




C-533-868
Investigation
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September 22, 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 Affirmative
Determination in the Countervailing Duty Investigation of Welded
Stainless Pressure Pipe from India

I. SUMMARY

The Department of Commerce ("Department") determines that countervailable subsidies are being provided above the *de minimis* level to producers and exporters of welded stainless pressure pipe from India, as provided for in section 705 of the Tariff Act of 1930, as amended ("the Act").

II. BACKGROUND

A. Case History

On March 11, 2016, we published the *Preliminary Determination*¹ for this investigation. In the *Preliminary Determination*, we calculated rates above *de minimis* for the two mandatory respondents, Steamline Industries Limited ("Steamline") and Sunrise Stainless Private Limited ("Sunrise").² We calculated the all-others rate using a weighted average of the mandatory respondents' publicly ranged export data and the calculated subsidy rates for these companies. We conducted verifications of the questionnaire responses submitted by respondents and the Government of India ("GOI"), between June 6 and 17, 2016.³ On August 23, 2016, we issued a

¹ See *Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 12871 (March 11, 2016) ("*Preliminary Determination*") and accompanying Preliminary Decision Memorandum ("PDM").

² Including its cross-owned affiliates Sun Mark Stainless Pvt. Ltd. ("Sun Mark") and Shah Foils Ltd. ("Shah Foils") (collectively, "Sunrise Group").

³ See Memoranda to the File, "Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Verification of the Questionnaire Responses of Steamline Industries Limited," dated August 8, 2016 ("Steamline Verification Report"); "Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Verification of the Questionnaire Responses of Sunrise Stainless Private Limited, Sun Mark Stainless Private



post-preliminary analysis memorandum.⁴ We received case briefs from interested parties on all issues not related to the post-preliminary analysis on August 17, 2016 and rebuttal briefs on August 22, 2016.⁵ We received case briefs addressing only issues arising from the post-preliminary analysis on August 29, 2016.⁶ No party provided rebuttal to the August 29, 2016, post-preliminary briefs. Because no party requested a hearing, the Department did not hold a hearing.

We did not receive any comments, from any parties, with regard to the scope of this investigation.

B. Period of Investigation

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

III. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. References to size are in nominal inches and include all products within tolerances allowed by pipe specifications. This merchandise includes,

Limited, and Shah Foils Limited,” dated August 9, 2016 (“Sunrise Verification Report”); and “Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Verification of the Questionnaire Responses of the Government of India,” dated August 8, 2016 (“GOI Verification Report”).

⁴ See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Post-Preliminary Analysis in the Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India,” dated August 23, 2016 (“Post-Preliminary Memorandum”).

⁵ On August 17, 2016, Bristol Metals, LLC, Felker Brothers Corp, Outokumpu Stainless Pipe, Inc., and Marcegaglia USA (collectively, “Petitioners”) timely filed their case brief. Because Petitioners’ case brief included arguments related to the new subsidy allegations that the Department would be addressing in its Post-Preliminary Memorandum (issued August 23, 2016), the Department requested (*see* Memorandum to the File, “Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Phone Call with Counsel to Petitioners,” dated August 18, 2016), that Petitioners re-submit their case brief and redact the arguments related to the new subsidy allegations. Petitioners complied with the Department’s request on August 18, 2016; thus, we have only addressed Petitioners’ arguments in their August 18, 2016 brief. *See* Letter from Petitioners, “Welded Stainless Pressure Pipe from India: Submission of a Case Brief,” dated August 18, 2016. Petitioners had an opportunity, after the Department issued its Post-Preliminary Memorandum, to submit comments on the Department’s decisions with regards to the new subsidy allegations, and to submit rebuttal comments to respondents’ arguments, but Petitioners did not file comments or rebuttal comments regarding the Department’s Post-Preliminary Memorandum. *See also* Letter from the GOI, “Case Brief of: Government of India,” dated August 17, 2016, (“GOI’s Case Brief”); Letter from Sunrise, “Welded Stainless Pressure Pipe from India: Case Brief of Sunrise Stainless Pvt. Limited,” dated August 17, 2016 (“Sunrise’s Case Brief”); Letter from Steamline, “Welded Stainless Pressure Pipe from India,” dated August 17, 2016 (“Steamline’s Case Brief”); Letter from Petitioners, “Welded Stainless Pressure Pipe from India: Submission of Rebuttal Brief,” dated August 22, 2016 (“Petitioners’ Rebuttal Brief”); Letter from the GOI, “Imposition of Antidumping and Countervailing Duties on Welded Stainless Pressure Pipe from India: Submission of Rebuttal Brief Ref: Case No.: C-533-868,” dated August 22, 2016 (“GOI’s Rebuttal Brief”); and Letter from Sunrise, “Welded Stainless Pressure Pipe from India: Rebuttal Brief of Sunrise Stainless Pvt. Limited,” dated August 22, 2016 (“Sunrise’s Rebuttal Brief”).

⁶ *See* Letter from the GOI, “Welded Stainless Pressure Pipe from India: Post Preliminary Case Brief of GOI filed by AZB & Partners,” dated August 29, 2016 (“GOI’s Post-Prelim Case Brief”); and Letter from Sunrise, “Welded Stainless Pressure Pipe from India: Post Preliminary Case Brief of Sunrise Stainless Pvt. Limited,” dated August 29, 2016 (“Sunrise’s Post-Prelim Case Brief”).

but is not limited to, the American Society for Testing and Materials (“ASTM”) A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope of the investigation are: (1) welded stainless mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A-269, ASTM A-270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (“HTSUS”). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

IV. LIST OF ISSUES

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

- Comment 1: Whether the Advance Authorization Program (“AAP”) Provides a Countervailable Subsidy
- Comment 2: Whether the Duty Drawback (“DDB”) Program Provides a Countervailable Subsidy
- Comment 3: Whether the Export Promotion of Capital Goods Scheme (“EPCGS”) Provides a Countervailable Subsidy and Whether the Department Should Use a Different Denominator for the Benefit Calculation
- Comment 4: Whether the Department Should Investigate and Countervail Marketable Certificates Purchased from Third Parties
- Comment 5: Whether Steamline’s Total Sales and Total Export Sales Figures are Overstated
- Comment 6: Whether the Electricity Duty Exemption Provided by the Uttar Gujarat Vij Company Limited is a Countervailable Subsidy Program
- Comment 7: Whether the Department Should Countervail Preferential Water Rates Provided by the Gujarat Industrial Development Corporation (“GIDC”) Under the GIDC Water Supply Regulation of 1991

Comment 8: Whether the Provision of Land for Less Than Adequate Remuneration (“LTAR”) Provides a Countervailable Subsidy

V. SUBSIDIES VALUATION

A. Allocation Period

The Department made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination*. No interested parties raised issues in case briefs or provided any new factual information in response to the Department’s post-preliminary determination supplemental questionnaires that would lead us to reconsider our preliminary determination regarding the allocation period or the allocation methodology. For a description of the allocation period and methodology used for these final results, *see the Preliminary Determination* and accompanying PDM at 6.

B. Attribution of Subsidies

Aside from the changes noted below, the Department used the same methodologies stated in the *Preliminary Determination* for attributing subsidies.⁷

Attribution of Subsidies for the Sunrise Group⁸

Sunrise and Sun Mark are cross-owned producers of subject merchandise; therefore, in accordance with 19 CFR 351.525(b)(6)(ii), and where appropriate, we have attributed subsidies received by Sunrise and Sun Mark to their combined sales. In addition, Shah Foils is cross-owned with Sunrise and provides Sunrise with an input that is primarily dedicated to the production of the downstream product; therefore, pursuant to 19 CFR 351.525(b)(6)(iv) and where appropriate, we have attributed subsidies received by Shah Foils, an input supplier to Sunrise, to the combined sales of Shah Foils, Sunrise, and Sun Mark.

C. Denominators

The Department made no changes to the denominators used in the *Preliminary Determination* or Post-Preliminary Memorandum for Sunrise, but made adjustments to two denominators for Steamline for this final determination. For a description of the denominators used for this final determination, *see the Preliminary Determination* and accompanying PDM at 7. *See also* section VI, “Use of Facts Otherwise Available and Adverse Inferences,” below, and Comment 5, below, for a description of the adjustments to two of Steamline’s denominators.

⁷ *See the Preliminary Determination* and accompanying PDM at 5-7.

⁸ Although Sunrise initially objected to a potential finding of cross-ownership between itself and Shah Foils and objected to the need for Sun Mark to submit a questionnaire response, Shah Foils and Sun Mark provided complete questionnaire responses, which were verified. No party to the proceeding has submitted any comments for consideration in this final determination objecting to the Department’s preliminary finding of cross-ownership of Sunrise with Sun Mark and Shah Foils. Thus, we are not revisiting our preliminary determination to find Shah Foils and Sun Mark to be cross-owned affiliates of Sunrise, and part of the Sunrise Group. *See the Preliminary Determination* and accompanying PDM at 6-7.

D. Benchmarks and Discount Rates

The Department made no changes to the benchmarks or discount rates used in the *Preliminary Determination* or Post-Preliminary Memorandum. No issues were raised by interested parties in case briefs, nor was any new factual information provided in response to the Department's post-preliminary determination supplemental questionnaires that would lead us to reconsider our preliminary determinations regarding benchmarks or discount rates. For a description of the benchmarks and discount rates and the methodology used for this final determination, *see* the *Preliminary Determination* and accompanying PDM at 7-8 and Post-Preliminary Memorandum at "Program Analysis."

