



C-533-864
Investigation
Public Document
E&C/V: JH, AD, MR, and PW

DATE: May 24, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Countervailing Duty Investigation of Certain Corrosion Resistant Steel Products from India: Issues and Decision Memorandum for the Final Affirmative Determination

I. SUMMARY

The Department of Commerce (the “Department”) determines that countervailable subsidies are being provided above the *de minimis* level to producers and exporters of certain corrosion resistant steel products (“corrosion-resistant steel”) from India, as provided for in section 705 of the Tariff Act of 1930, as amended (the “Act”).

II. BACKGROUND

A. Case History

On November 6, 2015, we published the *Preliminary Determination*¹ for this investigation. In the *Preliminary Determination*, we calculated rates above *de minimis* for the two mandatory respondents, JSW Steel Limited (“JSWSL”)² and Uttam Galva Steels Limited (“UGSL”).³ We calculated the all-others rate using a simple average of rates for these companies. On March 9, 2016, we issued a post-preliminary analysis memorandum.⁴ We conducted verifications of the questionnaire responses submitted by Respondents and the Government of India (“GOI”), between

¹ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Preliminary Affirmative Determination*, 80 FR 68854 (November 6, 2015) (“*Preliminary Determination*”) and accompanying Preliminary Decision Memorandum (“PDM”).

² Including its cross-owned affiliate JSW Steel Coated Products Limited (“JSCPL”).

³ Including its cross-owned affiliate Uttam Value Steels Limited (“UVSL”).

⁴ See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, re: “Post-Preliminary Analysis for the Countervailing Duty Investigation of Certain Corrosion Resistant Steel from India,” dated March 9, 2016 (“Post-Preliminary Memorandum”).



February 15 and 26, 2016.⁵ We received case briefs from interested parties on April 20, 2016, and rebuttal briefs on April 27, 2016. On May 6, 2015, we held a hearing limited to issues raised in case and rebuttal briefs.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now May 24, 2016.⁶

Subsequent to the *Preliminary Determination*, the Department received comments regarding the scope of the investigation. On February 9, 2016, Baoshan Iron & Steel Co., Ltd and Baosteel America, Inc. (collectively “Baosteel”) submitted scope comments on the Department’s preliminary scope determination regarding its prior requested scope exclusion for certain hot dipped galvanized steel products.⁷ On February 16, 2016, Petitioners submitted their scope rebuttal in support of the Department’s preliminary scope decision.⁸ On March 29, 2016, the Department rejected an improper filing of scope exclusion request by a Wisconsin-based importer, AmeriLux International Co., Ltd. (“AmeriLux International”) and filed our rejection letter and e-mail correspondence memo on the record of this investigation.⁹ Based on the reasons provided in the rejection letter, the Department is not considering the AmeriLux International’s comments for the final determination. For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum, which is incorporated by and hereby adopted by this final determination.¹⁰

⁵ *See* Memoranda to the File, “Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Verification of the Questionnaire Responses Submitted by Uttam Galva Steels, Ltd.,” (“Uttam Galva Report”), “Countervailing Duty Investigation of Certain Corrosion Resistant Steel Products from India: Verification of the Questionnaire Responses Submitted by JSW Steel Limited” (“JSW Report”), and “Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Verification of Information Submitted by the Government of India” (“GOI Report”), dated April 12, 2016.

⁶ *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,” dated January 27, 2016.

⁷ *See* Letter from Baosteel, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Post Preliminary Comments on Scope,” dated February 9, 2016. *See also* *Scope Correction Notice*.

⁸ *See* Letter from Petitioners, entitled, “Corrosion-Resistant Steel Products from the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Petitioners’ Scope Rebuttal Brief,” dated February 16, 2016 (“Petitioners’ Scope Rebuttal”).

⁹ *See* Letter to AmeriLux International, “Antidumping and Countervailing Duty Investigations of Certain Corrosion-Resistant Steel Products from the People’s Republic of China, India, Italy, the Republic of Korea and Taiwan: Rejection of AmeriLux International’s November 30, 2015, Scope Exclusion Request,” dated March 29, 2016. *See also* Memorandum to the File, “Email Correspondence Regarding Scope Exclusion,” filed concurrently with the rejection letter.

¹⁰ *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Scope Comments Decision Memorandum for the Final Determinations,” dated concurrently with this notice (“Final Scope Decision Memorandum”).

B. Period of Investigation

The period of investigation (“POI”) is January 1, 2014, through December 31, 2014.

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and
- (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products 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:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or

- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”)) steels and high strength low alloy (“HSLA”) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

IV. LIST OF ISSUES

The “Subsidies Valuation” 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 have analyzed the comments submitted by interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s responses to the issues raised in these briefs. Based on the comments received, and our verification findings, we have made certain modifications to the *Preliminary Determination*, which are discussed below under each relevant program. We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this investigation for which we have received comments from the parties.

- Comment 1: Whether the AAP is a Countervailable Subsidy
- Comment 2: Whether the DFIA Program is a Countervailable Subsidy
- Comment 3: Whether the DDB Program is a Countervailable Subsidy
- Comment 4: Whether the EPCGS is a Countervailable Subsidy
- Comment 5: Whether the Various State Government of Maharashtra Programs are Countervailable Subsidies
- Comment 6: Whether Purchased Status Holder Incentive Scrips Confer a Countervailable Subsidy
- Comment 7: Double-Counting of the Status Certificate Program (“SCP”) and SHIS
- Comment 8: Whether UVSL Was Required to File a Questionnaire Response
- Comment 9: Treatment of Indrajit Power Private Ltd. (“IPPL”)
- Comment 10: UGSL’s Use of the EPCGS (Unreported License)
- Comment 11: Application of Adverse Facts Available to JSWSL and Treatment of JSWSL’s Affiliate X
- Comment 12: Whether JSWSL Used the DFIA Program or the Incremental Export Incentivisation Scheme
- Comment 13: JSWSL’s Use of the Focus Market Scheme
- Comment 14: JSWSL’s Use of the EPCGS (Unreported License)

V. SUBSIDIES VALUATION

A. Allocation Period

The Department has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination*. No interested parties raised issues in case briefs or provided any

new factual information that would lead us to reconsider our preliminary determination regarding the allocation period or the allocation methodology. For a description of allocation period and the methodology used for these final results, *see* the *Preliminary Determination* and accompanying PDM at 6.

B. Attribution of Subsidies

Aside from the changes note below, the Department used the same methodologies stated in the *Preliminary Determination*¹¹ for attributing subsidies.

Attribution of Subsidies for Uttam Galva Metallics Ltd. (“UGML”)

UGML supplied Uttam Value Steels Limited (“UVSL”) with “hot metal” (*i.e.*, molten steel) used in the production of the merchandise under consideration during the POI. Although it did not originally file a response to the Department’s CVD questionnaire, after being requested to do so, UGML submitted a full response on November 2, 2015. UGML was cross-owned during the POI within the meaning of 19 CFR 351.525(b)(6)(vi).¹² Because UGML is an input producer that supplied an input to UVSL that is primarily dedicated to the production of the downstream product pursuant to 19 CFR 341.525(b)(6)(iv), we are attributing all subsidies received by UGML to the combined sales of it, UVSL, and UGSL.¹³

Summary of Attribution of Subsidies to JSW’s Affiliate X¹⁴

As described in detail further below, JSW had a cross-owned input supplier that was in operation for part of the POI, and for which we did not receive a CVD questionnaire response. Additionally, we are applying partial adverse facts available (“AFA”) for JSW’s failure to provide the requisite information about this company; *see* the “Use of Facts Otherwise Available and Adverse Inferences” and Comment 11 below.

C. Denominators

The Department has made no changes to the denominators used in the *Preliminary Determination*. For a description of the denominators used for these final results, *see* the *Preliminary Determination* and accompanying PDM at 5. For programs pertaining to UGML, we used the methodology described above in the “Attribution of Subsidies” section.

¹¹ *See* the *Preliminary Determination* and accompanying PDM at 7-8.

¹² The Department also verified the cross-ownership of UGML and its use of the subsidy programs reported in its questionnaire response. *See* the memorandum to the file “Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Verification of Questionnaire Responses Submitted by Uttam Galva Steels, Ltd.,” dated April 12, 2016.

¹³ For the denominators used in the final calculations, *see* “Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Uttam Galva Steels Limited Final Calculation Memorandum,” dated concurrently with this memorandum (“UGSL Final Calculation Memo”).

¹⁴ *See* “Business Proprietary Information Referenced in the Issues and Decision Memorandum” for an explanation of the proprietary information referenced herein in a public manner.

