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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement & Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of
Countervailing Duty Administrative Review: Certain Oil Country
Tubular Goods from India; 2013-2014

I. SUMMARY

On October 14, 2016, the Department published the preliminary results of the administrative review of the countervailing duty (CVD) order on certain oil country tubular goods from India.¹ The review covers one company: Jindal SAW Ltd. (Jindal SAW). The period of review (POR) is December 23, 2013, through December 31, 2014. The Government of India (GOI) submitted a case brief on November 12, 2016.² Jindal SAW filed a case brief on December 12, 2016,³ and Domestic Interested Parties⁴ filed a rebuttal brief on December 19, 2017.⁵ We find that Jindal SAW benefitted from countervailable subsidies during the POR.

In response to certain comments raised in parties' case and rebuttal briefs, we made certain changes to the preliminary results. The "Analysis of Comments" section below contains summaries of these comments and the Department's related positions. We recommend that you approve the positions described in the "Analysis of Comments" section of this memorandum.

Below is a complete list of the issues in this review for which we received comments from parties:

¹ See *Oil Country Tubular Goods From India: Preliminary Results And Partial Rescission of Countervailing Duty Administrative Review*, 81 FR 71059 (October 14, 2016) (*Preliminary Results 2013-2014*), and accompanying "Decision Memorandum for the Preliminary Determination in the Countervailing Duty Administrative Review of Certain Oil Country Tubular Goods from India," dated October 5, 2016 (PDM).

² See Letter from the Government of India (GOI) to the Department, dated November 12, 2016 (GOI's Case Brief).

³ See Letter from Jindal SAW to the Department, dated December 12, 2016 (Jindal SAW Case Brief).

⁴ Energex Tube, TMK IPSCO, Vallourec Star L.P., and Welded Tube USA, U.S. Producers of oil country tubular goods, and domestic interested parties (collectively, Domestic Producers).

⁵ See Letter from Domestic Interested Party to the Department, dated December 19, 2016 (Domestic Interested Parties' Rebuttal Brief).



- Comment 1: Whether Jindal SAW's mining rights of iron ore are a countervailable subsidy.
- Comment 2: Whether the Department relied upon an incorrect benchmark for both iron ore and the freight in its preliminary results.
- Comment 3: Whether the Department incorrectly countervailed licenses attributable to non-subject merchandise under the advance authorization program (AAP).
- Comment 4: Whether the Department incorrectly countervailed licenses attributable to non-subject merchandise under the Export Promotion Capital Goods Scheme (EPCGS).
- Comment 5: Whether the Department should deduct an amount for CENVAT from the benefit calculation under the EPCGS.
- Comment 6: Whether the Department conducted a selective/incomplete analysis of elements in determining a countervailable subsidy in the context of Article 1.1 of the Agreement on Subsidies and Countervailing Duty Measures (ASCM), the Tariff Act of 1930, as amended (the Act), and the Department's regulations, by mechanically relying on past decisions.⁶
- Comment 7: Whether the Department should consider other factors adversely impacting the domestic industry during the POR.
- Comment 8: Whether the Department erred in countervailing certain exemption, remission and drawback of indirect taxes in the context of Article 12 and Article 27, and Annex II and Annex VII of the ASCM.
- Comment 9: Whether the Department's analysis of certain programs is inconsistent with the ASCM, the Act, and the Department's regulations, as they do not involve a financial contribution and do not confer a benefit.
- Comment 10: Whether the Department made a calculation error in the benefit calculation of duty drawback (DDB).

II. SCOPE OF THE ORDER

The merchandise covered by the order is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock.

Excluded from the scope of the order are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30,

⁶ In its case brief, at 7, the GOI indicated that the Department's analysis missed one or two elements for the following programs: DDB, EPCGS, EOU-CST, SGOM 1988 sales tax, and SGOG VAT Remission 2006. *See* Letter from the GOI to the Department, dated November 12, 2016 (GOI Case Brief), at 7.

7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

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

III. PERIOD OF REVIEW

The period of review (POR) is December 23, 2013 through December 31, 2014.⁷

IV. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

The Department has made no changes to the allocation period and the allocation methodology used in the *Preliminary Results 2013-2014*, and no issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary determination regarding the allocation period or the allocation methodology. For a description of allocation period and the methodology used for these final results, *see* the *Preliminary Results 2013-2014* and accompanying PDM at 4.⁸

B. Attribution of Subsidies

The Department has made no changes to the methodologies used in the *Preliminary Results 2013-2014* for attributing subsidies. No party raised issues regarding the attribution of subsidies

⁷ See Memorandum To All Interested Parties From Elfi Bum: Countervailing Duty Administrative Review of Oil Country Tubular Goods from India; Period of Rate Calculation for the First Administrative Review, dated August 24, 2016. The Department invited parties to comment on its stated intention to base the assessment rate on subsidy information provided for calendar year 2014. The Department received no comments.

⁸ See *Preliminary Results 2013-2014*, PDM at 3-4.

in case and rebuttal briefs,⁹ and no new factual information on this issue was provided that would lead us to reconsider our preliminary determination. For a description of the methodologies used in these final results, *see* the *Preliminary Results 2013-2014* and accompanying PDM at 4-5.¹⁰

C. Benchmark Interest Rates

The Department has made no changes to the benchmarks or discount rates used in the *Preliminary Results 2013-2014*. No party raised issues regarding benchmarks or discount rates in case and rebuttal briefs,¹¹ and no new factual information on these issues was provided that would lead us to reconsider our preliminary determination. For a description of the benchmarks and discount rates used in these final results, *see* the *Preliminary Results 2013-2014* and accompanying PDM at 5-6.¹²

D. Denominator

The Department has made no changes to the denominators used in the *Preliminary Results 2013-2014*. No party raised issues regarding denominators in case and rebuttal briefs,¹³ and no new factual information on this issue was provided that would lead us to reconsider our preliminary determination. For a description of the denominators used in these final results, *see* the *Preliminary Results 2013-2014* and accompanying PDM at 5.¹⁴

V. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

The Department made changes to the provision of mining rights of iron ore and the duty drawback scheme (DDB). Specifically, issues raised by interested parties in case and rebuttal briefs regarding the provision of mining rights of iron ore and the DDB led us to reconsider our preliminary determinations for these programs.

The Department made no changes to its preliminary findings or calculations for the remaining programs. Specifically, issues raised by interested parties in case and rebuttal briefs regarding the advance authorization program (AAP)/advance license program (ALP), the Export Promotion Capital Goods Scheme (EPCGS), the export oriented units (EOU) (subprogram *Reimbursement of CST Paid on Capital Goods and Raw Materials*), State Government of Maharashtra (SGOM) Sales Tax Program (1988), and State Government of Gujarat's (SGOG) VAT Remission Scheme Established on April 1, 2006, did not lead us to reconsider our preliminary determinations for these programs. The final company-specific program rates for these programs, and those additional programs on which we received no comments, are

⁹ See GOI'S Case Brief and Jindal SAW's Case Brief, and Domestic Interested Parties' Rebuttal Brief.

¹⁰ See also Jindal SAW Preliminary Calculation Memorandum.

¹¹ See GOI'S Case Brief and Jindal SAW's Case Brief, and Domestic Interested Parties' Rebuttal Brief.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

unchanged from *Preliminary Results 2013-2014*. For the descriptions, analyses, and calculation methodologies related to these programs, see the *Preliminary Results 2013-2014* and accompanying PDM.¹⁵

Programs by the Government of India (GOI)

1. Advance Authorization Program (AAP) (Advance License program (ALP))¹⁶

In its case brief, Jindal SAW raised issues related to the Department's treatment of the benefits received under this program for non-subject merchandise in the *Preliminary Results 2013-2014*.¹⁷ As explained below in the Department's position under Comment 3, the Department's analysis with regard to this program remains unchanged from the *Preliminary Results 2013-2014*.¹⁸

Jindal SAW: 2.72 percent *ad valorem*.

2. DDB¹⁹

In its case brief, Jindal SAW alleged that the Department made a ministerial error in the *Preliminary Results 2013-2014* with respect to the Department's DDB benefit calculation for 2014.²⁰ Moreover, in its case brief, the GOI alleged that the Department did not conduct a complete analysis of all elements (specifically, financial contribution) in determining the countervailability of the DDB.²¹ As explained below in the Department's position under Comments 6 and 9, the Department's analysis with regard to this program changed from the *Preliminary Results 2013-2014*.²²

Jindal SAW: 2.15 percent *ad valorem*.

3. Export Promotion Capital Goods Scheme (EPCGS)²³

In its case brief, Jindal SAW raised issues related to the Department's treatment of the benefits received under this program for non-subject merchandise in the *Preliminary Results 2013-2014*.²⁴ Jindal SAW further argued that the Department should deduct an amount for CENVAT from the benefit calculation.²⁵ In addition, in its case brief, the GOI alleged that the Department did not conduct a complete analysis of all elements (specifically, financial contribution and

¹⁵ See also Jindal SAW Preliminary Calculation Memorandum.

¹⁶ See *Preliminary Results 2013-2014*, PDM at 6-7.

¹⁷ See Comment 3 of this memorandum.

¹⁸ See *Preliminary Results 2013-2014*, PDM at 6-7.

¹⁹ See *Preliminary Results 2013-2014*, PDM at 8-9.

²⁰ See Comment 9 of this memorandum.

²¹ See Comment 6 of this memorandum.

²² See Comment 9 of this memorandum.

²³ See *Preliminary Results 2013-2014*, PDM at 9-11.

²⁴ See Comment 4 of this memorandum.

²⁵ See Comment 5 of this memorandum.

specificity) in determining the countervailability of the EPCGS.²⁶ As explained below in the Department's positions under Comments 4, 5, and 6, the Department's analysis with regard to this program remains unchanged from the *Preliminary Results 2013-2014*.²⁷

Jindal SAW: 1.58 percent *ad valorem*.

