UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-533-866
Investigation
POI: 1/1/2014 – 12/31/2014
Public Document
E&C/ IV: EK

July 20, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
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 Cold-Rolled Steel Flat Products from India

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I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain cold-rolled steel flat products (cold-rolled steel) in India, within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act).[1] Below is the complete list of issues in this investigation for which we received comments from interested parties.

Issues:

Comment 1: Application of AFA to JSW Steel (Salav) Ltd.

Comment 2: Calculation of Benefits Under the Export Promotion of Capital Goods Scheme

Comment 3: JSCPL's Electricity Duty Exemptions

Comment 4: Adjustment to Export Sales Denominators

Comment 5: Rounding of Program Rates

[1] *See also* section 701(f) of the Act.

II. BACKGROUND

A. Case History

The selected mandatory respondent in this proceeding is JSW Steel Ltd. (JSWSL). On December 22, 2015, the Department published the *Preliminary Determination* in this proceeding.[2]

In the *Preliminary Determination*, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we aligned the final countervailing duty (CVD) determination with the final antidumping duty (AD) determination.[3]

Between February 15 and February 18, 2016, we verified the questionnaire responses submitted by JSWSL and its cross-owned affiliates, JSW Steel Coated Products Ltd. (JSCPL) and Amba River Coke Ltd. (ARCL) (collectively, JSW). We released our verification report on March 25, 2016.[4]

On April 1, 2016, Steel Dynamics, Inc. (Petitioner) and JSW submitted case briefs.[5] On April 6, 2016, JSW submitted a rebuttal brief.[6] On January 21, 2016, Petitioner submitted a request for a hearing, but withdrew that request on April 19, 2016.[7]

B. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2014 through December 31, 2014.

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement

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[2] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From India: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 79562 (December 22, 2015) (*Preliminary Determination*) and Memorandum to Paul Piquado, Decision Memorandum for the Preliminary Results of the Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India (Preliminary Decision Memorandum).

[3] *See Preliminary Determination*, 80 FR at 79563.

[4] *See* Memorandum to the File, "Verification of the Questionnaire Responses of JSW Steel Ltd., JSW Steel Coated Products Ltd., and Amba River Coke Ltd.," dated March 25, 2016 (JSW Verification Report).

[5] *See* Submission from Petitioner, "Certain Cold-Rolled Steel Flat Products from India: Case Brief," dated April 1, 2016 (Petitioner Case Brief); *see also* Submission from JSW, "Cold-Rolled Steel Flat Products from India: CVD Investigation – Case Brief of JSW Steel Ltd.," dated April 1, 2016 (JSW Case Brief).

[6] *See* Submission from JSW, "Cold-Rolled Steel Flat Products from India: CVD Investigation – Rebuttal Brief of JSW Steel Ltd.," dated April 6, 2016 (JSW Rebuttal Brief).

[7] *See* Submissions from Petitioner, "Certain Cold-Rolled Steel Flat Products from India: Request for Hearing," dated January 21, 2016; "Certain Cold-Rolled Steel Flat Products from India: Withdrawal of Hearing Request," dated April 19, 2016.

("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, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). 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. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

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

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

- Ball bearing steels;[8]
- Tool steels;[9]
- Silico-manganese steel;[10]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland*.[11]

[8] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[9] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[10] Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[11] *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 FR 42501, 42503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.[12]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

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

IV. SUBSIDIES VALUATION

A. Allocation Period

We made no changes to the allocation period or the allocation methodology used in the *Preliminary Determination*, and no interested parties raised issues in their case briefs 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.*[13]

[12] *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 FR 71741, 71741-42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

[13] *See also* Preliminary Decision Memorandum at 7.

B. Attribution of Subsidies

We made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies, and no interested parties raised issues in their case briefs regarding the attribution of subsidies. For descriptions of the methodologies used for this final determination, *see* the *Preliminary Determination*.[14]

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales, or portions thereof. As a result of verification, we revised JSWSL's, JSCPL's, and ARCL's total sales and export sales values.[15] The denominators we used to calculate the countervailable subsidy rates for the subsidy programs described below are explained in the Final Calculation Memorandum prepared for this investigation.[16] For interested party comments related to denominators, *see* Comment 4, below.

V. BENCHMARKS AND DISCOUNT RATES

We made no changes to the benchmarks or discount rates used in the *Preliminary Determination*, and no interested parties raised issues in their case briefs regarding benchmarks or discount rates. For a description of the benchmarks and discount rates used for this final determination, *see* the *Preliminary Determination*[17] and Final Calculation Memorandum.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

[14] *See also* Preliminary Decision Memorandum at 7-8.
[15] *See* JSW Verification Report.
[16] *See* Memorandum to the File, "Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: JSW Steel Limited Final Calculation Memorandum," dated July 20, 2016 (Final Calculation Memorandum).
[17] *See also* Preliminary Decision Memorandum at 8.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[18] The amendments to the Act are applicable to all determinations made on or after August 6, 2015 and, therefore, apply to this investigation.[19]

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[20] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.[21]

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[22] Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[23]

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.[24] The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[25]

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

[19] *See Applicability Notice*, 80 FR at 46794-95.

