coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500.

If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Countervailing Duty Order

In accordance with section 705(d) of the Tariff Act of 1930, as amended (the Act), on June 24, 2008, the Department published its final determination in the countervailing duty investigation of LWS from the PRC. *See Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008).

On July 30, 2008, the ITC notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured as a result of subsidized imports of LWS from the PRC.

The ITC determined that critical circumstances do not exist with respect to subject imports from the PRC. As a result of the ITC's negative critical circumstances determination, U.S. Customs and Border Protection (CBP) will refund all cash deposits and release all bonds collected on LWS from the PRC entered or withdrawn from warehouse, for consumption on or after September 4, 2007, and before December 3, 2007.

Countervailing duties will be assessed on all unliquidated entries of LWS from the PRC entered, or withdrawn from warehouse, for consumption on or after December 3, 2007, the date on which the Department published its preliminary affirmative countervailing duty determination in the **Federal Register**, and before April 1, 2008, the date on which the Department instructed the CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act, and on all entries of subject merchandise made on or after the date of publication of the ITC's final injury determination in the **Federal Register**. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of LWS made on or after April 1, 2008, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties due to the Department's discontinuation, effective April 1, 2008, of the suspension of liquidation.

In accordance with section 706 of the Act, the Department will direct CBP to reinstitute the suspension of liquidation for LWS from the PRC, effective the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below:

Producer/exporter	Net subsidy rate (percent)
Han Shing Chemical Co., Ltd. (Han Shing Chemical)	223.74
Ningbo Yong Feng packaging Co., Ltd. (Ningbo)	223.74
Shandong Qilu Plastic Fabric Group, Ltd. (Qilu)	304.40
Shandong Shouguang Jianyuan Chun Co., Ltd. (SSJ)/Shandong Longxing Plastic Products Company Ltd. (SLP)	352.82
Zibo Aifudi Plastic Packaging Co., Ltd. (Aifudi)	29.54
All Others	226.85

This notice constitutes the countervailing duty order with respect to LWS from the PRC pursuant to section 706(a) of the Act. Interested parties may contact the Central Records Unit (CRU), Room 1117 of the main Commerce building, for copies of an updated list of countervailing duty orders currently in effect.

This countervailing duty order is issued and published in accordance with sections 705(c)(2) and 705(d) of the Act and 19 CFR 351.211.

Dated: August 4, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–18195 Filed 8–6–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–533–825)

Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on polyethylene terephthalate (PET) film, sheet and strip from India for the period January 1, 2006 through December 31, 2006. We preliminarily determine that subsidies are being provided on the production and export of PET film from India. See the ''Preliminary Results of Administrative Review'' section, below. If the final results remain the same as the preliminary results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties. Interested parties are invited to comment on the preliminary results of this administrative review. *See* the ''Public Comment'' section of this notice, below.

EFFECTIVE DATE: August 7, 2008

FOR FURTHER INFORMATION CONTACT: Elfi Blum, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0197.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published in the **Federal Register** the countervailing duty (CVD) order on PET film from India. *See Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 67 FR 44179 (July 1, 2002) (*PET Film Order*). On July 3, 2007, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72

FR 36420 (July 3, 2007). On July 30, 2006, the Department received timely requests to conduct an administrative review of the *PET Film Order* from MTZ Polyfilms, Ltd. (MTZ), and from Jindal Poly Films Limited of India (Jindal), formerly named Jindal Polyester Limited, both of which are Indian producers and exporters of subject merchandise.

On August 24, 2007, the Department initiated an administrative review of the CVD order on PET film from India covering MTZ and Jindal for the period January 1, 2006 through December 1, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 48613 (August 24, 2007). On October 3, 2007, pursuant to 19 CFR 351.213(d)(1), Jindal timely withdrew its request for an administrative review of the CVD order on PET film from India. Because no other party requested a review of Jindal, on April 10, 2008, the Department rescinded the administrative review of Jindal. *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Notice of Partial Rescission of Administrative Review of the Countervailing Duty Order*, 73 FR 19474 (April 10, 2008).

The Department issued questionnaires to the Government of India (GOI) and MTZ on October 5, 2007. On November 27, 2007, the GOI submitted its questionnaire response. MTZ submitted its questionnaire response on December 4, 2007. On February 22, 2008, the Department extended the time limit for the preliminary results of the countervailing duty administrative review until July 30, 2008. *See Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 73 FR 9769 (February 22, 2008).

The Department issued its first supplemental questionnaires to the GOI and MTZ on March 14, 2008, and April 11, 2008, respectively. On March 28, 2008, the GOI submitted its first supplemental response, and MTZ submitted its first supplemental response on May 7, 2008. The Department issued a second supplemental questionnaire to the GOI and to MTZ on May 14, 2008 and on May 28, 2008, respectively. The GOI submitted its response on May 28, 2008. On June 3, 2008, the Department issued a third supplemental questionnaire to the GOI and on June 9, 2008 to MTZ. The GOI submitted its response to the third supplemental questionnaire on June 10, 2008. MTZ responded to the second and third supplemental questionnaire on June 23, 2008. On July 11, 2008, the Department issued a fourth supplemental questionnaire to the GOI and MTZ, respectively. The GOI filed its response on July 18, 2008, and MTZ on July 22, 2008.

Scope of the Order

For purposes of the order, the products covered are all gauges of raw, pretreated, or primed Polyethylene Terephthalate Film, Sheet and Strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance–enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Subsidies Valuation Information

Allocation Period

Under 19 CFR 351.524(d)(2)(i), we will presume the allocation period for non–recurring subsidies to be the average useful life (AUL) prescribed by the Internal Revenue Service (IRS) for renewable physical assets of the industry under consideration (as listed in the IRS's 1977 Class Life Asset Depreciation Range System, and as updated by the Department of the Treasury). This presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. Specifically, the party must establish that the difference between the AUL from the tables and the company–specific AUL or country–wide AUL for the industry under investigation is significant, pursuant to 19 CFR '351.524(d)(2)(i) and (ii). For assets used to manufacture plastic film, such as PET film, the IRS tables prescribe an AUL of 9.5 years.[1] In the previous segment of this proceeding, the Department determined that MTZ had rebutted the presumption and applied a company–specific AUL of 20 years. *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008), and accompanying *Issues and Decision Memorandum*, at ''Allocation Period'' (*PET Film Final Results of 2005 Review*). Therefore, the Department is using an AUL of 20 years for MTZ in allocating non–recurring subsidies.

