



DATE: October 15, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh *cm*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Circular Welded Carbon-
Quality Steel Pipe from India

Background

On March 30, 2012, the Department of Commerce (“the Department”) published the *Preliminary Determination* of this investigation.¹ The “Analysis of Programs” and “Selection of the Adverse Facts Available Rate” sections below describe the subsidy programs and the methodologies used to calculate the benefits from these programs. We have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which also contains the Department’s responses to the issues raised in the briefs. We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this investigation for which we received comments and rebuttal comments from parties:

General Issues

- Comment 1** Whether the GOI Cooperated to the Best of Its Ability and Should Not Be Subject to the AFA Rate that the Department Preliminarily Applied
- Comment 2** Whether the Application of AFA Is Inconsistent with Article 12.7 of ASCM
- Comment 3** Whether the Department’s Application of AFA With Respect to Provision of Hot-Rolled Steel by SAIL For LTAR Was Justified

¹ For this Issues and Decision Memorandum, we are using short cites to various references, including administrative determinations, court cases, acronyms, and documents submitted and issued during the course of this proceeding, throughout the document. We have appended to this memorandum a table of authorities, which includes these short cites as well as a guide to the acronyms.



Comment 4 Whether the Department’s Application of AFA With Respect to Provision of Land For LTAR Was Justified

Comment 5 Whether the Department Erred in Calculating the Subsidy Rate It Assigned in the Preliminary Determination

Use of Facts Otherwise Available and Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply “facts otherwise available” if, *inter alia*, 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 the Department, 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 the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

For the reasons explained below, the Department determines that application of facts otherwise available is warranted and that an adverse inference is warranted, pursuant to section 776(b) of the Act because, by not responding to our requests for information, the GOI, Zenith and Lloyds failed to cooperate by not acting to the best of their ability.

I. Lloyds

Lloyds did not respond to the QNR. As a result, we have none of the data necessary to calculate a subsidy rate for Lloyds. Accordingly, in reaching our determination, we have based Lloyds’ CVD rate on facts otherwise available pursuant to section 776(a)(2)(A) and (C) of the Act.

The Department has determined that an adverse inference is warranted, pursuant to section

776(b) of the Act because, by not responding to our questionnaire, Lloyds failed to cooperate by not acting to the best of its ability. Accordingly, our determination is based on AFA.

II. Zenith

Although Zenith filed several responses to the QNR, Zenith did not provide information we requested that is necessary to determine a CVD rate in this investigation. The numerous deficiencies of Zenith's responses are described below.

Our original questionnaire instructed the respondents that they must provide a complete questionnaire response for all cross-owned affiliates that meet one of the following criteria: 1) the cross-owned company produces the subject merchandise; 2) the cross-owned company is a holding company or a parent company (with its own operations) of the respondent; 3) the cross-owned company supplies an input product that is primarily dedicated to the production of the subject merchandise; 4) the cross-owned company has received a subsidy and transferred it to the respondent; 5) the cross-owned company is not a producer or manufacturer but provides a good or service to the respondent. *See* QNR, Section III, at 2. Regarding its ownership, Zenith initially only reported that it "has been a Birla Group Company (under the management of the Birla family) since incorporation in the year 1960." *See* ZQR at 5. Zenith also identified 38 affiliated companies in its initial response, but claimed that none were cross-owned companies and provided no response for any of them. *Id.* at 3 and Annexure 1.

On February 17, 2012, we sent a supplemental questionnaire to Zenith to clarify the relationship between Zenith, the affiliated companies Zenith identified in Annexure 1 of the ZQR, and Birla Group. *See* Z1SQ. In its response regarding the relationship of Birla Group and Zenith, Zenith stated, "Since Mr. Yashovardhan Birla is heading (Zenith) and he controls (Zenith) through other his affiliated companies and other entities and therefore we recognize all these companies and other entities as Yash Birla Group." *See* Z1SR at 1. Regarding the affiliated companies Zenith identified at Annexure 1 of the ZQR, Zenith stated, "it is clarified that these all affiliated companies along with Zenith Birla (India) Limited is controlled and managed by Yash Birla Group either through common management or by voting rights."² Therefore, Zenith's responses indicate that Yash Birla Group, or the "companies and other entities" that are collectively Yash Birla Group, was the parent company of Zenith by virtue of its control of Zenith. Furthermore, Zenith's responses indicate that Zenith was cross-owned with all 38 affiliated companies under 19 CFR 351.525(b)(6)(vi) through Yash Birla Group's common control of Zenith and all of its reported affiliates.

Despite the instructions in the QNR that Zenith provide a complete response for a parent company (*i.e.*, the second criterion indicated above), Zenith did not provide a response for the Yash Birla Group, or the "companies and other entities" that are collectively Yash Birla Group. Based on Zenith's responses to the ZQR and Z1SR, Yash Birla Group is the parent company of Zenith by virtue of its control of Zenith. In addition, we identified at least three other cross-owned companies for which Zenith should have provided a response based on information in the

² Zenith clarified that the company it referred to as "Birla Group" in the ZQR was the same as Yash Birla Group ("It is clarified that mention of Birla Group here and elsewhere in our earlier response refers to Yash Birla Group.") *See* Z1SR at 1-2.

ZQR and Z1SR. Zenith acknowledged that one of these companies, Birla Power Solutions Limited, supplied raw material to Zenith during the POI. *See* Z1SR at 2. Furthermore, the financial statements Zenith submitted with the ZQR show that Zenith purchased goods and services from “related parties,” which indicates these related parties potentially met the third and fifth criteria indicated above from the QNR. *See* ZQR at Annexures 3 through 5 and Z2SQ at 4.

We sent a second supplemental questionnaire to Zenith to request responses for all cross-owned companies that meet one or more of the criteria identified in the QNR, as well as to address other deficiencies in Zenith’s response. Regarding cross-owned companies, we requested the following:

- We stated that Zenith’s responses indicated that Yash Birla Group was the parent company, either directly or indirectly, of Zenith during the POI. Thus, we requested a complete questionnaire response on behalf of Yash Birla Group or the collective “companies and other entities” to which Zenith referred as Yash Birla Group at page 1 of the Z1SR.
- We requested a response on behalf of Birla Power Solutions Limited, a company cross-owned with Zenith through Yash Birla Group’s common control. Zenith acknowledged in the Z1SR that this company provided raw materials to Zenith during the POI. *See* Z1SR at 2.
- We requested a response on behalf of Birla Global Corporate Pvt. Limited, a cross-owned company under Yash Birla Group’s common control, because Zenith’s financial statements indicated that Zenith had charges for services from this company during the POI.
- We requested a complete questionnaire response on behalf of THPL. Zenith’s submitted financial statements indicated that Zenith merged with THPL in 2009 and that THPL was the original owner of two of Zenith’s three plants. Thus, subsidies that THPL received prior to its merger with Zenith would be attributable to Zenith.
- As explained above, the financial statements Zenith submitted with the ZQR showed that Zenith purchased goods and services from “related parties,” which indicates that these related parties potentially met the third and fifth criteria indicated above from the QNR. Therefore, we asked Zenith to identify these “related parties” and to provide responses on behalf of any companies within this group that were cross-owned with Zenith through Yash Birla Group’s common control.
- We requested that Zenith provide complete questionnaire responses for any other cross-owned companies that met one or more of the criteria identified in the QNR.

For a complete list of the questions, *see* Z2SQ at 1-5.

Zenith asked for two extensions of the deadline for responding to the Z2SQ. *See* Zenith’s letter entitled “Extension Request” dated March 5, 2012, and Zenith’s letter dated March 12, 2012. Because of the impending fully extended deadline for the preliminary determination, we were only able to grant Zenith a partial extension. *See* our letters to Zenith dated March 6, 2012, and March 12, 2012.

In its response, Zenith filed what it claimed was “a complete response on behalf of Yash Birla

Group.” *See* Z3SR at 1. Zenith filed individual responses on behalf of seven individual companies, which Zenith described as follows:

We wish to clarify that entities mentioned at serial number 1 to 6 were involved in manufacturing and export of various products but not the subject merchandise and all of them have received any of various subsidy program as identified by the DOC during the POI and therefore we have reported separate response for each of them and same is enclosed as Annexure – 48 to Annexure - 53. As far as (Birla Global Corporate Pvt. Limited) is concerned Zenith Birla (India) Limited has paid service charges to that entity and therefore we have reported separate response for that entity and same is enclosed as Annexure - 54.

Id. at 2.

Zenith also filed one response that it claimed covered 28 other companies. In this response, Zenith stated the following:

We further wish to clarify that all other 28 companies of Yash Birla Group as identified in Annexure-56 were neither involved in production or sales of subject merchandise nor any of them have any export sales and therefore in absence of export sales question of export subsidy does not arise at all and therefore we have reported a single response for all these companies as Annexure - 55.

Id.

This summary of Zenith’s responses demonstrates that Zenith did not provide information we requested that is necessary to determine a CVD rate for this investigation. First, we requested that Zenith respond on behalf of the Yash Birla Group because, as we described above, Zenith’s responses indicate that Yash Birla Group was the parent company to Zenith. *See* Z2SQ at 1-2. In response, Zenith filed incomplete responses on behalf of individual companies under the control of the Yash Birla Group (*see* below), but filed no response on behalf of the Yash Birla Group. *See* Z3SR at 2. Therefore, we have no response for Zenith’s parent, Yash Birla Group. Consequently, we cannot identify subsidies Zenith’s controlling or parent company received that may be attributable to Zenith under 19 CFR 351.525(b)(6)(iii).

