



C-533-876

Administrative Review

POR: 11/06/2017 – 12/31/2018

Public Document

E&C/OIV: AG

December 21, 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 Results in the
2017-2018 Countervailing Duty Administrative Review of Fine
Denier Polyester Staple Fiber from India

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty (CVD) order on fine denier polyester staple fiber (fine denier PSF) from India¹ for the period November 6, 2017 through December 31, 2018. As a result of this analysis, we made changes to the subsidy rate calculation for Reliance Industries Limited (Reliance), the sole mandatory respondent in this administrative review. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from interested parties:

- Comment 1: Sales Value Denominators
- Comment 2: Whether to Apply Adverse Facts Available (AFA) to Export Sales Values
- Comment 3: Discount Rates
- Comment 4: Calculation of Duty Exemptions Under the Special Economic Zone (SEZ) Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials Program and Export Promotion of Capital Goods Scheme (EPCGS)
- Comment 5: Application of AFA to the SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials Program and EPCGS
- Comment 6: Land Benchmark

¹ See *Fine Denier Polyester Staple Fiber from the People’s Republic of China and India: Amended Final Affirmative Countervailing Duty Determination for the People’s Republic of China and Countervailing Duty Orders for the People’s Republic of China and India*, 83 FR 11681 (March 16, 2018) (Order).



Comment 7: Whether the SEZ Programs, Technology Upgradation Fund Scheme (TUFS), and Merchandise Export from India Scheme (MEIS) are Countervailable

II. BACKGROUND

A. Case History

On April 3, 2020, Commerce published the *Preliminary Results* of this administrative review.² On June 22, 2020, we received case briefs from interested parties,³ and on July 1, 2020, we received rebuttal briefs.⁴

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.⁵ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days,⁶ thereby extending the deadline for these final results until November 19, 2020. On November 5, 2020, Commerce postponed the final results of this review by 33 days until December 22, 2020.⁷

B. Period of Review (POR)

The POR is November 6, 2017 through December 31, 2018. While the POR covers part of 2017, and calendar year 2018, we have analyzed data for the period January 1, 2018 through December 31, 2018, to determine the countervailable subsidy rate for exports of subject merchandise made during the periods in 2017 when liquidation of entries was suspended.⁸ No parties submitted comments regarding the limited reporting period.

III. SCOPE OF THE ORDER

The merchandise covered by the *Order* is fine denier polyester staple fiber (fine denier PSF), not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all

² See *Fine Denier Polyester Staple Fiber from the Republic of India: Preliminary Results of Countervailing Duty Administrative Review*, 85 FR 18916 (April 3, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

³ See Reliance's Letter, "Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber ('Fine Denier PSF') from India— Reliance Industries Limited's Case Brief," dated June 22, 2020 (Reliance's Case Brief); see also Petitioner's Letter, "Fine Denier Polyester Staple Fiber from India: Petitioners' Case Brief," dated June 22, 2020 (Petitioners' Case Brief). The petitioners are Auriga Polymers, Inc.; DAK Americas LLC; and Nan Ya Plastics Corporation, America.

⁴ See Reliance's Letter, "Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber ('Fine Denier PSF') from India – Redacted Rebuttal Brief and Request to Place Factual Information on the Record," dated July 10, 2020 (Reliance's Rebuttal Brief); see also Petitioners' Letter, "Fine Denier Polyester Staple Fiber from India: Petitioners' Rebuttal Brief," dated July 1, 2020 (Petitioners' Rebuttal Brief).

⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

⁶ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

⁷ See Memorandum, "2017-2018 Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Extension of Deadline for Final Results," dated November 5, 2020.

⁸ See Memorandum, "Limited Reporting Period for the First Administrative Review," dated June 5, 2019.

fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

- (1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065.
- (2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.⁹

IV. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF ADVERSE INFERENCES

A. Legal Standard

Sections 776(a) of the Tariff Act of 1930, as amended (the Act) provides that Commerce shall, subject to section 782(d) of the Act, use the “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the Act.

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁰ Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination

⁹ See *Order*.

¹⁰ See section 776(b)(1)(B) of the Act.

from the investigation, a previous administrative review, or other information placed on the record.¹¹

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹² Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”¹³ It is Commerce’s practice to consider information to be corroborated if it has probative value.¹⁴ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.¹⁵ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.¹⁶ Further, Commerce is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.¹⁷

Finally, under section 776(d) of the Act, when applying an adverse inference, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the agency considers reasonable to use, including the highest of such rates.¹⁸ Additionally, when using an adverse inference in selecting among the facts otherwise available, Commerce is not required, for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality of the interested party.”¹⁹

B. Application of AFA

Government of India

Commerce determined that an adverse inference is warranted in the selection of facts available, pursuant to section 776(b) of the Act, because the Government of India (GOI) failed to provide necessary information in response to questions pertaining to the SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials Scheme, and the State Government of Gujarat (SGOG) Provision of Land for Less Than Adequate Remuneration (LTAR) and Electricity Duty Exemption programs.²⁰

¹¹ See 19 CFR 351.308(c).

¹² See 19 CFR 351.308(d).

¹³ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. No. 103-316, vol. 1 at 870 (1994).

¹⁴ *Id.* at 870.

¹⁵ *Id.* at 869.

¹⁶ *Id.* at 869-870.

¹⁷ See section 776(c)(2) of the Act.

¹⁸ See section 776(d)(1) and (2) of the Act.

¹⁹ See section 776(d)(3) of the Act.

²⁰ See *Preliminary Results* PDM at 5-7.

However, because the respondent reported its usage of the aforementioned programs, Commerce relied on Reliance's reported information to calculate the benefit.²¹ For further descriptions of this decision, *see* the *Preliminary Results*.²² Because no party commented on this issue, we continue to rely on the respondent's reported information to calculate the benefit, within the meaning of section 771(5)(E) of the Act.

C. Application of Facts Available

Reliance

Commerce applied an adverse inference for information relating to Reliance's SEZ Duty-Free Importation of Capital Goods and Raw Material Components, Consumables, Intermediates, Spare Parts, and Packing Materials and EPCGS benefits received during the earliest three years of the average useful life (AUL) period.²³ For further descriptions of this decision, *see* the PDM²⁴ and Comment 5. Based on the comments received, Commerce has changed its methodology for determining the benefit for those years of the AUL period to rely on facts available for these final results for information relating to the benefit for these programs. Additionally, as explained in Comment 2, Commerce is relying on facts available for information relating to Reliance's export sales values for the final results.

V. SUBSIDIES VALUATION INFORMATION

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 Results*. For a description of the allocation period and the methodology used for the final results, *see* the PDM.²⁵

B. Attribution of Subsidies

As explained in Comment 7, we have made no changes to the methodology underlying our attribution of subsidies in the *Preliminary Results*. For a description of the methodology used for the final results, *see* the PDM.²⁶

²¹ *Id.* at 7.

²² *Id.*

²³ *Id.* at 7-8.

²⁴ *Id.*

²⁵ *Id.* at 8.

²⁶ *Id.* at 8-9.

C. Denominators

As explained in Comments 1 and 2, we have made adjustments to the denominators relied on for the calculation of Reliance's subsidy rate. For a description of the denominators used for the final results, *see* the Final Calculation Memorandum.²⁷

D. Benchmarks and Interest Rates

As explained in Comment 3, we have made adjustments to the interest rates relied on for the calculation of Reliance's benefits under the SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials program²⁸ and SGOG Land for LTAR program. For a description of the interest rates used for the final results, *see* the PDM²⁹ and the Final Calculation Memorandum.³⁰ Additionally, as discussed at Comment 6, interested parties raised issues in their case briefs regarding the benchmark we used in the *Preliminary Results* for the calculation of Reliance's benefit under the SGOG Land for LTAR program. For further discussion of the benchmarks used in the final results, *see* the PDM.³¹

VI. ANALYSIS OF PROGRAMS

We have made changes to our *Preliminary Results* with respect to the subsidy rate calculation for Reliance. For further details, *see* the specific program section below and the Final Calculation Memorandum. For the descriptions, analyses, and calculation methodologies of these programs, *see* the *Preliminary Results*. Except where noted, no issues were raised by interested parties in briefs regarding these programs. The final program rates for Reliance are identified below.

A. Programs Determined to Be Countervailable

1. Duty Drawback (DDB)

We made no changes to the *Preliminary Results* with regard to the countervailability of this program. As discussed in Comment 1, we adjusted the sales denominators used to calculate Reliance's subsidy rate under this program from the *Preliminary Results*. As a result, Reliance's final subsidy rate continues to be 1.47 percent *ad valorem*.³²

²⁷ See Memorandum, "2017-2018 Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Final Results Calculations for Reliance Industries Limited," dated concurrently with this memorandum (Final Calculation Memorandum) at 2.

²⁸ We note that for the final results, based on changes to the benefit calculation of this program, we are no longer allocating benefits received under the program.

²⁹ See *Preliminary Results* PDM at 10.

³⁰ See Final Calculation Memorandum at 2.

³¹ See *Preliminary Results* PDM at 10-11.

³² See *Preliminary Results* PDM at 12; *see also* Final Calculation Memorandum at 3.