[20] *See* section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

[21] *See also* 19 CFR 351.308(c).

[22] *See also* 19 CFR 351.308(d).

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

[24] *See* section 776(d)(1) of the Act; TPEA, section 502(3).

[25] *See* section 776(d)(3) of the Act; TPEA, section 502(3).

As discussed below, we find the application of partial adverse facts available (AFA) is warranted with respect to JSWSL's responses due to its failure to provide information for its affiliate, JSW Steel (Salav) Ltd. (JSW Salav).

Application of AFA to JSWSL

We have relied on facts available, in accordance with section 776(a) of the Act, because JSWSL withheld necessary information requested by the Department, and therefore, significantly impeded the investigation.[26] Thus, we must rely on facts otherwise available in accordance with sections 776(a)(1) and 776(2)(A)-(C) of the Act.

In selecting from among the facts available, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. JSWSL failed to submit a response to the Department's initial CVD questionnaire for a cross-owned input supplier, JSW Salav, which, prior to verification, JSWSL had stated was not in operation during the POI. However, we discovered at verification that JSW Salav was, in fact, operational for the final two months of the POI.[27] For this reason, as explained in greater detail below, we find that JSWSL failed to cooperate by not acting to the best of its ability to comply with the Department's request for information in this investigation. As such, we have based this final determination, with respect to JSWSL, on partial AFA.

Selection of the AFA Rate

It is the Department's practice in CVD proceedings to compute an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for a cooperating respondent in the same investigation or, if not available, rates calculated in prior CVD cases involving the same country.[28] Specifically, the Department applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, the Department applies the

[26] *See* Comment 1 for additional information.
[27] *See* JSW Verification Report at 6.
[28] *See, e.g.*, *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum at "Application of Facts Available, Including the Application of Adverse Inferences"); *see also Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC*), and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies."

highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.[29]

In applying partial AFA to JSWSL, we are guided by the Department's methodology detailed above. Because JSWSL failed to act to the best of its ability in this investigation, as discussed above, we made an adverse inference that JSW Salav benefitted from all of the programs used by the other entities within the JSW group of companies[30] (from which we received questionnaire responses).

We are applying the highest above-zero rates calculated for the other JSW companies[31] in this investigation for the following programs:

- Duty Drawback Program;
- Export Promotion of Capital Goods Scheme;
- State Government of Maharashtra Electricity Duty Exemptions;
- State Government of Maharashtra Sales Tax Program; and
- State Government of Maharashtra Subsidies for Mega Projects under the Package Scheme of Incentives – Sales Tax/VAT Deferral/Exemption.

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

- Waiving of Loan Interest by the State Industrial and Investment Corporation of Maharashtra Ltd. (SICOM).[32]

Corroboration of AFA Rate

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[33] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself

[29] *Id.*; *see also Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*) and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available Rate."
[30] JSWSL and its cross-owned affiliates, JSCPL and ARCL.
[31] JSWSL and its cross-owned affiliates, JSCPL and ARCL.
[32] *See Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) (*CWP from India*), and accompanying Issues and Decision Memorandum at 16-17.
[33] *See* Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 870.

that the secondary information to be used has probative value.[34] The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[35] Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[36]

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. As stated above, we are applying subsidy rates which were calculated in this investigation which do not constitute secondary information and thus do not require corroboration. With respect to the subsidy rates from previous India CVD investigations or administrative reviews, no information has been presented which calls into question the reliability of these previously calculated subsidy rates that we are applying as AFA. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.[37]

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

Program[38]	**AFA Subsidy Rate (Percent)**
Duty Drawback Program	1.98
Export Promotion of Capital Goods Scheme	0.60
SGOM Sales Tax Program	0.01
SGOM Electricity Duty Exemptions	0.01
SGOM Waiver of Loan Interest by SICOM	2.90
SGOM Subsidies for Mega Projects under the Package Scheme of Incentives – Sales Tax/VAT Deferral/Exemption	0.95
Partial AFA Rate Sub-Total for JSW Salav	6.45

[34] *See* Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 870.
[35] *Id.*, at 869-870.
[36] *See* section 776(c)(2) of the Act; TPEA, section 502(2).
[37] *See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).
[38] The Duty Drawback Program and Export Promotion of Capital Goods Scheme are export subsidies.