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.⁹

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

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁰ Further, section 776(b)(2) of the Act

⁹ On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) ("TPEA"). 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 the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *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). The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. Therefore, the amendments apply to this investigation.

¹⁰ *See* section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

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.¹¹

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.¹² 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.¹³

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.¹⁴ 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.¹⁵

As discussed below, we find the application of partial adverse facts available (“AFA”) is warranted with respect to Steamline’s and the GOI’s responses for their failure to provide information related to the electricity duty exemption provided by the Uttar Gujarat Vij Company to Steamline.¹⁶ Furthermore, we find the application of partial AFA is warranted with respect to Steamline’s responses for failing to correctly account for, and deduct, domestic freight related to Steamline’s domestic sales.¹⁷

A. Steamline

At verification, the Department discovered that Steamline and the GOI had failed to report an electricity duty rebate provided to Steamline by the Uttar Gujarat Vij Company Limited.¹⁸

¹¹ See also 19 CFR 351.308(c).

¹² See also 19 CFR 351.308(d).

¹³ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (“SAA”).

¹⁴ See section 776(d)(1) of the Act; TPEA, section 502(3).

¹⁵ See section 776(d)(3) of the Act; TPEA, section 502(3).

¹⁶ See Submission from Steamline, “Welded Stainless Pressure Pipe from India: Response to First Supplemental Questionnaire,” dated February 9, 2016 (“Steamline’s First Supplemental Questionnaire Response”) at 10 and Submission from the GOI, “Imposition Of Antidumping and Countervailing Duties On Welded Stainless Pressure Pipe From India – Response to the Supplementary Questionnaire by Government of India Ref: Case No. – C-533-868,” dated February 19, 2016 (“GOI’s First Supplemental Questionnaire Response”) at 17. See also Steamline Verification Report at 15.

¹⁷ See Steamline Verification Report at 6.

¹⁸ See Steamline’s First Supplemental Questionnaire Response at 10 and GOI’s First Supplemental Questionnaire Response at 17. See also Steamline Verification Report at 2 and 15.

Additionally, after numerous opportunities to provide the Department with Steamline's correct sales figures, at verification the Department found that Steamline had incorrectly included domestic freight related to Steamline's domestic sales in the figures for Steamline's total sales and total export sales during the POI, thereby overstating those figures.¹⁹

In light of the above, we have relied on facts available, in accordance with section 776(a) of the Act, because (1) by not having reported the electricity duty rebate, Steamline and the GOI withheld necessary information requested by the Department, and (2) by incorrectly including domestic freight for domestic sales in the total sales and total export sales figures, Steamline provided information not in the manner requested by the Department. Thus, we must rely on facts otherwise available in accordance with sections 776(a)(1) and 776(2)(A) and (B) of the Act.

Additionally, in selecting from among the facts available, the Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act. Where the Department determines that the use of facts available is warranted, section 776(b) of the Act permits the Department to apply an adverse inference if it makes the additional finding that "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information." The Court of Appeals for the Federal Circuit ("CAFC"), in *Nippon Steel*, provided an explanation of the "failure to act to the best of its ability" standard, noting that it requires a respondent to "put forth its maximum effort to provide {the Department} with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness or inadequate record keeping."²⁰ It requires them to, among other things, "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" their ability to do so.²¹ The CAFC noted that the statute does not require the Department to show that a respondent made more than a simple mistake in order to apply an adverse inference, nor is an excuse that the respondent "did not think through inadvertence" sufficient; rather "{i}nadequate inquiries may suffice. The statutory trigger for {the Department's} consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent."²²

The Department asked for information which was within the possession of both Steamline and the GOI, yet the information was not reported or was reported incorrectly. Thus, and as discussed at Comments 5 and 6, we find that Steamline and the GOI failed to cooperate by not acting to the best of their ability to comply with the Department's requests for information in this investigation, and as such, the Department has based our final determination, with respect to Steamline, on partial AFA.

¹⁹ See Steamline Verification Report at 2 and 6.

²⁰ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381 (CAFC 2003) ("*Nippon Steel*") at 1382.

²¹ *Id.*

²² *Id.*

Application of AFA and Selection of the AFA Rate

As AFA for the electricity duty rebate discovered at verification, the Department is finding that the program is specific under section 771(5A)(D) of the Act, and provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act as revenue forgone. *See* below at Comment 6.

Additionally, concerning Steamline's incorrect inclusion of domestic freight expenses in the total sales and total export sales figures, because the Department was largely able to verify Steamline's reported sales figures at verification, as facts available, we have used information from a freight invoice from one of Steamline's domestic sales transactions (the only such invoice on the record) to adjust Steamline's total and export sales figures.²³ As AFA, we have derived an estimate for total domestic freight based on information from the single domestic sale invoice on the record and have revised Steamline's total sales and total export sales figures by removing the estimated amount of total domestic freight.²⁴ *See* below at Comment 5.

Corroboration of the 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."²⁵ The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.²⁶ 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.²⁷

As stated above, we are using verified information provided by Steamline itself in this investigation to adjust Steamline's total and export sales figures. Therefore, in accordance with section 776(c)(1) of the Act, it is not necessary for the Department to corroborate that information because we have relied on primary information obtained from Steamline.

²³ *Id.*, and Steamline Verification Exhibit VE-6.

²⁴ *See* Memorandum to the file, "Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Final Calculation Memorandum for Steamline Industries Limited," dated concurrently with this memorandum ("Steamline Final Calculation Memorandum").

²⁵ *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 ("SAA").

²⁶ *Id.*

²⁷ *Id.*, at 869-870.

VII. ANALYSIS OF PROGRAMS

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

A. Programs Determined to Be Countervailable

The Department made no changes to its preliminary findings for the following programs, except where noted below.²⁸ For the descriptions, analyses, and calculation methodologies of these programs, *see* the *Preliminary Determination* and accompanying PDM. *See also* the Post-Preliminary Memorandum. Issues raised by interested parties in case briefs regarding these programs are addressed below in the "Analysis of Comments" section. Any changes to the calculations for the programs listed below are explained in the company-specific analysis memoranda.²⁹ Therefore, the final company-specific program rates for each of the following programs are as follows:

GOI Subsidy Programs

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

Steamline: 1.58 percent *ad valorem*

Sunrise: 6.19 percent *ad valorem*

2. *Duty Drawback ("DDB")*

We have corrected the reported duty drawback amount for Steamline, per the minor corrections reported at the start of verification.³⁰

Steamline: 1.35 percent *ad valorem*

3. *Export Promotion of Capital Goods Scheme ("EPCGS")*

We removed domestic freight from Steamline's total export sales and used the revised export sales figure to calculate the EPCGS benefit for Steamline. There was no change in the subsidy rate for Steamline's EPCGS benefit, based upon the revised sales figure. *See* Comment 5, below.

Steamline: 0.04 percent *ad valorem*

²⁸ Specifically, the Department has made changes since the *Preliminary Determination* and Post-Preliminary Memorandum which affected the DDB, EPGCS, and the Electricity Duty Exemption provided by the Uttar Gujarat Vij Company Limited.

²⁹ *See* Steamline Final Calculation Memorandum. *See also* Memorandum to the file, "Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Final Calculation Memorandum for Sunrise Stainless Private Limited, Sun Mark Stainless Private Limited, and Shah Foils Limited," dated concurrently with this memorandum.

³⁰ *See* Steamline Verification Report at 2-3.

Sunrise: no measurable benefit

4. *Pre- and Post-Shipment Export Financing*

Sunrise: 0.02 percent *ad valorem*

State Government of Gujarat Subsidy Programs

1. *Preferential Water Rates Under the Gujarat Industrial Development Corporation Water Supply Regulation of 1991*

Sunrise: 0.01 percent *ad valorem*

2. *Electricity Duty Exemption Provided by the Uttar Gujarat Vij Company Limited*

As discussed at section VI (above), “Use of Facts Otherwise Available and Adverse Inferences,” we have included the amount reported for this program which was recorded in Steamline’s accounting system during the POI.³¹ For a full discussion of this program, and the Department’s benefit, financial contribution, and specificity findings, *see* Comment 6, below.

Steamline: 0.16 percent *ad valorem*

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

1. Focus Product Scheme (“FPS”)
2. Status Certificate Program
3. Gujarat Industrial Development Corporation Subsidies: Provision of Land for Less Than Adequate Remuneration

C. Programs Determined to Be Not Used During the POI

Government of India Programs

1. Market Development Assistance Scheme (“MDA Scheme”)
2. Market Access Initiative (“MAI”)
3. Government of India Loan Guarantees
4. Steel Development Fund (“SDF”) Loans
5. Incremental Exports Incentivisation Scheme (“IEIS”)
6. Subsidies for “Export Oriented Units” (“EOUs”)
 - a. Duty-Free Import of Goods, Including Capital Goods and Raw Materials
 - b. Reimbursements of Central Sales Tax (“CST”) Paid on Goods Manufactured in India
 - c. Duty Drawback on Fuel Procured from Domestic Oil Companies

³¹ *Id.*, at 15 and Steamline Verification Exhibit 11.