4. Focus Product Scheme²⁸

Jindal SAW: 1.74 percent *ad valorem*

5. Export Oriented Unit (EOU)²⁹

In its case brief, the GOI alleged that the Department did not conduct a complete analysis of all elements (specifically, specificity) in determining the countervailability for this program in the *Preliminary Results 2013-2014* (specifically, the reimbursement of central sales tax (CST) paid on capital goods and raw materials).³⁰ As explained below in the Department's position under Comment 6, the Department has not changed its calculations for this program from the *Preliminary Results 2013-2014*.³¹

a. Duty-Free Importation of Capital Goods and Raw Materials

Jindal SAW: 0.08 percent *ad valorem* (capital goods)
0.01 percent *ad valorem* (raw materials)

b. Reimbursement of CST Paid on Capital Goods and Raw Materials

Jindal SAW: No benefit during the POR (capital goods)
0.01 percent *ad valorem* (raw materials)

6. Provision of Mining Rights of Iron Ore (GOI and State Government of Rajasthan (SGOR))³²

In its case brief, Jindal SAW alleged that the Department, in the *Preliminary Results 2013-2014*, incorrectly countervailed the provision of mining rights for iron ore, and failed to provide the GOI with an opportunity to cure deficiencies on the record with respect to this program.³³ In its case brief, Jindal SAW further asserted that the Department relied upon incorrect benchmarks for both iron ore and freight and improperly omitted a component for profit in its calculations.³⁴

The GOI alleged in its case brief that the Department's determination in the *Preliminary Results*

²⁶ See Comment 6 of this memorandum.

²⁷ See Comment 5 of this memorandum.

²⁸ See *Preliminary Results 2013-2014*, PDM at 11-12.

²⁹ See *Preliminary Results 2013-2014*, PDM at 12-14.

³⁰ *Id.* at 14, and Comment 6 of this memorandum.

³¹ See Jindal SAW Preliminary Calculation Memorandum.

³² See *Preliminary Results 2014*, PDM at 15-17.

³³ See Comment 1 of this memorandum.

³⁴ See Comment 2 of this memorandum.

2013-2014 is legally unsustainable on various grounds.³⁵

As explained below in the Department's Position under Comment 2, the Department's analysis regarding this program changed from the *Preliminary Results 2013-2014*.

Jindal SAW 5.61 percent *ad valorem*

Programs by State Government of Maharashtra (SGOM)

7. SGOM Sales Tax Program (1988)³⁶

In its case brief, the GOI alleged that the Department did not conduct a complete analysis of all elements (specifically, financial contribution and specificity) in determining the countervailability of this program.³⁷ As explained below in the Department's position under Comment 6, the Department's analysis regarding this program remains unchanged from the *Preliminary Results 2013-2014*.

Jindal SAW: 0.04 percent *ad valorem*

8. SGOM Subsidies Under the Package Scheme of Incentives (PSI) 2007³⁸

a. IPS VAT and CST Refund

Jindal SAW: 0.37 percent *ad valorem*

b. State of Maharashtra Electricity Duty Exemption Scheme

Jindal SAW: 0.07 percent *ad valorem*

Programs by State Government of Gujarat (SGOG)

9. SGOG VAT Remission Scheme Established on April 1, 2006³⁹

In its case brief, the GOI raised issues related to the Department's analysis of all elements in determining the countervailability of this program.⁴⁰ As explained below in the Department's position under Comment 6, the Department's analysis regarding this program remains unchanged from the *Preliminary Results 2013-2014*.⁴¹

Jindal SAW: 0.01 percent *ad valorem*

³⁵ See Comment 1 of this memorandum.

³⁶ See *Preliminary Results 2013-2014*, PDM at 18.

³⁷ See Comment 6 of this memorandum.

³⁸ See *Preliminary Results 2013-2014*, PDM at 18-20.

³⁹ See *Preliminary Results 2013-2014*, PDM at 20-21.

⁴⁰ See Comment 6 of this memorandum.

⁴¹ See *Preliminary Results 2013-2014*, PDM at 20-21.

Programs by the State Government of Uttar Pradesh (SGUP)

10. Exemption From Entry Tax for the Iron and Steel Industry⁴²

Jindal SAW: 0.02 percent *ad valorem*

B. Programs Determined to Be Not Used or to Provide No Benefit During the POR

The Department has made no changes to its preliminary findings regarding the following programs.⁴³ No issues were raised by interested parties in case and rebuttal briefs regarding these programs. We continue to find that, for these final results, the following programs were not used by Jindal SAW during the POR:

GOI Programs

Duty Exemption/Remission Schemes

1. Duty Free Import Authorization (DFIA) Scheme

Subsidies for Export Oriented Units

2. Duty Drawback on Fuel Procured from Domestic Oil Companies
3. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area (DTA)¹.

Other Countervailable Subsidies Provided by the GOI

4. Market Development Assistance (MDA) Scheme
5. Market Access Initiative
6. GOI Loan Guarantees
7. Status Certificate Program
8. Income Tax Exemption Program Under Section 80-IB of Income Tax Act
9. Target Plus Scheme

Subsidies for Producers and Exporters Located in Special Economic Zones

10. Duty Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material
11. Exemption from Payment of CST on Purchases of Capital Goods and Raw Materials, Components Consumables, Intermediates, Spare Parts and Packing Material
12. Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit
13. SEZ Income Tax Exemption
14. SEZ Service Tax Exemption
15. Steel Development Fund
16. Provision of Captive Mining Rights for Coal
17. Provision of High-Grade Iron Ore for LTAR

⁴² See *Preliminary Results 2013-2014*, PDM, t 20-21.

⁴³ See *Preliminary Results 2013-2014*, PDM at 20-21.

Programs by State Government of Andhra Pradesh (SGAP)

Subsidies under SGAP Industrial Investment Promotion Policy (IIPP)

18. Grant Under the SGAP IIPP: 25 percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas
19. Grant Under the SGAP IIPP: Reimbursement of Power at the Rate of Rs.0.75 per Unit
20. Grant Under the SGAP IIPP: 50 percent Subsidy for Expenses Incurred for Quality Certification
21. Grant Under the SGAP IIPP: 50 percent Subsidy on Expenses Incurred in Patent Registration
22. Grant Under the SGAP IIPP: 25 percent Subsidy on Cleaner Production Measures
23. Tax Incentives Under the SGAP 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
24. Tax Incentives Under the SGAP IIPP: 25 percent Reimbursement on Value Added Tax, CST, and State Goods and Services Tax
25. Tax Incentives Under the SGAP IIPP: Exemption from the SGAP Non-agricultural Land Assessment
26. Provision of Goods and Services for LTAR Under the SGAP IIPP: Provision of Infrastructure for Industries Located More Than 10 Kilometers from Existing Industrial Estates or Development Areas
27. Provision of Goods and Services for LTAR Under the SGAP IIPP: Guaranteed Stable Prices and Reservation of Municipal Water

Subsidies Provided by the Andhra Pradesh Industrial Investment Corporation (APIIC)

28. APIIC's Allotment of Land for LTAR
29. APIIC's Provision of Infrastructure

Programs by State Government of Gujarat (SGOG)

30. Provision of Land Use Rights for LTAR under the Gujarat Industrial Development Corporation Estate Scheme
31. SGOG's Critical Infrastructure Project Scheme
32. SGOG's Scheme for Assistance to Industrial Parks/Industrial Estates Set Up by Private Institutions
33. Gujarat Industrial Investment Corporation Financing
34. SGOG SEZ Act: Exemptions from Payment of Sales Tax, Stamp Duty and Registration Fees

Programs by State Government of Maharashtra (SGOM)

35. SGOM Provision of Land for LTAR
36. Refunds of Octroi Under the Package Scheme of Incentives 1993 (Octroi Refund Scheme)
37. Octroi Loan Guarantees
38. Waiving of Loan Interest by SICOM
39. Investment Subsidies

Programs by State Government of Haryana

40. Reduced VAT Rates for Inputs and Raw Materials
41. Land and Infrastructure Provided in HSIIDC Industrial Estates for LTAR

Programs by the State Government of Uttar Pradesh (SGUP)

42. Interest Free Loans Under the SGUP Industrial Development Promotion Rules 2003

C. Programs Preliminarily Determined to Be Terminated

43. Pre/Post-Shipment Export Financing (USD)

VI. FINAL RESULTS OF REVIEW

Based on the analysis provided below, we determine the net total *ad valorem* subsidy rate for these final results is as follows:

Company	Net Subsidy Rate
Jindal SAW	14.41 percent (<i>ad valorem</i>)

VII. ANALYSIS OF COMMENTS

Comment 1: Whether Jindal SAW's mining rights of iron ore are a countervailable subsidy

Jindal SAW's Case Brief

Jindal SAW's mining rights are not specific under the Act and are, thus, not countervailable

- The Department failed to conduct a detailed analysis of the record and provide an articulation of its analysis and reasons for its findings to establish specificity. Jindal SAW did not satisfy any criterion required to establish specificity.⁴⁴
- The Department's analysis focused on assumptions rather than record evidence and was thus arbitrary and capricious.⁴⁵
- The record establishes that Jindal SAW did not receive iron ore for less than adequate remuneration (LTAR) or a mining lease at a preferential rate. The mining and processing costs paid by Jindal SAW outweigh any benefit received.⁴⁶
- There is no finding of a *de jure* subsidy with respect to Jindal SAW's mining rights, and thus, the Department's analysis must focus on *de facto* specificity, in accordance with section 771(5A)(D)(iii) of the Act.
- The Department failed to examine specificity fully in light of the four criteria of section

⁴⁴ See Jindal SAW's Letter to the Department, dated December 12, 2016 (JS Case Brief) at 2.

⁴⁵ *Id.*, referencing *Zhaoqing Tifo New Fibre Co. v. United States*, 60 F. Supp. 3d 1328, 1343 (CIT 2015); *West Deptford Energy, LLC v. FERC*, 766 F.3d 0,21, 412 U.S. App. D.C. 295 (D.C. Cir. 2014); and *NMB Singapore Ltd. v. United States*, 557 F.3d 1316, 1319 (Fed.Cir. 2009).

⁴⁶ *Id.*, at 2-3.