D. Benchmarks and Discount Rates

The Department has made no changes to the benchmarks or discount rates used in the *Preliminary Determination*. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary determination regarding benchmarks or discount rates. For a description of allocation period and the methodology used for these final results, see the *Preliminary Determination* and accompanying PDM at 8-9.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply “facts otherwise available” if: (1) necessary information is not on the record; or (2) 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 an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (“TPEA”), which made numerous amendments to the antidumping and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.¹⁵ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.¹⁶

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁷ Further, section 776(b)(2) of the Act states that an

¹⁵ See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (“*Applicability Notice*”). The text of the TPEA may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

¹⁶ See *Applicability Notice*, 80 FR at 46794-95.

¹⁷ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.¹⁸

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹⁹ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.²⁰

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.²¹ The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.²²

As discussed below, we find the application of partial AFA is warranted with respect to JSWSL’s responses for its failure to provide information for Affiliate X.

A. JSWSL

We have relied on facts available, in accordance with section 776(a) of the Act, because JSWSL withheld necessary information requested by the Department, and therefore, significantly impeded the investigation. Thus, we must rely on facts otherwise available in accordance with sections 776(a)(1) and 776(2)(A), (B) and (C) of the Act.

In selecting from among the facts available, the Department determined that an adverse inference is warranted, pursuant to section 776(b) of the Act. JSWSL failed to submit a response to the Department’s initial CVD questionnaire for a cross-owned input supplier, Affiliate X, which, until verification, JSWSL had stated was not in operation during the POI. In fact, Affiliate X was in operation for the final two months of the POI. For this reason, as explained in greater detail below, we find that JSWSL failed to cooperate by not acting to the best of its ability to comply with the Department’s request for information in this investigation, and as such, this final determination with respect to JSWSL is based on partial AFA.

¹⁸ See also 19 CFR 351.308(c).

¹⁹ See also 19 CFR 351.308(d).

²⁰ See SAA at 870 (1994).

²¹ See section 776(d)(1) of the Act; TPEA, section 502(3).

²² See section 776(d)(3) of the Act; TPEA, section 502(3).

Selection of the AFA Rate

It is the Department's practice in CVD proceedings to compute an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for a cooperating respondent in the same investigation, or, if not available, rates calculated in prior CVD cases involving the same country.²³ Specifically, the Department applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.²⁴

In applying partial AFA to JSWSL, we are guided by the Department's methodology detailed above. Because JSWSL failed to act to the best of its ability in this investigation, as discussed above, we made an adverse inference that Affiliate X benefitted from all of the programs used by the other entities within the JSW group of companies that did properly submit questionnaire responses.

We are applying the highest above-zero rates calculated for the other JSW companies or the other mandatory respondent in this investigation for the following identical programs:

- Duty Drawback (“DDB”) Program²⁵
- Export Promotion of Capital Goods Scheme (“EPCGS”)²⁶
- State Government of Maharashtra (“SGOM”) Electricity Duty Exemptions²⁷
- State Government of Maharashtra (SGOM) Sales Tax Loan Program²⁸
- Waiving of Loan Interest by the State Industrial and Investment Corporation of Maharashtra Ltd (SICOM)²⁹

²³ See, e.g., *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM at “Application of Facts Available, Including the Application of Adverse Inferences”); See also *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (“*Aluminum Extrusions from the PRC*”), and accompanying IDM at “Application of Adverse Inferences: Non-Cooperative Companies.”

²⁴ *Id.*; See also *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (“*Thermal Paper from the PRC*”), and accompanying IDM at “Selection of the Adverse Facts Available Rate.”

²⁵ Calculated rate for the other JSW companies in this investigation.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Calculated rate for UGSL in this investigation.

- Subsidies for Mega Projects under the Package Scheme of Incentives-Sales Tax/VAT Deferral/Exemption³⁰

For programs for which we did not calculate an above-zero rate for any company in this proceeding, we are applying the highest subsidy rate calculated for the same or, if lacking such rate, for a similar program in a CVD investigation or administrative review involving India. We are able to match based on program name, descriptions, and treatment of the benefit, the following program to the same program from another Indian CVD proceeding:

- State Government of Karnataka Industrial Policy Tax Incentives³¹

For the final determination, we are able to match based on program type and treatment of the benefit, the following program to the highest rate for a similar program from another Indian CVD proceeding:

- Focus Market Scheme³²

Corroboration of AFA Rate

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.”³³ The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.³⁴ 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.³⁵

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

²⁹ This program provides an interest free loan based on sales tax deferral. Thus, despite the difference in name, we are using the rate calculated for UGSL in this investigation for this sales tax loan program. See JSW Verification Report at 9-14.

³⁰ *Id.*

³¹ 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 24.

³² See *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin From India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334, (March 14, 2016), and accompanying Issues and Decision Memorandum at 25.

³³ See SAA, at 870.

³⁴ *Id.*

³⁵ *Id.*, at 869-870.

from countervailable subsidy programs. Additionally, as stated above, we are applying subsidy rates which were calculated in in this investigation or previous India CVD investigations or administrative reviews. Additionally, no information has been presented which calls into question the reliability of these previously calculated subsidy rates that we are applying as AFA. 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.³⁶

In the absence of record evidence from Affiliate X concerning the above programs, which results from JSW's failure to file a questionnaire response for it, the Department reviewed the information concerning Indian subsidy programs in this and other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this case. Additionally, the relevance of these rates is that they are actual calculated CVD rates for Indian programs, from which Affiliate X could actually receive a benefit. As a result of JSW's failure to provide questionnaire responses concerning its cross-owned input supplier, Affiliate X, and the resulting lack of record information for it concerning these programs, the Department has corroborated the rates it selected to use as AFA to the extent practicable for this final determination.

Program ³⁷	AFA Percent Subsidy Rate
DDB Program	1.94
EPCGS	2.29
SGOM Electricity Duty Exemptions	0.01
SGOM Sales Tax Loan Program	0.12
Waiving of Loan Interest by the State Industrial and Investment Corporation of Maharashtra Ltd (SICOM)	0.12
Subsidies for Mega Projects under the Package Scheme of Incentives-Sales Tax/VAT Deferral/Exemption	0.12
Focus Market Scheme	16.63
State Government of Karnataka Industrial Policy Tax Incentives	3.99
Partial AFA Rate Sub-total for Affiliate X	25.22

VII. ANALYSIS OF PROGRAMS

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

³⁶ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

³⁷ The DDB Program, EPCGS, and Focus Market Scheme are export subsidies.

A. Programs Determined to Be Countervailable

The Department made no changes to its preliminary findings for the following programs. For the descriptions, analyses, and calculation methodologies of these programs, *see* the *Preliminary Determination* and accompanying PDM. Issues raised by interested parties in case briefs regarding these programs are addressed below in the “Analysis of Comments” section. Any changes to the calculations for the programs listed below are explained in the company-specific analysis memoranda. Therefore, the final company-specific program rates for each of the following programs are as follows:

GOI Subsidy Programs

1. *Advance Authorization Program (AAP), aka, Advance License Program (ALP)*

UGSL: 5.37 percent *ad valorem*

2. *Duty Free Import Authorization Scheme (DFIA Scheme)*

UGSL: 1.06 percent *ad valorem*

3. *Duty Drawback (DDB)*

UGSL: 0.76 percent *ad valorem*
JSWSL: 1.94 percent *ad valorem*

4. *Export Promotion of Capital Goods Scheme (EPCG)*

UGSL: 0.05 percent *ad valorem*
JSWSL: 2.29 percent *ad valorem*

5. *Status Certificate Program*

UGSL: 0.36 percent *ad valorem*

State Government of Maharashtra (SGOM) Subsidy Programs

1. *Sales Tax Program*

UGSL: 0.12 percent *ad valorem*
JSWSL: no measureable benefit

2. *Electricity Duty Exemptions*

UGSL: 0.01 percent *ad valorem*
JSWSL: 0.01 percent *ad valorem*

3. *Waiving of Loan Interest by the State Industrial and Investment Corporation of Maharashtra Ltd (SICOM)*

JSWSL: no measureable benefit

4. *Subsidies for Mega Projects under the Package Scheme of Incentives- Mega Incentive*

UGSL: 0.27 percent *ad valorem*

5. *Subsidies for Mega Projects under the Package Scheme of Incentives-Sales Tax/VAT Deferral/Exemption*

JSWSL: no measureable benefit

B. Programs Determined To Be Not Used or Not Confer a Benefit During the POI

Government of India Programs

1. Export Oriented Units (EOUs) (4 sub-programs)
2. Market Development Assistance Program
3. Market Access Initiative
4. Focus Product Scheme
5. GOI Loan Guarantees
6. 80-IB Tax Program
7. Special Economic Zones (5 sub-programs)
8. SDF
9. LTAR – Captive Mining Rights for Iron Ore
10. LTAR – Captive Mining Rights for Coal
11. LTAR – Provision of High-Grade Iron Ore
12. LTAR – Provision of Flat-Rolled Steel
13. Incremental Exports Incentivization Scheme
14. Provision of Steel for Less than Adequate Remuneration (“LTAR”) through Rashtriya Ispat Nigam Ltd.