2. EPCGS

We made no changes to the *Preliminary Results* with regard to the countervailability of this program. As discussed in Comments 1 and 2, we adjusted the sales denominators used to calculate Reliance's subsidy rate under this program from the *Preliminary Results*. We also changed our methodology for calculating Reliance's total duty exempted and changed our application of AFA to facts available for Reliance's redeemed EPCGS licenses for 2009 through 2011, as discussed in Comments 4 and 5, respectively. Additionally, in the *Preliminary Results*, we inadvertently did not include the total benefit for each year of the AUL period for outstanding licenses in the benefit calculation for the program. Accordingly, we have corrected this error for the final results. As a result, Reliance's final subsidy rate changed to 0.07 percent *ad valorem*.³³

3. MEIS

As discussed in Comment 7, we made no changes to the *Preliminary Results* with regard to the countervailability of this program. As discussed in Comments 1 and 2, we adjusted the sales denominators used to calculate Reliance's subsidy rate under this program from the *Preliminary Results*. As a result, Reliance's final subsidy rate changed to 0.25 percent *ad valorem*.³⁴

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

As discussed in Comment 7, we made no changes to the *Preliminary Results* with regard to the countervailability of this program. As discussed in Comments 1 and 2, we adjusted the sales denominators used to calculate Reliance's subsidy rate under this program from the *Preliminary Results*. We also changed the discount rates used to allocate non-recurring benefits³⁵ and changed our application of AFA to facts available for Reliance's benefits for 2009 through 2011, as discussed in Comments 3 and 5, respectively. As discussed in Comment 4, we made no changes to our methodology for calculating Reliance's total duty exempted. Additionally, in the *Preliminary Results*, we inadvertently did not include Reliance's total POR program benefit in the benefit calculation for the program. Accordingly, we have corrected this error for the final results. As a result, Reliance's final subsidy rate changed to 1.58 percent *ad valorem*.³⁶

³³ See *Preliminary Results* PDM at 15; see also Final Calculation Memorandum at 3. We note that the PDM states that we preliminarily determined that the countervailable subsidy rate provided to Reliance under this program was 0.06 percent *ad valorem*. This statement was an inadvertent error. The calculation memorandum for the *Preliminary Results* and attachment thereto indicate that we preliminarily determined that the countervailable subsidy rate provided to Reliance under this program was 0.09 percent *ad valorem*. See Memorandum, "Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Preliminary Determination Calculation for Reliance Industries Limited," dated March 30, 2020 (Preliminary Calculation Memorandum).

³⁴ See *Preliminary Results* PDM at 15; see also Final Calculation Memorandum at 4.

³⁵ We note that for the final results, based on changes to the benefit calculation of this program, we are no longer allocating benefits received under the program.

³⁶ See *Preliminary Results* PDM at 16; see also Final Calculation Memorandum at 4. We note that the PDM states that we preliminarily determined the countervailable subsidy rate provided to Reliance under this program was 1.46 percent *ad valorem*. This statement is an inadvertent error. The calculation memorandum for the *Preliminary Results* and attachment thereto indicate that we preliminarily determined the countervailable subsidy rate provided to Reliance under this program was 1.45 percent *ad valorem*. See Preliminary Calculation Memorandum.

5. *Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit*

As discussed in Comment 7, we made no changes to the *Preliminary Results* with regard to the countervailability of this program. As discussed in Comments 1 and 2, we adjusted the sales denominators used to calculate Reliance's subsidy rate under this program from the *Preliminary Results*. As a result, Reliance's final subsidy rate changed to 0.10 percent *ad valorem*.³⁷

6. *SGOG Subsidy Programs*
a. *SGOG Preferential Water Rates*
b. *SGOG Electricity Duty Exemption*
c. *SGOG Provision of Land for LTAR*

We made no changes to the *Preliminary Results* with regard to the countervailability of the SGOG Preferential Water Rates and the SGOG Electricity Duty Exemption programs. As discussed in Comment 1, we adjusted the sales denominators used to calculate Reliance's subsidy rate under these programs from the *Preliminary Results*. As a result, Reliance's final subsidy rate for the SGOG Preferential Water Rates program changed to 0.40 percent *ad valorem*³⁸ and Reliance's final subsidy rate for the SGOG Electricity Duty Exemption program continues to be 0.02 percent *ad valorem*.³⁹

We made no changes to the *Preliminary Results* with regard to the countervailability of the SGOG Provision of Land for LTAR program. As discussed at Comment 6, we are making no changes to the benchmark for this program. Additionally, as discussed in Comment 1, we adjusted the sales denominators used to calculate Reliance's subsidy rate under this program from the *Preliminary Results*. We also changed the discount rates used to allocate non-recurring benefits, as discussed in Comment 3. As a result, Reliance's final subsidy rate changed to 0.55 percent *ad valorem*.⁴⁰

³⁷ See *Preliminary Results* PDM at 17; see also Final Calculation Memorandum at 4. We note that the PDM states that we preliminarily determined the countervailable subsidy rate provided to Reliance under this program was 0.05 percent *ad valorem*. This statement was an inadvertent error. The calculation memorandum for the *Preliminary Results* and attachment thereto indicate that we preliminarily determined the countervailable subsidy rate provided to Reliance under this program was 0.09 percent *ad valorem*. See Preliminary Calculation Memorandum.

³⁸ See *Preliminary Results* PDM at 18; see also Final Calculation Memorandum at 5. We note that the PDM states that we preliminarily determined the countervailable subsidy rate provided to Reliance under the SGOG Preferential Water Rates program was 0.02 percent *ad valorem*. This statement was an inadvertent error. The calculation memorandum for the *Preliminary Results* and attachment thereto indicate that we preliminarily determined the countervailable subsidy rate provided to Reliance under this program was 0.37 percent *ad valorem*. See Preliminary Calculation Memorandum.

³⁹ See *Preliminary Results* PDM at 18; see also Final Calculation Memorandum at 5.

⁴⁰ See *Preliminary Results* PDM at 19; see also Final Calculation Memorandum at 5. We note that the PDM states that we preliminarily determined the countervailable subsidy rate provided to Reliance under this program was 0.69 percent *ad valorem*. This statement was an inadvertent error. The calculation memorandum for the *Preliminary Results* and attachment thereto correctly indicate that we preliminarily determined the countervailable subsidy rate provided to Reliance under this program was 0.52 percent *ad valorem*. See Preliminary Calculation Memorandum.

B. Programs Determined to Not Confer a Measurable Benefit During the POR

We made no changes to the *Preliminary Results* with respect to the non-countervailability or measurability of the following programs. For the description and analysis of the programs, see the *Preliminary Results* and the accompanying PDM.⁴¹

1. *Income Tax Reductions for Research and Development (R&D) Expenses*
 - a. 35(2AB) of the Income Tax Act of 1961; 35(1)(i), 35(1)(ii), 35(1)(iv)
 - b. 35(1)(iv) of the Income Tax Act of 1961
 - c. 35(1)(ii) of the Income Tax Act of 1961
 - d. 35(1)(i) of the Income Tax Act of 1961
 - e. SEZ Income Tax Exemption (10A)
 - f. Income Tax Exemption Scheme (80-IA)
 - g. State Government of Uttar Pradesh Income Tax Exemption Scheme
2. *Focus Product Scheme (FPS)*

As discussed in Comments 1 and 2, we adjusted the sales denominators used to calculate Reliance's subsidy rate under this program from the *Preliminary Results*. We continue to find that Reliance did not receive any benefits from this program attributable to the POR.⁴²

3. TUFs

As discussed in Comment 7, we made no changes to the *Preliminary Results* with regard to the non-countervailability of this program. As discussed in Comment 1, we adjusted the sales denominators used to calculate Reliance's subsidy rate under this program from the *Preliminary Results*. We continue to find that Reliance did not receive any benefits from this program attributable to the POR.⁴³

C. Programs Determined to Not Be Used During the POR

We made no changes to the *Preliminary Results* with regard to programs determined not to be used.

National Programs

1. Advance Authorization Program (AAP)
2. Sections 35(1)(i), 35(1)(ii), 35(1)(iv) of the Income Tax Act of 1961
3. Section 35(2)(AB) of the Income Tax Act of 1961
4. GOI Loan Guarantees
5. Renewable Energy Certificates
6. Income Tax Exemption under Section 80-IA
7. Interest Subsidy

⁴¹ See *Preliminary Results* PDM at 19-22.

⁴² See *Preliminary Results* PDM at 21; see also Final Calculation Memorandum at 5.

⁴³ See *Preliminary Results* PDM at 22; see also Final Calculation Memorandum at 5-6.