VII. ANALYSIS OF PROGRAMS

A. Programs Determined To Be Countervailable

We made no changes to our *Preliminary Determination* with respect to the methodology used to calculate the subsidy rates for the following programs, except where noted below, and for the incorporation of revised denominators, where appropriate.[39] For the descriptions, analyses, and calculation methodologies of these programs, see the *Preliminary Determination*. Except where noted, no issues were raised by interested parties in case briefs regarding these programs. The final program rates are as follows: [40]

1. Duty Drawback (DDB)

JSWSL: 1.98 percent *ad valorem*.

2. Export Promotion of Capital Goods (EPCG) Scheme

We relied upon revised data, presented as a minor correction during verification, in our final subsidy calculation. We also revised our treatment of certain EPCG licenses for which JSWSL, JSCPL, and ARCL met their export commitments, but for which the government of India (GOI) had not formally waived duties by the end of the POI, to treat them as interest-free loans for the final determination, consistent with the Department's practice.[41] We calculated the benefits under the EPCG program with an adjustment for reported Central Value Added Taxes for each instance in which the data was provided.[42] For additional detail and for interested party comments related to this program, *see* Comment 2.

JSWSL: 0.60 percent *ad valorem*.

3. State Government of Maharashtra Sales Tax Program

We relied on revised data that JSW submitted in a questionnaire response after the *Preliminary Determination*, which we verified.[43] JSW clarified after the *Preliminary Determination* that JSCPL used both the program option to defer payment of sales tax for a period of years and the option to pay the sales tax at a discounted rate based on the net present value (NPV).[44] Accordingly, we revised our calculation of subsidies under this program to account for JSCPL's usage of both program options. We treated the tax deferrals as an interest-free loan and calculated the benefit to be the interest the respondent would have paid during the POI had it

[39] *See* Section IV.C., above.
[40] *See* Final Calculation Memorandum for additional information.
[41] *See, e.g., Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) (*Threaded Rod from India*) and accompanying Issues and Decision Memorandum at 14-16; *see also* Final Calculation Memorandum.
[42] *See* Final Calculation Memorandum.
[43] *Id*.
[44] *See* JSW Verification Report at 19-22.

borrowed the full amount of the tax deferrals.[45] We calculated the benefit for the sales tax paid at a discounted NPV rate during the POI as the difference between the full amount of tax owed and the amount paid.[46]

JSWSL: 0.01 percent *ad valorem*.

4. State Government of Maharashtra (SGOM) Electricity Duty Exemptions

We relied on revised data that JSW submitted in a questionnaire response after the *Preliminary Determination*, which we verified.[47] For interested party comments related to this program, *see* Comments 3 and 5.

JSWSL: 0.01 percent *ad valorem*.

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

We relied on revised data that JSW submitted in a questionnaire response after the *Preliminary Determination*, which we verified.[48]

JSWSL: 0.95 percent *ad valorem*.

B. Programs Determined to Have Conferred No Measureable Benefit During the POI

We made no changes to our *Preliminary Determination* with respect to the methodology used for the following program, except for the incorporation of revised denominators, where appropriate.[49] For the descriptions, analyses, and calculation methodologies of this program, see the *Preliminary Determination*. No issues were raised by interested parties in their case briefs regarding this program.

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

JSWSL: less than 0.005 percent *ad valorem* (no measureable benefit).

[45] *See* Preliminary Decision Memorandum at Section VIII.B.2.
[46] *See* Final Calculation Memorandum.
[47] *Id*.
[48] *Id*.
[49] *See* Section IV.C., above.

C. Programs Determined Not to Be Used

We made no changes to the *Preliminary Determination* with respect to these programs.

Government of India Programs

1. Pre- and Post-Shipment Export Financing
2. Advance License Program (ALP)
3. Advance Authorization Program (AAP)
4. Duty Free Import Authorization Scheme (DFIA Scheme)
5. Subsidies for Export Oriented Units (EOUs)
    a. Duty-Free Import of Goods, Including Capital Goods and Raw Materials
    b. Reimbursements of Central Sales Tax Paid on Goods Manufactured in India
    c. Duty Drawback on Fuel Procured from Domestic Oil Companies
    d. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area
6. Market Development Assistance Scheme
7. Market Access Initiative
8. Focus Product Scheme
9. GOI Loan Guarantees
10. Status Certificate Program
11. Income Deduction Program (80-IB Tax Program)
12. Special Economic Zones (SEZ)
    a. Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
    b. Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
    c. Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit
    d. SEZ Income Tax Exemption
    e. Service Tax Exemption
    f. Exemption From Payment of Local Government Taxes and Duties, Such as Sales Tax and Stamp Duties
13. Steel Development Fund Loans (SDF)
14. Provision of Goods and Services for Less Than Adequate Remuneration
    a. Provision of Captive Mining Rights for Iron Ore
    b. Provision of Captive Mining Rights for Coal
    c. Provision of High-Grade Iron Ore
    d. Provision of Flat-Rolled Steel
15. Incremental Exports Incentivisation Scheme