Benchmark Interest Rates and Discount Rates

For programs requiring the application of a benchmark interest rate or discount rate, 19 CFR 351.505(a)(1) states a preference for using an interest rate that the company could have obtained on a comparable loan in the commercial market. Also, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient ''could actually obtain on the market'' the Department will normally rely on actual short–term and long–term loans obtained by the firm. However, when there are no comparable commercial loans, the Department may use a national average interest rate, pursuant to 19 CFR 351.505(a)(3)(ii).

In addition, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government–owned special purpose bank for purposes of calculating benchmark rates. The Department has previously determined that the Industrial Development Bank of India (IDBI) is a government–owned special purpose bank. *See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006), and accompanying *Issues and Decision Memorandum*, at *Comment 3* (*PET Film Final Results of 2003 Review*). Further, in the *PET Film Final Results of 2005 Review*, at ''Benchmark Interest Rates and Discount Rates,'' the Department determined that the Industrial Finance Corporation of India (IFCI) and the Export–Import Bank of India (EXIM) are government–owned special purpose banks. As such, the Department does not use loans from the IDBI, IFCI, or EXIM, if reported by respondents, as a basis for loan benchmark.

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a government- provided, short–term loan program, the preference would be to use a company–specific annual average of the interest rates on comparable commercial loans during the year in which the government–provided loan was taken out, weighted by the principal amount of each loan. For this review, the Department required a rupee–denominated short–term loan benchmark rate to determine benefits received under the Pre–Shipment Export Financing and Post–Shipment Export Financing programs. For further information regarding this program, *see* the ''Pre–Shipment and Post–Shipment Export Financing'' section below.

[1] For our subsidy calculations, we round the 9.5 years up to 10 years.

We requested from MTZ information on rupee–denominated and U.S. dollar–denominated short–term commercial loans outstanding during the period of review (POR) on three separate occasions: in the original questionnaire, the first supplemental questionnaire, and in the second supplemental questionnaire. MTZ reported that it did not receive rupee–denominated and U.S. dollar–denominated short–term commercial loans. MTZ further stated that it was unable to provide loan information in the form requested by the Department. Specifically, MTZ stated that MTZ does not maintain the information in a form permitting extraction of the data as requested by the Department. In response to the Department's fourth supplemental questionnaire, MTZ provided the Department with information on its short–term rupee–denominated loans during the POR. *See MTZ's Fourth Supplemental Questionnaire Response*, at S4–1 and Exhibits S4–1(a) (July 22, 2008) (*MTZ's Fourth Supplemental Questionnaire Response*). However, the Department finds MTZ's information to be incomplete. For further discussion, *see* the ''Pre–Shipment and Post–Shipment Export Financing'' section below. Because MTZ provided the Department with incomplete information regarding its short–term rupee–denominated loans for purposes of establishing a company–specific benchmark loan interest rate, and is unable to provide us with the information requested to allow for the calculation of long–term rupee and U.S. dollar denominated benchmark rates, we are using a national average dollar–denominated short–term and long–term interest rate, as reported in the International Monetary Fund's publication ''International Financial Statistics'' (IMF Statistics), in accordance with 19 CFR 351.505(a)(3)(ii). Further, for those programs requiring a rupee–denominated discount rate or the application of a rupee–denominated long–term benchmark rate, we also used national average interest rates from the IMF Statistics, pursuant to 19 CFR 351.505(a)(3)(ii). With respect to long–term loans and grants allocated over time, the Department required benchmarks and discount rates to determine benefits received under the Export Promotion Capital Goods Scheme (EPCGS) program. As stated above, MTZ was unable to report comparable commercial long–term rupee–denominated loans for all required years.[2] Therefore, we relied on the IMF statistics as benchmarks for the required years.

Programs Preliminarily Determined to be Countervailable

1. Pre–Shipment and Post–Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short–term pre–shipment financing, or ''packing credits,'' to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre–shipment loans for working capital purposes (*i.e.*, purchasing raw materials, warehousing, packing, transportation, etc.) for merchandise destined for exportation. Companies may also establish pre–shipment credit lines upon which they draw as needed. Limits on credit lines are established by commercial banks and are based on a company's creditworthiness and past export performance. Credit lines may be denominated either in Indian rupees or in a foreign currency. Commercial banks extending export credit to Indian companies must, by law, charge interest at rates determined by the RBI.

Post–shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to the lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of the proceeds from the sale to the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize proceeds from their export sales within 180 days of shipment. Post–shipment financing is, therefore, a working capital program used to finance export receivables. In general, post–shipment loans are granted for a period of not more than 180 days.

In the investigation, the Department determined that the pre–shipment and post–shipment export financing programs conferred countervailable subsidies on the subject merchandise because: (1) the provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act as a direct transfer of funds in the form of loans; 2) the provision of the export financing confers benefits on the respondents under section 771(5)(E)(ii) of the Act inasmuch as the interest rates provided under these programs are lower than commercially available interest rates; and (3) these programs are specific under section 771(5A)(B) of the Act because they are contingent upon export performance. *See 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 *Issues and Decision Memorandum* (*PET Film Final Determination*), at ''Pre–Shipment and Post–Shipment Financing.'' There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to find this program countervailable.