771(5A)(D)(iii) of the Act. This analysis is completely missing.⁴⁷

- The Department solely relied on a separate and distinct proceeding, assuming the same set of facts and circumstances exist in this case without examining Jindal SAW's mining rights granted by the SGOR.⁴⁸ In *RZBC Group*, the Department based its specificity analysis on hard statistical data and a full list of all industries that purchased the material being investigated.⁴⁹
- Determining the specificity of the subsidy in question is a *sine qua non* criterion for concluding whether or not a program can be a countervailable subsidy, as made clear in *ADM*, where the Department stated that there was very little data on the record with respect to dominant users.⁵⁰
- The GOI clearly stated that the granting of mining rights is not a specific subsidy program, and that no such program even exists. The Department cannot arbitrarily conclude that this position is unsupported.⁵¹
- There is no record evidence to suggest that mining rights are provided to a limited or specific group of industries, and the Department's analysis relies on the approval process of the GOI. This makes the Department's decision deficient and uncorroborated.⁵²
- Jindal SAW is not part of a statutorily specific group of companies receiving mining rights. There must be a definitive and identifiable group or category of recipients under a program for the program recipients to be considered limited in number, and thus favored.⁵³
- The Department's conclusion that Jindal SAW is part of a specific group because it manufactures steel products is unsupported by record evidence, such as a selective award basis, or limits on the number of mining leases that are approved by the GOI.
- Jindal SAW clearly stated in its responses that mining rights are granted on a first come, first serve basis, and that it held the lease to the magnetite seam because it is close to its Bhilwara plant. Further, leases are allocated to companies that operate across several industries.⁵⁴
- Jindal SAW reported all the information and data it held concerning mining rights and should not be penalized because the GOI's response was not as fulsome as expected.⁵⁵

⁴⁷ *Id.*, at 4 and 6.

⁴⁸ *Id.*, at 3 and 4. In support of its claim that the Department failed to conduct a complete analysis of the criteria of *de facto* specificity, in accordance with section 771(5A)(D)(iii) of the Act, Jindal SAW cites to *RZBC Group Shareholding Co. v. United States*, 100 F. Supp. 3d 1288, 1296 (CIT 2015) (*RZBC Group*), which examined a Departmental determination where, where Jindal SAW argues, the Department based its *de facto* specificity analysis on hard statistical data, in accordance with section 771(5A)(D)(iii) of the Act.

⁴⁹ *Id.*, at 4.

⁵⁰ *Id.*, at 4-5; see *Archer Daniels Midland Co., v. United States*, 968 F. Supp. 2d 1269, 1273 (CIT 2014) (*ADM*) (“... the Department in its administrative decision concluded that there was ‘insufficient data to make a finding that power generators are the ‘predominant users’ or receive a ‘disproportionate share’ of steam coal. Although the Government of China had provided the Department with secondary and tertiary data on China’s coal industry in general, the Department still determined that there was very little data on the record with respect to predominant users of steam coal in China.”)

⁵¹ *Id.*, at 6.

⁵² *Id.*, at 6-8.

⁵³ *Id.*, at 6-7.

⁵⁴ *Id.*, at 7-8 and 11.

⁵⁵ *Id.*, at 7.

- The Department’s standard appendix and the captive mining rights appendix are comprised of a list of standard questions. In light of the GOI’s position that the program is inapplicable, it would be incumbent on the Department to pose specific questions to the GOI.
- The Department does not explain on what basis it concludes that the granting of mining rights is limited to the OCTG and steel industries.⁵⁶
- The legal standard for specificity focuses on “‘the *de facto* case by case effect of benefits provided to recipients rather than on the nominal availability of benefits.’”⁵⁷
- The Department errs in assuming that, because steel companies may be identifiable as recipients of mining rights, this means that those companies are a specific category of recipients, especially as the Department itself includes mining companies as recipients of mining leases.⁵⁸
- In *Roses Inc. v. United States*, the Court upheld the Department’s finding that if benefits constituting bounties or grants were being provided to an entire sector of the economy, the recipients did not meet the statutory definition of an “industry or group of industries,” meaning that they are not a discrete class of grantees.⁵⁹
- In the instant proceeding, the Department attempts to classify all mining companies, steel manufacturers, and manufacturers that rely on minerals, as a discrete or specific class upon which a benefit is conferred.⁶⁰
- The Department incorrectly relied on *Hot-Rolled Steel 2006*, assuming its relevance to the current review.⁶¹
- *Hot-Rolled Steel 2006*, which included the Steel Ministry Report, mentions that iron ore is mined by both steel producers and mining companies, which themselves comprise a large number of industries. In addition, this report reiterates findings from an UNCTAD 2003-2004 Report, stating that the iron ore market in India is highly fragmented.⁶²
- The Hoda Committee Report, also part of the *Hot-Rolled Steel 2006* decision, further states that “the current law does not make investment in industry based on the mineral a necessary condition for grant of a ML, nor does it mandate any outright preference to be given to metal producers.”⁶³
- Thus, the Department incorrectly relied on *Hot-Rolled Steel 2006* to find specificity in this case. Its finding was not supported by the facts on the record of this administrative

⁵⁶ *Id.*, at 9.

⁵⁷ *Id.*, at 9, Jindal SAW citing *Cabot Corp. v. United States*, 12 CIT 664, 674, 694 (CIT) ((*Cabot II*); see also, *Cabot Corp. v. United States*, 9 CIT 489, 497 (CIT 1985) (*Cabot I*).

⁵⁸ *Id.*, at 9-10, Jindal SAW citing to *PPG Industries v. United States*, 928 F.2d 1568, 1577 (Fed. Cir.) 1991 (*PPG Industries*).

⁵⁹ *Id.*, at 10, Jindal SAW citing *Roses, Inc. v. United States*, 15 C.I.T. 465; 774 F. Supp.1376 (CIT 1991) (*Roses*).

⁶⁰ *Id.*, at 10-11.

⁶¹ *Id.*, at 11, Jindal SAW referencing the Department’s reliance in the *Preliminary Results 2013-2014 on Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results of Countervailing Duty Administrative Review*, 73 FR 1578, 1591 (January 9, 2008) (*Prelim Hot-Rolled Steel 2006*), and unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) (*Final Hot-Rolled Steel 2006*) (collectively, *Hot-Rolled Steel 2006*).

⁶² *Id.*, at 11-12.

⁶³ See *Hot-Rolled Steel 2006*, Hoda Committee Report, at 143.

review.⁶⁴

- The Department failed to conduct a complete specificity analysis and disregarded on a wholesale basis the remaining three criteria for determining specificity. It has not established that Jindal SAW is a predominant user of the mining rights program or that it received a disproportionately large amount of the subsidy. Moreover, it has not taken a statistical approach to determining the benefit received relative to other producers in the industry.⁶⁵

Jindal SAW did not avail itself of benefits with respect to mining rights

- The Department's conclusion that the procurement of iron ore under the mining lease confers a benefit or an unfair competitive advantage to Jindal SAW is without factual support on the record.
- The royalties and payments made by Jindal SAW to the GOI and the SGOR are not benefits and do not constitute the provision of goods or services for LTAR. Thus, the Department's conclusion that the purported benefits are countervailable is not in accordance with the law, *i.e.*, section 771(5)(D) of the Act.⁶⁶
- The granting of mining rights could only possibly fit section 771(5)(D)(iii) of the Act, as a provision of goods and services. However, the Department can only determine or measure the benefit to a foreign producer after it has found that a specific subsidy exists, so that it can measure the adequacy of remuneration.⁶⁷
- The Department is required, under section 771(E)(iv) of the Act, to determine the extent or adequacy of the benefit in relation to prevailing market conditions for the good or service being provided.⁶⁸
- The record does not satisfy any of the statutory or regulatory criteria governing benefit. Jindal SAW must pay the GOI for any ore mined at a commercially mandated price.⁶⁹
- The iron ore mined cannot be used for steel production without additional value-added processing, and the royalty paid to the GOI is market based.⁷⁰
- The iron ore mined is 30 percent iron ore content, and the royalty paid to the GOI is paid on an iron ore content of 65 percent. Hence, Jindal SAW's high value-added costs of processing the mined iron ore for consumption or resale as finished pellet leaves no calculable benefit.⁷¹

Jindal SAW's mining rights are not tied to subject merchandise and are thus not countervailable

- Jindal SAW's mining rights of iron ore are not tied to subject merchandise and are not countervailable. Untied subsidies are presumed to benefit an exporter in general and are therefore allocated to its total business. As a cash subsidy, money is fungible, *i.e.*, it frees

⁶⁴ See JS Case Brief, at 12-13.

⁶⁵ *Id.*, at 13-15.

⁶⁶ *Id.*, at 15-16.

⁶⁷ *Id.*, at 16.

⁶⁸ *Id.*, at 17.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*, at 18.

up revenue that may be applied to other purposes.⁷²

- In *Kajaria Iron Castings Pvt. Ltd. v. United States*, the court reviewed the Department's reasoning that a certain deduction was an untied export subsidy and its allocation of that benefit over respondent's total exports.⁷³ The court held that the Department erred in countervailing those benefits that were tied to merchandise not within the scope of the review. That is, a subsidy tied to non-subject merchandise does not become countervailable by virtue of its benefitting the company as a whole.⁷⁴
- The Department has not established that the benefit under the mining lease is tied to the production of OCTG products at the Nashik plant (which uses only purchased billets), and that the alleged benefit available under the mining rights program is exhausted in the manufacture and commercial sale of iron ore pellets.⁷⁵
- The benefit from the mining rights program is not tied to subject merchandise and is an untied subsidy attributable to the total exports or sales of Jindal SAW. It is tied to the production and sale of non-subject merchandise in the form of iron ore pellets to the domestic Indian market.⁷⁶

This program was not found to be countervailable in the investigation with respect to Jindal SAW

- In the investigation, the Department did not find this program to be countervailable. Arbitrarily, without cause or notice, the Department determined that Jindal SAW was availing of a subsidy, when this program was previously found to be not utilized.⁷⁷
- In accordance with *Nippon Steel Corp.*,⁷⁸ the Department is required to explain why it is changing its prior determination, not only the fact that it did. Its reasons must be supported by substantial evidence. Otherwise, the change is arbitrary.⁷⁹
- In the investigation of this proceeding, the Department found that Jindal SAW neither used nor benefitted from this program.⁸⁰ This is confirmed by the verification reports from the investigation and on the record of this review.⁸¹
- Jindal SAW provided the original verification report to support its claim that no facts have changed with respect to the use of programs since the investigation.⁸²
- Contrary to its findings in the investigation, the Department provided no factual evidence on the record to support its treatment of the mining rights of iron ore as a domestic

⁷² *Id.*, at 18-19, Jindal SAW referencing *Kiswok Indus. Pvt. Ltd. v. United States*, 28 C.I.T. 774, 786-787 (CIT 2005).