State Government Programs

1. State Government of Andhra Pradesh Programs
2. State Government of Gujarat Programs
3. State Government of Maharashtra Investment Subsidies
4. State Government of Maharashtra Infrastructure Assistance for Mega Projects
5. State Government of Maharashtra Other Subsidies under the Package Scheme Incentives
6. State Government of Maharashtra LTAR – Land
7. KIP Provision of Land for LTAR
8. KIP Provision of Iron Ore, Limestone and Dolomite for LTAR
9. KIP Provision of Power/Electricity for LTAR
10. KIP Provision of Water for LTAR

11. KIP Provision of Roads and Port Facility Infrastructure for LTAR
12. KIP Loans

C. Programs Found to Be Terminated

1. Pre- and Post-Shipment Export Financing

VIII. CALCULATION OF ALL-OTHERS RATE

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an “all-others” rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents by those companies’ exports of the subject merchandise to the United States. Under section 705(c)(5)(i) of the Act, the all-others rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated as well as rates based entirely on facts otherwise available. Where the rates for the individually investigated companies are all zero or *de minimis*, or determined entirely using facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an all-others rate using “any reasonable method.” Where the countervailable subsidy rates for all of the individually investigated respondents are zero or *de minimis* or are based on total AFA, the Department’s practice, pursuant to 705(c)(5)(A)(ii), is to calculate the all others rate based on a simple average of the zero or *de minimis* margins and the margins based on total AFA. Pursuant to section 705(c)(5)(A)(i) of the Act, have not calculated the “all-others” rate by weight averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. Therefore, and consistent with the Department’s practice, for the “all-others” rate, we calculated a simple average of the two responding firms’ rates.³⁸

IX. ANALYSIS OF COMMENTS

Comment 1: Whether the AAP is a Countervailable Subsidy

GOI

- The Department wrongly treated the Advance Authorization Program (“AAP”) as a countervailable subsidy in the preliminary determination because (1) the GOI has in place and applies an effective system to track imported inputs and related exports, (2) the Standard Input Output Norms (“SIONs”) are an accurate assessment of input/output norms, allowing for wastage, (3) the absence of evidence of penalties under the program does not indicate that the program is ineffective, (4) AAP does not subsidize “deemed exports,” (5) no actual examination of inputs and output is necessary to ensure the effectiveness of the program, and (6) only payment in excess of relevant import duties is a countervailable benefit.

³⁸ See, e.g., *Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 5089 (January 30, 2015), unchanged in *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 64745 (October 24, 2015).

- The GOI's system to track imported inputs and related exports includes numerous checks and oversight procedures by the relevant authorities which serve to monitor the relevant imports and exports and ensure compliance with the AAP license. Additionally, since the last review of this program in PET Film (2006), the GOI has implemented Appendix 23. This document shows the actual input consumption and export values as reported by the license-holder, and is subject to review by an independent chartered accountant or a cost & works accountant.
- The GOI's system to calculate the SIONs requires no explanation because the fact that the relevant license-holders are reporting input consumption in line with the SIONs proves that the SIONs are accurate.
- The absence of evidence of penalties under this program does not preclude effective implementation. Furthermore, gathering such evidence is difficult as a practical matter.
- The WTO SCM Agreement allows this kind of program, with regards to "deemed exports."
- No actual examination of inputs and output is necessary to ensure the effectiveness of the program because the tracking system, detailed above, is adequate. If the tracking system is adequate, then the GOI has no need to actually examine or audit license-holders.
- While the AAP program should not be countervailable at all, it certainly is only countervailable to the extent that the payment to the companies exceeds the normal duties on the goods imported to produce the relevant exports. Any payment to license-holders less than or equal to the import duties is not countervailable under the SCM Agreement.

UGSL

- The Department's decision to countervail this program was based on outdated administrative reviews and is inconsistent with the information collected by the Department at UGSL's and the GOI's verification.
- The Department verified that UGSL and the GOI can provide Standard Input Output Norms calculations that reflect UGSL's production experience, there are mechanisms for penalties for companies not meeting the export requirements under the AAP or for claiming excessive credits and UGSL did not utilize any deemed exports under its AAP licenses.
- The AAP process and the documentation generated therein allow the GOI to track UGSL's use of the AAP license and establish a clear link between what was imported and what was exported; moreover, the process entails a vigorous set of rules.
- The Department successfully verified the information provided by UGSL in its questionnaire responses and did not note any discrepancies.
- Because the GOI has in place and applies a system that is reasonable and effective to confirm which inputs, and in what amounts, are consumed in the production of the exported products and the inputs Uttam Galva used under this program have been utilized in accordance with the procedures established by the GOI, there is no benefit and the Department should not countervail Uttam Galva's use of this program.

Petitioners

- The Department's regulations provide that import duty exemptions for items to be exported may not be countervailable subsidies, provided, among other things, that the government granting the exemptions has and applies a system to confirm what inputs are consumed to make the exported goods, and this system is reasonable and effective. As the Department noted in its preliminary determination, the Department has repeatedly - and as recently as last month- found that the GOI does not have such a program in place for the AAP.

- While the GOI claims to have an elaborate system for fixing SION for every product, it crucially does not detail how that is done or how the SION reflects the experience of the corrosion-resistant steel industry as a whole
- While there is no doubt that companies report their imports and planned exports to the GOI, and these planned exports may match the GOI's expectations about industry norms, there is not sufficient information about ultimate checks to ensure that the GOI's industry norms reflect actual industry experience, or the extent to which the GOI performs enforcement activities to ensure that that is the case.
- UGSL's insistence that it received no "deemed exports" is irrelevant to whether the GOI's AAP system or procedures are reasonable. The system or procedure allows for deemed exports, and thus the system or procedure itself does not conform to the Department's standards, even if deemed exports may not have been used in a particular time period by a particular company.
- The Department's regulations stipulate that the government's system or procedure as a whole must be both reasonable overall and applied effectively. If the system does not meet those standards, then duty exemption may still be non-countervailable, but in that situation the government of the country providing them must itself performs inspections. Inspections by third parties, or even spot inspections by Department verifiers, are not acceptable guarantees under the regulation.

Department's Position: We disagree with the GOI and UGSL and continue to find the Advance Authorization Program ("AAP") countervailable. Under this program, 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.³⁹

As explained in *PET Film 2007*, which, in turn, relied on *PET Film 2005*⁴⁰, contrary to the GOI's and UGSL's claims that in this investigation our determination was based on out-of-date information, in *PET Film 2005*, the Department examined and verified on-site all changes to the AAP, as then reported by the GOI, and its respective implementation. This included the information submitted and relied on in its argument, in Appendix 8 of the initial questionnaire to this investigation. The documentation submitted by the GOI was not new information. Specifically, *PET Film 2005* includes an examination of the workings of Appendix 23 and the above public notice, as referenced by the GOI,⁴¹ and the Department determined that the GOI still did not have a system in place that was reasonable and effective for the purposes intended. In this context, the Department specifically stated that it still has concerns with regard to several aspects of the AAP including (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET film

³⁹ See GOI Questionnaire Response at 5-13.

⁴⁰ See *Preliminary Determination* at "Programs Preliminarily Determined to Be Countervailable;" *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 6634 (February 10, 2010) ("*PET Film 2007*") and accompanying Issues and Decision Memorandum at "Advance License Program;" and *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008) ("*PET Film 2005*") and accompanying Issues and Decision Memorandum at Comment 3.