In response to the original questionnaire, MTZ reported that in 2005 it obtained packing credits based on its ability to present its export orders to its bank and to receive, as a loan, a portion of the funds to be paid by the customer in advance. As these payments are to be made in foreign currency and against firm sales, MTZ states, it pays a lower rate of interest on those foreign currency short–term loans than for other short term borrowing. According to MTZ, these short–term loans were not given under the Pre- and Post–Shipment Programs because MTZ did not borrow from the Reserve Bank of India. MTZ further stated that it did not receive any packing credits in 2006, and therefore, provided no other information with respect to this program. *See MTZ's Original Questionnaire Response*, at 12.

In its first supplemental response, MTZ reiterated that it obtains loans from its banks based on its ability to take export orders, and these loans are not Pre–and Post–Shipment export

[2] MTZ provided the Department with limited information regarding its long-term loans for purposes of establishing a company-specific benchmark. In its original questionnaire response, MTZ stated that it did not receive any packing credits in 2006 and thus did not respond to the benchmark questions. In the same response MTZ did not address the Benchmark Appendix for long-term loans with respect to programs such as EPCGS. *See MTZ's Questionnaire Response*, at 12 (December 5, 2007) (*MTZ's Questionnaire Response*). In its first supplemental response, MTZ provided bank ledger accounts including postings dating back to 1999. *See MTZ's First Supplemental Questionnaire Response*, at 4-5, and Exhibit S1-4(a) (May 7, 2008) (*MTZ's First Supplemental Response*). MTZ further provided loan agreements for three banks, but MTZ did not clearly identify which supporting information pertains to its short-term loan and long-term loans. In its second supplemental questionnaire, the Department requested that MTZ fill out the prepared spreadsheet to allow, among other information, for the calculation of benchmarks. MTZ, in its second supplemental response, stated that it is unable to extract the loan data in the form requested by the Department, as the information is not maintained , if at all, in that form. *See MTZ's Second Supplemental Response*, at S2-1-2, (June 23, 2008) (*MTZ's Second Supplemental Questionnaire Response*).

financing identified by the Department because MTZ does not borrow money from the RBI. Furthermore, MTZ maintained that the Department had defined the term ''packing credit'' as credit provided by the RBI. In addition, contrary to its claim that it did not receive any packing credits, MTZ included supporting documentation for one such pre–shipment credit obtained during the POR. *See MTZ's First Supplemental Questionnaire Response*, at 5–6, and Exhbit S1–5.

In response to the Department's second supplemental questionnaire, requesting that MTZ provide information regarding all short–term loans outstanding during the POR, MTZ referred to Exhibit S2–1. However, this exhibit was neither included in the paper copy of the response nor in the electronic submission of the spreadsheets. *See MTZ's Second Supplemental Questionnaire Response*, at S2–1.

The GOI, in its first supplemental response, confirmed that, under the pre- and post–shipment export financing program, commercial banks extend working capital loans to exporters to purchase raw materials, etc., and that those exporters:

> generally qualify for export financing under the program by presenting to a bank a confirmed export order or letter of credit issued by a foreign importer. The bank then establishes pre–shipment credit limits upon which the exporter may draw loans as needed.

See GOI's First Supplemental Questionnaire Response, at 13–14 (March 28, 2008) (*GOI's First Supplemental Questionnaire Response*).

The GOI further reported that the RBI sets a ceiling on the interest rates banks may charge to borrowers under the program. Within this ceiling rate, banks are free to fix the interest rates for exporters on the basis of their actual cost of funds, operating expenses, etc. Also, in the same response, the GOI states that the ''RBI has not prescribed any application process or application form for Export Credit program. Commercial banks directly administer the program in accordance with their own procedures.'' *Id.* at 15.

MTZ's description of the process and conditions for obtaining these ''packing credits'' for export is consistent with the GOI's own description of its pre–shipment and post–shipment program, and the Department's description above. The Department has not, in this administrative review or any prior segment under this order defined pre–shipment and post–shipment loans under this program as short–term loans obtained by a respondent from the RBI. On the contrary, the Department specifically stated that ''the RBI, *through commercial banks*, provides short–term pre–shipment financing, or packing credits, to exporters. . . Commercial banks extending export credit to Indian companies must, by law, charge interest at rates determined by the RBI.'' *See PET Film Final Results of 2005 Review*, at ''Pre–and Post–Shipment Program,'' (emphasis added).

On July 11, 2008, the Department issued a fourth supplemental questionnaire to provide MTZ with an additional opportunity to provide the information that it claimed to have provided in its second supplemental questionnaire response. In its response, MTZ stated that the missing Exhibit S2–1 from its second supplemental response related to the pre- and post–shipment loans. Instead of providing a copy of the missing Exhibit S2–1, MTZ provided two spreadsheets in response to the Department's renewed request to report all short–term loans outstanding during the POR: ''Short–Term Interest Bench Mark'' {sic} and ''Pre- and Post–Shipment Financing.'' The written response to the Department's request did not provide any descriptions or explanation of the loan data MTZ reported in the spreadsheets. *See MTZ's Fourth Supplemental Questionnaire Response*, at S4–1 and Exhibits S4–1(a) and S4–1(A)(ii) (July 22, 2008) (MTZ's Fourth Supplemental Questionnaire Response). Furthermore, upon review of MTZ's new information, the Department was unable to reconcile the information provided by MTZ in this response with the information in *MTZ's First Supplemental Response*, at S1–5. Specifically, the short–term loan information submitted in Exhibit S1–5 of the first supplemental response was neither reflected in the spreadsheet termed ''Short–Term Interest Bench Mark'' {sic} nor in the spreadsheet termed ''Pre- and Post–Shipment Financing.'' *See Fourth Supplemental Questionnaire Response*, at Exhibit S3–1(a) and S3–1(a)(ii). Based on this analysis, the Department determines that, despite repeated requests for complete information, the short–term loan information provided by MTZ remains incomplete, and is thus unreliable and unuseable.

