



C-533-856
Investigation
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July 3, 2014

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation on Steel Threaded Rod from
India

I. SUMMARY

The Department of Commerce (“Department”) determines that countervailable subsidies are being provided to producers and exporters of steel threaded rod in India, as provided in section 705 of the Tariff Act of 1930, as amended (“the Act”), for the period January 1, 2012, through December 31, 2012.

II. BACKGROUND

On December 19, 2014, the Department published the *Preliminary Determination* in this investigation.¹ We preliminarily calculated a rate for Mangal Steel Enterprises Limited (“Mangal Steel”), a cooperative mandatory respondent. For Babu Exports (“Babu”), a non-cooperative mandatory respondent, we preliminarily calculated an adverse facts available (“AFA”) rate.

Between February 12, 2014, and February 18, 2014, we conducted verification of the questionnaire responses submitted by Mangal Steel and the Government of India (“GOI”). We released the verification reports for the GOI and Mangal Steel on March 6, 2014, and March 7, 2014, respectively.²

¹ See *Steel Threaded Rod From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 78 FR 76815 (December 19, 2013) (“*Preliminary Determination*”).

² See Memorandum to the File titled, “Verification of Information Submitted by the Government of India,” dated February 28, 2014 (“GOI Verification Report”); see also Memorandum to the File titled, “Verification of the Questionnaire Responses Submitted by Mangal Steel Enterprises Limited,” dated March 6, 2014 (“Mangal Steel Verification Report”).



On January 30, 2014, the GOI submitted comments regarding the Department's *Preliminary Determination*.³ On March 19, 2014, Mangal Steel submitted a case brief and on March 24, 2014, All America Threaded Products Inc., Bay Standard Manufacturing Inc., and Vulcan Threaded Products Inc. (collectively, "Petitioners"), submitted a rebuttal case brief.⁴ On March 26, 2014, Mangal Steel withdrew its request for a hearing. No parties submitted any case briefs or arguments regarding scope issues.

The "Subsidies Valuation Information," "Use of Facts Otherwise Available and Adverse Inferences," and "Analysis of Programs" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Additionally, we analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which contains the Department's positions on the issues raised in the briefs. Based on the comments received, and our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed below under each applicable program and "Use of Facts Otherwise Available and Adverse Inferences" section. Below is a complete list of the issues in this investigation for which we received comments from the parties:

- Comment 1: Manner in Which the Department Should Calculate the Benefit Under the Status Holder Incentive Scrip
- Comment 2: Manner in Which the Department Should Calculate the Benefit Under the Pre- and Post-Shipment Export Financing Program
- Comment 3: Manner in Which the Department Should Calculate the Benefit Under the Focus Product Scheme
- Comment 4: Whether the Indian Duty Drawback Program is Countervailable
- Comment 5: Whether the Countervailing Duty Subsidy Rate Applied to Babu Exports is Appropriate

III. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold-drawn, cold-rolled, machine straightened, or otherwise cold-finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to this investigation are non-headed and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.*, galvanized, whether by

³ See Letter from the GOI titled, "Countervailing Duty (CVD) Investigation Steel Threaded Rod from India C-533-856, POR (1/1/2012-12/31/2012)," dated January 30, 2014.

⁴ See Letter from Mangal Steel titled, "Steel Threaded Rod from India: Case Brief," dated March 19, 2014 ("Mangal Steel Brief"). See also Letter from Petitioners titled "Countervailing Duty Investigation of Steel Threaded Rod from India: Petitioners' Rebuttal Brief," dated March 24, 2014 ("Petitioners' Rebuttal Brief").

electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Included in the scope of this investigation are steel threaded rod, bar, or studs, in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.012 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, 7318.15.5090, and 7318.15.2095 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Excluded from the scope of this investigation are: (a) threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total length; and (b) threaded rod, bar, or studs made to American Society for Testing and Materials (“ASTM”) A193 Grade B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, and ASTM A320 Grade L7.

IV. SUBSIDY VALUATION INFORMATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (“AUL”) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 12 years, pursuant to 19 CFR

351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.⁵ No party in this proceeding disputed the allocation period.

Also, for non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

Cross-Ownership

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

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

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade

⁵ See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

⁶ See *Countervailing Duty Regulations*, 63 FR 65348, 65401 (November 25, 1998) ("*Countervailing Duties*").

(“CIT”) upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.⁷

Mangal Steel and Corona Steel Industry Pvt. Ltd. (“Corona”)

For the *Preliminary Determination*, we determined that the threshold for finding cross-ownership among Mangal Steel and Corona, as described under 19 CFR.351.525(b)(6)(vi), does not exist.⁸ At verification, we inquired about and verified the history and ownership of Mangal Steel and Corona.⁹ Based on the information on the record of the investigation, we continue to find that there is no equity ownership or common directorship between Mangal Steel and Corona. Furthermore, there is no sharing of proprietary sales or production data between the two companies and the production processes of each company are entirely independent.¹⁰ The operations of the two companies are not intertwined and there are no common managerial employees or Board members between Mangal Steel and Corona.¹¹ Finally, there are no transactions of sales, purchases, or services between the two companies.¹² Thus, we continue to determine that there is no evidence indicating that the two firms, Mangal Steel and Corona, have the ability to direct the individual assets of one another as if they were their own and that the threshold for finding cross-ownership between these firms, as described under 19 CFR 351.525(b)(6)(vi), does not exist.

C. Benchmarks and Discount Rates

We are investigating: 1) loans that the respondents received under the Pre- and Post- Export Financing programs; 2) unfulfilled export obligations under the Export Promotion Capital Goods Scheme (“EPCGS”) program that the Department treats as loans; and 3) non-recurring, allocable duty waivers under the EPCGS program (*see* 19 CFR 351.524(b)(1)). In the section below, we discuss the derivation of the benchmarks and discount rates for measuring the benefit from the loans and non-recurring, allocable grants.

For programs requiring the application of a benchmark interest rate or a 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

⁷ *See Fabrique de Fer de Charleroi, SA v. United States*, 166F. Supp. 2d 593, 600-604 (CIT 2001).

⁸ *See Preliminary Determination*, and accompanying Decision Memorandum at 6.

⁹ *See Mangal Steel Verification Report* 2-3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

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.¹³

1. Short-Term and Long-Term Rupee Denominated Loans

Based on Mangal Steel's responses, we determine that Mangal Steel did not take out comparable rupee-denominated short-term or long-term loans from commercial banks in the years for which we must calculate benchmark and discount rates. Therefore, pursuant to 19 CFR 351.505(a)(3)(ii), we are using national average interest rates. Specifically, we used national average interest rates from the International Monetary Fund's International Financial Statistics ("IFS") as benchmark rates for rupee-denominated short-term and long-term loans.¹⁴ We find that the IFS rates provide a reasonable representation of both short-term and long-term interest rates for rupee-denominated loans.¹⁵ Further, the record has no other information on either short-term or long-term rupee-denominated loans.

