



C-533-902  
Investigation  
POI: 01/01/2020 – 12/31/2020  
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August 30, 2021

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

**FROM:** Melissa G. Skinner  
Senior Director, Office VII  
Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Affirmative  
Determination in the Countervailing Duty Investigation of Organic  
Soybean Meal from India

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## I. SUMMARY

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

## II. BACKGROUND

### A. Initiation and Case History

On March 31, 2021, we received a countervailing duty (CVD) petition concerning organic soybean meal from India, filed in proper form, on behalf of the Organic Soybean Processors of America; American Natural Processors, LLC; Organic Production Services, LLC; Professional Proteins, Ltd.; Sheppard Grain Enterprises LLC; Simmons Grain Co.; Super Soy, LLC; and Tri-State Crush (collectively, the petitioners).<sup>1</sup> Pursuant to section 702(b)(4)(A)(ii) of the Act, we

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<sup>1</sup> See Petitioners' Letter, "Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Section 701 and 731 of the Tariff Act of 1930, as Amended, on Organic Soybean Meal from India," dated March 31, 2021; *see also* Petitioners' Letters, "Organic Soybean Meal from India: The Petitioners' Amendment to Volume I Relating to General Issues and Change of Petitioner Status," dated April 6, 2021; "Organic Soybean Meal from India: Petitioners' Response to Supplemental General Questions," dated April 7, 2021; and "Organic Soybean Meal from India: Petitioners' Response to Additional Supplemental CVD Questions," dated April 16, 2021 (collectively, the Petition).



invited representatives of the Government of India (GOI) for consultations.<sup>2</sup> Commerce received a request from the GOI to conduct consultations, but ultimately did not schedule consultations due to a lack of response from the GOI.<sup>3</sup> On April 20, 2021, we initiated a CVD investigation of organic soybean meal from India.<sup>4</sup>

Commerce stated in the *Initiation Notice* that we could not rely on data from U.S. Customs and Border Protection to select respondents for this investigation because one of the two Harmonized Tariff Schedule of the United States (HTSUS) subheadings in the scope of the investigation covers imports of both organic and non-organic soybean meal.<sup>5</sup> Commerce instead issued quantity and value (Q&V) questionnaires to the 19 companies identified in the Petition as producers/exporters of organic soybean meal.<sup>6</sup> We also posted the Q&V questionnaire on Commerce's website, inviting parties that did not receive a Q&V questionnaire via Fedex to file a response. Between May 7, 2021, and May 13, 2021, Commerce received timely filed Q&V questionnaire responses from ten exporters and producers of the merchandise under consideration, including three Q&V responses from companies that were not mailed the Q&V questionnaire: Kanishka Organics LLP (Kanishka), Shanti Worldwide, Shri Sumati Oil Industries Pvt. Ltd. (Shri Sumati), Shanti Overseas (India) Limited (Shanti Overseas), Agrawal Oil and Biocheam (Agrawal), Simran Feeds Pvt. Ltd. (Simran), Vimala Food Products (Vimala), Bergwerff Organic India Private Limited (Bergwerff), Suminter India Organics Private Limited (Suminter), and Navjyot International Pvt Ltd (Navjyot).<sup>7</sup> We did not receive a timely response from nine companies that were sent, and received, the Q&V questionnaire, including: Ish Agritech Pvt. Ltd. (Ish Agritech), Satguru Organics Pvt. Ltd. (Satguru), Radiance Overseas, Swastik Enterprises, Soni Soya Products Limited (Soni Soya), Raj Foods International, Vantage Organic Foods Pvt. Ltd. (Vantage Organic), Shree Bhagwati Oil Mill (Shree Bhagwati), and

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<sup>2</sup> See Commerce's Letter, "Countervailing Duty Petition on Organic Soybean Meal from India: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated April 5, 2021.

<sup>3</sup> See GOI's Letter, "Scheduling of Pre-Initiation Consultation for Countervailing Duty Petition on Organic Soybean Meal from India," dated April 15, 2021; *see also* Memorandum, "Countervailing Duty Investigation of Organic Soybean Meal from India: *Ex Parte* Communication Regarding Petition Consultation Deadline," dated April 16, 2021.

<sup>4</sup> See *Organic Soybean Meal from India: Initiation of Countervailing Duty Investigation*, 86 FR 22136 (April 27, 2021) (*Initiation Notice*).

<sup>5</sup> *Id.* at "Respondent Selection."

<sup>6</sup> See Commerce's Letter, "Quantity and Value Questionnaire for the Countervailing Duty Investigation of Organic Soybean Meal from India," dated April 22, 2021.

<sup>7</sup> See Kanishka's Letter, "Kanishka Organics LLP Quantity and Value Questionnaire Response: Organic Soybean Meal from India (C-533-902)," dated May 7, 2021; *see also* Shanti Worldwide's Letter, "Shanti Worldwide Quantity and Value Questionnaire Response: Organic Soybean Meal from India (C-533-902)," dated May 7, 2021; Shri Sumati's Letter, "Shri Sumati Oil Industries Private Limited ('Shri Sumati') Quantity and Value Questionnaire Response: Organic Soybean Meal from India (C-533-902)," dated May 7, 2021; Shanti Overseas' Letter, "Shanti Overseas (India) Limited ('Shanti Overseas') Quantity and Value Questionnaire Response: Organic Soybean Meal from India (C-533-902)," dated May 7, 2021; Agrawal's Letter, "Agrawal Oil and Biocheam Quantity and Value Questionnaire Response: Organic Soybean Meal from India (C-533-902)," dated May 7, 2021; Vimala's Letter, "Vimala Food Products Quantity and Value Questionnaire Response: Organic Soybean Meal from India (C-533-902)," dated May 7, 2021; Bergwerff and Suminter's Letter, "Organic Soybean Meal from India: Quantity and Value Questionnaire Responses," dated May 7, 2021; and Navjyot's Letter, "Navjyot International's Quantity and Value Questionnaire Response: Organic Soybean Meal from India (C-533-902)," dated May 13, 2021.

Pragati Organics.<sup>8</sup> For further information regarding these non-responsive companies, *see* the “Application of AFA to Non-Responsive Q&V Questionnaire Recipients” section *infra*.

Commerce received respondent selection comments from the petitioners, as well as joint comments filed by Bergwerff and Suminter.<sup>9</sup> On May 19, 2021, Bergwerff and Suminter filed a request for voluntary respondent treatment.<sup>10</sup>

On May 18, 2021, pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2), we selected Shanti Worldwide and Shri Sumati as mandatory respondents.<sup>11</sup> We issued our CVD questionnaire to the GOI, with instructions to forward the questionnaire to the mandatory respondents.<sup>12</sup> On June 3, 2021, Shri Sumati withdrew from participation in this investigation.<sup>13</sup> On June 4, 2021, we selected Bergwerff as an additional mandatory respondent in this investigation.<sup>14</sup> On June 5, 2021, Shanti Worldwide also withdrew from participation in the investigation.<sup>15</sup> On June 8, 2021, we selected Navjyot as an additional mandatory respondent in this investigation.<sup>16</sup> On June 17, 2021, Navjyot also withdrew from participation in the investigation.<sup>17</sup>

On June 22, 2021, we received a timely response to the affiliation section of the initial questionnaire from Bergwerff.<sup>18</sup> Following a request from Commerce, Bergwerff provided a supplemental affiliation response on July 13, 2021.<sup>19</sup> Between July 12, 2021, and July 19, 2021, we received timely responses to the initial questionnaire from Bergwerff.<sup>20</sup> On July 19, 2021

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<sup>8</sup> See Section VIII *infra* for a further discussion of these companies.

<sup>9</sup> See Petitioners’ Letter, “Organic Soybean Meal from India: Petitioners’ Comments on Respondent Selection,” dated May 13, 2021; *see also* Bergwerff and Suminter’s Letter, “Organic Soybean Meal from India: Respondent Selection Comments,” dated May 13, 2021.

<sup>10</sup> See Bergwerff’s Letter, “Organic Soybean Meal from India: Request for Voluntary Respondent Treatment,” dated May 19, 2021.

<sup>11</sup> See Memorandum, “Countervailing Duty Investigation of Organic Soybean Meal from India: Selection of Respondents for Individual Examination,” dated May 18, 2021 (Initial Respondent Selection Memo).

<sup>12</sup> See Commerce’s Letter, “Organic Soybean Meal from India: Countervailing Duty Questionnaire,” dated May 27, 2021 (Initial Questionnaire).

<sup>13</sup> See Shri Sumati’s Letter, “Organic Soybean Meal from India: Request for Withdrawal as a Mandatory Respondent in the Countervailing Duty Investigation,” dated June 3, 2021 (Shri Sumati Notice of Withdrawal).

<sup>14</sup> See Memorandum, “Countervailing Duty Investigation of Organic Soybean Meal from India: Selection of Replacement Mandatory Respondent,” dated June 4, 2021.

<sup>15</sup> See Shanti Worldwide’s Letter, “Organic Soybean Meal from India: Request for Withdrawal as a Mandatory Respondent in the Countervailing Duty Investigation (C-533-902),” dated June 5, 2021 (Shanti Worldwide Notice of Withdrawal).

<sup>16</sup> See Memorandum, “Countervailing Duty Investigation of Organic Soybean Meal from India: Second Selection of Replacement Mandatory Respondent,” dated June 8, 2021.

<sup>17</sup> See Navjyot’s Letter, “Organic Soybean Meal from India (C-533-902): Request for Withdrawal as Selected Mandatory Respondent,” dated June 17, 2021 (Navjyot Notice of Withdrawal).

<sup>18</sup> See Bergwerff and Suminter’s Letter, “Organic Soybean Meal from India: Section III Affiliation Questionnaire Responses,” dated June 22, 2021 (Bergwerff Initial Affiliation Response).

<sup>19</sup> See Commerce’s Letter, “Supplemental Affiliation Questionnaire in the Countervailing Duty Investigation of Organic Soybean Meal from India,” dated June 29, 2021; *see also* Bergwerff’s Letter, “Organic Soybean Meal from India: Supplemental Affiliation Questionnaire Response,” dated July 13, 2021.

<sup>20</sup> See Bergwerff’s Letters, “Organic Soybean Meal from India: List of Subsidies Used and Not Used,” dated July 12, 2021 (Bergwerff Subsidy List); and “Organic Soybean Meal from India: Section III Questionnaire Response,” dated July 19, 2021 (Bergwerff IQR).

and July 26, 2021, we received timely responses to the initial questionnaire from the GOI.<sup>21</sup> Commerce received comments from the petitioners regarding Bergwerff's initial responses between July 1, 2021, and August 9, 2021.<sup>22</sup> Commerce issued additional supplemental questionnaires to Bergwerff and the GOI on August 12, 2021, and August 16, 2021, respectively.<sup>23</sup> Commerce received timely responses to Bergwerff's supplemental questionnaire on August 18, 2021, and August 20, 2021.<sup>24</sup> Commerce received timely responses to the GOI's supplemental questionnaire on August 20, 2021, and August 23, 2021.<sup>25</sup> On August 25, 2021, we received pre-preliminary comments from the petitioners.<sup>26</sup>

The petitioners filed a new subsidy allegation (NSA) on July 14, 2021.<sup>27</sup> Commerce initiated on the allegation submitted by the petitioners on July 27, 2021,<sup>28</sup> and issued an NSA questionnaire to Bergwerff and the GOI on July 29, 2021.<sup>29</sup> Bergwerff and the GOI submitted responses to Commerce's NSA questionnaire on August 10, 2021.<sup>30</sup>

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<sup>21</sup> See GOI's Letters, "CVD Investigation – Organic Soybean Meal from India – Partial Reply to the Initial Questionnaire on Behalf of Government of India (GOI)," dated July 19, 2021 (GOI First IQR); and "CVD Investigation – Organic Soybean Meal from India – Reply to the Initial Questionnaire on Behalf of Government of India (GOI)," dated July 26, 2021 (GOI Second IQR).

<sup>22</sup> See Petitioners' Letters, "Organic Soybean Meal from India: Petitioners' Comments on Bergwerff Organic India Private Limited's Section III Affiliation Questionnaire Response," dated July 1, 2021; "Organic Soybean Meal from India (C-533-902): Petitioners' Comments on Bergwerff Organic India Private Limited's July 12, 2021 Section III Questionnaire Response and July 13, 2021 Supplemental Affiliation Questionnaire Response," dated July 19, 2021; "Organic Soybean Meal from India: Petitioners' Comments Concerning the July 19, 2021 Section II Questionnaire Response of the Government of India," dated August 2, 2021; "Organic Soybean Meal from India: Petitioners' Partial Comments on July 20, 2021 Section III Questionnaire Response of Bergwerff Organic India Private Limited and Suminter India Organics Private Limited and Request to Extend the Deadline to Submit Rebuttal Factual Information for the Remaining Programs," dated August 3, 2021; "Organic Soybean Meal from India: Petitioners' Comments Concerning the July 26, 2021 Section II Questionnaire Response of the Government of India," dated August 9, 2021; and "Organic Soybean Meal from India: Petitioners' Supplemental Comments on July 20, 2021 Section III Questionnaire Response of Bergwerff Organic India Private Limited and Suminter India Organics Private Limited," dated August 9, 2021.