The Department preliminarily determines that MTZ obtained pre–shipment and post shipment export financing loans under the GOI's Pre–Shipment and Post–Shipment Export Financing program because the application process and requirements described by MTZ to obtain short–term loans from commercial banks for pre–shipment and post–shipment export financing (*see MTZ's First Supplemental Questionnaire Response*, at 5–6), is consistent with the description of the program provided by the GOI (*see GOI's First Supplemental Response*, at 13–15). *See also PET Film Final Results of 2005 Review*, at ''Pre–and Post Shipment Program.'' As discussed above, the Department repeatedly requested that MTZ provide all short–term loans outstanding during the POR, and record evidence indicates that MTZ has failed to provide the Department with reliable and useable information regarding its short–term export financing loans. As a result, the Department does not have the information necessary to calculate a rate for MTZ based on its own information under the pre–shipment and post–shipment program for theses preliminary results.

Application of Facts Available

Section 776 of the Tariff Act of 1930, as amended (the Act), governs the use of facts available and adverse facts available. Section 776(a) provides that if an interested party or any other person: (1) withholds information that has been requested by the Department; (2) fails to provide such information by deadlines or in the form and manner requested; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching its determination. The statute requires that certain conditions be met before the Department may resort to facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or to explain the deficiency.

If the party fails to remedy the deficiency within the applicable timelines, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) of the Act if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has

demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

For these preliminary results, we determine that the application of facts available is warranted with respect to MTZ for the pre–shipment and post–shipment export financing program. As noted above, we asked MTZ on three occasions to provide the Department with its short–term loan information. MTZ first responded that it did not believe it participated in the program because it did not obtain loans from the RBI, and because it did not receive any packing credits in 2006. *See MTZ Questionnaire Response*, at 12. MTZ did not provide any loan information. However, in its original questionnaire, the Department stated that ''{t}he Reserve Bank of India (RBI), *through commercial banks*, provides pre–shipment financing or packing credits,' to exporters'' (emphasis added). The Department, from the onset of this administrative review, clearly identified the pre–shipment and post–shipment export financing loans under this program as loans obtained from commercial banks, and not through the RBI. This language is consistent with the language used to describe the program in every other segment of this proceeding.

In its first supplemental response, MTZ again failed to supply any loan data and reiterated the application process described in the original response, and that it believes that the loans it obtained are not part of the pre- and post shipment export financing program identified by the Department, as it does not borrow from the RBI. In the same response, MTZ asserted that the Department had defined ''packing'' credits ''as being those credits which were expressly provided by the Reserve Bank of India.'' *See MTZ's First Supplemental Questionnaire Response*, at 5–6. Exhibit S1–5 of the same response provided sample documentation for export financing obtained by MTZ during the POR. This exhibit served as sample documentation supporting the application process for export financing, as described in MTZ's response, and was issued during the POR. Not only did MTZ's description of the application process coincide with the Department's and the GOI's description of the program, but it also evidenced that MTZ obtained export financing through this GOI program during the POR. Since this exhibit is proprietary, we will further discuss this exhibit in MTZ's calculation memorandum under ''Loans.''

In the second supplemental questionnaire, the Department again requested that MTZ report all pre–and post–shipment export loans received during the POR from private commercial or semi–commercial banks, as well as from any government–owned entity. In response, MTZ referred to Exhibit S2–1 of its *MTZ's Second Supplemental Questionnaire Response*; however, the exhibit was not included in either the written response or the data set.

On July 11, 2008, in order to clarify whether there was such an exhibit with the loan information, the Department again, in a fourth supplemental questionnaire, asked MTZ to report all its short–term loans outstanding during the POR, and also to report all pre–shipment and post–shipment export financing loans separately. In *MTZ's Fourth Supplemental Questionnaire Response*, it provided two spreadsheets, ''Short–Term Interest Bench Mark'' {sic} and ''Pre- and Post–Shipment Financing.'' Upon examining the information provided in the spreadsheets, the Department was unable to find the loan identified in Exhibit S1–5 of *MTZ's First Supplemental Questionnaire Response* in either Exhibit S3–1(a), ''Short–Term Interest Bench Mark'' {sic} or S3–1(a)(ii), ''Pre and Post Shipment Financing,'' of *MTZ's Fourth Supplemental Questionnaire Response*. As a result, we have preliminarily determined that the loan data is not complete; without a reconciliation, the extent to which this data is incomplete is unclear.

As discussed above, the Department asked MTZ to provide the requested pre–shipment and post–shipment export financing loan information on four separate occasions, the original questionnaire and three supplemental questionnaires; yet, the information on the record remains incomplete. Because MTZ failed to provide all the information requested by the Department, and MTZ's failure to provide this information within the established deadlines impeded our review, we find that the application of facts otherwise available is warranted under sections 776(a)(2)(A), (B), and (C) of the Act.

Application of Facts Available With An Adverse Inference

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* the *SAA*. The statute provides, in addition, that in selecting from among facts available the Department may, subject to the corroboration requirements of section 776(c) of the Act, rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 of the Act (or section 753 for countervailing duty (CVD) cases), or any other information on the record. *See* section 776(b) of the Act.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* the *SAA* at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior experience, selecting the highest prior rate ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *See Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990) (emphasis omitted).

Because MTZ failed to cooperate to the best of its ability to comply with the Department's requests for information, an adverse inference, in accordance with section 776(b) of the Act, is warranted. Accordingly, the Department is making an adverse inference that the loan data is incomplete and therefore unreliable, and thus cannot be used for these preliminary results, pursuant to section 782(e)(3) of the Act.

The Department normally determines the benefit conferred by the pre–shipment and post–shipment loans as the difference between the amount of interest the company paid on the loan and the amount of interest it would have paid on a comparable commercial loan during the POR. However, because MTZ failed to provide us with complete loan information this calculation is not possible. Therefore, as adverse facts available, for purposes of these preliminary results, the Department selected the highest calculated rate for

the same program in this proceeding, 2.9 percent ad *valorem*. *See PET Film Final Determination*, at ''Pre–Shipment and Post–Shipment Export Financing.''