- d. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a DTA
- 7. Subsidies Provided by the GOI Under the Special Economic Zones Act, 2005 (“SEZ Act”) for Companies Located in 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

State Government Subsidy Programs

State Government of Andhra Pradesh (“SGAP”) Subsidy Programs under the SGAP Industrial Investment Promotion Policy (“IIPP”)

1. Grant under the IIPP: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas
2. Grant under the IIPP: Reimbursement of Power at the Rate of Rs. 0.75 per Unit
3. Grant under the IIPP: 50 Percent Subsidy for Expenses Incurred for Quality Certification
4. Grant under the IIPP: 50 Percent Subsidy on Expenses Incurred in Patent Registration
5. Grant under the IIPP: 25 Percent Subsidy on Cleaner Production Measures
6. Tax Incentives under the IIPP: 100 Percent Reimbursement of Stamp Duty and Transfer Duty Paid for the Purchase of Land and Buildings and the Obtaining of Financial Deeds and Mortgages
7. Tax Incentives under the IIPP: 25 Percent Reimbursement on Value Added Tax (“VAT”), Central Sales Tax (“CST”), and State Goods and Services Tax
8. Tax Incentives under the IIPP: Exemption from the SGAP Non-agricultural Land Assessment
9. Provision of Goods and Services for Less than Adequate Remuneration under the IIPP: Provision of Infrastructure for Industries Located More than 10 Kilometers from Existing Industrial Estates or Development Areas
10. Provision of Goods and Services for Less than Adequate Remuneration Under the IIPP: Guaranteed Stable Prices and Reservation of Municipal Water

State Government of Maharashtra Subsidy Programs

11. Infrastructure Assistance for Mega Projects under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects
12. Subsidies for Mega Projects under the Package Scheme of Incentives

State Government of Gujarat Programs

13. Subsidies Provided Under State Government of Gujarat Special Economic Zone Act
 - a. Exemptions from the Stamp Duty and registration fees for land transfers, loan agreements, credit deeds, and mortgages
 - b. Exemption from sales tax, purchase tax, and other taxes payable on sales and transactions
 - c. Exemptions from sales and other state taxes on purchases of inputs (goods and services) for the SEZ or a unit within the SEZ

D. Programs Found Not to be Countervailable

1. Gujarat Industrial Development Corporation Subsidies: Provision of Infrastructure for Less Than Adequate Remuneration

VIII. CALCULATION OF ALL-OTHERS RATE

Section 705(c)(5)(A) of the Act states that for companies not individually investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies individually investigated by each company's exports of subject merchandise to the United States, excluding any zero, *de minimis*, or facts available rates. In this review, the subsidy rates calculated for the two mandatory respondents are above *de minimis* and neither was determined entirely on facts otherwise available pursuant to section 776 of the Act. However, calculating the all-others rate by using the respondents' actual weighted-average rates risks disclosure of proprietary information. Therefore, for this final determination, we calculated the weighted-average all-others rate for non-selected companies using Steamline's and Sunrise's publicly-ranged information reported by Steamline and Sunrise. As a consequence, the all-others rate is 4.65 percent *ad valorem*.³²

IX. ANALYSIS OF COMMENTS

Comment 1: Whether the AAP Provides a Countervailable Subsidy

GOI's Case Brief

- The AAP is not a countervailable subsidy, but is a valid duty drawback scheme which is compatible with the Agreement on Subsidies and Countervailing Measures ("SCM Agreement").
- The GOI is permitted to "remit duties suffered on an exported product from duties on taxes borne by the like product when designed for domestic consumption to the extent there is no excess remission."³³
- The Department, as the investigating authority, is required by the SCM to follow the following analysis sequence:

³² See Memorandum to the File, "Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Final Determination Margin Calculation for All-Others," dated concurrently with this memorandum.

³³ See GOI's Case Brief at 9.

- First, determine whether the government of the exporting company has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts.
- Second, where such a system is determined to be applied, the investigating authority should examine the system to see whether it is reasonable and effective for the purposes intended.
- Third, where such a system or procedure is not available or not reasonable or found to be not applied effectively, a further examination of the exporting company based on the actual inputs involved needs to be carried out in the context of determining whether an excess payment occurred.
- The AAP allows duty free imports of inputs which are physically incorporated in an exported product, making normal allowance for wastage.
- The AAP scheme is no different from an indirect tax rebate scheme which allows for the exemption of prior stage cumulative indirect taxes levied on inputs that are consumed in the production of exported products.
- The GOI has product-specific standard input-output norms (“SION”), and Advance Authorization licenses are issued based on the product-specific SION only.
- The GOI has a system in place to confirm which inputs are consumed in the production of the exported product, and in what amounts.
- The regional authority is required to verify the actual amounts imported against the norms and the certified exports and will hold the authorization holder liable for any unutilized imported material.
- The requirements for a certification by a chartered accountant and verification by the regional authority confirm that the GOI does have in place a procedure to confirm which inputs are consumed in the production of the exported product and in what amounts.
- Notwithstanding the above arguments, even if the Department determines that there is an excess input availed by the exporter, the duty saved on the excess quantity of inputs alone would be countervailable, not the entirety of imports under the scheme.

Sunrise’s Case Brief

- The Department should not countervail the AAP program for Sunrise.
- Inputs imported under the AAP must be used in manufacturing the export product or for the replenishment of the inputs used in the product already exported.
- Advance Authorization license holders must maintain complete records of receipt and consumption of duty free inputs and, upon completion of the export obligation, the licensee furnishes the details of actual imports, consumption, and exports (as verified by chartered accountants) to the Directorate General for Foreign Trade (“DGFT”).
- The DGFT also audits the details to ensure that the licensee has exported sufficient quantities of the final goods to account for all the imported inputs, in accordance with the established SION, and will impose penalties.
- Sunrise demonstrated the monitoring mechanism of the AAP by providing a complete set of documents which it provided to the GOI for redemption of the Advance Authorization.

- Sunrise submitted the SION as part of its original response.³⁴
- No information on the record shows that Sunrise has defaulted in meeting its export requirements; hence, the lack of evidence regarding the implementation of penalties for companies not meeting the export requirements is not applicable to Sunrise.
- Sunrise does not have “deemed” exports;³⁵ hence the issue of deemed exports is not applicable to Sunrise.

Petitioners’ Rebuttal Brief

- The Department has reviewed this program in numerous proceedings over the years and in each instance, determined that the GOI does not have the necessary procedures in place to protect against excessive claims.³⁶
- The GOI and Sunrise do not provide any new, compelling evidence that the AAP program has been fundamentally reconfigured to ensure that the GOI confirms what inputs are consumed in the production of exported products, but only point to the same procedures which the Department has repeatedly found to be inadequate.
- Although the GOI states that it has a “robust” system for verifying the duty exemptions claimed and that the efficacy of this system was “adequately demonstrated during the verification process,”³⁷ the verification report for the GOI does not address AAP and neither of the company verification reports evinces any agency or official demonstrating how the GOI confirms the quantity of inputs consumed or protects against excessive claims.³⁸
- The record of this investigation does not support assertions that the GOI has in place an effective system for confirming which inputs are consumed in the production of exported products and in what amounts; the GOI and Sunrise are merely repeating arguments that the Department has previously considered and rejected.³⁹ Therefore, the Department should continue to countervail the AAP as it has in many other proceedings.

Department’s Position: We disagree with the GOI and Sunrise and continue to find the AAP countervailable. Under this program, exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported. The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled

³⁴ See Sunrise’s Case Brief at 4, citing to Sunrise’s submission, “Welded Stainless Pressure Pipe from India: Response to Section III of Original Countervailing Duty Questionnaire,” dated January 7, 2016 (“Sunrise’s Initial Questionnaire Response”) at Exhibit 8(c).

³⁵ See Sunrise’s Case Brief at 5, citing to Sunrise’s Initial Questionnaire Response at Exhibit 7.

³⁶ See Petitioners’ Rebuttal Brief at 1 (citing *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) (“*OCTG India Investigation*”).

³⁷ See Petitioners’ Rebuttal Brief at 2, quoting the GOI’s Case Brief at 6.

³⁸ See Petitioners’ Case Brief at 2, citing the GOI Verification Report, Steamline Verification Report at 7-8, and Sunrise Verification Report at 9-11.

³⁹ See Petitioners’ Rebuttal Brief at 3 (citing *e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 81 FR 51186 (August 3, 2016) and accompanying Preliminary Decision Memorandum at 16-17).

their export requirement. The quantities of imported materials and exported finished products are linked through SIONs established by the GOI.⁴⁰

This program had previously been found countervailable when the GOI failed to provide information demonstrating that the program was implemented and monitored effectively.⁴¹ The Department could not conclude that the system the GOI had in place with respect to the program was reasonable or was applied in a manner effective for the purposes intended.⁴² In *PET Film 2005*,⁴³ the GOI stated that changes had been made to the program, and the Department examined and verified on-site all changes to the AAP, as then reported by the GOI, and its respective implementation. At that time the Department continued to find that systemic issues still existed in regards to the program, including that the GOI was not able to demonstrate that a mechanism existed to evaluate the SIONs to determine whether they remain reasonable over time specifically, and that, despite frequent requests, the GOI failed to provide the Department with its SION calculations.⁴⁴ In the instant case, the GOI submitted no information with regard to the AAP which would allow the Department to conclude that the system the GOI has in place was reasonable or was applied in a manner effective for the purposes intended, most notably the SION calculations specific to the welded stainless pressure pipe industry, despite requests from the Department.⁴⁵ The GOI also did not provide the requested Appendix 23 (which is the form that users of the program submit to the GOI to allow the GOI to monitor program usage) or even an explanation for how the form is used, though the form is referenced several times in the GOI's questionnaire responses.⁴⁶ The withholding of these documents for the industry under investigation,⁴⁷ as the noted in *PET Film 2005*, raises concerns with regard to the GOI's actual implementation and monitoring of the respondent's use of the program (*e.g.*, to ensure that inputs listed in the SIONs are actually consumed in the production of exports, or the implementation of penalties for companies not meeting the export requirements or claiming excessive credits).⁴⁸ Though the respondents state that there is no evidence they did not meet their export requirements and that had they not complied with the obligations of the program they would

⁴⁰ See Submission from the GOI, "Imposition of Antidumping and Countervailing Duties on Welded Stainless Pressure Pipe from India – Response to the Questionnaire by Government of India," dated January 7, 2016 ("GOI's Initial Questionnaire Response"), at 6 and 11-20.