⁴¹ *Id.*

industry as a whole;⁴² (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits;⁴³ and, (3) the availability of ALP benefits for a broad category of “deemed” exports.⁴⁴

In the *PET Film 2005* decision, the Department based the determination on an on-site verification with the GOI and the Directorate General of Foreign Trade (“DGFT”) at the end of 2007, where it interviewed government officials concerning the changes noted by the GOI in its case brief with respect to the monitoring and enforcement procedures. In the 2005 review, the Department examined the amendments to the existing laws and regulations included in the Indian Foreign Trade Policy and the Handbook of Procedures, such as the amended public notice No. 60 (RE-2005)/2004-2009, and examined the workings of the changes the GOI lists in its brief.⁴⁵ At that verification, Department officials examined each and every change and amendment made to the laws and regulations to arrive at its decision. The GOI has not provided any information that is new since the *PET Film 2005* decision. Accordingly, consistent with the Department’s evaluation of the record of this investigation and the absence of new information on the record of this investigation with respect to the administration of the AAP, we have made the same countervailability determination.⁴⁶

Since *PET Film 2007* and *PET Film 2005*, the Department has in several other proceedings made determinations consistent with this treatment of the AAP.⁴⁷ While we do not dispute that our spot checks at UGSL’s verification indicated that the data it submitted for purposes of calculating a subsidy rate for this program were accurate, that does not detract from our determination regarding the countervailability of the AAP as a whole or address our concerns regarding the administration of the program. Additionally, while we have found the AAP to be countervailable in prior proceedings, in this investigation, we verified the record information submitted by the GOI and continue to find that there is no change in the administration and mechanics of the program that would cause us to change our determination. In sum, record evidence shows there has been no change to the AAP.⁴⁸

Accordingly, we continue to find that the AAP confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the

⁴² In its case brief, the GOI stated that how SIONs are calculated is immaterial (*see* GOI Case Brief at 8) and thus acknowledges that the current record contains no indication of how the SIONs reflect the actual experience of the corrosion-resistant steel industry.

⁴³ Despite our previously expressed concerns about the lack of effective enforcement mechanisms, the GOI argued that “The existence, effectiveness or reasonableness of a system does not depend upon imposition of penalties for non-compliance . . . Merely because no evidence was presented, one cannot take a view that the system in place is ineffective or not reasonable” (*see* GOI Case Brief at 9). Thus, the GOI in effect admits that there is no record evidence of enforcement mechanisms in place for this program.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *See* GOI Questionnaire Response at 5-13 and Exhibits 2-7; GOI Verification Report at 2-3.

⁴⁷ *See, e.g., Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 80 FR 19637 (April 13, 2015) and accompanying Issues and Decision Memorandum; *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) and accompanying Issues and Decision Memorandum; *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) and accompanying Issues and Decision Memorandum at “Advance License Program.”

⁴⁸ *See* GOI Questionnaire Response at 5-13 and Exhibits 2-7; GOI Verification Report at 2-3.

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, making normal allowance for waste, nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus, the entire amount of the import duty deferral or exemption 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)(A)-(B) of the Act because it is contingent upon export.

Comment 2: Whether the DFIA Program is a Countervailable Subsidy

GOI

- The Department wrongly treated the DFIA program as a countervailable subsidy in the preliminary determination. The DFIA program does not confer a countervailable benefit under the SCM Agreement for the same reasons expressed regarding the AAP. In particular, the DFIA also uses the Appendix 23 document and accompanying accountant's certification to verify that consumption of inputs is in line with SIONs.

UGSL

- The only meaningful differences between the AAP and the DFIA program is that the latter can be used by trading companies, there is a higher value-added threshold requirement (20 percent instead of 15 percent), and DFIA licenses can be transferred or sold once the export obligation has been fulfilled in its entirety. Thus, the Department should find that there is no benefit under this program in its final determination for the same reasons as described above for AAP.

Petitioners

- This program has defects similar to that of the AAP, and the Department has correctly and recently treated it as a countervailable subsidy. Respondents' arguments add nothing to refute the Department's previous determinations regarding the AAP and the DFIA.

Department's Position: We disagree with the GOI and continue to find the Duty Free Import Authorization scheme ("DFIA") countervailable. The GOI reported that "DFIA is issued to allow duty free imports of input fuel, oil, energy sources, catalysts which are required for production of export product."⁴⁹ The quantities of imported materials and exported finished products are linked through SIONs established by the GOI.⁵⁰ At verification, GOI officials explained that this program is very similar to the AAP, both in intent and administration.⁵¹

Appendix 23, introduced in amended public notice No. 60 (RE-2005)/2004-2009, is applicable to DFIA, and the obligations under Appendix -23 are required to be fulfilled in the DFIA scheme.⁵² As noted above, in past cases, as well as this investigation, the Department has examined the

⁴⁹ See GOI Questionnaire Response at 14.

⁵⁰ See Uttam Galva Questionnaire Response at 12-21 and Exhibits 13-15; GOI Questionnaire Response at 5-20.

⁵¹ See GOI Verification Report at 4.

⁵² *Id.* at Exhibit 2.

workings of Appendix 23, and determined that the GOI still did not have a system in place that was reasonable and effective for the purposes intended.⁵³ Although examined under the AAP, in *PET Film 2005*, the Department had concerns with (1) the GOI's inability to provide the SION calculations that reflect the production experience of the PET film industry as a whole; (2) the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements under the ALP or for claiming excessive credits; and, (3) the availability of ALP benefits for a broad category of "deemed" exports.⁵⁴ Also as noted above, the Department found that the existing laws and regulations included in the Indian Foreign Trade Policy and the Handbook of Procedures, such as the amended public notice No. 60 (RE-2005)/2004-2009 (*i.e.*, Appendix 23), and continue to find that there is no new information on the record of this investigation with respect to the monitoring and enforcement procedures of Appendix 23 that would warrant reconsideration of the Department's countervailability determination. The Department has found this program to be countervailable in a previous case.⁵⁵ Similar to the above explanation concerning AAP, while we do not dispute that our spot checks at UGSL's verification indicated that the data it submitted for purposes of calculating a subsidy rate for this program were accurate, that does not detract from our determination regarding the countervailability of the DFIA program as a whole or address our concerns regarding the administration of the program. Additionally, while we have found the DFIA program to be countervailable in prior proceedings, in this investigation, we verified the record information and continue to find that there is no change in the administration and mechanics of the program that would cause us to change our determination. In sum, record evidence shows there has been no change to the DFIA program.⁵⁶

Accordingly, we determine that: 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 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, making normal allowance for waste, nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus the entire amount of the import duty deferral or exemption provided to the respondent constitutes a benefit under section 771(5)(E) of the Act; and (3) this program is specific under section 771(5A)(A) and (B) of the Act because it is contingent upon exportation.

Comment 3: Whether the DDB Program is a Countervailable Subsidy

GOI

- The Department wrongly treated the DDB program as a countervailable subsidy in the preliminary determination, because the DDB program is expressly permitted by the SCM Agreement where the tax remission does not exceed duties initially collected and the exporting country has in place a system to verify such conditions.

⁵³ See *PET Film 2007* at "Advance License Program;" and *PET Film 2005* at Comment 3.

⁵⁴ *Id.*

⁵⁵ See *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468, (October 22, 2012).

⁵⁶ See GOI Questionnaire Response at 14-21 and Exhibits 2, 8-11; GOI Verification Report at 5.

- The SCM Agreement expressly allows for duty drawback programs where the drawback does not exceed the actual amount taxed.
- An independent committee of experts and economists sets the amount of the drawback. This committee investigates the relevant exporting industries and, based on significant factual observations, determines appropriate drawback rates. The committee reviews these rates annually. As a result, the rates match the estimated input taxes actually incurred, and do not result in excess tax remission that would confer a countervailable subsidy.
- India has in place an appropriate system to verify that there is no excess tax remission. The system is reasonable, effective, and based on Indian commercial practices because it properly estimates the amount of taxes on input goods and services without unduly burdening exporters or the exchequer. The SCM Agreement specifically notes that governments applying a tax remission scheme may consider the average experience of the relevant industry.
- While DDB should not be countervailable at all, it certainly is only countervailable to the extent that the tax remission exceeds the normal duties on the consumed goods and services. Any remission less than or equal to actual duties levied is not countervailable under the SCM Agreement. The SCM Agreement does not require India to carry out an investigation into whether remission is greater than duties collected.

Petitioners

- The Department properly countervailed the Duty Drawback scheme (“DDB”) in the preliminary determination because the GOI cannot demonstrate that it has in place a reasonable and effective system to confirm that duty-exempt inputs are used in production of exports.
- The GOI offers no new evidence or arguments in support of its assertions regarding this program.
- The GOI admits that commercial realities in India result in difficulties tracing actual duties paid on inputs.

Department’s Position: We disagree with the GOI and continue to find Duty Drawback (“DDB”) countervailable. According to the GOI, 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.⁵⁷ 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.⁵⁸ The DDB is generally fixed as a percentage of the FOB price of the exported product.⁵⁹

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.⁶⁰ 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.⁶¹ This system must be reasonable, effective for the purposes intended, and based on

⁵⁷ See GOI Section II Response at 21.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See 19 CFR 351.519(a)(1)(ii).