2. Short-Term and Long-Term U.S. Dollar Denominated Loans

As part of the Export Financing program, we are examining short-term loans that Mangal Steel received in U.S. dollars. When loans are denominated in a foreign currency, as in the present instance, 19 CFR 351.505(a)(2)(i) directs us to use a benchmark denominated in the same foreign currency as the loan. Mangal Steel did not report dollar-denominated loans that we can use as company-specific benchmarks. Therefore, for U.S. dollar-denominated short-term loans provided under the Export Financing program, we used as our benchmark annual average dollar-denominated short-term lending rates for the United States, as reported in the IFS.

3. EPCGS Discount Rate

For allocating the benefit from non-recurring grants under the EPCGS, we used the long-term rupee-denominated interest rates described above for the year in which the government agreed to provide the subsidy, consistent with 19 CFR 351.524(d)(3)(i)(A).¹⁶

D. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs are described in further detail in Comment 2 below and are explained in the Final Calculations Memorandum prepared for this final determination.¹⁷

¹³ See, *e.g.*, *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) ("*Shrimp from India*"), and accompanying Issues and Decision Memorandum, at "Benchmark and Discount Rates" section.

¹⁴ See Memorandum to the File titled "Mangal Steel Final Calculations" dated concurrently with this memorandum ("Final Calculations Memorandum") at Attachment 13.

¹⁵ See, *e.g.*, *Shrimp from India* and accompanying Issues and Decision Memorandum at 6.

¹⁶ See Final Calculations Memorandum at Attachments 9 and 13.

¹⁷ See Final Calculations Memorandum.

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

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

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. For the reasons explained below, the Department determines that application of facts otherwise available is warranted and that an adverse inference is warranted, pursuant to section 776(b) of the Act because, by not responding to our requests for information, Babu failed to cooperate by not acting to the best of its ability.

Babu

Babu did not provide any of the information requested by the Department that is necessary to determine a CVD rate for this final determination. Specifically, Babu did not respond to the Department’s September 6, and 19, 2013, questionnaires. As a result, we have none of the required data necessary to calculate a subsidy rate for Babu. Accordingly, in reaching our final determination, pursuant to section 776(a)(2)(A) and (C) of the Act, we based Babu’s CVD rate on facts otherwise available.

The Department determined that an adverse inference is warranted, pursuant to section 776(b) of the Act because, by not responding to our questionnaire, Babu failed to cooperate by not acting to the best of its ability. Accordingly, our final determination is based on AFA.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final

determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner."¹⁸ 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."¹⁹

Because Babu failed to act to the best of its ability in this investigation, as discussed above, we made an adverse inference that the programs on which the Department initiated this investigation, descriptions of which are contained in Attachment I, provide a financial contribution within the meaning of section 771(5)(D) of the Act, are specific in accordance with section 771(5A) of the Act, and confer a benefit in accordance with section 771(5)(E) of the Act. In assigning net subsidy rates for each of the programs for which specific information was required from Babu, we were guided by the Department's approach in prior India CVD reviews, as well as recent CVD investigations involving the People's Republic of China.²⁰

It is the Department's practice in CVD proceedings to select, as AFA, the highest calculated program-specific rates determined in the instant investigation, or if not available, rates calculated in prior CVD cases involving the same country.²¹ Thus, under this practice, for investigations involving India, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior India CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another India CVD proceeding. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, the Department applies the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies.²²

¹⁸ 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).

¹⁹ See SAA at 870.

²⁰ See, e.g., *Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Facts Available" section; see also *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009), and accompanying Issues and Decision Memorandum at "Application of Facts Available and Use of Adverse Inferences" section.

²¹ See, e.g., *Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008), and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available."

²² See, e.g., *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available Rate."

For a discussion of the application of the individual AFA rates for the programs under investigation, *see* the “Final AFA Rates Determined for Programs Used by Babu” section, below.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”²³ The Statement of Administrative Action (“SAA”) provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.²⁴ 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.²⁵

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.²⁶ In the instant case, no evidence has been presented or obtained that contradicts the relevance of the information relied upon in a prior India CVD proceeding. Therefore, in the instant case, the Department finds that the information used has been corroborated to the extent practicable.

VI. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, including parties’ comments addressed below, we determine the following.

²³ *See* SAA, H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 870.

²⁴ *Id.*

²⁵ *Id.*, at 869-870.

²⁶ *See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

A. Programs Determined To Be Countervailable

1. Pre- and Post-Shipment Export Financing

During the POI, the GOI provided pre- and post-export financing to make short-term working capital available to exporters at internationally comparable interest rates.²⁷ The financing was denominated in rupees and in foreign currencies.

With respect to the rupee-denominated export financing, the Reserve Bank of India (“RBI”) previously capped the interest rate that commercial banks could charge on these loans.²⁸ However, beginning on July 1, 2010, the RBI eliminated the interest rate cap and allowed participating commercial banks to set the interest rates for these export loans based on the bank’s own operating and lending costs.²⁹ At the same time, the RBI instituted an interest subvention program for certain exporting companies, including small and medium enterprises.³⁰ Banks that participated in the interest subvention program were restricted to charging an interest rate not exceeding the Benchmark Prime Lending Rate minus 4.5 percentage points on pre-shipment credit up to 270 days and post-shipment credit up to 180 days on the outstanding amount.³¹ In addition to the interest rate cap on subvention loans during the POI, the RBI provided a two-percentage point interest subvention on the export loans and required the banks to completely pass on the two percent interest subvention to small and medium enterprises.³² For example, if the commercial bank set the interest rate for the export loan at nine percent, the RBI would then provide a two percentage point interest subvention on the loan which would then be passed on to the exporter. Mangal Steel qualified, and received, the interest subvention during the POI.³³

We determine that rupee-denominated pre- and post-shipment export loans that were eligible for the interest rate subvention and cap confer 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) these loans give rise to a benefit, as described further below, because the interest rates are lower than the interest rates on comparable commercial loans (*see* section 771(5)(E)(ii) of the Act); and (3) these loans are specific under section 771(5A)(A) and (B) of the Act because they are contingent upon export performance.

To measure the benefit conferred by the rupee-denominated pre-shipment and post-shipment loans, we compared the amount of interest the company paid for its loans to the amount of interest it would have paid on a comparable commercial loan, using the benchmarks described above under “Benchmarks and Discount Rates” received by the company. We then took the interest savings from these loans and divided by Mangal Steel’s total export sales for pre-shipment loans and sales to the United States for post-shipment loans. We also took the interest subvention “rebate” received by Mangal Steel, for both pre- and post-shipment loans, and

²⁷ *See* GQR at 6.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*, at 6-8.

³¹ *Id.*, at 7-8.

³² *Id.*

³³ *See* initial questionnaire response from Mangal Steel dated November 4, 2013 (“MSQR”) at 14.

divided by Mangal Steel's total exports. Based on this methodology, we calculate a countervailable subsidy of 0.65 percent *ad valorem* for Mangal Steel.