<sup>23</sup> See Commerce's Letters, "Supplemental Questionnaire in the Countervailing Duty Investigation of Organic Soybean Meal from India," dated August 12, 2021, and "Supplemental Questionnaire in the Countervailing Duty Investigation of Organic Soybean Meal from India," dated August 16, 2021 (GOI Supplemental Questionnaire).

<sup>24</sup> See Bergwerff's Letters, "Organic Soybean Meal from India: Section III Supplemental Questionnaire Response Questions 1-7," dated August 18, 2021; and "Organic Soybean Meal from India: Section III Supplemental Questionnaire Response," dated August 20, 2021.

<sup>25</sup> See GOI's Letters, "CVD Investigation – Organic Soybean Meal from India – Partial Response to the Supplemental Questionnaire on Behalf of Government of India," dated August 20, 2021 (GOI August 20, 2021 SQR); and "CVD Investigation – Organic Soybean Meal from India – Response to the Remaining Part of Supplemental Questionnaire on behalf of Government of India (GoI)," dated August 23, 2021 (GOI August 23, 2021 SQR).

<sup>26</sup> See Petitioners' Letter, "Organic Soybean Meal from India: Petitioners' Pre-Preliminary Determination Comments," dated August 25, 2021.

<sup>27</sup> See Petitioners' Letter, "Organic Soybean Meal from India: New Subsidy Allegation," dated July 14, 2021.

<sup>28</sup> See Memorandum, "Countervailing Duty Investigation of Organic Soybean Meal from India," dated July 27, 2021.

<sup>29</sup> See Commerce's Letters, "Countervailing Duty Investigation on Organic Soybean Meal from India: New Subsidy Allegation Questionnaire," dated July 29, 2021; and "Countervailing Duty Questionnaire on Organic Soybean Meal from India: New Subsidy Allegation Questionnaire," dated July 29, 2021.

<sup>30</sup> See Bergwerff's Letter, "Organic Soybean Meal from India: New Subsidy Allegation Questionnaire Response," dated August 10, 2021 (Bergwerff NSA Response); *see also* GOI's Letter, "CVD Investigation – Organic Soybean

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

On June 3, 2021, Commerce postponed the deadline for this preliminary determination until no later than 130 days after the initiation of the investigation, based on a request from the petitioners.<sup>31</sup> As such, we postponed the preliminary determination until August 30, 2021, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(e).<sup>32</sup>

## **C. Period of Investigation**

The period of investigation (POI) is January 1, 2020, through December 31, 2020.<sup>33</sup> This period corresponds to the most recently completed calendar year in accordance with 19 CFR 351.204(b)(2).

## **D. Alignment**

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioners' request,<sup>34</sup> we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of organic soybean meal from India. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than January 10, 2022 unless postponed.<sup>35</sup>

## **III. SCOPE COMMENTS**

In accordance with the *Preamble* to Commerce's regulations,<sup>36</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, the scope, of organic soybean meal.<sup>37</sup> We received no comments on the scope of the investigation from interested parties. However, subsequent to the initiation of this investigation, Commerce determined that an expired Harmonized Tariff Schedule of the United States (HTSUS) code, 2309.90.1010, was erroneously included in the scope appendix of the *Initiation Notice* due to a typographical error.<sup>38</sup> Commerce amended the expired code to HTSUS 2309.90.1020, "Mixed feeds or mixed

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Meal from India – Response to the NSA Questionnaire on Behalf of Government of India (GOI)," dated August 10, 2021 (GOI NSA Response).

<sup>31</sup> See Petitioners' Letter, "Organic Soybean Meal from India: Petitioners' Request to Postpone the Countervailing Duty Investigation Preliminary Determination," dated May 26, 2021.

<sup>32</sup> See *Organic Soybean Meal from India: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 86 FR 29742 (June 3, 2021).

<sup>33</sup> See *Initiation Notice*, 86 FR at 22136.

<sup>34</sup> See Petitioners' Letter, "Organic Soybean Meal from India: Petitioners' Request to Align the Countervailing Duty Final Determination with Antidumping Duty Final Determination," dated August 23, 2021.

<sup>35</sup> See *Organic Soybean Meal from India: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 86 FR 29742 (June 3, 2021).

<sup>36</sup> See *Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>37</sup> See *Initiation Notice*, 86 FR at 22136-37.

<sup>38</sup> See Memorandum, "Antidumping and Countervailing Duty Investigation of Organic Soybean Meal from India: Scope Erratum," dated May 26, 2021.

feed ingredients; Poultry feeds, prepared,” prior to the issuance of the initial CVD questionnaire to selected respondents.<sup>39</sup>

The revised language is provided below.

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

The merchandise subject to the investigation is certified organic soybean meal. Certified organic soybean meal results from the mechanical pressing of certified organic soybeans into ground products known as soybean cake, soybean chips, or soybean flakes, with or without oil residues. Soybean cake is the product after the extraction of part of the oil from soybeans. Soybean chips and soybean flakes are produced by cracking, heating, and flaking soybeans and reducing the oil content of the conditioned product. “Certified organic soybean meal” is certified by the U.S. Department of Agriculture (USDA) National Organic Program (NOP) or equivalently certified to NOP standards or NOP-equivalent standards under an existing organic equivalency or recognition agreement.

Certified organic soybean meal subject to this investigation has a protein content of 34 percent or higher.

Organic soybean meal that is otherwise subject to this investigation is included when incorporated in admixtures, including but not limited to prepared animal feeds. Only the organic soybean meal component of such admixture is covered by the scope of this investigation.

The products covered by this investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 1208.10.0010 and 2304.00.0000. Certified organic soybean meal may also enter under HTSUS 2309.90.1005, 2309.90.1015, 2309.90.1020, 2309.90.1030, 2309.90.1032, 2309.90.1035, 2309.90.1045, 2309.90.1050, and 2308.00.9890.

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

#### **V. INJURY TEST**

Because India is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On May 24, 2021, the ITC determined that there is reasonable indication that an industry in the United States is materially injured by reason of imports of organic soybean meal from India.<sup>40</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> See *Organic Soybean Meal from India*, 86 FR 27649 (May 21, 2021).

## VI. SUBSIDIES VALUATION

### A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.<sup>41</sup>

Commerce finds the AUL in this proceeding to be 17 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service 946 (2020), “Appendix B – Table of Class Lives and Recovery Periods” (IRS Pub. 946).<sup>42</sup> Commerce notified the respondents of this 17-year AUL in the initial CVD questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

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

### B. Attribution of Subsidies

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

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

{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

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<sup>41</sup> See 19 CFR 351.524(b).

<sup>42</sup> See U.S. Internal Revenue Service Publication 946 (2020), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.<sup>43</sup>

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.<sup>44</sup>

Bergwerff is a producer and exporter of the subject merchandise. Bergwerff provided information regarding a number of additional affiliates for Commerce’s consideration.<sup>45</sup> We preliminarily determine that only Suminter meets the cross-owned definition set forth in 19 CFR 351.525(b)(6)(vi) and Commerce’s attribution regulations in 19 CFR 351.525(b)(6)(ii)-(v). Suminter is a holding company that holds certain equity shares of Bergwerff.<sup>46</sup> For the specific ownership interest, please *see* the Preliminary Calculation Memorandum. Suminter is also an exporter of the subject merchandise. Additionally, Suminter also provides Bergwerff with inputs, raw organic soybeans.<sup>47</sup> In accordance with 19 CFR 351.525(b)(6)(iii), we preliminarily determine that it is appropriate to attribute subsidies received by Suminter to Suminter’s consolidated sales. Further, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Bergwerff to its own sales.

### **C. Denominators**

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondent’s receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent’s export or total sales, or portions thereof. As discussed in the “Programs Preliminarily Determined to Be Countervailable” section and in Bergwerff’s Preliminary Calculation Memorandum, where a program is found to be countervailable as a domestic subsidy, we used total product sales as the denominator. Where a program is found to be contingent upon export activities, we used total export sales. For a further discussion of the denominators used, *see* Bergwerff’s Preliminary Calculation Memorandum.<sup>48</sup>

In the *Initiation Notice*, Commerce established January 1, 2020, through December 31, 2020, as the POI of this investigation.<sup>49</sup> In the initial questionnaire, Commerce requested that respondents submit program answers that cover each company’s situation during the POI, “unless specified

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<sup>43</sup> See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

<sup>44</sup> See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).

<sup>45</sup> See Bergwerff Initial Affiliation Response at 3-6.

<sup>46</sup> *Id.* at 7.

<sup>47</sup> *Id.* at 2-3.

<sup>48</sup> See Preliminary Calculation Memorandum.

<sup>49</sup> See *Initiation Notice*, 86 FR at 22136.



differently.”<sup>50</sup> The GOI indicated a preference to use April 1, 2020, to March 31, 2021 as the POI to better align with the GOI’s fiscal year, but no similar request was made by Bergwerff.<sup>51</sup> However, Bergwerff subsequently noted in its initial questionnaire that, although it was reporting POI sales based on calendar year, sales for the entire AUL period were reported in accordance with each fiscal year (April 1 to March 31).<sup>52</sup> Bergwerff explained that it provided AUL sales on a fiscal-year basis for itself and Suminter because the AUL sales information was retained on prior accounting systems, and manually extracting and parsing this data on a calendar-year basis would be overly burdensome within the deadlines of the investigation.<sup>53</sup> Bergwerff also explained that it does not maintain calendar-year accounting for these earlier years in the normal course of business.<sup>54</sup> Therefore, Bergwerff referred to the companies’ financial statements to provide AUL sales information.<sup>55</sup>

As a result, Commerce has used the April-March fiscal year encompassing the majority of the calendar year as the allocation basis for its non-recurring benefits (*e.g.*, a program with a one-time benefit attributed to calendar year 2010 would be allocated using the total sales value attributed to FY 2010-2011). For a further discussion of the denominators used, *see* the Preliminary Calculation Memorandum.<sup>56</sup>

## VII. BENCHMARKS AND DISCOUNT RATES

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

Additionally, 19 CFR 351.505(a)(2)(ii) states that Commerce will not consider a loan provided by a government-owned special-purpose bank for purposes of calculating benchmark rates.<sup>57</sup> In the absence of reported long-term loan interest rates, we use the below-discussed interest rates as discount rates for purposes of allocating non-recurring benefits over time pursuant to 19 CFR 351.524(d)(3)(i)(B).

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<sup>50</sup> See Initial Questionnaire at Section III, page 2.

<sup>51</sup> See GOI’s Letter, “CVD Investigation - Organic Soybean Meal from India - a) Request for Extension of Time to Reply to the Initial Questionnaire Response (QR) on Behalf of Government of India (GoI), and b) Request for Confirmation on Final List of Mandatory Respondents,” dated July 1, 2021.

<sup>52</sup> See Bergwerff IQR at 18-19.

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

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> See Preliminary Calculation Memorandum.

<sup>57</sup> See, *e.g.*, *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at “Benchmark and Discount Rates” section.

Commerce is examining short-term loans provided to Bergwerff that were outstanding during the POI. The loans are denominated in Indian rupees.<sup>58</sup> We are also examining non-recurring, allocable subsidies that Bergwerff and Suminter received.<sup>59</sup> In the section below, we discuss the derivation of the benchmarks and discount rates for the POI and the years comprising the AUL period.

#### A. Long- and Short-Term Loan Interest Rate Benchmark

Bergwerff and Suminter reported Indian rupee-denominated short-term loans received from commercial lenders.<sup>60</sup> However, we preliminarily determine that the short-term loan benchmark information was deficient and is not suitable for benchmarking purposes. In this regard, Commerce requested that Bergwerff provide a company-specific short-term interest rate benchmark by weighing the rates by the principal amount of each loan, and submit calculation worksheets showing how the weighted-average rate was derived.<sup>61</sup> Commerce also requested that Bergwerff provide 15 additional categories of information for all commercial short-term debt with principal outstanding during the POI.<sup>62</sup> However, Bergwerff's benchmark response was limited to a hardcoded exhibit that lacked information specific to each applicable short-term loan, as well as calculations to support the proposed benchmark.<sup>63</sup>

Bergwerff also reported Indian rupee-denominated long-term loans that it received from commercial lenders.<sup>64</sup> Where applicable, we relied on the interest rate that the company paid on its rupee-denominated long-term rate borrowing as benchmark interest rates.<sup>65</sup>

For years in which a company specific rate was not available, and for all short-term loans, in accordance with 19 CFR 351.505(a)(3)(ii), we used national average interest rates from the International Monetary Fund's International Financial Statistics (IFS) as benchmark rates for rupee-denominated short-term loans and in instances that would require a long-term benchmark, such as for our discount rates.

#### B. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate described above for the year in which the government approved non-recurring subsidies. When that was unavailable, we used the IFS rates.

The interest-rate benchmarks and discount rates used in our preliminary calculations are provided in the Preliminary Calculation Memorandum.

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<sup>58</sup> See Bergwerff IQR at 59-60.

<sup>59</sup> See 19 CFR 351.524(b)(1).