Second, we are not able to identify the universe of cross-owned companies with subsidies attributable to Zenith. Although Zenith initially responded that it has no cross-owned companies, Zenith’s responses revealed that Zenith is cross-owned with 38 companies through Yash Birla Group’s common control. *See* ZQR at Annexure 1. In accordance with the instructions in the QNR, Zenith should have responded on behalf of any of these companies that may have received subsidies attributable to Zenith under our regulations. *See* QNR, Section III, at 2. For example, subsidies to a cross-owned input supplier to Zenith are attributable to Zenith under 19 CFR 351.525(b)(6)(iv) if production of the input product is primarily dedicated to production of the downstream product. As we stated above, Zenith’s financial statements showed purchases from “related parties,” suggesting that Zenith may have cross-owned input suppliers with subsidies attributable to Zenith under 19 CFR 351.525(b)(6)(iv). Thus, we

requested that Zenith identify these companies. *See* Z2SQ at 4. Zenith did not answer this question. *See* Z3SR at 5. Consequently, we do not know the universe of cross-owned companies for which Zenith should have provided questionnaire responses, and we do not know the universe of subsidies attributable to Zenith that these cross-owned companies received.

Third, Zenith's responses on behalf of its cross-owned companies in the Z3SR are unusable for the following reasons. For 28 of these companies, Zenith filed one blanket response that it claimed covered all 28 companies. *Id.* at Annexure 56. Zenith, however, argued that it was not required to provide financial statements or tax returns for any of these companies because they did have export sales and, thus, the question of receiving any subsidy benefit was not relevant. *Id.* Under the Department's regulations, however, the universe of cross-owned companies receiving subsidies attributable to Zenith is not limited to cross-owned companies that export. *See* 19 CFR 351.525(b) and (c).

Regarding the seven companies for which Zenith filed individual responses in Z3SR, Zenith did not respond with respect to certain programs on the grounds that its cross-owned companies had not used the program "during the POI," even though we specifically asked for reporting during the entire AUL period. *Id.*, *e.g.*, at Annexure 48 at 20.

Moreover, Zenith did not provide requested documentation and benefit amounts for certain programs used by these seven companies on the grounds that any benefits the companies received were not related to subject merchandise. Z3SR, *e.g.*, at Annexure 48 at 8. However, absent a determination by the Department that a subsidy is "tied" to a specific product under 19 CFR 351.525(b)(5), the Department does not limit the attribution of a benefit from a subsidy program to a specific product. The Department bases these determinations on information on the record, including the questionnaire responses of respondent companies. Zenith failed to provide that information.

Furthermore, certain of these companies that Zenith claimed received no subsidies show subsidies under investigation in their annual reports. For example, the 2010-2011 Annual Report of Birla Precision Technologies Limited identifies a Sales Tax Deferred Payment Loan, a Maharashtra Value Added Tax Credit, an Export Promotion Capital Goods Scheme, an Export-oriented Unit, and consumption of steel during the POI (indicating that this company purchased steel during the POI). *Id.*, Annexure 48, at 31, 32, and 37. All of these items in the Annual Report relate to programs under investigation. In its narrative response, however, Zenith stated that the questions in the questionnaire were "not applicable to us" and did not report any subsidies or answer any of the questions from the QNR. *Id.* at 8 and 11. *See also id.* at 17 and 20.

Additionally, Zenith failed to provide requested worksheets reconciling sales to the financial statements. *Id.* at Annexures 48-54. The sales as reported are unusable to calculate the level of subsidy benefits if they include intercompany sales with other responding cross-owned companies. Because Zenith did not provide the requested reconciliations, we cannot determine whether Zenith properly excluded these sales.

Finally, Zenith also did not provide a complete questionnaire response on behalf of itself. Zenith's financial statements show that Zenith merged with THPL, which was the previous owner of two of Zenith's three plants during the POI. *See* ZQR at Annexure 4 at 12. Although Zenith later claimed that its response "includes all the benefits received by Tungabhadra Holdings Private Limited in the AUL period," Zenith provided no requested information (such as financial statements or description of operations or benefits received prior to its amalgamation with Zenith in 2009) with respect to THPL. This makes it impossible to evaluate what subsidies THPL may have availed itself prior to its amalgamation with Zenith which could potentially be attributable to Zenith. *See* Z3SR at 3.

Furthermore, Zenith responded that it did not purchase land from the GOI during the AUL period. *Id.* at 4. Zenith's response indicates, however, that THPL "acquired Murbad property (held by Sunlight Pipes and Tubes Private Limited) from Andhra Bank in a public auction in year 2005." *Id.* at 4. Publicly available information shows that the GOI owned a majority of the shares of Andhra Bank in 2005. *See* Memorandum to file, entitled "Calculation of the Adverse Facts Available Rate for Lloyds Metals and Engineers Ltd. and Zenith Birla Ltd.," dated March 26, 2012, ("Adverse Facts Available Memo") at Attachment III. Zenith's response also indicates that the Tarapur plant was "acquired by Tungabhadra Holdings Private Limited from Podar Tubes and Tyers Private Limited and part land (G-39) for Tarapur plant were acquired by the Tungabhadra Holdings Private Limited in a public auction by Debt Recovery Tribunal in a year 2003." *See* Z3SR at 4. Again, publicly available information shows that Debt Recovery Tribunals are entities constituted by the GOI. *See* Adverse Facts Available Memo at Attachment III. Thus, Zenith's claim in the Z3SR, at 4, that its Murbad and Tarapur plants were "not acquired from any government authority" does not take into account this information. By not responding to the questions regarding land received at LTAR, Zenith prevented us from evaluating whether these plants received any subsidies which could potentially be attributable to Zenith.

Because of the numerous deficiencies identified above, it is impossible to calculate a credible subsidy rate based on Zenith's responses. We provided Zenith two chances, including multiple deadline extensions, to provide a complete questionnaire response. Zenith filed no notification of difficulty in responding within 14 days of the date of receipt of the questionnaire, as required by our regulations and the questionnaire. *See* QNR, Section III, at 3; *see also* 19 CFR 351.301(c)(2)(iv). Accordingly, in reaching our determination, we have based Zenith's CVD rate on facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) of the Act. Moreover, Zenith's failure to provide complete responses, as described above, despite our repeated requests for such responses, constitutes a failure on Zenith's part to cooperate by not acting to the best of its ability. Accordingly, our determination is based on AFA.

III. Government of India

Although the GOI filed several responses to the QNR, it did not provide information we requested with respect to certain programs that is necessary to determine a CVD rate in this investigation. The numerous deficiencies in GOI's responses are described below.

CVD investigations necessarily rely on information from the government regarding the

administration of the alleged subsidy programs. Moreover, as our original questionnaire to the GOI stated, “The government is responsible for providing the information requested (in the questionnaire) for each company respondent, for each of the respondent’s cross-owned companies, and for each trading company through which the respondent sells subject merchandise to the United States.” *See* QNR, Section II, at 2.

In its original questionnaire response, the GOI claimed that the respondents did not avail themselves of certain programs. These programs are: (1) the GOI Loan Guarantees Program; (2) Research and Technology Scheme Under Empowered Committee Mechanism With Steel Development Fund Support; (3) SEZ Programs; (4) Provision of Captive Mining Rights for Coal and Iron Ore; the Provision of High-Grade Ore for LTAR; and (5) SGOM Programs (except the Value-Added Tax Refunds under SGOM Package Scheme. *See* GQR at 77-80 and 95-110. However, it was not clear whether the GOI covered programs received by the respondents’ cross-owned companies in its response.

Accordingly, we asked the GOI to confirm that its responses for those programs covered the respondents’ cross-owned companies. For example, we asked the GOI to “{c}onfirm that your response covers all GOI Loan Guarantees that the GOI provided to the mandatory respondents (including their responding cross-owned companies) on loans that were outstanding during the POI. Please coordinate with the mandatory respondents to obtain the names of these cross-owned companies if you do not already have them.” *See* G1SQ at 6. The GOI responded,

It has been reported by the Zenith (Birla) Ltd. that neither they nor any of their crossowned companies has availed of the said scheme. The Government of India would also like to clarify that this response is based solely on the declaration of Zenith (Birla) Ltd. as the GOI does not maintain any record of the so-called cross-owned companies of the mandatory respondents. As regards Lloyds Metals & Engineers Ltd., it appears that they have since shut down manufacture of the Product under Consideration and they are not participating in the investigations. Therefore, the GOI is in no position to provide further answers to the queries of the USDOC with regard to the cross-owned companies of this particular mandatory respondent.

See G1SR at, *e.g.*, 9.

After receiving the G1SR on March 3, 2012, we received Zenith’s ZQR. As we explained above, Zenith’s response in the ZQR indicated that Zenith was cross-owned with many other companies.

Accordingly, on March 1, 2012, we sent a second supplemental questionnaire to the GOI. We noted our request to Zenith for responses on behalf of certain cross-owned companies, and we requested that the GOI update its questionnaire responses for any subsidies those cross-owned companies received. *See* G2SQ at 1. Thus, for any of the programs identified above, the GOI should have updated its response if any responding cross-owned companies used the program.

On March 5, 2012, the GOI responded to this supplemental questionnaire stating:

The response of the GOI to the First Supplemental Questionnaire was based on the information supplied by Zenith. It is presumed that Zenith had included all the above companies in their response. The Government of India would also like to reiterate that this response is also based solely on the declaration of Zenith (Birla) Ltd. as the GOI does not maintain any record of the so-called cross-owned companies of the mandatory respondents. GOI has nothing further to add.

See G2SR at 1.

As this summary shows, the Department's repeated questions make clear that the GOI was responsible for coordinating with Zenith to obtain the names of its cross-owned companies that met the criteria of 19 CFR 351.525(b)(6)(ii)-(v) and then to provide information about the subsidies they received. The GOI's responses make clear that it failed to undertake serious inquiry in this regard by basing its responses on Zenith's declarations and the GOI's presumptions about Zenith's information. In particular, after Zenith's ZQR indicated numerous cross-owned companies beyond those addressed by the GOI in its QR and G1SR, the GOI did not update its responses, stating it had "nothing to add." Thus, we lack the information needed to determine whether these programs conferred a countervailable subsidy on Zenith's cross-owned companies.