With respect to export financing denominated in foreign currencies during part of the POI, the RBI required banks up to May 4, 2012, to fix the rates of interest with reference to ruling LIBOR, EURO LIBOR or EURIBOR, and these rates were subject to caps, with the size of the cap varying depending on the duration of the loan.³⁴ However, the government changed the manner in which the foreign currency-denominated export loan program operated, and effective May 5, 2012, banks were free to determine the interest rate on export loans provided in foreign currencies.³⁵ Mangal Steel reported receiving both pre- and post-shipment export loans denominated in foreign currencies during the POI.³⁶

Accordingly, we determine that pre- and post-shipment export loans that were denominated in foreign currencies confer 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) these loans give rise to a benefit, as described further below, to the extent that the interest rates are lower than the interest rates on comparable commercial loans (*see* section 771(5)(E)(ii) of the Act); (3) these loans are specific under sections 771(5A)(A) and (B) of the Act because they are contingent upon export performance.

To measure the benefit conferred by the pre-shipment and post-shipment loans in foreign currencies for the loans approved on or before May 4, 2012, we compared the amount of interest the company paid for these loans to the amount of interest it would have paid on a comparable commercial loan, using the benchmarks described above under "Benchmarks and Discount Rates." Because all the foreign currency loans were provided at rates above the benchmark rate, no countervailable benefit was conferred by these loans.

As reported in the instant investigation, and as the Department determined in *Shrimp from India*, the GOI reported that the foreign currency lending program was terminated on May 5, 2012. Specifically, as of that date, the RBI is not involved in setting interest rates (caps or floors) for these loans.³⁷ When a subsidy program is terminated, 19 CFR 351.526(d) requires that there be no residual benefits and that the government not implement a replacement program for the terminated program. In *Shrimp from India*, the Department determined that because the maximum term for post-shipment credits in foreign currencies was six months from the date of shipment, there are no residual benefits beyond April 30, 2013, from the foreign currency export lending program, and that the GOI has not implemented a replacement program.³⁸

³⁴ See GQR at 9-10.

³⁵ *Id.*, at 9.

³⁶ See MSQR at 14.

³⁷ See *Shrimp from India*, and accompanying Issues and Decision Memorandum at 18.

³⁸ *Id.*, and accompanying Issues and Decision Memorandum at 19.

2. Duty Drawback (“DDB”)

This program was not alleged by Petitioners but was discovered during the course of this investigation: Mangal Steel reported receiving duty rebates under this program in response to our request that they report “other subsidies.”³⁹ Accordingly, we requested the GOI to provide a response with respect to this program.

Section 775 of the Act provides that if the Department “discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition....the administering authority (1) shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding.” Accordingly, the statute authorizes us to investigate this program.

The GOI explained that the DDB program provides rebates of duties or taxes chargeable on any (a) imported or excisable materials and (b) input services used in the manufacture of export goods.⁴⁰ Specifically, the duties and tax “neutralized” under the program are the (i) Customs and Union Excise Duties on inputs and (ii) Service Tax in respect of input services.⁴¹ The duty drawback is generally fixed as a percentage of the free-on-board (“FOB”) price of the exported product.⁴²

Import duty exemptions on inputs for exported products are not countervailable so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.⁴³ However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products, and in what amounts.⁴⁴ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁴⁵ If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, remission or drawback is countervailable.⁴⁶

Regarding its establishment of applicable duty drawback rates, the GOI stated the following:

The rates are determined following a specified procedure that is undertaken by an independent committee appointed by the Government. The committee makes its recommendations after discussions with all stake holders including Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported,

³⁹ *Id.*, at 34.

⁴⁰ See supplemental questionnaire response from the GOI dated November 18, 2013 (“G1SQR”) at 15-16.

⁴¹ *Id.*

⁴² *Id.*

⁴³ See 19 CFR 351.519(a)(1)(ii).

⁴⁴ See *Shrimp from India*, and accompanying Issues and Decision Memorandum at “Duty Drawback.”

⁴⁵ *Id.*

⁴⁶ See 19 CFR 351.519(a)(4)(i)-(ii).

applicable duty rates, consumption ratios and GOB values of export products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analyzed and this information is used to form the basis for the rate of Duty Drawback.⁴⁷

We requested that the GOI provide a copy of the recommendations (and supporting documents) for the drawback rates in effect during the POI,⁴⁸ but the GOI only re-summarized the decision-making process and did not provide the requested documentation.⁴⁹ We reiterated our request for these recommendations and supporting documents,⁵⁰ but the GOI once again only re-summarized the methodology and drawback rates in effect and did not provide the requested supporting documentation.⁵¹ Thus, consistent with *Shrimp from India*, based on the GOI's questionnaire responses and lacking the documentation to support that the GOI has a system in place, we conclude that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended.⁵²

Accordingly, we determine that the DDB program confers a countervailable subsidy. Under the DDB program, a financial contribution, as defined under 771(5)(D)(ii) of the Act, is provided because rebated duties represent revenue forgone by the GOI. Moreover, as explained above, the GOI has not supported its claim that the DDB system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported product. Therefore, under 19 CFR 351.519(a)(4), the entire amount of the import duty rebate earned during the POI constitutes a benefit. Finally, this program is only available to exporters; therefore, it is specific under sections 771(5A)(A) and (B) of the Act.

Pursuant to 19 CFR 351.519(b)(1), we find that benefits from the DDB program are conferred as of the date of exportation of the shipment for which the pertinent drawbacks are earned. We calculated the benefit on an as-earned basis upon export because drawback under the program is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, it is at the date of exportation of the shipment that recipients know the exact amount of the benefit (*i.e.*, the value of the drawback).

We calculated the subsidy rate using the value of all DDB duty rebates that Mangal Steel earned on U.S. sales during the POI. We divided the total amount of the benefit received by Mangal Steel by the company's total sales of U.S. exports during the POI.

On this basis, we determine a countervailable subsidy rate of 2.69 percent *ad valorem* for Mangal Steel.

⁴⁷ See GISQR at 27.

⁴⁸ See the supplemental questionnaire issued to the GOI dated November 22, 2013, ("G2SQ") at 3.

⁴⁹ See the supplemental questionnaire response from the GOI dated November 27, 2013, ("G2SQR") at 2.

⁵⁰ See the post-preliminary supplemental questionnaire issued to the GOI dated January 13, 2014, ("G3SQ") at 3.

⁵¹ See the post-preliminary results supplemental questionnaire response from the GOI dated January 1, 2014.

⁵² See *Shrimp from India*, and accompanying Issues and Decision Memorandum at 12-14.

3. Export Promotion of Capital Goods Scheme (“EPCGS”)

The EPCGS provides for a reduction of or exemption from customs duties and excise taxes on imports of capital goods used in the production of exported products.⁵³ Under this program, license holders pay reduced duty rates on imported capital equipment. The balance of the duty is exempted as long as the exporter meets export obligations within a certain number of years contingent upon the rate of duty paid.⁵⁴ Once a company has met its export obligations, the GOI will formally waive the exempted duties on the imported goods.

The Department has previously determined that import duty reductions or exemptions provided under the EPCGS are countervailable export subsidies because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act; (2) provides two different benefits under section 771(5)(E) of the Act; and (3) is specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is contingent upon export performance. Because the above-cited evidence with respect to this program is consistent with the findings in *Shrimp from India*, we determine that this program is countervailable.

