DATE: January 3, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain New Pneumatic Off-The-Road Tires from Sri Lanka

I. SUMMARY

The Department of Commerce (Department) determines that countervailable subsidies are being provided above the de minimis level to producers and exporters of certain new pneumatic off-the-road tires (off road tires) from Sri Lanka, as provided in section 705 of the Tariff Act of 1930, as amended (the Act).1 Below is a complete list of the issues in this investigation for which we received comments from the parties.

Comment 1: Whether Camso Loadstar Benefited from Exemptions/Concessions for Fiscal Levies on Imports of Spare Parts
Comment 2: Whether the Provision of Tax Concession for Exporters of Non-Traditional Products Program is Countervailable
Comment 3: Whether the Nation Building Tax Preferences Program is Specific and Constitutes a Financial Contribution
Comment 4: Whether Camso Loadstar Benefited from the Guaranteed Price Scheme for Rubber
Comment 5: Whether to Use U.S. Dollar Amounts Recorded by Camso Loadstar to Determine Subsidy Rates
Comment 6: Whether to Use Camso Loadstar’s Revised FOB Sales Data for Denominator
Comment 7: Whether the Department Should Continue to Find Critical Circumstances
Comment 8: Whether to Terminate the Investigation

1 See also section 701(f) of the Act.
II. **BACKGROUND**

A. **Case History**

On June 20, 2016, the Department published the *Preliminary Determination* in this investigation.\(^2\) In the *Preliminary Determination*, we calculated rates above *de minimis* for Camso Loadstar, the mandatory respondent,\(^3\) and all-others. The Government of Sri Lanka (GOSL) and Camso Loadstar timely filed allegations of ministerial errors in the *Preliminary Determination*.\(^4\) The Department responded to these allegations on July 7, 2016, finding that the alleged errors were not ministerial errors within the meaning of 19 CFR 351.224(f).\(^5\) On August 18, 2016, the Department issued its post-preliminary decision addressing timely new subsidy allegations filed by the Petitioners.\(^6\)

Between August 23, 2016, and September 1, 2016, we conducted verification at the offices of the GOSL and Camso Loadstar, in accordance with section 782(i) of the Act, as amended (the Act).

We invited parties to comment on the *Preliminary Determination*. In October 2016 we received case and rebuttal briefs from the GOSL, Camso Loadstar, and the Petitioners.\(^7\) On July 20, 2016, the GOSL and the Petitioners timely requested a hearing,\(^8\) which was held on November 3, 2016.

\(^2\) *See Certain New Pneumatic Off-The-Road Tires from Sri Lanka: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Determination, 81 FR 39900 (June 20, 2016) (Preliminary Determination)* and accompanying Preliminary Decision Memorandum (PDM).

\(^3\) The Department selected Camso Loadstar (Private), Ltd. (Camso Loadstar) and Loadstar Private Limited (Loadstar) as mandatory respondents. *See Memorandum from Whitley Herndon, International Trade Compliance Analyst, to Gary Taverman, Associate Deputy Assistant Secretary, entitled, “Respondent Selection for the Countervailing Duty Investigation of Certain New Pneumatic Off-The-Road Tires from Sri Lanka,” dated February 25, 2016. On April 1, 2016, Camso Loadstar notified the Department that Camso Loadstar and Loadstar are not separate companies; rather, Loadstar is the previous name for Camso Loadstar. Specifically, Camso Loadstar stated that on June 24, 2015, Loadstar changed its name to Camso Loadstar. See Letter from Camso Loadstar, regarding “Certain Off-the-Road Tires from Sri Lanka,” dated April 1, 2016.*

\(^4\) *See letter from the GOSL, entitled “3% De Minimis Exception for Certain Other Developing Countries Certain New Pneumatic Off-The-Road Tires from Sri Lanka,” dated June 20, 2016; and letter from Camso “Certain Off-the-Road Tires from Sri Lanka; Ministerial Error Comments,” dated June 20, 2016.*


\(^6\) *See Memorandum to Paul Piquado, entitled “Post-Preliminary Analysis of Countervailing Duty Investigation: Certain New Pneumatic Off-The-Road Tires from Sri Lanka,” dated August 18, 2016 (Post-Preliminary Memorandum). The petitioners in this investigation are Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (collectively, the Petitioners).*

B. Period of Investigation

The period of investigation (POI) is January 1, 2015, through December 31, 2015.

III. SCOPE OF THE INVESTIGATION

The scope of this investigation is certain new pneumatic off-the-road tires (certain off road tires). Certain off road tires are tires with an off road tire size designation. The tires included in the scope may be either tube-type\(^9\) or tubeless, radial, or non-radial, regardless of whether for original equipment manufacturers or the replacement market.

Subject tires may have the following prefix or suffix designation, which appears on the sidewall of the tire:

Prefix designations:

DH – Identifies a tire intended for agricultural and logging service which must be mounted on a DH drop center rim.

VA – Identifies a tire intended for agricultural and logging service which must be mounted on a VA multipiece rim.

IF – Identifies an agricultural tire to operate at 20 percent higher rated load than standard metric tires at the same inflation pressure.

VF – Identifies an agricultural tire to operate at 40 percent higher rated load than standard metric tires at the same inflation pressure.

Suffix designations:

ML – Mining and logging tires used in intermittent highway service.

DT – Tires primarily designed for sand and paver service.

NHS – Not for Highway Service.

TG – Tractor Grader, off-the-road tire for use on rims having bead seats with nominal +0.188” diameter (not for highway service).

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\(^9\) While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (e.g., sold with or separately from subject merchandise).
K – Compactor tire for use on 5° drop center or semi-drop center rims having bead seats with nominal minus 0.032 diameter.

IND – Drive wheel tractor tire used in industrial service.

SL – Service limited to agricultural usage.

FI – Implement tire for agricultural towed highway service.

CFO – Cyclic Field Operation.

SS – Differentiates tires for off-highway vehicles such as mini and skid-steer loaders from other tires which use similar size designations such as 7.00-15TR and 7.00-15NHS, but may use different rim bead seat configurations.

All tires marked with any of the prefixes or suffixes listed above in their sidewall markings are covered by the scope regardless of their intended use.

In addition, all tires that lack any of the prefixes or suffixes listed above in their sidewall markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the following sections of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set forth below. The sections of the Tire and Rim Association Year Book listing numerical size designations of covered certain off road tires include:

- The table of mining and logging tires included in the section on Truck-Bus tires;
- The entire section on Off-the-Road tires;
- The entire section on Agricultural tires; and
- The following tables in the section on Industrial/ATV/Special Trailer tires:
  - Industrial, Mining, Counterbalanced Lift Truck (Smooth Floors Only);
  - Industrial and Mining (Other than Smooth Floors);
  - Construction Equipment;
  - Off-the-Road and Counterbalanced Lift Truck (Smooth Floors Only);
  - Aerial Lift and Mobile Crane; and
  - Utility Vehicle and Lawn and Garden Tractor.

Certain off road tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes certain off road tires produced in the subject countries whether mounted on wheels or rims in a subject country or in a third country. Certain off road tires are covered whether or not they are accompanied by other parts, e.g., a wheel, rim, axle
parts, bolts, nuts, etc. Certain off road tires that enter attached to a vehicle are not covered by the scope.

In addition, specifically excluded from the scope are passenger vehicle and light truck tires, racing tires, mobile home tires, motorcycle tires, all-terrain vehicle tires, bicycle tires, on-road or on-highway trailer tires, and truck and bus tires. Such tires generally have in common that the symbol “DOT” must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following prefixes and suffixes included as part of the size designation on their sidewalls:

Prefix letter designations:

AT – Identifies a tire intended for service on All-Terrain Vehicles;
P – Identifies a tire intended primarily for service on passenger cars;
LT – Identifies a tire intended primarily for service on light trucks;
T – Identifies a tire intended for one-position “temporary use” as a spare only; and
ST – Identifies a special tire for trailers in highway service.