⁶¹ See *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 “Duty Drawback (DDB).”

generally accepted commercial practices in the country of export.⁶² 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.⁶³

Regarding its establishment of applicable DDB 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, applicable duty rates, consumption ratios and FOB values of export products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analysed and this information is used to form the basis for the rate of Duty Drawback.⁶⁴

We requested that the GOI identify and explain the types of records maintained by the relevant government or governments (*e.g.*, accounting records, company-specific files, databases, budget authorizations, etc.) regarding the program in effect during the POI.⁶⁵ The GOI did not provide the requested documentation.⁶⁶ Based on the GOI's questionnaire responses, consistent with past cases, and lacking the documentation to support that the GOI has an adequate system in place, we conclude that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended.⁶⁷

Accordingly, we determine that the DDB confers a countervailable subsidy. Under the DDB, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because the 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 products. Therefore, under 19 CFR 351.519(a)(4), the entire amount of import duty rebate earned during the POI constitutes a benefit. Finally, this program is only available to exporters and, therefore, is specific under section 771(5A)(B) of the Act.

⁶² *Id.*

⁶³ See 19 CFR 351.519(a)(4)(i)-(ii).

⁶⁴ See GOI Section II Response at 25.

⁶⁵ See The Department CVD Questionnaire at 2.

⁶⁶ See GOI Section II Response 22.

⁶⁷ See, *e.g.*, *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016) and accompanying Issues and Decision Memorandum at "Duty Drawback;" *Shrimp from India* at "Duty Drawback (DDB)."

Comment 4: Whether the EPCGS Is a Countervailable Subsidy

GOI

- The Department wrongly treated the Export Promotion of Capital Goods Scheme (“EPCGS”) as a countervailable subsidy in the preliminary determination and should base its decision on a *de novo* analysis of the facts of the current case, rather than rely on past cases.
- EPCGS does not confer a countervailable subsidy because the value of capital goods used in the manufacture of an exported product is easily determinable.
- If the relevant authority invalidates an EPCGS license, the exporter is subject to the Central Excise duty.

Petitioners

- The Department properly countervailed EPCGS in the preliminary determination because depreciation of a capital good does not equal “consumption” of the capital good, and because the EPCGS exemption for excise taxes does not constitute a remission of import charges.
- The Department should consider that verification is not a forum for the introduction of significant new information.

Department’s Position: We disagree with the GOI and continue to find the EPCGS countervailable. According to the GOI, 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. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to six times the duty saved within a period of six years.⁶⁸ Once a company has met its export obligations, the GOI will formally waive the exempted duties on the imported goods.⁶⁹

Under EPCGS, the exempted import duties are owed to the GOI if the accompanying export obligations are not met.⁷⁰ 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).⁷¹ Since the unpaid duties are a liability contingent on subsequent events, these interest-free contingent-liability loans constitute the first benefit under the EPCG program. The second benefit arises when the GOI waives the duty on imports of capital equipment covered by those EPCG 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).

The Department has previously determined that import duty reductions or exemptions provided under 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

⁶⁸ See Letter from the GOI Questionnaire Response at 36.

⁶⁹ *Id.*

⁷⁰ See GOI Questionnaire Response at 36-48 and Exhibits 2-3, 19-23.

⁷¹ *Id.*

because the program is contingent upon export performance.⁷² Additionally, while we have found the EPCGS to be countervailable in prior proceedings, in this investigation, we verified the record information and find that there is no change in the administration and mechanics of the program that would cause us to change our determination. In sum, record evidence shows there has been no change to the EPCGS.⁷³ Because the above-cited evidence with respect to this program is consistent with the findings in, *inter alia*, *PET Resin Final Determination*, *PET Film Final Determination*, and *Shrimp from India*, we determine that this program is countervailable.

Comment 5: Whether the Various State Government of Maharashtra Programs Are Countervailable Subsidies

GOI

- The Department incorrectly found five State Government of Maharashtra (“SGOM”) programs to be countervailable subsidies because U.S. law establishes that non-specific subsidies to disadvantaged regions are not countervailable pursuant to sections 771(5A)(D) and 771(5B)(C)(i)- (ii) of the Act.
- These SGOM program are not specific because they are not limited to a particular enterprise or industry and because eligibility criteria are strictly followed and capable of verification by SGOM officials.
- Maharashtra is a disadvantaged region under U.S. law because the relevant region is categorized as a rural and disadvantaged area based on objective criteria, including the Human Development Index and per-capita domestic product.

Petitioners

- Under section 771(5B)(C) of the Act, the Department will consider subsidies to persons located in a disadvantaged region not to be countervailable if they are not specific within that region, and, among other things, each region is considered disadvantaged “on the basis of neutral and objective criteria” that are not temporary and are “clearly stated in the relevant statute, regulation, or other official document so as to be capable of verification,” and the criteria include a measure of economic development that includes either a measure of income over a three-year period of not more than 85 percent of the country’s average, or an unemployment rate at least 110 percent of the country’s average.⁷⁴
- According to the GOI, the SGOM identifies disadvantaged regions eligible for its subsidy programs based on the Human Development Index and Per-Capita District Domestic Products.⁷⁵ The GOI does not indicate which parts of the resolution it believes satisfy the requirements of section 771(5B)(C) of the Act, but the resolution does not appear to identify what income level is

⁷² See, e.g., *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin From India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016) (“*PET Resin Final Determination*”), and accompanying Issues and Decision Memorandum at 14-16; see also *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India*, 67 FR 34905 (May 16, 2002) (“*PET Film Final Determination*”), and accompanying Issues and Decision Memorandum at “EPCGS” section; see also *Shrimp from India*, and accompanying Issues and Decision Memorandum at 14.

⁷³ See GOI Questionnaire Response at 36-48 and Exhibits 2-3, 19-23; GOI Verification Report at 4-5.

⁷⁴ See section 771(5B)(C) of the Act.

⁷⁵ See the GOI’s April 20, 2016 submission at 30.

required to qualify for each level of benefits, and it certainly does not contain the information needed to verify that these criteria are actually adhered to over any three-year period.⁷⁶

- The Department has not treated SGOM programs as non-countervailable in the past.⁷⁷

Department’s Position: In the *Preliminary Determination*, the Department countervailed five State Government of Maharashtra (“SGOM”) Subsidy Programs: Electricity Duty Exemptions, Waiving of Loan Interest by the State Industrial and Investment Corporation of Maharashtra Ltd., Subsidies for Mega Projects under the Package Scheme of Incentives- Mega Incentive, Subsidies for Mega Projects under the Package Scheme of Incentives-Sales Tax/VAT Deferral/Exemption, and the Sales Tax Program. The GOI stated that these programs are provided to those companies investing in specified developing regions in Maharashtra.⁷⁸ While the GOI argues that these programs meet the requirements for subsidies to disadvantaged regions, as set forth under section 771(5B)(C)(i) and (ii) of the Act, we note that provision is no longer in effect.⁷⁹ Regarding specificity, the GOI relied on section 771(5A)(D) of the Act to argue these programs are not countervailable because they are not specific. However, section 771(5A)(D) of the Act outlines exceptions that are only applicable to subsidies that might otherwise be specific as a matter of law under section 771(5A)(D)(i) of the Act. Here, we find that that these programs are specific pursuant to section 771(5A)(D)(iv) of the Act, as it applies to certain industries and enterprises in certain less developed industrial regions in the State of Maharashtra.⁸⁰

Comment 6: Whether Status Holder Incentive Scrips (“SHIS”) Purchased from Third Parties Confer a Countervailable Subsidy

JSW

- Petitioners have mistakenly conflated the Status Certificate Program (“SCP”) and the SHIS program; the two programs provide different types of benefits.
- JSW did not qualify for or acquire SHIS licenses from the GOI, and instead purchased them from unrelated parties. Indian law provided during the POI that JSW could not qualify or acquire licenses pursuant to the SHIS program because a company could not simultaneously take advantage of both the EPCGS and SHIS programs.
- For these fundamental reasons – as well as the threshold fact that Petitioners never made allegations with respect to, and the Department never initiated upon, the SHIS program in this investigation – JSW did not provide information on its purchases of SHIS licenses from unrelated parties in response to the Department’s questionnaires.

⁷⁶ *Id.*

⁷⁷ See, e.g., *Circular Welded Carbon-Quality Steel Pipe from India*, 77 FR 64468 (October 22, 2012) and accompanying Issues and Decision memorandum at 30-31.

⁷⁸ See, e.g., GOI Questionnaire Response at 123-128 and Exhibits 43-44; GOI October 26, 2015, Supplemental Response at 38-39.

⁷⁹ See section 771(5B)(G) of the Act; *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) and accompanying Issues and Decision Memorandum at Comment 16.