Under the EPCGS, the exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. It is the Department’s practice to treat any balance on an unpaid liability that may be waived in the future as a contingent-liability interest-free loan pursuant to 19 CFR 351.505(d)(1). Since the unpaid duties are a liability contingent on subsequent events,⁵⁵ these interest-free contingent-liability loans constitute the first benefit under the EPCGS. The second benefit arises when the GOI waives the 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 the GOI has acknowledged that the company has completed its export obligation, 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 pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are approved for the purchase of capital equipment. The preamble of the Department’s 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....”⁵⁶ In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.⁵⁷

Mangal Steel reported that it imported capital goods at reduced import duty rates under the EPCGS in years prior to the POI.⁵⁸ Information provided by Mangal Steel indicates that their

⁵³ See GQR at 25-26.

⁵⁴ *Id.*

⁵⁵ *Id.*, at 26-27.

⁵⁶ See *Countervailing Duties*, 63 FR at 65393.

⁵⁷ See *Certain Frozen Warmwater Shrimp From India: Preliminary Countervailing Duty Determination*, 78 FR 33344 (June 4, 2013) (“*Shrimp/India/Prelim*”), and accompanying Decision Memorandum at “Duty Incentives under the Export Promotion Capital Goods (“EPCG”) Program,” unchanged in *Shrimp from India*.

⁵⁸ See MSQR at 23-27 and Exhibit 11(d).

EPCGS licenses were issued for the purchase of capital goods used for the production of subject merchandise so we are attributing the EPCGS benefits received by Mangal Steel to their total exports of subject merchandise consistent with 19 CFR 351.525(b)(5).

Mangal Steel met the export requirements for certain EPCGS licenses prior to December 31, 2012 (the last day of the POI), and the GOI formally waived the relevant import duties.⁵⁹ For a number of their licenses, however, Mangal Steel had not yet met its export obligation as required under the program. Therefore, although Mangal Steel received a deferral from paying import duties for the capital goods that were imported, the final waiver of the obligation to pay the duties was not demonstrated for a number of these imports.⁶⁰

To calculate the benefit received from the GOI's formal waiver of import duties on Mangal Steel's capital equipment where the export obligations were met prior to December 31, 2012 (the last day of the POI), we considered only the amount of basic customs duty waived. The record indicates that the additional duty (CVD), the Education Cess, and the Special Additional Duty (SAD) are creditable under India's VAT system (*i.e.*, they are refunded regardless of whether a firm uses the EPCGS). Therefore, we adjusted Mangal Steel's EPCGS calculation by removing the impact of the additional duty (CVD), the Education Cess, and the SAD for each instance in which the data was provided.⁶¹ Further, we determine that the year of receipt of the benefit to be the year in which the GOI formally waived the respondents' outstanding import duties. This is consistent with the approach followed in *Shrimp from India*. Next, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the total value of basic customs duties waived, for each year in which the GOI granted Mangal Steel an import duty waiver. We did not identify any years in which the value of the waivers exceeded 0.5 percent of Mangal Steel's total export sales, inclusive of subject merchandise, in that same year. As a result, we expensed the value of the waived duties to the year of receipt.

As noted above, import duty reductions or exemptions that the respondents received on the imports of capital equipment for which they had 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 are treating the unpaid import duty liability as an interest-free loan.⁶²

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 had not been officially waived by the GOI, as of the end of the POI. Accordingly, we find the benefit to be the interest that the respondents would have paid during the POI had they borrowed the full amount of the duty reduction or exemption at the time of importation.⁶³

⁵⁹ See MSQR at Exhibit 11(d).

⁶⁰ *Id.*, at 27.

⁶¹ See *Shrimp from India*; see also *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) ("*HR Steel/India*"), and accompanying Issues and Decision Memorandum at Comment 21.

⁶² See 19 CFR 351.505(d)(1); see also *Shrimp/India/Prelim*, and accompanying Decision Memorandum at "Duty Incentives under the Export Promotion of Capital Goods (EPCG) Program" (unchanged in *Shrimp from India*).

⁶³ *Id.*

As stated above, the time period for fulfilling the export requirement expires eight years after importation of the capital good. As such, pursuant to 19 CFR 351.505(d)(1), the 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 at a point in time that is more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the long-term interest rates as discussed in the “Benchmarks and Discount Rates” section, above. We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the capital good was imported and summed these amounts to determine the total benefit from these contingent liability loans.

The benefit received under the EPCGS is the interest due on the contingent-liability loans for imports of capital equipment that have unmet export requirements during the POI. We then divided the total benefit received by the respondent under the EPCGS by Mangal Steel’s total exports of subject merchandise during the POI.

On this basis, we determine a countervailable subsidy of 0.04 percent *ad valorem* for Mangal Steel.

4. Focus Product Scheme (“FPS”)

Mangal Steel reported receiving an incentive from the GOI under the FPS.⁶⁴ The FPS is an incentive on select exports of products. The incentives are paid to offset infrastructure inefficiencies and other associated costs involved in the marketing of these products. The FPS incentive rate for threaded rod is five percent of the FOB value of the export and provides for duty-free imports of inputs and capital goods.⁶⁵ The GOI also allows exporters to sell the FPS licenses.⁶⁶ Mangal Steel states that it does not utilize the FPS licenses for importing inputs or capital goods, but that it sells the licenses to other companies.⁶⁷

We determine that this program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act because duty-free import of goods represents revenue forgone by the GOI. Further, we determine that the FPS is specific under sections 771(5A)(A) and (B) of the Act because it is limited to exporters. Furthermore, the entire amount of the FPS constitutes a benefit under 771(5)(E) of the Act in exempted duties on imported inputs and capital goods.

Consistent with 19 CFR 351.519(b)(2), we find that the benefits from the FPS are conferred as of the date of exportation of the shipment for which the FPS is earned. This is because the FPS credits are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, the recipients know the exact amount of the benefit when exportation occurs. In the case of exports of threaded rod, the exact amount of the benefit is equal to five percent of the FOB value of the export. Because Mangal Steel receives a FPS benefit equal to

⁶⁴ See MSQR at 37.

⁶⁵ See GISQR at 32 and MSQR at Exhibits 14(c) and 14(d).

⁶⁶ See GOI Verification Report at 2.

⁶⁷ See Mangal Steel Verification Report at 9.

five percent of the FOB value of the exported threaded rod, we determine that a countervailable subsidy of 5.00 percent *ad valorem* is provided to Mangal Steel during the POI.

5. Status Holder Incentive Scrip (“SHIS”)

Mangal Steel reported that it imported capital goods under the SHIS scheme for use in the manufacture of subject and non-subject merchandise. The SHIS scheme was introduced in 2009 with the objective to promote investment in upgrading technology in specific sectors.⁶⁸ Status Holders under the GOI’s listing of specific exported products receive incentive scrip (or credit) equal to one percent of the FOB value of the exports in the form of a duty credit. Mangal Steel qualifies as a Status Holder under the exporting product category of “Engineering Sector.”⁶⁹ The SHIS license can only be used for imports of capital goods and it can be transferred to another Status Holder for the import of capital goods.⁷⁰

We determine that this program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act because duty free import of goods represents revenue forgone by the GOI. Further, we determine that it is specific under sections 771(5A)(A) and (B) of the Act because it is limited to exporters. A benefit is also provided under the SHIS program under 771(5)(E) and 19 CFR 351.519 in the amount of exempted duties on imported capital equipment.

