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Investigation
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November 2, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CPM For CUM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Countervailing Duty Investigation of Certain Corrosion-Resistant
Steel Products from India

I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain corrosion-resistant steel (corrosion-resistant steel) products in India, as provided in section 703 of the Tariff Act of 1930, as amended (Act).

II. BACKGROUND

A. Initiation and Case History

On June 3, 2015, the Department received a petition from United States Steel Corporation, Nucor Corporation, Steel Dynamics Inc., California Steel Industries, ArcelorMittal USA LLC, and AK Steel Corporation (collectively, Petitioners) seeking the imposition of countervailing duties (CVDs) on corrosion-resistant steel from India.¹ Supplements to the Petition and our consultations with the Government of India (GOI) are described in the Initiation Checklist.² On June 23, 2015, the Department initiated a CVD investigation on corrosion-resistant steel from India.³

¹ See Letter from Petitioners, "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Corrosion-Resistance Steel Products from the People's Republic of China, the Republic of Korea, India, Italy, and Taiwan," dated June 3, 2015 (Petition).

² See "CVD Investigation Initiation Checklist: Certain Corrosion-Resistant Steel Products from India," (June 23, 2015) (Initiation Checklist).

³ See *Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations*, 80 FR 37223 (June 30, 2015) (*Initiation Notice*).



We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on United States Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation. On June 24, 2015, the Department released the CBP entry data under administrative protective order.⁴

On July 1, 2015, Petitioners submitted respondent selection comments. On July 23, 2015, we selected JSW Steel Limited (JSWSL) and Uttam Galva Steels, Ltd. (Uttam Galva) as the mandatory respondents.⁵ We sent our countervailing duty questionnaire to the GOI, seeking information regarding the alleged subsidies, on July 31, 2015.⁶ The Department instructed the GOI to forward the questionnaire to the selected mandatory respondents.

We received responses to our questionnaires from the GOI on September 18, 2015, and from JSWSL and Uttam Galva on September 21, 2015.⁷ On September 25, 2015, and October 16, 2015, Petitioners submitted comments on parties' questionnaire responses.⁸ On October 8, 2015, we issued a letter to Uttam Galva requesting that its cross-owned affiliate, Uttam Galva Metallica Ltd. (UGML), file a response to our original questionnaire. We sent supplemental questionnaires to the GOI and Uttam Galva on October 19, 2015, and a supplemental questionnaire to JSWSL on October 20, 2015.⁹ On October 23, 2015, Uttam Galva submitted its response to the supplemental questionnaire, and on October 26, 2015, the GOI and JSWSL submitted their responses to the supplemental questionnaires.¹⁰ Because UGML's response to

⁴ See Letter to the File, from Jerry Huang, "Certain Corrosion-Resistant Steel Products from India: Customs Data for Respondent Selection Purposes," (June 24, 2015).

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Andrew Devine, through James C. Doyle, "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Respondent Selection," (July 23, 2015).

⁶ See Letter from the Department to the GOI, "Countervailing Duty Investigation of Polyethylene Terephthalate Resin From India: Countervailing Duty Questionnaire," dated April 28, 2015 (CVD Questionnaire). See also the Department's Memorandum to the File, "Countervailing Duty Questionnaire Delivery to Mandatory Respondent JBF Industries Limited," dated May 5, 2015.

⁷ See Letter from GOI to Paul Walker, "Certain Corrosion Resistant Steel Products from India (C-533-864) – Initial Questionnaire Response," (September 18, 2015) (GOI Questionnaire Response); Letter to the Secretary from Uttam Galva, "Certain Corrosion-Resistant Steel Products From India: Uttam Galva Steels Limited's Questionnaire Response to the Countervailing Duty Questionnaire," (September 18, 2015) (Uttam Galva Questionnaire Response); Letter to the Secretary from Uttam Value Steels Limited (Uttam Value), "Certain Corrosion-Resistant Steel Products From India: Uttam Value Steels Limited's Questionnaire Response to the Countervailing Duty Questionnaire (September 18, 2015) (Uttam Value Questionnaire Response); Letter to the Secretary from JSW, "Certain Corrosion-Resistant Steel Flat Products from India" Initial Questionnaire Section III Response," (September 21, 2015) (JSWSL Questionnaire Response).

⁸ See Letter to the Secretary from Petitioners, "Certain Corrosion-Resistant Steel Products from India: Comments on Uttam Galva initial partial questionnaire response" (September 25, 2015); see also Letter to the Secretary from Petitioners, "Certain Corrosion-Resistant Steel Products from India: Comments on Questionnaire Response" (October 16, 2015)

⁹ See Letter from the Department to GOI, "Countervailing Duty Investigation of Certain Corrosion-resistant Steel Products from India: Supplemental Questionnaire," (October 19, 2015); Letter from the Department to Uttam Galva, "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Countervailing Duty Questionnaire," (October 19, 2015); Letter from the Department to JSW, "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Countervailing Duty Questionnaire," (October 20, 2015).

¹⁰ See Uttam Galva's October 23, 2015, supplemental questionnaire response; the GOI's October 26, 2015 supplemental questionnaire response; and JSW's October 26, 2015, questionnaire response.

our standard CVD questionnaire is due on November 2, 2015, we will not be able to evaluate the response until after the preliminary determination.