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The *SAA* emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See* the *Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1, 870 (1994) (*SAA*) at 869.

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company–specific benefits resulting from countervailable subsidy programs. The rate being used as AFA was calculated in the final determination of the investigation in this proceeding. No information has been presented that calls into question the reliability of this calculated rate. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as adverse facts available, the Department will not use it. *See*, *e.g.*, *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996). The rate being used is relevant because it was calculated for the same program, Pre–Shipment and Post–Shipment Export Financing, and in the same proceeding, PET film from India.

On this basis, we preliminarily determine the countervailable subsidy for the pre–shipment and post–export shipment financing to be 2.9 percent ad valorem for MTZ.

2. Advance License Program (ALP)

Under the ALP, exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported. The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled their export requirement. The quantities of imported materials and exported finished products are linked through standard input–output norms (SIONs) established by the GOI. During the POR, MTZ used an advance license to import certain materials duty free.

In the 2005 administrative review of this proceeding, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the ALP during that POR. The Department analyzed the changes introduced by the GOI to the ALP during 2005 and acknowledged that certain improvements to the ALP system were made. However, the Department found that systemic issues continued to exist in the ALP system during the POR. *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 72 FR 6530 (February 12, 2007), and accompanying *Issues and Decision Memorandum*, at Comment 3 (*PET Film Final Results of 2004 Review*); and *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 45034 (August 8, 2006), and accompanying *Issues and Decision Memorandum*, at Comment 10 (*Lined Paper - Final Determination*). Based on the information submitted by the GOI and examined at verification of the 2004 and 2005 PORs, the Department noted that the systemic issues previously identified by the Department in *PET Film Final Results of 2004 Review* continued to exist. *See PET Film Final Results of 2004 Review*, 72 FR 6530, at *Comment 3. See also PET Film Final Results of 2005 Review*, at ''Advance License Program (ALP).''

There is no new information on the record of this review for the Department to reconsider its determination. Accordingly, the Department continues to find that the ALP confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from the payment of import duties that would otherwise be due; (2) the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products; thus, the entire amount of the import duty deferral or exemption earned by the respondent constitutes a benefit under section 771(5)(E) of the Act; and, (3) this program is specific under section 771(5A)(B) of the Act because it is contingent upon exportation.

Pursuant to 19 CFR 351.524(c)(1), the exemption of import duties normally provides a recurring benefit. Under this program, for 2006, MTZ did not have to pay certain import duties for inputs that were used in the production of subject merchandise. Thus, we are treating the benefit provided under the ALP as a recurring benefit. To calculate the subsidy, we first determined the total value of import duties exempted during the POR. From this amount, we subtracted the required application fees paid for each license during the POR as an allowable offset in accordance with section 771(6) of the Act. We then divided the resulting net benefit by the appropriate value of export sales. Consistent with our calculations in the final results of the 2004 administrative review, ''deemed export'' sales are included in the export sales denominator for the ALP only when the respondents applied for and were bestowed licenses during the POR based on both physical exports and deemed exports. However, MTZ stated that it had physical exports only;[3] therefore, we only used physical export sales in the denominator. On this basis, we determine the countervailable subsidy provided under the ALP to be 5.03 percent *ad valorem* for MTZ.

3. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to four to five times the value of the capital goods within a period of eight years. Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, plus penalty interest.

In the investigation, the Department determined that import duty reductions provided under the EPCGS are a countervailable export subsidy because

[3] *See MTZ's Original Questionnaire Response*, at 10.

the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) in the form of revenue forgone for not collecting import duties; (2) respondents benefit under section 771(5)(E) of the Act in two ways by participating in this program; and (3) the program is contingent upon export performance, and is specific under section 771(5A)(B) of the Act. *PET Film Final Results of 2004 Review*, 72 FR 6530, at ''EPCGS.'' There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

The first benefit is the amount of unpaid import duties that would have to be paid to the GOI if accompanying export obligations are not met. The repayment of this liability is contingent on subsequent events, and in such instances, it is the Department=s practice to treat any balance on an unpaid liability as an interest–free loan. *Id*. The second benefit is the waiver of duty on imports of capital equipment covered by those EPCGS licenses for which the export requirement has already been met. For those licenses for which companies demonstrate that they have completed their export obligations, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption.

Import duty exemptions under this program are provided for the purchase of capital equipment. The preamble to our regulations states that if a government provides an import duty exemption tied to major equipment purchases, ''it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non–recurring . . .'' *See Countervailing Duties; Final Rule*, 63 FR 65348, 65393 (November 25, 1998). In accordance with 19 CFR 351.524(c)(2)(iii), we are treating these exemptions as non–recurring benefits.

MTZ reported that it imported capital goods under the EPCGS in years prior to the POR. According to the information provided in its responses, MTZ received various EPCGS licenses for equipment involved in the production of subject merchandise. Further, we note that MTZ did not demonstrate that its respective EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we find that MTZ's respective EPCGS licenses benefit all of the company's exports.

MTZ met the export requirements for certain EPCGS licenses prior to the current POR, and the GOI formally waived the relevant import duties prior to this POR. For other licenses, however, MTZ has not yet met its export obligation as required under the program. Therefore, although MTZ has received a deferral from paying import duties when the capital goods were imported, the final waiver on the obligation to pay the duties has not yet been granted for many of these imports.

For MTZ's EPCGS licenses for which the GOI has formally waived the duties, we treat the full amount of the waived duty as a grant received in the year in which the GOI officially granted the waiver. To calculate the benefit received from the GOI's formal waiver of import duties on MTZ's capital equipment imports in the prior review, we considered the total amount of duties waived (net of any required application fees paid) to be the benefit. *See* section 771(6) of the Act. Further, consistent with the approach followed in the investigation, we determine the year of receipt of the benefit to be the year in which the GOI formally waived MTZ's outstanding import duties. *See PET Film Final Determination*, 67 FR 34905, at *Comment 5*. Next, we performed the ''0.5 percent test,'' as prescribed under 19 CFR 351.524(b)(2), for each year in which the GOI granted MTZ an import duty waiver. For all years in which MTZ received the final waiver of duties deferred under EPCGS licenses, the value of the duties waived exceeded 0.5 percent of MTZ's total export sales. Thus, in accordance with 19 CFR 351.524(b), we allocated the resulting benefits over MTZ's company–specific AUL. *See* ''Allocation Period'' section, above.