Further, for the Provision of Hot-Rolled Steel by SAIL for LTAR, the GOI claimed in both the GQR and the G1SR that it had no involvement in the purchasing decisions of the mandatory respondents and refused to provide any information on the program. *See GQR at 18 and G1SR at 16.* The information we requested from the GOI, however, was on the GOI's administration of the program, not information on purchases of hot-rolled steel by the respondents. *See QNR, Section II, at 7-8 (e.g., "Please describe {SAIL}, including the extent of government ownership in SAIL and any legislation or regulations pertaining to SAIL's establishment.")*. The GOI did not respond to our questions and did not respond to our request in the supplemental questionnaire to explain in detail the efforts it made to obtain this necessary information. *See G1SR at 16.* Therefore, we lack the information necessary for our analysis of the program.

Finally, for the Provision of Land for LTAR, the GOI's original response stated, "The Government of India does not have such information." *See GQR at 27.* Because information from the GOI in response to the questions in the QNR was necessary for our analysis of the program we asked the GOI again to answer our original questions. In response, the GOI stated, "State governments make provisions of land as a part of overall infrastructure development and the development of industry which cannot be considered as a subsidy under the ASCM." *See G1SR at 26.* Thus, the GOI did not respond to our questions; nor did it respond to our request in the supplemental questionnaire to explain in detail the efforts it made to obtain this necessary information. Instead, the GOI provided argument.

As explained above, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

The Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act because, by not responding to our requests for information with respect to these programs, the GOI failed to cooperate by not acting to the best of its ability. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. *See, e.g., Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 11397, 11399 (March 7, 2006) (unchanged in the *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006), in which the Department relied on adverse inferences in determining that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of sections 771(5)(D) and 771(5A)(D)(iii) of the Act, respectively).

Accordingly, as AFA, we determine that the GOI Loan Guarantees Program, the Research and Technology Scheme Under Empowered Committee Mechanism with Steel Development Fund Support, all of the SEZ Programs, all of the Input Programs (including the provision of hot-rolled steel by SAIL for LTAR), and all of the SGOM Programs (including the provision of land for LTAR, but with the exception of the VAT Refunds under SGOM Package Scheme) provided a financial contribution within the meaning of section 771(5)(D) of the Act and were specific within the meaning of 771(5A) of the Act. For further details with respect to these programs, *see* the “Analysis of Programs” section, below.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse “as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.” *See Semiconductors From Taiwan - AD*, 63 FR at 8932. The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” *See SAA* at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent’s prior commercial activity, selecting the highest prior margin “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.” *See Rhone Poulenc*, 899 F.2d at 1190.

In assigning net subsidy rates for each of the programs for which specific information was required from Lloyds and Zenith, we were guided by the Department’s approach in prior India CVD reviews as well as recent CVD investigations involving the People’s Republic of China. *See, e.g., Fifth HRS from India Review* and accompanying IDM at “SGOC Industrial Policy

2004-2009” section; *see also* *CWASP from the PRC* and accompanying IDM at “Application of Facts Available and Use of Adverse Inferences” section.

It is the Department’s practice in CVD proceedings to select, as AFA, the highest calculated rate in any segment of the proceeding.³ In previous CVD investigations of products from India, we adapted the practice to use the highest rate calculated for the same or similar program in another India CVD proceeding. Thus, under this practice, for investigations involving India, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior India CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated rate for the identical program in the investigation if a responding company or companies used the identical program, and the rate is not zero. If there is no identical program within the investigation, the Department uses the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another India CVD proceeding. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, the Department applies the highest calculated subsidy rate for any program in an India proceeding that could conceivably be used by the non-cooperating companies.⁴

In this case, there is no appropriate information on the record of this investigation from which to select appropriate AFA rates for any of the subject programs. Although Zenith provided some information for some of the programs with respect to itself, it provided no usable information on subsidies received with respect to any of its cross-owned companies, which means we cannot ascertain the total amount of subsidies attributable to Zenith’s sales. As a result, it is not possible for us to calculate an accurate subsidy rate for any of the programs alleged. Furthermore, because this is an investigation, we have no previous segments of this proceeding from which to draw potential AFA rates.

For the alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we have applied an adverse inference that the respondents paid no income tax during the POI. The standard income tax rate for corporations in India is 35 percent. *See* Petition at Exhibit III-A-18. Therefore, the highest possible benefit for the income tax rate programs is 35 percent. We are applying the 35 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 35 percent benefit).

For programs other than those involving income tax exemptions and reductions, we applied the highest non-*de minimis* rate calculated for the same or similar program in another India CVD proceeding. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, we applied the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the mandatory company respondents.⁵

For a discussion of the application of the individual AFA rates for programs determined to be countervailable, *see* the “Analysis of Programs” section, below.

³ *See, e.g., LWS from the PRC* and accompanying IDM at “Selection of the Adverse Facts Available.”

⁴ *See, e.g., LWTP from the PRC* accompanying IDM at “Selection of the Adverse Facts Available Rate.”

⁵ *See, e.g., KASR from the PRC*, 74 FR at 37013; *see also Sodium Nitrite from PRC*, 73 FR at 38982.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department 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.” *See* SAA at 870. The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value. *Id.* The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See* SAA at 869-870.

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, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA. *See, e.g., Flowers from Mexico.* In the instant case, no evidence has been presented or obtained that contradicts the relevance of the information relied upon in a prior India CVD proceeding. Therefore, in the instant case, the Department finds that the information used has been corroborated to the extent practicable.

Analysis of Programs

A. Export Oriented Unit Schemes

1. Duty-free import of all types of goods, including capital goods and raw materials

The GOI reported that an EOU “may import without payment of duty all types of goods, including capital goods and raw material, as defined in the Policy, required by it for manufacture, services, trading or in connection therewith.” *See* GQR at 26. Accordingly, we determine that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. The GOI also reported that “{u}nits undertaking to export their entire production of goods and services, except permissible sales in the Domestic Tariff Area, as per this policy, may be set up under the EOU Scheme for manufacture of goods.” *See* GQR at 26. Accordingly, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section 771(5A)(B) of the Act.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the

POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 14.61 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *PET Film from India Investigation* and accompanying IDM at the “DEPS” section.

2. Reimbursement of Central Sales Tax (“CST”) paid on goods manufactured in India

The GOI reported that “Export Oriented Units (EOUs) and units in Export Processing Zones (EPZs), Electronic Hardware Technology Park (EHTP), Software Technology Park (STP) and Special Economic Zones (SEZ) will be entitled to full reimbursement of Central Sales Tax (CST) paid by them on purchases made from the Domestic Tariff Area (DTA), for production of goods and services as per Exim Policy.” See GQR at 27. Accordingly, we determine that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. The GOI also reported that “{u}nits undertaking to export their entire production of goods and services, except permissible sales in the Domestic Tariff Area, as per this policy, may be set up under the EOU Scheme for manufacture of goods.” See GQR at 26. Accordingly, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section 771(5A)(B) of the Act.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 3.09 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *Second HRS from India Review* and accompanying IDM at the “State Government of Gujarat Tax Incentives” section.

3. Duty drawback on fuel procured from domestic oil companies

The GOI reported that “{f}uels procured from the depots of domestic oil companies on payment of excise duty by EOU/EHTP/STP/BTP will be eligible for reimbursement in the form of terminal excise duty in addition to drawback rates notified by DGFT from time to time provided the recipient unit does not avail CENVAT credit/rebate on such goods.” See GQR at 27-28. Accordingly, we determine that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. The GOI also reported that “{u}nits undertaking to export their entire production of goods and services, except permissible sales in the Domestic Tariff Area, as per this policy, may be set up under the EOU Scheme for manufacture of goods.” See GQR at 26. Accordingly, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section

771(5A)(B) of the Act.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 14.61 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *PET Film from India Investigation* and accompanying IDM at the "DEPS" section.

4. Exemption from income tax under Section 10A and 10B of Income Tax Act

The GOI reported that "Section 10A of the Income-tax Act provides for a five-year total tax holiday to industrial undertakings which manufacture or produce any article or thing and are set up in notified Free Trade Zones (FTZs)" and that "section 10B of the Income-tax Act allows a five-year tax holiday to approved 100% export-oriented undertakings (EOUs) which manufacture or produce any article or thing." See GQR at 28. Accordingly, we determine that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. The GOI also reported that "{u}nits undertaking to export their entire production of goods and services, except permissible sales in the Domestic Tariff Area, as per this policy, may be set up under the EOU Scheme for manufacture of goods." See GQR at 26. Accordingly, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section 771(5A)(B) of the Act.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

As explained above, for the alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we are applying the 35 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 35 percent benefit).

5. Exemption from payment of Central Excise Duty on goods manufactured in India and procured from a Domestic Tariff Area

The GOI reported that "{t}he EOUs can procure goods from DTA without payment of Central Excise duty subject to following of the Chapter X procedure of erstwhile Central Excise Rules." See GQR at 29. Most of the products manufactured in India are assessed excise duties at the rate of 16 percent. However, manufactured goods purchased domestically qualify for exemption

from this excise duty under this program. Accordingly, we determine that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. The GOI also reported that “{u}nits undertaking to export their entire production of goods and services, except permissible sales in the Domestic Tariff Area, as per this policy, may be set up under the EOU Scheme for manufacture of goods.” See GQR at 26. Accordingly, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section 771(5A)(B) of the Act.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 14.61 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *PET Film from India Investigation* and accompanying IDM at the “DEPS” section.

6. Reimbursement of CST on goods manufactured in India and procured from a Domestic Tariff Area

The GOI reported that “{t}he EOUs can procure goods from DTA without payment of Central Excise duty subject to following of the Chapter X procedure of erstwhile Central Excise Rules.” See GQR at 29. Accordingly, we determine that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. The GOI also reported that “{u}nits undertaking to export their entire production of goods and services, except permissible sales in the Domestic Tariff Area, as per this policy, may be set up under the EOU Scheme for manufacture of goods.” See GQR at 26. Accordingly, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section 771(5A)(B) of the Act.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 3.09 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *Second HRS from India Review* and accompanying IDM at the “State Government of Gujarat Tax Incentives” section.