Finally, on September 23, 2015, and September 30, 2015, Petitioners submitted new subsidy allegations to the Department.¹¹ We continue to evaluate these new subsidy allegations and intend to issue a post-preliminary memorandum if time permits.

B. Postponement of Preliminary Determination

On August 3, 2015, Petitioners requested that the deadline for the preliminary determination be postponed until no later than 130 days after the initiation of the investigation.¹² The Department granted Petitioners' request, and on August 11, 2015, postponed the preliminary determination until November 2, 2015, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).¹³

C. Period of Investigation

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

III. SCOPE COMMENTS

In accordance with the Preamble to the Department's regulations, and as noted in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.¹⁴

We received several comments concerning the scope of the antidumping duty (AD) and CVD investigations of corrosion-resistant steel from, *inter alia*, India. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigations, which are due for signature on December 21, 2015. We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determinations after considering any relevant comments submitted in case and rebuttal briefs.

¹¹ See Letter to the Secretary from Petitioners, "Certain Corrosion-Resistant Steel Products from India: Comments on CVD Respondent Selection {sic}," (September 23, 2015); Letter to the Secretary from Petitioners, "Certain Corrosion-Resistant Steel Products from India: New Subsidy Allegations," (September 30, 2015).

¹² See Letter to the Secretary from Petitioners, "Certain Corrosion-Resistant Steel Products from the People's Republic of China, the Republic of Korea, India, Italy, and Taiwan: Request for Extensions of Deadlines for Preliminary Countervailing Duty Determinations," (August 3, 2015).

¹³ See *Countervailing Duty Investigations of Certain Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations*, 80 FR 48499 (August 13, 2015).

¹⁴ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)("Preamble"); see also *Initiation Notice*, 80 FR at 37224.

IV. 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.

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.

V. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

On July 23, 2015, Petitioners filed allegations that critical circumstances exist with respect to imports of subject merchandise from all five countries under investigation.¹⁵ On October 29, 2015, the Department issued its preliminary critical circumstances determinations for all five countries.¹⁶ Pursuant to this determination, the Department determined that critical circumstances do not exist for imports of subject merchandise from India.

VI. INJURY TEST

Because India is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On July 27, 2015, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of corrosion-resistant steel from, *inter alia*, India.¹⁷

VII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System.¹⁸ The Department notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding has disputed the allocation period.

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

¹⁵ See Letter from Petitioners, “Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Critical Circumstances Allegations,” July 23, 2015.

¹⁶ See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR _____ (November __, 2015) (signed October 29, 2015).

¹⁷ See *Certain Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan: Inv. Nos. 701-TA-534-538 and 731-TA-1274-1278 (Preliminary)* (July 2015); *Certain Corrosion-Resistant Steel Products From China, India, Italy, Korea, and Taiwan*, 80 FR 44151 (July 24, 2015).

¹⁸ See U.S. Internal Revenue Service Publication 946 (2008), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

B. Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations.¹⁹ In certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross-ownership.²⁰ The Court of International Trade upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.²¹

Uttam Galva identified one cross-owned Indian company, Uttam Value Steel Ltd. (Uttam Value) that received subsidies. Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), between Uttam Galva and Uttam Value through a common chairman and shared directors.²² Uttam Galva and Uttam Value are producers of subject merchandise, therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we are attributing subsidies received by Uttam Galva and Uttam Value to their combined sales. Uttam Galva also reported another potentially cross-owned company, Uttam Galva Metallics Ltd. (UGML), that supplies hot metal to Uttam Value.²³ On October 8, 2015, we requested that UGML submit a full questionnaire response. As this response is due November 2, 2015, we will not be able to evaluate the information until after the preliminary determination. Therefore, for purposes of this preliminary determination, we are only examining subsidies provided to Uttam Galva and Uttam Value.

JSWSL identified two cross-owned Indian companies, JSW Steel Coated Products Limited (JSCPL) and Amba River Coke Limited (ARCL), that received subsidies. Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), because JSCPL and ARCL are wholly-owned subsidiaries of JSWSL. JSWSL and JSCPL are producers of subject merchandise, therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we are attributing subsidies received by JSWSL and JSCPL to their combined

¹⁹ See, e.g., *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998).

²⁰ *Id.*

²¹ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).

²² See Uttam Galva's August 25, 2015, affiliated companies response.

²³ *Id.*; see also Uttam Galva's September 10, 2015, letter regarding UGML. We note that UGML also has the same chairman as Uttam Galva and Uttam Value, as well as some shared directors.

sales. Pursuant to 19 CFR 341.525(b)(6)(iv), we are attributing all subsidies received by ARCL, an input supplier to JSWSL, to the combined sales of it and JSWSL.

C. Denominators

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 "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). Similarly, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs. For a further discussion of the denominators used, *see* the preliminary calculation memoranda.²⁴

VIII. BENCHMARKS AND DISCOUNT RATES

Section 771(5)(E)(ii) of the Act provides that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark. 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient could actually obtain on the market, the Department will normally rely on actual short-term and long-term loans obtained by the firm. If the firm did not have any comparable commercial loans during the period, 19 CFR 351.505(a)(3)(ii) provides that we "may use a national average interest rate for comparable commercial loans." In addition, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government-owned special purpose bank for purposes of calculating benchmark rates.²⁵ Also, in the absence of reported long-term loan interest rates, we use the above-discussed interest rates as discount rates for purposes of allocating non-recurring benefits over time pursuant to 19 CFR 351.524(d)(3)(i)(B).²⁶

²⁴ *See* Memorandum to the File, through Paul Walker, Program Manager, from Matthew Renkey, Senior International Trade Compliance Analyst "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Uttam Galva Steels Limited ("Uttam Galva") Preliminary Calculation Memorandum," dated concurrently with this memorandum; *see also* Memorandum to the File, through Paul Walker, Program Manager, from Jerry Huang, Senior International Trade Compliance Analyst "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: JSW Steel Limited ("JSWSL") Preliminary Calculation Memorandum," dated concurrently with this memorandum (collectively, "Preliminary Calculation Memoranda").