8. Incentives to Strengthening Micro, Small, and Medium-Sized & Large Scale Industries
9. Market Access Initiative
10. Market Development Program
11. Status Holder Incentive Scheme (SHIS)
12. Market-Linked Focus Product Scheme (MLFPS)
13. Incremental Exports Incentive Scheme (IEIS)
14. Special Economic Zones (SEZ) Programs
 - a. Income Tax Exemption for Companies Located in an SEZ
 - b. Exemption of Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ
 - c. Discounted Land Fees in an SEZ
15. State and Union Territory Sales Tax Incentive
16. Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
17. Duty Drawback on Furnace Oil Procured from Domestic Companies
18. Reimbursement of Central Sales Tax Paid on Goods Manufactured in India
19. Duty Free Import Authorization Scheme (DFIA)

State Programs

1. State Government of Maharashtra (SGOM) Subsidy Programs
 - a. SGOM Stamp Duty Exemption
 - b. SGOM Electricity Duty Exemption
2. State Government of Gujarat (SGOG) Subsidy Programs
 - a. SGOG IPS
 - b. SGOG Industry Policy 2009: Reimbursement of Stamp Duty
 - c. SGOG Plastics Industry Scheme: Interest Subsidy
 - d. SGOG Plastics Industry Scheme: Value Added Tax (VAT) Incentive
 - e. SGOG Industry Policy 2009: Financial Benefits for Mega Projects
 - f. SGOG Industry Policy 2009: Promotion for Textiles and Apparel
 - g. SGOG Industry Policy 2009: Promotion of Non-Conventional Energy
3. State Government of Uttar Pradesh (SGUP) Subsidy Programs
 - a. SGUP Special Assistance for Mega Projects
 - b. SGUP Stamp Duty Exemption
 - c. SGUP VAT Exemption
 - d. SGUP Electricity Duty Exemption

VII. DISCUSSION OF THE ISSUES

Comment 1: Sales Value Denominators

*Petitioners' Comments*⁴⁴

- In the *Preliminary Results*, Commerce used sales figures that are inclusive of tax recovery and freight, reported in Reliance's December 2, 2019 response, to determine the total sales value denominator. Additionally, Commerce used export sales values reported in Reliance's response that improperly included freight beyond the free-on-board (FOB) port values. However, Commerce's practice is to use domestic sales values that are exclusive of tax recovery and that have been reported ex-works, and export sales values exclusive of freight, taxes, and insurance. Accordingly, Commerce should use the sales figures from Reliance's January 9, 2020 response that correctly calculated its sales values to determine the denominators for the final results.
- The total sales information in the January 9, 2020 response is the best information available to value Reliance's total sales. However, should Commerce determine that the reported total sales data are inaccurate because they may not be inclusive of inland freight for export sales and Reliance has not separately identified inland freight expenses incurred on export sales, Commerce could alternatively subtract domestic inland freight and insurance based on a ratio of export sales to domestic sales to calculate the total sales values.

No other party commented on this issue.

Commerce's Position: We agree with the petitioners and find that, in the *Preliminary Results*, we incorrectly used sales figures that are inclusive of tax recovery and freight to determine the sales value denominators used to calculate the countervailable subsidy rate for various subsidy programs in this review. As explained in Comment 2 below, Reliance also notes that the January 9, 2020 submission contains the correct sales values information.⁴⁵

Commerce's practice is to use domestic sales values that are exclusive of tax recovery and that have been reported ex-works, and export sales values exclusive of freight, taxes, and insurance.⁴⁶ Thus, in its January 2, 2020 supplemental questionnaire, Commerce instructed Reliance to revise the sales figures that it reported in its December 2, 2019 response, to ensure that all tax recovery and freight is excluded.⁴⁷ Subsequently, in its January 9, 2020 response, Reliance stated that it revised its sales figures to exclude tax recovery, insurance, and freight.⁴⁸ However, for the *Preliminary Results*, Commerce inadvertently used the sales figures reported in Reliance's

⁴⁴ See Petitioners' Case Brief at 2-5.

⁴⁵ See Reliance's Rebuttal Brief at 1 and 3.

⁴⁶ See, e.g., *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014), and accompanying Issues and Decision Memorandum (IDM) at Comment 5.

⁴⁷ See Commerce's Letter, "Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Fourth Supplemental Questionnaire for Reliance Industries Limited," dated January 2, 2020 at 3.

⁴⁸ See Reliance's Letter, "Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber ('Fine Denier PSF') from India— Reliance Industries Limited's Response to Fourth Supplemental Questionnaire," dated January 9, 2020 (Reliance's January 9, 2020 Response) at 1 and Exhibit CVD4-Q1.

December 2, 2019 submission to determine the sales value denominators.⁴⁹ In addition, we also used the sales values from the December 2, 2019 submission that were not reported on an FOB basis for Reliance's programs.⁵⁰ Accordingly, for the final results, we have used Reliance's January 9, 2020 response sales value information to determine the denominators.⁵¹ Finally, with respect to the petitioners' suggested methodology for estimating Reliance's total sales values on an FOB basis, we do not find that this approach would arrive at accurate total sales values, and find that the total sales information reported in Reliance's January 9, 2020 response is the most accurate information on the record of this review.

Comment 2: Whether to Apply AFA to Export Sales Values

*Petitioners' Comments*⁵²

- Record evidence from the investigation indicates that Reliance inaccurately included certain items in its export sales values for the AUL period, which Commerce requires to determine countervailable benefits in the majority of the programs used by Reliance during the POR. While Commerce was able to revise inflated export sales information for Reliance in the investigation, there is no corrected data on the record for 2017 and 2018.
- Commerce should apply AFA to Reliance's export sales values for the final results, because Reliance withheld accurate export sales values information from Commerce, despite multiple requests for Reliance to provide corrected data. For example, Reliance incorrectly claims that it reported sales values that were exclusive of tax recovery. Accordingly, Commerce should utilize the smallest export sales values on the record during the POR to calculate Reliance's benefits for the export-contingent programs used during the POR. Commerce could alternatively apply as AFA the highest rate calculated for each export program.

*Reliance's Rebuttal*⁵³

- Reliance correctly reported its FOB export sales data, based on its published audited quarterly financial reports, in its January 9, 2020 submission. Specifically, Reliance deducted total insurance and ocean freight costs, and the total value of all deemed exports and SEZ sales from its export sales values, based on Commerce's instructions. Accordingly, because Reliance has acted to the best of its ability to report accurate export sales data and did not withhold any information, Commerce should not apply AFA in its calculation of Reliance's export sales values.
- The values in the investigation final calculation memorandum, which the petitioners argue represent correct export sales values exclusive of byproducts, excise taxes, and trade goods, are actually values in a Reliance account from which Commerce subtracted total ocean freight costs without deducting insurance costs to calculate the FOB export sales values. Since these values do not accurately reflect Reliance's export sales, Commerce should continue to use Reliance's reported information for the final results.

⁴⁹ See Preliminary Calculation Memo at 2.

⁵⁰ *Id.*

⁵¹ See Final Calculation Memorandum at 2 and Attachment II.

⁵² *Id.* at 5-10.

⁵³ See Reliance's Rebuttal Brief at 1-7.

- Should Commerce determine that Reliance’s reported export sales values are inaccurate and that the information in the investigation final calculation memorandum are accurate, Commerce should avoid application of AFA that is not based on information readily available on the record or is overly punitive. Specifically, Commerce should use the values from the investigation final calculation memorandum for 2009 through 2016, and should use Reliance’s reported export sales values for 2017 and 2018. However, should Commerce find it necessary to adjust the 2017 and 2018 values, Commerce may then reduce the values based on the 2009 value from the investigation final calculation memorandum, the year in which the difference between Reliance’s reported value and the revised value in the investigation is the largest.

Commerce’s Position: As explained in Comment 1 above, Commerce’s practice is to use export sales values that are exclusive of freight, taxes, and insurance. Accordingly, for the final results, we have used Reliance’s sales values reported in its January 9, 2020 response⁵⁴ to determine the denominators used to calculate the countervailable subsidy rate for various subsidy programs in this review, with certain revisions discussed below.

Although Reliance claims that the export sales values that it provided in its January 9, 2020 response are reported on an FOB basis, we do not find that these figures are the most accurate information on the record of this review. Specifically, in the investigation, Commerce found that for certain years “Reliance reported that its total sales, export sales, and subject merchandise sales are based on FOB terms ...”⁵⁵ However, based on a discovery at the investigation verification, Commerce instructed Reliance to “segregate out byproducts, VAT, excise taxes, and traded goods and provide Commerce with the revised sales exports based only on {a certain general ledger account} for the entire AUL to be consistent with Reliance’s reporting methodology for its total export sales of subject merchandise to the United States for 2016....”⁵⁶ Commerce further adjusted these export sales values and relied on the revised reported export sales in the final determination of the investigation.⁵⁷

During the course of this review, Reliance reported export sales values that are identical to the original figures it provided in the investigation that Commerce subsequently revised for the years 2009 through 2016.⁵⁸ In the *Preliminary Results*, we used Reliance’s export sales values that are identical to the unrevised figures it provided in the investigation, as submitted in Reliance’s December 2, 2019 response.⁵⁹ We find that Reliance has not adequately explained why it considers the export sales values Commerce revised in the investigation to be inaccurate. Thus,

⁵⁴ See Reliance’s January 9, 2020 Response at Exhibit CVD4-Q1.

⁵⁵ See Memorandum, “2017-2018 Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber from India: Investigation Final Calculation Memorandum,” dated concurrently with this memorandum at Attachment (Memorandum, “Final Determination Calculation Memorandum for Reliance Industries Limited,” dated January 16, 2018 (Investigation Final Calculation Memorandum) (public version) at 3); see also Reliance’s Letter, “Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber (‘Fine Denier PSF’) from India— Reliance Industries Limited’s Response to Section III,” dated August 2, 2019 (Reliance’s August 2, 2019 Response) at Exhibit A-1 (Investigation Final Calculation Memorandum) (BPI version).

