes stainless steel flanges as defined above that have been further processed in a third country. The processing includes, but is not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing, and/or any other processing that would not otherwise remove the merchandise from the scope of the *Order* if performed in the country of manufacture of the stainless steel flanges.

Merchandise subject to the *Order* is typically imported under headings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings and ASTM specifications are provided for convenience and customs purposes, the written description of the scope is dispositive.

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

The “Discussion of the Issues” section contains summaries of the comments and Commerce’s positions on the issues raised in the briefs. As a result of our analysis, we made no changes to the *Preliminary Results*.

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

We made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*.¹⁰ No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the allocation period or the allocation methodology for the respondent companies.

¹⁰ See *Preliminary Results* PDM at 5.

B. Attribution of Subsidies

We made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies.¹¹ No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the attribution of subsidies for the respondent companies.

C. Denominators

We made no changes to the denominators used in the *Preliminary Results*.¹² No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the denominators.

D. Benchmark Interest Rates

We made no changes to benchmarks or discount rates used in the *Preliminary Results*.¹³ No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding benchmark interest rates.

VI. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF 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.

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the

¹¹ *Id.* at 5-6.

¹² *Id.* at 7.

¹³ *Id.* at 7-9.

petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an AFA rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse so "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."¹⁴ 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."¹⁵ 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 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 or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹⁶ Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁷ It is Commerce's practice to consider information to be corroborated if it has probative value.¹⁸ In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.¹⁹ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.²⁰ Furthermore, Commerce is not required to corroborate any subsidy rate applied in a separate segment of the same proceeding.²¹

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.²² 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.²³

¹⁴ 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).

¹⁵ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) (SAA) at 870.

¹⁶ See 19 CFR 351.308(d).

¹⁷ See SAA at 870.

¹⁸ *Id.* at 870.

¹⁹ *Id.* at 869.

²⁰ *Id.* at 869-870.

²¹ See section 776(c)(2) of the Act.

²² See section 776(d)(1) of the Act.

²³ See section 776(d)(3) of the Act.

B. Application of AFA: Government of India (GOI)

Commerce relied on AFA with respect to the financial contribution and specificity determinations with respect to one program because the GOI failed to cooperate by not acting to the best of its ability to comply with our request for information.²⁴ Specifically, in applying AFA, we found that the Credit Linked Capital Subsidy Scheme (CLCSS) for Technology Upgradation of Small Scale Industries (SSI) program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act and that this program is specific within the meaning of section 771(5A)(D) of the Act.²⁵ However, because Kisaan reported its usage of the aforementioned program, we relied on its reported information to calculate the benefit, if any, within the meaning of section 771(5)(E) of the Act.²⁶ For further discussion of this decision, see the *Preliminary Results*.²⁷ Because no party commented on this issue, Commerce continues to apply AFA for these final results for the financial contribution and specificity findings, and continues to rely on Kisaan's reported usage to determine the benefit.

VII. ANALYSIS OF THE PROGRAMS

Programs Found to be Countervailable

1. GOI Subsidies

a. *Duty Drawback (DDB) Scheme*

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

Chandan: 1.87 percent *ad valorem*
Kisaan: 1.99 percent *ad valorem*

b. *Export Promotion of Capital Goods Scheme*

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

Chandan: 0.02 percent *ad valorem*
Kisaan: 0.01 percent *ad valorem*

c. *Merchandise Export from India Scheme*

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

²⁴ See *Preliminary Results* PDM at 10-12.

²⁵ *Id.* at 12.

²⁶ *Id.* at 22.

²⁷ *Id.*

Chandan: 1.94 percent *ad valorem*
Kisaan: 2.49 percent *ad valorem*

d. Interest Equalization Scheme for Export Financing

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

Chandan: 0.17 percent *ad valorem*
Kisaan: not used

e. Status Holders Incentive Scrip Scheme

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

Chandan: 0.11 percent *ad valorem*
Kisaan: not used

f. CLCSS for Technology Upgradation of SSI

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

Kisaan: 0.02 percent *ad valorem*
Chandan: not used

2. State Government Subsidies

State Government of Gujarat (SGOG)

a. Preferential Water Rates Under the GIDC Water Supply Regulation of 1991

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

Chandan: 0.02 percent *ad valorem*
Kisaan: not used

b. Electricity Duty Exemption in the State of Gujarat

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

Chandan: 0.02 percent *ad valorem*
Kisaan: not used

Programs Found to Not Confer a Measurable Benefit During the POR

1. SGOG: Land Under GIDC

Commerce made no changes to the *Preliminary Results* regarding this program, and we continue to find this program does not confer a measurable benefit during the POR to either respondent.

2. AAP/ALP Scheme

Commerce made no changes to the *Preliminary Results* regarding this program, and we continue to find this program is not used for subject merchandise for either respondent. *See Comment 3.*

Programs Found to Not Be Countervailable

Pradham Mantri Rojgar Prothsahan Yojna (PMRPY) Scheme

Programs Determined to be Not Used

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

GOI Programs

1. Provision of Steel Inputs by SAIL for LTAR
2. Duty Free Import Authorization Scheme
3. Market Development Assistance Scheme
4. Market Access Initiative
5. Focus Product Scheme
6. GOI Loan Guarantees
7. Status Certificate Program
8. Provision of Stainless Steel, Billet, and Bar by SAIL for LTAR (*see Comment 2*)
9. Incremental Exports Incentive Scheme
10. Ministry of Steel Grants
11. Provision of High-Grade Iron Ore for LTAR

Export Oriented Units

12. Duty-Free Import of Goods, Including Capital Goods and Raw Materials
13. Reimbursements of Central Sales Tax (CST) Paid on Goods Manufactured in India
14. Duty Drawback on Fuel Procured from Domestic Oil Companies
15. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area.

Federal Tax Programs

16. Income Deduction Program (80-IB Tax Program)

Special Economic Zones (SEZ)

17. Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
18. Exemption from Payment of CST on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
19. Exemption from Electricity Duty and Cess on Electricity Supplied to an SEZ Unit
20. SEZ Income Tax Exemption
21. Service Tax Exemption
22. Exemption from Payment of Local Government Taxes and Duties, Such as Sales Tax and Stamp Duties
23. Steel Development Funds Loans

State Government of Andhra Pradesh (SGAP) Subsidies

24. Grant Under the Industrial Investment Promotion Policy: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas
25. Grant Under the Industrial Investment Promotion Policy: Reimbursement of Power at the Rate of Rs. 0.75 per Unit
26. Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy for Expenses Incurred for Quality Certification
27. Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy on Expenses Incurred in Patent Registration
28. Grant under the Industrial Investment Promotion Policy: 25 – or 35-Percent Subsidy in Cleaner Production Measures
29. Tax Incentives under the Industrial Investment Promotion Policy: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages
30. Tax Incentives under the Industrial Investment Promotion Policy: Reimbursement on Value Added Tax (VAT), CST, and State Goods and Services Tax
31. Tax Incentives under the Industrial Investment Promotion Policy: Exemption from SGAP Non-Agricultural Land Assessment
32. Provision of Goods and Services for LTAR under the Industrial Investment Promotion Policy: Provision of Infrastructure for Industries Located More than 10 Kilometers from Existing Industrial Estates or Development Areas
33. Provision of Goods and Services for LTAR under the Industrial Investment Promotion Policy: Guaranteed Stable Water Prices and Reservation of Municipal Water

SGOG Subsidy Programs

34. VAT/Goods and Services Tax Reimbursement Under the Scheme of Incentive to Industries 2016-2021

State Government of Maharashtra (SGOM) Subsidy Programs

- 35. Sales Tax Program
- 36. Infrastructure Assistance for Mega Projects under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects
- 37. Subsidies for Mega Projects under the Package Scheme of Incentives
- 38. Special Capital Incentive Under Package Scheme of Incentives 1988 Scheme

State Government of Uttar Pradesh Programs

- 39. Exemption from Entry Tax for the Iron and Steel Industry
- 40. Investment Promotion Scheme
- 41. Special Assistance for Mega Projects
- 42. Reimbursement of Railway Freight

VIII. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Apply Total AFA to Kisaan

In the *Preliminary Results*, we attributed all subsidies received by Kisaan only to its own sales, in accordance with 19 CFR 351.515(b)(6)(i), because Kisaan reported having no current cross-owned affiliates, nor any prior cross-owned affiliates with reportable subsidies during the average useful life (AUL) period.²⁸

After the *Preliminary Results*, the petitioner alleged that Kisaan failed to provide complete financial statements on the record of this review, and it provided a copy of the complete statements for Commerce's consideration, accompanied by a request that Commerce accept this NFI.²⁹ On June 11, 2021, we accepted the NFI contained in the petitioner's request and permitted interested parties an opportunity to file NFI to rebut, clarify, or correct the petitioner's submission.³⁰ We received no comments on the NFI submitted by the petitioner.