²⁵ *See, e.g., Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) ("*Shrimp from India*"), and accompanying IDM, at "Benchmark and Discount Rates" section.

²⁶ *See Pasta 2012* and accompanying IDM at C. "Loan Benchmarks and Discount Rates."

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

Based on Uttam Galva's and JSW's responses, we preliminarily determine that both companies took out comparable rupee-denominated short-term or long-term loans from commercial banks for certain years for which we must calculate benchmark and discount rates. Because these short- and long-term commercial loans originated in the year the subsidy was provided and have similar maturity periods, we will use these commercial loans pursuant to 19 CFR 351.505(a)(2). For certain years, we do not have loan information from the companies in the year the subsidy was provided. As such loan rates were not available, we are preliminarily using national average interest rates, pursuant to 19 CFR 351.505(a)(3)(ii). Specifically, we used national average interest rates from the International Monetary Fund's International Financial Statistics (IFS) as benchmark rates for rupee-denominated short-term and long-term loans. We preliminarily find that the IFS rates provide a reasonable representation of both short-term and long-term interest rates for rupee-denominated loans

B. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies. The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Preliminary Calculation Memoranda.

IX. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following.

A. Programs Preliminarily Determined to Be Countervailable

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

Under the AAP, aka ALP, exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported.²⁷ The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled their export requirement.²⁸ The quantities of imported materials and exported finished products are linked through standard input-output norms (SIONs) established by the GOI.²⁹ During the POI, Uttam Galva used advance licenses to import certain materials duty free.³⁰

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.³¹ However, the government in question must have in place and

²⁷ See GOI Questionnaire Response, at 5-13.

²⁸ *Id.*

²⁹ See Uttam Galva Questionnaire Response, at 12-17 and Exhibit 13; *see also*. GOI Questionnaire Response, at 5-13.

³⁰ *Id.*

³¹ See 19 CFR 351.519(a)(1)(ii).

apply a system to confirm which inputs are consumed in the production of the exported products, and in what amounts.³² This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.³³ 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.³⁴

In the 2005 administrative review of countervailing duties on Polyethylene Terephthalate Film, Sheet, and Strip (“PET Film”) from India, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for the AAP/ALP during 2005. The Department acknowledged that certain improvements to the AAP/ALP system were made. However, the Department found that, based on the information submitted by the GOI and examined during previous reviews of that proceeding, and no information having been submitted for that review demonstrating that the GOI had revised its laws or procedures governing this program since those earlier reviews, systemic issues continued to exist in the AAP/ALP system during that POR.³⁵ Specifically, in the 2005 review, the Department stated that it continued to find the AAP/ALP countervailable based on:

the GOI’s lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. Specifically, we still have concerns with regard to several aspects of the ALP including (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.³⁶

Since that 2005 PET Film review, the Department has in several other proceedings made determinations consistent with this treatment of the AAP/ALP.³⁷ In the current investigation, record evidence shows³⁸ there has been no change to the AAP/ALP program and therefore we preliminarily find that the program confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from payment of import duties that would otherwise be due;

³² See *Shrimp from India*, and accompanying Issues and Decision Memorandum at “Duty Drawback (DDB).”

³³ *Id.*

³⁴ See 19 CFR 351.519(a)(4)(i)-(ii).

³⁵ See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006); and accompanying Issues and Decision Memorandum at 3-5.

³⁶ *Id.*

³⁷ See, e.g., *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; see also *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.

³⁸ See GOI Questionnaire Response, at 5-13 and Exhibits 2-7.

(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.

Pursuant to 19 CFR 351.524(c)(1), the exemption of import duties on raw material inputs normally provides a recurring benefit.³⁹ Under this program, during the POI, Uttam Galva did not have to pay certain import duties for inputs that were used in the production of subject merchandise.⁴⁰ Thus, we are treating the benefit provided under the AAP as a recurring benefit.

Uttam Galva imported inputs under the AAP for the production of subject merchandise duty free during the POI. In response to the Department's questionnaire, Uttam Galva provided supporting documentation regarding its AAP license.⁴¹ The information provided affirmatively demonstrates that the licenses provided to Uttam Galva were tied to the production and export of subject merchandise within the meaning of 19 CFR 351.525(b)(5).

To calculate the subsidy rate, we first determined the total value of import duties exempted during the POI for Uttam Galva under licenses tied to subject merchandise. We then divided the resulting benefit by the total value of Uttam Galva's and Uttam Value's export sales. On this basis we determine the countervailable subsidy provided to Uttam Galva under the AAP to be 5.49 percent *ad valorem*.⁴²

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

The GOI reported that "DFIA is issued to allow duty free imports of input fuel, oil, energy sources, catalyst which are required for production of export product."⁴³ The quantities of imported materials and exported finished products are linked through SIONs established by the GOI.⁴⁴ 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

³⁹ See, e.g., *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.