<sup>60</sup> *Id.* at 57 and CVD-46.

<sup>61</sup> See Initial Questionnaire at 28.

<sup>62</sup> *Id.* at 27-28.

<sup>63</sup> See Bergwerff IQR at 57 and CVD-46.

<sup>64</sup> See Bergwerff Initial Section III Response at 57 and CVD-45.

<sup>65</sup> We note that the respondent did not report the use of any long-term loan programs and, thus, we are using its long-term commercial loan benchmarks reported, that meet our criteria, for the appropriate discount rate in the corresponding year.

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

### A. Legal Standard

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

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>66</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record.<sup>67</sup>

When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide {Commerce} with complete and accurate information in a timely manner.”<sup>68</sup>

Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>69</sup>

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent

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<sup>66</sup> See section 776(b)(1)(B) of the Act.

<sup>67</sup> See 19 CFR 351.308(c).

<sup>68</sup> See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China Final*); and *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>69</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I (1994) (SAA) at 870.

practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>70</sup> Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>71</sup> It is Commerce’s practice to consider information to be corroborated if it has probative value.<sup>72</sup> In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.<sup>73</sup> However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.<sup>74</sup>

Finally, under section 776(d) of the Act, when applying an adverse inference, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>75</sup>

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

#### B. Application of AFA to Non-Responsive Q&V Questionnaire Recipients

As noted in the “Initiation and Case History” section above, Commerce issued Q&V questionnaires to the nineteen companies identified in the Petition as producers/exporters of organic soybean meal. We confirmed that the Q&V questionnaires were successfully delivered to thirteen of the intended recipients: Agrawal; Ish Agritech; Bergwerff; Satguru; Shri Sumati; Radiance Overseas; Swastik Enterprises; Soni Soya; Raj Foods International; Navjyot; Vantage Organic; Shree Bhagwati; and Pragati Organics.<sup>76</sup> Nine of these companies did not provide any response to Commerce’s Q&V questionnaire: Ish Agritech; Satguru; Radiance Overseas; Swastik Enterprises;<sup>77</sup> Soni Soya; Raj Foods International; Vantage Organic; Shree Bhagwati, and Pragati Organics. Delivery of the Q&V questionnaire was not confirmed for three non-responsive companies: Khyati Foods Pvt. Ltd., Geo Fresh Organic, and Narayana Agro Oils Pvt. Ltd.

Accordingly, we preliminarily determine that Ish Agritech; Satguru; Radiance Overseas, Swastik Enterprises; Soni Soya; Raj Foods International; Vantage Organic; Shree Bhagwati, and Pragati Organics withheld necessary information that was requested of them, failed to provide

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<sup>70</sup> See 19 CFR 351.308(d).

<sup>71</sup> See, e.g., SAA at 870.

<sup>72</sup> See SAA at 870.

<sup>73</sup> See, e.g., SAA at 869.

<sup>74</sup> See SAA at 869-870.

<sup>75</sup> See section 776(d)(3) of the Act.

<sup>76</sup> See Initial Respondent Selection Memo at 2.

<sup>77</sup> See Memorandum, “Rejection of Submission,” dated May 18, 2021 (in which Commerce rejected Swastik Enterprises’ untimely filed Q&V questionnaire response).

information within the deadlines established, and significantly impeded this proceeding. Thus, Commerce is relying on facts otherwise available in making our preliminary determination with respect to the aforementioned non-cooperative companies, pursuant to sections 776(a)(1) and (2)(A)-(C) of the Act.

Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b)(1) of the Act because, by not responding to Commerce's Q&V questionnaire, these companies did not cooperate to the best of their abilities to comply with the requests for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that the non-cooperative companies do not obtain a more favorable result by failing to cooperate than if they had fully complied with our requests for information.

As facts otherwise available with an adverse inference, we find that all programs at issue in this investigation, including certain programs that were self-reported<sup>78</sup> by the cooperating mandatory respondent, were used by Ish Agritech; Satguru; Radiance Overseas; Swastik Enterprises; Soni Soya; Raj Foods International; Vantage Organic; Shree Bhagwati, and Pragati Organics and confer a benefit on these companies within the meaning of sections 771(5)(B) and (E) of the Act. Therefore, we are including each of these programs in determining the AFA rate for these companies. We selected an AFA rate for each of these programs based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice. For a description of the selection of the AFA rate and our corroboration of this rate, *see* the "Selection of the AFA Rate" and "Corroboration of the AFA Rate" sections, below.

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<sup>78</sup> We have not included certain self-reported programs reported by Bergwerff in this investigation as they do not "appear" to be countervailable subsidies based on the existing record evidence. *See* 19 CFR 351.311(b); *see also* section 775 of the Act. These programs are the Guaranteed Emergency Credit Line and VAT/GST Refunds. Additionally, although Bergwerff reported using the Duty Entitlement Passbook Scheme during the AUL period, we found that this program provided recurring benefits and was terminated effective as of October 1, 2011 with no residual benefits. *See, e.g., Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014), and accompanying IDM at "Program Determined To Be Terminated." Therefore, we have not included this program in the investigation.

C. Application of AFA to Non-Cooperative Companies Shanti Worldwide, Shri Sumati and Navyjot

As discussed in the “Initiation and Case History” section above, Commerce initially selected Shanti Worldwide, Shri Sumati and Navyjot as mandatory respondents in this investigation.<sup>79</sup> Subsequent to their selection, Shanti Worldwide, Shri Sumati, and Navyjot withdrew from participation in these proceedings.<sup>80</sup> Therefore, we preliminarily find that, by not responding to any section of Commerce’s questionnaire, Shanti Worldwide, Shri Sumati and Navyjot withheld information that was requested, failed to provide information within the deadlines established, and thus significantly impeded this proceeding.<sup>81</sup> Accordingly, Commerce is relying on facts otherwise available in making our preliminary determination with respect to these companies, pursuant to sections 776(a)(1) and (2)(A)-(C) of the Act.

We also preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the act, because by not responding to the initial CVD questionnaire and not participating in this investigation, Shanti Worldwide, Shri Sumati and Navyjot failed to cooperate to the best of their abilities to comply with the requests for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that these companies do not obtain a more favorable result by failing to cooperate than if they had fully complied with our requests for information.

As facts otherwise available with an adverse inference, we preliminarily we find that all programs in this investigation, including certain programs that were self-reported by the cooperating mandatory respondent, were used by Shanti Worldwide, Shri Sumati, and Navyjot and confer a benefit on these companies within the meaning of sections 771(5)(B) and (E) of the Act. Therefore, we are including each of these programs in our determination of the AFA rate for Shanti Worldwide, Shri Sumati, and Navyjot.<sup>82</sup> We selected an AFA rate for each of these programs based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce’s practice. For a description of the selection of the AFA rate and our corroboration of this rate, *see* the “Selection of the AFA Rate” and “Corroboration of the AFA Rate” sections, below.

D. Application of AFA to the GOI

For programs used by Bergwerff or Suminter, we preliminarily find the programs to be specific and to provide a financial contribution based on information provided by the GOI.<sup>83</sup> These

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<sup>79</sup> See Initial Respondent Selection Memorandum.

<sup>80</sup> See Shanti Worldwide Notice of Withdrawal; *see also* Shri Sumati Notice of Withdrawal; and Navyjot Notice of Withdrawal.

<sup>81</sup> See sections 776(a)(2)(A)-(C) of the Act.

<sup>82</sup> See *infra* at section VIII, “Use of Facts Otherwise Available and Adverse Inferences” at “Selection of the AFA Rate.”

<sup>83</sup> We also preliminarily find the following programs which were not used by Bergwerff or Suminter to be countervailable based upon the information provided by the GOI: Advance Authorization Scheme Focus Product Scheme; Export Promotion of Capital Goods Scheme; SEZ Income Tax Exemption; Interest Equalization Scheme on Pre- and Post-Shipment Rupee Export Credit; and the Focus Market Scheme. *See* section IX.C. Programs Preliminary Determined Not to be Used by Bergwerff of Suminter During the POI *infra*.

programs are further described in the “Analysis of Programs: Programs Preliminary Determined to be Countervailable” section *infra*.

For the remaining programs upon which we initiated, or which Bergwerff or Suminter self-reported, the GOI did not meaningfully respond to our initial or supplemental questionnaires with respect to these programs as described below.

In the initial questionnaire, we directed the GOI to provide an explanation of each program under investigation, including a detailed description of records maintained with respect to each program, regardless of whether Bergwerff or Suminter used the program.<sup>84</sup> Notwithstanding these instructions, the GOI provided incomplete responses for non-used programs. In particular, for non-used programs, the GOI either declined to provide information at all (including even basic program information) or provided only basic program descriptions without the requested detailed explanation of the relevant record maintained for each program.<sup>85</sup> Additionally, regarding other forms of assistance, our initial questionnaire directed the GOI to provide a full response, including all applicable appendices, for any programs self-reported by the respondent companies.<sup>86</sup> Again, notwithstanding this instruction, the GOI did not provide any information regarding these programs and in fact omitted this question entirely from its initial questionnaire response.

On August 16, 2021, we issued the GOI a supplemental questionnaire<sup>87</sup> in response to these and other deficiencies that we identified in its initial questionnaire responses submitted between July 19 and 26, 2021.<sup>88</sup> In this supplemental questionnaire, we again requested information for the second time that we had previously requested and which the GOI had failed to provide. This information included key program information necessary to conduct our analysis regarding financial contribution and specificity pertaining to numerous programs on which Commerce initiated this investigation. We also directed the GOI to provide “full responses,” including “any applicable appendices” for all programs, including all self-reported programs and programs that were reported as not used by Bergwerff or Suminter.

On August 20 and 23, 2021, the GOI again submitted incomplete information in response to our supplemental questionnaire.<sup>89</sup> For self-reported programs (which were omitted entirely from the GOI’s initial questionnaire), the GOI either declined to submit question appendices at all, provided non-responses to key questions (including questions relevant to evaluating specificity), or referred Commerce to Bergwerff’s response. For non-used programs, the GOI’s responses were similarly deficient. For example, for all programs administered by the State Government of Gujarat (SGOG), all programs related to Export-Oriented Units, and certain other programs (*e.g.*, the Duty-Free Import Authorization Scheme, Market Development Assistance Scheme, Market Access Initiative, Incremental Exports Incentivization Scheme, and others), the GOI simply reiterated that neither Bergwerff nor Suminter used the relevant programs without further

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<sup>84</sup> See Initial Questionnaire at Section II, page 2.

<sup>85</sup> See, *e.g.*, GOI IQR at 14, “Duty-Free Import Authorization (DFIA) Scheme” (non-response), and 32, “Focus Product Scheme” (insufficient program information).

<sup>86</sup> See Initial Questionnaire at Section II, page 24.

<sup>87</sup> See GOI Supplemental Questionnaire.

<sup>88</sup> See GOI First IQR; *see also* GOI Second IQR.

<sup>89</sup> See GOI August 20, 2021 SQR; *see also* GOI August 23, 2021 SQR.

discussion and without providing the requested appendices. Similarly, for all programs administered by the State Government of Madhya Pradesh (SGMP) and State Government of Maharashtra (SGOM), the GOI referred Commerce to Bergwerff's response and offered to provide additional information only "if deemed necessary." Additionally, for other programs (such as GOI Loan Guarantees and Interest Subvention Scheme for MSMEs), the GOI denied that any program existed or did not respond to Commerce's questions at all.