⁸⁰ See, e.g., Uttam Galva Questionnaire Response at 45-46 and Exhibit 33; see also JSWSL’s Questionnaire Response at 42 and Exhibit 26.

- In any case, the Department’s practice is to state that the benefit from the SHIS licenses is conferred at the time the license is issued, and thus it is the direct recipient that receives a countervailable subsidy.
- If the Department erroneously countervails the SHIS licenses purchased by JSW, the Department should apply neutral facts available.

UGSL

- The SHIS program is a different program than the SCP in the petition and listed in the initiation checklist. The SHIS program was not alleged by Petitioners, nor did the Department initiate on the program. Countervailing the SHIS program would contravene 19 CFR 351.202(b)(7)(ii)(B).
- UVSL’s purchase of SHIS licenses on an arm’s length basis from an unrelated company cannot be considered a financial contribution from the GOI. It is the unrelated company that received the financial contribution from the GOI upon issuance of the scrip.
- The Department’s practice has been to consider the sale, through an arm’s length transaction, of licenses countervailable as to the seller, but not the purchaser of licenses (in this case, UVSL).

Petitioners

- The fact that a company purchased licenses from other companies rather than received them from the government is immaterial, where the purchasing company that used the licenses receives the benefit in the form of grants, tax rebates, or other financial contributions from the government.
- While Respondents may argue that purchase of the right to obtain a subsidy from another company reduces or eliminates its benefit, that is not the case. The government continues to provide the benefit associated with the license to its new owner, in the full amount, and thus promotes exports at the expense of U.S. industry.
- The failure to report these licenses seems to have been deliberate and impeded the investigation. The Department cannot calculate the subsidy amount as a result of Respondents’ decision to withhold information, and the Department should act accordingly.

Department’s Position: We agree with UGSL and JSW, but also note that we are changing the calculation methodology used in the *Preliminary Determination* for this program for the final determination in order to be consistent with our practice in other recent CVD cases.

As an initial matter, while the Department did not separately identify the SHIS program in the initiation checklist, record evidence shows that one must clearly hold a status certificate to apply for benefits. Indeed, UGSL and UVSL reported their SHIS benefits as being under the auspices of the SCP.⁸¹ Moreover, the Department’s standard CVD questionnaire includes an inquiry as to whether the GOI (or entities owned directly, in whole or in part, by the GOI or any provincial or local government) provided, directly or indirectly, any other forms of assistance, and to describe such assistance in detail, including the amounts, date of receipt, purpose and terms, and answer all questions in the appropriate appendices.⁸² Furthermore, pursuant to section 775 of the Act, if we

⁸¹ See UGSL’s Original Questionnaire Response at 35, and UVSL’s Original Questionnaire Response at 17.

⁸² See the Department’s Original Questionnaire at Section III, page 21.

find evidence of a possible subsidy in the course of an investigation, we will pursue it by gathering information to understand the nature of the program.

However, with regard to the licenses JSW and UVSL purchased, the Department recently explained its practice regarding this program in another case. Therein, the Department stated:

. . .the exact amount of benefit is known at the time of the issuance of the license. That is, in order to qualify for a SHIS license, the applicant has to be a Status Holder and has to have received payment for the exports for which it claims the SHIS scrip. Once this is demonstrated to the GOI by the manufacturer, the GOI will issue the license reflecting the amount to which the GOI determines the manufacturer is entitled. The Status Holder may apply for a SHIS license up to three years after the relevant exports were made. The GOI then fixes the amount of revenue that it is willing to forgo at the time it issues the SHIS license. The GOI also sets the expiration date of the SHIS license at that time.

Importantly, the SHIS scrip is freely transferable to other manufacturing companies while the license remains valid. The fact that the SHIS scrip can be sold before expiry of the SHIS license, just as with DEPS/DEPB licenses, is further evidence that the actual amount of the benefit is determined at the time the SHIS license is issued by the GOI. If the Department were to rely exclusively on the actual amount of duties that Jindal saved under the SHIS program as reported by Jindal, it would disregard the benefit inherent in the fact that the licenses were transferable when bestowed. (citations omitted)⁸³

Thus, the Department's practice is to countervail the full amount identified on the SHIS license at the time of bestowal. Therefore, for this final determination, we do not find that the purchased SHIS licenses are countervailable. However, for both UGSL and UVSL, which also availed themselves of SHIS licenses that they themselves received, we are countervailing the full amount identified on the licenses, rather than the amount of duties waived, per our practice.⁸⁴

Comment 7: Double-Counting of the Status Certificate Program (“SCP”) and SHIS

UGSL

- The Department countervailed the SCP as well as the SCP Grant in the *Preliminary Determination* for UVSL. UVSL provided information on Status Holder Incentive Scrip (SHIS) (not SCP *per se*) in the requested formats. Therefore, for purposes of the final determination, the Department should not calculate a benefit for SCP Grant as it is duplicative.

⁸³ See *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 7753 (February 16, 2016), and accompanying Issues and Decision Memorandum at Comment 2 (“PET Film”); see also *Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) and accompanying issues and decision memorandum, at “Status Holder Incentive Scrip.”

⁸⁴ *Id.*

No other party submitted comments on this issue.

Department’s Position: We agree with UGSL, in part. We agree that the information UVSL reported for the SCP and SCP Grant pertain to the same data for the SHIS program. However, also as noted above, the Department’s practice in past cases has been to countervail the full amount of the benefit noted on the SHIS license, and to treat it as a grant. Thus, for the final determination, we are not double-counting the benefits received by UVSL under the SHIS program. Indeed, for both UGSL and UVSL, we are not countervailing the duty amounts waived, but the full amount of the benefit on the SHIS license for each company.

Comment 8: Whether UVSL Was Required to File a Questionnaire Response

UGSL

- UVSL is a producer of corrosion-resistant steel; however it is *not* a producer of “subject merchandise” because the merchandise produced by UVSL was not exported to the United States. Therefore, it was not required to file a CVD questionnaire in this investigation and the Department should not calculate any subsidies (however minimal) related to UVSL.
- The statute is clear that “subject merchandise” is product *within the scope* of an investigation. This covers only products *imported* into the United States.
- UVSL did not transfer subsidies to UGSL. Any subsidies received by it could not affect the export of corrosion-resistant steel to the United States, and thus any benefits received by UVSL pertained solely to itself.

Petitioners

- The Department’s regulations at 19 CFR 35 1.525(b)(6)(ii) make clear that it will attribute subsidies to cross-owned companies producing the same product, and UVSL clearly produces corrosion-resistant steel.
- Countervailing duty investigations encompass subsidies to an entire “class or kind of merchandise” that is either imported, or sold for importation (but not necessarily imported) or even just likely to be sold for importation.
- Subsidies that benefit a company’s domestic production of merchandise both help allow and encourage its cross-owned affiliates to focus on export markets such as the United States. Such subsidies are highly relevant to the Department’s investigation and should be included in the countervailing duties.

Department’s Position: We agree with Petitioners. UGSL reported UVSL as a cross-owned affiliate from the outset of this investigation, and also reported it as a producer and exporter of, *inter alia*, corrosion-resistant steel.⁸⁵ Section 701(a)(1) of the Act makes it clear that the Department may impose countervailing duties on merchandise if it “. . .determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States. . .” Thus,

⁸⁵ See UGSL’s August 24, 2014, Affiliated Parties Response and UVSL’s September 18, 2015, Original Questionnaire Response.

the Department is statutorily mandated to investigate subsidies to the entire category of merchandise, even if never imported into the U.S. market. Moreover, 19 CFR 35 1.525(b)(6)(ii) states that if two (or more) corporations with cross-ownership produce the subject merchandise, the Department will attribute the subsidies received by either or both corporations to the products produced by both corporations. Thus, UVSL was required to file a questionnaire response with the Department (and indeed, properly did so from the outset of this investigation), and we thus properly countervailed the subsidies it received as a cross-owned affiliate of the mandatory respondent, UGSL.

Comment 9: Treatment of Indrajit Power Private Ltd. (“IPPL”)

UGSL

- IPPL provided some electricity to UVSL. UVSL primarily used the electricity from IPPL to make hot-rolled steel, which is non-subject merchandise. However, this is a non-issue as the Department correctly found no evidence of subsidies with respect to IPPL.

No other party submitted comments on this issue.

Department’s Position: We agree with UGSL. UGSL provided information about IPPL in its affiliated parties response, and UVSL’s original response included information about its related-party transactions with IPPL.⁸⁶ Thus, for this final determination, we do not find any countervailable subsidies with respect to IPPL.