⁴⁰ See Uttam Galva Questionnaire Response, at 12.

⁴¹ See Uttam Galva Questionnaire Response, at Exh. 13.

⁴² See preliminary results calculation memorandum.

⁴³ See GOI Questionnaire Response at 14.

⁴⁴ See Uttam Galva Questionnaire Response, at 12-21 and Exhibits 13-15; see also GOI Questionnaire Response, at 5-20.

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. The Department has found this program to be countervailable in a previous case.⁴⁵

Pursuant to 19 CFR 351.524(c)(1), the exemption of import duties on raw material inputs normally provides a recurring benefit.⁴⁶ Under this program, during the POI, Uttam Galva did not have to pay certain import duties for inputs that were used in the production of subject merchandise.⁴⁷ Thus, we are treating the benefit provided under the DFIA as a recurring benefit.

Uttam Galva imported inputs under the DFIA for the production of subject merchandise duty free during the POI. In response to the Department's questionnaire, Uttam Galva provided supporting documentation regarding the DFIA program.⁴⁸ The information provided demonstrates that the license was tied to the production and export of subject merchandise within the meaning of 19 CFR 351.525(b)(5).

Uttam Galva reported benefitting from this program during the POI, within the meaning of section 771(5)(E) of the Act.⁴⁹ To calculate the subsidy rate, we first determined the total value of import duties exempted during the POI for Uttam Galva under this program tied to subject merchandise. We then divided the resulting benefit by the total value of Uttam Galva's and Uttam Value's export sales. On this basis, we determine the countervailable subsidy provided to Uttam Galva under the DFIA to be 1.09 percent *ad valorem*.⁵⁰

3. Duty Drawback (DDB)

Uttam Galva, JSWSL and JSCPL reported receiving duty rebates under this program.⁵¹ The GOI explained that the DDB program provides rebates for customs duty (a) drawback on re-exported goods, (b) drawback on raw materials used in the manufacture of export products, (c) drawback of service tax paid on input services used in the manufacture of export goods, (d) deemed export drawback as permitted under the Foreign Trade Policy in respect to certain supplies made under deemed export, and (e) reimbursement of excise duty paid on fuels by way of drawback notified by DGFT.⁵² The refund is the average amount of duty paid on materials of any particular class or description of goods used in the manufacture of export goods of specified goods.⁵³

⁴⁵ See *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468, (October 22, 2012).

⁴⁶ See, e.g., *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.

⁴⁷ See Uttam Galva Questionnaire Response at 18-21.

⁴⁸ See Uttam Galva Questionnaire Response, at Exh. 14-15.

⁴⁹ See Uttam Galva Questionnaire Response at 18-21.

⁵⁰ See preliminary results calculation memorandum.

⁵¹ See JSWSL Section III Response at 12.

⁵² See GOI Section II Response at 21.

⁵³ *Id.*

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.⁵⁴ 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.⁵⁵ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁵⁶ 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.⁵⁷

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.⁵⁸ The GOI did not provide the requested documentation.⁵⁹ Thus, consistent with *Shrimp from India*, based on the GOI's questionnaire response that lacks the documentation to support that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products, we preliminarily conclude that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended.⁶⁰

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

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

We calculated the subsidy rate using the value of all DDB duty rebates that Uttam Galva earned on U.S. sales, JSWSL and JSCPL earned on export sales during the POI. We divided the total amount of the benefit received by Uttam Galva by the companies' total U.S. exports during the POI. For JSWSL and JSCPL, we divided the benefit by the companies' total exports during the

⁵⁴ See 19 CFR 351.519(a)(1)(ii).

⁵⁵ See *Shrimp from India*, and accompanying Issues and Decision Memorandum at "Duty Drawback (DDB)."

⁵⁶ *Id.*

⁵⁷ See 19 CFR 351.519(a)(4)(i)-(ii).

⁵⁸ See The Department CVD Questionnaire at 2.

⁵⁹ See GOI Section II Response 22.

⁶⁰ See *Shrimp from India*, and accompanying Issues and Decision Memorandum at 12-14.

POI. On this basis, we preliminarily determine a countervailable subsidy rate of 0.76 percent *ad valorem* for Uttam Galva, and a rate of 1.81 percent *ad valorem* for JSWSL.

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

The EPCG program 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 a multiple of the duty saved within a period of a certain number of years.⁶¹

The Department has previously determined that import duty reductions or exemptions provided under the EPCG program 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 (*see* above and below) under section 771(5)(E) of the Act; and (3) is specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is contingent upon export performance.⁶² Because the above-cited evidence with respect to this program is consistent with the findings in, *inter alia*, *PET Film Final Determination* and *Shrimp from India*, we preliminarily determine that this program is countervailable.

Under the EPCG program, the exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. It is the Department's practice to treat any balance on an unpaid liability that may be waived in the future as a contingent-liability interest-free loan pursuant to 19 CFR 351.505(d)(1).⁶³ 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).

Import duty exemptions under this program are approved for the purchase of capital equipment. The preamble of the Department's regulations states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring...."⁶⁴ In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.⁶⁵

⁶¹ *See* GOI Response at 36.

⁶² *See, e.g., 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.