⁴¹ See, *e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 72 FR 6530 (February 12, 2007) ("*PET Film 2004*"), and accompanying Issues and Decision Memorandum at Comment 3.

⁴² *Id.*

⁴³ See *Preliminary Determination* at "Programs Preliminarily Determined to Be Countervailable" and *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008) ("*PET Film 2005*") and accompanying Issues and Decision Memorandum at Comment 3.

⁴⁴ See *PET Film 2005* and accompanying Issues and Decision Memorandum at 7-9, citing to *PET Film 2004* and accompanying Issues and Decision Memorandum at Comment 3.

⁴⁵ See *Preliminary Determination* at "Programs Preliminarily Determined to Be Countervailable" and GOI's Initial Questionnaire Response, at 5-13 and Exhibits 2-7, and GOI's First Supplemental Questionnaire Response at 2-3.

⁴⁶ See, *e.g.*, GOI's Initial Questionnaire Response at 15 and GOI's First Supplemental Questionnaire Response at 4-5.

⁴⁷ See GOI's Initial Questionnaire Response at 6, and GOI's First Supplemental Questionnaire Response, at 2-3.

⁴⁸ See, *e.g.* *PET Film 2005* and accompanying Issues and Decision Memorandum at Comment 3.

have faced penalties,⁴⁹ without the requested documents and calculation from the GOI, we cannot adequately verify these claims.

Since *PET Film 2005*, the Department has in several other proceedings made determinations consistent with this treatment of the AAP.⁵⁰ Specifically, in the recent final determination in the investigation of *Corrosion-Resistant Steel from India*, the Department conducted verification of the AAP program, and again determined that no significant changes to the program had been made, and the Department determined to continue to countervail the AAP.⁵¹ Accordingly, based on the Department's evaluation of the record of this investigation and the absence of new information on the record of this investigation with respect to the administration of the AAP, we have made the same determination, *i.e.*, that the GOI lacks a system that is reasonable and effective for the purposes intended to confirm which inputs are consumed in the production of the exported products, and in what amounts, making normal allowances for waste, as required under 19 CFR 351.519.⁵²

At verification, we spot checked the data Sunrise and Steamline submitted for purposes of calculating a subsidy rate for this program. However, this information is an insufficient basis to alter our determination regarding the countervailability of the AAP as a whole because it does not address our concerns regarding the administration of the program.

As to the contention that even if the Department determines that there is an excess input availed by the exporter, the duty saved on the excess quantity of inputs alone would be countervailable, not the entirety of imports under the scheme, and the arguments that records were kept by the exporter and adequately certified, absent a system in place that is reasonable or applied in a manner effective for the purposes intended 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.⁵³ As stated above, the GOI has not provided record evidence of the implementation and monitoring of the respondent's use of the program, and without record

⁴⁹ See Sunrise's Case Brief at 4, citing to Sunrise's submission, "Welded Stainless Pressure Pipe from India: Response to Section III of Original Countervailing Duty Questionnaire," dated January 7, 2016 ("Sunrise's Initial Questionnaire Response") at Exhibit 8(c).

⁵⁰ See, *e.g.*, *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012*, 80 FR 19637 (April 13, 2015) and accompanying Issues and Decision Memorandum; *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) and accompanying Issues and Decision Memorandum; *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) and accompanying Issues and Decision Memorandum at "Advance License Program."

⁵¹ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Final Affirmative Determination*, 81 FR 35323 (June 2, 2016) ("*Corrosion-Resistant Steel from India*") and accompanying Issues and Decision Memorandum at Comment 1 ("Additionally, while we have found the AAP to be countervailable in prior proceedings, in this investigation, we verified the record information submitted by the GOI and continue to find that there is no change in the administration and mechanics of the program that would cause us to change our determination. In sum, record evidence shows there has been no change to the AAP.").

⁵² See GOI Questionnaire Response at 5-13 and Exhibits 2-7; GOI Verification Report at 2-3.

⁵³ See GOI's Case Brief at 4-6, and Sunrise's Case Brief at III.

information of how evaluation mechanisms like the SIONs were calculated and that they remained reasonable over time, the Department is unable to find that the inputs were consumed only in the production of export goods. The Department is also unable to verify how the records kept are adequately monitored, and how the standards used to certify these records are determined.

Accordingly, we continue to find that the AAP confers a countervailable subsidy because: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from the payment of import duties that would otherwise be due; (2) the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste, nor did the GOI carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts; thus, the entire amount of the import duty deferral or exemption earned by the respondent constitutes a benefit under section 771(5)(E) of the Act; and, (3) this program is specific under section 771(5A)(A)-(B) of the Act because it is contingent upon export.

Comment 2: Whether the DDB Program Provides a Countervailable Subsidy

GOI's Case Brief

- Because complete verification mechanisms and accounting procedures are in place with the GOI from procurement of inputs to utilization, which were explained and demonstrated during verification, this scheme is not countervailable under the SCM Agreement.
- Notwithstanding the above, even if the Department finds that there is an excess input availed by the exporter, the drawback received in excess on account of this excess input, if any, alone would be countervailable, not the entire drawback received under the scheme.

Petitioners' Rebuttal Brief

- The Department preliminarily determined that the DDB program provided countervailable subsidies to Steamline, in part, because the GOI failed to provide requested information regarding the books and records maintained by relevant agencies during the POI.⁵⁴ In the absence of this information, the Department could not evaluate whether the GOI had in place an effective system for ensuring that duty exemptions extended only to inputs consumed in the production of the exported product.
- The GOI's assertion that the DDB program "was adequately explained and demonstrated during the verification"⁵⁵ is belied by the record of this investigation. The GOI verification report does not address the DDB program and the verification report for Steamline only addresses the process from the company's point of view, not the GOI's.⁵⁶ Thus, there has been no change from the *Preliminary Determination* regarding the GOI's process for monitoring duty drawback claims.

⁵⁴ See Petitioners' Case Brief at 3, citing to the PDM at 11-12.

⁵⁵ *Id.*, at 3, quoting the GOI Case Brief at 7-8.

⁵⁶ *Id.*, at 4, citing cite the GOI Verification Report and Steamline Verification Report at 8-9.

- The GOI's failure to provide requested information has denied the Department the ability to determine what portion of the rebates provided in the POI were excessive and ignores the regulatory language which prescribes that the "entire amount" of the drawback will be considered a benefit except in certain situations not applicable here.⁵⁷

Department's Position: We disagree with the GOI and continue to find the DDB program countervailable. According to the GOI, the DDB program provides rebates of duties or taxes chargeable on any (a) imported or excisable materials and (b) input services used in the manufacture of export goods.⁵⁸ Specifically, the duties and tax "neutralized" under the program are the (i) Customs and Union Excise Duties on inputs and (ii) Service Tax in respect of input services.⁵⁹ The DDB is generally fixed as a percentage of the free on board ("FOB") price of the exported product.⁶⁰

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.⁶¹ 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.⁶² This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁶³ 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.⁶⁴

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

The rates are determined following a specified procedure that is undertaken by an independent committee appointed by the GOI. The committee makes its recommendations after discussions with all stake holders including Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products. Corroborating data is also collected from Central Excise and Customs field formations.

⁵⁷ *Id.*, at 4, citing 19 CFR 351.519(a)(4).

⁵⁸ See the GOI's Initial Questionnaire Response at 28-37 and the GOI's First Supplemental Questionnaire Response at 6-9.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See 19 CFR 351.519(a)(1)(ii).

⁶² See *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) ("*Shrimp from India*") and accompanying Issues and Decision Memorandum at "Duty Drawback (DDB)."

⁶³ *Id.*

⁶⁴ See 19 CFR 351.519(a)(4)(i)-(ii).

This data is analysed and this information is used to form the basis for the rate of Duty Drawback.⁶⁵

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.⁶⁶ The GOI did not provide the requested documentation.⁶⁷ Based on the GOI's questionnaire responses, consistent with past cases,⁶⁸ and lacking the documentation to support that the GOI has an adequate system in place, we determine that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended. Moreover, with regard to the GOI's claim that the DDB program was adequately explained and demonstrated at verification, we agree with Petitioners that the Department did not discuss the DDB program at the GOI's verification because it was not presented with adequate record evidence (as discussed above) and therefore only addressed the DDB program from the company's point of view at Steamline's verification.⁶⁹ Without the ability to confirm a respondent's claims and use of the program with records and information verified at the GOI, the Department does not agree that the mechanics of the DDB program were adequately verified. As for the argument that even if the Department finds that there is an excess input availed by the exporter, the drawback received in excess on account of this excess input, if any, alone would be countervailable, not the entire drawback received under the scheme, without record evidence that the GOI maintains an adequate system to implement and monitor the program, the Department is unable to find that the inputs were only used in the production of exported goods.