Comment 10: UGSL’s Use of the EPCGS (Unreported License)

UGSL

- UGSL had no imports of capital goods related to the “missing license” and reported all licenses which it utilized in the POI that resulted in the importation of capital goods.

No other party submitted comments on this issue.

Department’s Position: After further review, we agree with the analysis provided by UGSL in its case brief, much of which contains BPI,⁸⁷ and find that UGSL had no imports of capital goods pertaining to the license at issue, and thus it did not confer any benefit during the POI.

Comment 11: Whether the Department Should Apply Adverse Facts Available to JSWSL Based on Failure to Report Information about Subsidiaries

Petitioners

- The Department learned at verification that a JSWSL subsidiary, Affiliate X, which JSW had claimed to be not in operation during the POI and provided no input for the production of subject merchandise, was in fact operational for the last two months of POI and provided a small amount of input for the production of subject merchandise.

⁸⁶ *Id.*

⁸⁷ See UGSL Case Brief at 26-28.

- The Department discovered that Affiliate X used two subsidy programs, Duty Drawback Scheme and State Government of Maharashtra Sales Tax Deferral Program.
- Additionally, the Department found two other JSW subsidiaries, which JSW had claimed to be not operational, were operational at verification.
- Corporate affiliations are the most basic part of the investigation and such information must be accurately presented early in a proceeding. Since JSW claimed until verification that these affiliates were not in operation, the Department and Petitioners could not have properly examined these affiliates.
- The relevant issue to examine is whether subsidies received by one entity need to be attributed to the combined sales of its affiliates. It is an either/or determination, not a “how much” determination. The Department should not excuse JSW’s unresponsiveness because the input involved is small.
- The Department has repeatedly applied adverse facts available, and been affirmed, when a respondent has denied having manufacturing operations that subsequently turned out to exist and to have been subsidized.⁸⁸
- With respect to whether the DRI production at Affiliate X during the POI was “primarily dedicated” to production of subject merchandise, the Department recently explained that the Department will not attempt to trace the production of a particular input through to its ultimate product and determine whether that was exported to the United States.⁸⁹ Accordingly, the question is whether the input could have been used to produce the subject merchandise, and JSW has admitted so.

JSW

- JSW made an inadvertent error with regard to Affiliate X’s operations, because the company was acquired in October 2014, and the company was subsequently closed at the end of 2014.
- Notwithstanding this error, JSW’s affiliation response is materially correct because Affiliate X is not a supplier of input primarily dedicated to the production of subject merchandise. JSW demonstrated that the input supplied by Affiliate X during the POI was not used to produce subject merchandise.
- The input in question, direct reduced iron (“DRI”) is not a direct or primary input for CORE, but an input for a diverse range of products. Accordingly, it is not reasonable to assume that the purpose of a subsidy to the input product is to benefit the downstream product.⁹⁰
- Because the amount of input provided is miniscule, the transaction was not identified in JSW’s financial statements as related-party transactions, under the requirements of Indian law.
- The direct reduced iron that Affiliate X produced and provided was not directed to the JSW facility that made subject merchandise, therefore Affiliate X should not be considered as a cross-owned supplier of an input primarily dedicated to the production of subject merchandise.

⁸⁸ See *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People’s Republic of China*, 75 FR 57,444 (September 21, 2010) and accompanying Issues and Decision Memo at Comment 22; see also *Essar Steel, Ltd. v. United States*, 753 F.3d 1368, 1370 (Fed. Cir. 2014)

⁸⁹ See *Supercalendared Paper from Canada*, 80 FR 63,535 (October 20, 2105) and accompany Issues and Decision Memorandum at 160-61.

⁹⁰ See Department’s *Preamble to Countervailing Duties*, 63 FR 65,348, 65,401 (Nov. 25, 1998); see also *Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Seventh Countervailing Duty Administrative Review*, 69 FR 45,676 (July 30, 2004), at 45,679.

- The Department examined and verified that JSW accurately reported the status and affiliation of the other two JSW subsidiaries Petitioners claim to be operational.
- With regard to Affiliate X, Petitioners' arguments rely on a fundamentally inaccurate assertion; instead, the record shows that Affiliate X did not supply an input to the production of CORE, much less an input "primarily dedicated" to subject merchandise.
- Given the unique circumstances of the issue, if the Department disagrees and determines subsidies received by Affiliate X should be attributable to JSW, the Department should apply neutral facts available, as JSW has exerted maximum efforts throughout this investigation to respond to the Department's detailed requests and to provide accurate information.
- U.S. Court and Department precedents support a finding of neutral facts available to inadvertent errors committed in the following circumstances: (1) the respondent voluntarily discloses the error; (2) the respondent provides a plausible explanation for the error; and (3) the error is small and does not affect the overall reliability of the data in the investigation.⁹¹ These circumstances apply to JSW in this investigation.
- The circumstances with JSW directly contrast with the circumstances cited by Petitioners where the Department applied adverse facts available to respondents intentionally misled the Department. JSW voluntarily presented this information at the outset of the verification, the Department at most should apply neutral facts available.⁹²
- A decision to apply adverse inferences here would discourage respondents from promptly reporting inadvertent errors. Such an approach would make it harder for the Department to conduct investigations and to obtain the facts necessary to assign accurate dumping and countervailing duty margins.
- If the Department applies facts available, it should only attribute benefits from the two-month period of JSW's ownership and from the two programs used during the POI.

Department's Position: Pursuant to 776(a)(2)(A) and (C) of the Act, the Department finds that application of facts available is warranted with respect to JSW. Specifically, during the verification of JSW's questionnaire responses, the Department found that, despite the Department's detailed and specific questionnaires and instructions, which are documented below, JSW failed to satisfy its statutory duty to reply accurately and completely to requests for information regarding its affiliates. Moreover, the Department found that JSW significantly impeded the proceeding by not providing accurate or complete responses to the Department's questions about a certain affiliate, and the production of JSW's subject merchandise. Because of JSW's failure to cooperate to the best of their ability in participating in the investigation, the Department found that such circumstances warrant the application of facts otherwise available with adverse inferences, pursuant to sections 776(a)-(b) of the Act.

In the Department's original questionnaire, we provided instructions for reporting information related to JSW's cross-owned companies. The questionnaire specifically instructed:

⁹¹ See *Ad Hoc Shrimp Trade Action Committee. v. United States*, 675 F. Supp. 2d 1287, 1305 (CIT 2009); see also *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review*, 73 FR 50,933 (August 29, 2008) and accompanying Issues & Decision Memorandum at Comment 14.

⁹² See *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57,323 (October 2, 2008) and accompanying Issues & Decision Memorandum at 21–24.

Affiliated companies may be required to respond to this questionnaire where “cross-ownership” exists. According to 19 CFR 351.525(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. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.

You must provide a complete questionnaire response for those affiliates where “cross ownership” exists and:

- *the cross-owned company produces the subject merchandise; or*
- *the cross-owned company is a holding company or a parent company (with its own operations) of your company; or*
- *the cross-owned company supplies an input product to you that is primarily dedicated to the production of the subject merchandise; or*
- *the cross-owned company has received a subsidy and transferred it to your company; or*
- *the cross-owned company is not a producer or manufacturer but provides a good to your company.*

In JSW’s original questionnaire response, JSW provided information relating to its ownership, management, and scope of business.⁹³ JSW responded on behalf of itself and JSCPL, both producers of subject merchandise.⁹⁴ JSW also responded on behalf of ARCL, a producer of coke and iron ore pellets, which are inputs for a range of steel products, with a small portion directed to subject merchandise.⁹⁵ JSW represented to the Department that only these companies met the criteria set forth in the 19 CFR 351.525(6).⁹⁶

In the first supplemental questionnaire, the Department asked JSW to specifically examine, again, whether other cross-owned companies needed to respond:

For each company that has any common ownership with JSWSL or JSCPL, please describe the nature of that ownership and whether you believe the company is cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Please describe whether any such companies supply any inputs to the production of CORE or to the production of other inputs to the production of CORE. For each company that supplies such inputs, describe their nature, and answer questions regarding the provision of subsidies. Be sure to include any corporate predecessor companies in your response.

⁹³ See JSW’s August 24, 2015 and September 21, 2015 submissions.

⁹⁴ See JSW’s September 21, 2015 submission at 2-6.

⁹⁵ *Id.*, at 5-6.

⁹⁶ See JSW’s August 24, 2015 and September 21, 2015 submissions.

