



C-533-892

Investigation

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October 13, 2020

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

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Forged Steel Fittings
from India

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of forged steel fittings from India, as provided in section 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties:

- Comment 1: Whether Commerce Should Include the Integrated Goods & Service Tax (IGST) in the Calculation of the Benefit Received from the Export Promotion of Capital Goods Scheme (EPCGS) Program
- Comment 2: Whether Commerce Should Revise Its Calculation of the Benefit for the Provision of Water for Less Than Adequate Remuneration (LTAR) Program
- Comment 3: Whether the Duty Drawback (DDB) Program is Countervailable
- Comment 4: Whether the EPCGS Program is Countervailable
- Comment 5: Whether the MEIS Program is Countervailable
- Comment 6: Whether the State Government of Gujarat (SGOG) Scheme of Assistance to Micro, Small and Medium Enterprises (MSME): Assistance of One-Time Capital Investment Subsidy and the SGOG Scheme of Assistance to MSME: Assistance for Interest Subsidy Programs are Countervailable
- Comment 7: Whether the Gujarat Industrial Development Corporation (GIDC) Provision of Water for Less than Adequate Remuneration (LTAR) is Countervailable



II. BACKGROUND

A. Case History

The mandatory respondents subject to this investigation are Nikoo Forge Pvt. Ltd. (Nikoo Forge), Pan International, and Shakti Forge Industries Pvt. Ltd. (SFIPL) and Shakti Forge (collectively, Shakti). On March 30, 2020, Commerce published the *Preliminary Determination* and, at the petitioners' request, we aligned the final countervailing duty (CVD) determination with the final determination in the antidumping duty (AD) investigation of forged steel fittings from India.¹ On June 18, 2020, Commerce published the *Amended Preliminary Determination*.² On June 10, 2020 and June 12, 2020, Commerce issued supplemental questionnaires to Shakti and the government of India (GOI) requesting additional information pertaining to certain subsidy programs examined by Commerce in the *Preliminary Determination*.³ On June 30, 2020 and July 1, 2020, Shakti and the GOI filed their respective responses to Commerce's supplemental questionnaires.⁴ Commerce received case briefs from Shakti,⁵ the GOI,⁶ and Bonney Forge Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers (collectively, the petitioners) on August 10, 2020.⁷ Rebuttal briefs were filed by Shakti and the petitioners on August 17, 2020.⁸

During the course of this investigation, travel restrictions were imposed that prevented Commerce personnel from conducting an on-site verification.⁹ Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information cannot be verified, Commerce will use "facts otherwise available" in reaching the applicable determination. Accordingly, as we were unable to conduct verification in this investigation for

¹ See *Forged Steel Fittings from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 17536 (March 30, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Forged Steel Fittings from India: Amended Preliminary Affirmative Countervailing Duty Determination*, 85 FR 36835 (June 18, 2020) (*Amended Preliminary Determination*), and accompanying Preliminary Scope Decision Memorandum.

³ See Commerce's Letters, "Countervailing Duty Investigation on Forged Steel Fittings from India: New Subsidy Allegations Supplemental Questionnaire," dated June 12, 2020 (Shakti NSA Supp Q); and "Countervailing Duty Investigation on Forged Steel Fittings from India: New Subsidy Allegations Supplemental Questionnaire," dated June 10, 2020.

⁴ See Shakti's Letter, "Shakti Forge Industries Pvt. Ltd. Submission of New Subsidy Allegation Supplemental Questionnaire Response: Forged Steel Fittings from India (C-533-892)," dated June 30, 2020 (Shakti NSA Supp Response); see also GOI's Letter, "Countervailing Duty Investigation of Forged Steel Fittings from India: New Subsidy Allegations Supplemental Questionnaire – Response to Questionnaire on Behalf of the Government of India (GOI)," dated July 1, 2020 (GOI NSA Supp Response).

⁵ See Shakti's Letter, "Shakti Forge Industries Pvt. Ltd. Submission of Case Brief: Forged Steel Fittings from India (C-533-892)," dated August 10, 2020 (Shakti Case Brief).

⁶ See GOI's Letter, "C-533-892; Countervailing Duty Investigation of Forged Steel Fittings from India; Case Brief on Behalf of Government of India (GOI)," dated August 10, 2020.

⁷ See Petitioners' Letter, "Forged Steel Fittings from India: Submission of Case Brief," dated August 10, 2020 (Petitioners Case Brief).

⁸ See Shakti's Letter, "Shakti Forge Industries Pvt. Ltd. Submission of Rebuttal Brief: Forged Steel Fittings from India (C-533-892)," dated August 17, 2020; see also Petitioners' Letter, "Forged Steel Fittings from India: Submission of Rebuttal Brief," dated August 17, 2020 (Petitioners Rebuttal Brief).

⁹ See Memorandum, "Countervailing Duty Investigation of Forged Steel Fittings from India: Verification and Schedule for Submission of Case and Rebuttal Briefs," dated August 3, 2020.

reasons beyond our control, we relied on the information submitted on the record, which we relied on in making our *Preliminary Determination* (and as further developed via responses to subsequent supplemental questionnaires and factual information submitted on the record), as facts available in making our final determination.

B. Period of Investigation

The period of investigation (POI) is January 1, 2018 through December 31, 2018.

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are forged steel fittings. For a complete description of the scope of this investigation, *see* Appendix I of the accompanying *Federal Register* notice.

IV. SCOPE COMMENTS

During the course of this investigation, and the concurrent AD investigations of forged steel fittings from India and the Republic of Korea (Korea), Commerce received scope comments from interested parties. Commerce issued the Preliminary Scope Decision Memorandum¹⁰ and *Amended Preliminary Determination* to address these comments and establish a period of time for parties to submit case briefs on issues pertaining to scope. We received case briefs from interested parties on the Preliminary Scope Decision Memorandum, which we address in the Final Scope Decision Memorandum, dated contemporaneously with this final determination.¹¹

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES: NON-COOPERATIVE AND NON-RESPONSIVE COMPANIES

In the *Preliminary Determination*, we found the application of facts otherwise available with adverse inferences (AFA) to Nikoo Forge, Pan International, Patton International Limited, Sage Metals Limited, Kirtanlal Steel Private Limited, Disha Auto Components Private Limited, Dynamic Flow Products, Sara Sae Private Limited, and Parveen Industries Private Limited was warranted.¹² No interested parties raised issues in their case and rebuttal briefs regarding the application of total AFA. For this final determination, we made no changes to our decision to

¹⁰ See Memorandum, “Forged Steel Fittings from India and the Republic of Korea: Scope Comments Preliminary Decision Memorandum,” dated May 20, 2020 (Preliminary Scope Decision Memorandum).