⁵⁶ *Id.*

⁵⁷ *Id.* at Attachment II.

⁵⁸ *Id.*; see also Reliance’s January 9, 2020 Response at Exhibit CVD4-Q1.

⁵⁹ See Preliminary Calculation Memorandum at Attachment II.

we find that Commerce's revisions to Reliance's 2009 to 2016 export sales values pursuant to Commerce's instructions to Reliance at the investigation verification are the most accurate sales information on the record of this review. However, the record does not contain corrected sales information for 2017 and 2018 that excludes byproducts, VAT, excise taxes, and traded goods based on the general ledger account discovered at the investigation verification. Accordingly, as we have reasonably determined that Reliance's reported export sales information for these years are likewise distorted, we find that it is appropriate to adjust Reliance's reported 2017 and 2018 export sales values.

We also disagree with the petitioners' argument that application of AFA is warranted. After evaluating the record of this case, taking into consideration that we never instructed Reliance to reconcile its sales to the account identified in the investigation final calculation memorandum, nor notified Reliance that its reported export sales information was deficient, we have applied facts available to Reliance's export sales values using the revised export sales information contained in the investigation final calculation memorandum for the years 2009 through 2016. For 2017 and 2018, we have reduced Reliance's export sales values reported in its January 9, 2020 response by an average of the difference between the yearly export sales values as revised and used by Commerce in the investigation and the 2009 through 2016 export sales values reported by Reliance in this review, as facts available.⁶⁰

While the petitioners identified an export sales value that is exclusive of deemed exports in the investigation as the proper information for 2016,⁶¹ we likewise do not find this export sales value is the correct figure to use to calculate Reliance's export sales denominator for that year. In this review, we instructed Reliance to separately identify deemed exports in its AUL sales.⁶² However, in the *Preliminary Results*, we stated our intention was to use Reliance's total exports and deemed exports as the denominator for an export-contingent program.⁶³ Additionally, we note that Commerce used exports sales values that we adjusted to include deemed exports in the final investigation benefit calculations.⁶⁴ We find that the petitioners have not presented an argument as to why we should change this methodology for calculating Reliance's export sales denominators in this proceeding. Consequently, we find that Reliance's suggested plug for the 2017 and 2018 figures also does not result in accurate export sales values, as this information is based on export sales values exclusive of deemed exports that were not used as denominators to calculate Reliance's subsidy rates for various subsidy programs in the investigation.

⁶⁰ See Final Calculation Memorandum at 2 and Attachment II. We note that for certain years of the AUL period, Commerce's revised export sales values in the investigation are larger than the export sales values reported by Reliance in this review. As the parties' arguments concern Reliance's reported export sales information being improperly inclusive of byproducts, VAT, excise taxes, and traded goods, we find that the years of the AUL period in which Commerce decreased Reliance's export sales values are the appropriate basis for calculating Reliance's export sales denominators in this review. Accordingly, we have not reduced Reliance's reported export sales values for 2017 and 2018 by the years in which the difference between the revised export sales values in the investigation and the export sales values reported by Reliance in this review are negative.

⁶¹ See Petitioners' Case Brief at 7.

⁶² See Commerce's Letter, "Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Supplemental Questionnaire for Reliance Industries Limited," dated October 9, 2019 at 3.

⁶³ See *Preliminary Results* PDM at 13; see also Final Calculation Memorandum at 3.

⁶⁴ See Investigation Final Calculation Memorandum at 3 and Attachment II.

Comment 3: Discount Rates

*Petitioners' Comments*⁶⁵

- In the *Preliminary Results*, Commerce allocated certain benefits received by Reliance by adjusting the discount rates by the subsequent year. Pursuant to 19 CFR 351.524(d)(3)(i), Commerce should allocate non-recurring benefits based on the discount rate in effect at the time when the benefits were received for the final results. Specifically, Commerce should calculate benefits for the POR with the interest rates only in the years in which Reliance received allocable benefits.

No other party commented on this issue.

Commerce's Position: We agree with the petitioners. A review of the record indicates that for Reliance's allocable benefits, we applied the interest rates in effect for each year of the AUL period in our calculations of Reliance's benefits under the SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials and SGOG Provision of Land for LTAR programs. However, Commerce's regulations state that we "will select a discount rate based upon data for the year in which the government agreed to provide the subsidy."⁶⁶ Accordingly, pursuant to 19 CFR 351.524(d)(3)(i), we have adjusted the interest rates for the calculation of Reliance's benefits under these programs to allocate these non-recurring benefits based on the discount rates in effect at the time when the benefits were received. Therefore, for the final results, we have used the discount rates in effect for the approval year of each non-recurring benefit

Comment 4: Calculation of Duty Exemptions Under the SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials Program and EPCGS

*Petitioners' Comments*⁶⁷

- In the *Preliminary Results*, Commerce treated Goods and Service Tax (GST) as "cenvatable"⁶⁸ for the purpose of Reliance's benefit calculations. However, Reliance failed to substantiate its claim that GST is cenvatable, and thus understated its benefits received under programs where GST was applicable during the POR. Specifically, Reliance failed to explain whether it was reimbursed for input taxes paid and in what amounts, and provided invoices containing duty structure information that does not reflect Reliance's claim that duties are compounded or demonstrate inclusion of reimbursements. Accordingly, Commerce should not treat GST as cenvatable in the calculation of Reliance's program benefits for the final results.

⁶⁵ See Petitioners' Case Brief at 10.

⁶⁶ See 19 CFR 351.524(d)(3)(i).

⁶⁷ See Petitioners' Case Brief at 11-15.

⁶⁸ "Cenvatable" duties refers to one of India's value-added tax systems, in which certain duties are recoverable. See, e.g., Reliance's August 2, 2019 Response at 11; GOI's Letter, "Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Filing of Questionnaire Response," dated July 15, 2019 (GOI's July 15, 2019 Response) at Exhibit M.

- Value-added GST/Integrated Goods and Service Tax (IGST) is not always credited back to a company regardless of program use. For example, the GOI granted exemptions of IGST payments to SEZs, and IGST was exempt for goods procured under the EPCGS, Export-Oriented Units (EOU), and the AAP during the POR. Therefore, IGST exemption or duty forgone for these programs was not always credited back because it was granted on the basis of program use rather than as a standard credit received, and exemption of value-added GST/IGST should be considered a benefit of program use.

*Reliance's Comments*⁶⁹

- In the preliminary results, Commerce incorrectly inflated the total amount of Reliance's duty exemptions in the SEZ program and the EPCGS benefit calculations by summing each duty rate. Commerce should use the benefit amounts reported by Reliance for the SEZ program and EPCGS, because they accurately reflect the benefits received based on Reliance's accounting system and bills of entry. Specifically, Commerce should calculate the total amount of duties owed using the methodology Reliance demonstrated in its August 2, 2019 questionnaire response.
- Commerce incorrectly included cenvatable duties in the SEZ program and EPCGS benefit calculations (*i.e.*, the Countervailing Duty (CVD), Secondary and Higher Education on Countervailing Duty, Additional Duty CVD, and Additional CVD under the SEZ program, and the Special Additional Duty (SAD), CVD, Merit CVD Cess, Merit CVD Higher Education Cess, and IGST under the EPCGS). Accordingly, Commerce should use the benefit amounts reported by Reliance that exclude the cenvatable duties from its SEZ and EPCGS benefit calculations for the final results.

*Reliance's Rebuttal*⁷⁰

- The petitioners' argument regarding value-added GST is not applicable to the GST charged at the time of importation of capital goods and raw materials used as inputs. Specifically, any importer is eligible for reimbursement of GST amounts charged on imported goods that are used for the purpose of manufacturing goods that are ultimately exported. Therefore, because GST exemptions on those imports under the SEZ program and the EPCGS do not provide any benefit to Reliance that is not available to other importers, Commerce should continue to treat GST as cenvatable for the final results.

*Petitioners' Rebuttal*⁷¹

- Commerce should not revise its calculation of Reliance's total duty exemption rate. Reliance did not provide supporting documentation for the entirety of its calculation of the rates it submitted, and improperly excluded certain duties that have not been proven to be cenvatable (*i.e.*, GST/IGST). Additionally, Commerce should reject Reliance's argument to exclude GST from its benefit calculation for the final results, because Commerce has not determined whether this subsidy, as well as other duties Reliance identified as cenvatable (*e.g.*, the Merit CVD Cess, Merit CVD Higher Education Cess, certain additional duties, IGST) are cenvatable.

⁶⁹ See Reliance's Case Brief at 2-4.

⁷⁰ See Reliance's Rebuttal Brief at 7.

⁷¹ See Petitioners' Rebuttal Brief at 2-7.