As noted above, import duty reductions or exemptions that MTZ received on the imports of capital equipment for which it has not yet met export obligations may have to be repaid to the GOI if the obligations under the licenses are not met. Consistent with our practice and prior determinations, we will treat the unpaid import duty liability as an interest–free loan. See 19 CFR 351.505(d)(1); and *see*, *e.g.*, *Final Affirmative Countervailing Duty Determination: Bottle–Grade Polyethylene Terephthalate (PET) Resin From India*, 70 FR 13460 (March 21, 2005), and accompanying *Issues and Decision Memorandum*, (*Final Determination Indian PET Resin*), at ''EPCGS.''

The amount of the unpaid duty liabilities to be treated as an interest–free loan is the amount of the import duty reduction or exemption for which the respondent applied, but, as of the end of the POR, had not been formally waived by the GOI. Accordingly, we find the benefit to be the interest that MTZ would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation. *See*, *e.g.*, *Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 70 FR 46483, 46485 (August 10, 2005) (*PET Film Preliminary Results of 2003 Review*) (unchanged in the final results, 71 FR 7534).

As stated above, the time period for fulfilling the export commitment expires eight years after importation of the capital good. Consequently, the date of expiration of the time period to fulfill the export commitment occurs more than one year after the date of importation of the capital goods. Pursuant to 19 CFR 351.505(d)(1), the appropriate benchmark for measuring the benefit is a long–term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment) occurs more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the national average interest rate from the IMF statistics for the year in which the capital good was imported and the duty reduction or exemption was originally granted. *See* the ''Benchmark Interest Rates and Discount Rates'' section above.

The benefit received under the EPCGS is the total amount of: (1) the benefit attributable to the POR from the grant of formally waived duties for imports of capital equipment for which respondents met the export obligation by December 31, 2005, and/or (2) interest that should have been paid on the contingent liability loans for imports of capital equipment for which MTZ has not met its export obligation. To calculate the benefit from the formally waived duties for imports of capital equipment for which MTZ has met its export requirements, we treated each year's waived amount as a non–recurring grant. We applied the grant methodology set forth in 19 CFR 351.524(d), using the discount rates discussed in the ''Benchmark Interest Rates and Discount Rates'' section above to determine the benefit amounts attributable to the POR.

To calculate the benefit from the contingent liability loans for MTZ, we multiplied the total amount of unpaid duties under each license by the long–term benchmark interest rate for the

year in which the license was approved.[4] We summed this amount with the allocated benefits discussed above to determine the total benefit for this program. We then divided the benefit under the EPGCS by MTZ's total exports to determine a subsidy of 51.88 percent *ad valorem* for MTZ.

4. Duty Entitlement Passbook Scheme (DEPS/DEPB)

India's DEPS was enacted on April 1, 1997, as a successor to the Passbook Scheme (PBS). As with PBS, the DEPS program enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post–export basis, provided that the GOI has established a SION for the exported product. DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an exported product. DEPS credits are valid for twelve months and are transferable after the foreign exchange is realized from the export sales on which the DEPS credits are earned.

The Department has previously determined that the DEPS program is countervailable. *See*, *e.g.*, *PET Film Final Determination*, 67 FR 34905, at ''DEPS.'' In the investigation, the Department determined that under DEPS, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because the GOI provides credits for the future payment of import duties. Moreover, the GOI does not have in place and does not apply a system that is reasonable and effective to confirm which inputs, and in what amounts, are consumed in the production of the exported products. *Id*. Therefore, under 19 CFR 351.519(a)(4) and section 771(5)(E) of the Act, the entire amount of import duty exemption earned during the POI constitutes a benefit. Finally, this program can only be used by exporters and, therefore, it is specific under section 771(5A)(B) of the Act. *Id*. No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of this finding. Therefore, we continue to find that the DEPS is countervailable.

In accordance with past practice and pursuant to 19 CFR 351.519(b)(2), we find that benefits from the DEPS are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned. *See*, *e.g.*, *Final Affirmative Countervailing Duty Determination: Certain Cut–to-Length Carbon–Quality Steel Plate From India*, 64 FR 73131, 73134 (December 29, 1999), and accompanying *Issues and Decision Memorandum*, at Comment 4 (*Final Determination Carbon Steel Plate from India*). We calculated the benefit on an ''as–earned'' basis upon export because DEPS credits are provided as a percentage of the value of the exported merchandise on a shipment–by-shipment basis and, as such, it is at this point that recipients know the exact amount of the benefit (*e.g.*, the duty exemption).

MTZ reported that it received post–export credits on PET film under the DEPS program during the POR. Because DEPS credits are earned on a shipment–by-shipment basis, we normally calculate the subsidy rate by dividing the benefit earned on subject merchandise exported to the United States by total exports of subject merchandise to the United States during the POR. *See*, *e.g.*, *id*. 64 FR at 73134. The DEPS licenses and supporting documentation provided by MTZ indicate that benefits were earned on both subject and non–subject merchandise. Although MTZ was able to separate the DEPS credits earned on exports to the United States in the data provided to the Department, it did not provide the supporting documentation establishing the destination of the shipments on which the DEPS credits were earned. However, MTZ provided supporting documentation for each DEPS license, indicating whether the DEPS credit was earned on subject or non–subject merchandise. Therefore, we calculated the DEPS program rate using the value of total post–export credits that MTZ earned for its export shipments of subject merchandise during the POR. We divided the total amount of the benefit by MTZ's total exports of subject merchandise during the POR. On this basis, we preliminarily determine MTZ's countervailable subsidy from the DEPS program to be 3.40 percent *ad valorem*.