⁷³ *Id.*, 19, Jindal SAW citing to *Kajaria Iron Castings Pvt Ltd. v. United States*, 156 F.3d 1163, 1174-75 (Fed. Cir. 1998).

⁷⁴ *Id.*, at 19-20.

⁷⁵ *Id.*, at 20.

⁷⁶ *Id.*

⁷⁷ *Id.*, at 21; Jindal SAW referencing *SKF USA Inc. v. United States*, 263 F. 3d 1369, 1382 (Fed. Cir. 2001).

⁷⁸ See *Nippon Steel Corp.*, 494 F.3d 1371 at 1378 (Fed.Cir. 2007).

⁷⁹ *Id.*, at 21; Jindal SAW citing *Huvis Corp. v. United States*, 525 F. Supp. 2d 1370 (Ct. Int'l Trade 2007).

⁸⁰ *Id.*, at 22; see also *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 Final Determination*), and accompanying Issues and Decision Memorandum (IDM), at 37.

⁸¹ See Jindal SAW Ltd. First Supplemental Questionnaire Response, dated August 26, 2017 (Jindal SAW SQR1), at 4-5 and Exhibit 93.

⁸² See JS Case Brief, at 22.

subsidy. Thus, its determination was arbitrary and capricious and not in accordance with law or fact.⁸³

The Department failed to provide the GOI the opportunity to cure deficiencies on the record

- Upon investigating the captive mining rights program, the Department failed to follow proper procedures and precedent, in accordance with section 782(d) of the Act, by not promptly informing the GOI of the deficiency and providing an opportunity to remedy or explain the deficiency, upon which the Department was seeking additional information.⁸⁴
- Based on the information on the record, *i.e.*, the Department's initial and supplemental questionnaires and the GOI's questionnaire responses, the Department failed to promptly and specifically identify the deficiencies on which it required the GOI to respond.⁸⁵
- The Department issued a generic supplemental questionnaire six months after the GOI filed its initial response. The Department generally requires a response from respondents within two weeks or less.⁸⁶
- The Department failed to clearly and specifically identify the information sought by: (1) asking the GOI to opine as to whether Jindal SAW benefited from the program; and (2) answering all relevant questions from the initial questionnaire.⁸⁷
- In both of its responses, the GOI clarified that there is not a program entitled "Captive Mining Rights," and that, accordingly, there is no basis for Jindal SAW to benefit from this program.
- The GOI stated in both responses that it does not control the production or sale of steel or any raw material inputs associated with the steel production, and that there is no identifiable subsidy program. Thus, no benefit can be conferred.⁸⁸

GOI's Case Brief

The Department's determination in the preliminary results with respect to this program is legally unsustainable

- The Department's countervailability determination on captive mining rights in the preliminary results is unsustainable, and inconsistent with the United States' obligations under the ASCM, the Act, and the Department's regulations.⁸⁹
- First, the Department attempts to change the name of the program for which it initiated the administrative review. In the final determination of the investigation, an alleged program called "Provision of Captive Mining Rights for Iron Ore" was investigated and determined not to be used. In this subsequent administrative review, the questionnaire contained an alleged program by the same name, to which the GOI submitted an appropriate and timely reply.
- In the preliminary results, the Department has altered the alleged program to read

⁸³ *Id.*, at 22-23.

⁸⁴ *Id.* at 23-24, Jindal SAW citing to *Mukand, Ltd. v. United States*, SLIP OP .2013-41 (CIT 2013).

⁸⁵ *Id.*, at 24-25.

⁸⁶ *Id.*, at 25.

⁸⁷ *Id.*, at 25-26.

⁸⁸ *Id.*, at 25-26.

⁸⁹ See GOI's Letter to the Department, dated November 12, 2016 (GOI Case Brief), at 17.

“Provision of Captive Mining Rights for Iron Ore (GOI and State Government of Rajasthan).” To consider this program to be countervailable is a new fact.⁹⁰

- The Department is unilaterally attempting to change the program on which it initiated the investigation and this review, which is against the statutory mandate of section 702 of the Act, and its belated attempt to change the nomenclature is a deliberate attempt to bypass the statutory mandate. In addition, the SGOR was not mentioned in any of the Department’s questionnaires issued to the GOI.⁹¹

The Department must sufficiently support its selection of “facts available” as a “reasonable” replacement for missing “necessary information”

- Despite the GOI’s timely responses, and contrary to Article 12.7 of the ASCM, the Act, and 19 CFR 351.308, the Department decided to rely on “facts available” to preliminarily determine the existence of this program.
- Any adverse inference drawn by the Department is contrary to the submissions made by the GOI regarding the schemes reviewed, and will be treated as inconsistent with Article 12.7 of the ASCM, unless the Department provides an adequate explanation and analysis that the “facts available” are only used to replace missing “necessary information.” They cannot be made based on non-factual assumptions or speculations.⁹²
- For its facts available finding, the Department relied on its own findings in *Hot-Rolled Steel 2006*, to preliminarily determine that the provision of iron ore under this program constitutes a financial contribution.
- The GOI notes that the *Hot-Rolled Steel 2006* decision was successfully challenged by the GOI before the Dispute Settlement Panel (DSP), which held that the Department “did not have sufficient basis to properly determine the existence of the Captive Mining of Iron Ore Programme, . . . and failed to determine the existence of the Captive Mining of Iron Ore Programme on the basis of accurate information, as required by Article 12.5.”⁹³
- The Department did not portray the requisite objectivity expected in line with its obligations under the ASCM by not using the market price of iron ore from the Indian Bureau of Mines, and relying instead on 2007 world market prices, adjusted for inflation.⁹⁴

The alleged program does not constitute a subsidy within the meaning of Article 1 of the ASCM or Section 771(5)(B) of the Act

- In the present case, the alleged program, assuming that such a program exists, does not meet any of the criteria listed in section 771(5)(B) of the Act. It does not involve a provision of any goods or services so as to fall within the ambit of section 771(5)(D)(iii)

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*, at 18; GOI citing to *Appellate Body Report, United States – Countervailing Measures on Certain Hot Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R, Report dated December 8, 2014 (*US-Hot-Rolled Steel (December 8, 2014)*); and *Appellate Body Report, United States – Countervailing Duty Measures on Certain Products from China*, WT/DS437/AB/R, Report dated December 18, 2014.

⁹³ *Id.*, at 18-19; GOI citing *Report of the Panel, United States – Countervailing Measures on Certain Hot Rolled Carbon Steel Flat Products from India*, WT/DS436/R, Report dated July 14, 2014 (*US-Hot-Rolled Steel (July 14, 2014)*).

⁹⁴ *Id.*, at 19.

of the Act.

- Contrary to the Appellate Body’s interpretation of “provision of goods and services” in *US-Softwood Lumber IV*, in the case of mining rights, the rights to mine or extract coal or iron ore do not necessarily and inevitably lead to a right over the iron ore or coal.⁹⁵
- Further, the Appellate Body in *US-Hot-Rolled Steel* (December 8, 2014) pointed out that the “reasonably proximate test,” as laid down in *US-Softwood Lumber IV*, required an examination of the complexity and uncertainty of mining rights arrangements that should not be avoided because it “lacks legal certainty.”
- In *US-Softwood Lumber IV*, the good was standing trees, and not felled trees. However, the Appellate Body erred with respect to the “good” in *US-Hot-Rolled Steel* (December 8, 2014) by holding that the “rights over extracted iron ore and coal follow as a natural and inevitable consequence of the steel companies’ exercise of their mining rights.”⁹⁶
- The phrase “natural and inevitable consequence” cannot lead to a “natural and inevitable” right to coal or iron ore. It is submitted that the productivity of the miner is a major variable, and that a series of significant actions performed by the beneficiary are at its own risk and cost, in order to derive the tangible output from the grant of an intangible right. Hence, the Appellate Body’s interpretation did not indicate an objective consideration.⁹⁷
- The Canada Border Services Agency, in an investigation of OCTG from various countries, including India, held that the provision of captive mining rights for minerals, including iron ore and coal, did not constitute a financial contribution from any level of government.⁹⁸
- Pursuant to section 771(5)(B) of the Act, the Department has to establish both the existence of a financial contribution and a consequent benefit. In the instant case, there is no benefit to the alleged beneficiaries. Article 14(d) of the ASCM states that there is no benefit, unless the provision is made for less than adequate remuneration.⁹⁹
- The allocation of mining rights over iron ore is done on the basis of an open auction where the prices enterprises pay for these rights are determined by a market-based mechanism. Given the above, it is incumbent on the Department to demonstrate that the financial contribution leads the recipients to be better off than they would be absent that contribution.¹⁰⁰

Domestic Interested Parties’ Rebuttal Brief

The provision of iron ore mining rights is a countervailable subsidy and is correctly calculated

- Contrary to Jindal SAW’s argument that iron ore mining rights in India are not specific to

⁹⁵ *Id.*, at 20; GOI citing *Appellate Body Report, United States – Final Countervailing Duty Determination with respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, Report dated January 19, 2004 (*US-Softwood Lumber*).

⁹⁶ *Id.*

⁹⁷ *Id.*, at 20-21.

⁹⁸ *Id.*, at 21.