In JSW's supplemental questionnaire response, JSW again claimed that only ARCL is both cross-owned with JSWSL and provides inputs to the manufacture of subject merchandise or produces other input products for the production of subject merchandise.⁹⁷

In the final supplemental questionnaire, the Department requested a third and final time that JSW review and provide the necessary information as pertains to its affiliates:

In the initial questionnaire response, JSWSL stated it is reporting on behalf of itself, JSCPL and ARCL. Please revise your questionnaire response to cover subsidies received by all of JSWSL's Indian subsidiaries as identified in the chart JSW Steel Ltd. Response to the Affiliated Companies (Exhibit 1 of its affiliation questionnaire response) including each of the offices and plants, or explain why JSWSL believes it is not necessary to report subsidies received by these other divisions.

JSW responded that in advance of verification, it reviewed its Indian subsidiaries again and represented to the Department again that complete CVD questionnaire responses are only warranted on behalf of JSCPL and ARCL, in addition to JSWSL.⁹⁸ Furthermore, we relied upon these representations in preparing for verification, and the failure to report deprived the Department of record evidence concerning Affiliate X, as well as the opportunity to verify that information

Not until verification did JSW inform that Department that Affiliate X was in operation during the POI. Specifically, JSW revealed during its presentation of minor corrections that Affiliate X was a cross-owned input supplier to JSW. This revelation contradicted JSW's multiple questionnaire responses to the Department that Affiliate X was not operational during the POI. Moreover, JSW informed the Department that Affiliate X received subsidies and provided JSWSL DRI, a basic input for steel products that could be used for the production of a downstream product. The Department does not consider new factual information with regard to the unreported cross-owned input supplier provided at the time of verification to qualify as a minor correction.⁹⁹

Despite the Department's repeated requests, JSW failed to report that its subsidiary, Affiliate X, was operational and provided an input that can be used in the production of a downstream product. Because JSW did not provide any questionnaire response on behalf of Affiliate X, as required under 19 CFR 351.525(b)(6) the Department was prevented the opportunity to carefully examine the full extent to which of JSWSL and all of its cross-owned entities, including Affiliate X, benefitted from subsidies provided by the GOI. Consequently, the Department finds that JSW failed to report all its cross-owned companies within the meaning of 19 CFR 351.525(b)(6)(vi). Without the complete, accurate and reliable data upon which to attribute Affiliate X's subsidies to JSWSL, the Department cannot accurately calculate JSWSL's CVD subsidy rate for these final results.

While JSW claims that it made an inadvertent error and should be excused as it attempted to correct it at the outset of the verification, the Department explained both in the verification outline to JSW and during the opening remarks for the verification that verification was not intended to be an

⁹⁷ See JSW's October 26, 2015 submission at 5.

⁹⁸ See JSW's December 31, 2015 submission at 3-4.

⁹⁹ See JSW Verification Report at 2, 5.

opportunity for submission of new factual information.¹⁰⁰ Rather, such information must be accurately presented early in a proceeding, as corporate affiliations are a fundamental and critical part of the investigation and the Department establishes a separate deadline early for such information in order to determine what companies, including crossed owned affiliates, need to respond to the questionnaire.¹⁰¹

Further, while JSW argues that the amount of input involved is small, the Department does not consider the data collected to be complete and verified, as the Department did not learn about Affiliate X and the consumption of this input by JSWSL until well into the verification. Moreover, our regulations do not contemplate the amount of the input provided by a supplier as a gauge for whether that company should submit a response.¹⁰² Given the absence of information, the Department has no basis on which to conclude that the inputs Affiliate X provided to JSWSL constitute mere insignificant adjustments, as JSW urges. Moreover, under the Department's attribution regulations companies are to report all subsidies received by cross-owned companies pursuant to 19 CFR 351.525(b)(6)(vi).

Similarly, while JSW argues the DRI that Affiliate X provided was not in fact used in the production of subject merchandise, the Department is unable to fully examine this issue. As an initial matter, it is unclear to the Department how JSW can claim simply because DRI is used to produce a range of products and therefore should be excused, when ARCL also provided inputs (coke and iron ore pellets) that are used to produce a range of downstream products, and JSW provided a response for ARCL. Moreover, the Department's standard, pursuant to 19 CFR 351.525(b)(6)(iv) is not whether an input is primarily dedicated to production of the subject merchandise, but to the downstream product (which could be subject merchandise, or also an intermediate input to subject merchandise).¹⁰³ Nevertheless, prior to verification, the Department requested full and complete information in the original and supplemental questionnaires from JSW relating to all production facilities that provide a primarily dedicated input, in whole or in part, to the production of the downstream product, and the Department scheduled the verification based on the information provided by JSW. The Department finds that JSW's belated assertion that Affiliate X's input should not be considered as primarily dedicated to subject merchandise is unsubstantiated, unreliable, and does not conform to our regulatory standard, expressed above. The Department maintains that JSW should have informed the Department about Affiliate X early in the investigation, as provided in the original questionnaire.

The Department disagrees with JSW that it acted to the best of its abilities simply because JSW claims that it made extraordinary effort to comply with the Department's request for information. The Court of Appeals for the Federal Circuit ("Federal Circuit"), in *Nippon Steel*, provided an explanation of the "failure to act to the best of its ability," stating that the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of

¹⁰⁰ See The Department's February 11, 2016, Verification Outline for JSW at 2.

¹⁰¹ See Section III of the Department's original CVD questionnaire at 2; see also 19 CFR 351.525(b)(6)(vi).

¹⁰² See 19 CFR 351.525(b)(6).

¹⁰³ See *Supercalendered Paper From Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015), and accompanying Issues and Decision Memorandum at Comment 19.

its ability” requires the respondent to do the maximum it is able to do.¹⁰⁴ The Federal Circuit acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.¹⁰⁵ Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.¹⁰⁶ The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.¹⁰⁷

In sum, within the meaning of section 776(b) of the Act, the Department finds that JSW failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information, as noted above, thus warranting the application of AFA. Despite the Department’s detailed, specific, and repeated questionnaire instructions, JSW gave insufficient attention to its statutory duty to reply accurately and completely to requests for information regarding its affiliates. Consistent with the Department’s practice and Court precedents, in applying AFA, rather than neutral facts available, the Department finds that the error involved is significant enough to undermine the reliability with respect to Affiliate X of the data in the investigation. In order to properly calculate a CVD margin, as detailed above, the Department must examine whether subsidies received by one entity need to be attributed to the combined sales of its affiliates. As the inclusion of Affiliate X affects the overall calculations of CVD margins, the Department is, therefore, applying partial AFA for JSW with respect to certain programs.

Comment 12: JSCPL’s Use of the Focus Market Scheme

JSW

- The Focused Market Scheme program aims to support Indian exports to developing country markets, primarily in Africa and Latin America. In preparing for verification, however, JSW recognized that the FMS program also applies to certain exports to Puerto Rico.
- As an initial matter, Petitioners did not make allegations regarding this program in the petition and the Department has not initiated on an investigation of this program, therefore the Department should not find it countervailable.
- However, JSW reported to the Department relevant data concerning the company’s minimal use of the FMS program during the POI, should the Department countervail against this program.

No other party submitted comments on this issue.

Department’s Position: We agree with JSW, in part. Whether or not the Department specifically initiated on a program does not, in and of itself, dictate whether we will countervail a subsidy program. As noted previously, the Department’s standard CVD questionnaire requests respondents to identify other subsidy programs not specifically named. JSW identified this program after

¹⁰⁴ See *Nippon Steel*, 337 F.3d at 1382.

¹⁰⁵ *Id.*, at 1380.

¹⁰⁶ *Id.*, at 1382.

¹⁰⁷ *Id.*

realizing that it pertained to Puerto Rico and provided the relevant data for it. Therefore, we are countervailing this subsidy program and using the data provided by JSW, but find that it provides no measurable benefit.

Comment 13: Whether JSWSL Used the DFIA Program or the Incremental Export Incentivization Scheme

JSW

- The Department confirmed that JSW (JSWSL, JSCPL, and ARCL) did not use or benefit from two subsidy programs, DFIA and the Incremental Exports Incentivisation Scheme (“IEIS”), during the POI. Therefore the Department should not consider JSW as receiving any benefits under these programs for the POI.

No other party submitted comments on this issue.

Department’s Position: We agree with JSW that the record information shows that it did not receive any benefits from these two programs during the POI.

Comment 14: JSWSL’s Use of the EPCGS (Unreported License)

JSW

- The Department verified JSW’s use of the EPCGS program. With respect to the additional EPCGS license the Department noted during GOI verification, JSW never benefited from the license, therefore the Department should use the verified EPCGS data reported by JSW for the final determination.

No other party submitted comments on this issue.

Department’s Position: We agree with JSW that the record information shows that it did not utilize this license and receive a benefit from it during the POI.

X. 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

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 MAY 2016
Date