State Government Programs

16. State Government of Andhra Pradesh Subsidy Programs
17. State Government of Gujarat Subsidy Programs
18. State Government of Maharashtra VAT Refunds under the Package Scheme of Incentives
19. State Government of Maharashtra Investment Subsidies
20. State Government of Maharashtra Infrastructure Assistance for Mega Projects
21. State Government of Maharashtra Other Subsidies under the Package Scheme of Incentives
22. State Government of Maharashtra Provision of Land for Less than Adequate Remuneration

VIII. ANALYSIS OF COMMENTS

Comment 1: Application of AFA to JSW Steel (Salav) Ltd.

Petitioner's Comments:

- JSWSL originally reported that it acquired JSW Salav during the POI, but that JSW Salav was not operational during the POI. At verification, the Department learned that JSW Salav was operational during part of the POI (*i.e.*, November and December 2014), and supplied JSWSL with direct reduced iron as an input to steel production.
- Although JSWSL suggested that JSW Salav's POI operations were insignificant, as JSW Salav only accounted for a small percentage of JSWSL's annual iron consumption during the 2014-15 fiscal year, the relevant question is whether JSW Salav's production of iron was primarily dedicated to JSWSL's steel production.
- The Department should treat JSWSL's affiliation questionnaire as having failed verification and apply AFA in the final determination based on JSWSL's false assertion that JSW Salav was not in operation during the POI.
- As AFA, the Department should assume that JSW Salav received subsidy benefits equal to those received by ARCL (JSWSL's cross-owned input producer), and add these benefits to JSWSL's benefit calculation.

JSW's Rebuttal:

- JSWSL admittedly overlooked JSW Salav's short duration of POI operation and tiny contribution to JSWSL's operations; however, application of AFA on the basis of a failed verification is unjustified. JSWSL personnel compiling the responses were unaware that JSW Salav was operational for the last two months of the POI.
- JSW Salav supplied 0.5 percent of the iron inputs to one of JSWSL's factories during the 2014-15 fiscal year, which made it into hot-rolled coil. Cross-owned company JSCPL then used the hot-rolled coil to produce subject merchandise. However, JSCPL's sales were a very small part of JSWSL's overall operations, so any theoretical subsidies would have no noticeable impact on JSWSL's CVD rate.

Department's Position: Pursuant to sections 776(a)(2)(A) and (C) of the Act, we find that application of facts available is warranted with respect to JSWSL. During the verification of

JSW's questionnaire responses, we found that, despite the Department's detailed and specific questionnaires and instructions, which are documented below, JSWSL failed to accurately report information about one of its cross-owned affiliates, JSW Salav. Thus, we find that JSWSL failed to satisfy its statutory duty to respond accurately and completely to requests for information regarding its affiliates. Moreover, we find that JSWSL significantly impeded the proceeding by not providing accurate or complete responses to the Department's questions about JSW Salav. Because of JSWSL's failure to cooperate to the best of its ability in participating in the investigation, we find that the circumstances warrant the application of facts otherwise available with adverse inferences, pursuant to sections 776(a)-(b) of the Act.

The Department's original questionnaire provided instructions for reporting information related to JSWSL's cross-owned companies. The questionnaire specifically instructed:

> *Affiliated companies may be required to respond to this questionnaire where "cross-ownership" exists. According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.*
>
> *You must provide a complete questionnaire response for those affiliates where "cross-ownership" exists and:*
>
> *(a) the cross-owned company produces the subject merchandise; or*
> *(b) the cross-owned company is a holding company or a parent company (with its own operations) of your company; or*
> *(c) the cross-owned company supplies an input product to you that is primarily dedicated to the production of the subject merchandise; or*
> *(d) the cross-owned company has received a subsidy and transferred it to your company; or*
> *(e) the cross-owned company is not a producer or manufacturer but provides a good to your company*.[50]

In JSWSL's original affiliation questionnaire response, JSWSL identified the companies with which it is affiliated, and provided information relating to each company's ownership, management, and scope of business.[51] JSWSL indicated its intent to provide CVD questionnaire responses on behalf of itself and JSCPL, stating that these companies were the only affiliated producers of subject merchandise, and as such, were the only companies that required questionnaire responses pursuant to 19 CFR 351.525(b)(6).[52] In its affiliation questionnaire response, JSWSL described JSW Salav as an affiliated steel plant that was "not in operation during the POI."[53]

[50] *See* CVD Questionnaire at Section III, pages 1-3.
[51] *See* Submission from JSWSL, "Cold-Rolled Steel Flat Products from India: Response to CVD Affiliation Questions of JSW Steel Limited," dated October 2, 2015 (JSWSL-AQR) at Exhibit 1.
[52] *See* JSWSL-AQR at 2.
[53] *Id.*, at Exhibit 1.