Import duty exemptions under this program are solely provided for the purchase of capital equipment. The preamble of the Department’s 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....”⁷¹ In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.⁷²

Mangal Steel reported that it received SHIS licenses to import capital goods duty-free during the POI and AUL. Information provided by Mangal Steel indicates that its SHIS licenses were issued for the purchase of capital goods used for the production of exported goods, so we are attributing the SHIS benefits received by Mangal Steel to the company’s total exports.

At verification the GOI confirmed that the SHIS scrip is equivalent to cash and that the company can use it to pay all duties, upon entry. Unlike the DDB and FPS programs, the SHIS scrip represents a non-recurring benefit that is not automatically received and is known to the recipient

⁶⁸ See GISQR at 40 and Exhibit SQ-17.

⁶⁹ *Id.*, at 41 and Exhibit SQ-17; see also MSQR at 43.

⁷⁰ See GISQR at 41 and Exhibit SQ17; see also, MSQR at 42.

⁷¹ See *Countervailing Duties*, 63 FR at 65393.

⁷² See *Shrimp/India/Prelim*, and accompanying Decision Memorandum at “Duty Incentives under the Export Promotion Capital Goods (“EPCG”) Program,” unchanged in *Shrimp from India*.

at the time of receipt of the license.⁷³ Although the Department's regulations stipulate that we will normally consider the benefit as having been received as of the date of exportation, *see* 19 CFR 351.519(b)(1), because the SHIS benefit amount is not automatic and is not known to the exporter until well after the exports are made, the SHIS licenses, which contain the date of validity and the duty exemption amount, as issued by the GOI, are the best method to determine and account for when the benefit is received.⁷⁴

We performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the total value of the exempted customs duties for each year in which the Mangal Steel received a SHIS license and determined to allocate the benefits across the AUL.⁷⁵ We then calculated the benefits according to the calculation provided for in 19 CFR 351.524(d)(1). On this basis, we determine a countervailable subsidy of 0.23 percent *ad valorem* for Mangal Steel.

While the GOI confirmed that this program was discontinued effective April 1, 2013, companies may apply for licenses for up to three years after the program has ended (*i.e.*, through 2016).⁷⁶ Additionally, because this program applies to capital goods and the AUL for this investigation is 12 years, companies may receive residual benefits from this program through at least 2028.

B. Program Determined To Be Terminated

1. Duty Entitlement Passbook Scheme ("DEPS")

The DEPS served to remit duties on inputs used in the manufacture of exported products.⁷⁷ The main objective of the program, which the GOI introduced on April 1, 1997, was to neutralize the incidence of custom duties on the import content of the exported product.⁷⁸ According to the GOI, DEPS was terminated effective October 1, 2011. The GOI provided the relevant copy of the Ministry of Finance circular terminating the DEPS for shipment made on or after October 1, 2011.⁷⁹ The GOI also stated that there is no successor program to DEPS.⁸⁰

When a subsidy program is terminated, in accordance with 19 CFR 351.526(d), there must also be no residual benefits and the government must not have implemented a replacement program for the terminated program. In *Shrimp from India*, the Department determined that no residual benefits from DEPS existed after September 30, 2011.⁸¹ Therefore, we determine that the DEPS

⁷³ As both the GOI and Mangal Steel explained at verification, in order to receive a SHIS license, a company must (1) be a Status Holder, and (2) must apply for a SHIS license after it has received payment for all of its exports for the year in which it is applying. The applicant must provide documentation, certified by an accountant, substantiating the FOB export figures for which it is claiming credit under the SHIS program. *See* GOI Verification Report at 3-4 and Mangal Steel Verification Report at 10-11.

⁷⁴ The Department determined, and was upheld by the CIT in *Essar Steel v. United States* 395 F. Supp. 2d 1275, 1278 (CIT 2005) ("*Essar Steel*") in the similar but discontinued GOI program, the Duty Entitlement Passbook Scheme ("DEPS"), benefits were conferred when earned, rather than when the credits were used.

⁷⁵ *See* Final Calculations Memorandum at Attachment 11.

⁷⁶ *See* GOI Verification Report at 5.

⁷⁷ *See* GQR at Exhibit 1.

⁷⁸ *See, e.g., Shrimp from India* and accompanying Issues and Decision Memorandum at 7.

⁷⁹ *See* GQR at Exhibits 1 and 2.

⁸⁰ *Id.*, at 3.

⁸¹ *See Shrimp from India*, and accompanying Issues and Decision Memorandum at 8-9.

is terminated effective October 1, 2011. Furthermore, because we determined in *Shrimp from India* that the DEPS provided no residual benefits after September 30, 2011, we also find that no exporters of subject merchandise, including Mangal Steel, received benefits under this program, as of September 30, 2011.

C. Programs Determined To Be Not Used by Mangal Steel During the POI

Mangal Steel reported that it did not use the following benefits during the POI or during the AUL period.

Government of India Programs

- a. Advance Licenses Program
- b. GOI Loan Guarantees

State Government of Maharashtra Programs

- a. Industrial Promotion Subsidy
- b. Octroi Refund Scheme
- c. Electricity Duty Exemption
- d. Waiver of Stamp Duty
- e. Incentives to Strengthen Micro-, Small-, and Medium-Sized Manufacturing Enterprises

D. Final AFA Rates Determined for Programs Used by Babu

As explained above, we are making the adverse inference that Babu received countervailable subsidies under each of the subsidy programs that the Department included in its initiation, other than those found to be terminated and not replaced. We also included programs self-identified by Mangal Steel, as nothing in the description of the programs would limit them to Mangal Steel; thus, we determine that Babu could benefit from the same programs. Listed below are the AFA rates applicable to each program.

Program	Subsidy Rate (percent)
Pre-Shipment and Post-Shipment Financing	0.65
Export Promotion of Capital Goods Scheme	0.04
Advance Licenses Program ⁸²	0.50
Government of India Loan Guarantees ⁸³	2.90
National Manufacturing Competitiveness Program- Marketing Assistance Scheme ⁸⁴	6.06

⁸² See *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008), and accompanying Issues and Decision Memorandum at “Advance License Program (ALP)” where the Department calculated a rate for the identical program.

⁸³ 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 at “Pre-Shipment and Post-Shipment Export Financing” where the Department calculated a rate for a similar program.

Program	Subsidy Rate (percent)
Duty Drawback Scheme	2.69
Focus Product Scheme	5.00
Status Holder Incentive Scrip	0.23
State Government of Maharashtra- Industrial Promotion Subsidy ⁸⁵	6.06
State Government of Maharashtra- Octroi Refund Scheme ⁸⁶	3.09
State Government of Maharashtra- Electricity Duty Exemption ⁸⁷	3.09
State Government of Maharashtra- Waiver of Stamp Duty ⁸⁸	3.09
State Government of Maharashtra- Incentives to Strengthen Micro-, Small-, and Medium- Sized Manufacturing Enterprises ⁸⁹	6.06
Total	39.46

VII. CALCULATION OF THE ALL OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States. However, the all-others rate generally may not include zero and *de minimis* rates or any rates based solely on the facts available.⁹⁰ In this investigation, the only rate that is not *de minimis* or based entirely on facts available is the rate calculated for Mangal Steel. Consequently, the rate calculated for Mangal Steel is also assigned as the "all others" rate.