*Petitioner's Comments*³¹

- Evidence provided during the course of this administrative review raises significant questions about Kisaan's forging and production capacity for stainless steel flanges, as well as significant questions about Kisaan's affiliations. Based on this evidence, Commerce should find that Kisaan failed to meet the "best of its ability standard" under section 776(b) of the Act, warranting the application of total AFA for its final subsidy rate.³²
- In particular, Kisaan failed to: (1) report subsidies received from certain contractors, rendering the numerators of its subsidy calculations too low; and (2) exclude sales of

²⁸ *Id.* at 6-7.

²⁹ See Petitioner April 28, 2021 NFI Request.

³⁰ See NFI Memoranda.

³¹ See Petitioner Case Brief at 2-13 and Petitioner April 28, 2021 NFI Request.

³² See Petitioner Case Brief at 10 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*)).

forgings produced by other companies, rendering the denominators of its subsidy calculations too high.³³

- With respect to the first point (related to the numerator), while Kisaan stated unequivocally that it “hereby confirms that {Kisaan} has not exported any subject merchandise forged by another producer and finished by {Kisaan} during the POR,”³⁴ information provided in Kisaan’s financial statements indicates that Kisaan’s actual forging and production capacity was inconsistent with its representations to Commerce; this is indicative of an undisclosed entity with subsidies that should be attributed to Kisaan. When queried about this detail in its financial statements, Kisaan disclosed that it had a labor contractor. Kisaan’s failure to report highly relevant information until Commerce identified documentation contradicting Kisaan’s narrative responses demonstrates that Kisaan failed to cooperate to the best of its ability and impeded Commerce’s review.
- Kisaan also had sufficient opportunities to disclose this necessary information earlier in the proceeding, but it failed to do so. Because Kisaan did not provide the information until late in the proceeding, Commerce cannot determine whether this contractor received subsidies attributable to Kisaan, nor can Commerce confidently ascertain if other unreported affiliates, tollers, or other entities receiving subsidies attributable to Kisaan exist. This demonstrates that Kisaan failed to cooperate to the best of its ability, thereby warranting the application of AFA under section 776(b) of the Act. Reporting accurate and complete information is essential for determining that Kisaan identified all companies with subsidies potentially attributable to it under 19 CFR 351.525(b) and (c).
- Commerce has found cross-ownership based on factors other than formal connections, as exemplified in *Rebar from Turkey*, wherein Commerce found cross-ownership between a respondent and two otherwise unaffiliated subcontractors acting as “tollers.”³⁵ Specifically, Commerce found that the subcontractors’ subsidies were attributable to the respondent under 19 CFR 351.525(b)(6) because the relationship between the respondent and the two subcontractors was found to be akin to the relationship between a producer and a trading company under 19 CFR 351.525(c).
- Because Kisaan failed to provide complete information on its capacity and affiliated parties, the final subsidy rates calculated based on Kisaan’s selective reporting will exclude subsidies received by other companies that are attributable to Kisaan. Given the significant gaps in Kisaan’s reporting of its production capacity and affiliated parties, Kisaan’s accurate reporting of its sales and full disclosure of any special circumstances involving those sales were critical.
- With respect to the second point (involving the denominator), if Kisaan included sales of stainless steel flanges on which it only performed minor finishing operations in its sales totals, then these totals will include sales of flanges that Kisaan did not produce. Under

³³ *Id.* at 5-6.

³⁴ *Id.* at 7 (citing Kisaan’s Letter, “Supplemental Response to Section III of Countervailing Duty Questionnaire of Stainless Steel Flanges from India,” dated June 16, 2020 (Kisaan June 16, 2020 SQR) at S1-7).

³⁵ *Id.* at 5 (citing *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 82 FR 12195 (March 1, 2017) (*Rebar from Turkey Preliminary Determination*), and a accompanying PDM at 7, unchanged in *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 82 FR 23188 (March 22, 2017) (*Rebar from Turkey Final Determination*), and a accompanying Issues and Decision Memorandum (IDM) (collectively, *Rebar from Turkey*).

the standard in 19 CFR 351.525(b)(6)(i), this reporting would improperly reduce the subsidy rates for every program that Kisaan used.

- The petitioner's NFI submission demonstrates that Kisaan failed to provide its complete financial statements and that the missing portion of these statements is directly relevant to an issue of critical importance to this proceeding.³⁶ These additional pages to the financial statements provided by the petitioner include a note for "Purchases of Raw Material," which contains a line item titled "Raw Material Purchase (U.P) Forgings." On its face, this line item appears to clearly indicate that Kisaan purchases forgings. Even if Kisaan argues that the omission was not intentional or claims that the line item does not relate to forgings of subject merchandise, this evidence already demonstrates that Kisaan withheld critical information from Commerce and possibly engaged in fraudulent conduct.³⁷ Commerce should consider the financial statements as additional evidence that supports assigning a total AFA rate to Kisaan for the final results of this review.
- Further, the record also shows that Kisaan reported inconsistent sales values that are impossible to reconcile. Whether Kisaan reported irreconcilable sales values to intentionally obscure its sales data or because of inattentiveness or carelessness, the result is the same: Kisaan failed to meet the "best of its ability" standard under section 776(b) of the Act, warranting the application of AFA.
- Consistent with *CWP from India*, when Commerce finds that respondents provided fundamentally deficient production and sales responses, the application of total AFA is appropriate.³⁸

*Kisaan's Comments*³⁹

- Kisaan cooperated to the best of its ability and provided all information requested by Commerce in a timely manner and the format requested. Thus, there is no need to calculate a subsidy rate based on AFA.
- Throughout the proceeding, Kisaan always correctly stated that it did not sell any stainless steel flanges produced or forged by others. The petitioner failed to provide any conclusive evidence supporting its claim that Kisaan sold stainless steel flanges produced by others, thereby reporting an incorrect sales quantity to Commerce.
- Kisaan's financial statements were submitted in its initial questionnaire response. The line item on which the petitioner relies to support its claim that Kisaan sold flanges produced or forged by other companies is nothing but a recording of Kisaan's payment related to labor charges for carrying out work within Kisaan's factory premises, using Kisaan-owned-machinery and materials.⁴⁰ Kisaan pays for contract labor and this does not constitute subcontracting or tolling activity.

³⁶ See Petitioner April 28, 2020 NFI Request; *see also* Commerce NFI Memoranda.

³⁷ See Petitioner Case Brief at 7 (citing *Certain Cut-To-Length Carbon Steel Plate from Romania: Notice of Rescission of Antidumping Duty Administrative Review*, 63 FR 47232 (September 4, 1998), and *Certain Welded Stainless Steel Pipe from Taiwan: Final Results of Administrative Review*, 62 FR 37543 (July 14, 1997) (*CWP from Taiwan*)).

³⁸ *Id.* at 13 (citing *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) (*CWP from India*), and accompanying IDM at 3-7).

³⁹ See Kisaan Rebuttal Brief at 3-8.

⁴⁰ *Id.* at 5 (citing Kisaan's Letter, "3rd Supplemental Response for Question 2 to 8 of Section III of Countervailing Duty Admin Review of Stainless Steel Flanges from India," dated December 21, 2020 (Kisaan December 21, 2020 SQR) at S3-2).

- If Commerce accepts the petitioner’s vague argument to attribute the subsidies of a labor contractor to Kisaan, then every labor contractor providing labor to respondents would become the actual producers of the materials.
- In *Rebar from Turkey*, the respondent provided the billets to the subcontractors, who then rolled the billets into rebar and delivered the finished goods to the respondent for sale by the respondent.⁴¹ The respondent in that case was also able to use or direct each subcontractor’s assets in the same way it would use its own assets. In contrast, Kisaan used its own machines (*i.e.*, assets of Kisaan) to produce subject merchandise and did not rely on any contractor’s assets.
- Kisaan demonstrated that the subject merchandise quantity that it produced and sold corresponded to its consumption of raw materials.⁴²
- Commerce relies on the sales value, not the sales quantity, to calculate a subsidy rate. Although a minor kilogram quantity difference exists on the record, the sales value reported in the same supplemental questionnaire response properly reconciles with the value in Kisaan’s audited financial statements.⁴³
- In *CWP from India*, Commerce found numerous deficiencies in the respondent’s reported information, making a credible subsidy rate calculation impossible.⁴⁴ This is inapplicable to Kisaan, as the company timely provided information to Commerce in the format requested.