In sum, Commerce ultimately received insufficient information to make a preliminary determination of countervailability for the programs listed below. We preliminarily find that by not responding to our request for information regarding these programs, the GOI withheld necessary information that was requested of it, failed to provide information within the deadline established, and significantly impeded this proceeding. Additionally, we preliminarily find that the GOI has failed to cooperate to the best of its ability to respond to our requests for information. Specifically, the GOI's responses are incomplete in key respects and in many instances simply direct Commerce to look to Bergwerff's submissions or decline to answer the questions with the requested level of detail. Based on the foregoing, pursuant to sections 776(a)(2)(A)-(C) and 776(b) of the Act, we find that these programs, listed below, constitute a financial contribution and meet the specificity requirements of the Act within the meaning of section 771(5)(D) of the Act and (5A) of the Act, respectively:

1. Minimum Support Price Program
2. Duty Free Import Authorization (DFIA) Scheme
3. Duty-Free Import of Goods, Including Capital Goods and Raw Materials
4. Reimbursements of Central Sales Tax (CST) Paid on Goods Manufactured in India
5. Duty Drawback on Fuel Procured from Domestic Oil Companies
6. Exemption from Payment of Central Excise Duty (CED) on Goods Manufactured in India and Procured from a Domestic Tariff Area
7. Market Development Assistance (MDA) Scheme
8. Market Access Initiative (MAI)
9. Exemption from Electricity Duty and Cess on Electricity Supplied to a Special Economic Zone (SEZ) Unit
10. Exemption from Payment of Local Government Taxes and Duties, Such as Sales Tax and Stamp Duties
11. Incremental Exports Incentivization Scheme
12. Interest Subvention Scheme for MSMEs
13. GOI Loan Guarantees
14. Service Tax Exemption
15. Income Tax Deductions for Research and Development Expenses
16. SGOG Sales Tax Incentives
17. SGOG Gujarat Industrial Development Corporation (GIDC) Preferential Water Rates
18. SGOG Subsidized Financing
19. SGOG's Scheme for Incentive to Industries (General) 2016-2021
20. SGOM Sales Tax Program
21. VAT Refunds under the SGOM Package Scheme of Initiatives
22. SGOM Electricity Duty Exemptions



23. SGOM Waiving of Loan Interest by State Industrial & Investment Corporation of Maharashtra (SICOM) Limited
24. SGOM Interest Subsidies
25. SGOM Investment Subsidies
26. SGOM Provision of Land for Less than Adequate Remuneration (LTAR)
27. SGMP Exemption from State Taxes, Duties and Cess for Goods and Services within the SEZ
28. SGMP Discounted Land Fees in an SEZ
29. SGMP Investment Promotion Assistance
30. SGMP Assistance on Electricity Consumption
31. SGMP Reimbursement on Obtaining Quality Certification
32. SGMP Reimbursement for Portion of Research and Development
33. SGMP Reimbursement on Transportation
34. SGMP Capital Subsidy
35. SGMP Grants for Promotional Scheme
36. Vishesh Krishi and Gram Udyog Yojna/Special Agriculture and Village Industry Scheme
37. Grant-in-Aid for Setting Up of Unit

E. Selection of the AFA Rate

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

It is Commerce's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.<sup>90</sup> When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.<sup>91</sup> Accordingly, when selecting AFA rates, if we have cooperating respondents in the investigation, we first determine if there is an identical program in the instant investigation and use the calculated rate for the

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<sup>90</sup> See, e.g., *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008), unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences"; and *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

<sup>91</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 13; and *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was countervailed in another CVD proceeding involving the same country and apply the highest calculated rate above-*de minimis* for the identical program.<sup>92</sup> If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) countervailed in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.<sup>93</sup>

Commerce's methodology is consistent with section 776(d)(1)(A) of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, Commerce may (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce's existing practice of using an AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."<sup>94</sup> No legislative history accompanied this provision. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself. We find that the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its hierarchy methodology; and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.<sup>95</sup>

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<sup>92</sup> For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

<sup>93</sup> See *Shrimp from China Final IDM* at 13-14.

<sup>94</sup> See section 776(d)(2) of the Act.

<sup>95</sup> This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B). Under that provision, "any dumping margin from any segment of the proceeding under the applicable antidumping order" may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>96</sup> Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”<sup>97</sup> It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.<sup>98</sup>

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

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a “pool” of available rates that Commerce can rely upon for purposes of identifying an AFA rate for a particular program. In investigations for example, this “pool” of rates could include the rates for the same or similar programs used in either that same investigation, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among that “pool” of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

Under the first step of Commerce’s investigation hierarchy, Commerce applies the highest non-zero rate calculated for a cooperating company for the identical program in the investigation.

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<sup>96</sup> See SAA at 870; see also *Essar Steel*, 678 at 1276 (citing *F. Lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000) (*De Cecco*) (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate’ with Commerce’s investigation, not to impose punitive damages.”))

<sup>97</sup> See *De Cecco*, 216 F. 3d at 1032.

<sup>98</sup> Commerce has adopted a practice of applying its hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at 28-31 (applying the AFA hierarchical methodology within the context of CVD investigation); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. See also, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

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

Finally, if no such rate exists, under the third step of Commerce's investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.<sup>99</sup>

In all three steps of Commerce's AFA investigation hierarchy, if Commerce were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the "reward" for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce's investigation AFA hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.<sup>100</sup>

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

There are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy, in accordance with section 776(d)(1) of the Act, should be applied as AFA. As explained above, Commerce is preliminarily applying AFA to Shanti Worldwide, Shri Sumati, Navjyot, Ish Agritech, Satguru, Radiance Overseas, Swastik

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<sup>99</sup> In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

<sup>100</sup> It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. See, e.g., *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60632 (October 25, 2007), and accompanying IDM at 2 ("As AFA in the instant case, Commerce is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did not receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed..."). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as AFA under its hierarchy.

Enterprises, Soni Soya, Raj Foods International, Vantage, Shree Bhagwati, and Pragati Organics. In applying AFA to determine a net subsidy rate for the non-cooperating and non-responsive companies, we are guided by Commerce's methodology detailed above. We begin by selecting, as AFA, the calculated program-specific above-zero rates determined for the cooperating respondent in the instant investigation. Accordingly, we are applying the highest applicable subsidy rate calculated for Bergwerff for the following seven programs:

1. Merchandise Export Incentive Scheme
2. Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
3. Exemption from Payment of CST on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
4. Pre-Shipment and Post-Shipment Export Financing
5. SGMP Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit
6. SGMP Exemption of Mandi Fee for Agricultural Products
7. Punji Nivesh Subsidy Yojna

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

- GOI Programs
  1. Minimum Support Price (MSP) Program
  2. Advance Authorization Scheme
  3. DFIA Scheme
  4. Duty Drawback Scheme
  5. Focus Product Scheme (FPS)
  6. Duty-Free Import of Goods, Including Capital Goods and Raw Materials
  7. Reimbursements of CST Paid on Goods Manufactured in India
  8. Duty Drawback on Fuel Procured from Domestic Oil Companies
  9. Exemption from Payment of CED on Goods Manufactured in India and Procured from a Domestic Tariff Area
  10. Export Promotion of Capital Goods (EPCG) Scheme
  11. Market Development Assistance (MDA) Scheme
  12. Market Access Initiative (MAI)
  13. Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit
  14. SEZ Income Tax Exemption
  15. Service Tax Exemption
  16. Exemption from Payment of Local Government Taxes and Duties, Such as Sales Tax and Stamp Duties
  17. Incremental Exports Incentivization Scheme
  18. Interest Equalization Scheme (IES) on Pre- and Post-Shipment Rupee Export

Credit

19. Interest Subvention Scheme for MSMEs
  20. GOI Loan Guarantees
  21. Income Tax Deductions for Research and Development Expenses
  22. Transport and Marketing Assistance (TMA) for Specified Agricultural Products
- State Government of Gujarat (SGOG) Subsidy Programs
    23. State Government of Gujarat (SGOG) Sales Tax Incentives
    24. SGOG Gujarat Industrial Development Corporation (GIDC) Preferential Water Rates
    25. SGOG Subsidized Financing
    26. SGOG's Scheme for Incentive to Industries (General) 2016-2021
  - State Government of Maharashtra (SGOM) Subsidy Programs
    27. SGOM Sales Tax Program
    28. VAT Refunds under the SGOM Package Scheme of Initiatives
    29. SGOM Electricity Duty Exemptions
    30. SGOM Waiving of Loan Interest by State Industrial & Investment Corporation of Maharashtra (SICOM) Limited
    31. SGOM Interest Subsidies
    32. SGOM Investment Subsidies
    33. SGOM Provision of Land for LTAR
  - State Government of Madhya Pradesh Subsidy Programs
    34. SGMP Exemption from Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ
    35. SGMP Exemption from State Taxes, Duties and Cess for Goods and Services within the SEZ
    36. SGMP Discounted Land Fees in an SEZ
    37. SGMP Investment Promotion Assistance
    38. SGMP Assistance on Electricity Consumption
    39. SGMP Reimbursement on Obtaining Quality Certification
    40. SGMP Reimbursement for Portion of Research and Development
    41. SGMP Reimbursement on Transportation
    42. SGMP Capital Subsidy
    43. SGMP Grants for Promotional Scheme
  - Other Subsidies
    44. Duty Entitlement Passbook Scheme
    45. Vishesh Krishi and Gram Udyog Yojna/Special Agriculture and Village Industry Scheme
    46. Grant-in-Aid for Setting Up of Unit
    47. Punji Nivesh Subsidy Yojna
    48. Focus Market Scheme

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for the non-responsive and non-cooperative companies to be 266.37 percent *ad valorem*. The Appendix to this memorandum contains a chart summarizing our calculation of this rate.

#### F. Corroboration of the AFA Rate

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>101</sup> The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.<sup>102</sup>

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.<sup>103</sup> Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>104</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>105</sup>

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

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<sup>101</sup> See SAA at 870.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 869-870.

<sup>104</sup> See section 776(d) of the Act.

<sup>105</sup> See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

## IX. ANALYSIS OF PROGRAMS

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

### A. Programs Preliminarily Determined to Be Countervailable

#### GOI Federal Programs

##### 1. Merchandise Export Incentive Scheme (MEIS)

Both Bergwerff and Suminter reported benefiting from this program during the POI.<sup>106</sup> The MEIS<sup>107</sup> took effect on April 1, 2015.<sup>108</sup> According to the GOI, the purpose of this program is to offset infrastructural inefficiencies and associated costs involved in the export of goods and products that are manufactured in India, especially those that have high export intensity, employment potential and, thereby, enhance India's export competitiveness.<sup>109</sup> Under this program, the GOI issues a scrip (duty credit) worth either: (1) two, three, or five percent of the FOB value of the exports in free foreign exchange realized or received; or (2) the realized FOB value of exports in free foreign exchange, or on FOB value of exports, as given in the shipping bills in free foreign exchange (whichever is less).<sup>110</sup> To receive the scrip, a recipient must file an electronic application and supporting shipping documentation for each port of export with the Directorate General of Foreign Trade (DGFT).<sup>111</sup> After a recipient receives and registers the scrip, it may either use it for the payment of future customs duties for importing goods or transfer it to another company.<sup>112</sup>

We preliminarily determine that this program is specific within the meaning of sections 771(5A)(A) and (B) of the Act, because eligibility to receive the scrips is contingent upon export performance.<sup>113</sup> This program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, because the scrips provide exemptions for paying duties associated with the import of goods, which represents revenue forgone by the GOI. This program provides a recurring benefit, as the scrips from this program are not tied to capital assets.<sup>114</sup> Furthermore, recipients can expect to receive additional subsidies under this same program on an ongoing basis from year to year under 19 CFR 351.524(c)(2)(i).

Bergwerff and Suminter both reported that they submitted applications and received approval under the MEIS program.<sup>115</sup> Both companies further indicated that they met the requirements of

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<sup>106</sup> See Bergwerff IQR at 35.

<sup>107</sup> This program is also referred to as the Merchandise Exports from India Scheme. See GOI First IQR at 37.

<sup>108</sup> See GOI First IQR at 32.

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

<sup>110</sup> *Id.* at 32, 39, and Exhibit GEN-4.

<sup>111</sup> *Id.* at 41.

<sup>112</sup> *Id.* at Exhibit GEN-4.

<sup>113</sup> *Id.* at 33-34.

<sup>114</sup> See Bergwerff IQR at 42.

<sup>115</sup> *Id.* at 39-41 and Exhibit CVD-39.



this program and obtained the requisite scrips from the DGFT but sold all scrips on the open market to third parties.<sup>116</sup> We calculated the benefits to Bergwerff and Suminter to be the total value of the scrips received during the POI. Normally, in cases where the benefits are granted based on a percentage value of the shipment, Commerce calculates the benefit as having been received as of the date of exportation.<sup>117</sup> However, because the benefit (the scrip) amount is not automatic and is not known to the exporter until well after the exports are made, the MEIS licenses, which contain the date of validity and the duty exemption amount as issued by the GOI, are the best method to determine and account for when the benefit is received.<sup>118</sup> Therefore, for our subsidy rate calculation, we divided the value of the scrips granted to Bergwerff and Suminter during the POI by the value of these companies' total export sales during the POI. We then added together the rates calculated for each company. On this basis, we preliminarily determine a countervailable subsidy rate of 2.54 percent *ad valorem*.

## 2. SEZ Programs

Under the SEZ Act of 2005, an SEZ may be established jointly or individually by the central government, a state government or an individual or entity, to manufacture goods and/or provide services and to serve as a Free Trade and Warehousing Zone.<sup>119</sup> Entities that want to set up an SEZ in an identified area may submit their proposal to the relevant state government.<sup>120</sup> To be eligible under the SEZ Act, the companies inside an SEZ must commit to export their production of goods and/or services. Specifically, companies must achieve a positive net foreign exchange.<sup>121</sup> In return, the companies inside the SEZ are eligible to receive various benefits.<sup>122</sup>

Companies in a designated SEZ may receive the following benefits: (1) duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; (2) purchase of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material without the payment of CST thereon; (3) exemption from the services tax for the services consumed within the SEZ; (4) exemption from stamp duty for all transactions and transfers of immovable property, or documents related thereto within the SEZ; (5) exemption from electricity duty, and cess (tax or levy) thereon, on the sale or supply to the SEZ unit; and (6) income tax exemptions under Section 10A of the Income Tax Exemption Scheme.<sup>123</sup>

Bergwerff reported that its manufacturing unit was located in an SEZ unit located in Dhar, Madhya Pradesh during the POI.<sup>124</sup> Specifically, Bergwerff reported using the SEZ program at

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<sup>116</sup> *Id.* at 35.

<sup>117</sup> See 19 CFR 351.519(b)(1).