VIII. DISCUSSION OF THE ISSUES

Comment 1: Manner in Which the Department Should Calculate the Benefit Under the Status Holder Incentive Scrip ("SHIS")

Mangal Steel's Comments

- The Department should remove the impact of additional duty (CVD), Education Cess (*i.e.*, education tax), and Special Additional Duties ("SAD").

⁸⁴ See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 49635 (September 28, 2001), and accompanying Issues and Decision Memorandum at "GOI Forgiveness of SDF Loans Issued to SAIL" ("*HRS Investigation Industrial Promotion Program*") where the Department calculated a rate for a similar program.

⁸⁵ *Id.*

⁸⁶ See *Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India*, 71 FR 28665 (May 17, 2006) and accompanying Issues and Decision Memorandum at "State Government of Gujarat (SGOG) Tax Incentives," where the Department calculated a rate for a similar program.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See *HRS Investigation Industrial Promotion Program*, where the Department calculated a rate for a similar program.

⁹⁰ Section 705(c)(5)(A) of the Act; see, e.g., *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017, 17020 (March 23, 2012).

- The Department should calculate the benefit based on import duties actually exempted on actual imports of capital goods.
- Since the program was terminated effective April 1, 2013, and not replaced by a similar scheme, the Department should not calculate any cash deposit rate for this program.

Petitioners' Rebuttal

- The scrip provided by SHIS has a cash value and can be sold; thus, the Department should not make any adjustment for the additional duty (CVD), Education Cess, and SAD because there is no evidence that, when scrip is sold, its market value is diminished by the deduction of the additional duties.

Department's Position: We calculated the SHIS benefit based upon scrip granted to Mangal Steel, and, as in the *Preliminary Determination*, we are treating the import duty exemptions on capital equipment as non-recurring benefits. Moreover, we included this benefit in the cash deposit rate because 1) benefits from the scrip are allocated over the AUL, and 2) although the program has been terminated, companies may still apply for, and receive, licenses based on past export performance.

During verification, the GOI confirmed that this scrip is equivalent to cash and that the company can use it to pay all duties upon entry.⁹¹ Moreover, the GOI confirmed that, even if the company used its SHIS license scrip to pay for entry duties, under the Indian central value added tax system ("CENVAT system"), the company can still receive a rebate or credit, just as it would if it had paid the entry duty with a cash deposit or bond, instead of with its SHIS license scrip because the SHIS license is like cash.⁹² Thus, there is no reason to consider adjusting the SHIS licenses received by Mangal Steel for import duties. Additionally, although the Department stated in the *Preliminary Determination* that it was adjusting the SHIS benefit by the additional duty CVD, Education Cess, and SAD,⁹³ this was an inadvertent misstatement, because the Department, in fact, did not adjust the SHIS calculations by these duties for the *Preliminary Determination*. Likewise, the Department is not making such an adjustment for this final determination, since the SHIS license, as was verified, is debited for the entire amount of the duties owed,⁹⁴ is "like cash" according to the GOI,⁹⁵ and the scrip amount on the SHIS license represents the benefit to Mangal Steel, as explained below.

Although the Department's regulations stipulate that we will normally consider the benefit as having been received as of the date of exportation,⁹⁶ the SHIS benefit amount is not automatic and is not known to the exporter until after the end of the fiscal year in which the exports are made. Accordingly, we determined that the best method to account for the benefit received is to rely on the SHIS licenses themselves, which contain the date of validity and the scrip amount.

⁹¹ See GOI Verification Report at 4.

⁹² *Id.*, at 4-5.

⁹³ See *Preliminary Determination*, and accompanying Decision Memorandum at 18.

⁹⁴ See Mangal Steel Verification Report at 11.

⁹⁵ See GOI Verification Report at 4.

⁹⁶ See 19 CFR 351.519(b)(2).

As we previously determined,⁹⁷ and were upheld by the CIT in *Essar Steel*,⁹⁸ regarding the similar but discontinued GOI program, the Duty Entitlement Passbook Scheme (“DEPS”), benefits were conferred when *earned*, rather than when the credits were used. Thus, we previously considered, and rejected, the as-used benefit methodology.⁹⁹ In the case of SHIS licenses, the benefit was known to Mangal Steel when it received the license.

Furthermore, calculating benefits under the SHIS based on the receipt of the SHIS license scrip and not when the SHIS license script is used is consistent with the Department’s long standing practice of not tracking what companies do with the subsidies they received.¹⁰⁰ Although the facts of this investigation differ slightly with respect to the disposition of the DEPS license in *Essar Steel*, the Court’s affirmation of countervailing DEPS licenses at the date when the exact amount of the benefit is known is still applicable. Specifically, in the case of benefits received under the SHIS, once the Department is able to ascertain the value of benefits received under the program, as defined by the scrip amount and date on the license, it would not be administratively feasible to analyze and determine whether the licenses are somehow discounted due to a subsequent sale.¹⁰¹

Finally, at verification, the GOI confirmed that this program was discontinued effective April 1, 2013, although companies may apply for licenses for up to three years after the program has ended (*i.e.*, through 2016).¹⁰² Furthermore, the licenses are for imports of capital goods, which are applied against the AUL and can confer an extended benefit up to 12 years after issue. The provision for adjusting cash deposit rates for terminated programs is set forth under 19 CFR 351.526 and is only applicable when the Department determines that there are no residual benefits from the terminated program. Because there may be residual benefits conferred under the SHIS program, any benefit derived from the SHIS program should be included in the cash deposit rate.

Comment 2: Manner in Which the Department Should Calculate the Benefit Under the Pre- and Post-Shipment Export Financing Program

Mangal Steel’s Comments

- The Department should calculate the benefit based solely on the interest subvention, divided by total export sales during the POI.

Petitioners’ Rebuttal

- Because Mangal Steel’s bank should not be considered a commercial bank, the Department’s use of average national interest rates from the IMF’s IFS continues to be the correct benchmark for comparing interest rates.

⁹⁷ See *e.g.*, *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) (“*Lined Paper from India*”) and accompanying Issues and Decision Memorandum at Comment 2.

⁹⁸ See *Essar Steel*, 395 F. Supp. 2d at 1278.

⁹⁹ See, *e.g.*, *Lined Paper from India* and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰⁰ See 19 CFR 351.503(c); see also, *e.g.*, *id.*, and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰¹ See, *e.g.*, *Lined Paper from India* and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰² See GOI Verification Report at 5.