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

⁶⁵ See the GOI's Initial Questionnaire Response at 35.

⁶⁶ See Letter from the Department to the GOI, "Investigation of Certain Welded Stainless Pressure Pipe Products from India: Countervailing Duty Questionnaire," dated November 25, 2015 ("Department's Initial Questionnaire"), at Section II. See also, Letter from the Department to the GOI, "Countervailing Duty Investigation on Welded Stainless Pressure Pipe from India: First Supplemental Questionnaire for the Government of India," dated February 4, 2016 ("First Supplemental Questionnaire for the GOI") at 4-6.

⁶⁷ See the GOI's Initiation Questionnaire Response at 28-37 and the GOI's First Supplemental Questionnaire Response at 6-9.

⁶⁸ See, *e.g.*, *Corrosion-Resistant Steel from India* and accompanying Issues and Decision Memorandum at Comment 3; *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016) ("PET Resin Final Determination") and accompanying Issues and Decision Memorandum at "Duty Drawback;" *Shrimp from India* at "Duty Drawback (DDB)."

⁶⁹ See Petitioners' Case Brief at 4, citing the GOI Verification Report and Steamline Verification Report at 8-9.

Pursuant to 19 CFR 351.519(b)(1), benefits from the DDB program are conferred as of the date of exportation of the shipment for which the pertinent drawbacks are earned.⁷⁰ We calculated the benefit on an as-earned basis upon export because drawbacks under the program are 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 the recipient knows the exact amount of the benefit (*i.e.*, the value of the drawback).⁷¹

Steamline reported that it received drawbacks under the DDB program during the POI for exports of subject merchandise to the United States.⁷² Because drawbacks under the program are earned on a shipment-by-shipment basis, we would normally calculate the subsidy rate by dividing the benefit earned on subject merchandise exported to the United States by total exports of subject merchandise to the United States during the POI.⁷³ With respect to drawbacks under the program, we are able to tie the benefits for subject merchandise to specific markets, in accordance with 19 CFR 351.525(b)(4).

Therefore, we calculated the subsidy rate using the value of all DDB duty rebates that Steamline earned on U.S. sales of subject merchandise during the POI. We divided the total amount of the benefit received by total exports of subject merchandise to the United States during the POI.

Comment 3: Whether the EPCGS Provides a Countervailable Subsidy and Whether the Department Should Use a Different Denominator for the Benefit Calculation

GOI's Case Brief

- EPCGS is not a countervailable subsidy. No discretion is allowed in issuing an EPCGS license as long as certain conditions are met and the DGFT has the power to refuse to grant or renew a license under certain proscribed conditions. Moreover, the EPCGS has a robust system of monitoring at each stage.
- The operation and monitoring mechanisms of the program were adequately demonstrated during the verification. Though the scheme is linked to export production and requires the importer to take additional export obligation over and above its average exports in previous years, it is not an exclusive export linked scheme. The benefit of the duty saved accrues to the entire production of the goods and services during the entire useful life of the capital good, including the domestic as well as export sales.
- Even if the Department finds that a benefit has been conferred in a way in which it should be countervailed, the benefit conferred, if any, needs to be computed taking into account the entire production during the useful life of the capital good, not the export quantity alone.

⁷⁰ See, *e.g.*, *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India*, 64 FR 73131 (December 29, 1999) (“*Steel Plate Final Determination*”) at 73134 and 73140.

⁷¹ See, *e.g.*, *Shrimp from India* at “Duty Drawback (DDB).”

⁷² See Submission from Steamline, “Welded Stainless Pressure Pipe from India: Response to Section III,” dated January 7, 2016 at 15-17.

⁷³ See, *e.g.*, *Steel Plate Final Determination*, 64 FR at 73134 and 73140.

Petitioners' Rebuttal Brief

- The Department must still find EPCGS to be a prohibited export subsidy under section 771(5A)(B) of the Act because it is contingent on export performance, notwithstanding that there may be additional criteria.

Department's Position: We disagree with the GOI and continue to find the EPCGS countervailable. According to the GOI, EPCGS provides for a reduction of, or exemption from, customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to six times the duty saved within a period of six years.⁷⁴ Once a company has met its export obligations, the GOI will formally waive the exempted duties on the imported goods.⁷⁵

With regard to the GOI's argument that any computed benefit should take into account the entire useful life of the machine, and not only the export quantity, we note that the duty savings are contingent only upon the company's export sales (not total sales).⁷⁶ Under EPCGS, the exempted import duties are owed to the GOI if the accompanying export obligations are not met.⁷⁷

With respect to the GOI's argument that the program is not an exclusive export linked program, pursuant to section 771(5A)(B) of the Act, an export subsidy is "a subsidy that is, in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions." The EPCGS satisfies that description. For example, GOI officials "stated that there must be a link between the imported capital good and the manufactured goods exported, and the exporter must export six-times the duty saved amount within six years (based on FOB value)" and that "if the exporter fails to meet the conditions of the license, then the exporter will exit the scheme and owe the duties on the imported capital goods forgone under the scheme."⁷⁸ Additionally, GOI officials confirmed that the EPCGS program "is specific to exporters (*i.e.*, requires a company to export)" and that "in order to meet the obligation of the EPCGS license, the company must meet certain export quotas and must export goods whose production is associated with the imported capital goods" and that "the goods exported must be manufactured by the exporter (*i.e.*, not traded goods)."⁷⁹

With respect to the GOI's argument that "{n}o discretion is allowed in issuance of EPCG Authorization as long as the conditions are met," we note that, in the next sentence in its case brief, the GOI seems to contradict itself, by stating: "{h}owever, no person may claim authorization as a right and the DGFT (Directorate General of Foreign Trade) has the power to refuse to grant or renew the authorization under certain laid down conditions" and that "{t}he DGFT may direct any registering authority to register or de-register an exporter or otherwise

⁷⁴ See GOI's Initial Questionnaire Response at 38-51.

⁷⁵ *Id.*

⁷⁶ *Id.* and GOI's First Supplemental Questionnaire Response at 9-10. ,

⁷⁷ *Id.*

⁷⁸ See GOI Verification Report at 2.

⁷⁹ *Id.* at 3.

issue such directions to them.”⁸⁰ Moreover, we point to the GOI’s questionnaire response, which confirms that companies must meet the “eligibility criteria” in order to use the EPCGS program.⁸¹

With regard to the GOI’s assertion that any benefit should take into account the entire production during the useful life of the asset, as explained in the *Preliminary Determination*, neither Steamline nor Sunrise met the export requirements for their EPCGS licenses prior to the end of the POI.⁸² Therefore, we treated the unpaid import duty liability as an interest-free loan, which we divided by the companies’ export sales because, as explained in the “Denominators” section of the PDM, this program is contingent upon exports.⁸³ Additionally, as we explained in the *Preliminary Determination*, if Steamline or Sunrise had duties waived prior to or during the POI (which they did not), we would have considered the import duty exemptions on capital equipment as non-recurring benefits and would have treated the benefit in accordance with 19 CFR 351.524(b) and (d).⁸⁴

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).⁸⁵ Since the unpaid duties are a liability contingent on subsequent events, these interest-free contingent-liability loans constitute the first benefit under the EPCGS program. The second benefit arises when the GOI waives the duty on imports of capital equipment covered by those EPCGS licenses for which the export requirement has already been met. For those licenses for which the GOI has acknowledged that the company has completed its export obligation, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption, pursuant to 19 CFR 351.505(d)(2).

The Department has previously determined that import duty reductions or exemptions provided under EPCGS are countervailable export subsidies because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act; (2) provides two different benefits under section 771(5)(E) of the Act; and (3) is specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is contingent upon export performance.⁸⁶ We verified the record information in the instant investigation and find that there is no change in the administration and mechanics of the program that would cause us to change our determination from prior

⁸⁰ See GOI Case Brief at 7.

⁸¹ See GOI’s Initial Questionnaire Response at 38.

⁸² See the *Preliminary Determination* and accompanying PDM at 13.

⁸³ *Id.* at 7 and 12-14.

⁸⁴ *Id.* at 13-14. See also Sunrise Verification Report at 12-13 and Steamline Verification Report at 9-10.

⁸⁵ 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) (“*Steel Threaded Rod From India*”) and accompanying issues and decision memorandum, at “Export Promotion of Capital Goods Scheme (“EPCGS”).”

⁸⁶ See, e.g., *Corrosion-Resistant Steel from India* and accompanying Issues and Decision Memorandum at Comment 4; *PET Resin Final Determination* and accompanying Issues and Decision Memorandum at 14-16; see also *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India*, 67 FR 34905 (May 16, 2002) (“*PET Film Final Determination*”), and accompanying Issues and Decision Memorandum at “EPCGS” section; see also *Shrimp from India*, and accompanying Issues and Decision Memorandum at 14.

proceedings. As a result, and consistent with our prior determinations in, *inter alia*, *Corrosion-Resistant Steel from India*, *PET Resin Final Determination*, *PET Film Final Determination*, and *Shrimp from India*, we determine that this program is countervailable.