Commerce’s Position: Commerce is not applying AFA to Kisaan for these final results because the conditions of section 776 of the Act have not been met. According to section 776(a) of the Act, Commerce shall use the facts otherwise available in reaching a determination if: (1) necessary information is not available on the record, or (2) an interested party or any other person – (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act.

Further, section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, it may use an inference that is adverse to the interest of that party in selecting from the facts otherwise available. The “best of its ability” standard of section 776(b) of the Act means to put forth maximum effort to provide full and complete answers to all inquiries.⁴⁵ In *Nippon Steel*, the Court of Appeals for the Federal Circuit clarified that, for Commerce to determine that a respondent did not act to the best of its ability, Commerce must demonstrate:

⁴¹ See Kisaan Rebuttal Brief at 6 (citing *Rebar from Turkey Preliminary Determination* PDM, unchanged in *Rebar from Turkey Final Determination* IDM).

⁴² *Id.* at 6 (citing Kisaan December 21, 2020 SQR at S3-3 through S3-4 and Exhibits S3-3.a through Exhibit S3-3.d).

⁴³ *Id.* at 8 (citing Kisaan December 21, 2020 SQR at Exhibit S3-1).

⁴⁴ See Kisaan Rebuttal Brief at 11 (citing *CWP from India* IDM at 3-7).

⁴⁵ See *Nippon Steel*, 337 F.3d 1373, 1382-83.

(1) an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations and

(2) that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.⁴⁶

The petitioner correctly notes that Commerce may apply AFA “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully,” and it may consider “the extent to which a party may benefit from its own lack of cooperation.”⁴⁷ We agree with the petitioner's assertion that Commerce, not the respondent, determines what information is relevant and necessary.⁴⁸ However, we disagree with the petitioner that Kisaan failed to meet the “best of its ability” standard under section 776(b) of the Act.⁴⁹ We find that facts available are not warranted because necessary information is not missing from the record, and Kisaan provided all information requested by Commerce in a timely manner and the format requested. Therefore, we find the record has no evidentiary gaps that would warrant the application of total AFA because Kisaan complied with Commerce's requests for information to the best of its ability, as discussed below.

The petitioner claims that it has provided evidence during the course of this administrative review that raises significant questions about Kisaan's forging and production capacity for stainless steel flanges, as well as significant questions about Kisaan's affiliations.⁵⁰ While we agree that Kisaan's reporting of accurate and complete information on its capacity and affiliated parties was essential to ensure that Commerce identified all companies with subsidies potentially attributable to Kisaan under 19 CFR 351.525(b) and (c), we find no basis to conclude that Kisaan failed to report such information, nor did Kisaan's actions significantly impede this proceeding; therefore, the application of facts available, never mind the application of AFA, is not warranted.

As noted in the *Preliminary Results* PDM, 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.⁵¹ However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the

⁴⁶ *Id.*

⁴⁷ See Petitioner Case Brief at 4 (citing SAA at 870).

⁴⁸ *Id.* (citing *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 49475 (August 14, 2013), and accompanying IDM at Comment 5; *Ansaldo Componenti, S.p.A. v. United States*, 10 CIT 28, 37, 628 F. Supp. 198, 205 (1986); and *Essar Steel Ltd. v. United States*, 34 CIT 1057, 1073, 721 F. Supp. 2d 1285, 1298-99 (2010)).

⁴⁹ *Id.* at 10 (citing *Nippon Steel*, 337 F.3d at 1382-83).

⁵⁰ *Id.* at 4 (citing Petitioner's Letter, “Comments on Kisaan Die Tech's Affiliated Companies Questionnaire Response,” dated February 26, 2020 at 2-3 and Exhibit 1; Petitioner's Letter, “Comments on Kisaan Die Tech Pvt Ltd's Countervailing Duty Questionnaire Response,” dated April 21, 2020 at 2-3; and Petitioner's Letter, “Comments on Kisaan Die Tech Pvt Ltd's Countervailing Duty Questionnaire Responses,” dated July 16, 2020 at 2-6).

⁵¹ See *Preliminary Results* PDM at 5-6.

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.

As stated in the *Preliminary Results*, 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.⁵² This section of Commerce's regulations states that this standard will normally be met where there is a majority of voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to Commerce's regulations further clarifies Commerce's cross-ownership standard:

{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.⁵³

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.⁵⁴

The petitioner contends that Kisaan's failure to provide complete financial statements or to timely disclose other pertinent facts prevented Commerce from ascertaining whether Kisaan has other unreported affiliates, tollers, or other entities with subsidies attributable to Kisaan.⁵⁵ However, we have examined Kisaan's reported data,⁵⁶ and our examination of the record shows

⁵² *Id.* at 6-7.

⁵³ See *Countervailing Duties: Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).

⁵⁴ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).

⁵⁵ See Petitioner Case Brief at 9.

⁵⁶ See Kisaan's Letter, "Section III Identification of Affiliated Companies Response of Countervailing Duty Administrative Review," dated February 12, 2020 (Kisaan February 12, 2020 AFFR) at 3-7 and Exhibits 1(a) through 1(b); see also Kisaan's Letter, "Response to Section III of Countervailing Duty Questionnaire of Stainless Steel Flanges from India," dated March 13, 2020 (Kisaan March 13, 2020 IQR) at 4-5; Kisaan June 16, 2020 SQR at S1-1 – S1-7 and Exhibit S1-1 through Exhibit S1-4.B; and generally, Kisaan's Letter, "3rd Supplemental Response for Question 1 of Section III of Countervailing Duty Review of Stainless Steel Flanges from India," dated December 28, 2020 (Kisaan December 28, 2020 SQR).

no basis for finding that cross-ownership between Kisaan and any other company that met our attribution regulations.⁵⁷ Furthermore, no party is arguing that there are any affiliates that Commerce should find cross-owned with Kisaan.

Commerce asked questions throughout this proceeding to ensure that Kisaan itself produced all the subject merchandise it exported. Neither Kisaan's responses, nor any other record evidence, indicate that Kisaan exported subject merchandise forged by another producer and finished by Kisaan during the POR. For instance, Kisaan initially reported that neither Kisaan nor any cross-owned affiliates exported subject merchandise produced by any other companies.⁵⁸ Commerce questioned Kisaan further, asking:

You report that neither Kisaan nor cross-owned affiliates exported the subject merchandise produced by any other companies in India. Please confirm that Kisaan does not export subject merchandise forged by another producer and finished by Kisaan. If Kisaan does export subject merchandise forged by another producer, please provide a complete questionnaire response for each non-Kisaan producer.⁵⁹

Kisaan responded, "KDT {(Kisaan)} hereby confirms that KDT has not exported any subject merchandise forged by another producer and finished by KDT during the POR."⁶⁰ We also requested details on several of Kisaan's reported affiliates, as well as details on their ownership structures. None of the information provided indicated that Kisaan had any unreported affiliates or companies which could be found cross-owned with Kisaan.⁶¹

The petitioner initially implied that a line item in Kisaan's financial statements indicated that Kisaan had an undisclosed entity with subsidies that should be attributed to Kisaan.⁶² The petitioner requested that Commerce look into this matter,⁶³ and we asked in a supplemental questionnaire that Kisaan explain the line item in question. Kisaan responded that this line item related to its use of a labor contractor during the POR, and it provided documentation to support its claim.⁶⁴ The petitioner now argues that this "late disclosure" prevented Commerce from

⁵⁷ See *Preliminary Results* PDM at 6-7 (explaining that Kisaan reported Kisaan Steels Pvt. Ltd (Kisaan Steels) as a shareholder during the AUL period which was engaged in the sales and production of subject merchandise. However, record evidence demonstrates that Kisaan Steels is no longer a shareholder, nor did it receive any non-recurring subsidies attributable to Kisaan during this POR. Accordingly, we attributed the subsidies received by Kisaan only to its own sales, in accordance with 19 CFR 351.525(b)(6)(i)); *see also generally*, Kisaan December 28, 2020 SQR).

⁵⁸ See Kisaan March 13, 2020 IQR at 9.