¹¹ See Memorandum, “Forged Steel Fittings from India and the Republic of Korea: Final Scope Decision Memorandum,” dated October 13, 2020; *see also* IPI’s Letter, “Response to Scope Preliminary Determinations: Antidumping and Countervailing Duty Investigation of Forged Steel Fittings from India and Korea (A-533-891, C-533-892, A-580-904),” dated June 26, 2020; Ramkrishna’s Letters, “Forged Steel Fittings from India and Korea: Response to Req for Clarification RE Scope Prelim Determination. IPI 3/26/2020,” dated July 3, 2020, “Forged Steel Fittings from India and Korea: Response to the Department of Commerce’s Preliminary Determination from Titus PVF Group Inc. (“Titus”) dated June 29th, 2020,” dated July 5, 2020, and “Forged Steel Fittings from India and Korea: Response to Req for Clarification RE Scope Prelim Determination. IPI 3/26/2020,” dated July 6, 2020; SPM Flow’s Letter, “Forged Steel Fittings from India and Korea: Response Clarification RE Scope Prelim Determination,” dated July 6, 2020; and Petitioners’ Letter, “Forged Steel Fittings from India and Korea: Scope Rebuttal Comments,” dated July 6, 2020.

¹² See PDM at 13-14.

apply total AFA to the aforementioned companies with regard to non-cooperative and non-responsive behavior.

VI. SUBSIDIES VALUATION

A. Allocation Period

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

B. Attribution of Subsidies

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

C. Denominators

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

D. Loan Interest Rate Benchmarks and Discount Rates

The loan interest rate benchmarks and discount rates that we used for these final results are unchanged from the *Preliminary Determination*. For a description of the benchmarks and discount rates used for these final results, see the *Preliminary Determination* and the accompanying PDM.¹³

VII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. DDB Scheme

Interested parties submitted comments in their case and rebuttal briefs regarding the countervailability of this program. These issues are discussed in Comment 3.

The *Amended Preliminary Determination* for this investigation included revisions to the scope published in the *Preliminary Determination*, most of which concerned exclusions for certain types of merchandise known as “hammer unions.”¹⁴ After receiving further scope comments from a number of interested parties, Commerce is issuing the Final Scope Decision Memorandum, dated contemporaneously with this final determination, that includes additional revisions to the exclusions listed in the scope of the investigation.

¹³ See PDM at 12.

¹⁴ See Preliminary Scope Decision Memorandum at 6-12 and Appendix.

For the *Preliminary Determination*, the DDB program rate was calculated using the rebates earned on POI exports of subject merchandise to the United States and the company's total POI exports of subject merchandise to the United States. The DDB scheme is the only program found by Commerce to be preliminarily countervailable whose numerator and denominator could be affected by changes to the scope of the investigation for the final determination. Thus, in light of the concurrent nature of the scope revision process, Commerce will continue to rely on the numerator and denominator identified in the *Preliminary Determination* to calculate Shakti's DDB program rate for the final determination.

Shakti: 1.59 percent *ad valorem*

2. EPCGS

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are discussed in Comment 1 and Comment 4. Commerce has modified the calculation of the benefit for this program to exclude IGST for the final determination. *See* Comment 1.

Shakti: 0.00 percent *ad valorem*

3. MEIS

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are discussed in Comment 5. Commerce has not modified its analysis or calculation of the subsidy rate for this program from the *Preliminary Determination*.

Shakti: 0.93 percent *ad valorem*

4. SGOG Scheme of Assistance to MSME: Assistance of One-Time Capital Investment Subsidy

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

Shakti: 0.03 percent *ad valorem*

5. SGOG Scheme of Assistance to MSME: Assistance for Interest Subsidy

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

Shakti: 0.08 percent *ad valorem*

6. Provision of Water by the GIDC for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are discussed in Comment 2 and Comment 7. Commerce has not modified its analysis or calculation of the subsidy rate for this program from the *Preliminary Determination*.

Shakti: 0.01 percent *ad valorem*

B. Programs Determined Not to Be Used by Shakti

Commerce has made no changes to its preliminary determination that the following programs were not used. Commerce received no comments from interested parties on these programs.

1. GIDC Provision of Land for LTAR

After the publication of the *Preliminary Determination*, Commerce issued supplemental questionnaires to Shakti and the GOI that included questions pertaining to the GIDC's provision of land in industrial estates for LTAR, a program that was raised by the petitioners as a new subsidy allegation.¹⁵ After reviewing the additional information provided by Shakti and the GOI in their responses to Commerce's supplemental questionnaires, we continue to find that the program was not used by Shakti during the POI.¹⁶

- 2. Advance Authorization Scheme (AAS)**
- 3. Duty Free Import Authorization Scheme (DFIA Scheme)**
- 4. Duty-Free Import of Goods, Including Capital Goods and Raw Materials**
- 5. Reimbursements of Central Sales Tax (CST) Paid on Goods Manufactured in India**
- 6. Duty Drawback on Fuel Procured from Domestic Oil Companies**
- 7. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area (DTA)**
- 8. Market Development Assistance (MDA) Scheme**
- 9. Market Access Initiative (MAI)**
- 10. Focus Product Scheme (FPS)**
- 11. Status Certificate Program (SCP)**
- 12. Steel Development Fund Loans**
- 13. Provision of Steel for Less Than Adequate Remuneration (LTAR)**
- 14. Incremental Exports Incentivization Scheme**
- 15. Grant Under the IIPP: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas**
- 16. Grant Under the IIPP: Reimbursement of Power at the Rate of Rs. 0.75 per Unit**
- 17. Grant Under the IIPP: 50 Percent Subsidy for Expenses Incurred for Quality Certification**

¹⁵ See Petitioners' Letter, "Forged Steel Fittings from India: New Subsidy Allegations," dated February 12, 2020.

¹⁶ See Shakti NSA Supp Response at 1-5; see also GOI NSA Supp Response at 6-17; and *Preliminary Determination* at 34.

18. Grant Under the IIPP: 50 Percent Subsidy on Expenses Incurred in Patent Registration
19. Grant Under the IIPP: 25 Percent Subsidy on Cleaner Production Measures
20. Tax Incentives Under the IIPP: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages
21. Tax Incentives Under the IIPP: 25 Percent Reimbursement of Value Added Tax (VAT), CST, and State Goods and Services Tax)
22. Tax Incentives Under the IIPP: Exemption from the State Government of Andhra Pradesh (SGAP) Non-Agricultural Land Assessment
23. Provision of Goods and Services for LTAR Under the IIPP: Provision of Infrastructure for Industries Located More Than 10 Kilometers from Existing Industrial Estates or Development Areas
24. Provision of Goods and Services for LTAR Under the IIPP: Guaranteed Stable Prices and Reservation of Municipal Water
25. Andhra Pradesh Industrial Investment Corporation's (APIIC) Allotment of Land for LTAR
26. State Government of Gujarat (SGOG): Sales Tax Incentives
27. SGOG: Gujarat Industrial Development Corporation Subsidized Financing
28. State Government of Maharashtra (SGOM) Sales Tax Program
29. Electricity Duty Exemptions
30. Waiving of Loan Interest by SICOM
31. Investment Subsidies
32. Infrastructure Assistance for Mega Projects Under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects
33. Subsidies for Mega Projects Under the Package Scheme of Incentives
34. Other Subsidies Under the Package Scheme of Incentives (2013)
35. SGOM Provision of Land for LTAR

VIII. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce Should Include the IGST in the Calculation of the Benefit Received from the EPCGS Program

*Shakti's Arguments:*¹⁷

- In its initial questionnaire response, Shakti explained that the IGST is a “cenvatable” tax scheme where credit is earned as the tax is paid on purchased inputs, and can be subsequently applied toward the payment of the tax when a sale is made. Shakti also explained that duty-free goods imported under the EPCGS are exempt from the IGST.¹⁸
- Shakti argues that by exempting payment of the IGST on duty-free imports under the EPCGS, no additional government revenue is forgone and no additional benefit accrues to EPCGS participants because the IGST is already a “cenvatable” tax for which credit is

¹⁷ See Shakti Case Brief at 3-5.