B. Export Promotion Capital Goods Scheme

The GOI reported that “{t}he scheme allows import of capital goods for pre production, production and post production at 5% Customs duty subject to an export obligation equivalent to 8 times of duty saved on capital goods imported under EPCG scheme to be fulfilled over a period of 8 years reckoned from the date of issuance of license.” *See* GQR at 41. Thus, under this program, Indian companies may import capital equipment at reduced rates by fulfilling certain export obligations. Accordingly, we determine that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. Moreover, because this duty reduction is subject to an export obligation, we determine that this program is specific within the meaning of section 771(5A)(B) of the Act.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 16.63 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for the same program in any segment of any proceeding involving India. *See HRS from India Investigation* and accompanying IDM at the “Export Promotion for Capital Goods (EPCGS) Scheme” section.

C. Duty Exemption/Remission Schemes

1. Advance License Program

The GOI reported that “{a}n Advance Authorization is issued to allow duty free import of inputs, which are physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, energy, catalysts which are consumed/ utilized to obtain export product, may also be allowed.” *See* GQR at 45. Accordingly, we determine that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. The GOI also reported that “{d}uty free import of mandatory spares up to 10% of CIF value of Authorization which are required to be exported/ supplied with resultant product are allowed under Advance Authorization.” *See* GQR at 26. Accordingly, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section 771(5A)(B) of the Act.

The GOI initially claimed that the respondents had not availed themselves of any benefits under this program. *See* GQR at 47. Zenith reported that it used this program. *See* ZQR at 12-14.⁶ However, for Zenith, we cannot determine the level of benefit within the meaning of section 771(5)(E) of the Act because Zenith did not report necessary information for its cross-owned

⁶ The GOI subsequently acknowledged that Zenith used Advanced Authorization licenses during the POI that were issued before the POI. *See* G1SR at response to Question 18.

companies.

Absent the cooperation of Lloyds and Zenith with respect to its cross-owned companies, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, we find that Zenith and Lloyds used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 0.50 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for the same program in any segment of any proceeding involving India. See *Fourth HRS from India Review* and accompanying IDM at the "Advance License Program (ALP)" section.

2. Duty Free Import Authorization Scheme

The GOI reported that "DFIA is issued to allow duty free import of inputs, fuel, oil, energy sources, catalyst which are required for production of export product." See GQR at 46. Accordingly, we determine that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. Moreover, because this program is limited to exports, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section 771(5A)(B) of the Act.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 0.50 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *Fourth HRS from India Review* and accompanying IDM at the "Advance License Program (ALP)" section.

3. Duty Entitlement Passbook ("DEP") Scheme

The GOI reported that the "{o}bjective of {DEP} is to neutralise incidence of customs duty on import content of export product." See GQR at 46. Under this program, exporting companies earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEP credits on a post-export basis. DEP credits can be applied to subsequent imports of any materials, regardless of whether they are consumed in the production of an exported product. Accordingly, we determine that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. Moreover, because this program is limited to export products, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section 771(5A)(B) of

the Act.

Zenith reported that it used this program. *See* ZQR at 15-17. However, for Zenith, we cannot determine the level of benefit within the meaning of section 771(5)(E) of the Act because Zenith did not report necessary information for its cross-owned companies.

Absent the cooperation of Lloyds and Zenith with respect to its cross-owned companies, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, we find that Zenith and Lloyds used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 14.61 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for the same program in any segment of any proceeding involving India. *See PET Film from India Investigation* and accompanying IDM at the "DEPS" section.

D. Pre-shipment and Post-shipment Export Financing

The GOI reported that the Reserve Bank of India "sets the ceiling interest rate that banks may charge under the Preshipment Export Financing Scheme through circulars that are issued periodically." *See* GQR at 55. Accordingly, we determine that the GOI's issuance of financing at preferential rates constituted a financial contribution pursuant to section 771(5)(D)(i) of the Act. The GOI also reported that "{e}ligibility for export finance is contingent upon export performance." *See* GQR at 56. Accordingly, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section 771(5A)(B) of the Act.

Zenith reported that it used this program. *See* ZQR at 17-19. However, for Zenith, we cannot determine the level of benefit within the meaning of section 771(5)(E) of the Act because Zenith did not report necessary information for its cross-owned companies.

Absent the cooperation of Lloyds and Zenith with respect to its cross-owned companies, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, we find that Zenith and Lloyds used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 2.90 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for the same program in any segment of any proceeding involving India. *See PET Film from India Investigation* and accompanying IDM at the "Pre-Shipment and Post-Shipment Export Financing" section.

E. Market Development Assistance (“MDA”)

The GOI reported that “{r}ecognised Export Promotion Councils (EPCs) on product grouping basis, Commodity Boards and Export Development Authorities are eligible for MDA assistance {sic} for development and promotional activities to promote exports of their products and commodities from India. All exporters are eligible for assistance under MDA scheme for bonafide {sic} overseas marketing promotion activities to explore new markets for export of their specific product(s) and commodities from India in the initial phase through activities like participation in trade fairs/exhibitions/BSMs/Trade Delegations and publicity through printed material abroad.” See GQR at 63. Accordingly, we determine that this program provides a direct financial contribution within the meaning of section 771(5)(D)(i) of the Act. Moreover, because this program is limited to exporters, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section 771(5A)(B) of the Act.

Zenith reported that it used this program. See Z2SR at 10. However, for Zenith, we cannot determine the level of benefit within the meaning of section 771(5)(E) of the Act because Zenith did not report necessary information for its cross-owned companies.

Absent the cooperation of Lloyds and Zenith with respect to its cross-owned companies, we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, we find that Zenith and Lloyds used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 6.06 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *HRS from India Investigation* and accompanying IDM at the “The GOI’s Forgiveness of SDF Loans Issued to SAIL” section.

F. Market Access Initiative

The GOI reported that “Market Access Initiatives (MAI) Scheme is an Export Promotion Scheme envisaged to act as a catalyst to promote India’s export on a sustained basis. The scheme is formulated on focus product-focus country approach to evolve specific market and specific product through market studies/survey. Assistance would be provided to Export Promotion Organizations/ Trade Promotion Organizations/ National Level Institutions/ Research Institutions/Universities/ Laboratories, Exporters, etc., for enhancement of export through accessing new markets or through increasing the share in the existing markets.” See GQR at 70. Accordingly, we determine that this program provides a direct financial contribution within the meaning of section 771(5)(D)(i) of the Act. Moreover, because this program is limited to exporters, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section 771(5A)(B) of the Act.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence,

within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 6.06 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *HRS from India Investigation* and accompanying IDM at the “The GOI’s Forgiveness of SDF Loans Issued to SAIL” section.

G. Government of India Loan Guarantees⁷

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that guarantees given under this program provide a financial contribution and are specific.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 2.90 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *PET Film from India Investigation* and accompanying IDM at the “Pre-Shipment and Post-Shipment Export Financing” section.

H. Status Certificate Program

The GOI reported that “{t}he objective of the scheme is to recognize established exporters as Export House, Trading House, Star Trading House and Super Star Trading House with a view to building marketing infrastructure and expertise required for export promotion,” and that “{t}he amount of the assistance provided is determined solely by established criteria found in the law, regulation or other official document.” See GQR at 81 and 85, respectively. Accordingly, we determine that this program provides a direct financial contribution within the meaning of section 771(5)(D)(i) of the Act. The GOI also reported that “{t}he eligibility criterion for such recognition shall be on the basis of the FOB/NFE value of export of goods and services.” See GQR at 81. Accordingly, we determine that this program is contingent upon export and, therefore, is specific within the meaning of section 771(5A)(B) of the Act.

Zenith reported that it used this program. See Z2SR at 11. However, for Zenith, we cannot determine the level of benefit within the meaning of section 771(5)(E) of the Act because Zenith

⁷ The Department has previously determined that this program is countervailable. See, e.g., *Sixth HRS from India Review*.

did not report necessary information for its cross-owned companies.

Absent the cooperation of Lloyds and Zenith with respect to its cross-owned companies, we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, we find that Zenith and Lloyds used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 2.90 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *PET Film from India Investigation* and accompanying IDM at the "Pre-Shipment and Post-Shipment Export Financing" section.

I. Steel Development Fund Loans

The GOI reported that "Steel Development Fund (SDF) was created in 1978 to add an element to the ex-works prices of the main producers" and that "{t}his fund thus provides financial assistance to the industry from the interest of SDF corpus for taking up projects like, technology upgradation, measures connected with pollution control, activities related to Research & Development." See GQR at 81 and 85, respectively. Accordingly, we determine that the GOI's provision of Steel Development Fund loans under this program provide a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. Moreover, because this program is limited to a single industry, we find it to be specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 0.99 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for the same program in any segment of any proceeding involving India. See *HRS from India Investigation* and accompanying IDM at "Loan from the Steel Development Fund (SDF) Fund" section.

J. Research and Technology Scheme Under Empowered Committee Mechanism with Steel Development Fund Support

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that support given under this program provides a financial contribution and are specific.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we

determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 0.99 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *HRS from India Investigation* and accompanying IDM at "Loan from the Steel Development Fund (SDF) Fund" section.

K. Special Economic Zones ("SEZ") Programs

1. Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material⁸

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that duty exemptions given under this program provide a financial contribution and are specific.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 14.61 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *PET Film from India Investigation* and accompanying IDM at the "DEPS" section.

2. Exemption from Payment of CST on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material⁹

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that the exemptions of payment of CST given under this program provide a financial contribution and are specific.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the

⁸ The Department has previously determined that this program is countervailable. See *Pet Film from India NSR*.