Department’s Position: As explained above, under the section titled “Pre- and Post-Shipment Export Financing,” for rupee denominated loans, we have calculated two separate benefits under the GOI’s export financing program: 1) a benefit based on the interest ceiling for Mangal Steel’s subvention loans, and 2) a benefit based on the interest subvention rebates received by Mangal Steel during the POI.¹⁰³

Regarding Denominators: 1) For pre-shipment loans, because the loans are for raw material inputs for all exports, we are using total exports as the denominator.¹⁰⁴ 2) For post-shipment loans, Mangal Steel was unable to disaggregate loans for exports of subject merchandise to the United States from total exports to the United States; thus, Mangal Steel provided export loan data for all exports to the United States. Therefore, for post-shipment loans, we are using total exports to the United States as the denominator.¹⁰⁵ 3) For interest subvention, because the subvention rebates are applied to all of Mangal Steel’s exports, we are using total exports as the denominator.¹⁰⁶

The GOI explained that, since 2010, the Reserve Bank of India has operated an interest subvention scheme of two percent for rupee-denominated loans.¹⁰⁷ Additionally, the GOI’s questionnaire response indicates that pre- and post-shipment export financing programs in Indian rupees, where interest subvention was applied, still had a cap placed on the amount of interest banks could charge, although other non-subvention loans were deregulated in 2010 and banks were free to charge a market-based rate.¹⁰⁸ Thus, in addition to accounting for the interest subvention, we must also take into account the benefit accruing to Mangal Steel due to the GOI-prescribed ceiling on the interest rate charged for loans which were part of the GOI’s interest subvention program to determine whether the interest rate charged on these loans is less than the rate the company would have paid on a comparable commercial loan as required under section 771(5)(E)(ii) of the Act.

Comment 3: Manner in Which the Department Should Calculate the Benefits Under the Focus Product Scheme

Mangal Steel’s Comments

- The Department should consider the total benefit for subject and non-subject merchandise under FPS and divide it by total exports during the POI.

Petitioners’ Rebuttal

- The Department correctly concluded for the preliminary determination that Mangal Steel received a countervailable subsidy equal to five percent during the POI.

¹⁰³ See Final Calculations Memorandum at Attachments 2, 4, 6, and 8.

¹⁰⁴ *Id.*, at Attachments 2.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ See, e.g., GQR at 7-8.

¹⁰⁸ *Id.*

Department's Position: As discussed above under the section titled "Focus Product Scheme ("FPS")," the incentive credit or scrip rate¹⁰⁹ received by Mangal Steel for exports of subject merchandise is equal to five percent of the export value. Under 19 CFR 351.525(b)(5), a five percent subsidy under this program is tied to the sale (export) of subject merchandise. Because the GOI sets the scrip rate on a product specific basis, and the exact amount of the benefit conferred upon exports of subject merchandise is five percent, there is no reason under our statute or the CVD regulations to include the exports of non-subject merchandise in any benefit calculation, as Mangal Steel suggests. Although Mangal Steel provided the Department with a table of all of its FPS licenses based on exports during the POI, Mangal Steel also demonstrated that the scrip rate in effect for all subject merchandise during the POI was five percent,¹¹⁰ although some of Mangal Steel's non-subject exports also received a lower scrip rate of two percent. Because all of Mangal Steel's exports of subject merchandise received a rate of five percent, there is no need to consider the scrip received on exports of non-subject merchandise. Lumping together benefits from the subject merchandise with those from non-subject merchandise merely dilutes the benefit accruing to Mangal Steel on exports of subject merchandise and would result in an inaccurate subsidy calculation. As such, we continue to find the five percent rate to be the most accurate benefit rate for Mangal Steel under the FPS program.

Comment 4: Whether the Indian Duty Drawback Program is Countervailable

Mangal Steel's Comments

- The Department should find that India's DDB system is not countervailable.

Petitioners' Rebuttal

- As the Department found in other proceedings, and as occurred here, the GOI failed to provide requested documentation for the drawback rates in effect during the POI. Consequently, the GOI has not supported its claim that its system is reasonable or effective for the purposes intended. Furthermore, there was no discussion of this issue during the Department's verification of the GOI.
- Accordingly, because there is no evidence that the GOI has an adequate system in place to confirm which inputs are consumed in the production of an exported product and in what amounts, the Department should make a final determination that the Indian DDB program constitutes a countervailable subsidy.

Department's Position: As in *Shrimp from India*, we continue to find India's DDB system to be countervailable because the Indian government did not provide sufficient information to support that it has an effective system in place to confirm that the imports consumed were used to produce the exported merchandise that benefited from this program.¹¹¹

Although we requested specific information and supporting documentation from the GOI regarding its DDB system, the GOI did not provide the information to support its claims (*see the*

¹⁰⁹ A "scrip rate" is a value assigned to certain Indian importers that a company is entitled to claim against import duties during a specific period of time, in accordance with a FPS license. Indian authorities keep track of the amount of scrip remaining and debit the license to pay for import duties.

¹¹⁰ See MSQR at Exhibits 14(c) and 14(d).

¹¹¹ See *Shrimp from India*, and accompanying Issues and Decision Memorandum at 12-14.

discussion of this program above, under “Duty Drawback (‘DDB’)”). Because the GOI did not provide the requested documentation in its questionnaire responses, there was insufficient information on the Indian DDB program to verify, and we did not discuss the DDB program at verification with the GOI.

Comment 5: Whether the Countervailing Duty Subsidy Rate Applied to Babu Exports is Appropriate

GOI’s Comments

- The GOI has a number of alternate schemes; in certain cases, an exporter may not avail itself of multiple schemes at the same time.
- The Department has not determined that Babu is eligible for Government of Maharashtra schemes, but has applied those benefits in its calculations.
- The Department has not applied the principles of best available information in a manner consistent with provisions of Article 12.7 of the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”), as interpreted by the World Trade Organization (“WTO”).

Petitioners’ Rebuttal

- Because Babu did not respond to the Department’s questionnaire, the Department applied AFA in its calculation of a rate for Babu.
- This proceeding is governed by U.S. countervailing duty law, which fully implements the obligations of the United States under the SCM Agreement; because Babu failed to provide information requested by the Department, the Department has the authority, under U.S. countervailing duty law, to apply AFA.

Department’s Position: In accordance with U.S. law, we did not change the programs or calculation methodology in our determination of complete AFA, with regard to the rate applied to Babu.

With regard to the GOI’s comments about alternate schemes and Government of Maharashtra programs, we note that because Babu did not provide us with a questionnaire response, we are unable to determine if any of these programs do not apply to Babu. Moreover, we find that Babu withheld requested information and significantly impeded a proceeding; thus, as part of an AFA rate, we assigned Babu rates for all programs which were included in the Department’s initiation, other than those programs which were found to be terminated and not replaced. We also included programs self-identified by Mangal Steel, as nothing in the description of the programs would limit them to Mangal Steel; thus, we determine that Babu could benefit from the same programs.

Section 776(a) of the Act provides that, if an interested party or any other person withholds information that has been requested, fails to provide such information by the deadlines, significantly impedes a proceeding, or provides information that cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination. Further, section 776(b) of the Act provides that, if the Department finds that “an interested party has failed to cooperate by not acting to the best of its ability” the Department “may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise

available.” As discussed above in “Use of Facts Otherwise Available and Adverse Inferences,” Babu, a mandatory respondent, withheld requested information and significantly impeded a proceeding, and failed to cooperate in this investigation by not acting to the best of its ability to comply with the Department’s requests for information. As such, the application of facts available to Babu is warranted. Further, the use of an inference that is adverse to the company’s interests in selecting from the facts otherwise available is appropriate, pursuant to section 776(b) of the Act.¹¹²

This proceeding is governed by U.S. CVD law; to the extent that parties raise provisions of the WTO SCM Agreement in these proceedings, the U.S. CVD law is consistent with the United States’ obligations under the SCM Agreement. As explained in the *Preliminary Determination*, Babu failed to provide a questionnaire response;¹¹³ hence, we applied AFA, pursuant to U.S. countervailing duty law.