¹⁸ *Id.* at 3-4.

always available to the extent it is paid.¹⁹

- According to Shakti, Commerce has previously calculated EPCGS benefits by excluding the IGST. Shakti cites the final determination for the CVD investigation of quartz surface products from India and the preliminary determination for the 2017-2018 CVD administrative review of certain cold-drawn mechanical tubing of carbon and alloy steel from India as examples of this methodological precedent.²⁰
- Commerce used the Customs Duty, Social Welfare Surcharge, and IGST reported by Shakti to calculate the benefit received from the EPCGS. However, Commerce should have excluded the IGST from this benefit calculation.²¹

Commerce's Position: In the *Preliminary Determination*, Commerce found that the EPCGS program provides an exemption from customs duties on imports of capital goods used in the pre-production, production, and post-production of exported products.²² This exemption is contingent on the importer's commitment to export a multiple of the CIF value of the imported capital goods, or a multiple of the duty saved, within a certain number of years.²³

Shakti reported the duty subject to reduction under the EPCGS program as well as separate IGST duties, explaining that capital goods imported duty-free under the EPCGS are exempt from IGST.²⁴ Shakti explained that the IGST generates an input credit that is available to the extent it is paid, and that the credit is available regardless of whether goods are imported under the EPCGS or under the "regular" import regime.²⁵ Because payment of the IGST can always be "canceled out" by a payee using earned input credits, Shakti argues that no additional revenue is forgone when duty-free capital goods imported under the EPCGS are exempt from IGST.²⁶

Commerce has previously investigated the relationship between the IGST and the EPCGS, as well as previous "cenvatable" taxes that were abolished and ultimately subsumed by the IGST (e.g., Countervailing Duty (CVD), Special Additional Duty (SAD), etc.).²⁷ In *Cold-Rolled Steel from India*, Commerce declined to include reported CVD and SAD in the benefit calculation for the EPCGS, citing "information on the record and the Department's prior determinations {which} indicated that CenVAT duties are refunded for both exporters and non-exporters regardless of whether a firm uses the EPCGS program."²⁸ In *Threaded Rod from India* and *Hot-Rolled Carbon Steel from India*, Commerce also adjusted the benefit calculation by "removing the impact of the additional duty (CVD), the Education Cess, and the SAD for each instance in

¹⁹ *Id.* at 4.

²⁰ *Id.* at 4-5 (citing *Countervailing Duty Investigation of Quartz Surface Products from India*, 85 FR 25398 (May 1, 2020) (*Quartz Surface Products from India*), and accompanying IDM at 26, and *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Preliminary Results of Countervailing Duty Administrative Review, 2017-2018*, 85 FR 12897 (March 5, 2020), and accompanying PDM at 21).

²¹ *Id.* at 4.

²² See PDM at 26.

²³ *Id.*

²⁴ See Shakti's March 4, 2020 Initial Questionnaire Response (Shakti IQR) at SFIPL-27.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at SFIPL-26.

²⁸ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination*, 81 FR 49932 (July 29, 2016), and accompanying Issues and Decision Memorandum at 21.

which the data was provided” for entries under EPCGS.²⁹ In *Quartz Surface Products from India*, Commerce specifically excluded the newly-established IGST from the benefit calculation for EPCGS.³⁰

We find that the information available on the record, in combination with Commerce’s prior determinations, indicates that payment of the IGST allows companies to earn tax credits toward future IGST obligations upon the sale of a product, regardless of whether the product is later exported or whether the company imports capital goods under the EPCGS. As a result, we are excluding IGST from the calculation of the program benefit for EPCGS for the final determination.

Comment 2: Whether Commerce Should Revise Its Calculation of the Benefit for the Provision of Water for Less Than Adequate Remuneration (LTAR) Program

*Petitioners’ Arguments:*³¹

- The petitioners argue that in the *Preliminary Determination*, Commerce calculated the benefit received by Shakti for the GIDC’s provision of water for LTAR based on information in Shakti’s questionnaire pertaining to the “cost for water for unit 1.”³² However, according to the petitioners, Shakti indicated elsewhere in its questionnaire that it operates four units in the GIDC Lodhika Industrial Estate, and that all units are involved in the production of subject merchandise.³³
- According to the petitioners, Commerce only countervailed the provision of water for LTAR for one of Shakti’s four identified units.³⁴ The petitioners state that Commerce would typically address the remaining three units at verification, but Commerce has been unable to verify any of the questionnaire responses in light of the coronavirus pandemic.³⁵
- The petitioners argue that in the absence of verification, Commerce will not be able to obtain “missing information” about the three additional units pertaining to their water usage. As such, the petitioners believe that Commerce should apply facts otherwise available (FA) because necessary information regarding these units is missing from the record of the investigation.³⁶
- To calculate the benefit for this program in accordance with FA, the petitioners suggest that Commerce multiply the benefit attributed to “unit 1” by four to capture the full scope

²⁹ See *Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) (*Threaded Rod from India*), and accompanying Issues and Decision Memorandum (IDM) at Section A.3; see also *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) (*Hot-Rolled Carbon Steel from India*), and accompanying IDM at Comment 21.

³⁰ See *Quartz Surface Products from India* at 26.

³¹ See Petitioners Case Brief at 1-2.