⁹ The Department has previously determined that this program is countervailable. See, e.g., *Sixth HRS from India Review*.

POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 0.53 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for the same program in any segment of any proceeding involving India. See *PET Film from India NSR* and accompanying IDM at “Exemption from Payment of Central Sales Tax (CST) on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material” section.

3. Exemption from Electricity Duty and Cess thereon on the Sale or Supply to the SEZ Unit¹⁰

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that exemptions from electricity duty and cess thereon given under this program provide a financial contribution and are specific.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 3.09 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *Second HRS from India Review* and accompanying IDM at the “State Government of Gujarat (SGOG) Tax Incentives” section.

4. SEZ Income Tax Exemption Scheme (Section 10A)¹¹

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that the SEZ income tax exemptions given under this program provide a financial contribution and are specific.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

As explained above, for the alleged income tax programs pertaining to either the reduction of the

¹⁰ The Department has previously determined that this program is countervailable. See *Pet Film from India NSR*.

¹¹ The Department has previously determined that this program is countervailable. See *Pet Film from India NSR*.

income tax rates or the payment of no income tax, we are applying the 35 percent AFA rate on a combined basis (*i.e.*, the income tax programs combined provided a 35 percent benefit).

5A. Discounted Land and Related Fees in an SEZ¹²

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that the support given under this program provides a financial contribution and is specific.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 3.09 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *Second HRS from India Review* and accompanying IDM at the “State Government of Gujarat (SGOG) Tax Incentives” section

5B. Land Provided at LTAR in an SEZ

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that support given under this program provides a financial contribution and is specific.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 18.08 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *Fourth HRS from India Review* and accompanying IDM at the “Captive Mining Rights of Iron Ore” section.

L. Input Programs

1. Provision of Hot-Rolled Steel by the Steel Authority of India (“SAIL”) For LTAR

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that provision of hot-rolled steel for LTAR under this program provides a financial

¹² The Department has previously determined that this program is countervailable. See *Pet Film from India NSR*.

contribution and is specific.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 16.14 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *Fifth HRS from India Review* and accompanying IDM at "Sale of High-Grade Iron Ore for LTAR" section.

2. Provision of Captive Mining Rights¹³

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that provision of captive mining rights under this program provides a financial contribution and is specific.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 18.08 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *Fourth HRS from India Review* and accompanying IDM at the "Captive Mining of Iron Ore" section.

3. Captive Mining Rights of Coal¹⁴

As explained above under "Use of Facts Otherwise Available and Adverse Facts Available," we determine that provision of captive mining rights for coal under this program provides a financial contribution and is specific.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the

¹³ The Department has previously determined that this program is countervailable. See, e.g., *Sixth HRS from India Review*.

¹⁴ The Department has previously determined that this program is countervailable. See, e.g., *Sixth HRS from India Review*.

POI. Therefore, as AFA we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 3.09 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for the same program in any segment of any proceeding involving India. See *Fourth HRS from India Review* and accompanying IDM at “Captive Mining Rights of Coal” section.

4. Provision of High-Grade Ore for LTAR¹⁵

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that provision of high-grade ore for LTAR under this program provides a financial contribution and is specific.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 16.14 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for the same program in any segment of any proceeding involving India. See *Fifth HRS from India Review* and accompanying IDM at “Sale of High-Grade Iron Ore for Less Than Adequate Remuneration” section.

M. State Government of Maharashtra (“SGOM”) Programs

1. Sales Tax Program¹⁶

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that the deferral on sales tax payments given under this program provides a financial contribution and is specific.

Zenith reported that it “availed sales tax deferred payment loan facility from State Government of Maharashtra before the POI.” See ZQR at 32. However, for Zenith, we cannot determine the level of benefit within the meaning of section 771(5)(E) of the Act because Zenith did not report necessary information for its cross-owned companies.

Absent the cooperation of Lloyds and Zenith with respect to its cross-owned companies, we determine that the respondents’ submissions do not constitute complete and verifiable evidence,

¹⁵ The Department has previously determined that this program is countervailable. See, e.g., *Sixth HRS from India Review*.

¹⁶ The Department has previously determined that this program is countervailable. See, e.g., *Sixth HRS from India Review*.

within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 0.59 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for the same program in any segment of any proceeding involving India. See *Fourth HRS from India Review* and accompanying IDM at “State Government of Maharashtra (SGOM) Programs Sales Tax Program” section.

2. VAT Refunds under SGOM Package Scheme

The GOI reported that “Any industry new or expansion fulfilling the eligibility criteria (Para 3.5, 3.6 & 3.10 of the Scheme) are granted incentives in accordance with the classification of the block/taluka in which it is located.” See GQR at 113. Under the Maharashtra Package Scheme of Incentives and the Maharashtra New Package Scheme of Incentives, the SGOM offered tax incentives including VAT tax refunds to companies that are located or invested in certain developing areas in the State of Maharashtra. Accordingly, we determine that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. The GOI also reported that “{t}he main objective of the Scheme is to encourage dispersal of industries to the industrially less developed areas of the State so as to achieve higher and sustainable economic development with balance regional development. The talukas/blocks in the State are classified in to {sic} six (06) zones depending up on their industrial backwardness. The graded scale of incentives is offered to the industrial units being set up in such backward areas with a view to compensate their difficulties faced by them on account of gap in infrastructure facilities vis-a-vis the developed areas of the State.” See GQR at 111. Accordingly, we determine that this program is limited to only those companies investing in a specified developing area and, therefore, is specific within the meaning of section 771(5A)(D)(iv) of the Act.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 3.09 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *Second HRS from India Review* and accompanying IDM at the “State Government of Gujarat (SGOG) Tax Incentives” section.

3. Electricity Duty Scheme under Package Scheme Incentives 1993¹⁷

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that the incentives given under this program provide a financial contribution and are specific.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 3.09 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *Second HRS from India Review* and accompanying IDM at the “State Government of Gujarat (SGOG) Tax Incentives” section.

4. Octroi Refunds¹⁸

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that the octroi refunds given under this program provide a financial contribution and are specific.

The GOI did not respond to our requests for information with respect to this program. The Department has previously determined that this program is countervailable. See, e.g., *Sixth HRS from India Review* and accompanying IDM. Specifically, the Department determined that the indirect tax savings under this program provide a financial contribution in the form of revenue forgone and are regionally specific within the meaning of sections 771(5)(D)(i) and 771(5A)(D)(iv) of the Act, respectively. *Id.* No new information or evidence of changed circumstances has been provided with respect to this program. Therefore, as AFA, we find this program to be countervailable.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 3.09 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any

¹⁷ The Department has previously determined that this program is countervailable. See, e.g., *Sixth HRS from India Review*.

¹⁸ The Department has previously determined that this program is countervailable. See, e.g., *Sixth HRS from India Review*.

segment of any proceeding involving India. *See Second HRS from India Review* and accompanying IDM at the “State Government of Gujarat (SGOG) Tax Incentives” section.

5. Octroi Loan Guarantees¹⁹

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that the octroi loan guarantees given under this program provides a financial contribution and are specific.

The GOI did not respond to our requests for information with respect to this program. The Department has previously determined that this program is countervailable. *See, e.g., Sixth HRS from India Review* and accompanying IDM. Specifically, the Department determined the SGOM’s loan guarantees under this program provide a financial contribution within the meaning of section 771(5)(D)(i) of the Act through a potential direct transfer of the Octroi refund to pay off loans. *Id.* The Department also found that these loan guarantees are specific within the meaning of 771(5A)(D)(iii)(I) of the Act because only companies eligible for the Octroi scheme can receive these loan guarantees. *Id.* No new information or evidence of changed circumstances has been provided with respect to this program. Therefore, as AFA, we find this program to be countervailable.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 2.90 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. *See PET Film from India Investigation* and accompanying IDM at the “Pre-Shipment and Post-Shipment Export Financing” section.

6. Infrastructure Assistance for Mega Projects²⁰

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that the infrastructure assistance given under this program provides a financial contribution and is specific.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the

¹⁹ The Department has previously determined that this program is countervailable. *See, e.g., Sixth HRS from India Review.*

²⁰ The Department has previously determined that this program is countervailable. *See, e.g., Sixth HRS from India Review.*

POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning net subsidy rates of 3.09 percent *ad valorem* for indirect tax and 6.06 for grants percent *ad valorem*, which correspond to the highest above *de minimis* subsidy rates calculated for similar programs in another segment of this proceeding. See *Second HRS from India Review* and accompanying IDM at the “State Government of Gujarat (SGOG) Tax Incentives” section, and *HRS from India Investigation* and accompanying IDM at the “The GOI’s Forgiveness of SDF Loans to SAIL” section.

7. Provision of Land for LTAR²¹

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that the provision of land for LTAR under this program provides a financial contribution and is specific.

The GOI did not respond to our requests for information with respect to this program. The Department has previously determined that this program is countervailable. See, e.g., *Sixth HRS from India Review* and accompanying IDM. Specifically, the Department determined that this program constitutes a financial contribution in the form of land sold for LTAR within the meaning of section 771(5)(D)(iii) of the Act. *Id.* The Department also found that the program is limited to enterprises purchasing land outside of the Bombay and Pune area and, therefore, is specific within the meaning of section 771(5A)(D)(iv) of the Act. *Id.* No new information or evidence of changed circumstances has been provided with respect to this program. Therefore, as AFA, we find this program to be countervailable.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents’ submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 18.08 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *Fourth HRS from India Review* and accompanying IDM at “Captive Mining Rights of Iron Ore” section.

8. Investment Subsidies²²

As explained above under “Use of Facts Otherwise Available and Adverse Facts Available,” we determine that the investment subsidies given under this program provide a financial contribution

²¹ The Department has previously determined that this program is countervailable. See, e.g., *Sixth HRS from India Review*.

²² The Department has previously determined that this program is countervailable. See, e.g., *Sixth HRS from India Review*.

and are specific.