Suffix letter designations:

TR – Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156” or plus 0.250”;
MH – Identifies tires for Mobile Homes;
HC – Identifies a heavy duty tire designated for use on “HC” 15” tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.

Example: 8R17.5 LT, 8R17.5 HC;

LT – Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service;

ST – Special tires for trailers in highway service; and

M/C – Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: Pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; aircraft tires; and turf, lawn and garden, and golf tires. Also excluded from the scope are mining and construction tires that have a rim diameter equal to or exceeding 39 inches. Such
tires may be distinguished from other tires of similar size by the number of plies that the
construction and mining tires contain (minimum of 16) and the weight of such tires (minimum
1500 pounds).

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the
United States (HTSUS) subheadings: 4011.20.1025, 4011.20.1035, 4011.20.5030,
4011.20.5050, 4011.61.0000, 4011.62.0000, 4011.63.0000, 4011.69.0050, 4011.92.0000,
4011.93.4000, 4011.93.8000, 4011.94.4000, 4011.94.8000, 8431.49.9038, 8431.49.9090,
8709.90.0020, and 8716.90.1020. Tires meeting the scope description may also enter under the
following HTSUS subheadings: 4011.99.4550, 4011.99.8550, 8424.90.9080, 8431.20.0000,
8431.39.0010, 8431.49.1090, 8431.49.9030, 8432.90.0005, 8432.90.0015, 8432.90.0030,
8432.90.0080, 8433.90.5010, 8503.00.9560, 8708.70.0500, 8708.70.2500, 8708.70.4530,
8716.90.5035 and 8716.90.5055. While HTSUS subheadings are provided for convenience and
customs purposes, the written description of the subject merchandise is dispositive.

IV. SCOPE COMMENTS

In the Preliminary Determination, we did not modify the scope language as it appeared in the
Initiation Notice.\textsuperscript{10} No interested parties submitted scope comments in case or rebuttal briefs;
therefore, the scope of this investigation remains unchanged for this final determination.
On July 25, 2016, after receiving a request from Customs and Border Protection, the Department
added two new HTSUS numbers to the scope of this investigation.\textsuperscript{11}

IV. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

The Department made no changes to the allocation period and the allocation methodology used
in the Preliminary Determination. No interested parties challenged our preliminary
determination regarding the allocation period or the allocation methodology. For a description of
the allocation period and methodology used for this final determination, see the Preliminary
Determination and accompanying PDM at 9.

B. Attribution of Subsidies

The Department made no changes to the attribution of subsidies methodology used in the
Preliminary Determination. No interested parties challenged our preliminary determination
regarding the attribution of subsidies methodology. For a description of our attribution
methodology used for this final determination, see the Preliminary Determination and
accompanying PDM at 9-10.

\textsuperscript{10} See Preliminary Determination and accompanying PDM at “Scope Comments.”
\textsuperscript{11} The Department added HTSUS numbers 8716.90.5056 and 8716.90.5059 to the Automated Commercial
Enterprise (aka ACE) case reference files for this case. See Memorandum, “Request from Customs and Border
Protection to Update the ACE Case Reference File,” July 25, 2016.
C. Denominators

In accordance with 19 CFR 351.525(b), when selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondents’ receipt of benefits under each program. As discussed in further detail below in the “Analysis of Programs – Programs Determined to be Countervailable” section, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.12

V. Critical Circumstances

In the *Preliminary Determination*, the Department preliminarily determined that critical circumstances exist with respect to Camso Loadstar and all others. Based on our analysis in the *Preliminary Determination*13 and our analysis of comments, as discussed below in the “Department’s Position” in response to Comment 7, we continue to find that critical circumstances exist.

VI. ANALYSIS OF PROGRAMS

The Department made no changes to its preliminary findings for the following programs, except where noted below.14 For the descriptions, analyses, and calculation methodologies of these programs, see the *Preliminary Determination* and accompanying PDM. See also the Post-Preliminary Memorandum. 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 memorandum.15 Therefore, the final company-specific program rates for each of the following programs are as follows:

A. Programs Determined To Be Countervailable

1. Tax Concessions for Exporters of Non-Traditional Products

We converted the benefit amount from Sri Lankan rupees to U.S. dollars using the verified effective exchange rate.16 We also used the verified total export sales value in U.S. dollars.17

Camso Loadstar: 0.93 percent *ad valorem*.

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12 See Memorandum to the File from Elizabeth Eastwood, “Final Determination Calculation Memorandum for Camso Loadstar (Private) Ltd. and Loadstar (Private) Ltd. (collectively Camso Loadstar),” dated concurrently with this memorandum (Final Calculation Memo).
13 See *Preliminary Determination*, at “Preliminary Affirmative Determination of Critical Circumstances.” See also, PDM, at “Critical Circumstances.”
14 Specifically, the Department made changes since the *Preliminary Determination* and Post-Preliminary Memorandum which affected the Tax Concessions for Exporters of Non-Traditional Products, Exemptions/Concessions for Fiscal Levies on Capital and Intermediate Goods, Guaranteed Price Scheme for Rubber, and Nation Building Tax Preferences.
15 See Final Calculation Memo.
17 See id.
2. Exemptions/Concessions for Fiscal Levies on Capital and Intermediate Goods

In the *Preliminary Determination*, the Department preliminary determined that Camso Loadstar received no benefit from this program because it otherwise would have paid no import duties on its imports of capital goods in the absence of this program.\(^\text{18}\) In this final determination, we determine that Camso Loadstar did benefit from this program based on its exemption from customs duties on imports of spare parts. For further discussion, *see Comment 1, below.*

According to the GOSL, the Exemptions/Concessions for Fiscal Levies on Capital and Intermediate Goods program provides for a reduction of or exemption from customs duties on imports of capital goods and intermediate goods used in the production of exported products.\(^\text{19}\) The Department determines that this program provides a financial contribution in the form of revenue forgone, as defined in section 771(5)(D)(ii) of the Act. We determine that the exemption from fiscal levies which Camso Loadstar received under the program is specific under sections 771(5A)(A) and (B) of the Act because it is limited to exporters registered with the Board of Investment (BOI).\(^\text{20}\) Finally, we determine that the exemption confers a benefit within the meaning of 19 CFR 351.519(a)(1)(ii) because the exemption was applicable to spare parts that are not consumed in the production of the exported product.

Under 19 CFR 351.519(a)(3)(ii), the benefit conferred is the difference between the duty actually paid and the duty that would have been paid absent the program. To calculate the benefit of the duty exemption that Camso Loadstar received under the program, we determined the duty that Camso Loadstar actually paid under the program during the POI and the duty Camso Loadstar would have paid if they had not been exempted. To calculate the subsidy rate, we divided the benefit by Camso Loadstar’s export sales during the POI. On this basis, we determine the countervailable subsidy rate for Camso Loadstar under this program to be 0.41 percent *ad valorem*.

3. Guaranteed Price Scheme for Rubber

We used Camso Loadstar’s verified program reimbursement figure.\(^\text{21}\) We also used the verified total sales value.\(^\text{22}\)

Camso Loadstar: 0.69 percent *ad valorem*.

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\(^{18}\) See PDM, at 13.

\(^{19}\) See GOSL April 21 Response, at pages 33-41; see also, Camso Loadstar April 21 Response, at pages 13-14 and Appendix 6.

\(^{20}\) See Camso Loadstar April 21 Response, at 14, Exhibit Appendix-5, and Exhibits Duties 1-20; see also GOSL April 21 Response, at 33-34.

\(^{21}\) See Camso Loadstar Verification Report, at 15.

\(^{22}\) See Camso Loadstar Verification Exhibit 1.
D. Program Found Not To Be Countervailable

1. Nation Building Tax Preferences (NBT)

Although we found this program to confer a countervailable benefit in the Preliminary Determination, as discussed in Comment 3, for this final determination we find that there is no benefit provided under this program and, therefore, the NBT is not countervailable.