³² *Id.*

³³ *Id.* at 2.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

of the benefit provided to all four of Shakti's identified units.³⁷

*Shakti's Rebuttal Arguments:*³⁸

- According to Shakti, there is no information missing from the record that would necessitate the use of FA to calculate the benefit for this program. Shakti argues that water charges for units 2, 3, and 4 are paid by the private landowner to whom Shakti pays rent, and that this information is included in its responses to Commerce's initial and NSA questionnaires.³⁹ Shakti is thus only directly responsible for the water charges attributed to "unit 1."
- Commerce should continue to use the methodology from the *Preliminary Determination* to calculate the benefit received from this program for the final determination.⁴⁰

Commerce's Position: We agree with Shakti on this issue. In its initial questionnaire response, Shakti submitted a monthly breakdown of water charges paid to the GIDC for the POI as well as a bimonthly set of sample water charges attributed to unit 1 of Shakti's facilities.⁴¹ Shakti also explained that it did not pay separate water charges for units 2, 3, and 4 because these charges are billed to the account of the private landowner to whom Shakti pays rent, and that water charges are accounted for in the rent payments for these units.⁴² In its subsequent NSA questionnaire response, Shakti provided further information regarding the GIDC's provision of water for LTAR, including an additional water bill for unit 1 and the rental agreements for units 1-3.⁴³ An analysis of the terms of these rental agreements indicates that unit 1 is the only unit for which a separate water bill is issued to Shakti rather than the landowner. Because our position relies on business proprietary information, please see the Shakti Final Calculation Memorandum.

The petitioners argue that Commerce should use FA to compensate for information that is missing from the record of the investigation. However, it is Commerce's belief that there is no missing information from the record – Shakti has provided compelling information to support its claim that water charges from units 2-4 should not be countervailed. Thus, Commerce will continue to use only POI water charges reported for unit 1 of Shakti's facilities to calculate the benefit for the GIDC's provision of water for LTAR for the final determination.

Comment 3: Whether the DDB Program is Countervailable

*GOI's Arguments:*⁴⁴

- According to the GOI, Commerce cited the *Shrimp from India Final Determination* as the basis for specificity regarding the DDB program, for which "the GOI continues to employ universal rates based on aggregate data collected from various sources rather than

³⁷ *Id.*

³⁸ See Shakti Rebuttal Brief at 1-2.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See Shakti IQR at Exhibit SFIPL 21(a) and 21(b).

⁴² See Shakti IQR at SFIPL-51, n.13.; see also Shakti NSA Supp Response at 2.

⁴³ See Shakti NSA Supp Response at 7, and Exhibits S1-4 and S1-1(a)-(c).

⁴⁴ See GOI Case Brief at 7-9.

attempting to determine the respondent's actual consumption, production, and waste."⁴⁵ The GOI argues that by doing so, Commerce has failed to engage in a meaningful and independent inquiry with respect to Shakti's use of this program.⁴⁶

- The GOI claims that by relying on the findings of a previous investigation and not engaging in a new independent inquiry, Commerce adopts a position that is inconsistent with precedent from the Court of International Trade. Citing *Inland Steel Industries*, the GOI argues that it is well established that Commerce's findings in a particular case are not binding for the purposes of a subsequent case, but rather must be based solely on the facts in the administrative record of the ongoing proceedings.⁴⁷
- According to the GOI, robust verification mechanisms have been instituted for the implementation of the DDB scheme that include:⁴⁸
 - Verification procedures under the Customs, Central Excise Duties & Service Tax Drawback Rules (1995) for monitoring input consumptions for exported products;
 - Customs Authority requirements for the submission of information and documentation about the production of applicable goods and the amount of tax paid in relation to their production;
 - Additional checks conducted by the Customs Authority to monitor for potential misuse of drawback facilities;
 - The use of Standard Input Output Norms (SION) as a mechanism for tracking and verifying inputs used to produce applicable exported goods;
 - Updates to SION by the Directorate General of Foreign Trade and the associated Board of Directors.
- The GOI claims that without a meaningful consideration of the GOI's submissions regarding duty drawback, Commerce's preliminary determination of countervailability for the DDB program is incorrect.⁴⁹

*Petitioners' Rebuttal Arguments:*⁵⁰

- The petitioners argue that the GOI presents no arguments or evidence in its case brief that Commerce has not already considered and rejected regarding this program. The GOI is thus asking Commerce to re-weigh the evidence already used to determine that this program provides a countervailable subsidy in the preliminary determination, as well as in other proceedings.⁵¹
- According to the petitioners, the determination regarding the DDB program was appropriate and based on substantial evidence. Commerce has previously declined the GOI's invitation to reconsider preexisting record evidence, and should do so in this case as well.⁵²

⁴⁵ See *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India Final Determination*).

⁴⁶ See GOI Case Brief at 7-8.

⁴⁷ *Id.* at 8 (citing *Inland Steel Industries, Inc. et al. v. United States*, 967 F. Supp. 1338, 1361 (CIT 1997), *aff'd*, 188 F.3d 1349 (CAFC 1999) (*Inland Steel Industries*)).

⁴⁸ *Id.* at 8-9.

⁴⁹ *Id.* at 9.

⁵⁰ See Petitioners Rebuttal Brief at 1.

⁵¹ *Id.* at n.3

⁵² *Id.* at 1.

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

Pursuant to 19 CFR 351.519(a)(1)(ii), import duty exemptions on inputs for exported products are not countervailable, so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste. However, as stated in the *Shrimp from India Final Determination*, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products and in what amounts.⁵³ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁵⁴ If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, or remission of drawback is countervailable.⁵⁵

According to the GOI, the DDB scheme provides rebates for duty or tax chargeable on any imported or excisable materials used to manufacture exported goods.⁵⁶ Regarding its establishment of DDB rates, the GOI explained that a committee exists to review data and recommend DDB rates. Specifically, the GOI stated:

The Central Government determines the All Industry Rate of drawback based on taking essentially averages of values duties on materials used for a class of export goods produced or manufactured and taking into account the extent to which these duties may not have been paid or already rebated or refunded. The All Industry Rates are notified in the form of a schedule every year after a Committee appointed for the purpose has reviewed the data and recommended the rates.⁵⁷

The GOI also stated:

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

⁵³ See *Shrimp from India Final Determination*, and accompanying IDM at 12-14.

⁵⁴ *Id.*

⁵⁵ See 19 CFR 351.519(a)(4)(i)-(ii).

⁵⁶ See the GOI's February 24, 2020 Initial Questionnaire Response (GOI IQR) at 12.

⁵⁷ *Id.*

As a second stage verification, the exporter's manufacturing premises and the books of accounts are randomly audited by the field formations as per the audit provisions to ensure that no undue benefits are claimed by the exporters.⁵⁸

The GOI claims that it not only has a reasonable and effective system in place, but that its Drawback Rules allow for verification of inputs consumed in the exported subject merchandise. However, the GOI has not demonstrated on the record of this investigation that it has a system that is reasonable or effective, nor has it demonstrated how the DDB rates are derived. While the GOI maintains that its Drawback Rules provide for a verification procedure, the GOI has also not provided record evidence that it has conducted such verifications, including any verifications of SFIPL or Shakti Forge to support the All Industry Rates of drawback under which Shakti's merchandise falls.⁵⁹ To merely state or point to a system is not enough to demonstrate that such a system actually exists in practice; that system must also be implemented and supported with documentation.⁶⁰ Thus, contrary to the GOI's claim, we do not find that the GOI has a reasonable or effective system in place that implements the monitoring of the inputs consumed in the production of the exported product, a finding that is consistent with Commerce's previous determinations (*e.g.*, *Quartz Surface Products from India* and *Polyester Textured Yarn from India*).⁶¹

We continue to find that a financial contribution, pursuant to section 771(5)(D)(ii) of the Act, is provided under the DDB program because rebated duties represent revenue forgone by the GOI. Because the program is only available to exporters, we determine that the DDB is specific under section 771(5A)(B) of the Act. Since the GOI has not supported its claim that the DDB system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported product, we determine that the entire amount of the import duty rebate earned during the POI constitutes a benefit under 19 CFR 351.519(a)(4). Accordingly, we continue to find that the DDB scheme confers a countervailable subsidy, and agree with the petitioners that the GOI has presented no new evidence that would justify revisiting or altering the preliminary determination of countervailability for this program.