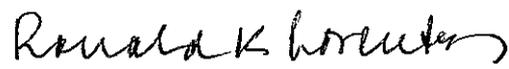
IX. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

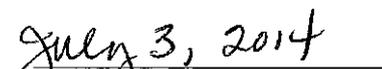
✓

Agree

Disagree



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance



(Date)

¹¹² See also Article 12.7 of the SCM, which states that “In cases in which any interested Member or interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.”

¹¹³ See *Preliminary Determination*, 78 FR at 76816.

Attachment 1

Description of Programs Being Investigated as Alleged in the Petition

Below is a description of programs which are not otherwise discussed above, but which were initiated on by the Department, as alleged and described by Petitioner.¹¹⁴

A. Government of India Subsidy Programs

1. Advance Licenses Program

Description: Petitioners allege that under India's Duty Exemption Scheme, exporters may import inputs duty free through the use of import licenses. Petitioners allege that through the use of advance licenses, companies are able to import inputs required for the manufacture of goods without paying India's basic customs duty. The Department has previously determined that the advance license program constitutes a countervailable subsidy.¹¹⁵

Financial Contribution: Petitioners allege that the program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone by the GOI.

Benefit: Petitioners allege that the program confers a benefit consistent with section 771(5)(E) of the Act in the form of an over-rebate of duties on imports not consumed in production.

Specificity: Petitioners allege that the program is specific within the meaning of section 771(5A)(B) of the Act because only exporters are eligible to receive advance licenses. We note that, under section 771(5A)(A) of the Act, an export subsidy is deemed to be specific.

2. Government of India Loan Guarantees

Description: Petitioners allege that the GOI, through the Ministry of Finance, extends loan guarantees to selected Indian companies in particular industries, including the steel industry, on an *ad hoc* basis.

Financial Contribution: Petitioners allege that loan guarantees provide a financial contribution under section 771(5)(D)(i) of the Act in the form of direct transfer of funds from the GOI.

Benefit: Petitioners allege that loan guarantees confer a benefit to the extent that the interest charged on GOI loans is lower than the rates charged on comparable commercial loans pursuant to section 771(5)(E)(ii) of the Act.

Specificity: Petitioners allege that loan guarantees are *de jure* specific under section 771(5A)(D)(i) of the Act because they are limited to companies within the steel industry.

¹¹⁴ See the Department's Initiation Checklist, dated July 17, 2013.

¹¹⁵ *Id.*; see also *Steel Pipe*, and accompanying Issues and Decision Memorandum at C.1.

3. National Manufacturing Competitiveness Program- Marketing Assistance Scheme

Description: Petitioners allege that this program provides subsidies to support the export activities of micro-, small-, and medium-enterprises through grants for participation in international exhibitions and trade fairs held in foreign countries. The subsidies apply to rental space, freight charges, airfare and advertising.

Financial Contribution: Petitioners allege that the program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of grants by the GOI.

Benefit: Petitioners allege that the program confers a benefit through the payment of a subsidy based on export-oriented activities pursuant to section 771(5)(E) of the Act.

Specificity: Petitioners allege that the program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because the benefits are limited to micro-, small-, or medium-sized enterprises that are engaged in export activities. We note that although Petitioners cite to section 771(5A)(D)(i) of the Act, they describe the alleged program as an export subsidy. See sections 771(5A)(A) and (B) of the Act. Therefore, we find that Petitioners have provided sufficient evidence to support an allegation that the program is specific under section 771(5A)(B) of the Act.

B. Subsidy Programs of the State of Maharashtra

Petitioners identified several producers and/or exporters of steel threaded rod which they allege are located in the State of Maharashtra and may have benefited from subsidies available from the state government.

1. Industrial Promotion Subsidy

Description: Petitioners allege that new project in certain areas of the state of Maharashtra are eligible for the Industrial Promotion Subsidy (“IPS”) which provides a payment incentive to companies that invest in new projects.

Financial Contribution: Petitioners allege that the program provides a financial contribution under section 771(5)(D)(i) of the Act in the form of revenue forgone by the State of Maharashtra.

Benefit: Petitioners allege that the program confers a benefit through the payment of a subsidy based on taxes collected from the beneficiary company pursuant to section 771(5A)(D)(i) of the Act.

Specificity: Petitioners allege that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits under this program are limited to micro-, small-, and/or medium-sized companies located within designated geographic regions in the State of Maharashtra.

2. Octroi Refund Scheme

Description: Petitioners allege that this program offers a refund of the Octroi duty, a tax levied on goods that enter a town or district, to industrial establishments that make capital investments in specific regions of Maharashtra. The program is valid for a period of up to 12 years.

Financial Contribution: Petitioners allege that the program provides a financial contribution under section 771(5)(D)(i) of the Act in the form of either a direct transfer of funds or revenue foregone by the State of Maharashtra.

Benefit: Petitioners allege that the program confers a benefit consistent with section 771(5)(E) of the Act in the amount of the Octroi refund.

Specificity: Petitioners allege that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits are limited to certain companies located within designated geographic regions in the State of Maharashtra.

3. Electricity Duty Exemption

Description: Petitioners allege that, under this program, the state provides an exemption from the payment of the duty of tax on electricity charges.

Financial Contribution: Petitioners allege that the program provides a financial contribution under section 771(5)(D)(ii) of the Act because Maharashtra has foregone or not collected revenue otherwise due.

Benefit: Petitioners allege that the program confers a benefit consistent with section 771(5)(E) of the Act in the amount of the duty or tax exempted on electricity charges.

Specificity: Petitioners allege that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits are limited to companies located within designated geographic regions in the State of Maharashtra.

4. Waiver of Stamp Duty

Description: Petitioners allege that, under this program, companies establishing new projects as well as companies expanding existing operations are exempted from the payment of stamp duty at various rates, depending on the location of the company.

Financial Contribution: Petitioners allege that the program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue foregone by the State of Maharashtra.

Benefit: Petitioners allege that the program confers a benefit consistent with section 771(5)(E) of the Act in the amount of duty not collected from the beneficiary company.

Specificity: Petitioners allege that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits are limited to companies located within designated geographic regions in the State of Maharashtra.

5. *Incentives to Strengthen Micro-, Small-, and Medium-Sized Manufacturing Enterprises*

Description: Petitioners allege that, under this program, micro-, small-, and medium-sized companies are eligible for a range of incentives on technology upgrades, quality certification and cleaner production processes.

Financial Contribution: Petitioners allege that the program provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of a direct payment of funds from the State of Maharashtra.

Benefit: Petitioners allege that the program confers a benefit consistent with section 771(5)(E) of the Act in the amount of the funds received by the beneficiary company.

Specificity: Petitioners allege that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits are limited to companies located within designated geographic regions in the State of Maharashtra.