2. Export Restraints on Natural Rubber

C. Programs Found Not To Be Used by Camso Loadstar

1. Export Development Reward Scheme
2. Tax Concessions for Specified Undertakings
3. Incentives for Producers and Suppliers of Exporters
4. Tax Exemptions and Concessions for Export Production Village Companies
5. Incentives for New Undertakings
6. Incentives for Certain New Undertakings in Certain Areas
7. Incentives for New Undertakings in Any Lagging Region
8. Incentives for Certain Undertakings with High Investments
9. Port and Airport Levy Preferences
10. Tax Incentives from the BOI of Sri Lanka
11. Export Processing Zones
12. Sri Lanka Export Development Board Assistance
13. Export Credit Guarantees from the Sri Lanka Export Credit Insurance Corporation
14. Planting and Replanting Subsidies for Natural Rubber Producers
15. Rubber Factory Development Subsidy Scheme

VII. ANALYSIS OF COMMENTS

Comment 1: Whether Camso Loadstar Benefited from Exemptions/Concessions for Fiscal Levies on Imports of Spare Parts

The Petitioners do not contest the Department’s preliminary determination that the program, with respect to imports of capital goods is not countervailable because imports of capital goods were already subject to a zero percent import duty – a fact the Department verified. However, the Petitioners argue that for the final determination the Department should countervail the exemptions/concessions for fiscal levels on capital and intermediate goods as it relates to imports of spare parts.\(^{23}\) The Petitioners assert that the program meets all of the criteria of a countervailable subsidy, as it provides a financial contribution, is specific, and confers a benefit.

The Petitioners note that, in the import tariff template chart provided by Camso Loadstar, imports of spare parts are listed that have an original duty rate which was greater than zero but

\(^{23}\) See Petitioners’ Brief, at 2-5.
for which Camso Loadstar reported paying no duties. The Petitioners state that Camso Loadstar reported it was exempt from duty on imported spare parts because it was registered with the BOI and, therefore, the program is specific because it is contingent on export performance. The Petitioners further argue that the full amount of the exemption is countervailable because the spare parts were not consumed in the production process. They argue that spare parts cannot be considered inputs consumed in production of the exported product and they note that the Department has countervailed import duty exemptions on imported spare parts in prior proceedings. Further, they argue that the amount of the benefit was not *de minimis*, as Camso Loadstar stated in its response. The Petitioners argue that, contrary to Camso Loadstar’s claim, regardless of whether the program is treated as a recurring program or a non-recurring program, there is a measurable benefit during the POI.

Camso Loadstar and the GOSL argue that the Petitioners provided no legal or factual basis for the Department to countervail this program. Both Camso Loadstar and the GOSL argue that, based on the Petitioners’ allegation, the Department initiated an investigation to determine whether the exemptions/concessions with respect to imports of capital goods and intermediate goods conferred a countervailable benefit. In addition, they both argue that the Department declined to initiate an investigation of the exemptions/concessions program as it relates to inputs on the basis that the Petitioners failed to properly support an allegation that inputs are not consumed in the production of the exported product. Camso Loadstar notes that the GOSL reported that the term “intermediate goods” as used in the Petitioners’ allegation, “refers to all input materials that were used in the process to produce the final product.” The GOSL notes that Camso Loadstar reported that the spare parts it imports are consumed in the production of exports as the spare parts it imports have a short life span and the company exports nearly 100 percent of its production. As such, both Camso Loadstar and the GOSL argue there is no basis to investigate this program at this stage of the investigation.

Regardless, both the GOSL and Camso Loadstar argue that the program is neither specific nor provides a benefit because either the relevant customs duties are zero (for machinery and equipment) or are exempted for all companies registered with the BOI.

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24 See *id.* (also citing to Exhibit Appendix-6).
25 See Petitioners’ Brief, at 4.
26 See *id.*, at 3 (citing Camso Loadstar April 21 Response, at 14).
27 See *id.*, at 5 (citing 19 CFR 351.519(a)(3)(ii)).
28 See *id.*, at 5 (citing *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428 (April 1, 2010) and accompanying Issues and Decision Memorandum, at 10 (*Bags from Vietnam*)).
29 See *id.*, at 4 (citing Camso Loadstar May 20 Response, at 14).
30 See *id.* (citing 19 CFR 351.524(b)(2)).
31 See Camso Loadstar Rebuttal Brief, at 1-3. See also GOSL Rebuttal Brief, at 2-4.
32 See *id.*
33 See *id.* (citing to PDM, at 13, fn. 61).
34 See Camso Loadstar Rebuttal Brief, at 1 (citing to GOSL May 20 Response, at 5).
36 See Camso Loadstar Rebuttal Brief, at 1-3. See also GOSL Rebuttal Brief, at 2-4.
37 See Camso Loadstar Rebuttal Brief, at 2 (citing *Countervailing Duties; Final Rule*, 63 FR 65348, 65357 (November 25, 1998) (“the purpose of the specificity test is simply to ensure that subsidies that are distributed very
Camso Loadstar states that in *Bags from Vietnam*, the Department calculated a benefit on import duty exemptions for spare parts where the government undisputedly had no system in place for confirming which inputs were consumed in production of exported products, consistent with 19 CFR 351.519. Camso Loadstar argues that that case is dissimilar from the facts in this investigation, where Camso Loadstar has stated inputs described as spare parts are consumed in the production process and the GOSL has a system in place to confirm which inputs are consumed in production of exported goods. Camso Loadstar asserts that the Petitioners now agree that program for capital goods does not confer unlawful subsidies.

Finally, the GOSL asserts that while the Agreement on Subsidies and Countervailing Measures (SCM Agreement) permits the Department to investigate alleged subsidies, that authority is limited. The GOSL cites to Article 11.2(iii) of the SCM Agreement’s requirement that subsidy allegations must be supported by evidence with regard to the existence, amount and nature of the subsidy in question and argues that in the absence of such evidence, as is the case here, there is no allegation for the Department to consider. The GOSL also argues that the SCM Agreement does not consider duty exemptions for inputs consumed in production process to be a subsidy.

In conclusion, the GOSL argues that since the information on the record show that no duties were otherwise paid on imports of capital goods and inputs were consumed in production of exported goods, as submitted by Camso Loadstar and the GOSL and verified by the Department, there is no basis for reversing the Preliminary Determination.

**Department’s Position:**

As detailed above in the “Programs Determined To Be Countervailable” section of this memorandum, the Department agrees with the Petitioners that there is sufficient evidence on the record to determine that the exemptions/concessions for imported spare parts provides a countervailable benefit to Camso Loadstar. While we agree with Camso Loadstar and the GOSL that we declined to initiate an investigation on inputs, we note that we did initiate an investigation on this program with regard to capital and intermediate goods, which “include machinery, equipment, accessories, appliances, devices, and supporting equipment; other essential equipment; spare parts of project plants; and transportation and handling equipment.” Camso Loadstar acknowledged importing spare parts. Further, with respect to the argument that having declined to initiate an investigation of this program as it related to inputs we are foreclosed from considering the program as it relates to spare parts, we disagree.