Comment 4: Whether the EPCGS Program is Countervailable

*GOI's Arguments:*⁶²

- According to the GOI, the EPCGS cannot be considered "specific" under Article 2 of the SCM Agreement because there are no restrictions on the goods manufactured by imported machines and parts to be sold in the home market.⁶³
- The EPCGS is consistent with the Export Clause of the U.S. Constitution (Article I, Section 9, Clause 5) which states that "no tax or duty shall be laid on articles exported

⁵⁸ *Id.* at 22-23.

⁵⁹ See Shakti IQR at Exhibit SFIPL-10(d).

⁶⁰ See, *e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 10789 (March 22, 2019), and accompanying IDM at Comment 4.

⁶¹ See *Quartz Surface Products from India* at 15-16; see also *Polyester Textured Yarn from India: Final Affirmative Countervailing Duty Determination*, 84 FR 63848 (November 19, 2020) (*Polyester Textured Yarn from India*), and accompanying IDM at 16-17.

⁶² See GOI Case Brief at 9-10.

⁶³ *Id.* at 10.

from any state.”⁶⁴

- The GOI claims that capital goods are considered critical to the production of exported products and thus fall within the meaning of Annex I(g) of the SCM Agreement, which applies “in respect of” indirect taxes from the production of exported products. Thus, exemptions on indirect taxes under the EPCGS are permissible under the SCM.⁶⁵

*Petitioners’ Rebuttal Arguments:*⁶⁶

- The petitioners argue that the GOI presents no arguments or evidence in its case brief that Commerce has not already considered and rejected. The GOI is thus asking Commerce to re-weigh the evidence already used to determine that this program provides a countervailable subsidy in the preliminary determination, as well as in other proceedings.⁶⁷
- According to the petitioners, the determination regarding the EPCGS was appropriate and based on substantial evidence. Commerce has previously declined the GOI’s invitation to reconsider preexisting record evidence, and should do so in this case as well.⁶⁸

Commerce’s Position: While the GOI contends that this program is not countervailable, we continue to find that the EPCGS program constitutes a countervailable subsidy under Commerce’s statute and regulations. The record shows that the EPCGS program provides for a reduction or exemption of customs duties and excise taxes on imports of capital goods used in the production of exported products.⁶⁹ Under this program, producers are exempted from or pay reduced duties on imported capital equipment by committing to export six times the amount of duties, taxes, and cess saved on capital goods within six years. Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods.⁷⁰ If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction plus an interest penalty.⁷¹ Thus, this program has an export obligation that requires a company to export a certain amount of goods in order to qualify for program benefits. Consistent with the statute at section 771(5A)(B) of the Act and our regulations under 19 CFR 351.514(a), we consider the subsidy under this program to be an “export subsidy” and “contingent upon export performance.” As such, we continue to find this program to be specific pursuant to section 771(5A)(B) of the Act.

Furthermore, we are conducting this investigation pursuant to U.S. CVD law, specifically the Act and Commerce’s regulations. To the extent that the GOI is raising arguments concerning certain provisions of the SCM Agreement in this proceeding, the U.S. CVD law fully implements the United States’ obligations under the SCM Agreement. As we explained in *Steel Flanges from India*, Commerce has conducted this investigation in accordance with the Act and Commerce’s regulations, and U.S. law is fully compliant with our WTO obligations:

⁶⁴ *Id.* at 9.

⁶⁵ *Id.*

⁶⁶ See Petitioners Rebuttal Brief at 1.

⁶⁷ *Id.* at n.3.

⁶⁸ *Id.* at 1.

⁶⁹ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 26-29.

⁷⁰ *Id.* at 26-27.

⁷¹ *Id.* at 27.

{O}ur CVD laws are consistent with our WTO obligations. Moreover, it is the Act and {Commerce's} regulations that have direct legal effect under U.S. law, and not the WTO Agreements or WTO reports. In this regard, WTO reports "do not have any power to change U.S. law or to order such a change."⁷²

Therefore, because our decisions here are consistent with the Act and our regulations, they are also consistent with our obligations under the SCM Agreement. The GOI's WTO-related arguments have no merit in this regard, and we agree with the petitioners that the GOI has presented no new evidence that would justify revisiting or altering the preliminary determination of countervailability for this program.

Comment 5: Whether the MEIS Program is Countervailable

*GOI's Arguments:*⁷³

- According to the GOI, the MEIS should not be found countervailable because its objective is to provide assistance to exporters to offset infrastructural inefficiencies and associated costs and taxes involved, and to provide a level playing field for companies.⁷⁴
- The GOI claims that under the MEIS, assistance is provided in the form of a refund of prior-stage cumulative indirect taxes levied on input goods and services that are consumed in the production of the exported product. According to the GOI, the exporter has paid these taxes (usually specific to fuel or electricity usage), but does not receive a refund from the government.⁷⁵
- The GOI argues that Commerce must engage in a thorough and meaningful review of the MEIS before concluding that it qualifies as a countervailable subsidy, and cannot rely on previous determinations of countervailability in other cases.⁷⁶
- The GOI claims that the MEIS is consistent with the provisions of paragraph (g) and paragraph (h) of Annex I read with provisions of Annex II of the SCM Agreement.⁷⁷ According to the GOI, MEIS assistance to exporters consists of refunds on indirect goods and service taxes that the exporter has paid, but for which the exporter not received a refund from the government.⁷⁸

*Petitioners' Rebuttal Arguments:*⁷⁹

- The petitioners argue that the GOI presents no arguments or evidence in its case brief that Commerce has not already considered and rejected. The GOI is thus asking Commerce to re-weigh the evidence already used to determine that these programs provide countervailable subsidies in the preliminary determination, as well as in other

⁷² See *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Steel Flanges from India*), and accompanying IDM at Comment 1 (internal citations omitted).

⁷³ See GOI Case Brief at 10-11.