⁹⁹ *Id.*

¹⁰⁰ *Id.*, at 22.

any industry or group of industries, it is not possible to imagine that the GOI supplies iron ore mining rights broadly to Indian businesses outside the mining- and steel industries.

- Mining rights are predominantly used by mining companies and by some users of downstream iron and steel manufacturers. That is, mining rights are not broadly and generally distributed.¹⁰¹
- The legal standard for specificity is defined in section 771(5A)(D)(iii) of the Act and the SAA, which states that “government assistance that is both generally available and widely and evenly distributed throughout the jurisdiction of the subsidizing authority is not an actionable subsidy.”¹⁰²
- As stated in the *Preliminary Results 2013-2014*, Jindal SAW applied in 2005 for a lease for magnetite iron ore, which had to be approved by the GOI and the SGOR. Jindal SAW became the only miner of magnetite iron ore, and in return, had commit to a specific level of investment and was not allowed to sell the ore on the open market.
- In *Hot-Rolled Steel 2006*, the Department determined that the provision of mining rights constitutes a countervailable subsidy, and falls under the definition of a direct provision of a good to a firm by a government entity, and as such, constitutes a program.
- In a recent Section 129 proceeding,¹⁰³ the Department reaffirmed that the provision of mining rights is specific because it is limited to two industries, steel producers and mining companies.¹⁰⁴
- In this review, the Department asked the GOI twice to respond to its Standard Questions Appendix and to its specific questions in the Captive Mining Rights Appendix regarding the provision of mining rights for iron ore, but the GOI refused to respond both times, arguing that there was no such program.¹⁰⁵
- As the GOI refused to respond to the questionnaires, the Department’s use of facts available for this program was based on the *Hot-Rolled Steel 129 Implementation Memo*. The Department also noted that the GOI had to approve the program, and that Jindal SAW was the only captive producer of magnetite iron ore in India, indicating that at most a small group of companies in the steel industry received such rights.¹⁰⁶
- Jindal SAW’s argument that the Department must first conduct a mathematical and exhaustive analysis as to whether it receives a disproportionate amount of the subsidy, and whether the way the GOI exercised discretion indicates that some are favored over others, rests on legal and factual errors.¹⁰⁷
- Legal precedent has rejected the idea of conducting a specificity analysis based on a

¹⁰¹ See Petitioners’ Letter to the Department, dated December 19, 2016 (Petitioners Rebuttal Brief), at 1-2.

¹⁰² *Id.* at 2; Petitioners citing Uruguay Round Trade Agreement, Statement of Administrative Action, Agreement on Subsidies and Countervailing Measures, H.R. DOC. NO. 316, 103d Cong., 2d Sess., Vol.1, 911, 914 (September 27, 1994) (SAA).

¹⁰³ See Memorandum from Christian Marsh to Paul Piquado, Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India, WTO/DS436, at21-25 (April 14, 2016) (*Hot-Rolled Steel 129 Implementation Memo*).

¹⁰⁴ *Id.*, at 3.

¹⁰⁵ *Id.*, at 3-4.

¹⁰⁶ *Id.*, at 4.

¹⁰⁷ *Id.*, at 4-5.

precise mathematical formula in favor of an analysis based on judgement and balance.¹⁰⁸

- It is enough for the Department to determine that the subsidy is specific to the mining industry, the steel industry, or any limited number of industries or groups of industries, whether or not the industries to which the subsidy is specific are respondents in the investigation.¹⁰⁹
- In the absence of conclusive evidence to the contrary, the Department's findings that the program was specific to the hot-rolled steel industry and mining industry, constitute strong evidence that the program is specific to the OCTG industry.¹¹⁰
- In the instant case, there is no evidence showing that the program is non-specific, and Jindal SAW disregards the point that, due to the GOI's repeated refusal to respond to questions about the program, the Department could not conduct a mathematical analysis.¹¹¹
- *ADM*, as cited by Jindal SAW in this context, does not fit the instant situation because there, the Government of China (GOC) did not possess (nor was it otherwise available) the information the Department asked for, so the Department had no information that would allow it to find the program was specific.¹¹²
- Another difference with *ADM* is that mining for minerals is not as ubiquitous an activity as generating power. In contrast to the provision of iron ore mining rights, which are much more likely to be a type of financial contribution specific to or disproportionately used by particular industries, the provision of steam coal benefitted power generators, and many industries generate their own power.¹¹³
- The lack of evidence is attributable to the GOI's refusal to respond; it was intentional and made in awareness of the Department's previous findings regarding the GOI's provision of iron ore mining rights. Hence, the GOI must expect the Department to use facts available.¹¹⁴
- Jindal SAW tried to make the program non-specific by arguing that the GOI has a different program, provision of mining rights of all kinds, because it goes to miners and users of other types of minerals. However, industries that mine gold, silver, lead, etc., are all in the same industry, the mining industry.
- Further, the fact that other companies may benefit from different programs is not relevant to whether a given program exists or is specific. And the Department previously found the provision of iron ore to exist.¹¹⁵

¹⁰⁸ *Id.*, at 5; Petitioners referencing *PPG Indus. v. United States*, 928 F.2d 1568, 1576 (Fed. Cir. 1991).

¹⁰⁹ *Id.*; Petitioners referencing section 771(5A)(D)(iii) of the Act, and *Samsung Elecs. Co. v. United States*, 100 F. Supp. 3d 1320 (CIT 2014).

¹¹⁰ *Id.*, at 6.

¹¹¹ *Id.*

¹¹² *Id.*; Petitioners citing to *ADM*.

¹¹³ *Id.*, at 7.

¹¹⁴ *Id.*

¹¹⁵ *Id.*, at 8.

- Even if captive producers of other downstream products do not sell the minerals they mine, Jindal SAW's argument would still fail because: (1) the program would still benefit predominantly or disproportionately a group of industries and (2) even if some of the industries using mining rights were considered to be in a different group of industries, the number of groups of industries receiving the subsidy would still be "limited in number," within the meaning of section 771(5A)(D)(iii)(I).¹¹⁶
- Again, a mathematical analysis of market shares and subsidy shares by industry is not possible because (1) Jindal SAW's argument involves a hypothetical program that has neither been investigated nor reviewed by the Department, and (2) the GOI refused to answer questions about the program the Department did review.¹¹⁷
- The Court decisions cited by Jindal SAW, *PPG Industries* and *Roses*, actually confirm the Department's determination in the preliminary results and in *Hot-Rolled Steel 2006*, that mining rights are disproportionately used by a single industry or group, the mining industry, and are limited to a group of industries, metals or minerals.¹¹⁸

The Provision of leases to mine iron ore is a financial contribution and subsidy to Jindal SAW

- Because leases are an interest in land, the provision of leases for mining rights by a government is the provision of an interest in land, and Jindal SAW can no longer argue that the provision of land is not a financial contribution under section 771(5)(D) of the Act.
- With respect to Jindal SAW's claim that the royalties paid to the GOI and SGOR were market based, there is nothing to indicate that the GOI or SGOR sell the rights in any sort of market-based system. In fact, the SGOR requires Jindal SAW to maintain a certain level of investment to mine its iron ore and restricts the sale of mined iron ore. Hence, there is no question regarding the existence of a benefit under section 771(5)(E) of the Act.¹¹⁹

This program is not tied to non-subject merchandise

- In accordance with 19 CFR 351.525(b)(5)(i), the only basis for not attributing a subsidy to subject merchandise is demonstrating that, at the point of bestowal, the assistance was tied to the production of non-subject merchandise, and, thus, could not benefit the production of subject merchandise, regardless of how the subsidies are actually used by the recipient.¹²⁰
- Jindal SAW has not demonstrated that the GOI or the SGOR intended, provided or knew, at the point of bestowal, that Jindal SAW would not use the iron ore to make OCTG. Moreover, Jindal SAW has not provided evidence showing that the pellets it sells are not made into subject OCTG by itself or others, or that the billets it consumes in its OCTG production are not made from iron ore supplied by the GOI or SGOR (the GOI owns all

¹¹⁶ *Id.*, at 9.

¹¹⁷ *Id.*

¹¹⁸ *Id.*, at 9-10.

¹¹⁹ *Id.*, at 11.

¹²⁰ *Id.*, at 12; Petitioners citing *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 1740 (March 26, 2012) (*Bottom Mount Refrigerators Korea*), and accompanying Issues and Decision Memorandum (IDM), at Comment 15.

iron ore in India).¹²¹

- Jindal SAW failed to demonstrate that the billets it consumes to produce OCTG at Nashik were acquired from unaffiliated parties and what iron those vendors used to produce those billets.¹²²
- Jindal SAW refers to a beneficiation process used to reduce the potential processing costs its unaffiliated customers may incur, but fails to explain who those customers are, and whether it also sells iron ore pellets to affiliated customers.
- Jindal SAW fails to discuss whether any of its customers provide sponge iron or steel for making billets that Jindal SAW buys to produce subject OCTG. Jindal SAW has failed to meet its burden of establishing that the benefits it receives under this program are not tied to subject merchandise.¹²³
- While the GOI and SGOR placed restrictions on the iron ore mined by Jindal SAW, it is not prohibited from using the iron ore to produce billets, directly or via a third party, for OCTG. Accordingly, while the iron ore may be used exclusively to produce non-subject merchandise, provision of the iron ore still would not be tied to the production of non-subject merchandise.
- Jindal SAW did not demonstrate that the iron ore it produces is never used to make OCTG, that the GOI or SGOR tied the provision of this subsidy to non-subject merchandise at the time of bestowal, or that neither Jindal SAW nor its affiliates use any of the iron ore it mines, to produce OCTG. Again, Jindal SAW has not met its burden of proof that this subsidy is tied to non-subject merchandise.¹²⁴

The Department did not need to give the GOI further opportunities to cure the deficiencies on the record

- Jindal SAW's arguments contradict each other, because Jindal SAW admits on the one hand that the GOI took the position that this program did not exist, and on the other hand, insists that had the Department asked more questions, the GOI would have answered them.
- Section 782(d) of the Act does not require the Department to give the GOI more chances to refuse to say anything.¹²⁵

Department's Position:

Use of Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and

¹²¹ *Id.*, at 13.