With respect to the GOSL and Camso Loadstar arguments that the imported spare parts are inputs used in the production of the exported product and that no benefit exists because the GOSL has a system in place to confirm which inputs are consumed in the production of goods...
for exports, we do not agree. We note that 19 CFR 351.102(b)(12) provides that “[i]nputs ‘consumed in the production process’ are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the product.” Camso Loadstar does not argue that its imported spare parts are physically incorporated into its finished products; only that they have short life spans. Thus while the respondents argue that imports of spare parts are inputs used in the production of OTR tires, we determine that spare parts with short life spans are not inputs that are physically incorporated into the exported product and thus, the exemption from duties on such imports does not qualify for the exception provided for in 351.519(a)(4). Bags from Vietnam is not instructive because it addresses a question not at issue in this investigation – whether the government has a program in place to ensure “inputs are consumed in the production of the exported product.”44 Because “spare parts” are not consumed in the production process, a government program regarding monitoring of how those spare parts are used is immaterial. Further, it should be noted that the “inputs” discussed in Bags from Vietnam were “raw materials.”45

In conclusion, the Department disagrees that there is insufficient evidence on the record with regard to the existence, amount, and nature of the subsidy. Both the GOSL and Camso Loadstar stated on the record that Camso Loadstar is exempt from import duties on spare parts because Camso Loadstar an exporter.46 Camso Loadstar provided a list of imported spare parts for which, unlike imported capital goods that were otherwise subject to a duty rate of zero, it was exempted from import duties.47 Further, the Department verified the rates that the GOSL reported in their customs tariff schedule for 2015.48

Comment 2: Whether the Provision of Tax Concession for Exporters of Non-Traditional Products Program is Countervailable

The GOSL and Camso Loadstar argue that, for the final determination, the Department should find the tax exemption for exporters of non-traditional products program not countervailable. The GOSL argues that the program: does not provide a financial contribution, is not specific, was nullified by the imposition of the Super Gains Tax, and has been terminated.49 Camso Loadstar argues that the program is available to a broad cross section of the Sri Lankan economy.50 Camso Loadstar further argues that the Department’s preliminary analysis failed to consider the effect of the imposition of the Super Gains tax on Camso Loadstar’s effective tax rate.51 In addition, Camso Loadstar argues that there was a program-wide change that must be taken into account for the final determination.52

The GOSL argues that this program does not provide a financial contribution because, as a sovereign government, the GOSL has the authority to implement changes to its tax policies

44 See Bags from Vietnam, at 9.
45 See id.
46 See Camso Loadstar April 21 Response, at 13-14; see also, GOSL April 21 Response, at 4-6.
47 See Camso Loadstar April 21 Response, at Exhibit Appendix-6.
48 See GOSL Verification Report, at 12.
50 See Camso Loadstar Brief, at 4-5.
51 See id., at 5-6.
52 See id., at 6-8.
without conferring a countervailable subsidy.\textsuperscript{53} The GOSL further argues that the SCM Agreement does not prevent a country from charging different tax rates for different types of businesses. Additionally, the GOSL argues that there is no financial contribution as there is no revenue “foregone” by the GOSL that is not also applicable to a diverse number of industries and companies.\textsuperscript{54}

Camso Loadstar and the GOSL also argue that the program is not specific. Camso Loadstar and the GOSL assert that the program applies to more than just exporters and the tire industry, as the Inland Revenue Act of 2006, as amended, applied to “specified undertakings,” which applies to numerous other, non-exporting, industries that operate in Sri Lanka.\textsuperscript{55} Camso Loadstar claims that the companies that fall under this program represent a broad cross section of the Sri Lankan economy and asks the Department to consider how the program applies to the local market. The GOSL argues that the program is not limited to a few industries, but rather the industries that do not fall under this program are more limited in scope.\textsuperscript{56} The GOSL states that the program includes all other products not considered traditional, as well as a variety of services. The GOSL argues that the Department verified that the program was made as a “strategic policy to improve the economic situation of Sri Lanka, generating employment, maintaining the balance of payments, and developing foreign currency reserves, and not to strengthen the OTR tire industry or any other specific industry or sector.”\textsuperscript{57}

Even if the program provides a countervailable subsidy, Camso Loadstar and the GOSL argue that the benefit was nullified by the Super Gains tax paid by Camso Loadstar during the POI. Camso Loadstar and the GOSL reported that under the Finance Act No. 10 of 2015 all companies whose profit before taxes exceeded two billion Sri Lankan rupees in the 2013-2014 taxable year, which includes Camo Loadstar, was subject to an additional tax of 25 percent of taxable income. Camso Loadstar argues that the 25 percent Super Gains tax on top of the 12 percent tax under the program results in an effective tax rate of 37 percent, exceeding the standard corporate tax rate of 28 percent.\textsuperscript{58} Camso Loadstar and the GOSL assert that the Super Gains tax nullifies any benefit and therefore there was no benefit and no revenue forgone by the GOSL.

Finally, Camso Loadstar and the GOSL argue that, since the program was terminated, the Department has the discretion to adjust the cash deposit rate. They state that the Department “may take a program-wide change into account” if it “determines that subsequent to the \{POI\}, but before a preliminary determination in an investigation … a program-wide change has occurred.”\textsuperscript{59} A “program-wide change” is one that is not limited to an individual firm or firms and is “effectuated by an official act.”\textsuperscript{60} The GOSL argues that it is the Department’s consistent

\textsuperscript{53} See GOSL Brief, at 10.
\textsuperscript{55} See Camso Loadstar Brief, at 4-5 (citing Camso Loadstar April 21 Response, at Exhibit Tax 1); see also, GOSL Brief, at 11-12 (citing GOSL April 21 Response, at 5; and Camso Loadstar April 21 Response, at 1-2).
\textsuperscript{56} See GOSL Brief, at 12 (citing Bethlehem Steel Corp. v. United States, 25 CIT 307, 322 (2001)).
\textsuperscript{57} See id.; at 13 (citing GOSL Verification Report, at 3).
\textsuperscript{58} See Camso Loadstar Brief, at 6 (citing GOSL Verification Report, at 3).
\textsuperscript{59} See id.; at 6 (citing 19 CFR 351.526(a)); and GOSL Brief, at 14 (citing 19 CFR 351.526(a)).
\textsuperscript{60} See id.; at 6; and GOSL Brief, at 14 (citing 19 CFR 351.526(b)).
practice in prior cases to adjust the cash deposit rate in countervailing duty proceedings if the program has been terminated.61 Camso Loadstar cites *PET Film from India*, where the Department adjusted the cash deposit rate to account for a program-wide change that was effectuated by an official act (it was listed in an official notification in the Indian Department of Commerce’s Handbook of Procedures).62 Camso also cites *Frozen Warmwater Shrimp from India*, where the Department adjusted the cash deposit rate for a program which was terminated during the POI, as shown by the relevant portion of India’s Foreign Trade Policy and the circular issued the by the Indian Ministry of Finance.63 Camso Loadstar argues the facts of the current investigation are similar to *PET Film from India* and *Frozen Warmwater Shrimp from India*. Camso Loadstar states that, effective April 1, 2016 (i.e., after the POI but prior to the Preliminary Determination), the GOSL increased the tax rate from 12 percent to 17.5 percent and applied that rate broadly, without specific reference to export activities.64 Camso Loadstar claims that it and the GOSL confirmed the increased tax program.65 Camso Loadstar argues that the removal of the benefit was program-wide, the change was measurable, and the GOSL has effectively abolished the program with the implementation of the program prior to the Preliminary Determination.