Commerce’s Position: We disagree with the petitioners in part, and with Reliance in part. A review of the record indicates that in the *Preliminary Results*, for benefits received by Reliance in each year of the AUL period, we excluded IGST from Reliance’s benefit calculation under the EPCGS for redeemed and outstanding licenses and included IGST in Reliance’s benefit calculation under the SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials program.⁷² This decision is consistent with Commerce’s practice in prior India CVD proceedings to exclude duties that we determine are “cenvatable,” or refundable, from the calculation of a respondent’s program benefit.⁷³ Therefore, Commerce has not modified either its exemption of IGST under the EPCGS benefit calculation or inclusion of IGST under the SEZ program benefit calculation. However, Commerce has modified certain aspects of its calculation for the total duty exempted under the EPCGS.

In the *Preliminary Results*, Commerce found that the EPCGS provides an exemption from customs duties on imports of capital goods used in the pre-production, production, and post-production of exported products.⁷⁴ This exemption is contingent on the importer’s commitment to export six times the duty saved on the imported capital goods within a certain number of years.⁷⁵ Reliance reported the duty subject to reduction under the EPCGS, as well as separate IGST and certain other duties on those imported capital goods (*i.e.*, SAD, CVD, Education Cess, Secondary and Higher Education Cess) under the EPCGS during the AUL period.⁷⁶ Reliance also explained that beginning July 1, 2017, capital goods imported duty-free under the EPCGS are exempt from IGST, which generates input credits that are available regardless of whether goods are imported under the EPCGS or under the “regular” import regime.⁷⁷ Reliance also explained that companies received input credits on all duties other than the “basic customs duty and cess on customs duty” for imports prior to the establishment of the IGST regime.⁷⁸

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.*, CVD, SAD, Education Cess) beginning July 1, 2017. In *Cold-Rolled Steel from India*, Commerce declined to include the reported CVD and SAD rates in the benefit calculation for the EPCGS, citing “information on the record and {Commerce’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.”⁷⁹ 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

⁷² See Preliminary Calculation Memorandum at Attachment II.

⁷³ See, *e.g.*, *Forged Steel Fittings from India: Final Affirmative Countervailing Duty Determination*, 85 FR 66535 (October 20, 2020) (*Forged Steel Fittings from India*), and accompanying IDM at Comment 1; see also *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination*, 81 FR 49932 (July 29, 2016) (*Cold-Rolled Steel from India*), and accompanying IDM at Comment 2.

⁷⁴ See *Preliminary Results* PDM at 12.

⁷⁵ *Id.*

⁷⁶ See Reliance’s Letter, “Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber (‘Fine Denier PSF’) from India– Reliance Industries Limited’s Response to Supplemental Questionnaire,” dated November 1, 2019 (Reliance’s November 1, 2019 Response) at Exhibit EPCG.7-P10.

⁷⁷ See Reliance’s August 2, 2019 Response at 17-18.

⁷⁸ *Id.* at 17.

⁷⁹ See *Cold-Rolled Steel from India* IDM at 21.

which the data was provided” for entries under the EPCGS⁸⁰ “because these duties are creditable under India’s VAT system (*i.e.*, they are refunded regardless of whether a firm uses the EPCGS).”⁸¹ In *Quartz Surface Products from India*, Commerce specifically excluded the newly-established IGST from the benefit calculation for the EPCGS because “the GOI reported that imports of capital goods under the EPCGS are exempt from IGST.”⁸² In *Forged Steel Fittings from India*, Commerce likewise excluded the newly-established “IGST from the calculation of the program benefit for EPCGS...” because “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.”⁸³ As a result of these analyses of the EPCGS in each of these proceedings, Commerce determined that it was appropriate to exclude the “cenvatable” duties from the EPCGS benefit calculations.

We find that the information available on the record, together 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 have continued to exclude IGST from the calculation of the program benefit for EPCGS for the final results.⁸⁴ Additionally, we find that the information available on the record, in combination with Commerce’s prior determinations, similarly indicates that payment of the various CVD, SAD, and the Education duties allows companies to earn tax credits toward future obligations under those duties. Accordingly, we have adjusted the benefit calculation under the EPCGS by continuing to exclude, or excluding as applicable, only IGST and these above-referenced categories of duties that Commerce determines are “cenvatable” from the calculation of the program benefit for the final results.⁸⁵

In contrast, Commerce has not determined that either the IGST or other categories of duties that existed prior to July 1, 2017 are “cenvatable” under the SEZ program in any prior India CVD proceeding. Record evidence indicates that companies in SEZs are entitled to import capital goods and raw materials, components, consumables, intermediates, spare parts, and packing materials duty-free in exchange for committing to export all the products they produce, excluding rejects and certain domestic sales.⁸⁶ Additionally, such companies have to achieve a net foreign exchange calculated cumulatively for a period of five years from the commencement of production.⁸⁷ Thus, while all import duties under the SEZ program are exempted if a producer

⁸⁰ 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 IDM at 15; 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.

⁸¹ See *Hot-Rolled Carbon Steel from India* at Comment 21.

⁸² See *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.

⁸³ See *Forged Steel Fittings from India* IDM at 9.

⁸⁴ See Final Calculation Memorandum at 3 and Attachment II.

⁸⁵ *Id.*

⁸⁶ See Reliance’s August 2, 2019 Response at 42-44 and Exhibits SEZ.1 and SEZ.2.

⁸⁷ *Id.* We note that in the PDM, we stated that the export obligation must be met within six years, beginning from the authorization date. See *Preliminary Results* PDM at 12. However, the record demonstrates that companies must achieve a net foreign exchange for a period of five years.

incorporates the imported inputs into the exported finished goods, the import duties must be paid if the producer ultimately sells the final good inside India and does not meet the export obligation.

In *Pet Film from India*, Commerce found that with regard to these SEZ import duty exemptions,

the GOI did not claim or provide any information to demonstrate that such exemptions meet the criteria for non-countervailability set forth in 19 CFR 351.519(a)(4). Specifically, the GOI does not appear to have in place, and does not apply a system that is reasonable and effective for the purposes intended, to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste, nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus, the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(50)(E) of the Act. Absent such information, {Commerce} finds that all of the import duty exemptions provided under this category of the SEZ program are countervailable.⁸⁸

We find that the record of the instant review similarly demonstrates that the GOI does not have a system to confirm the identity and quantity of the inputs that are consumed in the production of the exported products under the SEZ program.⁸⁹ Therefore, we disagree with Reliance's argument that record evidence demonstrates that certain duty rates are "cenvatable" under the SEZ program, and have continued to include each reported duty rate in the calculation of the program benefit for the final results.⁹⁰

Finally, we find that Reliance did not substantiate its calculation of the total duty rate applicable to either the EPCGS or the SEZ program. We note that Commerce requires that companies use the VAT and Import Tariff Exemptions template to report the duty rates and the values of duties paid for each transaction where the company may have received VAT or import duty exemptions in electronic format using Microsoft Excel. We attached this data worksheet template to our initial questionnaire⁹¹ for Reliance to report its EPCGS and SEZ program benefits so that we could understand the programs and the basis for calculating Reliance's benefits. In its questionnaire responses, Reliance reported both the value of its exemptions and the duty rates that would have been applied to their imports absent these programs. Thus, in the *Preliminary Results*, we derived the benefit for the programs by multiplying the total reported duty rates less

⁸⁸ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty New Shipper Review*, 76 FR 30910 (May 27, 2011) (*Pet Film from India*), and accompanying IDM at 14.

⁸⁹ See Reliance's August 2, 2019 Response at 42-44 and Exhibits SEZ.1 and SEZ.2. As Commerce explained in the *Preliminary Results*, Commerce's ability to examine the SEZ program was significantly impeded because the GOI did not provide necessary information relating to the program, and rather stated that "there is no specific program formulated by the GOI bearing the name." Consequently, Commerce is unable to determine whether the GOI maintains and applies a system to confirm the identity and quantity of the inputs that are consumed in the production of the exported products under the SEZ program. See *Preliminary Results* PDM at 5-6.

⁹⁰ See Final Calculation Memorandum at 4 and Attachment II.

⁹¹ See Commerce's Letter, "Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Countervailing Duty Questionnaire," dated June 4, 2019.

the total duty rate charged by the value of the imported goods to arrive that the amount of total duty forgone under each program.⁹²

We find that it is a respondent's responsibility to ensure that the information it provides in its questionnaire responses is accurate and reliable. As such, in the *Preliminary Results*, Commerce relied on the information provided in the data worksheets for Reliance's EPCGS and SEZ program use,⁹³ and did not modify this information based on Reliance's explanation of the IGST duty structure.⁹⁴ While Reliance explained that under the IGST, a company's total duty rate cannot be computed by summing the rates of each duty category, we find that Reliance did not provide evidence to support its assertion of the calculation of a company's total duty rate under the IGST regime, and its reporting of its EPCGS and SEZ program use does not reflect the alternative duty structure it asserts is applicable to its imports under these programs.⁹⁵ Specifically, Reliance has provided no evidence supporting its alternative duty structure calculation and moreover has not reconciled the duty rates and values of duties paid or exempted that are reported in the format of the VAT and Import Tariff Exemptions template for the EPCGS and SEZ program to this suggested duty structure.⁹⁶ Accordingly, for the final results, we have not modified our calculation of the total duty exempted under either the EPCGS or SEZ program.