¹²² *Id.*, at 13-14.

¹²³ *Id.*, at 14.

¹²⁴ *Id.*, at 15-16; Petitioners citing to *Aluminum Extrusions From the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review*; 2013, 80 FR 77325 (December 14, 2015) (*Aluminum Extrusions from the PRC*), and accompanying Issues and Decision Memorandum (IDM), at 34.

¹²⁵ *Id.*, at 16-17.

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.

For the reasons explained below, the Department determines that the application of facts available is warranted with respect to this program.

GOI Control of Mining Rights and the Provision of Mining Rights for Iron Ore During the POR

As an initial matter, we disagree with the GOI that the Department's reliance on facts available in its preliminary determination is inconsistent with section 776(a) of the Act and 19 CFR 351.308.

As discussed and explained in the preliminary results, and contrary to Jindal SAW's assertion that the Department failed to provide the GOI with the opportunity to cure the deficiencies on the record, the Department gave the GOI multiple opportunities to respond to the Department's detailed questions in the initial- and supplemental questionnaires regarding the captive mining rights for iron ore program.¹²⁶

The Department's questionnaires specifically asked the GOI for: 1) responses to all items in the Standard Questions Appendix and the Captive Mining Rights Appendix;¹²⁷ 2) information on royalties charged by private landowners in India for the extraction of iron ore from their property; and 3) information regarding market prices in India for iron ore that is available to consumers in India.¹²⁸ As discussed, the GOI responded that it considered it unnecessary to respond to the Department's questions because there is no program called "Captive Mining Rights for Iron Ore,"¹²⁹ and the GOI does not exercise any "control over manufacturing, pricing, distribution, or marketing, neither on the steel products nor on the raw materials required for their production."¹³⁰ While the GOI and Jindal SAW both contend that the iron ore and steel sectors in India are deregulated, and that the GOI does not exercise any control over manufacturing, pricing, distribution, or marketing in either industry, we note that, despite the Department's numerous requests, the GOI did not provide the Department with any laws or regulations that would support its claim.¹³¹

¹²⁶ See *Preliminary Results 2013-2014*, PDM at 15-16.

¹²⁷ The Standard Questions Appendix requests information on financial contribution, specificity, and benefit. The Captive Mining Rights Appendix requests information on how the program operates and government involvement in the market for iron ore. See the Department of Commerce's Initial Countervailing Duty Questionnaire, dated January 4, 2016, at I-14 and Captive Mining Rights Appendix, and GOI IQR (February 16, 2016) at 133-137.

¹²⁸ See GOI IQR (February 16, 2016) at 133-137 and GOI SQR1 at 29.

¹²⁹ The Department stated in another proceeding that a rights to iron ore program, whether "captive" or not, still constitutes a rights to iron ore program. See *Hot-Rolled Steel 129 Implementation Memo*, at Comment 6.

¹³⁰ See GOI IQR (FEB 2016) at 133. The GOI contends that the Mines and Mineral Development and Regulation (Amendment) Act 2015, effective January 2015, requires iron ore mining concessions for purposes including consumption to be granted by means of auction, and that state governments have been granted the authority to hold auctions, granting mining concessions to the highest bidder. However, an examination of this law is irrelevant to the instant review since the effective date occurred after the POR. Moreover, the law itself has not been placed on the record of this review.

¹³¹ See GOI IQR (February 16, 2016) at 133 and GOI SQR1 at 29, and JS Case Brief, at 12 and 33.

In our supplemental questionnaire, we requested that the GOI confirm whether Jindal SAW participated in the provision of mining rights for iron ore program, and provide a complete description of this program.¹³² In its response, the GOI referred to its initial questionnaire response and restated that there is no program called “Captive Mining Rights for Iron Ore.”¹³³ Despite the fact that the supplemental questionnaire to the GOI was issued after Jindal SAW reported participating in this very program, and that the Department for the second time requested that the GOI “respond to all questions pertaining to the above program” included in the initial questionnaire, the GOI referred the Department to its initial questionnaire response, insisting that such questions were inapplicable.¹³⁴ That is, although the respondent, Jindal SAW, reported in its initial and in its second supplemental questionnaire responses that it participated in this program, the GOI continued its unsubstantiated claims that no such program exists.¹³⁵

Despite these claims, facts available support the determination that the GOI controls mines, minerals, and mineral rights in India. Specifically, Jindal SAW explained and provided the MOU with the SGOR which states that approval from the GOI is required. Without the approval of the GOI, the agreement between the respondent and the state government is null and void. Further, Jindal SAW stated that it is not allowed to sell the iron ore that it extracts pursuant to the MOU on the open market, and thus, has no information on market prices for iron ore identical to the iron ore it mines.¹³⁶ Thus, because Jindal SAW is the only miner of iron ore in India, the Department can determine, based on Jindal SAW’s information, that the GOI controls access to, and the sale of, mined resources in India. Therefore, the Department determines, as facts available, that the GOI continues to control the mining sector (*i.e.* mines, minerals, and mineral rights).

The GOI’s claim that the Department violated section 702 of the Act by unilaterally changing the name of the program it initiated on in the investigation and this review (*i.e.*, “Provision of Captive Mining Rights for Iron Ore”) by calling it a different name (*i.e.*, “Provision of Captive Mining Rights for Iron Ore (GOI and State Government of Rajasthan)”) does not have merit. We disagree with the GOI’s argument that the Department is unable to revise a program that it initiated upon in a CVD proceeding. In this proceeding, the Department reviewed the respondent’s information, which showed State of Rajasthan’s involvement in administering the program. The GOI also misconstrues the role of an investigation when it argues that a subsidy program alleged and initiated upon cannot be revised based upon the information gathered and obtained in the course of a proceeding. In fact, section 775 of the Act requires the Department to include within a CVD proceeding “a practice which appears to be a countervailable subsidy,” but was not alleged by the domestic industry. Accordingly, regardless of the precise name of the program alleged and initiated upon, if there is information indicating a possible subsidy, the Department will examine it.

¹³² See the Department of Commerce’s First Supplemental Questionnaire to the Government of India, dated September 14, 2016, at 5.

¹³³ See GOI SQR1 at 2.

¹³⁴ *Id.*

¹³⁵ See Jindal SAW IQR (APR 2016) at Exhibits 61 and 63, and Jindal SAW SQR2 at 12 and Exhibit 114.

¹³⁶ See Jindal SAW SQR2 at 12, and Jindal SAW IQR (APR 2016) at Exhibits 61 and 63, and Jindal SAW SQR2 at 18 and Exhibit 113 and 114.

While the GOI argues that the Department never mentioned the SGOR with respect to this program in its questionnaires, Jindal SAW clearly reported to the Department its participation in the GOI program “Provision of Captive Mining Rights for Iron Ore” and provided information demonstrating that the mining rights granted through this program were agreed to by the State of Rajasthan, but approved by the GOI. That is, in the instant case, Jindal SAW provided information demonstrating that it entered into an MOU with the SGOR, which had to be approved by the GOI. Accordingly, in the preliminary results, the Department simply clarified the SGOR’s involvement, as reported by Jindal SAW, by including in parentheses the names of the government entities involved in this program. This did not alter the details of the program, or indicate that the Department was reviewing a different program than what was initiated on in the investigation or this review. Thus, the Department’s investigation of this program was in accordance with law.

Financial Contribution and Specificity

As stated in the preliminary results, the Department relies on government-provided information to make its countervailability determination (particularly, with respect to financial contribution and specificity). However, as reiterated above, the GOI did not provide the information necessary for the Department to determine whether a financial contribution has been provided or whether the program in question is specific.

Regarding the Provision of Mining Rights for Iron Ore, the GOI failed to respond to the program-specific questions in both the initial questionnaire and the supplemental questionnaire, insisting that no such program exists. Accordingly, for this program, the GOI withheld requested information with respect to whether a financial contribution was provided and whether the subsidy was specific, in accordance with the Act. Therefore, the Department must resort to facts available for these determinations, and will rely on *Hot-Rolled Steel 2006* and *Hot-Rolled Steel 129 Implementation Memo*.¹³⁷ Specifically, we continue to rely on our findings in *Hot-Rolled Steel 2006* to determine that the provision of mining rights for iron ore under this program constitutes a financial contribution, in the form of a provision of a good, within the meaning of section (771)(5)(D)(iii) of the Act.¹³⁸ In *Hot-Rolled Steel 2006*, we stated that: “because record evidence indicates that the GOI maintains ownership of the mineral rights to iron ore...and thereby has control over whom it grants mining concessions for iron ore...the iron ore {respondent}...extracts from the ground {is} from the GOI. Therefore, {the}...mining of iron ore...constitute{s} a financial contribution, in the form of a provision of a good.”¹³⁹ Moreover, the Department determines that the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the provision of iron ore mining rights is limited to certain enterprises, specifically, steel producers and mining companies.¹⁴⁰ The *Hot-Rolled Steel 129 Implementation Memo* states that “the GOI’s provision of mining rights... {is} specific in

¹³⁷ *Id.*, at 21-25, and *Hot-Rolled Steel 2006*, IDM at 18 and Comment 25.

¹³⁸ See *Hot-Rolled Steel 2006*, IDM at 18 (unchanged in *Hot-Rolled Steel 129 Implementation Memo*).

¹³⁹ *Id.*, IDM at Comment 24.

¹⁴⁰ See *Hot-Rolled Steel 2006*, IDM at 18 and Comment 25, and *Hot-Rolled Steel 129 Implementation Memo*, at 24-25.

accordance with section 771(5A)(D)(iii)(I) of the Act, because the provision of the rights was limited to two industries, specifically steel producers and mining companies.”¹⁴¹

Therefore, consistent with *Hot-Rolled Steel 129 Implementation*, we continue to find as facts available the GOI provides mining rights for LTAR program, meaning that it received a financial contribution that was specific to the steel producing and mining industries.