The Petitioners counter that the Department correctly found the program confers a countervailable subsidy as it provides a financial contribution in the form of government revenue foregone and is specific because it is contingent on export performance.66 The Petitioners assert that the GOSL’s claim that the program does not provide a financial contribution because the tax benefits for exporters are set out in the GOSL’s tax law and Camso was not exempted from the tax liability on an ad hoc basis, is contrary to the Act, the Department’s regulations, and agency practice.67 The Petitioner state that statute specifically lists tax credits and deductions as the type of programs that provide financial contributions.68 The Petitioners argue that permitting governments to provide subsidies as long as those subsidy programs are part of their tax code would eviscerate the countervailing duty law.69

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61 See GOSL Brief, at 15 (citing Final Determination in the Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China, 80 FR 47902 (June 11, 2015), and accompanying decision memorandum, at 68-69; Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 49635 (September 28, 2001) and accompanying decision memorandum, at Comment 7; Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India, 80 FR 11163 (March 2, 2015) and accompanying decision memorandum, at 23-24; and Final Results of Certain Frozen Warmwater Shrimp from India, 78 FR 50385 (August 12, 2013), and accompanying decision memorandum, at 8-9).
62 See Final Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India, 67 FR 34905 (May 16, 2002) and accompanying decision memorandum, at Comment 7).
64 See Camso Loadstar Brief, at 7 (citing Camso Loadstar Verification Report, at 9).
65 See id., at 78 (citing Camso Loadstar April 21 Response, at 3 and Exhibit Tax-3; and GOSL April 21 Response, at 8 and Attachment 2).
66 See Petitioners Rebuttal Brief, at 1, and 3-4.
67 See id., at 3 (citing GOSL Brief, at 10-11).
68 See id., at 3 (citing Section 771(5)(D)(ii) of the Act).
69 See id.
The Petitioners also argue that claims that the program is not specific are without merit.70 With regard to the assertion that tax concessions are not limited to a sufficient number of export industries, the Petitioners stress that a subsidy that is, in law or in fact, contingent on export performance, is countervailable regardless of the number of exporters using the program.71 With regard to the fact the lower tax rate also applies to those engaged in certain services, the Petitioners argue that the Inland Revenue Act specifically states that only those specified undertakings with export revenue are eligible for the tax rate, and thus, the program is export contingent.72 With regard to Camso Loadstar’s assertion that other businesses in certain sectors may also be eligible for the tax rate of 12 percent, the Petitioners note that the fact that there may be similar benefits for other industries under other programs does not diminish the fact that the program under investigation and which Camso Loadstar availed itself of, is the Tax Concessions for Exporters of Non-Traditional Goods, which is limited to exporters and thus contingent in law on export performance.73

The Petitioners assert that the Department correctly calculated the benefit under this program as the regulations provide that a direct tax program confers benefit “to the extent the tax paid by a firm is less than tax the firm would have paid in the absence of the program.”74 The Petitioners point out that the focus is on the revenue forgone, not the total effective tax rate of the beneficiary company after other provisions of the tax code are taken into account.75

Finally, the Petitioners argue that the Department should not adjust the cash deposit rate for an alleged program wide change as the alleged change does not satisfy the Department’s criteria for program-wide change. The Petitioners acknowledge that the Department has the discretion to take program-wide changes into account but they argue that the program-wide change must be “effectuated by an official act” and the Department must be able to measure the change in the amount of countervailable subsidies.76 The Petitioners argue that the change was not effectuated by an official act, but rather by a notice from the GOSL’s Department of Inland Revenue that the Petitioners argue is unclear as to whether or how the implementation of the proposals supersedes the Inland Revenue Act.77 Additionally, the Petitioners assert that there is no evidence on the record that the notice effectuates a permanent change to the tax concessions program or that the rates might change again based on another such notice. Further, the Petitioners argue that the lack of official act means that the Department is not able to measure any change in the amount of countervailable subsidies provided under this program. They state that there is insufficient information to determine whether the new tax rate applicable to Camso Loadstar may continue to provide a benefit as other entities are still being taxed at higher rates ranging from 28 to 40 percent.78 The Petitioners assert that unlike the cases involving duty drawback programs referred to by Camso Loadstar as support for adjusting the cash deposit rate, a change in the tax rate does

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70 See id., at 4.  
71 See id., at 4 (citing Section 771(5A)(B) of the Act).  
72 See id., at 4 (citing Camso Loadstar April 21 Response, at Exhibit Tax-1, Sections 52 and 60(c)).  
73 See id., at 5.  
74 See id. (citing 19 CFR 351.309(a)).  
75 See id.  
76 See Petitioners’ Rebuttal Brief, at 6 (citing 19 CFR 351.526(a); 19 CFR 351.526(a)(2); and 19 CFR 351.526(b)(2)).  
77 See Petitioners’ Rebuttal Brief, at 6-7 (citing Camso Loadstar April 21 Response, at Exhibit Tax-3).  
78 See id.
not easily translate into a change in the subsidy rate. Instead, the Petitioners cite *PET Film from India 2004*, where the Department declined to adjust the cash deposit rate for a change to an income tax program stating, “The basis for receipt of the 80 HHC benefit is the realization of profit. The amount of Polyplex’s future profits, or whether there will be any profits, is unknown and thus the effect of the change is not measurable.”79 The Petitioners argue that, as in *PET Film from India 2004*, Camso Loadstar’s future profits are unknowable and, thus, any impact of a change in the tax rate is not measureable.

Department’s Position:

The Department disagrees with the GOSL and Camso Loadstar and continues to determine that this program provides a financial contribution that was specific and provided a benefit to Camso Loadstar during the POI.

While we do not disagree with the GOSL that, as a sovereign government it has the authority to implement tax policy changes, we do not agree that such changes cannot result in a financial contribution in the form of revenue foregone. To the extent that the GOSL charges a tax rate to a limited number of companies that is lower than the standard tax rate, the government is foregoing revenue as described in section 771(5)(D)(ii) of the Act and thus, is providing a financial contribution.

The Department also disagrees with Camso Loadstar and the GOSL that the program is not specific. We agree with the Petitioners that the fact that a large number of exporters receive the same benefit or that other companies qualify for a lower tax rate under other programs does not change the fact that the program is limited to companies that export non-traditional goods, among other conditions, and Camso Loadstar qualified for the lower tax rate because it is an exporter of non-traditional products.80 As such, the program is specific because it is contingent on export performance.

The Department also disagrees that the imposition of the Super Gains tax nullifies the benefit under this program. As the Petitioners point out, the Department measures the benefit from a tax program by determining whether the amount of tax paid by a firm is less than the tax the firm would have paid in the absence of the program; not the total effective tax rate. Notwithstanding that the appropriate comparison is between the standard corporate tax rate and the tax concession rate, were we to consider the effective tax rate, we would add the Super Gains tax to the standard corporate tax rate to obtain an appropriate benchmark.

Finally, the Department disagrees with Camso Loadstar and the GOSL that it is appropriate for the Department to adjust the cash deposit rate on the basis of a program-wide change. The GOSL and Camso Loadstar cite to a publication from the Sri Lankan Department of Inland Revenue, entitled, “Implementation of Proposals on Economic Service Charge and Income Tax

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79 See Petitioners’ Rebuttal Brief, at 7-8 (citing Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India, 69 FR 51063 (August 17, 2004) and accompanying Issues and Decision Memorandum at Comment 6).

80 See Camso Loadstar April 21 Response, at Exhibit Appendix-1.
on the Instruction of the Ministry of Finance,” as an official document notifying the change in the corporate tax rate. The proposal states, “As instructed by the Ministry of Finance and published in the website of the Ministry, the Economic Service Charge (ESC) and Income Tax proposals made by Budget 2016 shall be revised and implemented with effect from 01.04.2016.” We agree with the Petitioners that this document does not meet the standard of “official act” required to effectuate a program-wide change under the Department’s regulations. This program was implemented by the Internal Revenue Act and several subsequent changes of tax rate were implemented by amendments to the Act. While the proposal gives the indication that the effective corporate tax rate will change, there is no evidence on the record that the relevant portions of the Inland Revenue Act have been amended to reflect the changes put forward in this proposal.

The cases cited by Camso Loadstar and the GOSL differ from the current investigation because in those instances there was an “official act” which effectuated a program-wide change and that act indicated that the program at issue had been or was being terminated. In this investigation, the document notes that this is only a proposed change. Because there is not an “official act” on the record to show there has been a program-wide change, the Department cannot affirmatively determine the program was canceled. We also note that, should a CVD order be issued as a result of this investigation, the first administrative review, if requested, would cover the time period beginning with the first day of suspension of liquidation (March 22, 2016), and include an analysis of the tax return filed during 2016 and, as such, would not be effected by the change in the corporate tax rate referenced by the GOSL and Camso Loadstar.