The GOI did not respond to our requests for information with respect to this program. The Department has previously determined that this program is countervailable. *See, e.g., Sixth HRS from India Review* and accompanying IDM. Specifically, the Department determined that this program constitutes a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. *Id.* The Department also found that the program is limited to firms operating outside of the Bombay and Pune metropolitan areas and, thus, is specific within the meaning of section 771(5A)(D)(iv) of the Act. *Id.* No new information or evidence of changed circumstances has been provided with respect to this program. Therefore, as AFA, we find this program to be countervailable.

Absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 6.06 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. *See HRS from India Investigation* and accompanying IDM at "Forgiveness of SDF Loans to SAIL" section.

N. Waiving of Interest on Loan by the State Industrial and Investment Corporation of Maharashtra Ltd ("SICOM")

In prior investigations, the Department has determined that SICOM is a public body and found that waived interest on "intercorporate deposits" was countervailable. *See PET Film from India Investigation*. Specifically, the Department determined that a financial contribution was provided by SICOM, a public entity, pursuant to section 771(5)(D)(i) of the Act, in the amount of the waived interest. *Id.* The Department also found that the waived interest was specific to the respondent pursuant to section 771(5A)(D)(i) of the Act. *Id.* No new information or evidence of changed circumstances has been provided with respect to this program. Therefore, we find this program to be countervailable.

We initiated an investigation into this program on March 16, 2012. *See Memorandum to Susan Kuhbach, Director, Office 1, "Analysis of New Subsidy Allegation,"* dated March 16, 2012. Although we did not send a questionnaire to Zenith on this program, Zenith's annual reports on the record indicate that Zenith benefitted from this program. *See ZQR at Annexure 3, 2008-2009 Annual Report at 27; and Annexure 4, 2009-2010 Annual Report at 32.* Zenith did not provide any additional information on this program in the "Other Subsidies" section of its original questionnaire response. Moreover, because of the deficiencies in Zenith's response as a whole, we would be unable to determine what level of benefit Zenith received even if we had a complete questionnaire response on this program from Zenith. For example, as we stated above under the "Use of Facts Otherwise Available and Adverse Facts Available" section, Zenith did

not provide necessary information on the sales of any of its cross-owned companies. This information is necessary to determine the level of benefits Zenith may have received under this program.

Therefore, absent the cooperation of Lloyds and Zenith (including its cross-owned companies), we determine that the respondents' submissions do not constitute complete and verifiable evidence, within the meaning of sections 782(e)(3) and (2) of the Act, respectively, demonstrating that the respondents or any of their cross-owned affiliates did not benefit from this program during the POI. Therefore, as AFA, we find that both Lloyds and Zenith used and benefitted from this program within the meaning of section 771(5)(E) of the Act.

For this program, we are assigning a net subsidy rate of 2.90 percent *ad valorem*, which corresponds to the highest above *de minimis* subsidy rate calculated for a similar program in any segment of any proceeding involving India. See *PET Film from India Investigation* and accompanying IDM at the "Pre-Shipment and Post-Shipment Export Financing" section.

Analysis of Comments

Comment 1 Whether the GOI Cooperated to the Best of Its Ability and Should Not Be Subject to the AFA Rate that the Department Preliminarily Applied

The GOI argues that the use of facts available is not justified in this investigation because the facts of this case do not meet the standards established by section 776(a) of the Act. The GOI asserts that it has not withheld any information which would be necessary for a proper determination, that it filed all responses within the timelines indicated by the Department, that it has not impeded the proceeding, and that the information it provided could have been verified. Thus, the GOI argues, this investigation does not satisfy the conditions for use of facts available laid down in U.S. law or the provisions of Article 12.7 of the ASCM.

The GOI argues that the Department's requirement that the GOI (1) coordinate with the respondents to obtain the names of their cross-owned companies, and (2) confirm that its responses cover them, is contrary to all legal tenets and violates the provisions of the ASCM. The GOI asserts that it is unreasonable to expect the GOI to coordinate with private exporters and to collect and certify any information which is not normally maintained by the GOI as part of its official records. According to the GOI, it can be expected to supply only that information which is maintained by it in the normal course of administration and which it is in a position to certify. According to the GOI, it is up to the Department to obtain the information from the respondents which can, at best, be cross-verified with the GOI provided that it is available with the GOI as part of its official records.

The GOI argues that, under the ASCM, the primary responsibility of a Member country is to provide information in relation to the specific programs and not company-specific information. The GOI contends that the government may not be in a legal position to collect information from private companies and, therefore, the Department's repeated direction to the GOI to coordinate with the mandatory respondents for information relating to cross-owned companies is ill-conceived. The GOI asserts that collection of information and its verification insofar as it relates

to specific companies has to be done by the investigating authority, and this burden cannot be shifted to the concerned government. The GOI also claims that it cannot be expected to authenticate or certify any information it collects from private parties pursuant to the Department's instructions. The GOI avers that there is no legal provision to "verify" the information provided by the government of the exporting Member under the ASCM. The GOI contends that the Department is entitled to seek information from the GOI only to the extent necessary to determine the nature and countervailability of the programs and not company-specific information.

The GOI also asserts that neither section 776(a) of the Act nor Article 12.7 of the ASCM allows authorities to use facts available on the ground that the efforts made to obtain the information were not explained in detail. Moreover, the GOI claims that the QNR indicated that a response to program-specific questions was not required where none of the respondents used the program.

The GOI also contends it never claimed that Zenith had no cross-owned companies; instead, the GOI claimed that neither Zenith nor any of its cross-owned companies used the programs under investigation. The GOI alleges that the Department's conclusions indicate that the Department inappropriately applied its own law merely to meet its deadlines, which the GOI argues is not grounds for applying facts available.

Wheatland argues that the Department properly applied AFA to the GOI. Wheatland asserts that, because the GOI's responses provided no information about multiple subsidy programs, the Department's use of facts available was lawful under section 776(a)(2)(B) of the Act, which provides that facts available may be used when a party fails to provide information requested by the Department in the form and manner requested. Wheatland contends that, because the GOI's responses provided no information about multiple subsidy programs at issue in this investigation, the Department properly applied AFA even though the GOI filed its responses within the deadlines indicated by the Department.

Wheatland contends that the GOI failed to comply with the Department's requests for information. Specifically, Wheatland asserts that, in its original response, the GOI provided no information about cross-owned affiliates of the respondents and did not indicate whether it coordinated with the mandatory respondents regarding cross-owned companies. Wheatland alleges that, in its first supplemental response, the GOI stated that it based its response solely on the declaration of Zenith, thus failing to comply with the Department's instruction. Finally, Wheatland contends that, in its second supplemental response, the GOI gave a very limited answer to comprehensive questions from the Department. Wheatland avers that the GOI is incorrect in its assertion that it had stated that neither Zenith nor any of its cross-owned companies availed themselves of various programs. Wheatland argues that the Department should reaffirm its preliminary finding that the GOI's original and supplemental responses did not update its submissions in a way that was responsive to the Department's inquiries.

Furthermore, Wheatland asserts, the GOI's arguments do not take into account that the Department made its affirmative use and benefits findings based on AFA because of the lack of cooperation by the individual companies who were selected as mandatory respondents. Wheatland contends that there is no reasonable basis for the GOI to argue that its terse responses

to the Department's cross-owned affiliate inquiries demonstrate that neither Zenith nor any of their cross-owned affiliates availed themselves of the schemes. Wheatland further asserts that it is irrelevant to the Department's AFA findings regarding use and benefit for the respondents because the Department normally relies on a respondent's records to determine the existence and amount of the benefit. Wheatland contends that, because the Department could not use the mandatory respondents' records because they were fundamentally incomplete and deficient, the Department appropriately made its benefit determinations on the basis of AFA.

Department's Position

We note initially that we relied on the GOI's responses where possible to determine the countervailability of the programs under investigation. In the *Preliminary Determination*, we found certain programs to be countervailable based on information in the GOI's responses, not based on facts available or AFA under section 776 of the Act. *See Preliminary Determination*, 77 FR at 19200-209. The GOI did not contest our countervailability findings from the *Preliminary Determination* for any of these programs. Therefore, in this position, we respond to the GOI's comments with respect to the programs identified under "Use of Facts Otherwise Available and Adverse Facts Available."

Regarding these programs (*i.e.*, the programs listed above under the "Application of Facts Available and Adverse Facts Available - Government of India" section above), we continue to find that the Department properly applied AFA to the GOI because the GOI was provided with ample opportunity to provide requested information and failed to do so. The GOI stated, in the GCB at 4, the following:

It is beyond the realm of reasonableness to expect the GOI to coordinate with private exporters particularly with regard to information about their cross-holdings etc.

Moreover, it is equally unreasonable to expect the GOI to first collect the information on behalf of US DOC and then to certify any information which is normally not maintained by the GOI as a part of its official records.

In the G2SQ, however, we did not request that the GOI provide information on the cross-owned companies themselves. We requested that the GOI update its own questionnaire response (*i.e.*, the GQR) because of the inclusion of additional cross-owned companies in the investigation. *See G2SQ* at 1. This includes, for example, "a description of the program including the purpose of the program and the date it was established," "the name and address of each of the government agencies or authorities responsible for administering the program," and an explanation of "the types of records maintained by the relevant government or governments (*e.g.*, accounting records, company-specific files, databases, budget authorizations, etc.) regarding the program." *See QNR*, Section II, at the Standard Questions Appendix, Part E.

Instead of responding to these QNR questions, the GOI stated the following in response:

The response of the GOI to the First Supplemental Questionnaire was based on the information supplied by Zenith. It is presumed that Zenith had included all the above companies in their response. The Government of India would also like to reiterate that

this response is also based solely on the declaration of Zenith (Birla) Ltd. as the GOI does not maintain any record of the so-called cross-owned companies of the mandatory respondents. GOI has nothing further to add.