In the Department's October 7, 2015 supplemental questionnaire, the Department asked JSWSL to examine, again, whether other cross-owned companies needed to respond to the questionnaire, based on all criteria listed in 19 CFR 351.525(b)(6):

> *Affiliated companies may be required to respond to this questionnaire where "cross-ownership" exists. According to 19 CFR 351.525(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.*
>
> *You must provide a complete questionnaire response for those affiliates where "cross ownership" exists and:*
>
> *(a) the cross-owned company produces the subject merchandise; or*
> *(b) the cross-owned company is a holding company or a parent company (with its own operations) of your company; or*
> *(c) the cross-owned company supplies an input product to you that is primarily dedicated to the production of the subject merchandise; or*
> *(d) the cross-owned company has received a subsidy and transferred it to your company; or*
> *(e) the cross-owned company is not a producer or manufacturer but provides a good to your company.*
>
> *In its October 2, 2015 affiliation response, JSW{SL} responded that "only one other cross-owned company identified in Exhibit 1 also produces subject merchandise" (i.e., JSW Steel Coated Products Limited), which matches the criteria for part (a) above. However, JSW{SL} did not identify whether any of its affiliates meet criteria (b) through (e), above. Please identify JSW{SL}'s affiliated companies which meet criteria (b) through (e), above, by October 14, 2015.*[54]

In response, JSWSL again represented to the Department that only JSWSL and JSCPL (and no other affiliated companies) met the criteria set forth in 19 CFR 351.525(b)(6), requiring a CVD questionnaire response.[55] JSWSL again described JSW Salav as non-operational during the POI.[56]

In the Department's November 13, 2015 supplemental questionnaire, the Department specifically asked JSWSL to identify affiliated input suppliers:

[54] *See* "Certain Cold-Rolled Steel Flat Products from India: Supplemental Questionnaire for JSW Steel Limited's Affiliation Response," dated October 7, 2015.
[55] *See* Submission from JSWSL, "Cold-Rolled Steel Flat Products from India: Response to First Supplemental CVD Questionnaire of JSW Steel Limited," dated October 14, 2015 (JSWSL-2AQR) at 1.
[56] *Id.*, at Exhibit 2.

> *For each company that has any common ownership with JSWSL or JSW Steel Coated Products Ltd. (JSCPL), please describe the nature of that ownership.* ***Please describe whether any such companies supply any inputs to the production of cold-rolled steel, or to the production of other inputs in the production of cold-rolled steel.*** *For each company that supplies such inputs, describe their nature, and answer the questions in the original CVD questionnaire regarding the provision of subsidies. Ensure to include any corporate predecessor companies in your response*.[57] (Emphasis added.)

In response, JSWSL again stated that it "reviewed all of its subsidiaries in which JSW{SL}'s ownership was greater than 50 percent during the POI," and determined that only JSWSL and JSCPL met the criteria requiring a CVD questionnaire response.[58] At the Department's request, JSWSL also stated that it would provide a questionnaire response on behalf of ARCL, a cross-owned producer of coke and iron ore pellets, which are inputs for a range of steel products, with a portion directed to production of subject merchandise.[59]

In the Department's December 1, 2015 supplemental questionnaire, the Department requested for a fourth and final time that JSWSL review and provide information relating to its affiliated companies:

> *At Exhibit 1 of JSWSL's October 2, 2015 submission, JSWSL lists all of the companies with which JSWSL is affiliated according to section 773(c)(1) of the Tariff Act of 1930, as amended (the Act). Please confirm,* ***for the POI and average useful life (AUL) period****, that JSWSL has provided complete questionnaire responses for those affiliates where cross-ownership exists and which meets one of the following criteria:*
>
> *(a) the cross-owned company produces the subject merchandise; or*
> *(b) the cross-owned company is a holding company or a parent company (with its own operations) of your company; or*
> *(c) the cross-owned company supplies an input product to you that is primarily dedicated to the production of the subject merchandise; or*
> *(d) the cross-owned company has received a subsidy and transferred it to your company; or*
> *(e) the cross-owned company is not a producer or manufacturer but provides a good to your company*.[60] (Emphasis in original.)