5. Union Territories Central Sales Tax (CST) Program

In the previous review, MTZ reported that a supplier located in a Union Territory did not collect any tax on MTZ's purchases because companies located in that Union Territory are exempt from charging CST. Based on analysis of the information on the record, the Department determined that a financial contribution, in the form of tax revenue forgone, as defined under section 771(5)(D)(ii) of the Act, is provided by the GOI under the Union Territories CST exemption program. The benefit equals the amount of sales taxes not paid by MTZ on its purchases, in accordance with to section 771(5)(E) of the Act. Pursuant to section 771(5A)(D)(iv) of the Act, this program is *de jure* specific because it is administered by the central government and is limited by law to certain geographical regions (*i.e.*, Union Territories) within India. *See PET Film Final Results of 2005 Review*, 73 FR 7708, at ''Union Territories Central Sales Tax (CST) Program.'' The CST program also provides a recurring benefit under 19 CFR 351.510(c) and 19 CFR 351.524(c).

In this POR MTZ purchased from a supplier located in a Union Territory. To calculate the benefit for MTZ under this program, we first calculated the total amount of CST that MTZ would have paid on its purchases from suppliers located in a Union Territory during the POR absent this program. We then divided this amount by MTZ's total sales during the POR. On this basis, we determine the subsidy rate under this program to be 1.57 percent *ad valorem* for MTZ.

MTZ reported that the GOI has repealed the CST and is phasing out the CST in four stages, reducing it to zero percent by April 1, 2010. However, MTZ did not provide any supporting documentation, such as a copy of the law promulgated by the GOI, to demonstrate that the CST is being phased out and that there is no replacement program or residual benefits. Neither did MTZ request an adjustment of the cash deposit rate because of a program–wide change. We asked the GOI to provide the pertinent laws and regulations phasing out the CST. Instead, in its third supplemental response, the GOI provided the Department with a one–page excerpt of its 2008–2009 Budget that indicated the anticipated decline in revenue, needing to be reviewed on a monthly/quarterly basis. We further asked the GOI and MTZ to clarify whether there were residual benefits from the Union Territory CST program, or whether there was any replacement program implemented for the Union Territory CST program, to which the GOI responded that the CST was being phased out. However, it did not address whether there were any residual benefits remaining. MTZ responded that the CST ''has been repealed and is being phased out in stages.'' *See MTZ's First Supplemental Questionnaire Response*, at 13.

[4] MTZ stated, in its second supplemental response, at 8-9, that it was not liable for certain other duties during the year. However, MTZ did not provide any supporting documentation regarding these duties. Thus, we have included these duties in our calculations. We intend to inquire further about these duties.

Although MTZ and the GOI have reported that the CST is being phased out by April 1, 2010, they have not demonstrated this with sufficient information or documentation to enable the Department to measure the change in countervailable subsidies provided under this program. *See* 19 CFR 351.526(a)(2). The Department measures the benefit as the tax savings on MTZ's purchases during the POR; there is no information on the record to measure how MTZ's tax savings have changed since the POR for purposes of adjusting the cash deposit rate. Therefore, for all of these reasons, there is no basis for the Department to determine that a program–wide change has occurred or to adjust the cash deposit rate pursuant to 19 CFR 351.526.

6. State Sales Tax Incentive Programs – State of Gujarat

In the 2004 countervailing duty administrative review, the Department determined that various state governments in India grant exemptions to, or deferrals from, sales taxes in order to encourage regional development. *See PET Film Final Results of 2004 Review*, 72 FR 6530, at ''State Sales Tax Incentive Programs.'' These incentives allow privately owned and partially privately owned (*i.e.*, not 100 percent owned by the GOI) manufacturers in selected industries and located in the designated regions to sell goods without charging or collecting state sales taxes. The State of Gujarat (SOG) is one of the states offering these state sales tax incentive programs. As a result of this program, MTZ did not pay sales taxes on its purchases from suppliers located in the SOG during the POR. In the original countervailing duty investigation, we determined that the operation of these types of state sales tax programs confer a countervailable subsidy. *See PET Film Final Results of 2005 Review*, 73 FR 7708, at ''*State Sales Tax Incentive Programs*.'' The financial contribution is the tax revenue foregone by the respective state governments pursuant to section 771(5)(D)(ii) of the Act, and the benefit equals the amount of sales taxes not paid by MTZ pursuant to section 771(5)(E) of the Act. Pursuant to section 771(5A)(D)(iv) of the Act, these programs are *de jure* specific because they are limited to certain geographical regions within the respective states administering the programs.

MTZ stated that the SOG sales tax incentive program was terminated effective April 1, 2006. However, MTZ reported taxes saved on purchases within the SOG for the entire POR. *See MTZ's Questionnaire Response*, at Exhibit 17; and *MTZ's Third Supplemental Questionnaire Response*, at Exhibit S3–1. Further, in response to the Department's request to identify which taxes the ''Tax Saved On Purchases'' column header refers to, MTZ identified those taxes as part of the Gujarat Sales Tax Program for ''Items Purchased in Gujarat from Registered Dealers.'' *See MTZ's First Supplemental Questionnaire Response*, at Exhibit S1–15. To calculate the benefit, the Department normally calculates the total amount of state sales taxes respondent would have paid on its purchases during the POR absent these programs. The Department then divides this amount by respondent's total sales during the POR. MTZ only reported the monthly total of taxes saved on purchases, and MTZ did not indicate whether these totals are net of the Gokul Gram Yojana (a development promotion scheme of the SOG, and a liability MTZ has to pay), or not. Thus, we have not included this tax in our calculations. For these preliminary results we calculated MTZ's rate for this program by dividing the total amount of tax saved on purchases, as reported, by MTZ's total sales. On this basis, we preliminarily determine the subsidy rate under this program to be 1.83 percent *ad valorem* for MTZ.