<sup>118</sup> See, e.g., *Carbon and Alloy Steel Threaded Rod from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 36570 (July 29, 2019), and accompanying PDM at 23, unchanged in *Carbon and Alloy Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination*, 85 FR 8828 (February 18, 2020).

<sup>119</sup> See GOI Second IQR at Exhibit SEZ-1.

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

<sup>121</sup> See GOI August 20, 2021 SQR at PDF page 16.

<sup>122</sup> *Id.* at Exhibit SEZ-1 and PDF pages 7-10.

<sup>123</sup> *Id.*

<sup>124</sup> See Bergwerff IQR at 7.

the level of the central government to obtain: (1) duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material; and (2) exemption from payment of CST on capital goods and raw materials, components, consumables, intermediates, spare parts, and packing material.<sup>125</sup>

In addition, Section 50 of the SEZ Act, 2005, grants power to state governments to enact laws granting exemptions from state taxes, levies, and duties to the developer or entrepreneur, and delegates power to the SEZ's Development Commission in relation to developers or entrepreneurs.<sup>126</sup> Thus, a state government can also adopt laws to grant an exemption of the above nature that will run concurrently to the exemptions granted under the SEZ Act.<sup>127</sup> The state of Madhya Pradesh enacted the Indore Act which promulgates its SEZ programs.<sup>128</sup> Bergwerff availed itself of certain SEZ programs at the level of the State Government of Madhya Pradesh (SGOM) to obtain: (1) exemption from stamp duty of all transactions and transfers of immovable property within the SEZ; (2) exemption from electricity duty and cess thereon on the sale or supply to an SEZ unit; and (3) exemption from the payment of a Mandi fee for agricultural products.

Because eligibility for the SEZ program is contingent upon export performance, we find that the assistance provided under all SEZ programs is specific, within the meaning of sections 771(5A)(A)-(B) of the Act. The following SEZ programs were found to confer measurable benefits during the POI:

#### Central Government Programs

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

Companies in SEZs are entitled to import capital goods and raw materials, components, consumables, intermediates, spare parts and packing material duty-free, in exchange for committing to export all of the products they produce, excluding rejects and certain domestic sales.<sup>129</sup> Additionally, such companies have to achieve a positive net foreign exchange.<sup>130</sup> Bergwerff reported that it received benefits under this program since 2009 and in the POI because its manufacturing unit is in an SEZ, and that it automatically qualifies for import duty exemptions on capital goods, raw materials, consumable, spares and intermediaries.<sup>131</sup> Specifically, Bergwerff reported exemptions of duties and taxes on imports of capital goods during the AUL and other inputs during the POI.<sup>132</sup>

We preliminarily determine that the duty-free importation of capital goods and raw materials, components, consumables, intermediates, spare parts, and packing material, provides a financial

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<sup>125</sup> *Id.* at 70-84.

<sup>126</sup> *See* GOI Second IQR at Exhibit SEZ-1.

<sup>127</sup> *Id.* at PDF page 20.

<sup>128</sup> *See* GOI Second IQR at PDF page 7.

<sup>129</sup> *See* GOI Second IQR at PDF page 7.

<sup>130</sup> *See* GOI August 20, 2021 SQR at PDF page 86.

<sup>131</sup> *See* Bergwerff IQR at 72-73.

<sup>132</sup> *Id.* at 80 and Exhibit CVD 56.

contribution pursuant to section 771(5)(D)(ii) of the Act through the forgoing of duty payments. We also preliminarily determine that this program is specific pursuant to sections 771(5A)(A) and (B) of the Act, because the program is contingent upon export performance. Moreover, in several prior investigations, Commerce has determined that import duty exemptions provided under this program are countervailable export subsidies.<sup>133</sup> This SEZ program confers benefits in the amounts of exemptions of customs duties not collected, but otherwise would have been collected in the absence of this program, in accordance with section 771(5)(E) of the Act.<sup>134</sup>

Pursuant to 19 CFR 351.519(a)(1)(ii), import duty exemptions on inputs for exported products are not countervailable, so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.<sup>135</sup> However, because the GOI did not claim or provide information demonstrating that it has in place and applies a system that is reasonable and effective to confirm which inputs, and in what amounts, are consumed in the production of the exported products under this program, consistent with our prior determinations, we find that the entire amount of the import duty exemption constitutes a benefit (19 CFR 351.519(a)(4)(i)-(ii)).<sup>136</sup>

Normally, exempted import duties are considered to be recurring benefits. However, a portion of the benefit of this program relates to the purchase of capital goods.<sup>137</sup> Pursuant to 19 CFR 351.524(c)(2)(iii), we normally treat uncollected taxes due on purchases of capital goods as non-recurring benefits. Accordingly, we performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), on Bergwerff’s uncollected import duties that related to its purchases of capital goods in the fiscal years 2004 through 2020. For the years that passed the “0.5 percent test,” we allocated the benefit over the AUL using the discount rates discussed above to determine the amount attributable to the POI.

To calculate the benefit, we summed the total value of uncollected import duties for capital goods purchases and other purchases attributed to the POI and the total value of uncollected import duties due on all other purchases during the POI. We then divided this amount by the total value of Bergwerff’s export sales during the POI. On this basis, we determine the countervailable subsidy provided to Bergwerff through the import duty exemptions under the SEZ program to be 1.19 percent *ad valorem*.

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<sup>133</sup> See, e.g., *Polyester Textured Yarn from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 19036 (May 3, 2019), and accompanying PDM at “Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material,” unchanged in *Polyester Textured Yarn from India: Final Affirmative Countervailing Duty Determination*, 84 FR 63848 (November 19, 2019).

<sup>134</sup> Commerce intends to see additional information regarding this program after the preliminary determination.

<sup>135</sup> See 19 CFR 351.519(a)(1)(ii).

<sup>136</sup> See, e.g., *Fine Denier Polyester Staple Fiber from India: Final Results of Countervailing Duty Administrative Review*, 85 FR 86537 (December 30, 2020), and accompanying IDM at Comment 4.

<sup>137</sup> See GOI August 20, 2021 SQR at PDF page 80.

B. Exemption from Payment of CST on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material

Under this program, Bergwerff was exempt from paying CST on capital goods, raw materials, and other goods such as packaging materials that were procured domestically.<sup>138</sup> We determine that the exemption from payment of CST on purchases of capital goods and raw materials, components, consumables, intermediates, spare parts and packing material provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act through the forgoing of CST payments. As stated above, because this is an SEZ program we find it to be specific under sections 771(5A)(A) and (B) of the Act, because the program is contingent upon export performance. This SEZ program confers benefits in the amount of CST not collected, in accordance with section 771(5)(E) of the Act. Specifically, the benefit associated with domestically purchased materials is the amount of CST due and uncollected on those purchases by Bergwerff during that period.<sup>139</sup>

Normally, uncollected indirect taxes are considered to be recurring benefits. However, a portion of the benefit of this program is tied to the purchase of capital goods.<sup>140</sup> Pursuant to 19 CFR 351.524(c)(2)(iii), we normally treat uncollected taxes due on purchases of capital goods as non-recurring benefits. Accordingly, we performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), on Bergwerff’s uncollected CST that related to its purchases of capital goods in the fiscal years 2004 through 2020 and found that, for certain years, uncollected import duties were more than 0.5 percent of total export sales for each year. Therefore, the annual benefit for these years was allocated over the AUL to find the benefit attributable to the POI. Also, in certain years, the amount of uncollected import duties that related to the purchase of capital goods during the POI was less than 0.5 percent of total export sales; therefore, in these instances, the benefits were expensed to the year of receipt.

To calculate the benefit, we summed the total value of uncollected CST for capital goods purchases and other purchases attributed to the POI and the total value of uncollected CST due on all other purchases during the POI. We then divided this amount by the value of Bergwerff’s total export sales during the POI. On this basis, we determine the countervailable subsidy provided to Bergwerff through the CST exemptions under the SEZ program to be 2.70 percent *ad valorem*.

Madhya Pradesh SEZ Programs

A. SGMP Exemption from Electricity Duty and Cess Thereon on the Sale or Supply to the SEZ Unit

The GOI and Bergwerff reported that under Rule 5 of the SEZ Rules of 2006 and Section 11(4) of the Indore SEZ Act, the supply of self-generated or purchased electric power for use in the processing area of an SEZ is exempt from electricity duty and cess, as long as the unit for which

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<sup>138</sup> *Id.* at PDF page 90.

<sup>139</sup> Commerce intends to seek additional information for this program after the preliminary determination.

<sup>140</sup> *See* Bergwerff IQR at 80.

electricity duty is exempted is located within the SEZ, as approved by the GOI.<sup>141</sup> Bergwerff only reported electricity duty exemptions under this program during the POI.<sup>142</sup>

These electricity duty exemptions provide a financial contribution in the form of revenue forgone by the SGMP, pursuant to section 771(5)(D)(ii) of the Act. The program confers a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. As stated above, because this is an SEZ program we find it to be specific under sections 771(5A)(A) and (B) of the Act, because the program is contingent upon export performance. The SEZ exemption from electricity duty provides a recurring benefit under 19 CFR 351.524(c). To calculate the benefit, we divided Bergwerff's total electricity duties saved during the POI by Bergwerff's total export sales during the POI to calculate a countervailable subsidy of 0.08 percent *ad valorem*.

#### B. SGMP Exemption of Mandi Fee for Agricultural Products

The GOI and Bergwerff report that the SGMP enacted the M.P. Krishi Upaj Mandi Adhiniyam, 1972 (MP Mandi Act) in order to regulate the buying and selling of agricultural produce and establish the proper administration of agricultural produce markets in the state.<sup>143</sup> According to the GOI, the MP Mandi Act allows the SGMP to regulate the sale of produce in specific notified areas and to form market committees to manage the regulation of notified areas. The GOI explains that Section 19 of the MP Mandi Act grants market committees the power to levy market fees on the sale of notified produce sourced from inside and outside the state. The GOI further explains that the market fees are set by the SGMP as a percentage of the price of the agricultural produce at issue, and are payable by buyers of notified produce when it is brought into designated market areas.<sup>144</sup> The GOI notes that market fees may not be levied on notified agricultural produce in more than one market area within the state, nor on agricultural produce that is resold in the same market.<sup>145</sup> According to the GOI and Bergwerff, Section 13(1) of the Indore SEZ Act and Section 50 of the SEZ Act allow the SGMP to grant exemptions for goods imported into the Indore SEZ from any levies required by state law, including the aforementioned mandi fee.<sup>146</sup> When Bergwerff purchases soybeans from outside of Madhya Pradesh or imports them from outside of India into the SEZ, it is exempt from any associated mandi fees.

As stated above, because this is an SEZ program we find it to be specific under sections 771(5A)(A) and (B) of the Act, because the program is contingent upon export performance.<sup>147</sup> We also find that this program provides a financial contribution in the form of revenue forgone or otherwise due pursuant to section 771(5)(D)(ii) of the Act. It confers a benefit equal to the amount of the mandi fees exempted under this program, pursuant to section 771(5)(E) of the Act. Additionally, this program provides a recurring benefit, as the exemptions claimed under this

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<sup>141</sup> See GOI August 20, 2021 SQR at PDF page 100; *see also* Bergwerff IQR at 20.

<sup>142</sup> Regarding the cess portion of this program Bergwerff claims that the SGMP has not levied any electricity cess. Commerce intends to seek additional information regarding this point after the preliminary determination.

<sup>143</sup> See GOI Second IQR at PDF 37; *see also* Bergwerff IQR at 111.

<sup>144</sup> See GOI Second IQR at PDF page 37.

<sup>145</sup> *Id.*

<sup>146</sup> See GOI Second IQR at PDF page 37; *see also* Bergwerff IQR at 112-113.

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

program are not tied to capital assets but rather to recurring purchases of agricultural produce.<sup>148</sup> Recipients can expect to receive additional subsidies under this same program on an ongoing basis from year to year under 19 CFR 351.524(c)(2)(i). To calculate the benefit, we divided the total value of mandi fees Bergwerff was exempted from paying during the POI by Bergwerff's total export sales during the POI to calculate a countervailable subsidy of 0.50 percent *ad valorem*.

### **3. Pre-Shipment and Post-Shipment Export Financing**

Bergwerff reported utilizing export packing credits denominated in INR during the POI under the Pre-Shipment and Post-Shipment Export Financing Program.<sup>149</sup> Bergwerff and Suminter also reported utilizing foreign currency-denominated loans in U.S. dollars (USD) and Euros (EUR) during the POI.<sup>150</sup> The GOI reported that the program provides short-term loans sanctioned by banks to exporters for their working capital needs, and that the loans are provided to exporters at internationally comparable interest rates for a maximum of 360 days.<sup>151</sup> The financing is denominated in rupees and in foreign currencies. We have previously found that the GOI terminated the foreign currency export financing program on May 5, 2012.<sup>152</sup> Specifically, as of that date, the Reserve Bank of India (RBI) is not involved in setting interest rates (caps or floors) for these loans.