⁵⁹ See Commerce's Letter, "Administrative Review of Countervailing Duty Order on Stainless Steel Flanges from India: Supplemental Questionnaire," dated May 1, 2020 at "General Questions," Question 2.

⁶⁰ See Kisaan June 16, 2020 SQR at S1-7.

⁶¹ See, *generally*, Kisaan February 12, 2020 AFFR; *see also* Kisaan March 13, 2020 IQR at 5-6; Kisaan June 16, 2020 SQR at S1-1 – S1-7 and Exhibits S1-1 through Exhibits S1-4.B; and *generally*, Kisaan December 28, 2020 SQR.

⁶² See Petitioner Case Brief at 7-8.

⁶³ See Petitioner's Letter, "Comments on Kisaan Die Tech Pvt Ltd.'s Countervailing Duty Questionnaire Responses," dated July 16, 2020 at 5-6.

⁶⁴ See Kisaan December 21, 2020 SQR at S3-2 and Exhibits S3-2.a and Exhibit S3-2.c.

conducting the same analysis employed in *Rebar from Turkey*,⁶⁵ despite the fact that Kisaan's initial questionnaire response demonstrates that Kisaan did not sell flanges produced or forged by others.⁶⁶ We disagree and find the petitioner's reliance on *Rebar from Turkey* is inapposite as the facts there were not analogous.

In *Rebar from Turkey*, the respondent identified various unaffiliated subcontractors to which it outsourced the rolling of billets into rebar during the period of investigation.⁶⁷ Commerce sought additional information regarding the respondent's relationship with each subcontractor, including its contractual and/or practical capacity to use or direct each subcontractors' assets in the same way it would use its own assets (*i.e.*, whether the respondent and any subcontractor fell under the definition of cross-ownership under 19 CFR 351.525(b)(6)(vi)).⁶⁸ In that case, the respondent reported that it had two subcontractors which acted as "tollers,"⁶⁹ and it provided billets to these subcontractors, who then rolled the billets into rebar and delivered the finished goods to the respondent for sale by the respondent.⁷⁰ Commerce noted:

{T}he record reflects a relationship between Habas {(the respondent)} and its "tollers" that is akin to the relationship between a producer and its trading company under 19 CFR 351.525(c). Accordingly, we are preliminarily cumulating the benefits from subsidies provided to Habas's "tollers" with benefits from subsidies provided to Habas, in a manner similar to the attribution of a trading company's subsidies to an unaffiliated producer. We find that such a determination is consistent with the general understanding of attribution of subsidies, as reflected in {Commerce's} regulations and further addressed in the *Preamble*, as cited above.⁷¹

Unlike in *Rebar from Turkey*, the line item the petitioner questioned denotes labor charges for carrying out work within Kisaan's factory premises, using Kisaan-owned, and controlled, machinery and materials.⁷² This differs significantly from the facts in *Rebar from Turkey*, where the respondent provided billets to the subcontractors, who rolled the billets into subject merchandise and delivered the finished goods to the respondent.⁷³ In this administrative review, Kisaan submitted a ledger demonstrating the relevant labor contractor expenses it incurred, booked by month, and it provided a sample invoice.⁷⁴ The invoice shows Kisaan paid only for labor charges, not for subject merchandise. Accordingly, information on the record indicates that the fact pattern in *Rebar from Turkey* is not comparable to the facts of this administrative review. The same relationship between the respondent and the toller in *Rebar from Turkey* does not exist in this proceeding. In this case, Kisaan simply hired labor contractors to perform production-related activities in its factories, rather than to produce subject merchandise in an independent

⁶⁵ See Petitioner Case Brief at 8.

⁶⁶ See Kisaan March 13, 2020 IQR at Exhibit 6.

⁶⁷ See *Rebar from Turkey Preliminary Determination* PDM at 7.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See, e.g., Kisaan Rebuttal Brief at 5.

⁷³ See *Rebar from Turkey Preliminary Determination* PDM at 7.

⁷⁴ See Kisaan December 21, 2020 SQR at Exhibit S3-2.a and Exhibit S3-2.c.

fashion. The relationship between Kisaan and the labor contractors is not akin to the relationship between a subject merchandise producer and its trading company under 19 CFR 351.525(c). Therefore, we find the labor contractor used by Kisaan does not meet any of our attribution regulations, and that any potential subsidies the labor contractor may have received are not attributable to Kisaan.

We also disagree that the NFI provided by the petitioner provides evidence of mis-reporting by Kisaan.⁷⁵ The NFI consists of the public version of several pages of Kisaan's financial statements submitted in the concurrent administrative review of the companion antidumping duty order of stainless steel flanges. According to the petitioner, these pages demonstrate that Kisaan failed to provide complete financial statements to Commerce on the record of this proceeding, hiding the fact that Kisaan purchases raw material forgings, contrary to Kisaan's statements on the record.⁷⁶ The petitioner contends that Commerce had no opportunity to address the additional information during the course of the administrative review, and that this missing information provides a reasonable basis to suspect that Kisaan's concealment may have been intentional.⁷⁷ As a result, the petitioner alleges that Kisaan possibly engaged in fraudulent behavior, and it argues that Commerce should take necessary steps to address the fraud and protect the integrity of its process.⁷⁸

Commerce must base its decisions on a review of the record as a whole, and those decisions must be supported by substantial evidence on the record – not on speculation.⁷⁹ As discussed further below, we find that, while Kisaan submitted additional pages to its financial statements on the record of another proceeding, upon examination, these additional pages do not support an allegation of fraud; further, it is not apparent that Commerce required, and/or requested, the additional pages in that other proceeding. We find the petitioner's claims that these missing pages indicate Kisaan sold subject merchandise it did not produce to be speculative and not supported by the record. Therefore, we find the NFI does not support the petitioner's request for the application of AFA.

In the initial questionnaire, we instructed Kisaan to provide a "complete set" of financial statements. Specifically, we required Kisaan to:

⁷⁵ See Petitioner April 28, 2020 NFI Request.

⁷⁶ *Id.* at 3.

⁷⁷ *Id.* at 6.

⁷⁸ *Id.* at 7 (citing *CTL Plate Romania*, and *CWP from Taiwan* to support the petitioner's contention that Commerce, when faced with evidence of potential fraud by a party, may take any steps necessary to rectify the fraud and protect the integrity of the process).

⁷⁹ See *Nucor Corp v. United States*, 594 F. Supp. 2d 1320, 1332, (CIT2008), affirmed 601 F.3d 1291 (Fed. Cir. 2010); section 516(A) of the Act; *Downhold Pipe & Equip., L.P. v. United States*, 776 F.3d 1368, 1374 (Fed. Cir. 2015); and *Asociacion Colombiana de Exportadores de Flores v. United States*, 704 F. Supp. 1114, 1117 (CIT 1989), affirmed 901 F.2d 1089 (Fed. Cir. 1990).

Please provide your company's complete audited financial statements from the last three fiscal years ... These should be the official financial statements filed with your government. If there is no such filing requirement, the financial statements should be those presented to the banks or independent third parties. The financial statements should include the complete set of statements, e.g., income statement, balance sheet, cash flow statement, statement of change in equity, and all notes, and must be accompanied by the auditor's opinion. If you do not prepare audited financial statements, please provide whatever unaudited financial statements that are prepared for your board of directors, your shareholders, and for the government.⁸⁰

In response, Kisaan provided the requested "complete set" of financial statements.⁸¹ Not only do the additional pages supplied by the petitioner not appear in the above list, but it is not obvious that these missing pages constitute part of the financial statements at all, as they appear after the signed and stamped financial statements and notes to the financial statements. The pages are titled "Grouping of Accounts to Balance Sheet as on 31/03/2019" and "Grouping of Accounts to Profit and Loss for the Year Ending 31/03/2019," indicating they somehow tie to the information already provided in the financial statements. It is also not evident from our request for information that Commerce required Kisaan to provide this information. We find that, contrary to the petitioner's allegation, Kisaan timely provided its financial statements, including all portions explicitly identified by Commerce, and that these financial statements afforded Commerce the information we needed to calculate Kisaan's subsidy rates. We disagree that Kisaan's failure to provide any additional pages constitutes fraud since the pages were: (1) were not requested documentation, (2) are not needed to accurately determine the subsidy rates, and (3) are not clearly part of the financial statements themselves.