⁷⁴ *Id.* at 11.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ See Petitioners Rebuttal Brief at 1.

proceedings.⁸⁰

- According to the petitioners, the determination regarding the MEIS was based on substantial evidence and appropriate. Commerce has previously declined the GOI's invitation to reconsider preexisting record evidence, and should do so in this case as well.⁸¹

Commerce's Position: We agree with the petitioners and continue to find that the MEIS is countervailable under the Act and Commerce's regulations. Pursuant to 19 CFR 351.518, prior-stage cumulative indirect taxes are taxes that are levied at each stage of production and distribution without any offset, and the amounts exempted, remitted or deferred upon export must correspond to the prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product, making normal allowances for waste. That is, only exemptions, remissions or deferrals of such taxes in excess of the indirect taxes on inputs that are not consumed in the production of the export product are countervailable.⁸²

The supporting documentation for this program, submitted by the GOI, indicates that the duty credit scrips under this program bear no relationship to any cumulative indirect taxes potentially levied on inputs throughout the production of the exported product but, instead, are calculated based on the FOB value received in foreign exchange for the exported product.⁸³ Similar to *PET Film from India*,⁸⁴ the GOI claims that duty credit scrips earned by the respondents under this program constitute the remission of prior-stage cumulative indirect taxes, as the MEIS assists exporters to offset infrastructural inefficiencies and associated costs and taxes and is, thus, not countervailable, to the extent that there is no excess remission. However, the GOI failed to demonstrate that it has a system and procedures in place to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and that its system or procedures are reasonable and effective.

Furthermore, while the respondents provide a table listing the percent rate for calculating the duty credit scrip by product group, including tariff code, for Commerce to confirm the reported benefits, the GOI did not provide any explanation as to how the percent rate for calculating the duty scrip on exports of subject merchandise to the United States was derived for that group of products.⁸⁵ That is, the GOI failed to explain how that particular percent reimbursement/credit on the FOB value received in foreign exchange was determined, or how it relates to any cumulative indirect tax expenses incurred by the Indian producer/exporter due to any prior-stage cumulative indirect taxes paid on the exported product, or how infrastructural inefficiencies are measured and assessed. Accordingly, the duty credit scrips under this program bear no relationship to any cumulative indirect taxes potentially levied on inputs throughout the production of the exported product.

⁸⁰ *Id.* at n.3.

⁸¹ *Id.* at 1.

⁸² See 19 CFR 351.518(a)(1)-(3).

⁸³ See GOI IQR at Exhibit D1.1 (FTP 2015-2020 Chapter 3, subhead 3.04, "Entitlement under MEIS").

⁸⁴ See *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film from India*), and accompanying Issues and Decision Memorandum at Comment 1.

⁸⁵ See Shakti IQR at Exhibit SFIPL-15(c) Part 1 and 2.

As stated in the *Preliminary Determination*,⁸⁶ we continue to find that this program is specific pursuant to sections 771(5A)(A) and (B) of the Act, because, as the GOI reported, eligibility to receive the scrips is contingent upon export.⁸⁷ This program provides a financial contribution in the form of revenue forgone pursuant to section 771(5)(D)(ii) of the Act, because the scrips provide exemptions for paying duties associated with the importation of goods, which represents revenue forgone by the GOI.⁸⁸ Record information demonstrates that SFIPL received benefits under the MEIS program, and we continue to calculate a benefit and subsidy rate for Shakti for this program because we agree with the petitioners that the GOI has presented no new evidence that would justify revisiting or altering the preliminary determination of countervailability for this program.

Finally, while the GOI argues that the MEIS program cannot be countervailable under the SCM Agreement, we disagree. As previously noted, we are conducting this investigation in accordance with U.S. CVD laws, under the Act and Commerce's regulations, which are consistent with our obligations under the SCM Agreement, as U.S. CVD laws implement our obligations under the SCM Agreement.

Comment 6: Whether the SGOG Scheme of Assistance to MSME: Assistance of One-Time Capital Investment Subsidy and the SGOG Scheme of Assistance to MSME: Assistance for Interest Subsidy Are Countervailable

*GOI's Arguments:*⁸⁹

- According to the GOI, the SGOG's Schemes of Assistance to MSME in the form of capital investment and interest subsidies do not satisfy the test of specificity as explained by previous WTO panel and appellate body decisions, and ignore the disciplines contained in Article 2 of the SCM agreement.⁹⁰
- The GOI requests that Commerce explain the context of the term "in part" used in Commerce's explanation of the basis on which the SGOG's MSME programs have been countervailed. According to the GOI, there is no basis under WTO law to support a finding of "in part" satisfaction of the necessary conditions for a program to qualify as a countervailable subsidy.
- The GOI claims that article 2.1(a) of the SCM Agreement establishes that a subsidy is specific if the granting authority or legislation explicitly limits access to that subsidy to eligible enterprises or industries.⁹¹ In addition, the GOI argues that the concept of an "industry" or "group of industries" may depend on several factors in a given context, and thus requires that the specificity of a subsidy be assessed on a case-by-case basis.⁹²
- According to the GOI, whether or not a scheme is "tiered" does not mean that the schemes are only available to a narrow set of enterprises located in a specific region of the state of Gujarat. These schemes are available to all enterprises that qualify as

⁸⁶ See PDM at 30.

⁸⁷ See GOI IQR at 64 ("The entitlement under MEIS is contingent upon export of notified products to notified countries and on realization {sic} of export proceedings within a stipulated time.")

⁸⁸ See Shakti IQR at SFIPL-40 and SFIPL-41.

⁸⁹ See GOI Case Brief at 11-14.

⁹⁰ *Id.* at 14.

⁹¹ *Id.* at 12-13.

⁹² *Id.* at 13.

MSMEs and are widely used throughout the state of Gujarat.⁹³

*Petitioners' Rebuttal Arguments:*⁹⁴

- The petitioners argue that the GOI presents no arguments or evidence in its case brief that Commerce has not already considered and rejected. The GOI is thus asking Commerce to re-weigh the evidence already used to determine that this program provides a countervailable subsidy in the preliminary determination, as well as in other proceedings.⁹⁵
- According to the petitioners, the determination regarding the SGOG Schemes of Assistance to MSMEs was based on substantial evidence and appropriate. Commerce has previously declined the GOI's invitation to reconsider preexisting record evidence, and should do so in this case as well.⁹⁶

Commerce's Position: As described in the *Preliminary Determination*, the SGOG Scheme of Assistance to MSME is intended to improve the sophistication of MSMEs through various measures, including capital investment and interest subsidies.⁹⁷ Commerce determined that the capital and interest subsidies provided under the SGOG's Scheme of Assistance to MSMEs are specific within section 771(5A)(D)(iv) of the Act because eligibility to receive capital and interest subsidies under this scheme is contingent, in part, upon a company's geographic location. Commerce specifically cited paragraphs 2.1 and 3.1 of the SGOG MSME scheme as the basis for finding the program to be specific. Those paragraphs refer to "tiered" scheme whose benefits are dependent on a user's location inside or outside of an area designated to be a "municipal corporation." Under this "tiered" system, companies within a municipal corporation area that meet all other program requirements have access to a capital investment subsidy worth 10 percent of the loan amount disbursed by a bank or financial institution (up to Rs. 15 lakhs), and a five percent interest subsidy (up to Rs. 25 lakhs per annum) for five years, while companies outside of a municipal corporation area that meet all other program requirements have access to a capital investment subsidy worth 15 percent of the loan amount disbursed by a bank or financial institution (up to 25 lakhs), and a seven percent interest subsidy (up to Rs. 30 lakhs per annum) for five years.⁹⁸

The context for Commerce's description of the scheme being contingent "in part" upon a company's location is in reference to these conditions, which constitute only one set of the criteria that is used to determine the assistance that may be received from the program. As noted in the *Preliminary Determination*, SFIPL receives higher capital investment subsidies and interest subsidies because it is located outside of a municipal corporation area.⁹⁹ Thus, we continue to find these programs to be specific, and we agree with the petitioners that the GOI has presented no new evidence that would justify revisiting or altering the preliminary determination of countervailability for this program.