With respect to the rupee-denominated export financing, the RBI previously capped the interest rate that commercial banks could charge on these loans.<sup>153</sup> However, beginning on July 1, 2010, the RBI eliminated the interest rate cap and set only a floor rate for these loans.<sup>154</sup> At the same time, the RBI instituted an interest subvention program offering a three percent to five percent interest equalization for certain exporting companies, including small and medium enterprises.<sup>155</sup> Thus, rupee-denominated pre-shipment and post-shipment export financing that was eligible for the subvention was subject to an interest-rate cap. Bergwerff reported that it did not qualify for, or receive financing through, the interest subvention portion of the program because it is limited to only 416 tariff lines (HTS codes) as per Annexure A under the RBI circulars.<sup>156</sup> Annexure A lists the 416 tariff lines eligible under this scheme. The HTS code under which Bergwerff's subject merchandise falls is not listed in Annexure A.<sup>157</sup> As a result, Bergwerff is not eligible for interest equalization benefits under this scheme.

The provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act, as a direct transfer of funds in the form of loans. These loans are specific under sections 771(5A)(A) and (B) of the Act because they are contingent upon export performance. To measure the benefit conferred by the pre-shipment and post-shipment export

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<sup>148</sup> See GOI Second IQR at PDF page 37.

<sup>149</sup> See Bergwerff IQR at 51.

<sup>150</sup> *Id.*

<sup>151</sup> See GOI August 20, 2021 SQR at PDF page 49.

<sup>152</sup> See *Shrimp from India Final Determination* IDM at 18-19; see also GOI August 20, 2021 SQR at PDF page 49.

<sup>153</sup> See GOI First IQR at 48.

<sup>154</sup> *Id.*

<sup>155</sup> See GOI August 23, 2021 SQR at PDF page 35.

<sup>156</sup> See Bergwerff August 20 SQR at Exhibit CVD-119C.

<sup>157</sup> *Id.*

financing in rupees, we compared what the companies paid for their loans to what they would have paid according to the short-term loan benchmarks described above in accordance with section 771(5)(E)(ii) of the Act. We divided the interest savings each company received during the POI by the company's exports during the POI. On this basis, we determine the countervailable subsidy provided to Bergwerff through this program to be 0.01 percent *ad valorem*.

#### **4. Punji Nivesh Subsidy Yojna**

Bergwerff self-reported the use of the Punji Nivesh Subsidy Yojna, otherwise known as the Scheme for Development of Agricultural Marketing Infrastructure, Grading, and Standardization, which is administered by the GOI.<sup>158</sup> According to the GOI, the program's objective is to encourage the rapid development of infrastructure projects in agricultural and allied sectors, including dairy, meat, fisheries, and minor forest produce.<sup>159</sup> The maximum program subsidy amount was generally limited to INR 50 Lakh per project.<sup>160</sup> However, entities in northeastern states, hilly and tribal areas, the states of Uttarakhand, Himachal Pradesh, Jammu, and Kashmir, as well as entrepreneurs belonging to scheduled castes, scheduled tribes, and their cooperatives, were permitted a maximum subsidy amount of Rs. 60 Lakh per project.<sup>161</sup>

The GOI further explained that project subsidies are disbursed through the National Bank for Agriculture and Rural Development (NABARD) for projects financed by the commercial, cooperative, and regional rural banks including Agricultural Development Finance Companies (ADFCs), scheduled Primary Cooperative Banks (PCBs), North Eastern Development Financial Corporation, and other institutions eligible for refinance from NABARD.<sup>162</sup> The GOI also submitted a list of infrastructure projects that are eligible for benefits under the program, including: (1) market user common facilities like market yards, platforms for loading, assembling and auctioning of the produce, weighing and mechanical handling equipment, *etc.*; (2) functional infrastructure for assembling, grading, standardization and quality certification, labelling, packaging, value addition facilities (without changing the product form); (3) infrastructure for marketing from producers to consumers/processing units, bulk buyers, *etc.*; (4) infrastructure for e-trading, market extension and market-oriented production planning; and (5) mobile infrastructure for post-harvest operations like grading, packaging, quality testing, *etc.* (excluding transport equipment).<sup>163</sup>

Bergwerff reported that it availed itself of benefits under this program after completing a qualifying functional infrastructure project in 2010.<sup>164</sup> We preliminarily determine that this program is specific within the meaning of section 771(5A)(D)(i) of the Act because it is limited to infrastructure projects in the agricultural and allied sectors. We also find that this program provides a financial contribution in the form of a direct transfer of funds pursuant to section 771(D)(i) of the Act. It confers a benefit equal to the amount of the grant provided under the

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<sup>158</sup> See Bergwerff IQR at 148.

<sup>159</sup> *Id.*; see also GOI August 20, 2021 SQR at PDF page 16.

<sup>160</sup> See GOI August 20, 2021 SQR at PDF page 16.

<sup>161</sup> See Bergwerff IQR at 148; see also GOI August 20, 2021 SQR at PDF page 16.

<sup>162</sup> See Bergwerff IQR at 149; see also GOI August 20, 2021 SQR at PDF page 16.

<sup>163</sup> See GOI August 20, 2021 SQR at PDF page 16-17.

<sup>164</sup> *Id.* at 150.

program per section 771(5)(E) and 19 CFR 351.504(a) of the Act. Because the program provides a non-recurring benefit, we performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), and found that the benefit received in the year the grant was sanctioned was more than 0.5 percent of Bergwerff’s total sales for that year. Using this methodology, we calculated a countervailable subsidy of 0.03 percent *ad valorem* for this program.

**B. Programs Preliminarily Determined Not to Confer a Measurable Benefit to Bergwerff or Suminter During the POI**

**1. Duty Drawback (DDB) Scheme - Exports on Soybean Meal**

Bergwerff and Suminter reported that, under the DDB Scheme, both companies received rebates of duties paid when they exported products manufactured in India.<sup>165</sup> The GOI explained that the DDB scheme provides rebates of duties or taxes chargeable on any imported or excisable input materials used in the manufacture of exported goods, including both imported material and domestically procured materials.<sup>166</sup> Specifically, the duties and taxes “neutralized” under the program are the Customs and Central Excise Duties for inputs used to manufacture exported goods.<sup>167</sup> DDB, which is generally fixed as a percentage of the free-on-board (FOB) price of the exported product, is provided in two ways: (1) on the basis of the actual duty incidence; or (2) on the basis of averages (All Industry Rate (AIR)).<sup>168</sup> The drawback rates established under the program are calculated on the basis of data pertaining to inputs and input services used in the manufacturing process.<sup>169</sup>

Import duty exemptions on inputs for exported products are not countervailable, as long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.<sup>170</sup> However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products and in what amounts.<sup>171</sup> This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.<sup>172</sup> If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of *actual* inputs involved to confirm which inputs are consumed in the

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<sup>165</sup> See Bergwerff IQR at 23.

<sup>166</sup> See GOI First IQR at 15.

<sup>167</sup> *Id.* at 17 and Exhibit DDB-1 at PDF page 1.

<sup>168</sup> *Id.* at Exhibit DDB-4 at PDF page 11.

<sup>169</sup> *Id.* at 17 and Exhibit DDB-4.

<sup>170</sup> See 19 CFR 351.519(a)(1)(ii).

<sup>171</sup> See *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India Final Determination*), and accompanying IDM at 12-14.

<sup>172</sup> *Id.*



production of the exported product, the entire amount of any exemption, deferral, or remission of drawback is countervailable.<sup>173</sup>

Regarding its establishment of applicable DDB rates, the GOI stated the following in *Shrimp from India*:<sup>174</sup>

The rates are determined following a specified procedure that is undertaken by an independent committee appointed by the Government. The committee makes its recommendations after discussions with all stake holders including Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB {free on board} values of export products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analyzed and this information is used to form the basis for the rate of Duty Drawback.<sup>175</sup>

However, “based on the GOI’s questionnaire responses and lacking the documentation to support that the GOI has a system in place,” we concluded in that investigation that “the GOI had not supported its claim that its system is reasonable or effective for the purposes intended.”<sup>176</sup>

Similar to its statement in *Shrimp from India Final Determination*, the GOI once again reported:

The drawback rates are calculated on the basis of the data, pertaining to inputs and input services used in the manufacturing process as per SION, provided by the different export promotion councils and are duly verified by the statutory auditors. Data is also sought from the Customs, Central Excise and Service tax Commissionerate regarding the inputs used, their prices and the duty incidence on the inputs or the input services. Based on these verified data, and any additional statutory or non-statutory data available from the different government departments, the drawback rates are calculated by the Drawback Committee.<sup>177</sup>

Consistent with previous proceedings, including *Shrimp from India Final Determination*, the record of this investigation indicates that the GOI continues to employ universal rates based on aggregate data collected from various sources, rather than attempting to determine the respondent’s actual consumption, production, and waste. With regard to the drawback rate available on the export of subject merchandise, the GOI states that the “rates provided to the

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<sup>173</sup> See 19 CFR 351.519(a)(4)(i)-(ii).

<sup>174</sup> See *Shrimp from India* IDM at 12-13, “Duty Drawback.”

<sup>175</sup> *Id.* at 12-13.

<sup>176</sup> *Id.*

<sup>177</sup> See GOI First IQR at 19.

goods in question represent a broad assessment of unrebated incidence (direct and embedded) of the duties which are, for ease of implementation, extended together as the ‘drawback rate’.”<sup>178</sup>

We preliminarily determine that a financial contribution, pursuant to section 771(5)(D)(ii) of the Act, is provided under the DDB program because the rebated duties represent revenue forgone by the GOI. Because the program is available only to exporters, we preliminarily determine that the DDB program is specific under section 771(5A)(A) and (B) of the Act. As explained above, under 19 CFR 351.519(a)(4), in the absence of an adequate drawback system, the entire amount of customs and excise duties and service taxes rebated during the POI constitutes a benefit. Drawback under the program is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis.<sup>179</sup> As such, it is at the time of exportation that recipients know the exact amount of the benefit (*i.e.*, the value of the drawback). Therefore, pursuant to 19 CFR 351.519(b)(1), we find that the benefits from the DDB program are conferred on the dates of exportation of the shipments for which the pertinent drawbacks were earned.<sup>180</sup>

Bergwerff and Suminter reported the benefits earned on exports of subject merchandise to the United States under this program on a transaction-specific basis.<sup>181</sup> In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, Commerce will attribute that subsidy to only that product or market. For Bergwerff, we divided the DDB rebates earned on exports of subject merchandise to the United States during the POI by the company’s exports of subject merchandise to the United States during the POI. For Suminter, we divided the DDB rebates earned on exports of subject merchandise to the United States during the POI by the holding company’s consolidated exports of subject merchandise to the United States during the POI. We then added the two rates together. On this basis, we preliminarily determine a net countervailable subsidy rate of less than 0.005 percent *ad valorem* for Bergwerff, which is not measurable.<sup>182</sup>

## **2. SGMP Exemption from Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ**

The GOI reports that Section 50 of the SEZ Act allows states to enact laws regarding granting exemptions from the state taxes, levies and duties to a developer or entrepreneur, including exemptions that run concurrently to the exemptions granted under the SEZ Act.<sup>183</sup> Specifically, the GOI cites Section 13(2) of the Indore SEZ Act as the basis for the exemption from payment of any tax, duty, fee, cess, or other levies, including stamp duties, related to transactions and transfers of immovable property within an SEZ.<sup>184</sup> According to the GOI, any unit that holds a

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<sup>178</sup> *Id.* at 20.

<sup>179</sup> *See, e.g.*, GOI First IQR at Exhibit DDB-2.

<sup>180</sup> *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Cut-To-Length Carbon Quality Steel Plate from India*, 64 FR 73131, 73140 (December 29, 1999).

<sup>181</sup> *See* Bergwerff’s IQR at CVD-25 and CVD-26.

<sup>182</sup> *See* Preliminary Calculation Memorandum.

<sup>183</sup> *See* GOI Second IQR at PDF page 20.

<sup>184</sup> *Id.* at 20-21.

letter of approval to operate in an SEZ, as well as existing units, are automatically eligible for the program.<sup>185</sup> Bergwerff reported stamp duty exemptions.<sup>186</sup>

As aforementioned, as with all SEZ programs, we find this program to be specific under sections 771(5A)(A) and (B) of the Act, because the program is contingent upon export performance.<sup>187</sup> We also find that this program provides a financial contribution in the form of revenue forgone pursuant to section 771(D)(ii) of the Act. This program provides a non-recurring benefit, as the stamp duty exemption is a one-time allowance granted at the time that land is transferred on lease from a developer to a unit.<sup>188</sup> Accordingly, we performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), on Bergwerff’s reported stamp duty exemptions during the fiscal years 2004 through 2020 and found that the amount of uncollected import stamp duties, cess, and other related levies related to the transfer of immovable property within an SEZ during the POI was less than 0.5 percent of total sales; therefore, these benefits were expensed to the year of receipt. On this basis, we determine the countervailable subsidy provided to Bergwerff through the SGMP stamp duty exemption to be less than 0.005 percent *ad valorem*, which is not measurable.