Regarding the GOI’s arguments under the ASCM, we reiterate that we are conducting this administrative review pursuant to U.S. law, particularly the Act and the Department’s regulations. The Act and regulations are fully consistent with the ASCM. Therefore, because our decisions here are consistent with the Act and regulations, they are also consistent with our obligations under the ASCM. The GOI and Jindal SAW argue that the Department did not follow the proper steps in its *de facto* specificity analysis by not addressing each subsection of section 771(5A)(D)(iii)(I)-(IV) of the Act and that the provision of leases for mining rights does not constitute a financial contribution under section 771(5)(D) of the Act. These arguments are without merit. As discussed above, the GOI failed to provide the relevant information on the record of this review for the Department to make a determination on financial contribution and on specificity. Hence, we are relying on *Hot-Rolled Steel 2006* and on *Hot-Rolled Steel Implementation Memo*, where the Department based its determinations on section 771(5A)(D)(iii)(I) of the Act. Therefore, there is no need for the Department to conduct a specificity analysis based on sections 771(5A)(D)(iii)(II)-(IV) of the Act. Moreover, there is no need, for example, to compare entities that might have been expected to receive the subsidy with those that actually received the subsidy.

Furthermore, and despite Jindal SAW’s arguments, the circumstances in *ADM* are different than those in the present proceeding. In the proceeding underlying *ADM*, the Department determined that there was “insufficient data to make a finding that power generators are the ‘predominant users’ or receive a ‘disproportionate share’ of steam coal.”¹⁴² Accordingly, for the steam coal for LTAR program, because the other elements of *de facto* specificity had not been met, the Department concluded that the subsidy lacked specificity under section 771(5A)(D)(iii) of the Act.¹⁴³ In the litigation that followed, petitioners asserted, *inter alia*, that the Department ignored record evidence in concluding that the subsidy program lacked specificity. The Court rejected this assertion,¹⁴⁴ and also concluded, based on its questionnaire responses, that “the GOC {did}...not possess the specific steam coal data necessary to make an affirmative finding on ‘predominant use’ or ‘disproportionate share.’”¹⁴⁵ In the instant proceeding, the GOI did not claim that it does not possess the relevant information; rather, it failed to provide this information to the Department by claiming that the program in question does not exist, despite record evidence to the contrary. Accordingly, the Department based its financial contribution and specificity determinations for the mining rights program on facts available, looking to *Hot-Rolled Steel 2006* and *Hot-Rolled Steel 129 Implementation Memo*. In *Hot-Rolled Steel 2006*

¹⁴¹ See *Hot-Rolled Steel 129 Implementation Memo*, at 24.

¹⁴² See *ADM*, at 968 F.Supp.2d 1269, 1273.

¹⁴³ *Id.*, at 968 F. Supp. 2d 1269, 1273.

¹⁴⁴ *Id.*, at 968 F. Supp. 2d 1269, 1274-1275.

¹⁴⁵ *Id.*, at 968 F. Supp. 2d 1269, 1275,

and *Hot-Rolled Steel 129 Implementation Memo*, the Department concluded that “the GOI’s provision of mining rights was specific in accordance with section 771(5A)(D)(iii)(I) of the Act because the provision of the rights was limited to two industries, specifically steel producers and mining companies.”¹⁴⁶ Jindal SAW, as a mining enterprise and a producer of steel pipes and OCTG, belongs to that group of industries.

In addition, the Department’s determination in *Hot-Rolled Steel 2006*, as applied as facts available in the instant proceeding, is consistent with both *PPG Industries* and *Roses*. We agree with Jindal SAW that the court in *Roses* upheld the Department’s finding that the program at issue “had a single set of policy objectives and maintained a unitary administrative structure” and that “the program was designed to foster the development of agriculture in general.”¹⁴⁷ The Court further affirmed the Department’s finding that the program at hand did not function “to benefit discrete classes of grantees because of varying policies and broad discretionary authority.”¹⁴⁸ However, as Petitioners point out, and contrary to Jindal SAW’s claim to the contrary, mining rights for iron ore are granted to a limited number of recipients, *i.e.*, companies in the steel and mining industries. This is in contrast to *Roses*, where the grant at issue was provided to an entire sector of the economy, and the recipients did not meet the statutory definition of an “industry or group of industries,” *i.e.*, they were not a discrete class of grantees.¹⁴⁹ Moreover, *Roses* is inapposite as it examined the statutory criteria for specificity under a previous version of the Act.¹⁵⁰

Benefit

A benefit is conferred to Jindal SAW within the meaning of section 771(5)(E)(iv) of the Act, because Jindal SAW purchases the iron ore it mines from the GOI for less than adequate remuneration. While Jindal SAW has to pay royalties to the GOI for the mining rights, prevailing market conditions and our benefit calculations demonstrate that Jindal SAW obtains the iron ore for less than adequate remuneration. For a discussion on the determination and calculation methodology to derive a benefit, *see* Comment 2, below.

Attribution of Subsidy

We disagree with Jindal SAW’s claim that the provision of mining rights for iron ore is not tied to subject merchandise, and is thus not countervailable. First, under 19 CFR 351.525(b)(5)(i), if a subsidy is tied to the production or sale of a particular product, the subsidy will be attributed only to that product. However, Jindal SAW has not demonstrated that, at the point of bestowal by the GOI, the provision of mining rights was tied to the production of non-subject merchandise, and that accordingly, it should only be attributed to the production of non-subject merchandise.¹⁵¹ Rather, the record evidence demonstrates that the provision of mining rights is not tied to a particular product, within the meaning of 19 CFR 351.525(b)(5)(i). Specifically, the “Sanction Letter” and the MOU between Jindal SAW and the SGOR, as approved by the GOI,

¹⁴⁶ See *Hot-Rolled Steel 129 Implementation Memo*, at 24-25, and *Hot-Rolled Steel 2006*, at 18.

¹⁴⁷ See *Roses*, at 774 F. Supp. 1376, 1380.

¹⁴⁸ See *Roses*, at 774 F. Supp. 1376, 1378 and 1382-1384.

¹⁴⁹ See *Id.*

¹⁵⁰ See section 771(5) of the Act (1988).

¹⁵¹ See Jindal SAW IQR (APR 2016) at Exhibits 61 and 63, and Jindal SAW SQR2 at 12 and Exhibit 114.

does not contain terms limiting the granting of mining rights to the production of a particular product. Therefore, at the time of bestowal of the mining rights there is no evidence to support the claims that Jindal SAW must use the iron ore to produce non-subject merchandise. Therefore, consistent with our practice, the granting of mining rights is an untied domestic subsidy that is not related to the production of a particular product, and is, therefore, attributable to all products sold by Jindal SAW, in accordance with 19 CFR 351.525(b)(3).

We disagree with Jindal SAW and the GOI that the Department needs to arrive at the identical determination for a program from one segment to the next with respect to any particular program. Specifically, the Department is not obligated to find a specific program, like the provision of iron ore, “not used,” just because the respondent did not participate in the program in the original investigation. In fact, the Department should not do so if the record of one segment does not support the conclusions arrived at in a prior segment. The facts on the record of a specific administrative review are the basis for determining whether a particular program was used and whether respondent benefitted from that program during the period of review. Our analysis of the information on the record in the instant review, and as demonstrated above, clearly indicates that the provision of mining rights constitutes a countervailable subsidy used by Jindal SAW. This subsidy is not tied to any particular product, and thus, the benefit received by Jindal SAW needs to be allocated across all of Jindal SAW’s sales.¹⁵²

Comment 2: Whether the Department relied upon an incorrect benchmark for both iron ore and the freight in its preliminary results

Jindal SAW’s Case Brief

The Department should rely on tier one benchmarks as the iron ore market in India is not government controlled

- In the *Preliminary Results 2013-2014*, the Department’s decision to ignore tier one benchmark prices for iron ore in India as part of its benchmark analysis was based on the assumption that ownership of all mineral and mining rights by the GOI leads to distorted iron ore prices in India. This must be corrected for the final results of review.¹⁵³
- Section 771(5)(E)(iv) of the Act and 19 CFR 351.511 lay out the steps for the Department to determine whether adequate remuneration was paid and the hierarchy for determining which tier benchmark to use for determining the benefit.¹⁵⁴

¹⁵² See, e.g., *Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review*, 71 FR 13582 (March 16, 2006), and accompanying Issues and Decision Memorandum (IDM), at Comment 2; see also, *Static Random Access Memory Semiconductors from Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 65 FR 55005 (September 12, 2000) (SRAM Semiconductors from Taiwan), at Comment 6.

¹⁵³ See JS Case Brief, at 26-27.

¹⁵⁴ *Id.*, at 27.

- The Court held in *Borusan*¹⁵⁵ that, for a determination that the market is significantly distorted by governmental influence, there must be some demonstrable evidence on the record from which such distortion may reasonably be inferred or concluded.¹⁵⁶
- The Department has not demonstrated that control or ownership of mineral rights by the GOI leads to a significant distortion of iron ore prices.¹⁵⁷
- The GOI has stated that it does not control the steel or mining industries through control of the finished goods or raw materials, and there is no evidence on the record that leads to the conclusion that the prevailing market conditions in India are significantly distorted. The Department is also not permitted to refuse to consider other record evidence, such as the Indian Bureau of Mines data for a tier one benchmark.¹⁵⁸
- In *Hot-Rolled Steel 2006*, which the Department heavily relied on for this proceeding, respondent was unable to provide a market-determined benchmark price resulting from actual transactions in India, which is why a tier two benchmark was used in that case.¹⁵⁹ In the instant case, useable market-determined prices are available from the Indian Bureau of Mines, which reflect the actual market prices of iron ore, based on the unsubsidized actual prices by all non-captive mining lessees in India. In *Hot-Rolled Steel 2006*, the Department actually used a tier one benchmark for captive mining rights of coal.¹⁶⁰
- According to the *Hot-Rolled Carbon Steel* Appellate Body Report, an analysis of the market in the country in which the alleged subsidy was provided is required to determine whether particular in-country prices are relied upon to arrive at the appropriate benchmark.¹⁶¹
- In the instant case, the Department can easily analyze and compare the price actually paid by Jindal SAW for the 65 percent grade iron ore to the unsubsidized market prices from the Indian Bureau of Mines data for 65 percent iron ore. The Department has all the necessary information to use a tier one benchmark on the record of this review.¹⁶²
- The India Bureau of Mines data are based on market prices, and Jindal SAW paid royalty tied to the Indian Bureau of Mines data, which is a market based rate. The Department did not place any documents on the record to support its conclusion that the Indian Bureau of Mines data are not market-based and reflect distorted prices.¹⁶³
- The Department failed in its questionnaires to the GOI to require specific information on prevailing market prices for iron ore.¹⁶⁴

¹⁵⁵ See *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 61 F. Supp. 3d 1306, 1327 (CIT 2015) (*Borusan*).