JSWSL responded again that it "reported all cross-owned companies, as defined by the Department's regulations."[61] We relied on JSWSL's representations in its questionnaire

[57] *See* "Certain Cold-Rolled Steel Flat Products from India: Supplemental Questionnaire for JSW Steel Limited's CVD Questionnaire Response," dated November 13, 2015, at 2.
[58] *See* Submission from JSWSL, "Cold-Rolled Steel Flat Products from India: Supplemental CVD Questionnaire Response of JSW Steel Ltd.," dated November 23, 2015, at 2-3.
[59] *Id.*, at 3.
[60] *See* "Certain Cold-Rolled Steel Flat Products from India: Second Supplemental Questionnaire for JSW Steel Limited's CVD Questionnaire Response," dated December 1, 2015.
[61] *See* Submission from JSWSL, "Cold-Rolled Steel Flat Products from India: Second Supplemental CVD Questionnaire Response of JSW Steel Ltd. (Part 2)," dated December 23, 2015, at 2.

responses in preparing for verification, and JSWSL's failure to accurately report information relating to JSW Salav deprived the Department of record evidence concerning JSW Salav, as well as the opportunity to verify that information.

At verification, we discovered that JSW Salav was a cross-owned input supplier to JSWSL, and that JSW Salav was, in fact, operational during November and December 2014 (the last two months of the POI).[62] This discovery contradicted JSWSL's questionnaire responses stating that JSW Salav was not operational during the POI and was not among the companies for which questionnaire responses were required. During verification, JSWSL acknowledged that JSW Salav provided JSWSL with direct-reduced iron, a basic input for steel products, which is used in the production of downstream products.[63]

Despite the Department's repeated requests, JSWSL failed to report that its subsidiary, JSW Salav, was operational and provided an input used in the production of a downstream product. Because JSWSL did not provide any questionnaire responses on behalf of JSW Salav, as required under 19 CFR 351.525(b)(6), the Department was not afforded the opportunity to carefully examine the full extent to which JSWSL and each of its cross-owned entities, including JSW Salav, benefitted from subsidies provided by the GOI. Consequently, we find that JSWSL failed to report all of its cross-owned companies within the meaning of 19 CFR 351.525(b)(6)(vi).

JSWSL claims that it made an inadvertent error in failing to report that JSW Salav was JSWSL's operational subsidiary for two months of the POI.[64] However, as we discuss further below, the Court of Appeals for the Federal Circuit (Federal Circuit) has made clear that inattentiveness, carelessness, or inadequate record keeping are not condoned. The Department requires information about affiliates to be accurately presented early in a proceeding, as corporate affiliations are a fundamental and critical part of the investigation. The Department establishes a separate, early deadline for such information in order to determine which companies, including cross-owned affiliates, need to respond to the Department's questionnaire.[65]

Further, while JSWSL argues that the amount of the input provided by JSW Salav is small, we do not consider the information collected about JSW Salav to be complete and verified, as we did not learn about JSW Salav's POI operations or JSWSL's consumption of the input produced by JSW Salav until well into JSWSL's verification. Moreover, our regulations do not contemplate the amount of the input provided by a supplier as a gauge for whether that company should submit a questionnaire response.[66] Given the absence of information, we have no basis on which to conclude that either the inputs JSW Salav provided to JSWSL, or any subsidies received by JSW Salav, are insignificant, as JSWSL suggests. Moreover, under the Department's attribution regulations, companies are to report all subsidies received by cross-owned companies pursuant to 19 CFR 351.525(b)(6)(vi).

[62] *See* JSW Verification Report at 6.
[63] *Id.*
[64] *See* JSW Rebuttal Brief at 5.
[65] *See* Section III of the Department's original CVD questionnaire at 2; *see also* 19 CFR 351.525(b)(6)(vi).
[66] *See* 19 CFR 351.525(b)(6).

Furthermore, we find that JSWSL did not act to the best of its ability in complying with the Department's requests for information. The Federal Circuit, in *Nippon Steel*, provided an explanation of the "failure to act to the best of its ability," stating that the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum that it is able to do.[67] The Federal Circuit acknowledged, however, that while there is no willfulness requirement, "deliberate concealment or inaccurate reporting" would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.[68] Compliance with the "best of its ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.[69] The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.[70]

In sum, we find that JSWSL failed to cooperate by not acting to the best of its ability to comply with our requests for information, thus warranting the application of AFA. Despite our detailed, specific, and repeated questionnaire instructions, JSWSL gave insufficient care and attention to its statutory duty to reply accurately and completely to requests for information regarding its affiliates. In order to properly calculate a CVD margin, as detailed above, we must examine whether subsidies received by one entity need to be attributed to the combined sales of its affiliates. As the inclusion of JSW Salav affects the calculations of CVD subsidy rates, we are applying partial AFA to JSWSL with respect to certain programs.[71]