In the current review, MTZ argues that the sales tax law in the SOG, under which MTZ did not pay or collect sales taxes, was repealed, and thus, the rate from this program should not be included in the cash deposit rate. *See MTZ's Questionnaire Response*, at 25. Exhibit S2–9 of MTZ's second supplemental response includes a copy of the Gujarat Government Gazette of March 22, 2006, stating that the Gujarat Value Added Tax Rules, 2006, which MTZ states replaces the Gujarat sales tax, shall be effective April 1, 2008. In the first, second and third supplemental questionnaires the Department asked MTZ to clarify whether there are any residual benefits for MTZ from this program. MTZ responded that the only benefit was an exemption from tax on purchases, and that any purchase made after the repeal of the tax would not have benefited from an exemption because the tax did not exist.

In response to the Department's third request for information, the GOI responded in its second supplemental questionnaire, at 12, that the Gujarat Sales Tax Act, 1969, has been repealed and the VAT Act, 2005, has been introduced. Thus, the GOI stated, the scheme no longer provides any benefit to a recipient, and no company exempted under the previous scheme accrues any benefit. In its third supplemental response, at 5, the GOI stated that the Gujarat VAT Rules, 2006, Rule 18A, made provisions for industrial units to carry forward the exemptions for the residual period.[5]

In a fourth supplemental questionnaire, the Department requested that the GOI provide a copy of the Gujarat VAT Rules, 2006, including Rule 18A. In addition, the Department asked the GOI whether MTZ has filed Form–109 in accordance with Rule 18A, to carry forward the exemptions for the residual period, and if so, to provide a copy of MTZ's filing. The Department further asked the GOI to state how the SOG deals or intends to deal with the residual benefits originating from this program, other than Rule 18A, and whether the SOG intends to or has implemented any replacement program(s) for state sales tax incentive in the context of the value added tax (VAT) or otherwise. Based on the Department's request, the GOI provided the Gujarat VAT Rules, 2006, including rule 18A, applicable to residual benefits under the program, on the record of this review. Additionally, the GOI provided the Department with Form–109, Application for Certificate of Entitlement, as filed by MTZ, on the record of this review. This document indicates MTZ's residual benefits under the SOG Sales Tax program will continue for an extended period of time. *See GOI's Fourth Supplemental Questionnaire Response*, at 8–19 (July 18, 2008) (*GOI's Fourth Supplemental Questionnaire Response*).

The Department issued the same questions to MTZ, asking it to provide proof of payment of the VAT on all purchases during the POR, and to demonstrate that MTZ did not file Form–109 and did not participate in a replacement program. MTZ responded by providing the same supporting documentation as the GOI. *See MTZ's Fourth Supplemental Questionnaire Response*, at Exhibits S3–2 and S3–3.

As proof of termination of the Gujarat sales tax, MTZ provided the official act of the SOG in the form of the Gujarat Government Gazette, implementing the VAT with the Gujarat Value Added Tax Act, 2003, effective April 1, 2006, and announcing the repeal of the Gujarat Sales Tax Act, 1969, at section 100(1).[6] However, the record shows that the existing state sales tax incentive program is providing residual benefits. Therefore, the Department preliminarily

[5] This ''residual period'' is specified in Form-109.

[6] *MTZ's First Supplemental Questionnaire Response*, at Exhibit S1-16(A); and *MTZ's Second Supplemental Questionnaire Response*, at Exhibit S2-9.

determines that the conditions of 19 CFR 351.526 have not been met, and no adjustment to the rate for cash deposit purposes is warranted.

Programs Preliminarily Determined to be Not Used

We preliminarily determine that MTZ did not apply for or receive benefits during the POR under the programs listed below:

1. Duty Free Replenishment Certificate (DFRC) (GOI)

2. Export Oriented Units (EOU) (GOI)

3. Target Plus Scheme (GOI)

4. Capital Subsidy (GOI)

5. Exemption of Export Credit from Interest Taxes (GOI)

6. Loan Guarantees from the GOI

7. Income Tax Exemption Scheme (Sections 10A & 10B) (GOI)

8. State Sales Tax Incentive Programs other than SOG

9. State of Maharashtra (SOM) Electricity Duty Exemption

10. State of Maharashtra (SOM) Capital Incentive Scheme

11. Octroi Refund Scheme- SOM

12. Waiving of Interest on Loan by SICOM Limited (SOM)

13. State Sales Tax Incentives–Section 4–A of the Uttar Pradesh Trade Tax Act

14. State Sales Tax Incentive of Uttaranchel

15. State of Uttar Pradesh Capital Incentive

16. SOG Infrastructure Assistance Schemes

17. Capital Incentive Scheme of Uttaranchel

Preliminary Results of Administrative Review

In accordance with 19 CFR 351.221(b)(4)(i), we have calculated an individual subsidy rate for MTZ for the POR. We preliminarily determine the total countervailable subsidy to be 66.61 percent *ad valorem* for MTZ.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or in the original countervailing duty investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 20.40 percent *ad valorem*, the all–others rate made effective by the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Assessment Rates

Upon publication of the final results of this review, the Department shall determine, and Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(2), the Department will instruct CBP to assess countervailing duties by applying the rates included in the final results of the review to the entered value of the merchandise. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification applies to entries of subject merchandise during the POR produced by any company included in the final results of review for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, the Department will instruct CBP to liquidate un–reviewed entries at the ''all others'' rate if there is no rate for the intermediary involved in the transaction. *See id*.

Disclosure and Public Hearing

We will disclose the calculations used in our analysis to parties to this segment of the proceeding within five days of the public announcement of this notice. *See* 19 CFR 351.224(b). Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless the time period is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice in the **Federal Register**. *See* 19 CFR 351.309(c). Rebuttal briefs, which must be limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments. Case and rebuttal briefs must be served on interested parties, in accordance with 19 CFR 351.303(f).

Unless extended, the Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: July 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI67

Amendment 2 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.