⁶³ *Id.*

⁶⁴ *See Countervailing Duties*, 63 FR 65348, 65393 (November 25, 1998).

⁶⁵ *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty*

Uttam Galva, Uttam Value, JSWSL, JSCPL, and ARCL reported that they imported capital goods at reduced import duty rates under the EPCG program. Information provided by Uttam Galva, Uttam Value, JSWSL, and JSCPL indicates that their EPCG licenses were issued for the purchase of capital goods used for the production of subject and non subject merchandise⁶⁶ so we are attributing the EPCG benefits received to their total exports consistent with 19 CFR 351.525(b)(5).

JSWSL and JSCPL met the export requirements for certain EPCG licenses prior to December 31, 2014 (the last day of the POI), and the GOI has formally waived the relevant import duties. For a number of their licenses, however, JSWSL, JSCPL, and ARCL had not yet met their export obligation as required under the program. Therefore, although JSWSL, JSCPL, and ARCL received a deferral from paying import duties for the capital goods that were imported, the final waiver of the obligation to pay the duties was not demonstrated for a number of these imports.

To calculate the benefit received from the GOI's formal waiver of import duties on Uttam Galva, Uttam Value, JSWSL and JSCPL's capital equipment where the export obligations were met prior to December 31, 2014 (the last day of the POI), we used the total amounts of duties waived. We treated these amounts as grants pursuant to 19 CFR 351.504. Further, consistent with the approach followed in the *PET Film Final Determination*, we preliminary determined the year of receipt of the benefit to be the year in which the GOI formally waived the respondents' outstanding import duties.⁶⁷ Next, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the total value of duties waived, for each year in which the GOI granted these companies an import duty waiver. For any years in which the value of the waived import duties was less than 0.5 percent of the respondent's total export sales, we expensed the amount of the waived duties to the year of receipt. For years in which the value of the waivers exceeded 0.5 percent of the respondent's total export sales in that year, we allocated the waived duty amount using the allocation period of 15 years for nonrecurring subsidies, in accordance with 19 CFR 351.524(d)(2). See the "Allocation Period" section, above. For purposes of allocating the value of the waived duties over time, we used the appropriate discount rate for the year in which the GOI officially waived the import duties. See "Benchmarks and Discount Rates" section, above.

As noted above, import duty reductions or exemptions that the respondents received on the imports of capital equipment for which they had not yet met export obligations may have to be repaid to the GOI if the obligations under the licenses are not met. Consistent with our practice and prior determinations, we are treating the unpaid import duty liability as an interest-free loan.⁶⁸

Administrative Review, 75 FR 6634 (February 10, 2010), and accompanying Issues and Decision Memorandum at Comment 9; see also *Certain Frozen Warmwater Shrimp From India: Preliminary Countervailing Duty Determination*, 78 FR 33344 (June 4, 2013) (*Shrimp India Prelim.*), and accompanying Decision Memorandum at "Duty Incentives under the Export Promotion Capital Goods ("EPCG") Program," unchanged in *Shrimp from India*.

⁶⁶ See JSWSL Section III Response at Exhibit 14.

⁶⁷ See *PET Film Final Determination*, and accompanying Issues and Decision Memorandum at Comment 5.

⁶⁸ See 19 CFR 351.505(d)(1); see also *Shrimp India Prelim.*, and accompanying Decision Memorandum at EPCG Program (unchanged in *Shrimp from India*).

The amount of the unpaid duty liabilities to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the respondent applied, but had not been officially waived by the GOI, as of the end of the POI. Accordingly, we find the benefit to be the interest that the respondent would have paid during the POI had it borrowed the full amount of the duty reduction or exemption at the time of importation.⁶⁹

As noted above, the time period for fulfilling the export requirement expires a certain number of years after importation of the capital good. As such, pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment), occurs at a point in time that is more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the long-term interest rates as discussed in the “Benchmarks and Discount Rates” section, above.⁷⁰ We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the capital good was imported and summed these amounts to determine the total benefit from these contingent liability loans.

The benefit received under the EPCG program is the sum of: (1) the benefit attributable to the POI from the formally waived duties for imports of capital equipment for which the respondents met export requirements by the end of the POI; and (2) interest due on the contingent-liability loans for imports of capital equipment that have unmet export requirements during the POI. We then divided the total benefit received by Respondents under the EPCG program by the companies’ total exports during the POI. On this basis, we preliminarily determine a countervailable subsidy of 0.01 percent *ad valorem* for Uttam Galva, and a countervailable subsidy rate of 0.98 percent *ad valorem* for JSWSL.

5. Status Certificate Program

The GOI stated that:

The objective of the program is to promote investment in upgradation of technology of some specified sectors such as leather, textiles, jute, handicrafts, plastics, basic chemicals, rubber products, glass and glassware, paper and books, paints and allied products, plywood and allied products, electronics products, sports goods and toys, engineering products *viz.* iron and steel, pipes and tubes, ferro-alloys *etc.*⁷¹

We have examined the program in prior proceedings, and preliminarily determine that the program continues to operate in the same manner as in those cases.⁷² In those proceedings we

⁶⁹ *Id.*

⁷⁰ See the Preliminary Calculation Memoranda for further details.

⁷¹ See GOI October 26, 2015, Supplemental Response at 20.