Comment 5: Application of AFA to the SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials Program and EPCGS

*Reliance's Comments*⁹⁷

- Commerce should not apply AFA with respect to benefits received under the SEZ Duty-Free Importation of Capital Goods and Raw Material Components, Consumables, Intermediates, Spare Parts, and Packing Materials program for the years 2009 through 2011 for the final results. In the *Preliminary Results*, Commerce stated that Reliance failed to report data for benefits received under this program. However, Reliance provided information for benefits received under the SEZ program for all entries made on or after April 1, 2010.
- Commerce should not apply AFA for Reliance's failure to provide information that was requested for the EPCGS. Commerce found that the year of receipt of Reliance's EPCGS program benefit is the year in which the GOI waived the contingent liability on the import duty exemption. Additionally, Commerce determined that Reliance failed to provide benefits for redeemed EPCGS licenses for the years 2009 through 2011. However, Commerce never requested information about benefits related to EPCGS

⁹² See Preliminary Calculation Memorandum at 3-4 and Attachment II.

⁹³ See Reliance's November 1, 2019 Response at Exhibit EPCG.7-P10; see also Reliance's December 2, 2019 Response at Exhibit SEZ 3.2.

⁹⁴ See Reliance's August 2, 2019 Response at 12 and Exhibit DUTY.

⁹⁵ *Id.*; see also Reliance's November 1, 2019 Response at Exhibit EPCG.7-P10; and Reliance's Letter, "Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber ('Fine Denier PSF') from India—Reliance Industries Limited's Response to Supplemental Questionnaire," dated December 2, 2019 (Reliance's December 2, 2019 Response) at Exhibit SEZ 3.2.

⁹⁶ *Id.*

⁹⁷ See Reliance's Case Brief at 4-5.

licenses redeemed during that period, and Reliance provided information for benefits received under the EPCGS for all import entries since 2009. Moreover, there are other dates that may be considered for the date of receipt of the benefit, such as the license date and the date of import entry.

*Petitioners' Rebuttal*⁹⁸

- Commerce should continue to apply AFA to Reliance's reporting of benefits under the SEZ program and the EPCGS for the years 2009 through 2011, because Reliance failed to report complete program use for the entire AUL period despite being provided multiple opportunities to submit this information.
- Reliance was aware that program benefits under EPCGS are calculated utilizing the year in which the GOI waived contingent liability, if a license has been redeemed, as Commerce calculated Reliance's benefits in this manner in the original investigation. Accordingly, Reliance should have reported complete information for EPCGS licenses redeemed in 2009 through 2011.

Commerce's Position: Based on record evidence, we have determined to no longer apply AFA to Reliance's benefits received under the SEZ Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials program and to its redeemed EPCGS licenses for the years 2009 through 2011. For the final results, we are applying facts available because, although Reliance submitted deficient information for its benefits received for redeemed EPCGS licenses and imports under the SEZ program for the years 2009 through 2011, we find that Reliance has otherwise complied with our requests for information for its EPCGS and SEZ program use.

In the *Preliminary Results*, we applied AFA to Reliance's benefits for EPCGS licenses redeemed in 2009 through 2011 because we found that Reliance withheld information regarding Reliance's receipt of benefits under this program.⁹⁹ Commerce instructed Reliance to report all EPCGS licenses it received during the AUL period.¹⁰⁰ Subsequently, in its November 1, 2019 response, Reliance stated that it did "confirm that Reliance has reported all licenses it received, regardless of whether such licenses are utilized in the production of the subject merchandise."¹⁰¹ While a review of the record indicates that Reliance did not report information for any EPCGS licenses redeemed prior to 2012 in its initial and supplemental questionnaire responses, we did not inform Reliance that we identified missing information in its submissions and considered its responses to be deficient. Taking this into consideration, we find that application of AFA is no longer warranted. As facts available, we have instead used the average of the total benefit amounts received for the years 2012 through 2018 as a plug for the three missing years of the AUL period for the final results.¹⁰²

⁹⁸ See Petitioners' Rebuttal Brief at 8-10.

⁹⁹ See *Preliminary Results* PDM at 7-8 and 13.

¹⁰⁰ See Commerce's Letter, "Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Supplemental Questionnaire for Reliance Industries Limited," dated October 9, 2019 at 5.

¹⁰¹ See Reliance's November 1, 2019 Response at 7-8.

¹⁰² See Final Calculation Memorandum at 3 and Attachment II.

With respect to Reliance's claim that there are other dates that may be considered for the date of receipt of the benefit for its redeemed EPCGS licenses, such as the license date and the date of import entry, we disagree. Pursuant to 19 CFR 351.524(b)(2), Commerce "will normally allocate (expense) non-recurring benefits provided under a particular subsidy program to the year in which the benefits are received if the total amount approved under the subsidy program is less than 0.5 percent of relevant sales ... of the firm in question during the year in which the subsidy was approved." Accordingly, in the *Preliminary Results*, we calculated the benefit received under the EPCGS for Reliance's redeemed licenses as the benefit attributable to the POR from the formally-waived duties for imports of capital equipment for which the respondent met export requirements by the end of the POR.¹⁰³ This approach is consistent with Commerce's practice in prior India CVD proceedings, wherein we have determined the year of receipt of the benefit to be the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2).¹⁰⁴ Moreover, Reliance has not provided a reason why Commerce should consider dates other than the year in which the GOI conferred the benefit. Accordingly, we continue to find that the year Reliance redeemed the licenses is the appropriate basis to determine Reliance's receipt of the benefits for redeemed EPCGS licenses. We further note that for each year of the AUL period, Reliance's EPCGS benefits for redeemed licenses have been expensed to the year of receipt.¹⁰⁵ Therefore, Reliance's argument regarding the date of receipt of the EPCGS licenses benefits is moot, as the benefits conferred for 2009 through 2011 will not have an impact on its CVD rate.

Regarding the SEZ program, in the *Preliminary Results*, we applied AFA to Reliance's benefits received under the SEZ program for the years 2009 through 2011.¹⁰⁶ In Commerce's initial questionnaire, we instructed Reliance to report benefits received under the SEZ program for the years 2009 through 2018.¹⁰⁷ Subsequently, in its August 5, 2019 response, Reliance stated that it provided information relating to its receipt of benefits under the SEZ program.¹⁰⁸ While a review of the record indicates that Reliance did not report complete information for SEZ duty-free imports prior to 2012 in its initial and supplemental questionnaire responses, we did not inform Reliance that we identified missing information in the submissions and that we considered its responses to be deficient. Taking this into consideration, we find that application of AFA is no longer warranted. As facts available, we have used the average of the total benefit

¹⁰³ See Preliminary Calculation Memorandum at 3.

¹⁰⁴ See, e.g., *Fine Denier Polyester Staple Fiber from India: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 51387 (November 6, 2017), and accompanying PDM at 21, unchanged in *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination*, 83 FR 3122 (January 23, 2018) (*Fine Denier PSF from India*); see also *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002), and accompanying IDM at Comment 5.

¹⁰⁵ See Final Calculation Memorandum at 3.

¹⁰⁶ See *Preliminary Results* PDM at 7-8 and 15-16.

¹⁰⁷ See Commerce's Letter, "Countervailing Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Countervailing Duty Questionnaire," dated June 4, 2019 (Initial Questionnaire) at 53.

¹⁰⁸ See Reliance's Letter, "Administrative Review of the Countervailing Duty Order on Fine Denier Polyester Staple Fiber ('Fine Denier PSF') from India— Reliance Industries Limited's Partial Response to Section III," dated August 5, 2019 at 1 and Exhibit SEZ 3.2-Import Duty on Capital Goods; see also Reliance's December 2, 2019 Response at Exhibit SEZ 3.2-Imports-CG-AUL.

amounts received for the years 2012 through 2018 as a plug for the three missing years of the AUL period for the final results.¹⁰⁹

Finally, with respect to Reliance's argument that Commerce should not apply AFA to the SEZ program benefits received in 2011, we note that we cannot use the incomplete data provided by Reliance for 2011 to calculate its benefit under this program.¹¹⁰ However, as described above, we are no longer applying AFA and are instead applying facts available to Reliance's SEZ program benefits for 2011. We further note that for each year of the AUL period, Reliance's SEZ program benefits have expensed to the year of receipt.¹¹¹ Therefore, Reliance's argument regarding its partial reporting of the SEZ program benefits is moot, as the benefits conferred for 2011 will not have an impact on its CVD rate.

Comment 6: Land Benchmark

*Reliance's Comments*¹¹²

- In the *Preliminary Results*, Commerce used benchmark price information for land transactions in Mumbai submitted by the petitioners to calculate benefits for Reliance's use of leased land in Gujarat. However, land prices in Mumbai are not comparable to land prices in less-populous Gujarat. Accordingly, Commerce should use the benchmark price information submitted by Reliance for the final results, because this information concerns actual transactions between private parties for land in Gujarat that is similar to Reliance's leased land.