81 See Camso Loadstar April 21 Response, at Exhibit Tax 3.
82 See PET Film from India 2002, at Comment 7 (change in duty rate was “effectuated by an official act in the Indian Department of Commerce's Handbook of Procedures, and listed in an official notification of the Director General of Foreign Trade.”); see also, Tires from China, at 69 (change in the enterprise income tax was the “Notice of the State Council on the Implementation of the Transitional Preferential Policies in Respect of the Enterprise Income Tax (Transitional Policies),”); Hot-Rolled from India, at Comment 7 (the respondents provided policy circulars and Ex-Im handbook that demonstrated the programs had been abolished); PET Film from India 2015, at 24 (the government “provided the relevant copy of the Ministry of Finance circular terminating the DEPS/DEPB for shipment[s]”); Warm Water Shrimp from India Prelim, at 13 (Consistent with the official act submitted by the government, “the respondents’ reporting of benefits under the program shows no credits earned after September 30, 2011.”); and Warmwater Shrimp from India Final, at 8-9 (“The GOI supported its claim with a copy of relevant part of Foreign Trade Policy and the circular issued by the Ministry of Finance which specified that the DEPS program was “discontinued for exports made on or after 1.10.2011.”).
83 See Preliminary Determination, 81 FR at 39901.
Comment 3: Whether the Nation Building Tax Preferences Program is Specific and Constitutes a Financial Contribution

In the Preliminary Determination the Department found that the tax exemption received by Camso Loadstar under the Nation Building Tax (NBT) program constituted a countervailable subsidy as it: provided a financial contribution in the form of revenue foregone; was contingent on export performance and therefore, was specific; and provided a benefit in the form of a tax exemption. The GOSL asserts that each of these determinations are either not supported by substantial evidence or are not in accordance with the law. Therefore, the GOSL argues that the Department should reverse its determination for the final determination.

The GOSL argues the Department typically only finds programs to be de facto specific when the actual number of recipients are limited in number. The GOSL cites Bethlehem Steel for support for its argument that where the users of a program represent numerous and diverse industries, the Department finds the program not to be specific. The GOSL contends that the NBT is not limited to a limited number of industries, but rather is available to “numerous and diverse industries.” The GOSL states that many industries and types of businesses are exempted from the NBT, including over twenty types of service businesses. The GOSL asserts that there is no evidence on the record to contradict the fact that the preferences are available to a multitude of industries, articles and services and the singular claim that the preferences are export dependent is not sufficient to satisfy the specificity requirements of the statute, particularly since the exemptions extend to items, industries, or services that are not connected to export.

The GOSL further argues that the NBT program does not constitute a financial contribution. The GOSL states that the NBT, similar to a value added tax (VAT), is an indirect tax within the meaning of 19 CFR 351.102(b) {sic}. It operates like a VAT tax within Sri Lanka and the Department has previously found indirect taxes to not be countervailable. The GOSL asserts that there is no foregoing of revenue because there is no provision in the law for the GOSL to provide discount or rebates of the NBT. The GOSL further argues that making tax rate preferences countervailable would interfere with Sri Lanka’s sovereignty to establish and adjust tax rates.

The GOSL and Camso Loadstar argue that the Department did not accurately calculate the

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84 See GOSL Brief, at 3-9.
85 See id., at 4 (citing to Section 771(5A)(D)(iii) of the Act and Countervailing Duties; Final Rule, 63 FR 65348, 65357 (November 25, 1998)).
87 See id.
88 See id., at 5-6 (citing GOSL April 14 Response, at Attachment 6; GOSL May 25 Response, at Exhibit S-1; GOSL Verification Report, at 4; and GOSL Verification Exhibit 2).
89 See id., at 9.
90 See id., at 6 (citing Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122, 37125 (June 23, 2003)
91 See id., at 7.
92 See id.
benefit in its *Preliminary Determination.* Camso Loadstar asserts that there is a fundamental error in the calculation when a program that relieves an exporter of a two percent duty is found to confer a benefit greater than two percent.

The Petitioners argue that the Department should continue to the NBT preferences provide a financial contribution and are thus countervailable as the GOSL argument that there is no revenue foregone because the NBT preferences are set out in Sri Lanka’s law, flatly contradicts the statute, the Department’s regulations and practice, and the entire purpose of the countervailing duty law.

The Petitioners argue that program is specific because the record in this case shows that the program is for exporters. The Petitioners assert that the Act does require that a subsidy program contingent on export performance also be restricted to a limited number of industries. Rather, contingency on export performance alone is sufficient to establish specificity under the statute.

The Petitioners contend that the benefit is the amount of revenue forgone by the GOSL. The Petitioners state that under 19 CFR 351.517(a), the benefit for exemption upon export of indirect taxes “exists to the extent that the {Department} determines that the amount remitted or exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.” They assert the benefit in for this program is the amount of NBT exempted based on Camso Loadstar’s export status and the amount that would have been levied on goods sold for domestic consumption during the POI. The Petitioners argue that, contrary to the arguments of the GOSL and Camso Loadstar, the Department used the correct denominator for calculating the benefit rate and there is no fundamental error in the calculated benefit rate.

**Department’s Position:**

Based on a further examination of the program and the Department’s regulations, we determine the program does not provide a benefit under 19 CFR 351.517(a).

While the NBT is a turnover tax, not a VAT, the turnover tax is considered to be an indirect tax under 19 CFR 351.102(a)(28). Furthermore, we preliminarily found that the program was contingent on export performance. Accordingly, we analyze whether there is a benefit under this program under 19 CFR 351.517 (Exemption or remission upon export of indirect taxes).

Under 19 CFR 351.517(a), a “benefit exists to the extent that the {Department} determines that the amount remitted or exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.” The NBT is levied on domestic consumption at two percent. The NBT exempted under this program is two percent.

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93 *See id.,* at 9. *See also* Camso Loadstar Brief, at 9-12.

94 *See* Camso Loadstar Brief, at 9.

95 *See* Petitioners’ Rebuttal Brief, at 9 (citing Section 771(5A)(A) of the Act).

96 *See Preliminary Determination* and accompanying PDM at 13.

97 An analysis of benefit under 19 CFR 351.510 is inappropriate as this section applies to programs “other than an export program.”

98 *See* Camso Loadstar April 21 Response, at 12.
Because the amount exempted under this program and the amount levied on domestic consumption is the same, there is no benefit under 19 CFR 351.517(a).

Because there is no benefit, there is no need for the Department to determine whether there was a financial contribution, whether the program is specific, or if the Department used the correct denominator in the Preliminary Determination.

**Comment 4: Whether Camso Loadstar Benefited from the Guaranteed Price Scheme for Rubber**

In the Post-Preliminary Memorandum, the Department determined that the Guaranteed Price Scheme for Rubber provided a countervailable subsidy to Camso Loadstar. The GOSL and Camso Loadstar argue that the Department erred in making this determination as the program was established with the intent of providing benefits limited to small rubber growers, which Camso Loadstar is not. The GOSL argues that the record contains the information necessary for the Department to determine that the GPS is not countervailable. According to the GOSL, due to administrative inefficiencies, it used four different methods to administer the program and, as a large producer and exporter, Camso Loadstar did not apply for, receive, claim, use assistance, or benefit under any of the methods used to administer this program. Camso Loadstar adds that the benefits from this program were received by the rubber growing industry of which Camso Loadstar is not a member. The GOSL and Camso Loadstar assert that the guaranteed rubber price (GRP) was established by the GOSL and although the GOSL initially paid the difference between the market price and the GRP to the small rubber farmers, it later required rubber purchasers such as Camso Loadstar to pay the GRP for its purchases and then reimbursed Camso Loadstar for the difference. Camso Loadstar argues that even during the portions of the POI that it received funds under the program, the record makes clear that this was a one-way pass through where the benefits flowed to the small rubber farmers. The GOSL asserts that because no revenue is foregone that otherwise would be due to the GOSL and the benefit to small rubber farmers is not contingent on export, it is not permissible for the Department to assign a countervailable subsidy to Camso Loadstar for this program.