See G2SR at 1. In the GCB, however, the GOI stated the following:

The above submission categorically indicates the GOI position that the response of the GOI was for all the cross-owned companies of the mandatory respondent namely, Zenith. The above position is also clear from the original response wherein the GOI had categorically stated that neither Zenith nor any of their cross-owned companies has availed of the said scheme.

The GOI's response in the G2SR and its explanation in the GCB are contradictory. In the G2SR, the GOI stated that it "presumed" Zenith had included all cross-owned companies in the ZQR. The case record, however, showed clearly that Zenith had not. See, e.g., G2SQ at 1. In the GCB, however, the GOI claimed its response "was for all of the cross-owned companies of (Zenith)," as stated above. Therefore, the GOI based its claim that its responses covered all of Zenith's cross-owned companies on its erroneous presumption that Zenith had included all cross-owned companies in the ZQR. When we provided the GOI with an opportunity to update its response to the government section (*i.e.*, Section II) of the QNR for additional programs the cross-owned companies received, the GOI stated that it "ha(d) nothing further to add." See G2SR at 1. As a result, we lack information from the GOI that is necessary to determine the countervailability of programs the cross-owned companies may have received. The information we requested from the GOI is on the subsidy programs, not information on the cross-owned companies themselves.²³

The GOI also stated, "It is beyond the realm of reasonableness to expect the GOI to coordinate with private exporters, particularly with regard to information about their cross-holdings etc." See GCB at 4. Under the GOI's contention, however, a deficient response by a company respondent would preclude the Department from obtaining necessary information from a government on the subsidy programs themselves. Further, with respect to the GOI's contention that the QNR indicated that a response to program-specific questions was not required where none of the respondents used the program, the QNR specified that "{f}or each program, if no company(ies) under investigation or 'cross-owned' companies as defined in Section III applied for, used, or benefited from that program during the POI, the GOI must so state and provide a brief explanation of the program and a detailed description of the records kept on that program." See QNR, Section II, at 2. The GOI did not provide an explanation of the programs or a description of the records kept on the programs despite these instructions. See, e.g., GQR at 77.

In a CVD investigation, we require information from both the company and government respondents. See, e.g., *Sixth HRS from India Review* and accompanying IDM at 58. In this investigation, the GOI did not provide information that we requested from it despite having two opportunities to do so, as described above. The GOI did not even respond to our request to

²³ See G2SQ at 1 ("If any part of the GOI's January 30, 2012, questionnaire response has changed as a result of the inclusion of these cross-owned affiliates in the investigation, please identify and explain these changes.").

explain the efforts it made to provide information we requested in the QNR, meaning the record shows no evidence that the GOI made any effort to provide information necessary for us to determine the countervailability of these programs. Therefore, consistent with the *Preliminary Determination*, we continue to find that the GOI failed to cooperate by not acting to the best of its ability to provide this necessary information. As a result, we continue to find, as AFA, that the programs listed under the “Use of Facts Otherwise Available and Adverse Facts Available” section above provided a financial contribution within the meaning of section 771(5)(D) of the Act and were specific within the meaning of 771(5A) of the Act.

Comment 2 Whether the Application of the AFA Is Inconsistent with Article 12.7 of ASCM

The GOI argues that section 776(b) of the Act is inconsistent with the ASCM because, according to the GOI, there is no provision in the ASCM which suggests that an adverse inference can be drawn if an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information.

Wheatland argues that Article 12.7 of the ASCM provides that facts available determinations are permissible where any interested Member or interested party does not provide the requested information. Because the GOI and the respondents did not provide substantial amounts of requested information, Wheatland avers, the Department fully complied with applicable U.S. law and the United States’ WTO obligations. Citing *Sixth HRS from India Review*, Wheatland asserts that the Department has rejected similar arguments made by the GOI in a proceeding with similar facts as this investigation.

Department’s Position

This proceeding is governed by the U.S. CVD law. To the extent that parties are raising provisions of the WTO ASCM in these proceedings, the U.S. CVD lawfully implements United States’ obligations under the ASCM. As explained in the *Preliminary Determination*, the GOI failed to provide information regarding several programs allegedly used by the mandatory respondents during the POI, although it was given two opportunities to respond to the Department’s questions concerning these programs. See *Preliminary Determination*, 77 FR at 19195-196. In CVD cases, we require information from both the government of the country whose merchandise is subject to the investigation (or under the order) and the foreign producers and exporters. See, e.g., *Sixth HRS from India Review* and accompanying IDM at Comment 4. As discussed above, when the government fails to provide requested information concerning alleged subsidy programs, as AFA, we find that a financial contribution exists under the alleged program and that the program is specific as described under sections 771(5)(D) and 771(5A) of the Act, respectively.

Comment 3 Whether the Department’s Application of AFA With Respect to Provision of Hot-Rolled Steel by SAIL For LTAR Was Justified

The GOI contends that it answered questions with respect to the provision of hot-rolled steel by SAIL for LTAR in accordance with the Department’s instructions. The GOI argues that it is unfair to state that the GOI failed to explain in detail the efforts it made to obtain necessary

information and that the GOI cannot be expected to collect information relating to a commercial enterprise merely because the GOI owns a substantial portion of the shares of that enterprise. The GOI contends that the Department has failed to appreciate that SAIL is a publicly listed company with numerous other shareholders and that the rights of the GOI are no different from those of other shareholders.

The GOI also argues that section 776(b) of the Act²⁴ is applicable only if the concerned party fails to provide information by deadlines. The GOI contends that there is no occasion to invoke these provisions when it has categorically stated the reasons in support of its inability to provide the information sought by the Department in relation to SAIL.

Wheatland argues that the Department should continue to countervail the provision of hot-rolled steel by SAIL for LTAR. Citing *GSW from PRC*, 77 FR at 17420, and accompanying IDM at Section III, Wheatland alleges that the GOI is exactly the source of information relating to this subsidy program. Wheatland contends that when a government fails to provide requested information concerning alleged subsidy programs, the Department's practice is to find, as AFA, that the program provides a financial contribution and is specific. According to Wheatland, the Department provided the GOI with multiple opportunities to respond to its standard LTAR program questions, but the GOI refused to do so. Wheatland asserts that the GOI made no attempt to even explain its efforts to respond to the Department's inquiries. Wheatland further contends that the GOI's unwillingness to provide the information requested by the Department is far different from an inability to provide the information.

Wheatland argues that the GOI posits a fatally flawed understanding of section 776(a)(2)(B) of the Act. According to Wheatland, the statute does not require that facts available be applied only if the concerned party fails to provide the information by the deadlines. Wheatland avers that the suggestion that a respondent do nothing more than file a response by the due date, no matter how deficient substantively or procedurally, would eviscerate the Department's fact-finding function. Wheatland concludes that the GOI's argument is incorrect as a matter of law and offers no basis for the Department to depart from its preliminary findings.

Department's Position

We continue to find it is appropriate to apply AFA to the GOI with respect to this program. We disagree with the GOI claim that it cannot be expected to collect information relating to a commercial enterprise merely because it owns a substantial portion of the shares of that enterprise. Record information shows that the GOI owns 85.82 percent of SAIL. *See* Petition, Volume III at 37. Therefore, the GOI is in the position to, at a minimum, request information from SAIL that is necessary for our analysis of the countervailability of the program. We provided the GOI with two opportunities to respond to questions on this program from the QNR. *See* QNR, Section II, at 7-8; *see also* G1SQ at 10-12. We also provided the GOI an opportunity to explain the efforts it took to obtain this necessary information if it was unable to provide the

²⁴ In its brief, the GOI referred to "section 776(B)" of the Act. *See* GCB at 9. We assume from the context that the GOI meant to refer to section 776(a)(2)(B) of the Act, which provides that the Department shall use the facts available where an interested party "fails to provide such information by the deadlines for submission of the information or in the form and manner requested."

information. *Id.*

Despite having these opportunities, the GOI provided no evidence that it made even a minimal attempt to answer the questions we asked. For example, the GOI ignored our requests that it “describe the Steel Authority of India, Ltd. (SAIL), including the extent of government ownership in SAIL and any legislation or regulations pertaining to SAIL’s establishment,” or that it “state the VAT and import tariff rates in effect for hot-rolled steel in 2010 and the prior two years.” *See* GQR at 18-19. Furthermore, regardless of whether the GOI may compel SAIL to provide information, the GOI provided no evidence that it even asked SAIL for the information requested. Thus, we continue to determine that the GOI did not act to the best of its ability in attempting to obtain the information requested.

Moreover, the GOI’s citation to section 776(a)(2)(B) of the Act is inapposite because we did not use AFA for this program on the grounds specified by section 776(a)(2)(B) of the Act. The deficiency is not that the GOI did not file its submissions by the deadlines we established; the deficiency is that the GOI’s submissions were, as described above, non-responsive with respect to this program. Accordingly, consistent with the *Preliminary Determination*, we continue to find that the GOI failed to cooperate by not acting to the best of its ability to provide necessary information with respect to this program. As a result, we continue to find, as AFA, that the GOI provided a financial contribution within the meaning of section 771(5)(D) of the Act, and that the program was specific within the meaning of 771(5A) of the Act.

Comment 4 Whether the Department’s Application of AFA With Respect to Provision of Land For LTAR Was Justified

The GOI argues that the Department misapplied the provisions of section 776 of the Act with regard to the provision of land for LTAR regarding information withheld by the GOI. The GOI avers that it did not withhold information with respect to this program.

Wheatland argues that the Department should continue to countervail the provision of land for LTAR. Wheatland alleges that, rather than answering the Department’s questions, the GOI replaced a factual response with legal argument and only stated that this program cannot be considered a subsidy under the ASCM.