*Petitioners' Rebuttal*¹¹³

- Pursuant to 19 CFR 351.511(a)(2), Commerce gives preference to market prices from actual transactions within the country under investigation in selecting a benchmark. However, information on the record does not demonstrate that the benchmark price information submitted by Reliance is for market transactions between private parties or through a competitively run government auction. Thus, Commerce should not alter the benchmark used for the final results.
- Reliance did not explain how it calculated the unit of measure for the land transactions in its submitted benchmark. Additionally, there is no information on the record demonstrating that these transactions are comparable to its SGOG land transactions, and this information was not publicly obtained. Accordingly, Commerce should continue to use the land benchmark submitted by the petitioners, for which record information demonstrates was a private transaction, based on market rates, and occurred in India.

Commerce's Position: In the *Preliminary Results*, Commerce used the petitioners' submitted land benchmark to calculate the benefit of Reliance's SGOG Land for LTAR transactions because, notwithstanding the location of the land parcel outside of the state of Gujarat, the sale of

¹⁰⁹ See Final Calculation Memorandum at 4 and Attachment II.

¹¹¹ See Final Calculation Memorandum at Attachment II.

¹¹² See Reliance's Case Brief at 5-6.

¹¹³ See Petitioners' Rebuttal Brief at 11-13.

the parcel was an actual private transaction in the country of the investigation.¹¹⁴ With respect to Reliance's submission, we agree with the petitioners' argument that Reliance did not sufficiently explain how it derived the price per square meter. Specifically, Reliance's land benchmark price information does not demonstrate that the land transactions occurred between private parties or through a competitively run government auction.¹¹⁵ Additionally, Reliance's submission includes no explanation for how it calculated the price per square meter for the land transactions, provides no indication that the transactions are comparable to the transactions we are trying to benchmark, and was not publicly obtained.¹¹⁶ Therefore, we do not find Reliance's benchmark to be reliable.

The adequacy of remuneration for government-provided goods or services is determined pursuant to 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2), Commerce measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services for LTAR. It is Commerce's preference to use a transaction-specific (tier-one) benchmark derived from the country under investigation. Consequently, we must rely on actual transaction prices paid by private entities in India. For the final results, we have continued to use the petitioners' benchmark submission because the underlying transaction involves industrial land purchases between private parties in India¹¹⁷ and it is a usable benchmark in accordance with 19 CFR 351.511(a)(2).

Comment 7: Whether the SEZ Programs, TUFS, and MEIS are Countervailable

*Reliance's Comments*¹¹⁸

- Pursuant to 19 CFR 351.525(b)(5)(i), Commerce must find that subsidies that are tied to non-subject merchandise do not provide a countervailable benefit. In the instant case, the record demonstrates that Reliance did not receive any benefit tied to subject merchandise under the SEZ programs, TUFS, and MEIS. Accordingly, Commerce should determine that these programs are not countervailable.
- Regarding the SEZ programs, Reliance imports inputs that are used for manufacturing exported products, and the imports are not sold in the domestic tariff area of India; these imports are not tied to subject merchandise. Furthermore, because SEZs are outside the domestic tariff area of India, companies must pay normal customs duties on any good procured from the SEZ, and a duty exemption under these programs would not confer a financial contribution from the GOI. Commerce has found in prior proceedings that duties and taxes in duty-free zones do not constitute a financial contribution. Thus, Commerce should find that duty exemptions under the SEZ programs are not countervailable.

¹¹⁴ See *Preliminary Results* PDM at 10-11 (citing Petitioners' Letter, "Fine Denier Polyester Staple Fiber from India – Petitioners' Submission of Factual Information to Measure the Adequacy of Remuneration {sic}," dated March 2, 2020 (Petitioners' New Factual Information) at 4 and Exhibits 2A, 2B, and 2C); see also *Preliminary Calculation Memorandum* at 5.

¹¹⁵ See Reliance's August 2, 2019 Response at 95-96 and Exhibit SGOG Land Benchmark.

¹¹⁶ *Id.*

¹¹⁷ See Petitioners' New Factual Information at 4 and Exhibits 2A, 2B, 2C, and 3; see also *Final Calculation Memorandum* at Attachment II.

¹¹⁸ See Reliance's Case Brief at 6-8.

*Petitioners' Rebuttal*¹¹⁹

- Reliance improperly cites to a proposed rule, which is not a Commerce regulation, to assert that subsidies cannot be countervailed if they are not tied to subject merchandise. Moreover, Commerce rejected a similar argument by Reliance in *Yarn from India*, in which Reliance claimed that subsidies are granted to specific production facilities.
- Commerce's practice is to tie a subsidy to particular products or operations only if an application, contract, or approval explicitly indicates government acknowledgement of an intended tie prior to or concurrent with conferral of the subsidy. Additionally, Commerce's regulations state that it will attribute a subsidy to both the input and downstream products produced by a corporation if a subsidy is tied to production of an input product.
- Pursuant to 19 CFR 315.535(b), Commerce may attribute subsidies to certain sales based on the nature of the subsidy. Reliance has failed to demonstrate that benefits received under the SEZ programs, TUFS, and MEIS are tied to non-subject merchandise. Accordingly, Commerce should continue to find Reliance's benefits received under these programs are countervailable and benefit all Reliance's export production, because these subsidies are not tied to particular products or operations.
- With regard to Reliance's arguments as to the countervailability of the SEZ programs, the record does not establish that the GOI is able to track inputs consumed in the production of exported subject merchandise. Moreover, in the final results of the 2016 CVD administrative review of polyethylene terephthalate film, sheet, and strip from India, Commerce disagreed with a similar argument that an SEZ should be considered outside India's customs territory.¹²⁰ Therefore, Commerce should continue to find the SEZ programs countervailable for the final results.

Commerce's Position: We agree with the petitioners and find that the respondent did not provide sufficient evidence supporting its claims that the benefits received under the SEZ programs, TUFS, and MEIS are tied to a certain product or market and cannot be transferred or used in the production or sale of subject merchandise. Thus, we continue to find that benefits received under the SEZ programs, TUFS, and MEIS are not tied to the production of any particular merchandise and benefit all Reliance's production.

Commerce normally attributes domestic subsidies to all products sold by a firm. However, in accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, we will attribute that subsidy to only that product or market. Whether a subsidy is tied to a particular product is a fact-specific inquiry in each case. Further, as the *CVD Preamble* explains,

we are extremely sensitive to potential circumvention of the countervailing duty law. We intend to examine all tying claims closely to ensure the attribution rules are not manipulated to reduce countervailing duties. If the Secretary determines as a factual matter that a subsidy is tied to a particular product, then the Secretary will attribute that subsidy to sales of that particular product, in accordance with (b)(5). If subsidies

¹¹⁹ See Petitioners' Rebuttal Brief at 13-18.

¹²⁰ See *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 5.

allegedly tied to a particular product are in fact provided to the overall operations of a company, the Secretary will attribute the subsidy to sales of all products by the company.¹²¹

According to the *CVD Preamble*, Commerce determines whether a subsidy is tied to a specific product or market by examining “the purpose of the subsidy based on information available at the time of bestowal. Once the firm receives the funds, it does not matter whether the firm used the government funds, or some of its own funds that were freed up as a result of the subsidy, for the stated purpose or the purpose that we evince.”¹²² The courts have previously upheld Commerce’s analysis in this regard.¹²³ Moreover, the burden of producing relevant evidence that benefits are tied to a particular market or product belongs with the respondents, not Commerce.¹²⁴ Based on the facts available on the record of this proceeding, we determine that the respondent did not submit sufficient information to demonstrate that the SEZ programs, TUFS, and MEIS are tied to non-subject merchandise.

Regarding the SEZ programs (*i.e.*, SEZ Import Duty Exemption and SEZ Electricity Duty Exemption), Reliance’s argument that it does not produce the subject merchandise within an SEZ is an insufficient basis on which to establish that the benefits of the SEZ programs are tied to non-subject merchandise. Reliance reported that, according to rule 53 of the “Special Economic Zone Rules 2006,” “as in force at the time the additions to the SEZ unit were approved, the SEZ unit should undertake to export its production of goods and services (excluding rejects and sales in the domestic tariff areas as per provisions of the SEZ scheme) and achieve a positive net foreign exchange, calculated cumulatively for a period of five years from the commencement of production, in order to be eligible under the SEZ scheme.”¹²⁵ Indeed, the GOI reported that SEZ benefits are “contingent upon export performance of the applicant”¹²⁶ and “available for all entities located in an SEZ and all entities supplying or selling electricity to a unit in an SEZ.”¹²⁷ When asked if any other eligibility criteria is taken into account or whether the authority has any discretion that goes beyond the criteria laid out in the law, the GOI stated that this was not the case.¹²⁸ Thus, the participating Reliance plant within the SEZ is eligible to receive these benefits because of its ability to meet the SEZ net foreign exchange requirement, not because the plant produces specific products.

The issue of tying regional subsidies to the production in a particular region or to a particular factory or mill of a respondent has previously been raised before Commerce.¹²⁹ Our subsidy attribution regulations explicitly reject the concept that benefits from regional subsidies are tied

¹²¹ See *Countervailing Duties; Final Rule*, 63 FR 56348 (November 25, 1998) (*CVD Preamble*) at 65400.

¹²² *Id.* at 65403.

¹²³ See *Maverick Tube Corp. v. United States*, Slip Op. 16-16, Consol. Court No. 14-00229 (CIT 2016), *aff’d.*, *Maverick Tube Corp. v. United States*, 857 F.3d 1353 (Fed. Cir. 2017).