⁹³ *Id.* at 14.

⁹⁴ See Petitioners Rebuttal Brief at 1.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See PDM at 31.

⁹⁸ See Shakti IQR at Exhibit SFIPL-16(a) Part 1.

⁹⁹ See PDM at 31.

Finally, while the GOI argues that the SGOG's Scheme of Assistance to MSMEs cannot be countervailed under the SCM Agreement, we disagree. As previously noted, we are conducting this investigation in accordance with U.S. CVD laws, under the Act and Commerce's regulations, which are consistent with our obligations under the SCM Agreement, as U.S. CVD laws implement our obligations under the SCM Agreement.

Comment 7: Whether the GIDC Provision of Water for LTAR is Countervailable

*GOI's Arguments:*¹⁰⁰

- The GOI claims that Commerce has wrongly determined that the GIDC or SGOG exercise, or have the ability to exercise, any discretion in the implementation of the program for the provision of water by the GIDC. Any company that establishes a unit within a GIDC area is automatically subject to GIDC regulations, and these companies are clearly aware of these regulations.¹⁰¹
- The GOI argues that Commerce has wrongly identified the provision of water by the GIDC to be a subsidy because the GIDC provides water to the companies within its designated bounds at commercial rates, including the associated water connection rate.¹⁰²
- According to the GOI, the WTO Appellate Body has stated that an essential part of a specificity analysis is a proper determination of the relevant jurisdiction of a granting authority. The GOI has previously explained that the SGOG has entrusted the GIDC with the creation of infrastructure within its bounds, and the GIDC ultimately recovers the costs for creating this infrastructure from the companies within its bounds that use this infrastructure.¹⁰³
- The GOI argues that the GIDC's provision of water to units located within its estate is not specific because it is available to any enterprise within a GIDC estate, and the locations of the estates themselves are not restricted to any geographic territory within the SGOG.¹⁰⁴

*Petitioners' Rebuttal Arguments:*¹⁰⁵

- The petitioners argue that the GOI presents no arguments or evidence in its case brief that Commerce has not already considered and rejected. The GOI is thus asking Commerce to re-weigh the evidence already used to determine that this program provides a countervailable subsidy in the preliminary determination, as well as in other proceedings.¹⁰⁶
- According to the petitioners, the determination regarding the GIDC's provision of water for LTAR was appropriate and based on substantial evidence. Commerce has previously declined the GOI's invitation to reconsider preexisting record evidence, and should do so in this case as well.¹⁰⁷

¹⁰⁰ See GOI Case Brief at 11-14.

¹⁰¹ *Id.* at 15.

¹⁰² *Id.*

¹⁰³ *Id.* at 16.

¹⁰⁴ *Id.*

¹⁰⁵ See Petitioners Rebuttal Brief at 1.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at n.3.

Commerce’s Position: As described in the *Preliminary Determination*, the GIDC is the agency created by the SGOG for facilitating industrial development in the state of Gujarat, and is tasked with establishing “industry-ready land, referred to as ‘industrial estates,’ with basic infrastructure, such as roads, water and power availability, which is then leased out to manufacturers.”¹⁰⁸ In addition, record evidence demonstrates that under the GIDC Water Supply Regulation of 1991, all companies located in a GIDC estate where the GIDC provides access to water are required to use this water.¹⁰⁹ Under these regulations, water is supplied through the GIDC, which controls the supply and sets and alters the rates charged.¹¹⁰

As explained in the GIDC Water Supply Regulation of 1991, “in an industrial estate, the charge for water supply to the consumer shall be calculated at such a rate as may be fixed by the Corporation from time to time for that estate.”¹¹¹ Commerce thus rejects the GOI’s claim that the GIDC lacks the ability to exercise discretion over this program, as both the rates and connection charges associated with water usage are set and presided over by the GIDC. Furthermore, the regional specificity of this program is solely based on a company’s geographical location within a GIDC, and is not dependent on a company’s awareness of the regulations governing water usage within the GIDC estate before establishing operations inside the GIDC.

As noted in the *Preliminary Determination*, the GIDC Water Supply Regulation of 1991 also states that if a water connection is given to premises outside the limits of the estate, water charges shall be calculated at double the prevailing rates for water inside the estate.¹¹² Commerce has determined that because the GIDC, as the administering agency of the SGOG, sets the rates and supplies the water used by SFIPL and Shakti Forge, the 50 percent price discount for enterprises within the GIDC industrial estates constitutes a financial contribution in the form of revenue foregone under section 771 (5)(D)(ii) of the Act. The record is clear that the water rates outside of the GIDC estate are twice the amount of the water rates paid by companies located within the GIDC estate, pursuant to the GIDC’s own binding directives that provide benefits to companies within the GIDC estate areas.¹¹³

Finally, while the GOI argues that the GIDC provision of water for LTAR program cannot be countervailable under the SCM Agreement, we disagree. As previously noted, we are conducting this investigation in accordance with U.S. CVD laws, under the Act and Commerce’s regulations, which are consistent with our obligations under the SCM Agreement, as U.S. CVD laws implement our obligations under the SCM Agreement.

¹⁰⁸ See Preliminary Decision Memorandum at 32-33.

¹⁰⁹ See Shakti IQR at SFIPL-52 and Exhibit SFIPL- 21(c), and SF-40 and Exhibit SF-13(c).