Comment 4: Whether the Department Should Investigate and Countervail Marketable Certificates Purchased from Third Parties

Petitioners' Case Brief

- The Department should reconsider its earlier determinations that the entire face amount of marketable certificates provides a countervailable subsidy benefit to whichever company first received them from the government at the time of purchase, so that no benefit accrues to the firm that buys them and uses them for export.⁸⁷
- The benefit to the company that initially receives the certificate is the face value of the certificate, while the benefit to the buyer is the amount of taxes or duties it avoids by using the certificate.
- The Department's approach is problematic because it attributes all the subsidy benefit to the company that did not export or otherwise use the benefit and does not address the incentives such a government program creates, or the possibilities for abuse. Thus, the Department should take a more nuanced approach to such situations. At a minimum, the Department should ensure that it learns details of all such subsidy entitlement certificates that a company has received, even if the recipient has not used any itself.

Sunrise and GOI Rebuttal Briefs

- As in past determinations,⁸⁸ the Department should not impose countervailing duties on licenses purchased from third parties.
- The Department's practice is to countervail the actual license amount at the time the license is issued by the GOI; there is no basis to reconsider the Department's position for this case.
- In the past, the Department has determined that the benefit on licenses such as the Focus Product Scheme ("FPS") or Duty Entitlement Passbook Scheme ("DEPS") are earned by the exporter at the time of export and that the benefit on licenses such as the Status Holder Incentive Scrip ("SHIS") is earned by the exporter at the time the license is granted.⁸⁹
- There is no benefit bestowed in a transaction where one company buys a license from a third party by paying commercial consideration at arm's length.
- The Department cannot consider a benefit to accrue both to the original exporter who earned the license, and to the purchaser of the license, otherwise it will result in countervailing the benefit twice, once with the exporter and again with the purchaser of the license.
- In none of the programs, such as FPS, DEPS, or SHIS, is the license granted to a firm who did not export. Thus, these licenses cannot be granted to an entity, customs broker, or

⁸⁷ See Petitioners' Case Brief at 8 (citing to, e.g., *Corrosion-Resistant Steel from India* and accompanying Issues and Decision Memorandum at Comment 6 and *Polyethylene Terephthalate Film, Sheet, and Strip from India*, 81 FR 7753 (February 16, 2015) ("*PET Film 2013 Review*") and accompanying Issues and Decision Memorandum at Comment 2).

⁸⁸ See Sunrise's Rebuttal Brief at 4 and the GOI's Rebuttal Brief at 4 (citing e.g., *Corrosion-Resistant Steel from India* and *PET Film 2013 Review*).

⁸⁹ See Sunrise's Case Brief at 4-5 and the GOI's Case Brief at 4-5 (citing e.g., *PET Film 2013 Review*).

middleman who has not exported. Additionally, Petitioners are incorrect in stating that the buyer of the licenses uses the license for export operations; the licenses may only be used to discharge import duty obligations and are not for export operations. Moreover, the licenses may be purchased by any company, and the buyer need not be an exporter.

Department's Position: We disagree with Petitioners regarding the countervailability of marketable certificates regarding certain programs examined in this investigation and addressed by Sunrise and the GOI above (*e.g.*, FPS, DEPS, or SHIS). For these programs, consistent with past precedent, the Department will continue to countervail the benefit which accrues to the exporter upon earning the certificate/scrip.⁹⁰ Transferable duty certificates purchased by exporters (from other exporters) which are then used to offset duties owed on imports, under the FPS, DEPS, and SHIS programs do not provide a countervailable benefit to the purchaser of the certificate.

Consistent with the Department's initial questionnaire, and with past precedent, the GOI and the respondents, Sunrise and Steamline, fully reported benefits earned upon export, but did not report when they purchased duty credits on the open market to offset duties on imports. Based upon observations made by the Department at verification,⁹¹ Petitioners have alleged that the Department should further investigate when exporters purchase duty credit certificates and use those certificates to offset duties on imports. As an initial matter, at verification the Department fully reviewed the financial systems of the mandatory respondents and did not find any benefits associated with the programs, as alleged by Petitioners.⁹² Typically, transferrable duty certificates are sold, on the open market, for a very small discount from the certificate face value. Petitioners have asserted that the benefit to the company that initially receives the certificate is the face value of the certificate (an assertion that all parties agree with, and which has formed the basis of the Department's calculation for such certificate programs in the past), while the benefit to the buyer is the amount of taxes or duties it avoids by using the certificate. We disagree with Petitioners' second assertion, that the duties avoided by the certificate constitute a benefit. The Department has stated, in the past, that such duty scrips are "equivalent to cash and that the company can use it to pay all duties, upon entry."⁹³ A company purchasing a duty scrip or certificate from another private company, to pay import duties to the government, does not constitute a benefit. The duties are owed and the companies may use the scrip like cash; in order to earn the duty scrip, a company must export. In the past, the Department has considered the benefit to accrue at the time the scrip or certificate is earned.⁹⁴ Petitioners have not pointed to, nor have Department officials observed, evidence of the certificates being transferred in a manner such that a financial contribution in the form of forgone revenue is being construed to the

⁹⁰ *Id.*

⁹¹ See Sunrise Verification Report at 3; see also Steamline Verification Report at 11 and 16. The specific issues involve business proprietary information and were not fully briefed by the Petitioners; further, they were only briefly addressed in the verification reports because, although the Department did examine some of these programs at verification, there was no benefit identified in connection with the purchase of such transferable duty credits.

⁹² See Sunrise Verification Report; see also Steamline Verification Report.

⁹³ See, *e.g.*, *Steel Threaded Rod From India* and accompanying issues and decision memorandum, at "Status Holder Incentive Scrip ("SHIS")."

⁹⁴ *Id.*, at "Focus Product Scheme ("FPS")" and "Status Holder Incentive Scrip ("SHIS")."

importing company who is using a purchased scrip to pay duties owed, and not to the company who originally earned the scrip.

With regard to Petitioners' assertion that the Department's approach is problematic because it attributes all of the subsidy benefit to the company that did not export or otherwise use the benefit, and because it does not address the incentives such a government program creates, or the possibilities for abuse, we note that, first and foremost, Petitioners seem to misunderstand the duty certificate programs. The subsidy benefit is only earned upon export. Companies who do not export cannot earn duty rebates under these duty certificate programs. Any company may purchase the certificates to offset duties owed, upon import of raw materials or capital goods into India, but the certificates may only be earned by exporters (*i.e.*, they are an incentive to export). Although Petitioners envision situations in which delegated government agents may receive certificates at preferential rates, and then act as resellers or distributors, in the Department's examination of these programs (as explained below), we have not encountered such a situation in India.

For all three programs (FPS, DEPS, and SHIS), the Department has previously determined that they confer a countervailable benefit upon the exporter when the benefit amount is known (*i.e.*, either at the time of export, or at the time of bestowal of the transferrable license).

FPS

With regard to FPS, in *Shrimp from India* the Department found, as we did in the *Preliminary Determination*, that "the benefits from the FPS program are conferred as of the date of exportation of the shipment for which the FPS is earned. This is because the FPS credits are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, the recipients know the exact amount of the benefit when exportation occurs."⁹⁵ This is consistent with the Department's other recent determinations regarding FPS.⁹⁶

DEPS

In *Shrimp from India*, the Department explained "that benefits from the DEPS program are conferred as of the date of exportation of the shipment for which the credits are earned. This is because DEPS credits are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, the recipients know the exact amount of the benefit (*i.e.*, the value of the credit) when exportation occurs."⁹⁷ However, in *Shrimp from India*, the Department also found that DEPS had been terminated (with no residual benefits), effective November 1, 2011.⁹⁸

⁹⁵ See *Shrimp from India* and accompanying Issues and Decision Memorandum at "Programs Determined to be Countervailable"; see also PDM at 17. Neither mandatory respondent used the FPS program for shipments of subject merchandise to the United States.

⁹⁶ See, e.g., *PET Resin Final Determination* and accompanying Issues and Decision Memorandum at "Programs Determined to Be Countervailable."

⁹⁷ See *Shrimp from India* and accompanying Issues and Decision Memorandum at "Programs Determined to be Countervailable."

⁹⁸ *Id.*

SHIS

The Department recently examined SHIS in the *PET Film 2013 Review* and reached the following determination:

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

Importantly, the SHIS scrip is freely transferable to other manufacturing companies while the license remains valid. The fact that the SHIS scrip can be sold before expiry of the SHIS license, just as with DEPS/DEPB licenses, is further evidence that the actual amount of the benefit is determined at the time the SHIS license is issued by the GOI. If the Department were to rely exclusively on the actual amount of duties that Jindal saved under the SHIS program as reported by Jindal, it would disregard the benefit inherent in the fact that the licenses were transferable when bestowed.⁹⁹

Thus, the Department's practice, for the above named programs, is to countervail the full amount identified on the export licenses/certificates at the time of bestowal. At bestowal, the scrip (or license or certificate) is equivalent to a cash grant by the GOI. What the companies do with the scrip (or "cash grant") from the government is not relevant under the countervailing duty law; they may sell the scrip or they may use it, but the scrip itself is the benefit. Using the scrip to pay duties owed is not a benefit. Therefore, consistent with recent precedent,¹⁰⁰ for this final determination, we do not find the purchased FPS, DEPS, or SHIS licenses to be countervailable.