⁷² See GOI October 26, 2015, Supplemental Response at 20-31 and Exhibit 2; *see also, e.g., Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468, (October 22, 2012); *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488, (July 26, 2010); *Certain Lined Paper Products From India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 80 FR 19637, (April 13, 2015).

found that this program provides certain privileges to exporters depending on their export performance. These privileges include: authorizations and customs clearances for both imports and exports on self-declaration basis; fixation of input-output norms on priority within 60 days; exemption from compulsory negotiation of documents through banks (the remittance, however, would continue to be received through banking channels); 100 percent retention of foreign exchange in EEEEC account; enhancement in normal repatriation period from 180 days to 360 days; and exemption from furnishing of bank guarantee in schemes under this policy. The GOI stated that “The amount of assistance is solely determined in terms of FTP 2009-14 and the notification by the GOI in this respect.”⁷³ Accordingly, we determine that this program provides a direct financial contribution within the meaning of section 771(5)(D)(i) of the Act. Because the program is contingent upon exports,⁷⁴ we preliminarily determine that the program is specific under section 771(5A)(A) and (B) of the Act.

Uttam Galva and Uttam Value reported receiving benefits under this program during the POI via the status holder incentive scrip, and Uttam Value also received a grant under this program.⁷⁵ To calculate the subsidy rate we divided the total amount of the benefit received by the companies’ total exports during the POI. Pursuant to this calculation we preliminarily find a countervailable subsidy of 0.22 percent *ad valorem* for Uttam Galva.

6. State Government of Maharashtra (SGOM) Subsidy Programs

Uttam Galva and JSWSL stated that SGOM provides a Package Scheme of Incentives (PSI), which encourages investments in new units and/or the expansion of existing production capacity located in specified underdeveloped areas in accordance with the terms and conditions specified by SGOM.

a. Sales Tax Program

In another CVD proceeding involving India, the Department found that certain states in India (including the state of Maharashtra) provide a package of incentives to encourage the development of certain regions of those states. These incentives are provided to privately-owned (as defined by the GOI to not be 100 percent government-owned) manufacturers in selected industries which are located in designated regions. One incentive is the exemption or deferral of state sales taxes. Specifically, under these state programs, companies are exempted from paying state sales taxes on purchases, and from collecting state sales taxes on sales.⁷⁶

Uttam Galva, Uttam Value, and JSCPL reported that they utilized this program, which provides a tax deferral of payable VAT and Central Sales Tax (CST) that is collected but not paid. This unpaid VAT and CST are deferred for a number of years after which the duty is required to be paid in five installments. However, a company using this program also may elect to make an

⁷³ See GOI October 26, 2015, Supplemental Response at 20.

⁷⁴ See GOI October 26, 2015, Supplemental Response at 22.

⁷⁵ See Uttam Galva’s Questionnaire Response, at 35.

⁷⁶ See, e.g., *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (2003 Review of PET Film from India), and accompanying Issues and Decision Memorandum (2003 Review of PET Film from India Decision Memorandum) at “State Sales Tax Incentives” section.

early payment of the duty owed by paying the Net Present Value (NPV) of the liability that would accrue after the set number of years.

The GOI reported that the aforementioned companies availed themselves of this program.⁷⁷ We preliminarily determine that this program constituted a financial contribution, in the form of revenue forgone, and is regionally specific, under sections 771(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively.⁷⁸

Because the tax deferrals that the respondents received have to be repaid to the GOI, we are treating the unpaid tax liability as an interest-free loan,⁷⁹ and thus find that the aforementioned companies benefited from this program, pursuant to section 771(5)(E) of the Act. Accordingly, we find the benefit to be the interest that the respondents would have paid during the POI had they borrowed the full amount of the tax deferrals.⁸⁰ As noted above, the time period to repay the tax deferral is a certain number of years. As such, pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event of repayment of the deferred taxes occurs at a point in time that is more than one year. As the benchmark interest rate, we used the long-term interest rates as discussed in the “Benchmarks and Discount Rates” section, above.⁸¹ On this basis, we preliminarily determine a countervailable subsidy of 0.11 percent *ad valorem* for Uttam Galva, and that JSWSL received a benefit of less than 0.005 percent *ad valorem*, and thus received no measureable benefit under this program.

b. Electricity Duty Exemptions

Uttam Value, JSCPL, and ARCL reported that their manufacturing facilities were exempted from the payment of electricity duty (under different provisions) during all or part of the POI, thus conferring a benefit pursuant to section 771(5)(E) of the Act. The Government of Maharashtra has exempted from electricity duties certain industries and enterprises in certain less developed industrial regions in the State of Maharashtra.⁸²

We preliminarily determine that this program constituted a financial contribution, the form of revenue forgone, and is regionally-specific, under sections 771(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively.

To calculate the subsidy rate, we divided the benefit by the total sales of each company during the POI. On this basis, we preliminarily determine a countervailable subsidy of 0.01 percent *ad valorem* for Uttam Galva, and also a countervailable subsidy of 0.01 percent *ad valorem* for JSWSL.

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

⁷⁷ See GOI October 26, 2015, Supplemental Response at 38-39.

⁷⁸ See, e.g., JSWSL’s Questionnaire Response at 38 and Exhibit 22.

⁷⁹ See 19 CFR 351.505(d)(1).

⁸⁰ *Id.*

⁸¹ See the Preliminary Calculation Memoranda for further details.