Camso Loadstar also argues that Department incorrectly presumed full and complete pass through of the benefits received by unrelated small farmers to Camso Loadstar. They argue that such a determination cannot be made with the conduct of a pass-through analysis, which the Department did not conduct. Nor, they assert, is there any significant evidence of the record to support such a conclusion even had the Department conducted such analysis. Even if there

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100 See Post-Preliminary Memorandum.
102 See GOSL Brief, at 17-18.
103 See Camso Loadstar Brief, at 13.
104 See GOSL Brief, at 17-18. See also, Camso Loadstar Brief, at 13-15.
105 See Camso Loadstar Brief, at 17.
106 See GOSL Brief, at 18.
107 See Camso Loadstar Brief, at 18-19.
was a benefit to Camso Loadstar, Camso Loadstar asserts that the Department would be required to conduct an upstream subsidy analysis before it can countervail alleged subsidies.108

Finally, Camso Loadstar and the GOSL argue that the Department should take into account when setting the cash deposit rate the fact that the program was terminated during the POI.109

The Petitioners argue that the GOSL and Camso Loadstar arguments are without merit and the Department should continue to countervail this program. Specifically, the Petitioners note that there is no dispute that the GOSL made direct payments to Camso Loadstar under the program.110 The Petitioners argue that during the period when the GOSL made payments to rubber purchasers, the program was specific because only purchasers of rubber could receive payments and further, since the tire industry, and Camso Loadstar specifically, is the predominate user of rubber in Sri Lanka, any program benefitting rubber purchasers is specific.111 The Petitioners note that no upstream subsidy analysis is needed in this case as the Department only countervailed the payments the GOSL made directly to Camso Loadstar. In addition, the Petitioners argue that the fact that Camso Loadstar may have paid higher prices for rubber under this program is irrelevant as any costs a recipient incurs to qualify for the payment are not offset against the benefit conferred.112

The Petitioners argue that the Department should not adjust the cash deposit rate for the alleged program-wide change as the record does not support finding a program-wide change. The Petitioners note that neither Camso Loadstar nor the GOSL has cited to any “official act” that would have effectuated a program-wide change with respect to the GPS for Rubber.113 The Petitioners assert that while the record indicates that “the budget was not sufficient to continue” the program, this only suggests that if the budget increases or otherwise permits it in the future, the GOSL may again provide payments under this program or a substitute program.114 The Petitioners conclude that since nothing on the record indicates that the GOSL is prohibited from providing additional payments under the GPS for Rubber program in the future, there has not been a program-wide change and the Department may not exclude it from the cash deposit rate.115

Department’s Position:

For reasons set forth in our Post-Preliminary Analysis, we continue to determine that the Guaranteed Price Scheme for Rubber provides a countervailable subsidy to Camso Loadstar. We agreed with the Petitioners that, regardless of the GOSL intent to benefit small rubber farmers, the GOSL provided a financial contribution in the form of direct payments to Camso Loadstar.

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109 See Camso Loadstar Brief, at 22-23. See also, GOSL Brief, at 18-19.

110 See id., at 12

111 See id. (citing Petitioners’ New Subsidy Allegations (May 4, 2016), at 13-14).

112 See id., at 13.

113 See id., at 13-14.

114 See id., at 14.

115 See id., at 14-15.
Further, the program is specific as only rubber purchasers could receive payments under the program. Finally, Camso Loadstar received a benefit in the amount of payments received from the GOSL. Furthermore, because the payments went directly from the GOSL to Camso Loadstar, there is no need for any sort of “pass-through” analysis as proposed by the respondents. In addition, an upstream analysis is not conducted when payments are made directly to the respondent company by a government.

In addition, we agree with the Petitioners that the program has not been terminated through an official act, such as the enactment of a statute, regulation, or decree, or contained in the schedule of an existing statute, regulation, or decree. As such, an adjustment to the cash deposit rate is not authorized under the CVD regulations.

Comment 5: Use of Dollar Amounts to Determine Subsidy Benefits Recorded by Camso

In the Preliminary Determination, the Department calculated the rate for tax concessions for exporters of non-traditional products with the numerator and denominator in Sri Lankan rupees and the rate for NBT in U.S. dollars. In the Post-Preliminary Analysis, the Department calculated the rate for the guaranteed price scheme for rubber in Sri Lankan rupees.

The Petitioners argue that because the Department verified that Camso Loadstar keeps its books in U.S. dollars and records the relevant figures for various subsidies in U.S. dollars, the Department should use these dollar amounts to calculate subsidy rates for the final determination.117 Camso Loadstar argues that if the Department continues to impose countervailing duties, it should calculate any subsidy rates in the same currency used in the Preliminary Determination, i.e. using Sri Lankan rupees for the tax concessions for exporters of non-traditional products and the guaranteed price scheme for rubber and using U.S. dollars for the NBT program. Camso Loadstar asserts that, as verified by the Department, the record indicates that the tax concessions for exporters of non-traditional products and the guaranteed price scheme for rubber are determined based on local currency and currency conversions would unnecessarily inflate the duty rate.118

Department’s Position:

The Department agrees with Camso Loadstar that calculating a countervailing duty rate for the programs at issue in the currency in which the benefit was received is preferable and avoids potential currency distortion. The Department verified that the benefit for all three programs found countervailable was denominated in Sri Lankan rupees. For the tax concessions for exporters of non-traditional products, Camso Loadstar received a lower tax rate on the income

116 See 19 CFR 351.526(b)(2).
117 See Petitioners Brief, at 5-6 (citing Camso Loadstar Verification Report, at 6, 9 and 13; and Memorandum to Shawn Thompson, entitled “Preliminary Determination Calculation Memorandum for Camso Loadstar (Private) Ltd. and Loadstar (Private) Ltd. (collectively Camso Loadstar)” dated June 13, 2016 (Prelim Calculation Memo), at Attachment 4).
118 See Camso Loadstar Rebuttal Brief, at 4-5 (citing Camso Loadstar Verification Exhibit 1, Prelim Calculation Memo, at 2, and Camso Loadstar Verification Report, at 2).
that they reported to the GOSL in rupees.\textsuperscript{119} For the exemptions/concessions for fiscal levies on capital and intermediate goods, Camso Loadstar reported the value of the imported good in rupees to the GOSL.\textsuperscript{120} And for the guaranteed price scheme for natural rubber, the GOSL paid Camso Loadstar in rupees.\textsuperscript{121} While Camso Loadstar keeps its books in U.S. dollars, the Department verified Camso Loadstar’s method for converting their sales into rupees.\textsuperscript{122}

\textbf{Comment 6: Use of Camso Loadstar’s Revised FOB Sales Data for Denominator}

The Petitioners argue that the Department should use the revised U.S. dollar, FOB total sales and export sales figures determined at verification as the denominators in its final subsidy calculations.\textsuperscript{123} Camso Loadstar and the GOSL did not respond to this argument.

\textbf{Department’s Position:}

The Department agrees that the correct denominator for determining rates for the programs is the revised FOB total sales and FOB export sales figures determined at verification. However, as noted in response to Comment 5, the Department used the updated figures from verification in the appropriate currencies in its final rate calculations.\textsuperscript{124}

\textbf{Comment 7: Whether the Department Should Continue to Find Critical Circumstances}

In the \textit{Preliminary Determination}, the Department preliminarily determined that Camso Loadstar received countervailable benefits under two programs that are contingent on export performance and thus, determined that there was a reasonable basis to believe or suspect that there is a program in the investigation which is inconsistent with the SCM Agreement. Further, the Department preliminarily determined that imports of the subject merchandise had been massive. As such, the Department preliminarily determined that critical circumstances exist.

The Petitioners assert that although Camso Loadstar submitted some revisions to its monthly shipment data, the Department should continue to find critical circumstances exist as the revised data continues to reflect an increase in imports. The Petitioners add that the Department should continue to find critical circumstances exist for all others because adjusting Global Trade Atlas data for Camso Loadstar’s reported shipments results in data for all others that are not usable.