Further, it is also not evident that the "raw material forging" line item in these additional pages is tantamount to subject merchandise forged by another producer and finished by Kisaan. Instead, pursuant to the description itself, the line item is for "raw materials," and it is not clear whether this means Kisaan purchased forgings as a raw material or whether it purchased raw materials used to produce forgings. In either case, purchases of raw materials from unaffiliated suppliers have no bearing on this review.⁸² Equally important, there is no indication elsewhere in the financial statements that Kisaan resells flanges produced by another company.⁸³ In summary, after reviewing these additional pages, we find that the application of AFA is not warranted based on the totality of the record.

We also find the petitioner's concerns with respect to Kisaan's production capacity to be misplaced. Commerce requested that Kisaan reconcile its flange sales quantity with its quantity

⁸⁰ See Commerce's Letter, "Administrative Review of Countervailing Duty Order of Stainless Steel Flanges from India: Countervailing Duty Questionnaire," dated January 17, 2020 (Commerce Initial Questionnaire) at Section III, Page III-5.

⁸¹ See Kisaan June 16, 2020 SQR at Exhibits S1-5.d through Exhibit S1-5.f.

⁸² If Kisaan is purchasing raw materials to produce flanges, the information on these additional pages is not necessary for the purpose of this review. As explained above, Commerce does not require questionnaire responses from unaffiliated producers in this context.

⁸³ See Kisaan March 13, 2020 IQR at Exhibits 5.b. through Exhibit 5.c; *see also* Kisaan June 16, 2020 SQR at Exhibits S1-5.e through Exhibit S1-5.f.

of purchases of stainless steel inputs.⁸⁴ In response, Kisaan provided an “input-output” chart, demonstrating its purchases of stainless steel inputs, its sales of stainless steel finished goods, and the scrap generated during the production process.⁸⁵ Although the petitioner takes issue with the quantity on this chart, which is labeled “sales of stainless steel finished goods during 2018” in the chart, we disagree that this label is meaningful; indeed, when viewed in the context of the record as a whole, it appears that Kisaan made a simple mistake and that its labeling of this line item is inaccurate. Because Kisaan’s response and later comments indicates it was actually reporting only on behalf of its stainless steel flanges (which is only a subset of all stainless steel finished goods), this line item would more appropriately be labeled as “sales of stainless steel *flanges* finished goods.” Kisaan notes that the quantity in the chart for this line item differs only slightly from the quantity of its reported sales of subject merchandise. After reviewing Kisaan’s pre-preliminary comments⁸⁶ and rebuttal brief, it is clear that the quantity Kisaan identified as sales of “stainless steel finished goods” in its input-output chart is the same quantity as its sales of subject merchandise, further supporting Commerce’s understanding that the input-output chart represents Kisaan’s sales of stainless steel flanges (and not a broader category of stainless steel products). Additionally, Kisaan repeatedly demonstrates how the data in this input-output chart reconcile to the reported value of its sales of subject merchandise.⁸⁷

A review of the record demonstrates that Kisaan reconciled its gross revenue sales to its 2018-2019 profit and loss statements, and the petitioner raises no concerns regarding Kisaan’s sales reconciliation. Record information indicates that Kisaan sells stainless steel products beyond just stainless steel flanges (*i.e.*, flanges are a subset of Kisaan’s overall stainless steel finished goods).⁸⁸ This sales reconciliation includes the quantity of subject and non-subject merchandise, and the petitioner also points to no concerns in Kisaan’s reconciliation based on quantity for subject and non-subject merchandise. As Kisaan notes, there is a small discrepancy of less than 0.05 percent in the quantity of stainless steel flanges it sold as reported in the input-output chart and in its reported sales of subject merchandise.⁸⁹ However, as Kisaan notes, this difference can be attributed to a slight time lag between the reported data sets. Because Kisaan’s sales fully reconciled to its audited financial statements, we find this difference does not require us to reject Kisaan’s reported sales values when calculating its subsidy rates or to disregard Kisaan’s response in its entirety.

Finally, we disagree with the petitioner that *CWP from India* is on point. Unlike here, in that case, the respondent, Zenith, provided fundamentally incomplete and deficient responses, warranting the application of total AFA. First, Zenith failed to respond on behalf of a parent company.⁹⁰ In contrast, Kisaan cooperated when Commerce requested a full response on behalf

⁸⁴ See Commerce’s Letter, “Administrative Review of Countervailing Duty Order on Stainless Steel Flanges from India: Second Supplemental Questionnaire,” dated December 1, 2020 (Commerce December 1, 2020 Supplemental) at question 6.

⁸⁵ See Kisaan December 21, 2020 SQR at S3-3.

⁸⁶ See Kisaan’s Letter, “Rebuttal to Petitioners Pre-Preliminary Comment,” dated March 9, 2021.

⁸⁷ See Kisaan March 13, 2020 IQR at 11-12 and Exhibits 9 through 10.b; Kisaan June 16, 2020 SQR at Exhibit S1-5.e, S1-5.f, and S1-17.

⁸⁸ See Kisaan March 13, 2020 IQR at 8, 12, 19, 30, 49 and Exhibit 2; *see also* Kisaan December 21, 2020 SQR at S3-4 – S3-5.

⁸⁹ See Kisaan Rebuttal Brief at 8.

⁹⁰ See *CWP from India* IDM at 5.

of a shareholder during the AUL period and did not withhold any response requested by Commerce.⁹¹ Second, Commerce could not identify the universe of cross-owned companies with subsidies attributable to Zenith because the respondent initially reported having no cross-owned companies, yet the responses revealed 38 companies.⁹² Specifically, Zenith's financial statements showed purchases from "related parties," suggesting that Zenith may have cross-owned input suppliers with subsidies attributable to Zenith under 19 CFR 351.525(b)(6)(iv).⁹³ Although the petitioner fails to demonstrate where on the record a similar transaction(s) exists, we note that neither Kisaan's financial statements nor the input purchases template reflect "related party" purchases.⁹⁴ Lastly, Zenith failed to provide requested worksheets reconciling its sales to its financial statements.⁹⁵ In contrast, in this proceeding, Kisaan reconciled its gross revenue to its 2018-2019 profit and loss financial statements, and the petitioner took no issue with this reconciliation. For these reasons, we do not find the petitioner's reliance upon *CWP from India* persuasive in this administrative review.

In sum, we find that Kisaan fully cooperated to the best of its ability in this review and nothing on the record supports the alleged deficiencies raised by the petitioner. Therefore, Commerce finds applying total AFA is not warranted for these final results.

Comment 2: Whether Commerce Should Countervail the Provision of Stainless Steel, Billet, and Bar by SAIL for LTAR Program for Kisaan

In the *Preliminary Results*, we found that Kisaan did not purchase stainless steel, billet, or bar from SAIL, and, therefore, found this LTAR program not used by Kisaan.

*Petitioner Comments*⁹⁶

- If Commerce does not apply a total AFA rate to Kisaan then Commerce should, as AFA, determine that Kisaan used the provision of stainless steel, billet, and bar by SAIL for LTAR program.
- The record lacks information regarding Kisaan's arrangement with its labor contractor, resulting in distorted reporting for this program. Consequently, Commerce cannot accurately determine whether Kisaan failed to report purchases from SAIL that could confer a benefit to Kisaan.
- Although Commerce requested supplemental information relevant to this program, Kisaan provided an "input-output" chart that contains information which is irreconcilable to its reported sales information. Therefore, the record contains reporting deficiencies (such as the underreporting of these input purchases) that may be relevant to evaluating the use of this program.

⁹¹ See *Preliminary Results* PDM at 6-7; see also Commerce December 1, 2020 Supplemental; Kisaan December 28, 2020 SQR; and Kisaan's Letter, "4th Supplemental Response for Section III of the Countervailing Duty Admin Review of Stainless Steel Flanges from India," dated January 28, 2021.

⁹² See *CWP from India* IDM at 5-6.

⁹³ *Id.* at 5.

⁹⁴ See Kisaan June 16, 2020 SQR at Exhibits S1-5.a through S1-5.f, and Exhibit S1-17.

⁹⁵ See *CWP from India* IDM at 6.

⁹⁶ See Petitioner Case Brief at 13-16.