⁸² See GOI Questionnaire Response at 123-128 and Exhibits 43-44; see also GOI October 26, 2015, Supplemental Response at 38-39.

JSCPL reported benefiting from this program during the POI, within the meaning of section 771(5)(E) of the Act (*i.e.*, a benefit exists equal to the amount of the unpaid interest that SICOM waived). Uttam Galva reported that it also received benefits, but the information it submitted instead refers to the sales tax program above. In prior investigations, the Department has determined that SICOM is a public body and found that waived interest on “intercorporate deposits” was countervailable.⁸³ Specifically, the Department determined that a financial contribution was provided by SICOM, a public entity, pursuant to section 771(5)(D)(i) of the Act, in the amount of the waived interest.⁸⁴ The Department here finds that the waived interest was specific to the respondents 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.⁸⁵ Therefore, we find this program to be countervailable.

To calculate the countervailable subsidy, we find the benefit to be the interest that the respondents would have paid during the POI.⁸⁶ As the benchmark interest rate, we used the long-term interest rates as discussed in the “Benchmarks and Discount Rates” section, above.⁸⁷ On this basis, we preliminarily determine JSWSL received a benefit of less than 0.005 percent *ad valorem*, and thus received no measureable benefit under this program.

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

Uttam Value reported that it was awarded an Eligibility Certificate for a Mega Project under the Package Scheme of Incentives, 2007 (PSI-2007) for the expansion made to its existing manufacturing facilities, thus benefiting within the meaning of section 771(5)(E) of the Act because it reduced the cost of making the investment. We preliminarily determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a direct transfer of funds, and that the program is specific within the meaning of section 771(5A)(D)(i) of Act because the subsidies are expressly limited to select industries and enterprises as a matter of law.⁸⁸

To calculate the benefit for the grant that Uttam Value received during the POI, we divided the amount received by Uttam Value by Uttam Value’s total POI sales. The grant that Uttam Value received during the POI was less than 0.5 percent of its total POI sales. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we preliminarily determine a countervailable subsidy of 0.02 percent *ad valorem* for Uttam Galva.

⁸³ See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India, 67 FR 34905 (May 16, 2002) and accompanying Issues and Decision Memorandum.

⁸⁴ *Id.* See also, *e.g.*, Uttam Galva Questionnaire Response at 45-46 and Exhibit 33.

⁸⁵ See, *e.g.*, Uttam Galva Questionnaire Response at 45-46 and Exhibit 33; see also JSWSL’s Questionnaire Response at 42 and Exhibit 26.

⁸⁶ *Id.*

⁸⁷ See the Preliminary Calculation Memoranda for further details.

⁸⁸ See Uttam Value Questionnaire Response at 27-30 and Exhibits 18-19; see also GOI Questionnaire Response at 123-128 and Exhibits 43-44.

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

JSWSL stated that it is currently receiving benefits under the Package Scheme of Incentives 1993, and during the POI specifically via this program. This program defers sales tax (*i.e.*, VAT) payments for fourteen years and then permits eligible companies to pay the sales tax in five equal annual installments. Alternatively, the deferred sales tax may be paid at an earlier date on an NPV basis. Thus, we preliminarily find that JSWSL received a benefit within the meaning of section 771(5)(E) of the Act.

We further preliminarily find the tax savings to the company under this program provide a financial contribution in the form of revenue forgone and are specific because they are limited only to those companies investing in a specified developing area (*i.e.*, certain underdeveloped regions in Maharashtra)⁸⁹ within the meaning of sections 771(5)(D)(ii) and 771(5A)(D)(iv) of the Act, respectively.

To calculate the benefit for the grant that JSWSL received during the POI, we divided the amount received by JSWSL by JSWSL's total POI sales. The grant that JSWSL received during the POI was less than 0.5 percent of its total POI sales. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we preliminarily determine that JSWSL received a benefit of less than 0.005 percent *ad valorem*, and thus received no measureable benefit under this program.

B. Programs Preliminarily Determined Not to Confer a Benefit During the POI

1. Pre- and Post-Shipment Export Financing

During the POI, the GOI provided pre- and post-export financing to make short-term working capital available to exporters at internationally comparable interest rates.⁹⁰ The financing was denominated in rupees and in foreign currencies.⁹¹

With respect to the rupee-denominated export financing, the Reserve Bank of India (RBI) previously capped the interest rate that commercial banks could charge on these loans. However, beginning on July 1, 2010, the RBI eliminated the interest rate cap and allowed participating commercial banks to set the interest rates for these export loans based on the bank's own operating and lending costs.⁹² The RBI also instituted an interest subvention program for certain exporting sectors and companies, and for small and medium sized companies, valid up to March 31, 2014.⁹³ All respondents also stated that they did not qualify for the interest subvention program for certain exporting sectors and companies, and for small and medium sized companies, valid up to March 31, 2014.⁹⁴ We preliminarily determine that rupee-denominated

⁸⁹ See JSWSL's Questionnaire Response at 47 and Exhibits 30-31.

⁹⁰ See GOI Response at 48-58.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*, at 8 – 9 and Exhibit 2.