Comment 2: Calculation of Benefits Under the Export Promotion of Capital Goods (EPCG) Scheme

Petitioner's Comments:

- The Department should include Central Value Added Tax (CenVAT) in the EPCG program benefit calculations (*i.e.*, exclude anticipated CenVAT refunds).
- Under the CenVAT program, when a manufacturer buys inputs or capital equipment from a supplier, the supplier collects certain taxes. The manufacturer in turn collects excise duties from customers when it sells the finished good, and passes the collected amount on to the government, but subtracts the amount of excise, countervailing, or special additional duties it paid on the inputs or capital equipment used in the manufacture of the goods sold. Assuming the manufacturer sells enough finished goods to collect taxes equal to or greater than the taxes it paid for its inputs and capital equipment, it will receive credits that will offset the excise, countervailing, and special additional duties the manufacturer initially paid.
- JSW has argued that the CenVAT credits should be deducted from the duty JSW would have paid if it had not participated in the EPCG program, because the CenVAT duties

[67] *See Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).
[68] *Id.*, at 1380.
[69] *Id.*, at 1382.
[70] *Id.*
[71] *See* Final Calculation Memorandum.

would have been refunded anyway. However, JSW would not necessarily have received these credits: if JSW's sales of finished products were less than expected, it may not have recovered the duties paid on its inputs and capital equipment. Additionally, JSW would not have collected any excise duties for domestic purchases on goods it exported, so to the extent that JSW used the products it imported under the EPCG program to make exports, JSW would not have received CenVAT credits for them.

- The Department has no legal basis for offsetting duty exemptions received under one program with duty exemptions that might have been received under a different program.

JSW's Rebuttal:

- The Department should continue calculating the EPCG program benefit based on the basic customs duty that is waived under the program. The Department should not include the CenVAT-able duties, which are later credited regardless of the EPCG program. The CenVAT credit reflects nothing more than the normal operation of any VAT system, where the tax paid by a company at one sales level is "passed on" to the buyer and credited back to the seller at the next stage. As such, the CenVAT credit is just a way of avoiding double taxation, and does not constitute a kind of benefit or subsidy.
- A portion of a company's normal import duty payment is just a temporary deposit that will later be refunded in the ordinary course. The refundable portion is the CenVAT, and the CenVAT credit is the refund or offset when the downstream product is sold to the next stage customer.
- When the EPCG program reduces a duty obligation, the amount of reduction is equal to the net amount of duties, since the refundable CenVAT portion would be credited regardless of EPCG.
- The amount of benefit under the EPCG program is the difference in the amount of import duties and fees the company would pay without the EPCG and the amount of reduced duties and fees the company actually paid with the EPCG.
- The CenVAT credit, which operates separately from the EPCG program, should not be characterized as a reduction of duties because with or without the EPCG program, JSWSL would never have any permanent obligation of CenVAT, which is collected on imports but then refunded later, as with any value-added tax.
- Petitioner's speculation about whether JSW actually uses the CenVAT credit offset is irrelevant because the offset is an inherent part of the Indian tax structure, not a result of a decision by the company. Whether JSW has export sales is also irrelevant, as the CenVAT credit is not dependent on exports. The CenVAT credit refunds the amount paid by the producer at the time of resale, which is true of both export and domestic sales.

Department's Position: We disagree with Petitioner. In the *Preliminary Determination*, we stated that 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.[72] Under the EPCG 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.[73] In its questionnaire responses, JSW reported both the duty

[72] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at Section VIII.A.2.
[73] *Id.*

subject to reduction or exemption under the EPCG program, as well as the separate "CenVAT" duties. JSW indicated that the CenVAT duties it reported include special additional duty and additional duty (CVD).[74] JSW explained that CenVAT duties are credited back to the seller after being "passed on" to the buyer. JSW stated that this CenVAT duty credit is not a waiver of duties owed (as is the EPCG program), and that it operates separately from the EPCG program.[75]

The Department has previously investigated the EPCG program, as well as the effect of India's CenVAT system on the EPCG program.[76] In *Threaded Rod from India* and *Hot-Rolled Carbon Steel from India*, the Department declined to include the types of duties that JSW reported as CenVAT duties in the benefit calculation for the EPCG program.[77] In *Threaded Rod from India*, the Department stated that it "considered only the amount of basic customs duty waived" in calculating the respondent's benefit under the EPCG program, and that "the additional duty (CVD), the Education Cess, and the Special Additional Duty (SAD) are creditable under India's VAT system (*i.e.*, they are refunded regardless of whether a firm uses the EPCG {program})."[78] Therefore, in both *Threaded Rod from India* and *Hot-Rolled Carbon Steel from India*, the Department adjusted the EPCG program benefit calculation "by removing the impact of the additional duty (CVD), the Education Cess, and the SAD for each instance in which the data was provided."[79]