¹²⁴ See *Fine Denier PSF from India* IDM at 56.

¹²⁵ See Reliance’s August 2, 2019 Response at 42-43 and Exhibit SEZ.2.

¹²⁶ See GOI’s Letter, “Supplemental Questionnaire,” dated January 6, 2020 (GOI’s January 6, 2020 Response) at 15.

¹²⁷ *Id.* at 16.

¹²⁸ *Id.* at 15-17.

¹²⁹ See, e.g., *Polyester Textured Yarn from India: Final Affirmative Countervailing Duty Determination*, 84 FR 63848 (November 19, 2019) (*Yarn from India*), and accompanying IDM at Comment 5.

to the production in that particular region and to the particular factory located in that region.¹³⁰ Reliance's plant within the SEZ is a subdivision of Reliance, as evidenced by the fact that Reliance files its taxes as one corporate entity.¹³¹ Commerce does not tie subsidies on a plant – or factory-specific basis, nor do the statute or the regulations provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm (*i.e.*, a factory located within an SEZ or specific state).¹³² Reliance is misguided in concluding that, because subsidies were provided to a plant that does not produce subject merchandise, the subsidies are tied to the production of non-subject merchandise, because the plant is a *division* of a subject merchandise producer (*i.e.*, Reliance). Reliance states that “{t}he PSF plants of {Reliance} are neither situated in a SEZ nor do they procure raw materials for the production of PSF from any of the plants situated in SEZs. Therefore, benefits under the SEZ scheme, whether received or not, are not tied to the subject merchandise.”¹³³ However, Commerce has stated that money is fungible within a single integrated company and its use for one purpose may free up money to benefit another purpose.¹³⁴ Thus, for the final results, Commerce will continue to countervail the SEZ programs for the reasons described above.

Furthermore, we disagree with Reliance's assertion that an SEZ is located outside India's customs territory, and as such, imports into the SEZ do not confer a financial contribution from the GOI. The record demonstrates that duties are applied when goods enter into an SEZ and companies are held liable for those duties unless the export requirement is met.¹³⁵ We also note that record evidence indicates that SEZs are not territories outside the customs territory of India because the GOI continues to regulate SEZs. Specifically, the “Special Economic Zones Act, 2005” confirms the GOI's ultimate control over an SEZ, including granting it the power to review any letter of approval for an SEZ.¹³⁶ Moreover, if SEZs were operated outside of the customs territory of India, there would be nothing to exempt or refund unless duties are applicable on imports in the first place.¹³⁷ Therefore, Commerce continues to determine, pursuant to 19 CFR 351.505(d)(1), that until the contingent liability for the unpaid duties is officially waived by the GOI, we consider the unpaid duties on imports into an SEZ to be an interest-free loan made to Reliance at the time of importation. We also determine the unpaid electricity duty and cess on the basis of location in an SEZ to be revenue forgone by the GOI.

We continue to find that the SEZ programs are specific pursuant to section 771(5A)(D) of the Act, because they are available only to industrial undertakings in the State of Gujarat.¹³⁸ The programs provide a financial contribution in the form of revenue forgone by the SGOG, pursuant

¹³⁰ See *CVD Preamble* at 65404.

¹³¹ See Reliance's August 2, 2019 Response at Exhibits B-5, B-5.1, and B-5.2.

¹³² See *Final Results and Partial Rescission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber from Canada*, 67 FR 67388 (November 5, 2002), and accompanying IDM at Comment 8.

¹³³ See Reliance's August 2, 2019 Response at 4.

¹³⁴ See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002), and accompanying IDM at Comment 53.

¹³⁵ See Reliance's August 2, 2019 Response at Exhibit SEZ.2.

¹³⁶ *Id.* at Exhibit SEZ.1.

¹³⁷ See *Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 2946 (January 19, 2017), and accompanying IDM at Comment 1.

¹³⁸ See *Preliminary Results PDM* at 17.

to section 771(5)(D)(ii) of the Act, because they provide a financial contribution to beneficiaries, in the form of non-recurring benefits in the case of the SEZ Duty-Free Importation program, under 19 CFR 351.524(b)(2), and in the form of recurring benefits in the case of the SEZ Electricity Duty and Cess exemption, under 19 CFR 351.524(c).¹³⁹ Record information demonstrates that Reliance received benefits under the SEZ programs,¹⁴⁰ and we continue to calculate a benefit and subsidy rate for Reliance for the SEZ programs¹⁴¹ because Reliance has presented no new evidence that would justify revisiting or altering the preliminary results of countervailability for these programs.

Regarding the MEIS, Reliance argues that subject merchandise is not included in the list of eligible products under the laws that govern the administration of the program; thus, the program is tied to non-subject merchandise. The GOI provided Appendix 3B to the Foreign Trade Policy (FTP) of 2015-2020, which it states lists products eligible for MEIS; however, the GOI did not provide the language of the FTP of 2015-2020 itself.¹⁴² Reliance, in its questionnaire responses, provided a copy of Appendix 3B, which does not list the subject merchandise.¹⁴³ Reliance also provided public notices dated July 3, 2017, and August 22, 2017, which include what appear to be updates to the list of eligible products in Appendix 3B.¹⁴⁴ We note that the notices include products not listed in the Appendix 3B provided by the GOI, which predates the public notices that Reliance submitted in its questionnaire responses.¹⁴⁵ Moreover, the GOI, in its questionnaire responses germane to the DDB program, provided sections of the Customs Manual 2015, which, in Chapter 23 titled “Export Promotion Schemes,” at 2.2, discusses the FTP of 2015-2020 and the MEIS.¹⁴⁶ Namely, at 2.2(c), the Customs Manual 2015 explains that “MEIS {...} scrips are freely transferable and can be used for import of any items except those listed in appendix 3A of Appendices.”¹⁴⁷ Neither the GOI nor Reliance provided Appendix 3A, but the Customs Manual 2015 suggests that MEIS scrips are transferable for any products except those listed in Appendix 3A, which is not on the record of the proceeding. Therefore, Commerce concludes that the GOI did not provide an up-to-date or complete record of regulations regarding this program.

We find that Reliance did not provide sufficient evidence to support its claim that the MEIS benefits are tied to non-subject merchandise and cannot be transferred or used in the production or sale of subject merchandise. Moreover, based on the inconsistencies in the record, we find that the GOI did not provide a complete record of all legislation relevant to the MEIS (*i.e.*, amendments, appendices, public notices, and revisions). While Reliance provided certain additional policy documents outlining eligible products, these documents each included product lists that differed from one another. Therefore, without a full accounting of all the relevant legislation regarding this program and a comprehensive, up-to-date list of eligible products from Reliance and the GOI, we cannot reliably determine that MEIS is tied to non-subject merchandise or even what products are eligible for this benefit.

¹³⁹ *Id.*

¹⁴⁰ See Reliance’s November 1, 2019 Response at Exhibits SEZ 3.1, SEZ 3.2, and SEZ 3.3.

¹⁴¹ See Final Calculation Memorandum at 4-5 and Attachment II.

¹⁴² See GOI’s January 6, 2020 Response at Exhibit D.

¹⁴³ See Reliance’s November 1, 2019 Response at Exhibit App3B A.

¹⁴⁴ *Id.* at Exhibit App3B B.

¹⁴⁵ See GOI’s January 6, 2020 Response at Exhibit D.

¹⁴⁶ See GOI’s July 15, 2019 Response at Exhibit M.

¹⁴⁷ *Id.*

We continue to find that the MEIS is specific, pursuant to section 771(5A)(A) and (B) of the Act, because eligibility to receive the scrips is contingent upon exportation.¹⁴⁸ 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 import of goods.¹⁴⁹ Record information demonstrates that Reliance received benefits under the program,¹⁵⁰ and we continue to calculate a benefit and subsidy rate for Reliance for this program¹⁵¹ because Reliance has presented no new evidence that would justify revisiting or altering the preliminary results of countervailability for this program.

With respect to the TUFS, we continue to find the program is specific pursuant to section 771(5A)(D)(iii) of the Act, because access to the subsidy is expressly limited to the textile industry.¹⁵² This program provides a financial contribution in the form of direct transfer of funds pursuant to section 771(5)(D)(ii) of the Act, because Reliance reported receiving reimbursement for interest payments on sanctioned loans from the Industrial Development Bank of India, effectively reducing Reliance's interest rates.¹⁵³ Record information demonstrates that Reliance received benefits under the program.¹⁵⁴ However, Reliance's arguments as to the countervailability of this program are moot, as the benefit conferred is non-measurable and will not have an impact on its CVD rate.

VIII. RECOMMENDATION

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



Agree



Disagree

12/21/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

¹⁴⁸ See GOI's July 15, 2019 Response at 36.

¹⁴⁹ *Id.*

¹⁵⁰ See Reliance's November 1, 2019 Response at Exhibit MEIS-Rcpt-Details-as-on-2210219.

¹⁵¹ See Final Calculation Memorandum at 4 and Attachment II.

¹⁵² *Id.* at 24-26.

¹⁵³ See Reliance's August 2, 2019 Response at 36.

¹⁵⁴ *Id.* at Exhibit TUFS.3.