Department’s Position

We agree with Wheatland. In the GQR, the GOI stated that it “does not have such information” in response to our questions on this program. *See* GQR at 24. In the G1SQ, we stated that the GOI’s responses were necessary for our analysis of the program, and we provided the GOI with another opportunity to respond or to explain the efforts it undertook to obtain information responsive to our questions. *See* G1SQ at 18-19. Rather than respond to our second request, the GOI stated, “State governments make provisions of land as a part of overall infrastructure development and the development of industry which cannot be considered as a subsidy under the ASCM.” *See* G1SR at 26. Because the GOI did not respond to our questions in the GQR or the G1SR or explain in detail the efforts it made to obtain this necessary information, we continue to find that the GOI did not act to the best of its ability in responding to our questions.

Accordingly, we continue to find it appropriate to apply AFA to the GOI with respect to this program.

Comment 5 Whether the Department Erred in Calculating the Subsidy Rate It Assigned in the Preliminary Determination

The GOI argues that the Department, in its use of AFA, did not refer to facts that are on the record. First, the GOI contends that the Department erred by including programs in the preliminary subsidy rate that the record demonstrates are mutually exclusive. The GOI asserts that, because a company that operates as an EOU is permitted to import inputs and capital goods without paying customs duties, such enterprises would not be able to avail themselves of other programs that allow duty-free imports of inputs or capital goods. Second, the GOI contends that neither Zenith nor any of its cross-owned companies has availed themselves of several programs such as the EOU programs or SEZ programs. Thus, the GOI avers, the Department erred by including such programs in the subsidy rate it calculated for the *Preliminary Determination*.

Wheatland argues that the Department should reject the GOI's arguments regarding "mutually exclusive programs." Wheatland asserts that the GOI failed to cooperate with respect to these programs by refusing to provide the Department with answers to relevant questions and that the GOI withheld official documents upon which it now attempts to base its arguments. Wheatland also alleges that the GOI's arguments are based upon official GOI documentation that was never provided to the Department and that it is inappropriate for the GOI to rely upon such extra-record information in its case brief.

Department's Position

We disagree with the GOI's argument that we erred by including programs that are mutually exclusive. With respect to the programs that the GOI alleges are mutually exclusive, different cross-owned companies could use different programs. For example, if Zenith uses one of the programs in question, one of its cross-owned companies could use another of the programs in question.

Record evidence shows that different cross-owned companies can use the same programs the GOI claims are mutually exclusive. For example, the annual report of one of Zenith's cross-owned companies identifies the company as an EOU. *See Preliminary Determination*, 77 FR at 19198. Zenith reported that it used the Advanced License Program, which allows duty-free imports. *Id.* at 19202, citing ZQR at 12-14. In the GCB, however, the GOI claimed that a company receiving duty exemptions under EOU programs cannot receive duty exemptions under other programs allowing duty-free imports, including the Advanced License Program. *See GCB* at 14 and 16. Therefore, the record shows that Zenith and one or more of its cross-owned companies are able to receive benefits under programs the GOI claims are mutually exclusive.

Furthermore, we disagree with the GOI's contention that neither Zenith nor any of its cross-owned companies used several programs such as the EOU programs or SEZ programs. As described above, we do not have complete information with respect to Zenith's cross-owned companies. As a result, we are unable to determine that none of Zenith's cross-owned

companies used the EOU programs, the SEZ programs, or any other alleged program. Accordingly, there is no reason to alter our calculation of the subsidy rate we calculated for the *Preliminary Determination*.

Moreover, as Wheatland has pointed out, the GOI appears to have cited documentation that was not on the record in making its argument that the Department should have known that certain duty exemption programs were mutually exclusive. Specifically, the GOI cited Central Excise Notification No. 22.2003 – CE dated 31.3.2003 and Customs Notification No. 52 dated 31 March 2003. *See* GCB at 16. The GOI provided no citation to either document on the record, and no document under these titles is on the record of this investigation.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these Department’s positions are accepted, we will publish the final determination in the *Federal Register*.

AGREE DISAGREE



Paul Piquado
Assistant Secretary
for Import Administration

15 OCTOBER 2012

(Date)

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Full Name or Term
The Act	Tariff Act of 1930, as amended
AD	Antidumping duty
AFA	Adverse facts available
AUL	Average useful life
BPI	Business proprietary information
CAFC	Court of Appeals for the Federal Circuit
CFR	Code of Federal Regulations
CIT	Court of International Trade
CRU	The Department's Central Records Unit (Room 7046 in the HCHB Building)
CVD	Countervailing duty
Department	Department of Commerce
EOU	Export oriented unit
GOI	Government of India
IDM	Issues and Decision Memorandum
Lloyds	Lloyds Metals and Engineers Ltd.
LTAR	Less than adequate remuneration
Petitioners	Allied Tube and Conduit, JMC Steel Group, U.S. Steel Corporation, and Wheatland Tube Corporation
POI	Period of investigation
SAA	Statement of Administrative Action
SEZ	Special economic zones
SGOM	State Government of Maharashtra
URAA	Uruguay Round Agreements Act
SAIL	Steel Authority of India, Ltd.
THPL	Tungabhadra Holdings Private Limited
VAT	Value added tax
Wheatland	Wheatland Tube Corporation
WTO	World Trade Organization
Zenith	Zenith Birla Ltd.

II. RESPONSES AND DEPARTMENT MEMORANDA

Short Cite	Full Name
	GOC
GQR	Response of the Government of India to the Department's Initial Questionnaire (January 30, 2012)
G1SR	Response of the Government of India to the Department's First Supplemental Questionnaire (March 3, 2012)
G2SR	Response of the Government of India to the Department's Second Supplemental Questionnaire (March 5, 2012)
GCB	Case Brief of the Government of India (May 21, 2012)
	Petitioners
Petition	Original Petition (October 26, 2011)
	Zenith
ZQR	Zenith's Original Questionnaire Response (February 13, 2012)
Z1SR	Zenith's First Supplemental Response (February 21, 2012)
Z2SR	Zenith's Second Supplemental Response (March 9, 2012)
Z3SR	Zenith's Third Supplemental Response (March 15, 2012)
	Department
QNR	Questionnaire (December 22, 2011)
G1SQ	First Supplemental Questionnaire to GOI (February 10, 2012)
G2SQ	Second Supplemental Questionnaire to GOI (March 1, 2012)
Z1SQ	First Supplemental Questionnaire to Zenith (February 17, 2012)
Z2SQ	Second Supplemental Questionnaire to Zenith (February 28, 2012)

III. LITIGATION TABLE

Short Cite	Cases
<i>Rhone Poulenc</i>	<i>Rhone Poulenc, Inc. v. United States</i> , 899 F.2d 1185 (Fed. Cir. 1990)

IV. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

Note: if “certain” is in the title of the case, it has been excluded from the title listing.

Short Cite	Administrative Case Determinations
	<i>CVD Preamble</i>
<i>CVD Preamble</i>	<i>Countervailing Duties; Final Rule, 63 FR 65348 (November 25, 1998)</i>
	<i>CVD Proposed Regulations</i>
<i>CVD Proposed Regulations</i>	<i>Notice of Proposed Rulemaking and Request for Public Comments (Countervailing Duties), 54 FR 23366 (May 31, 1989)</i>
	<i>CVD Regulations</i>
<i>CVD Regulations</i>	<i>Countervailing Duty Regulations, 63 FR 65377 (Nov. 25, 1998)</i>
	<i>Circular Welded Austenitic Stainless Pressure Pipe - PRC</i>
<i>CWASP from the PRC</i>	<i>Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 4936 (January 28, 2009)</i>
	<i>Circular Welded Carbon Quality Steel Pipe – India</i>
<i>Preliminary Determination</i>	<i>Circular Welded Carbon-Quality Steel Pipe From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 77 FR 19192 (March 30, 2012)</i>
	<i>Fresh Cut Flowers – Mexico</i>
<i>Flowers from Mexico</i>	<i>Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996)</i>
	<i>Galvanized Steel Wire – PRC</i>
<i>GSW from PRC</i>	<i>Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 17418 (March 26, 2012)</i>
	<i>Hot-Rolled Carbon Steel Flat Products – India</i>
<i>HRS from India Investigation</i>	<i>Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 49635 (September 28, 2001)</i>
<i>Second HRS from India Review</i>	<i>Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 71 FR 28665 (May 17, 2006)</i>
<i>Fourth HRS from India Review</i>	<i>Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008)</i>

<i>Fifth HRS from India Review</i>	<i>Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 20923 (May 6, 2009)</i>
<i>Sixth HRS from India Review</i>	<i>Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 75 FR 43488 (July 26, 2010)</i>
	<i>Kitchen Appliance Shelving & Racks – PRC</i>
<i>KASR from the PRC</i>	<i>Certain Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009)</i>
	<i>Laminated Woven Sacks – PRC</i>
<i>LWS from the PRC</i>	<i>Laminated Woven Sacks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008)</i>
	<i>Lightweight Thermal Paper – PRC</i>
<i>LWTP from the PRC</i>	<i>Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008)</i>
	<i>Polyethylene Terephthalate Film, Sheet, and Strip - India</i>
<i>PET Film from India Investigation</i>	<i>Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India, 67 FR 34905 (May 16, 2002)</i>
<i>PET Film from India NSR</i>	<i>Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty New Shipper Review, 76 FR 30910 (May 27, 2011)</i>
	<i>Sodium Nitrite -PRC</i>
<i>Sodium Nitrite from PRC</i>	<i>Sodium Nitrite From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 38981 (July 8, 2008)</i>
	<i>Static Random Access Memory Semiconductors - Taiwan</i>
<i>Semiconductors From Taiwan - AD</i>	<i>Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909 (February 23, 1998)</i>

V. MISCELLANEOUS TABLE (REGULATORY, STATUTORY, ARTICLES, ETC.)

Short Cite	Full Name
ASCM	Agreement on Subsidies and Countervailing Measures, April, 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 264 (1994)
SAA	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)
URAA	<i>Uruguay Round Agreements Act</i> , Pub L. No. 103-465, 108 Stat. 4809 (1994)