Petitioner argues that we should not offset duty exemptions received under one program (*i.e.*, EPCG) with duty exemptions that might have been received under a different program (*i.e.*, CenVAT), and that JSW may not have actually recovered all CenVAT duties paid on its inputs and capital equipment. However, we find that the information available on the record and the Department's prior determinations indicate that CenVAT duties are refunded for both exporters and non-exporters regardless of whether a firm uses the EPCG program.[80] As a result, we continue to find that it is appropriate to calculate JSW's benefit under the EPCG program by removing the impact of the reported CenVAT duties for each instance in which that data were provided.[81]

[74] *See* JSW Verification Report at 30.
[75] *Id.*
[76] *See, e.g.*, *Threaded Rod from India* and accompanying Issues and Decision Memorandum at Section A.3; *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) (*Hot-Rolled Carbon Steel from India*), and accompanying Issues and Decision Memorandum at Comment 21.
[77] *Id.*
[78] *See Threaded Rod from India* and accompanying Issues and Decision Memorandum at Section A.3.
[79] *Id.*; *see also Hot-Rolled Carbon Steel from India*, and accompanying Issues and Decision Memorandum at Comment 21.
[80] *See, e.g.*, Submission from JSWSL, "Cold-Rolled Steel Flat Products from India: Third Supplemental CVD Questionnaire Response of JSW Steel Ltd.," dated January 19, 2016, at 1-5 and Exhibit 78; *see also Threaded Rod from India*, and accompanying Issues and Decision Memorandum at Section A.3; *Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 from India*, 69 FR 67321 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 6.
[81] *See* Final Calculation Memorandum.

Comment 3: JSCPL's Electricity Duty Exemptions

Petitioner's Comments:

- JSW concealed the electricity duty exemptions received by JSCPL's Kalmeshwar facility until verification, where it disclosed that JSCPL received benefits based on the facility's location in the Vidarbha region.
- The Department should consider the electricity duty exemption received by JSCPL's Kalmeshwar facility to be a countervailable subsidy and impose duties.

JSW's Rebuttal:

- In its initial CVD questionnaire response, JSW accurately reported the electricity duty exemptions received by JSCPL's Kalmeshwar facility. The Department verified the reported information and found no discrepancies.

Department's Position: We agree with JSW that it reported, in its initial CVD questionnaire response, the electricity duty exemptions received by JSCPL's Kalmeshwar facility during the POI.[82] In the *Preliminary Determination*, we found a countervailable subsidy for JSCPL for this program,[83] and we verified the information reported for JSCPL's Kalmeshwar facility under this program.[84] We continue to find for the final determination that the electricity duty exemption received by JSCPL's Kalmeshwar facility represents a countervailable subsidy.[85]

Comment 4: Adjustment to Export Sales Denominators

Petitioner's Comments:

- For the final determination, the Department should use JSWSL's revised export sales values, which were revised to an FOB basis at verification.

No parties submitted rebuttal comments.

Department's Position: We agree with Petitioner. For the final determination, we have used the sales values as revised at verification, including JSWSL's revised FOB export sales value, in our subsidy calculations.[86]

Comment 5: Rounding of Program Rates

JSW's Comments:

- The Department exaggerated JSW's countervailable subsidy under the Electricity Duty Exemption program in the *Preliminary Determination* by rounding the subsidies of cross-owned affiliates JSCPL and ARCL prior to summing the rates.

[82] *See* JSWSL's November 5, 2015 Questionnaire Response at Exhibit 24.
[83] *See Preliminary Determination*, and accompanying Preliminary Decision Memorandum at Section VIII.A.3; *see also* Preliminary Calculation Memorandum at Attachments 6A-6B.
[84] *See* JSW Verification Report at 22-24 and Exhibit 12.
[85] *See* Section VII.A.3, above; *see also* Final Calculation Memorandum at Attachments 6A-6B.
[86] *See* Final Calculation Memorandum; *see also* JSW Verification Report.

- For the final determination, the Department should calculate the subsidy received by each cross-owned company using actual, unrounded figures. Rounding is appropriate, if at all, only after the total program rate is determined.

No parties submitted rebuttal comments.

Department's Position: We agree with JSW and have revised the rounding of all program rates for the final determination. For the calculated subsidy rates under all programs for the final determination, we have rounded only the total program rates, rather than the calculated rates of each cross-owned company.[87]

IX. RECOMMENDATION

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

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

20 July 2016
(Date)

[87] *See* Final Calculation Memorandum.