Comment 5: Whether Steamline's Total Sales and Total Export Sales Figures are Overstated

Steamline's Case Brief

- Steamline correctly reported "total export sales" on a FOB port basis and the Department verified such.
- Steamline agrees that home market sales were not reported on a FOB factory basis and therefore the domestic freight included in the home market sales and total sales is overstated.
- Although Steamline's domestic sales figure was overstated by including domestic freight for some sales, this is a miniscule amount because most home market sales are made on an ex-

⁹⁹ See *PET Film 2013 Review* and accompanying Issues and Decision Memorandum at Comment 2. See also *Steel Threaded Rod From India* and accompanying Issues and Decision Memorandum, at "Status Holder Incentive Scrip."

¹⁰⁰ See, e.g., *Corrosion-Resistant Steel from India* and accompanying Issues and Decision Memorandum at Comment 6.

factory basis (as reflected in the verification report). Regardless, the Department can calculate a domestic freight adjustment based upon the information Steamline provided in the antidumping (“AD”) investigation.

No other party submitted comment or rebuttal comment on this issue.

Department’s Position: For the final determination, we are making an adjustment, as AFA, to deduct domestic freight from the total sales and total export sales figures, both of which, at verification, we confirmed to be overstated as reported.¹⁰¹

As explained in our verification report, Steamline incorrectly included all domestic freight (for export sales and domestic sales) in the reported Total Export Sales figure and in the Total Sales figure, and thus overstated Steamline’s total export sales and total sales figures during the POI.¹⁰² This overstatement affects how we calculate the subsidy rate for EPCGS and the electricity duty exemption discussed below (in Comment 6), because these are the only programs where the total export sales and total sales figures are used as the denominator.

In the Department’s Initial Questionnaire, respondents were instructed to “report the sales value on an FOB (port) basis with respect to export sales and/or on an FOB (factory) basis for domestic sales.”¹⁰³ In addition to explaining how Steamline should report its total export sale and total sales figures, the Department provided Steamline with multiple opportunities to correctly calculate and report its sales figures, including two supplemental questionnaires asking for a complete reconciliation of Steamline’s reported sales figures.¹⁰⁴ At verification, the Department discovered, as part of the sales reconciliation process, that Steamline had overstated its total sales value and total export sales value during the POI. Thus, we find that application of facts available with an adverse inference to be appropriate in accounting for the overstatement of these total sales values, in accordance with sections 776(a)(1), 776(a)(2)(A), (B) and (C), and 776(b) of the Act. *See* section VI, above, “Use of Facts Otherwise Available and Adverse Inferences.”

For this final determination, we adjusted Steamline’s reported total reported sales value and total export sales value to deduct domestic freight for domestic sales, based upon the information on the record.¹⁰⁵ Specifically, using information available on the record for one transaction,¹⁰⁶ we calculated the amount of freight billed as a percentage of the total invoiced amount of that one transaction and applied this calculated percentage to the total domestic sales revenue to estimate total domestic freight. We then reduced the total sales and total export sales values by this estimated amount of total domestic freight. We used this revised value of total export sales as

¹⁰¹ *See* Steamline Verification Report at 2 and 6.

¹⁰² *Id.*

¹⁰³ *See* Department’s Initial Questionnaire at Section III.

¹⁰⁴ *See* Letters from the Department to Steamline, “Countervailing Duty Investigation on Welded Stainless Pressure Pipe from India: First Supplemental Questionnaire for Steamline Industries Limited,” dated February 2, 2016 (“First Supplemental Questionnaire for Steamline”), at 4 and “Countervailing Duty Investigation on Welded Stainless Pressure Pipe from India: Second Supplemental Questionnaire for Steamline Industries Limited” at 3-4.

¹⁰⁵ *See* Steamline Final Calculation Memorandum.

¹⁰⁶ *See* Steamline Verification Exhibit VE-6.

the denominator for EPCGS.¹⁰⁷ Additionally, we used the revised total sales figure as the denominator for the electricity duty exemption (Comment 6, below).¹⁰⁸

Furthermore, we disagree with Steamline's suggestion to use its reported freight information from the AD investigation because the POIs of the two investigations are different, and also because the information on the AD record is not on the record of the CVD case.¹⁰⁹

Comment 6: Whether the Electricity Duty Exemption by the Uttar Gujarat Vij Company Limited is a Countervailable Subsidy Program

Steamline's Case Brief

- The electricity duty exemption is not specific under section 771(5A)(D) of the Act (*i.e.*, it is not limited by enterprise or industry), and thus is not countervailable. The eligibility criteria and/or conditions for exemptions from electricity duty are neutral and do not favor certain enterprises over others. Any company in India can seek this benefit.
- The duty exemption was not listed as a subsidy program in the questionnaires.
- This program covers five years, and thus the benefit figure in the verification report should be divided by five, for a per year amount, in the event the Department determines the program to be countervailable.

GOI's Case Brief

- The electricity duty is not countervailable "since it is automatically available to all without any distinction."¹¹⁰

No other party submitted comment or rebuttal comment on this issue.

Department's Position: At verification, Department officials discovered that Steamline received a rebate for electricity duty paid, which had not been previously identified or reported to the Department by the GOI or Steamline.¹¹¹ Due to the lack of reporting from the GOI and Steamline regarding this program, we find a financial contribution and that the program is specific based upon an adverse inference pursuant to sections 776(a)(1) and 776(2)(A) and (B) and 776(b) of the Act. *See* section VI, above, "Use of Facts Otherwise Available and Adverse Inferences."

Although this program was not alleged, in our first supplemental questionnaire, we requested that both the GOI and Steamline report "any other forms of assistance" provided "directly or indirectly" by the GOI or State Government of Gujarat ("SGOG") or state-owned enterprises.¹¹²

¹⁰⁷ *See* Steamline Final Calculation Memorandum. However, we note that this minor change in denominator does not result in a substantive change to the resulting subsidy rate calculated for the EPCGS program.

¹⁰⁸ *Id.*

¹⁰⁹ The freight information is business proprietary information and the Department does not move proprietary information across proceedings. *See* sections 777(b)(1)(A) and (c) of the Act; and 19 CFR 351.306.

¹¹⁰ *See* GOI Case Brief at 8.

¹¹¹ *See* Steamline Verification Report at 15 and Steamline Verification Exhibit VE-11. *See also* Steamline's First Supplemental Questionnaire Response at 10 and GOI's First Supplemental Questionnaire Response at 17.

¹¹² *See* First Supplemental Questionnaire for Steamline at 7 and First Supplemental Questionnaire for the GOI at 10.

Neither Steamline nor the GOI reported any additional assistance.¹¹³ Pursuant to section 775 of the Act, if we find evidence of a possible subsidy in the course of a proceeding, we will pursue it by gathering information to understand the nature of the program.

At verification, as part of completeness checks in Steamline's accounting records, we discovered that Steamline received an exemption from electricity duties for five years from the Uttar Gujarat Vij Company Limited because it was a new enterprise in the State of Gujarat. The Uttar Gujarat Vij Company Limited is a public utility company in the State of Gujarat, charged with distribution of electricity and under control of the State Government of Gujarat.¹¹⁴ The information examined by the Department at verification showed the duty paid, as well as that Steamline received a certificate of exemption in December 2014, and that it received a rebate of the electricity duty paid, which company officials booked into Steamline's accounts during the POI.¹¹⁵

There is no response on the record from the GOI regarding eligibility criteria. The Bombay Electricity Duty Act, 1958, states that an application is required and that the government may prescribe "terms and conditions" to be eligible for this program, none of which has been explained or provided by the GOI.¹¹⁶ Moreover, the GOI did not identify any record evidence in its case brief in support of its argument that the program is "automatically available to all."¹¹⁷ Additionally, there is no evidence of an application on the record from Steamline, and no explanation of the procedure for how Steamline obtained the exemption.¹¹⁸ Thus, we find the program specific within the meaning of section 771(5A)(D) of the Act based upon an adverse inference pursuant to sections 776(a) and (b) of the Act.

Further, based on an adverse inference pursuant to sections 776(a) and (b) of the Act, we find that the rebate of electricity duties to Steamline from the Uttar Gujarat Vij Company Limited constitutes a financial contribution under section 771(5)(D)(ii) of the Act, and that the rebated duty confers a benefit, pursuant to section 771(5)(E) of the Act.¹¹⁹

¹¹³ See Steamline's First Supplemental Questionnaire Response at 10 and GOI's First Supplemental Questionnaire Response at 17. See also Steamline Verification Report at 15.

¹¹⁴ See Letter from the GOI, "Imposition of Anti Dumping and Countervailing Duties on Welded Stainless Pressure Pipe From India - Response to the Questionnaire By Government of India Ref: Case No. - C-533-868," dated May 9, 2016, at Annexure 16 ("Gujarat Electricity Regulatory Commission: Tariff Order for Uttar Gujarat Vij Company Limited").

¹¹⁵ See Steamline Verification Report at 15 and Steamline Verification Exhibit VE-11.

¹¹⁶ See Steamline Verification Exhibit VE-11.

¹¹⁷ See GOI Case Brief at 8.

¹¹⁸ See Steamline Verification Report at 15. Although Steamline provided an exemption certificate, Steamline was unable to provide any correspondence with their setup-consultant, who, allegedly, informed them of their eligibility for this duty rebate.

¹¹⁹ See Steamline Final Calculation Memorandum.