- Commerce should base the subsidy rate for this program on AFA. As AFA, Commerce should apply the highest non-*de minimis* rate calculated for an identical or similar program in another CVD proceeding involving the same country.⁹⁷
- Specifically, Commerce recently applied a calculated AFA rate of 16.14 percent *ad valorem* to this program in another India CVD proceeding. Commerce should similarly apply this rate as the AFA rate for this program for Kisaan.⁹⁸

*Kisaan's Comments*⁹⁹

- The petitioner claims that stainless steel flanges produced by Kisaan were forged by a toller and that this toller may have used billets and bars purchased from SAIL. However, the record does not support this false claim.¹⁰⁰ The record clearly demonstrates that Kisaan did not purchase any stainless steel billets and/or bars from SAIL.
- The record shows that this alleged “toller” provided nothing but labor for carrying out the work conducted within Kisaan’s factory premises, using Kisaan’s own machinery.
- Since Kisaan did not purchase stainless steel billets or bars from SAIL, this program was not used and conferred no benefit to Kisaan.
- Kisaan did not: (1) withhold any information requested of it; (2) fail to provide information in a timely manner or in the form requested; (3) significantly impede the proceeding; or (4) provide unverifiable information. Further, Kisaan did not fail to act to the best of its ability. Accordingly, AFA is not warranted in this review.

Commerce’s Position: For these final results, we continue to rely on our findings in the *Preliminary Results* and determine that the record does not demonstrate that Kisaan purchased stainless steel, billet, or bars from SAIL for LTAR.¹⁰¹

We find that Kisaan acted to the best of its ability regarding this program when complying with Commerce’s requests for information. In our supplemental questionnaires, we requested that Kisaan complete the input purchases template, reporting all of Kisaan’s purchases of stainless steel, stainless steel billet, and stainless steel bar during the POR.¹⁰² Kisaan timely responded to our questions, and it further provided sample purchase documentation from each supplier.¹⁰³ Based on Kisaan’s responses, we find that nothing on the record indicates it purchased stainless steel, billet, or bars from SAIL.

⁹⁷ *Id.* at 16 (citing *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2017, 85 FR 71312 (November 9, 2020), and accompanying IDM at 57).

⁹⁸ *Id.* (citing *Forged Steel Fittings from India: Final Affirmative Countervailing Duty Determination*, 85 FR 66535 (October 20, 2020), and accompanying IDM at 23 (citing *CWP from India* IDM at 24-25). Commerce applied the 16.14 percent rate as an AFA rate, which was calculated in *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009), and accompanying IDM at “Sale of High-Grade Iron Ore for LTAR” for the calculated program rate).

⁹⁹ See generally Kisaan Rebuttal Brief.

¹⁰⁰ *Id.* at 9 (citing Kisaan June 16, 2020 SQR at Exhibit S1-17 (showing that Kisaan did not purchase any stainless steel billets and/or bars from SAIL)).

¹⁰¹ See *Preliminary Results* PDM at 27.

¹⁰² See Commerce’s Letter, “Administrative Review of Countervailing Duty Order on Stainless Steel Flanges from India: Supplemental Questionnaire,” dated May 1, 2020 at Question 14.

¹⁰³ See Kisaan June 16, 2020 SQR at S1-12 and Exhibit S1-17 through S1-18.

We disagree with the petitioner that information on the input-output chart provided by Kisaan¹⁰⁴ calls into question whether Kisaan purchased stainless steel, billet, and bars from SAIL for LTAR. First, the “purchases of SS inputs during 2018” provided in the input-output chart ties to the total quantity of Kisaan’s stainless steel, stainless steel billet, and stainless steel bar purchases over the POR reported in its input purchases template. Therefore, we find no discrepancy between the input-output chart and Kisaan’s reported input purchases table. The petitioner points to no record information that Kisaan’s input purchases template is incomplete. Furthermore, we find that the input-output table is reconcilable to information on the record. As we explained in Comment 1 above, we cannot base our findings in the final results on the petitioner’s speculative conclusions. We, therefore, find that the information in the input-output chart provided by Kisaan, which reconciles to its input purchases it reported, does not support the contention that Kisaan failed to report any input purchases from SAIL. Because we find that Kisaan fully cooperated in this review and timely provided the necessary information on the record, we find the application of facts available, including by extension the application of AFA, is not warranted.

Further, we also disagree that Kisaan’s disclosure regarding a labor contractor prevents us from accurately determining whether Kisaan used this program. As discussed in detail in Comment 1 above, we have determined that the relationship between Kisaan and its labor contractor is not akin to the relationship between a producer and its trading company under 19 CFR 351.525(c). Based on this record evidence, we continue to find this program is not used by Kisaan for these final results.

Comment 3: Whether Commerce Should Countervail the AAP/ALP Scheme for Chandan

In the *Preliminary Results*, we found that, at the point of bestowal, the GOI granted Chandan licenses under the AAP/ALP scheme based on its production and exportation of non-subject merchandise.¹⁰⁵ Because we found that the licenses were tied to non-subject merchandise within the meaning of 19 CFR 351.525(b)(5), we found this program not used by Chandan. This approach is consistent with Commerce’s practice.¹⁰⁶

*Petitioner Comments*¹⁰⁷

- The record does not support Commerce’s preliminary finding that the AAP licenses in question were tied to non-subject merchandise pursuant to 19 CFR 351.525(b)(5). Further, Chandan failed to report certain exemptions received under the AAP, as well as detailed calculations for these specific line items, which also could have conferred a benefit to Chandan during the POR.

¹⁰⁴ As noted in Comment 1, above, Commerce requested that Kisaan reconcile its flange sales quantity with its purchases of stainless steel inputs. In response, Kisaan provided an “input-output” chart, demonstrating the relationship between its purchases of stainless steel inputs, its sales of stainless steel finished goods, and the scrap generated during the production process.

¹⁰⁵ See *Preliminary Results* PDM at 26.

¹⁰⁶ See *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) (*OCTG from India*), and accompanying IDM at “Advance License Program/Advance Authorization Program.”

¹⁰⁷ See Petitioner Case Brief at 17-27.

- Commerce has stated that the burden is on respondents to demonstrate that the benefits under the AAP/ALP scheme are tied to non-subject merchandise, but Chandan failed to meet that burden in this review.¹⁰⁸ Specifically, Chandan’s production process flowchart does not support the claim that the AAP/ALP scheme cannot benefit upstream inputs that eventually can be used as an input into subject merchandise.¹⁰⁹
- Commerce found in the underlying investigation that the GOI did not have an effective monitoring system in place to confirm which imported inputs were consumed in the production of exported products, and, therefore, it found a benefit existed under this program under section 771(5)(e) of the Act and 19 CFR 351.519(a)(4).¹¹⁰ Because the GOI failed to timely file a questionnaire response in this administrative review, Commerce has no basis to reconsider its determinations from the investigation.
- In the *Preliminary Results*, Commerce stated, “{w}e reviewed Chandan’s licenses and noted that the items to be exported under the licenses did not include subject merchandise in any instance.”¹¹¹ However, since the GOI did not have an effective monitoring system in place to confirm which imported inputs were consumed in the production of exported products, the GOI’s listing of non-subject merchandise on AAP licenses does not demonstrate that Chandan did not benefit from the program.
- In *Polyester Yarn from India*, Commerce determined, “the burden of producing relevant evidence belongs with the respondents, not Commerce. {The respondent} did not provide evidence supporting its assertion that it only used the AAP for the export of non-subject merchandise.”¹¹² Similarly, Chandan failed to meet its evidentiary burden in this review, and the record does not support a decision tying AAP/ALP benefits to non-subject merchandise pursuant to 19 CFR 351.525(b)(5).¹¹³
- Separate from the issue of attribution, Commerce should find that Chandan incompletely reported its use of the AAP scheme. Initially, Chandan reported AAP/ALP licenses in its database relating to the use of DDB licenses. In a supplemental questionnaire response, Chandan admitted it had failed to report these benefits in its AAP license database.¹¹⁴ Chandan also failed to provide detailed calculations for these specific licenses.
- Given the breadth of the data omission, and the fact that Commerce provided Chandan with two opportunities to provide a complete AAP database, Commerce should apply the highest rate for an identical program under the third step of its AFA hierarchy (*i.e.*, applying the highest calculated rate for the AAP scheme from another CVD proceeding involving India). This rate is 19.22 percent.¹¹⁵

¹⁰⁸ *Id.* at 22 (citing *Polyester Yarn from India* IDM at Comment 3).

¹⁰⁹ *Id.* at 23 (citing Chandan’s Letter, “Program Specific Questionnaire Response,” dated March 3, 2020 (Chandan March 3, 2020 IQR) at Exhibit CVD-5, “Process Flow Chart”).

¹¹⁰ *Id.* at 24-25 (citing *Stainless Steel Flanges from India: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 83 FR 40748 (August 16, 2018), and accompanying IDM at Comment 5 (*Flanges Investigation Final*)).