¹¹⁰ *Id.* at Exhibits SFIPL-21(c) and SF-13(c).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

IX. RECOMMENDATION

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



Agree



Disagree

10/13/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

APPENDIX
AFA Rate Calculated

Program Name	AFA Rate	Source of AFA Rate or Precedent for Previous Use of the AFA Rate Under the Hierarchy
<i>Duty Exemption/Remission Schemes</i>		
Advance Authorization Scheme (AAS) (formerly, Advance License Program)	11.95%	<i>See Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances</i> , 79 FR 41967 (July 18, 2014) and accompanying IDM at 19.
Duty Free Import Authorization Scheme (DFIA)	14.61 ¹¹⁴	<i>See Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part</i> , 81 FR 13334 (March 14, 2016) (<i>PET Resin</i>), and accompanying IDM at 27.
Duty Drawback Scheme (DDB)	1.59%	Rate calculated for Shakti in this proceeding
<i>Subsidies for Export Oriented Units (EOUs):</i>		
Duty-Free Import of Goods, Including Capital Goods and Raw Materials	14.61%	<i>See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India</i> , 67 FR 34905 (May 16, 2002) (<i>PET Film from India Investigation</i>), at “DEPS.”
Reimbursements of Central Sales Tax (CST) Paid on Goods Manufactured in India	3.09%	<i>See Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India</i> , 71 FR 28665 (May 17, 2006), and accompanying IDM at “State Government of Gujarat (SGOG) Tax Incentives.”
Duty Drawback on Fuel Procured from Domestic Oil Companies	14.61% ¹¹⁵	<i>See PET Film from India Investigation</i> , at “DEPS.”
Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a	14.61% ¹¹⁶	<i>See PET Film from India Investigation</i> , IDM at “DEPS.”

¹¹⁴ Commerce, although citing the correct case (*PET Film*), inadvertently included the wrong rate at the *Preliminary Determination*. This rate should be 14.61%.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

Domestic Tariff Area (DTA)		
Export Promotion of Capital Goods Scheme (EPCGS)	16.63%	The calculated rate for Shakti for the EPCGS is 0.00% for the final determination. According to the AFA hierarchy used by Commerce to determine appropriate sources for AFA program rates, Commerce will now select the highest rate calculated for the EPCGS in a CVD case pertaining to India. <i>See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India</i> , 66 FR 49635 (September 28, 2001) (<i>HRS from India Investigation</i>), and accompanying IDM at “Export Promotion of Capital Goods Scheme.”
Market Development Assistance Scheme (MDA)	16.63%	<i>See HRS from India Investigation</i> , at “Export Promotion of Capital Goods Scheme.”
Market Access Initiative (MAI)	16.63%	<i>See HRS from India Investigation</i> , at “Export Promotion of Capital Goods Scheme.”
Focus Product Scheme	1.99%	<i>See PET Resin</i> IDM at 18-19.
Status Certificate Program	2.90%	<i>See PET Film from India Investigation</i> IDM at “Pre-Shipment and Post-Shipment Export Financing.”
Steel Development Fund Loans	0.99%	<i>See HRS from India Investigation</i> at “Loans from the Steel Development Fund (SDF) Fund.”
Provision of Steel for LTAR	16.14%	<i>See Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination</i> , 77 FR 64468 (October 22, 2012) (<i>Circular Welded Steel Pipe from India</i>), and accompanying IDM at 24-25.
Incremental Exports Incentivization Scheme (IEIS)	2.90%	<i>See PET Film from India Investigation</i> IDM at “Pre-Shipment and Post-Shipment Export Financing.”
<i>State Government of Andhra Pradesh (SGAP) Subsidy Programs:</i>		
Grant under the Industrial Investment Promotion Policy (IIPP): 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas	6.06%	<i>See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review</i> , 75 FR 43488 (July 26, 2010) (<i>HRS from India AR</i>), and accompanying IDM at 29-30.
Grant under the IIPP: Reimbursement of Power at the Rate of Rs. 0.75 per Unit	6.06%	<i>See HRS from India AR</i> at 30.

Grant under the IIPP: 50 Percent Subsidy for Expenses Incurred for Quality Certification	6.06%	<i>See HRS from India AR at 30-31.</i>
Grant under the IIPP: 50 Percent Subsidy on Expenses Incurred in Patent Registration	6.06%	<i>See HRS from India AR at 31-32.</i>
Grant under the IIPP: 25 Percent Subsidy on Cleaner Production Measures	6.06%	<i>See HRS from India AR at 31.</i>
Tax Incentives under the IIPP: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages	3.09%	<i>See HRS from India AR at 32.</i>
Tax Incentives under the IIPP: 25 Percent Reimbursement on Value Added Tax (VAT), CST, and State Goods and Services Tax	3.09%	<i>See HRS from India AR at 32.</i>
Tax Incentives under the IIPP: Exemption from the SGAP Nonagricultural Land Assessment	3.09%	<i>See HRS from India AR at 33.</i>
Provision of Goods and Services for Less than Adequate Remuneration (LTAR) under the IIPP: Provision of Infrastructure for Industries Located More than 10 Kilometers from Existing Industrial Estates or Development Areas	18.08%	<i>See HRS from India AR at 33-34.</i>
Provision of Goods and Services for LTAR under the IIPP: Guaranteed Stable Prices and Reservation of Municipal Water	18.08%	<i>See HRS from India AR at 34.</i>
Andhra Pradesh Industrial Corporation's Allotment of Land for LTAR	6.06%	<i>See HRS from India AR at 29-30.</i>

<i>State Government of Maharashtra (SGOM) Subsidy Programs:</i>		
SGOM Sales Tax Program	0.59%	<i>See Circular Welded Steel Pipe from India at 26-27.</i>
Electricity Duty Exemptions	3.09%	<i>See Circular Welded Steel Pipe from India at 28.</i>
Waiving of Loan Interest by SICOM	2.90%	<i>See Circular Welded Steel Pipe from India at 31-32.</i>
Investment Subsidies	6.06%	<i>See Circular Welded Steel Pipe from India at 30-31.</i>
Infrastructure Assistance for Mega Projects Under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects	6.06%	<i>See Circular Welded Steel Pipe from India at 29-30.</i>
Subsidies for Mega Projects Under the Package Scheme of Incentives	0.95%	<i>See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination, 81 FR 49932 (July 29, 2016), and accompanying IDM at 11-12.</i>
Other Subsidies Under the Package Scheme of Initiatives	3.09%	<i>See Circular Welded Steel Pipe from India at 28, where Commerce calculated a rate for a similar program.</i>
Provision of Land for LTAR	18.08%	<i>See Circular Welded Steel Pipe from India at 30.</i>
Merchandise Export from India Scheme (MEIS)	0.93%	Rate calculated for Shakti in this proceeding
<i>State Government of Gujarat (SGOG) Subsidy Program</i>		
Sales Tax Incentives	3.09%	<i>See Hot-Rolled Carbon Steel Flat Products from India at 21-22.</i>
Gujarat Industrial Development Corporation (GIDC) Subsidized Financing	6.06%	<i>See Circular Welded Steel Pipe from India at 30-31, where Commerce calculated a rate for a similar program.</i>
GIDC Provision of Land for LTAR	18.08%	<i>See Circular Welded Steel Pipe from India at 30, where Commerce calculated a rate for a similar program.</i>
GIDC Provision of Water for LTAR	0.01%	Rate calculated for Shakti in this proceeding
<i>Gujarat Government's Scheme for Assistance to Small, Micro and Medium Enterprises (MSME)</i>		

Capital Investment Subsidy	0.03%	Rate calculated for Shakti in this proceeding
Interest Subsidy	0.08%	Rate calculated for Shakti in this proceeding
Total AFA Rate:	300.77%	