Camso Loadstar and the GOSL argue that the statutory criteria for finding critical circumstances have not been met because: 1) the alleged subsides are not inconsistent with the SCM Agreement, and 2) imports have not been massive during the relevant periods.\textsuperscript{125} Camso Loadstar and the GOSL assert that when determining whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, the Department limits its finding to those subsidies

\textsuperscript{119} See Camso Loadstar April 14 Response, at Exhibit General 6.
\textsuperscript{120} See id., at Exhibit Appendix 6.
\textsuperscript{121} See GOSL August 1 Response, at 5.
\textsuperscript{122} See Camso Loadstar Verification Report, at 7-8.
\textsuperscript{123} See Petitioners’ Brief, at 6 (citing Camso Loadstar Verification Report, at 2 and 7).
\textsuperscript{124} See Final Calculation Memo.
\textsuperscript{125} See Camso Loadstar Brief, at 23. See also, GOSL Rebuttal Brief, at 5 (citing Section 703(e) of the Act and 19 CFR 351.206).
prohibited under Article 3 of the SCM Agreement.\textsuperscript{126} Camso Loadstar argues that Camso Loadstar’s questionnaire response stated it only used three of the programs initially alleged and those three programs were neither export contingent nor based on the use of domestic over imported goods.\textsuperscript{127} The GOSL further argues that the three programs the Department preliminary determined to be countervailable do not satisfy the statutory criteria for financial contribution and specificity and two of the three programs have been terminated.\textsuperscript{128} Even if the Department determines the relevant programs were export contingent, Camso Loadstar and the GOSL argue that Sri Lanka is exempt from the prohibition against export subsidies under Article 3.1(a) in accordance with Article 27 and Annex VII of the SCM Agreement and thus the subsidies alleged in this proceeding are consistent with the SCM Agreement.\textsuperscript{129}

The GOSL claims that the Department inappropriately assessed the volume of subject imports during the base and comparison periods and when properly considered in the broader context, it is evident that shipments were not massive and therefore, the Department should not find critical circumstances for the final.\textsuperscript{130} Camso Loadstar also contends that imports have not been massive during the relevant periods because, when import volumes are properly compared to corresponding periods during previous years, it is clear that there is no import surge sufficient to satisfy the critical circumstances provisions.\textsuperscript{131} Camso Loadstar argues that the baseline period selected by the Department (September through December 2015) was distortive because three of the four months in the baseline period were abnormally low volume months and the Department should instead compare the first quarter of 2016 with the first quarter of 2015 or 2014. Camso Loadstar claims that comparing the end of one year to the beginning of another is meaningless. Further, Camso Loadstar urges the Department to consider that shipments during the first quarter of 2016 were based on orders placed in the previous, pre-petition quarter and thus cannot be found to have been shipped in an attempt to avoid suspension of liquidation.\textsuperscript{132}

The Petitioners rebut Camso Loadstar and the GOSL claims that the programs found countervailable are not contingent on exports and cite to the GOSL Verification Report for their assertion that both the Tax Concessions for Exporters of Non-Traditional Products and the NBT Preferences are explicitly contingent on export performance according to the plain terms of the establishing measures.\textsuperscript{133} The Petitioners also assert that whether Sri Lanka is exempted from the prohibition on export subsidies in the SCM Agreement is irrelevant for purposes of the Department’s subsidy analysis and critical circumstances determination.\textsuperscript{134} Further, the


\textsuperscript{127} See Camso Loadstar Brief, at 23-24 (citing Camso Loadstar April 21 Response and Camso Loadstar May 20 Response).

\textsuperscript{128} See GOSL Rebuttal Brief, at 6.

\textsuperscript{129} See Camso Loadstar Brief, at 24. See also, GOSL Rebuttal Brief, at 5-6.

\textsuperscript{130} See GOSL Rebuttal Brief, at 6-7.

\textsuperscript{131} See Camso Loadstar Brief, at 24 (citing 19 CFR 351.206(h)(1) and (2)).

\textsuperscript{132} See id., at 24-25 and Camso Loadstar Rebuttal Brief, at 5.

\textsuperscript{133} See Petitioners’ Rebuttal Brief, at 15 (citing to GOSL Verification Report, at 2-6).

\textsuperscript{134} See id.
Petitioners note that while the Department may take seasonality into account when analyzing shipment data, Camso Loadstar has not claimed, much less demonstrated, that there are clear, predictable seasonal trends that can be seen and/or measured by the Department.\textsuperscript{135}

**Department’s Position:**

As discussed above in the “Programs Determined to be Countervailable” section of this memorandum, the Department determines that Camso Loadstar received countervailable benefits under two programs that are contingent upon export performance (i.e., Tax Concessions for Exporters of Non-Traditional Products and the Exemptions/Concessions for Fiscal Levies on Capital and Intermediate Goods).\textsuperscript{136} Therefore, there are programs in this investigation which are inconsistent with the SCM Agreement.\textsuperscript{137} With respect to Camso Loadstar’s and the GOSL’s arguments pertaining to the SCM Agreement, the Department conducted its critical circumstances analysis in accordance with U.S. law which, in turn, is consistent with our international obligations. As to the GOSL’s argument that two of the three programs were terminated, those programs were in place during the POI and, as discussed in Comments 2 and 4, they have not been terminated by an official act.

The Department also disagrees with Camso Loadstar and the GOSL that imports have not been massive. The Department looked not only at the base period and comparison period but also did a seasonality analysis for the previous two years.\textsuperscript{138} The seasonality analysis allows the Department to determine if an increase in imports between the base period and comparison period in previous years shows a similar increase thereby suggesting that the observed surge in the post-petition period was due to seasonal trends. As we stated in our PDM, the record evidence in this investigation does not show a similar increase from year to year and, therefore, we disagree with Camso Loadstar and the GOSL that a seasonality analysis reveals that the observed surge was due to seasonal trends.\textsuperscript{139} Further, we disagree with Camso Loadstar that comparison of shipments at the end of one year and the beginning of another is meaningless. Section 351.206(i) provides that a “relatively short period” of time for measuring whether imports have been massive is generally the period beginning on the date the proceeding begins (i.e., the date the petition is filed) and ending at least three months later. The timing of the filing of a petition does not make the analysis meaningless. Finally, at the time of the Preliminary Determination, Camso Loadstar had provided data which allowed us to use base and comparison periods of four months to address Camso Loadstar’s concerns regarding allegedly abnormally low shipments in certain months of the base period and that shipments in the first quarter were ordered in the previous quarter.

**Comment 8: Whether to Terminate the Investigation**


\textsuperscript{136} See also PDM, at “Tax Concessions for Exporters of Non-Traditional Products.”

\textsuperscript{137} See section 705(a)(2)(A) of the Act.


\textsuperscript{139} See PDM, at “Critical Circumstances.”
The GOSL argues that although Article 3.1(a) of the SCM Agreement prohibits export subsidies, Article 27 of the SCM Agreement grants developing nations listed in Annex VII of the SCM Agreement, such as Sri Lanka, an exemption from Article 3.1(a). They claim that, as Sri Lanka is not subject to the Article 3 prohibition on export subsidies, Sri Lanka has the right to implement the programs which have been alleged as countervailable in this investigation. Accordingly, the GOSL requests that the Department terminate the investigation.\textsuperscript{140} Camso Loadstar and the Petitioners did not respond to this argument.

**Department’s Position:**

We disagree with the GOSL. As mentioned above in response to Comment 7, the Department has conducted this investigation in accordance with U.S. law which, in turn, is consistent with our international obligations.

**VIII. RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish this final determination of this investigation and the final subsidy rates in the \textit{Federal Register}.

\[\begin{array}{cc}
\checkmark & \square \\
\hline
Agree & Disagree \\
\hline
1/3/2017
\end{array}\]

Signed by: PAUL PIQUADO

Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

\textsuperscript{140} See GOSL Brief, at 19-20.