¹¹¹ *Id.* at 24 (citing *Preliminary Results* PDM at 26).

¹¹² *Id.* at 25 (citing *Polyester Yarn from India* IDM at Comment 3).

¹¹³ *Id.* at 22 and 25.

¹¹⁴ *Id.* at 18 (citing Chandan’s Letter, “Section-III Supplemental Questionnaire Response,” dated June 17, 2020 (Chandan June 17, 2020 SQR) at 12-13).

¹¹⁵ *Id.* at 21 (citing *Polyester Textured Yarn from India: Final Affirmative Countervailing Duty Determination*, 84 FR 63848 (November 19, 2019) (*Polyester Yarn from India*), and accompanying IDM at 7) (The highest rate on record for the same program in another India CVD proceeding is 19.22 percent).

- At minimum, Commerce should use facts available under section 776(a) of the Act to countervail exemptions that Chandan received under this program.¹¹⁶ If Commerce instead chooses to rely on facts available to determine the benefit for these misreported AAP licenses, it could derive an approximate benefit using the limited information Chandan provided for the missing transactions. In such case, Commerce should not grant a claimed offset because the offset is contrary to the Act and Commerce's regulations.¹¹⁷ In *2016 Rebar from Turkey*, Commerce cited the narrow statutory basis that enables the offsetting of a countervailable subsidy benefit, which must be directly connected to the subsidy.¹¹⁸ Commerce must follow its governing statute and regulations when calculating Chandan's AAP/ALP scheme benefit.

*Chandan's Comments*¹¹⁹

- Chandan timely provided all relevant data to Commerce to establish that imports made under the AAP/ALP scheme were not used for exports of subject merchandise.¹²⁰
- Contrary to the petitioner's claim, Chandan provided details of all exports made under the AAP/ALP scheme and DDB program.¹²¹ The petitioner also incorrectly claims that Chandan was unable to resolve the mentioned discrepancy between several exhibits. Chandan in fact explained in detail the differences between the data provided in the exhibits with supporting documentation. An additional supplemental questionnaire exhibit details all exports made under the AAP/ALP scheme received by Chandan.¹²²
- A sample AAP/ALP license consists of a condition sheet and a corresponding complete product list detailing the items which Chandan can export using that respective license.¹²³ A company cannot use an AAP/ALP license for goods not stated in the license.
- The petitioner's inability to understand the AAP/ALP data does not signify that Chandan failed to cooperate the proceeding. None of the AFA criteria mentioned by the petitioner applies to Chandan; thus, Commerce should not apply AFA to Chandan for this program.

Commerce's Position: After considering the information on the record further, we continue to find that Chandan's AAP/ALP scheme licenses are tied to non-subject merchandise. Accordingly, the AAP/ALP scheme does not benefit the company's exports of subject merchandise and countervailing the AAP/ALP scheme is not warranted for these final results. We also find that the application of facts available and AFA are not warranted as no necessary information is missing from the record and Chandan cooperated to the best of its ability in this review.

In its request to apply AFA to Chandan, the petitioner argues that Chandan did not provide complete information regarding its use of the AAP scheme. As the petitioner notes, Chandan's

¹¹⁶ *Id.* at 19.

¹¹⁷ *Id.* at 25-26 (citing 19 CFR 351.519(a)(4)(i)).

¹¹⁸ *Id.* (citing *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review*; 2016, 84 FR 36051 (July 26, 2019) (*2016 Rebar from Turkey*), and accompanying IDM at Comment 5 (citing section 771(5)(E) of the Act)).

¹¹⁹ See generally Chandan Rebuttal Brief.

¹²⁰ *Id.* (citing Chandan March 3, 2020 IQR at Exhibit CVD-21).

¹²¹ *Id.* at 7 (citing Chandan March 3, 2020 IQR at Exhibit CVD-13 and Exhibit CVD-21).

¹²² *Id.* (citing Chandan June 17, 2020 SQR at Exhibit CVD-37).

¹²³ *Id.* (citing Chandan March 3, 2020 IQR at Exhibit CVD-21.1).

initial reporting raised questions about its accuracy in reporting its usage of the DDB and AAP/ALP schemes.¹²⁴ Chandan reported both AAP/ALP scheme data and DDB data within its DDB databases.¹²⁵ As a result, we asked Chandan:

In Exhibit CVD-13, it appears you included all duty drawbacks Chandan received over the POR, regardless of the program the “drawback” is under. Confirm that all transactions listed as “AA” under the column “Drawback or Advance Authorization” are included in Exhibit CVD-21. If any transactions are not included in Exhibit CVD-21, please explain why, and if necessary, provide an updated exhibit.¹²⁶

In its revised AAP/ALP reporting, Chandan accounted for all of the AAP/ALP invoices previously reported in the DDB exhibits.¹²⁷ We provided Chandan with an additional opportunity to explain the criterion used for determining the AAP/ALP scheme licenses it reported to Commerce, and to provide a complete database reporting its use of the AAP licenses during the POR.¹²⁸ Chandan clarified that it had reported to Commerce all AAP/ALP scheme licenses which were utilized, granted, or issued during the POR.¹²⁹ We also requested Chandan provide sample documentation supporting its assertion that the AAP/ALP scheme licenses were not used for the production of subject merchandise.¹³⁰ Chandan provided additional documentation demonstrating a license tied to non-subject merchandise exportation.¹³¹ We, therefore, disagree with the petitioner that Chandan deliberately omitted information from the record, thereby necessitating that Commerce apply AFA.

The petitioner also requests that Commerce, at a minimum, should use facts available under section 776(a) of the Act to countervail exemptions that Chandan received under this program.¹³² As we state at “Use of Facts Otherwise Available and Application of Adverse Inferences,” above, 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

¹²⁴ *Id.* at 17-24.

¹²⁵ See Chandan March 3, 2020 IQR at Exhibit CVD-13 and CVD-13.1.

¹²⁶ See Chandan June 17, 2020 SQR at 12.

¹²⁷ *Id.* at Exhibit CVD-37. In Chandan March 3, 2020 IQR at Exhibit CVD-13.1, Chandan lists all the line item transactions for each invoice associated with its use of the AAP scheme. Chandan reported each of these invoices in its AAP database, see Chandan June 17, 2020 SQR at Exhibit CVD-37. However, not all the line item transactions from Exhibit CVD-13.1 were included in Exhibit CVD-37. While the petitioner argues this is grounds for AFA, we disagree. Not only does the record contain sufficient information to calculate a benefit for these licenses (were such an action warranted), but as discussed further below, the record establishes that each of the licenses in question was for the export of non-subject merchandise. Thus, we continue to find that Chandan did not benefit from this program.

¹²⁸ See Commerce’s Letter, “Administrative Review of Countervailing Duty Order on Stainless Steel Flanges from India: Third Supplemental Questionnaire,” dated December 10, 2020 (Commerce December 10 Supplemental) at 4.

¹²⁹ See Chandan’s Letter, “Third Supplemental Questionnaire Response,” dated December 28, 2020 (Chandan December 28, 2020 SQR) at 6.

¹³⁰ See Commerce December 10 Supplemental at 4.

¹³¹ See Chandan December 28, 2020 SQR at Exhibit CVD-58.

¹³² See Petitioner Case Brief at 19.

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. We disagree with the petitioner that Chandan's reporting of this program met any of these standards.

In particular, Commerce issued multiple supplemental questionnaires to Chandan, and Chandan answered the questions to the best of its ability, providing all necessary information for Commerce to make a determination for the *Preliminary Results*.¹³³ Unlike the GOI, Chandan provided the information to Commerce in a timely manner, and in the requested format, without impeding this proceeding. While Commerce did not conduct a verification of the information provided by Chandan, nothing on the record indicates that the AAP/ALP information provided by Chandan is not verifiable under section 782(i) of the Act. As further discussed above, we find that contrary to the petitioner's assertions, no necessary information is missing from the record regarding Chandan's use of the AAP scheme. Accordingly, because we do not find the application of facts otherwise available is warranted, the petitioner's suggestion that we reverse-engineer the benefit calculation and accompanying exemption discussion is moot.