### **3. TMA for Specified Agricultural Products**

The GOI reported that the TMA scheme provides cash assistance as partial reimbursement of freight paid, for the international aspects of freight and marketing for agricultural produce.<sup>189</sup> According to the GOI, the program was designed to mitigate the disadvantage of higher trans-shipment transportation costs associated with the exportation of certain agricultural products, as well as to promote brand recognition for Indian agricultural products in overseas markets.<sup>190</sup> The GOI states that the scheme covers all exporters of eligible agriculture products, registered with the relevant Export Promotion Council, in accordance with the Foreign Trade Policy.<sup>191</sup> Both Bergwerff and Suminter reported applying for benefits under this program during the POI, though Suminter reported only applying for benefits pertaining to non-subject merchandise.<sup>192</sup> Both companies also reported that the GOI had not granted any benefits to Bergwerff or Suminter at the time their NSA questionnaire responses were submitted on August 10, 2021.<sup>193</sup> However, the GOI reported that it disbursed certain benefits to Suminter during the POI.<sup>194</sup>

We preliminarily determine that this program is specific within the meaning of section 771(5A)(A) and (B) of the Act because the assistance received is contingent on the export of subject merchandise.<sup>195</sup> We also find that this program provides a financial contribution in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act. It confers a benefit

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<sup>185</sup> *Id.* at 21.

<sup>186</sup> Commerce intends to clarify the exemptions received by Bergwerff after the preliminary determination.

<sup>187</sup> *Id.*

<sup>188</sup> *See* Bergwerff IQR at 42.

<sup>189</sup> *See* GOI NSA Response at PDF page 5.

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

<sup>191</sup> *Id.* at PDF page 10.

<sup>192</sup> *See* Bergwerff NSA at 5.

<sup>193</sup> *Id.* at 6.

<sup>194</sup> *See* GOI NSA at submission PDF page 38. Commerce intends to follow up on this discrepancy after the preliminary determination.

<sup>195</sup> *Id.*

equal to the amount of assistance disbursed under this program per section 771(5)(E) and 19 CFR 351.504(a). Specifically, this program provides a non-recurring benefit, as the program was only in force between March 1, 2019, and March 31, 2021.<sup>196</sup> Accordingly, we performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), on Suminter’s reported assistance during the fiscal years 2004 through 2020 and found that the amount of assistance was less than 0.5 percent of total sales; therefore, these benefits were expensed to the year of receipt. To calculate the benefit, we divided the total value of Suminter’s assistance by its total export sales during the POI to calculate a countervailable subsidy of less than 0.005 percent *ad valorem*, which is not measurable.

### **C. Programs Preliminarily Determined Not to Be Used by Bergwerff or Suminter During the POI**

We preliminarily determine that Bergwerff and Suminter neither applied for, nor received, benefits during the POI under the programs listed below. However, because we are including these programs in the rate for the non-responsive and non-cooperative companies (as described above), we have evaluated below whether certain of these programs provide a financial contribution and are specific within the meaning of section 771(5)(D) and (5A) of the Act, respectively.

#### **1. Advance Authorization Scheme**

Under the Advance Authorization Scheme, exporters may import duty free specified quantities of inputs required to manufacture products that are subsequently exported.<sup>197</sup> The quantities of imported materials and exported finished products are linked through standard input-output norms (SIONs) established by the GOI.<sup>198</sup> According to Bergwerff, neither it nor Suminter applied for, nor received, any benefits under the Advance Authorization Scheme during the POI or the AUL.<sup>199</sup>

Import duty exemptions on inputs for exported products are not countervailable, as long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.<sup>200</sup> However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products, and in what amounts.<sup>201</sup> This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.<sup>202</sup> If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the

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<sup>196</sup> See Bergwerff IQR at 42.

<sup>197</sup> See GOI IQR at GEN-4.

<sup>198</sup> *Id.*

<sup>199</sup> See Bergwerff IQR at 22.

<sup>200</sup> See 19 CFR 351.519(a)(1)(ii).

<sup>201</sup> See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India Final Determination*), and accompanying IDM at “Duty Drawback (DDB).”

<sup>202</sup> *Id.*

production of the exported product, the entire amount of any exemption, deferral, remission or drawback is countervailable.<sup>203</sup>

In *PET Film India AR 2005*, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the Advance Authorization Scheme (then known as the Advance Authorization Program (AAP)/Advance License Program (ALP)) during 2005.<sup>204</sup> Commerce acknowledged that certain improvements to the AAP/ALP system were made. However, Commerce found that, based on the information submitted by the GOI and examined during previous reviews of that proceeding, and no information having been submitted for that review demonstrating that the GOI had revised its laws or procedures governing this program since those earlier reviews, systemic issues continued to exist in the AAP/ALP system during that period of review.<sup>205</sup> Specifically, in the 2005 review, Commerce stated that it continued to find the AAP/ALP countervailable based on:

{t}he GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. Specifically, we still have concerns with regard to several aspects of the ALP including (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET Film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports.<sup>206</sup>

Since the *2005 Review of PET Film from India*, Commerce has in several other proceedings made determinations consistent with this treatment of the AAP/ALP.<sup>207</sup> Therefore, we preliminarily find that the program confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from payment of import duties that would otherwise be due; (2) the GOI does not have in place, and does not apply, a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported product, making normal allowance for waste, nor did the GOI 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; thus, the entire amount of the import duty deferral or exemption provided to the

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<sup>203</sup> See 19 CFR 351.519(a)(4)(i)-(ii).

<sup>204</sup> See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 73 FR 7708 (February 11, 2008) (*PET Film India AR 2005*), and accompanying IDM at Comment 3.

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

<sup>206</sup> *Id.*

<sup>207</sup> See, e.g., *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) (*Oil Country Tubular Goods from India Final*), and accompanying IDM; see also *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 80 FR 19637 (April 13, 2015), and accompanying IDM.

respondent constitutes a benefit under section 771(5)(E) of the Act; and (3) this program is specific under section 771(5A)(A)-(B) of the Act, because it is contingent upon exportation.

## 2. Focus Product Scheme

The GOI states that the objective of the Focus Product Scheme is to promote export of products with a high export intensity or employment potential by offsetting marketing costs.<sup>208</sup> The program provides a duty credit scrip to exporters of eligible products worth either two or five percent of the FOB value of the exported goods in free foreign exchange, depending on the product.<sup>209</sup> Bergwerff and Suminter availed themselves of benefits under the Focus Product Scheme during the AUL period, in which they received program licenses and sold them in the open market to third parties.<sup>210</sup> However, they reported that they did not receive program duty scrips during the POI.<sup>211</sup>

We preliminarily determine that the Focus Product Scheme confers a direct financial contribution in the form of revenue forgone, within the meaning of section 771(5)(D)(ii) of the Act. We further find that this program is specific, consistent with sections 771(5A)(A) and (B) of the Act, because it is contingent upon export performance. We find that a benefit is conferred under this program within the meaning of section 771(5)(E) of the Act in the value of the scrips applicable to future duty payments. Because the Focus Product Scheme is a recurring subsidy and because no benefits were received during the POI, we are preliminarily finding the program not used for Bergwerff and Suminter.

## 3. EPCG Scheme

The EPCGS provides an exemption from customs duties on imports of capital goods used in the pre-production, production, and post-production of exported products.<sup>212</sup> Under the EPCGS, a license holder is exempt from custom duties on imported capital equipment subject to an export obligation.<sup>213</sup>

To fulfill the program's obligation, a company must export a multiple of the cost, insurance, and freight (CIF) value of the imported capital goods, or a multiple of the duty saved, within a designated period (*e.g.*, six times the duty saved over six years, applicable for the period 2015-2020).<sup>214</sup> Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is liable for penal action, including "payment of residual duty and penalty as per the Foreign Trade (Development and Regulation) Act, 1992 and order and rules made under applicable Foreign Trade Policy (FTP) (such as FTP 2009-14, FTP 2015-20) and Customs Act, 1992."<sup>215</sup>

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<sup>208</sup> See GOI August 20, 2021 SQR at PDF page 36.

<sup>209</sup> *Id.*

<sup>210</sup> See Bergwerff IQR at 34.

<sup>211</sup> *Id.* at 35.

<sup>212</sup> See GOI August 23, 2021 SQR at PDF page 20.

<sup>213</sup> See GOI First IQR at GEN-4.

<sup>214</sup> See GOI August 21, 2021 SQR at PDF pages 27-28.

<sup>215</sup> *Id.* at PDF page 19.

We preliminarily determine that the EPCGS provides a financial contribution in the form of revenue forgone, pursuant to section 771(5)(D)(ii) of the Act, and is specific, pursuant to sections 771(5A)(A) and (B) of the Act, because the program is contingent upon export performance. Moreover, in several prior investigations, Commerce has determined that import duty reductions or exemptions provided under the EPCGS are countervailable export subsidies.<sup>216</sup>

#### 4. SEZ Income Tax Exemption

The GOI reported that Section 10AA of the Income Tax Act, 196 allows entrepreneurs in an SEZ to deduct profits derived from exports from their taxable income for a period of 10 years, and thereafter for another five years subject to satisfying certain conditions.<sup>217</sup> The GOI notes that this tax deduction is recurring in nature, as it is a deduction applied annually to a company's tax return. Both the GOI and Bergwerff reported that the latter did not avail of this program under Section 10AA during fiscal year 2019-2020 because the period of 10 years for claiming the deduction was exhausted.<sup>218</sup>

As noted in the section above, "Special Economic Zones (SEZ) Programs" we find that the assistance provided under all SEZ programs is specific, within the meaning of sections 771(5A)(A)-(B) of the Act, because eligibility for the SEZ program is contingent upon export performance. Commerce also finds that this program provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue forgone. Because the SEZ Income Tax Exemption is a recurring subsidy and because no benefits were received during the POI, we are preliminarily finding the program not used for Bergwerff.

#### 5. IES on Pre- and Post-Shipment Rupee Export Credit

The GOI reports that until 2018 the IES granted an annual interest equalization of three percent on pre-and post-shipment rupee export credits for exports that fall under the 416 four-digit tariff lines identified in the scheme, as well as all MSME exporters across all merchandise exports.<sup>219</sup> According to the GOI, as of November 2, 2018, the equalization rate was increased from three percent to five percent with respect to exports by manufacturers of MSME sector.<sup>220</sup> The GOI also reports that the scheme was not made available to merchant exporters until January 2, 2019.<sup>221</sup>

Commerce finds that this program is specific within the meaning of section 771(5A)(B) of the Act because it is contingent upon export. Commerce also finds that the program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a direct transfer of funds. Bergwerff reported that only merchandise exported under certain HTS codes is eligible for benefits under this scheme, and that the HTS code associated with the

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<sup>216</sup> See, e.g., *Shrimp from India Final Determination* IDM at 14-17; see also *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film from India*), and accompanying IDM at "EPCGS."

<sup>217</sup> See GOI Second IQR at PDF page 9.

<sup>218</sup> See GOI Second IQR at PDF page 9.

<sup>219</sup> See GOI August 23, 2021 SQR at PDF page 35.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

merchandise under investigation (HTS 23040010) is not listed in the annexure containing these codes. Bergwerff also reports that no interest subvention or equalization was granted to its cross-owned affiliate, Suminter, for its INR-denominated loans because its merchandise is not eligible under the scheme.<sup>222</sup> Thus, we are preliminarily finding the program not used for Bergwerff or Suminter.

## 6. Focus Market Scheme

The GOI reported that the Focus Market Scheme was implemented on August 27, 2009, and phased out with the introduction of the Foreign Trade Policy 2015-2020.<sup>223</sup> According to the GOI, the objective of the program was to offset high freight costs and other externalities to select international markets with a view to enhance India's export competitiveness in these countries.<sup>224</sup> The program stipulates that exporters of all products to notified countries (as in Appendix 3 7C of HBPv1) are entitled to duty credit scrips equivalent to three percent of the FOB value of exports, in free foreign exchange, for exports made from August 27, 2009, onwards. The scheme renders certain export products and sectors ineligible for duty credit scrips under the program, including: (1) supplies made to SEZ units; (2) service exports; (3) diamonds and other precious and semi-precious stones; (4) gold, silver, platinum and other precious metals in any form, including plain and studded jewelry; (5) ores and concentrates, of all types and in all forms; (6) cereals, of all types; (7) sugar, of all types and in all forms; (8) crude / petroleum oil & crude and petroleum-based products covered under ITC HS codes 2709 to 2715, of all types and in all forms; and (9) export of milk and milk products covered under ITC HS Codes 0401 to 0406, 19011001, 19011010, 2105 & 3501.

We preliminarily determine that the Focus Product Scheme constitutes a financial contribution in the form of revenue forgone, within the meaning of section 771(5)(D)(ii) of the Act. We further find that this program is specific, consistent with sections 771(5A)(A) and (B) of the Act, because it is contingent upon export performance. Bergwerff reported that Suminter utilized the Focus Market Scheme during the AUL but did receive or sell licenses/scrips during the POI.<sup>225</sup> We consider this program to provide a recurring benefit per 19 CFR 351.524(c)(1). Thus, Commerce finds that the program was not used by Bergwerff used during the POI.