Comment 7: Whether the Department Should Countervail Preferential Water Rates Provided by the GIDC Under the GIDC Water Supply Regulation of 1991

Sunrise's and GOI's Post-Preliminary Case Briefs

- Sunrise is under mandatory legal obligation to use only GIDC water and incurs the requisite expense for water supplied. In evaluating the appropriateness of countervailing the water rate, Sunrise's circumstance may be compared to its affiliate, Shah Foils, which is not located on a GIDC estate, has dug its own well, and does not have any recurring cost for water except for a small amount of electricity consumed. Therefore, Sunrise's obligation to use the GIDC water supply actually incurs more cost than what they would have otherwise chosen.
- Because Sunrise incurs a higher, compulsory recurring cost for water than companies located outside of the GIDC estates, the program does not provide a benefit, and therefore does not confer any subsidy to Sunrise.
- The GOI further asserts that it adequately clarified during verification that the companies located within GIDC estates have already paid for the development cost (including pipelines, etc.) for supply of water and thus the cost of water supplied to them is as per the actual cost of water.
- With respect to the doubled fee for water supplied by the GIDC to consumers outside the GIDC estates, the GOI states that any such non-GIDC users have not contributed to the development of water facilities and, therefore, the higher fee is in place to recoup the development cost. Thus, the GOI claims that there is no element of subsidy to the enterprises located in GIDC estates and the higher fee charged to non-estate facilities is not an indicator of such.

No other party submitted comment or rebuttal comment on this issue.

Department's Position: As described in the Post-Preliminary Memorandum, the GIDC is the agency created by the SGOG for facilitating industrial development in the state of Gujarat and establishes industry-ready land with basic infrastructure such as roads, water, and power availability, which is then leased out to manufacturers.¹²⁰ Sunrise has active production facilities in two GIDC estates that use GIDC water – Chhatral and Kalol.¹²¹ Under the GIDC Water Supply Regulation of 1991, all companies located in a GIDC estate where the GIDC provides access to water must use that water.¹²² Under the regulations, water is supplied through the GIDC, which controls the supply and sets and alters the rates charged, and can be made available

¹²⁰ See Post-Preliminary Memorandum at 3. See also Letter from the GOI, "Imposition of Anti-dumping and Countervailing Duties on Welded Stainless Pressure Pipe from India – Response to the Questionnaire by Government of India Ref: Case No. – C-533-868," dated April 18, 2016 ("GOI 1st Supp NSA QR"), at 1-2, and Annexure 1.

¹²¹ See Post-Preliminary Memorandum, at 4. See also Letter from Sunrise, "Welded Stainless Pressure Pipe from India: Countervailing Duty (CVD) New Subsidy Allegation Response," dated March 31, 2016 ("Sunrise NSA QR"), at Exhibit S4-2; and see Letter from Sunrise, "Welded Stainless Pressure Pipe from India: Countervailing Duty (CVD) First Supplemental Response of New Subsidy Allegation," dated April 18, 2016 ("Sunrise 1st Supp NSA QR"), at Exhibit S6-6(b).

¹²² See Post-Preliminary Memorandum, at 4. See also GOI 1st NSA Supp QR, at Annexure 8 and Sunrise Verification Report, at 18.

to companies located outside of the estates.¹²³ The regulation also states that if a water connection is given to premises outside the limits of the estate, water charges shall be calculated at double the prevailing rates for water in the estate.¹²⁴

In the Post-Preliminary Memorandum, the Department determined that the GIDC estates are a designated area under the jurisdiction of the SGOG, and that the provision of water at the discounted rate is limited by law to enterprises or industries within a designated geographical region within the jurisdiction of the authority providing the subsidy and is therefore regionally specific in accordance with section 771(5A)(D)(iv) of the Act.¹²⁵ The Department also determined that because the GIDC, as the administering agency of the SGOG, sets the rates and supplies the water used by Sunrise, the 50 percent price discount for enterprises within the GIDC industrial estates constitutes a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act.¹²⁶ Finally, the Department found that this program conferred a benefit, *i.e.*, the 50 percent discounted rate, within the meaning of section 771(5)(E) of the Act, calculating an estimated net subsidy of 0.01 percent *ad valorem* for Sunrise.¹²⁷

As we explained in the Post-Preliminary Memorandum, the GOI did not provide evidence to support its claim that water infrastructure costs were charged to companies within the estates as part of other fees or costs.¹²⁸ The GOI did not identify any such evidence in its case brief. Similarly, the GOI does not identify any evidence on the record in support of its assertion that units located within GIDC estates have already paid for the development costs, including the pipelines, *etc.*, for the supply of water, and thus its argument is unsubstantiated.¹²⁹ With regard to Sunrise's contention that it incurred no benefit from the water rates set by the GIDC, this claim is also unsubstantiated;¹³⁰ to the contrary, record evidence demonstrates that companies outside the GIDC area pay double for GIDC-supplied water.¹³¹ Therefore, the contention that the rate for companies located in the GIDC areas is more expensive than Sunrise might otherwise

¹²³ See Post-Preliminary Memorandum, at 4. See also GOI 1st NSA Supp QR, at Annexure 8 and GOI Verification Report, at 12.

¹²⁴ See Post-Preliminary Memorandum, at 4. See also GOI 1st NSA Supp QR, at Annexure 8.

¹²⁵ See, *e.g.*, *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28755 (May 21, 2010), and accompanying Issues and Decision Memorandum, at the "Provision of Land Use Rights for LTAR to FIEs in Jiangxi and the City of Xinyu" section (where eligibility for a program was limited to as Economic Development Zone under the jurisdiction of a city); see also *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at the "Provision of Electricity for Less than Adequate Remuneration" section (where eligibility for a program was limited to users outside the Bangkok metropolitan area); see also *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) and accompanying Issues and Decision Memorandum, at Comment 8, (where eligibility for a program was limited to companies located in an industrial park within the provider's (*e.g.*, county's or municipality's) jurisdiction).

¹²⁶ See Post-Preliminary Memorandum, at 4-5.

¹²⁷ *Id.*, at 4-5 and Memorandum to the File, "Post-Preliminary Calculations for New Subsidy Programs," dated August 23, 2016.

¹²⁸ See GOI 2nd Supp NSA QR, at 3. See also GOI Verification Report, at 12 and GOI Verification Exhibit VE-6.

¹²⁹ See GOI's Post-Prelim Case Brief at 4.

¹³⁰ See Sunrise's Post-Prelim Case Brief at 3.

¹³¹ See GOI 1st NSA Supp QR, at Annexure 8; and see the GOI Verification Report, at 12.

pay does not undermine our analysis. In any case, the record lacks evidence or cost comparisons for well water (*e.g.*, including the full cost of the well water system used by Shah Foils, comprising, but not limited to, the cost of drilling the well, procuring the necessary machinery and equipment, installation, maintenance of the system, and the amount and cost of the “minimal” electricity consumed) and, thus, we are unable to evaluate Sunrise’s assertion that the use of GIDC water is, overall, more expensive than if it were permitted to drill and use a well. Because neither the GOI nor Sunrise has substantiated its claims, and in the absence of record evidence to the contrary, we continue to find that the Preferential Water Rates Under the GIDC Water Supply Regulation of 1991 provide a benefit within the meaning of section 771(5)(E) of the Act.¹³²

Accordingly, we continue to find that the Preferential Water Rates Under the GIDC Water Supply Regulation of 1991 confer a countervailable subsidy. We continue to find that the program is regionally specific, in accordance with section 771(5A)(D)(iv) of the Act, and provides a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act, as discussed in the Post-Preliminary Memorandum.¹³³ Moreover, as explained above, the GOI and Sunrise have not supported their allegations that GIDC water is more expensive than other water provision options. Additionally, the GOI has not supported its claim that water infrastructure costs were charged to companies within the estates as part of other fees or costs with any evidence on the record. Therefore, we find that this program confers a benefit, *i.e.*, the 50 percent discounted rate, within the meaning of section 771(5)(E) of the Act calculated at an estimated net subsidy of 0.01 percent *ad valorem* for Sunrise.

Comment 8: Whether the Provision of Land for LTAR Provides a Countervailable Subsidy

*GOI’s Case Brief*¹³⁴

- The land allotted to the units located in GIDC areas does not constitute a subsidy.
- The statement in the GOI Verification Report that GIDC officials were unable to provide any statistics or supporting information for the number of applications received and approved for the provision of land in GIDC estates is incorrect. The GOI provided all documentation requested by Department verifiers.

Department’s Position: We preliminarily determined that Sunrise received no measurable benefit from the provision of land in the GIDC estates.¹³⁵ This finding has not been contested by any interested party, and so we continue to find that the Provision of Land for LTAR program does not confer a measurable benefit, and have not addressed the issue of specificity for this program in this investigation. Because we have not made a determination that this program provides a countervailable subsidy, we find that the GOI’s arguments regarding whether these allotments constitute a subsidy and whether it provided documentation at verification to support

¹³² See Post-Preliminary Memorandum, at 3-5.

¹³³ *Id.*

¹³⁴ See GOI Case Brief at 8-9.

¹³⁵ See Post-Preliminary Memorandum at 5-6.

its description of the application process leasing land in the GIDC estates are moot, and we have not addressed them for our final determination.

X. RECOMMENDATION

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



Agree

Disagree



Paul Piquado

Assistant Secretary

for Enforcement and Compliance

22 SEPTEMBER 2016

Date