⁹⁴ See Uttam Galva's October 23, 2015, supplemental response at 3-4, and JSWSL's October 26, 2015, supplemental response at 7-8.

pre- and post- shipment export loans that were eligible for the interest rate subvention confer countervailable subsidies on the subject merchandise because: (1) the provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act, as a direct transfer of funds in the form of loans; (2) these loans give rise to a benefit, as described further below, because the interest rates are lower than the interest rates on comparable commercial loans (*see* section 771(5)(E)(ii) of the Act); and (3) these loans are specific under sections 771(5A)(A) and (B) of the Act because they are contingent upon export performance. However, because the respondents did not use this benefit, we determine that the program was not used.

With respect to export financing denominated in foreign currencies, the GOI explained that the RBI required banks up to May 4, 2012, to fix the rates of interest with reference to ruling LIBOR, EURO LIBOR or EURIBOR, and these rates were subject to caps, with the size of the cap varying depending on the duration of the loan. However, the government changed the manner in which the foreign currency-denominated export loan program operated and effective May 5, 2012, banks were free to determine the interest rate on export loans provided in foreign currencies and now provide export credit to exporters at internationally competitive rates under the programs of “Pre-shipment Credit in Foreign Currency” and “Rediscounting of Export Bills Abroad.”⁹⁵ As a result, we have previously found that the GOI terminated the foreign currency export financing program on May 5, 2012.⁹⁶

In *Shrimp from India*, the GOI supported its claim with a copy of the “Master Circular - Rupee / Foreign Currency Export Credit & Customer Service To Exporters,” issued by RBI, which was included also as part of the respondents’ submissions in the instant investigation.⁹⁷

As explained below, 19 CFR 351.526(a) permits the Department to take account of program-wide changes in setting the countervailing duty deposit rate in certain circumstances. When a subsidy program is terminated, 19 CFR 351.526(d) requires that there be no residual benefits under the program and that, if a replacement program has been implemented, the benefits under the replacement program be calculable.

In *Shrimp from India*, as well as the instant investigation, the GOI reported that the maximum term for pre-shipment credits in foreign currencies was 360 days prior to shipment, and the maximum term for post-shipment credits in foreign currencies was six months from the date of shipment. Thus, the last day on which the respondents could have paid reduced interest on their foreign currency export financing was April 30, 2013 (360 days after May 5, 2012). Therefore, no residual benefits exist beyond that date. Moreover, the GOI has not implemented a replacement program.⁹⁸ Therefore, consistent with the Department’s determination in *Shrimp from India*, we are determining that the respondents had no foreign currency denominated export loan benefit during the POI.

⁹⁵ See GOI Response at 48-58.

⁹⁶ See GOI Response at 48-58. See also *Shrimp from India* and accompanying Issues and Decision Memorandum at “Export Financing Program” section.

⁹⁷ *Id.* See also Uttam Galva Response at Exhibit 21 and JSWSL Response at Exhibit 17.

⁹⁸ See *Shrimp from India* and accompanying Issues and Decision Memorandum at “Export Financing Program” section; see also GOI Response at 10, 18, and 20 – 21; and Dhunseri Section III Response at 16 – 17.

C. Programs Preliminarily Determined Not to Be Used

Government of India Programs

- a) Export Oriented Units (EOUs) (4 programs)
- b) Market Development Assistance Program
- c) Market Access Initiative
- d) Focus Product Scheme
- e) GOI Loan Guarantees
- f) 80-IB Tax Program
- g) Special Economic Zones (5 programs)
- h) SDF
- i) LTAR – Captive Mining Rights for Iron Ore
- j) LTAR – Captive Mining Rights for Coal
- k) LTAR – Provision of High-Grade Iron Ore
- l) LTAR – Provision of Flat-Rolled Steel
- m) Incremental Exports Incentivization Scheme

State Government Programs

- a) State Government of Andhra Pradesh Programs
- b) State Government of Gujarat Programs
- c) State Government of Maharashtra Investment Subsidies
- d) State Government of Maharashtra Infrastructure Assistance for Mega Projects
- e) State Government of Maharashtra Other Subsidies under the Package Scheme Incentives
- f) State Government of Maharashtra LTAR – Land

X. CALCULATION OF THE ALL-OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States. We 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. Consistent with the Department's practice, for the "all-others" rate, we calculated a simple average of the two responding firms' rates.⁹⁹

XI. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written

⁹⁹ See, e.g., *Countervailing Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Determination*, 79 FR 10097 (February 24, 2014).

consent of the Assistant Secretary for Enforcement and Compliance. In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

XII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹⁰⁰ Case briefs or other written comments for all non-scope issues may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹⁰¹ Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of this preliminary determination in the *Federal Register*, and rebuttal briefs, limited to issues raised in the case briefs, maybe submitted no later than five days after the deadline for the case briefs. For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for the other concurrent countervailing duty and antidumping duty investigations.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁰² This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.¹⁰³ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using the Department's electronic records system, ACCESS.¹⁰⁴ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹⁰⁵ on the due dates established above.

XIII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

¹⁰⁰ See 19 CFR 351.224(b).

¹⁰¹ See 19 CFR 351.309(c)-(d); see also 19 CFR 351.303 (for general filing requirements).

¹⁰² See 19 CFR 351.309(c)(2) and (d)(2).

¹⁰³ See 19 CFR 351.310(c).

¹⁰⁴ See 19 CFR 351.303(b)(2)(i).

¹⁰⁵ See 19 CFR 351.303(b)(1).

XIV. CONCLUSION

We recommend that you approve the preliminary findings described above.

✓
Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

2 NOVEMBER 2015
Date