## 7. Tax Deductions Under Section 32 of the Income Tax Act

Bergwerff reported that due to the COVID 19 pandemic, the GOI extended the deadline for filing tax returns for fiscal year 2019-2020 from November 2020 until February 2021.<sup>226</sup> Thus there were no tax returns filed within the POI for either Bergwerff or Suminter. Because direct tax benefits are normally treated as received "as of the date on which the firm filed its tax return,"<sup>227</sup> we find that this program was not used by the respondent during the POI. Furthermore, because the deadline for filing one's tax return shifted to outside of the POI we are not including this

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<sup>222</sup> *Id.*

<sup>223</sup> See GOI August 20, 2021 SQR at PDF pages 36-37.

<sup>224</sup> *Id.* at 36.

<sup>225</sup> See Bergwerff IQR at 158-159.

<sup>226</sup> See Bergwerff IQR at 13.

<sup>227</sup> See 19 CFR 351.509(b)(1).



program in our AFA calculations.

Additionally, we preliminarily find that Bergwerff and Suminter did not use the following programs which, as described above, we find to be specific and to provide a financial contribution based on AFA due to the GOI's non-cooperation:

8. Service Tax Exemption
9. Incremental Exports Incentivization Scheme
10. Grant-in-Aid for Setting Up of Unit

Bergwerff reported that it received grants under this program during the AUL.<sup>228</sup> To calculate the benefit under this program, we first applied the “0.5 percent expense test” to the amounts approved during the AUL period as described in the “Allocation Period” section above. The amounts did not exceed the 0.5 percent threshold and, thus, the benefits are allocated to the years of receipt. Thus, there is no benefit to Bergwerff during the POI.

#### **D. Programs for Which More Information is Needed**

1. Status Certificate Program

Suminter reported holding a Status Certificate that was valid during the POI, but reported that no benefits were received under this program.<sup>229</sup> The GOI also reported that Suminter had received a Status Certificate that was valid during the POI, and also alleged that no monetary benefit or incentive is transferred to a certificate holder when a certificate is granted.<sup>230</sup> However, we need additional information to evaluate the parties' claims and to reach a preliminary determination regarding this program. As a result, we are deferring our decision and intend to seek additional information from parties after our preliminary determination.

2. Duty Drawback on Supply of Organic Soybeans by Suminter to Bergwerff SEZ

Bergwerff explained that Suminter sells raw organic soybeans, an input to subject merchandise, to Bergwerff, who is located in an SEZ.<sup>231</sup> Due to its location in the SEZ, Bergwerff is eligible to claim drawback on these purchases. We find that we do not have enough information to make a preliminary determination with respect to this program, and thus intend to seek additional information from parties after our preliminary determination.

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

Sections 703(d) and 705(c)(5)(A) of the Act state that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. Pursuant to section 705(c)(5)(A)(i) of the Act, this rate shall normally be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually

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<sup>228</sup> See Bergwerff IQR at 142.

<sup>229</sup> See Bergwerff IQR at 62.

<sup>230</sup> See GOI First IQR at 50; *see also* GOI August 8, 2021 SQR at PDF pages 65-66.

<sup>231</sup> See Bergwerff IQR at 26.

examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. Because Bergwerff is the only respondent in this investigation to receive a calculated rate that is not zero, *de minimis*, or based entirely on facts available, we are assigning Bergwerff's net countervailable subsidy rate, 7.05 percent *ad valorem*, as the all-others rate.

## **XI. RECOMMENDATION**

We recommend that you approve the preliminary findings described above.

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\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

8/30/2021

X

*James Maeder*

Signed by: JAMES MAEDER

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James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**APPENDIX**  
**AFA Rate Calculation**

Program Names	AFA Rate (%)	Source of AFA Rate or Precedent for Previous Use of the AFA Rate Under the Hierarchy
<b><i>Used Programs</i></b>		
1. Merchandise Export Incentive Scheme	2.54	Rate calculated in this proceeding
2. Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material	1.19	Rate calculated in this proceeding
3. Exemption from Payment of CST on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material	2.70	Rate calculated in this proceeding
4. Pre-Shipment and Post-Shipment Export Financing	0.01	Rate calculated in this proceeding
5. SGMP Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit	0.08	Rate calculated in this proceeding
6. SGMP Exemption of Mandi Fee for Agricultural Products	0.50	Rate calculated in this proceeding
7. Punji Nivesh Subsidy Yojna	0.03	Rate calculated in this proceeding
<b><i>Government of India Programs</i></b>		
8. Minimum Support Price (MSP) Program	18.08	<i>See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review</i> , 75 FR 43488 (July 26, 2010) ( <i>HRS from India AR</i> ), and accompanying IDM at 33-34.
9. Advance Authorization Scheme (AAS)	19.22	<i>See Polyester Textured Yarn from India: Final Affirmative Countervailing Duty Determination</i> , 84 FR 63848 (November 19, 2019) ( <i>Yarn from India Final Determination</i> ), and accompanying IDM at 7.
10. Duty Free Import Authorization (DFIA) Scheme	14.61	<i>See Large Diameter Welded Pipe from India: Final Affirmative Countervailing Duty Determination</i> , 83 FR 56819 (November 14, 2018) ( <i>LDWP from India Final Determination</i> ), and accompanying IDM at 30.

11. Duty Drawback (DDB) Scheme	1.99	<i>See Stainless Steel Flanges from India: Final Results of Countervailing Duty Administrative Review; 2018, 86 FR 47623 (August 26, 2021) (Steel Flanges AR 2018), and accompanying IDM at 6.</i>
12. Focus Product Scheme (FPS)	1.99	<i>See Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part, 81 FR 13334 (March 14, 2016) (PET Resin from India Final Determination), and accompanying IDM at 18-19.</i>
13. Duty-Free Import of Goods, Including Capital Goods and Raw Materials (EOU)	14.61	<i>See LDWP from India Final Determination, and accompanying IDM at 29.</i>
14. Reimbursements of Central Sales Tax (CST) Paid on Goods Manufactured in India (EOU)	3.09	<i>See LDWP from India Final Determination IDM, and accompanying IDM at 29.</i>
15. Duty Drawback on Fuel Procured from Domestic Oil Companies (EOU)	14.61	<i>See LDWP from India Final Determination, and accompanying IDM at 29.</i>
16. Exemption from Payment of Central Excise Duty (CED) on Goods Manufactured in India and Procured from a Domestic Tariff Area (EOU)	14.61	<i>See LDWP from India Final Determination, and accompanying IDM at 29.</i>
17. Export Promotion of Capital Goods (EPCG) Scheme	16.63	<i>See Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Carbon Steel Flat Products from India, 66 FR 49635 (September 28, 2001) (HRS from India Investigation), and accompanying IDM at “Export Promotion of Capital Goods Scheme.”</i>
18. Market Development Assistance (MDA) Scheme	16.63	<i>See LDWP from India Final Determination, and accompanying IDM at 29.</i>
19. Market Access Initiative (MAI)	16.63	<i>See LDWP from India Final Determination, and accompanying IDM at 29.</i>
20. Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit	1.01	<i>See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2017, 85 FR 14463 (March 12, 2020) (PET Film from India Final Determination AR 2017), and accompanying IDM at 11.</i>
21. SEZ Income Tax Exemption	1.29	<i>See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty New Shipper Review, 76 FR 30910 (May 27, 2011), and accompanying IDM at 18.</i>

22. Service Tax Exemption	3.09	<i>See LDWP from India Final Determination, and accompanying IDM at 30.</i>
23. Exemption from Payment of Local Government Taxes and Duties, Such as Sales Tax and Stamp Duties	3.09	<i>See PET Resin from India Final Determination, and accompanying IDM at 25.</i>
24. Incremental Exports Incentivization Scheme	0.40	<i>See LDWP from India Final Determination, and accompanying IDM at 30.</i>
25. Interest Equalization Scheme (IES) on Pre- and Post-Shipment Rupee Export Credit	2.01	<i>See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Countervailing Duty Determination, 82 FR 58172 (December 11, 2017) (Cold-Drawn Mechanical Tubing from India), and accompanying IDM at 23.</i>
26. Interest Subvention Scheme for MSMEs	2.90	<i>See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India, 67 FR 34905 (May 16, 2002) (PET Film from India Investigation) and accompanying IDM at “Pre- and Post-Shipment Export Financing.”</i>
27. GOI Loan Guarantees	2.90	<i>See PET Film from India Investigation and accompanying IDM at “Pre- and Post-Shipment Export Financing.”</i>
28. Income Tax Deductions for Research and Development Expenses	0.21	<i>See Forged Steel Fluid End Blocks from India: Final Affirmative Countervailing Duty Determination, 85 FR 79999 (December 11, 2020) (Fluid Ends Blocks from India Final Determination) and accompanying IDM at 5.</i>
29. Transport and Marketing Assistance (TMA) for Specified Agricultural Products	3.09	<i>See LDWP from India Final Determination, and accompanying IDM at 32.</i>
<b><i>SGOG Subsidy Programs</i></b>		
30. State Government of Gujarat (SGOG) Sales Tax Incentives	3.09	<i>See Notice of Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 71 FR 28665 (May 17, 2006) (Hot-Rolled Steel AR 2004 Final Results), and accompanying IDM at 3.</i>
31. SGOG Gujarat Industrial Development Corporation (GIDC) Preferential Water Rates	0.60	<i>See Polytetrafluoroethylene Resin from India: Final Affirmative Countervailing Duty Determination, 83 FR 23442 (May 21, 2018), and accompanying IDM at 7.</i>

32. SGOG Subsidized Financing	6.06	<i>See Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination, 77 FR 64468 (October 22, 2012) (Circular Welded Steel Pipe from India), and accompanying IDM at 30-31, where Commerce calculated a rate for a similar program.</i>
33. SGOG's Scheme for Incentive to Industries (General) 2016-2021	3.09	<i>See Circular Welded Steel Pipe from India, and accompanying IDM at 27.</i>
<b>SGOM Subsidy Programs</b>		
34. State Government of Maharashtra (SGOM) Sales Tax Program	0.63	<i>See Certain Corrosion-Resistant Steel Products from India: Final Results of Countervailing Duty Administrative Review; 2015-2016, 84 FR 11053 (March 25, 2019) (CORE from India Final Determination AR 15-16), and accompanying IDM at 10.</i>
35. VAT Refunds under the SGOM Package Scheme of Initiatives	3.09	<i>See Circular Welded Steel Pipe from India, and accompanying IDM at 27.</i>
36. SGOM Electricity Duty Exemptions	0.01	<i>See Common Alloy Aluminum Sheet from India, 86 FR 13285 (March 8, 2021) and accompanying IDM at 12.</i>
37. SGOM Waiving of Loan Interest by State Industrial & Investment Corporation of Maharashtra (SICOM) Limited	2.90	<i>See Circular Welded Steel Pipe from India, and accompanying IDM at 31-32.</i>
38. SGOM Interest Subsidies	6.06	<i>See Circular Welded Steel Pipe from India, and accompanying IDM at 30-31 "Investment Subsidies."</i>
39. SGOM Investment Subsidies	6.06	<i>See Circular Welded Steel Pipe from India, and accompanying IDM at 30-31.</i>
40. SGOM Provision of Land for Less than Adequate Remuneration (LTAR)	18.08	<i>See Circular Welded Steel Pipe from India, and accompanying IDM at 30.</i>
<b>SGMP Subsidy Programs</b>		
41. State Government of Madhya Pradesh (SGMP) Exemption from Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ	3.09	<i>See Hot-Rolled Steel AR 2004 Final Results), and accompanying IDM at 3.</i>
42. SGMP Exemption from State Taxes, Duties and Cess for Goods and Services within the SEZ	3.09	<i>See Hot- Rolled Steel AR 2004 Final Results), and accompanying IDM at 3.</i>
43. SGMP Exemption from Electricity Duty and Cess Thereon on the Sale or Supply to the SEZ Unit	3.09	<i>See Hot- Rolled Steel AR 2004 Final Results), and accompanying IDM at 3.</i>
44. SGMP Discounted Land Fees in an SEZ	3.09	<i>See LDWP from India Final Determination, and accompanying IDM at 32</i>
45. SGMP Investment Promotion Assistance	6.06	<i>See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India,</i>

		66 FR 49635 (September 28, 2001) and accompanying IDM at “The GOI’s Forgiveness of SDF Loans Issued to SAIL.”
46. SGMP Assistance on Electricity Consumption	3.09	<i>See LDWP from India Final Determination</i> , and accompanying IDM at 32
47. SGMP Reimbursement on Obtaining Quality Certification	3.09	<i>See LDWP from India Final Determination</i> , and accompanying IDM at 32
48. SGMP Reimbursement for Portion of Research and Development	3.09	<i>See LDWP from India Final Determination</i> , and accompanying IDM at 32
49. SGMP Reimbursement on Transportation	3.09	<i>See LDWP from India Final Determination</i> , and accompanying IDM at 32
50. SGMP Capital Subsidy	3.09	<i>See LDWP from India Final Determination</i> , and accompanying IDM at 32
51. SGMP Grants for Promotional Scheme	3.09	<i>See LDWP from India Final Determination</i> , and accompanying IDM at 32
<b>Total AFA Rate:</b>	<b>266.37%</b>	