The petitioner also argues that the record does not support Commerce's determination that the AAP scheme is tied to non-subject merchandise. The petitioner claims that, instead, Chandan admits to receiving duty exemptions under this program in a way that benefits subject merchandise.¹³⁴ In making this argument, the petitioner references a chart in Chandan's response which details whether Chandan took advantage of various GOI schemes during the POR and the AUL period, whether the scheme benefited subject merchandise, and which products that benefitted from the scheme.¹³⁵ However, contrary to the petitioner's statement, Chandan did not admit to utilizing the AAP/ALP scheme for subject merchandise and the list of covered products by this scheme did not include subject merchandise.¹³⁶ Further, Commerce has determined that the benefit from this program is tied to the product produced and listed for export on the licenses. None of the products listed in Chandan's chart as benefitting from the use of this scheme are subject merchandise.¹³⁷ Accordingly, we find the information relied on by the petitioner provides no basis to reverse our preliminary finding that these licenses are tied to non-subject merchandise.¹³⁸

Further, while we agree with the petitioner that the burden is on respondents to demonstrate that benefits under the AAP/ALP scheme are tied to non-subject merchandise,¹³⁹ we disagree that Chandan failed to meet this burden here. In reaching our finding that the AAP/ALP scheme is tied to non-subject merchandise, we reviewed AAP licenses provided by Chandan. While the petitioner alleges that imported inputs listed on the AAP licenses could be used in the production of subject merchandise, as evidenced by Chandan's production process flowchart,¹⁴⁰ we find the

¹³³ See, generally, *Preliminary Results* PDM.

¹³⁴ See Petitioner Case Brief at 23 (citing Chandan March 3, 2020 IQR at 11-12).

¹³⁵ See Chandan March 3, 2020 IQR at 11-12.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ See Petitioner Case Brief at 23 (citing Chandan March 3, 2020 IQR at Exhibit CVD-5, "Process Flow Chart").

¹³⁹ *Id.* at 22 (citing *Polyester Yarn from India Final Determination* IDM at Comment 3).

¹⁴⁰ *Id.* at 22-23 (citing Chandan March 3, 2020 IQR at 3 and Exhibits CVD-5, CVD-21 and CVD-21.1; and Chandan December 28, 2020 SQR at Exhibit CVD-58).

record does not support this allegation. Specifically, the record does not support the assertion that the AAP/ALP imported inputs are definitively used in Chandan's subject merchandise production process. The petitioner's allegations are based on supposition and assumptions not on the record. More importantly, subject merchandise is not on Chandan's licenses under this program. Our approach here is consistent with our approach in past cases.¹⁴¹

We agree with the petitioner that we found in the underlying investigation that the GOI does not have an effective monitoring system in place to confirm which inputs were consumed in the production of exported products.¹⁴² However, we disagree that this fact signifies that a listing of non-subject merchandise on AAP licenses is insufficient to demonstrate that Chandan did not benefit from this program. It is true that Commerce determined in the underlying investigation 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 products, making normal allowance for waste.¹⁴³ It is also true that Commerce found that 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.¹⁴⁴ Thus, Commerce found the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act.¹⁴⁵

However, the petitioner's arguments ignore the fact that Commerce has repeatedly found that, at the point of bestowal, in accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we attribute that subsidy to only that product or market.¹⁴⁶ Commerce has established a practice which allows a respondent to demonstrate the AAP/ALP license is tied to non – subject merchandise, regardless of whether the GOI has a system in place to confirm which inputs are consumed in the production of the exported products.¹⁴⁷ When a respondent is able to demonstrate the AAP/ALP program is tied to non-subject merchandise, Commerce does not countervail the program.¹⁴⁸ Consistent with our long-standing practice, we find that the benefits of the AAP/ALP licenses are attributable to the specific exported products identified in the licenses, which in this review are all for non-subject merchandise. Indeed, the petitioner does not dispute the fact that these licenses are all for the exportation of non-subject merchandise. The petitioner is merely arguing that, because the GOI does not have a system in

¹⁴¹ See OCTG from India IDM at 18; see also *Common Alloy Aluminum Sheet from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 49631 (August 14, 2020) (*Aluminum Sheet from India Preliminary Determination*), and accompanying PDM at 22, unchanged in *Common Alloy Aluminum Sheet from India: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 86 FR 13285 (March 8, 2021) (*Aluminum Sheet from India Final Determination*), and accompanying IDM.

¹⁴² *Id.* at 24-25 (citing *Flanges Investigation Final IDM* at Comment 5).

¹⁴³ See *Flanges Investigation Final IDM* at Comment 5.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ See e.g., *Aluminum Sheet from India Preliminary Determination* PDM at 22-23, unchanged in *Aluminum Sheet from India Final Determination* IDM.

¹⁴⁷ See *Aluminum Sheet from India Final Determination* IDM at Comment 5.

¹⁴⁸ See *Aluminum Sheet from India Preliminary Determination* PDM at 22-23, unchanged in *Aluminum Sheet from India Final Determination* IDM.

place in accordance with 19 CFR 351.519(a)(4), Commerce cannot rely on the listing of non-subject merchandise on the licenses.

Section 351.519(a)(4) of Commerce's regulations provides the regulatory mechanism to determine whether a duty drawback program is countervailable. Section 351.525 informs Commerce on the calculation of *ad valorem* subsidy rates and the attribution of a subsidy to a product. It is through this latter regulation where Commerce takes the benefit, in this case as dictated by 19 CFR 351.519(a)(4), and determines the appropriate method to attribute the subsidy and to calculate the ultimate subsidy rate. Through 19 CFR 351.525, Commerce is provided with the regulatory authority to determine whether a subsidy is tied to a specific product. Although Commerce has found that the GOI does not have a system in place to track the *inputs* used to produce the exported goods, neither Commerce nor the regulations have stated that this lack of a system precludes Commerce from determining the benefits from the subsidy are tied to a product. As a result, we continue to find that Chandan's AAP licenses clearly demonstrate it exclusively exports non-subject merchandise, and, as a consequence, Chandan did not benefit from this program.

The petitioner relies on *Polyester Yarn from India* to demonstrate that the burden is on respondents to demonstrate that the benefits under the AAP scheme are tied to specific merchandise. In that case, Commerce stated:

We disagree with the GOI that JBF's{(a respondent)} AAP benefits are tied to non-subject merchandise. In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we will attribute that subsidy to only that product or market. However, the burden of producing relevant evidence belongs with the respondents, not Commerce. JBF did not provide evidence supporting its assertion that it only used the AAP for the export of non-subject merchandise.¹⁴⁹

However, what the petitioner fails to note in *Polyester Yarn from India* is that Commerce found that the other mandatory respondent, Reliance, met its burden such that Commerce found its exports related to its AAP licenses to be tied to non-subject merchandise:

In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we will attribute that subsidy to only that product or market. Reliance's data show that the company only used this program for export of non-subject merchandise. Therefore, we preliminarily determine that Reliance has not received benefits tied to subject merchandise during the POI under this program.¹⁵⁰

Commerce distinguished the AAP/ALP scheme treatment on the basis of the respondents' reporting, as it does in each segment of a proceeding. In *Polyester Yarn from India*, we found that JBF also attempted to submit a minor correction consisting of an entirely new Excel

¹⁴⁹ See *Polyester Yarn from India* IDM at 15 (citations omitted).

¹⁵⁰ See *Polyester Textured Yarn from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 19036 (May 3, 2019), and accompanying PDM at 15 (citations omitted), unchanged in *Polyester Yarn from India* IDM.

workbook regarding its AAP/ALP scheme program benefit.¹⁵¹ Further, JBF did not provide evidence supporting its assertion that it only used a portion of the AAP/ALP scheme for subject merchandise.¹⁵² The finding made by Commerce in *Polyester Yarn from India*, that AAP/ALP countervailability contingent on a respondent's reporting, is consistent with findings in other proceedings and our treatment of the record information in this proceeding.¹⁵³

Finally, because Commerce continues to find the AAP/ALP scheme not used by Chandan for our final results, we find the petitioner's arguments relating to the calculation of a benefit moot.

IX. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this review in the *Federal Register*.



Agree



Disagree

8/20/2021

X



Signed by: RYAN MAJERUS

Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations

¹⁵¹ See *Polyester Yarn from India* IDM at Comment 18.

¹⁵² *Id.* at Comment 3.

¹⁵³ See, e.g., *Aluminum Sheet from India Preliminary Determination* PDM at 22-23 (Commerce found a countervailable subsidy rate of 2.10 percent *ad valorem* for one respondent, but found that another respondent did not benefit under this program), unchanged in *Aluminum Sheet from India Final Determination* IDM; see also *OCTG from India* IDM at "Advance License Program/Advance Authorization Program."