¹⁵⁶ *Id.*, at 27-28.

¹⁵⁷ *Id.*, at 28.

¹⁵⁸ *Id.*, at 29 and 33; Jindal SAW referencing *Essar Steel Ltd. v. United States*, 34 C.I.T. 1057 (CIT 2010) (*Essar I*).

¹⁵⁹ *Id.*, at 29; Jindal SAW citing *Hot-Rolled Steel 2006*, at Comment 26.

¹⁶⁰ *Id.*, at 29.

¹⁶¹ *Id.*, at 30; Jindal SAW referencing *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, (WT/DS436/AB/R, December 8, 2014) (*Hot-Rolled Carbon Steel Appellate Body Report*).

¹⁶² *Id.*, at 31 and 33; Jindal SAW referencing *RZBC Group*.

¹⁶³ *Id.*, at 32.

¹⁶⁴ *Id.*, 32-33.

The Department relied upon the incorrect tier two benchmark for iron ore concentrate

- In the *Preliminary Results 2013-2014*, the Department made a flawed assumption that the iron ore concentrate produced by Jindal SAW was comparable to the Hammersley iron ore lumps, which led to an excessively distortive “apples-to-oranges” comparison, and must be corrected in the final results of review.¹⁶⁵
- Fines of iron ore, which have a much smaller grain size than pellets, and which are a form of lump iron ore, reflect two separate stages of the mining and processing of iron ore, and should not be compared with one another.¹⁶⁶
- If the Department relies on a benchmark for iron fines, it should compare this benchmark to the fully loaded cost of iron ore concentrate produced as an intermediary product by Jindal SAW. Conversely, if the Department relies on the benchmark for iron ore lumps, it should compare that benchmark to the fully loaded cost of iron ore pellets produced by Jindal SAW.¹⁶⁷
- If the Department relies on a tier two benchmark, it should either rely on the benchmark for iron ore fines from the Tex Report 2007, or the benchmark for iron ore fines from the 2014 World Bank Report, as placed on the record by Jindal SAW.¹⁶⁸
- If the Department decides to disregard all of Jindal SAW’s arguments in its case brief and continues to use the benchmark from the preliminary results, the Department needs to correctly compare Jindal SAW’s cost of producing iron ore pellets to the Hammersley lumps benchmark relied on in the *Preliminary Results 2013-2014*, instead of Jindal SAW’s cost of producing iron ore concentrate.¹⁶⁹

The Department relied upon the incorrect benchmark for ocean freight in its preliminary results

- The Department relied on a container freight rate to calculate a proxy freight rate to be used in its benchmark calculations, when it is established that the steel industry ships iron ore in bulk, because the commodity does not require any specialized care. Accordingly, the Department should rely on the bulk freight benchmark submitted by Jindal SAW, in accordance with 19 CFR 351.511(a)(2)(iv).¹⁷⁰
- The Department’s use of a containerized freight rate in the preliminary results created a significant distortion that needs correction.¹⁷¹

The Department must add a profit component to Jindal SAW’s cost of iron ore and pellets prior to making its benchmark comparison

- In *Hot-Rolled 2006*, which the Department relied on in the *Preliminary Results 2013-2014*, the Department added a profit to the cost of manufacturing by the respondent, to ensure that the benchmark comparison was on an equivalent basis.¹⁷² Therefore, the Department must add an amount for profit to Jindal SAW’s reported costs to ensure a

¹⁶⁵ *Id.*, at 34.

¹⁶⁶ *Id.*, at 35.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*, at 36.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*, at 37; Jindal SAW citing to *Essar1*.

¹⁷¹ *Id.*, at 38.

¹⁷² *Id.*

consistent comparison with the benchmark price. Jindal SAW placed its own profit experience, as well as that of other mining companies in India, on the record of this review.¹⁷³

The Department made calculation errors in comparing the cost of iron ore concentrate to the benchmark

- The Department incorrectly calculated and adjusted the benchmark value for raw iron ore (30 percent), which it compared to Jindal SAW's cost of manufacture for iron ore concentrate (65 percent), which led to a significant distortive "apples-to-oranges" comparison.¹⁷⁴
- Jindal SAW calculates and assesses the royalty it pays on the iron ore concentrate that is used as the raw material for its pelletizing plant.¹⁷⁵

GOI's Case Brief

The iron ore market in India is not distorted

- The Department's determination that the prices within India for iron ore are distorted and cannot be used as a tier one benchmark is unfounded, and enormously exaggerated the non-existent benefit.
- The Department used a landed price at the port, whereas the cost of production for Jindal SAW is ex-mines, and the iron content of Jindal SAW's iron ore has much lower purity when compared to subject goods.¹⁷⁶

Domestic Interested Parties' Rebuttal Brief

The Indian market for iron ore mining rights is too distorted to use as a tier one benchmark

- The Department correctly determined that the Indian market for iron ore mining rights is too distorted to allow the use of Indian prices as a tier one benchmark, in accordance with 19 CFR 351.511(a)(2)(i). This is because the GOI owns all mineral rights in India.
- The Department further determined that all leases for mineral rights in India require federal and state government approval, and that the SGOR imposed non-market conditions on its transfer of rights to Jindal SAW. Jindal SAW had to commit to a specified level of investment for a specific type of enterprise to mine the iron ore and could not sell that iron ore on the open market. Jindal SAW has to process the iron ore into downstream products in order to sell them on the open market.¹⁷⁷
- To use a tier two benchmark, in accordance with 19 CFR 351.511(a)(2)(ii), one might find prices available to Indian companies for mining rights in other countries, purchased from private entities, or prices for iron ore purchased in international markets.¹⁷⁸

¹⁷³ *Id.*, at 39.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*, at 40.

¹⁷⁶ GOI Case Brief, at 22.

¹⁷⁷ See Petitioners' Rebuttal Brief, at 17-18.

¹⁷⁸ *Id.*, at 18-19.

- The Department chose the approach taken in *Hot-Rolled Steel 2006*, where the Department adjusted the price paid by the recipient firm to the government by adding to the mining rights fees paid for its iron ore acquired under the captive mining program the costs to extract the goods, an amount for profit that accounts for those extraction costs, as well as any freight expenses incurred to transport the iron ore to its factory.¹⁷⁹
- Jindal SAW's iron ore mining rights are for the low-grade 30 percent iron ore concentration, not to be sold openly in India, whereas the royalties paid are based on the quantity of 65 percent concentrate that Jindal SAW produces.
- Accordingly, as a tier one benchmark, Jindal SAW wants the Department to compare the published prices for transactions for pellets within India to the royalties that Jindal SAW pays.¹⁸⁰
- As pellets are a downstream product, Jindal SAW is actually advocating a tier three benchmark, to test whether the program is consistent with market principles, notwithstanding that the Department noted that all mining rights in India are sold by the GOI, and the pellet prices are government-provided.¹⁸¹

The Department should not adjust benchmark prices for Jindal SAW's profit

- The lower the price the government charges for the iron ore, the greater the profit Jindal SAW earns. That is, based on Jindal SAW's proposed method of making an adjustment for profit, this adjustment would exactly offset the reduced cost of the iron ore. Any extra subsidy would be taken as profit to avoid countervailing duties.
- Due to the government monopoly on the provision of mineral rights and the non-market terms the GOI embeds in its contracts, profits of other mining firms in India would be just as distorted. Alternatively, an amount for depreciation may be included in any cost calculation.¹⁸²

The Department should calculate the value of the subsidy received, not try to duplicate the GOI's Royalty calculation methodology

- The manner in which the GOI calculates royalty rates is not relevant to the subsidy calculation. The benefit received by Jindal SAW is equal to the difference between the benchmark price per ton for a given type of iron ore and the benchmark price for that type, multiplied by Jindal SAW's total production of that type.¹⁸³

Department's Position:

Tier One Benchmark and Market Distortion

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country providing the alleged subsidy (*e.g.*,

¹⁷⁹ *Id.*, at 19; Petitioners' citing *Hot-Rolled Steel 2006*, IDM at Comment 26.

¹⁸⁰ *Id.*, 19-20.

¹⁸¹ *Id.*, at 20.

¹⁸² *Id.*, at 20-21

¹⁸³ *Id.*, at 21-22.

actual sales, actual imports, or competitively run government auctions) (tier one); (2) world market prices available to purchasers in the country providing the alleged subsidy (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). Based on this hierarchy, the Department must first determine whether there are market prices from actual sales transactions in India that can be used to determine whether mining rights for iron ore were provided to Jindal SAW by the GOI and SGOR for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that such prices are distorted, for example when the government owns or controls the majority or a substantial portion of the market for the good or service, the Department will not use such prices as a basis of comparison for determining whether there is a benefit, and we will resort to the next alternative in the hierarchy.¹⁸⁴

As stated in Comment 1, the GOI did not provide the Department with the information necessary to determine whether the Indian market for iron ore is distorted. Accordingly, as noted above in the facts available section, the Department relied on the information provided by Jindal SAW, which is also supported by the *Hot-Rolled Steel 2006* and the recent *Hot-Rolled Steel 129 Implementation Memo*, to determine that the Indian market for iron ore is controlled by the GOI. In those determinations, the Department determined that all mineral mining rights in India are owned by the GOI, and that mining leases for iron ore are granted with approval from the GOI. The Department, thus, determined that the GOI maintained control of all mineral rights and mining leases in India.¹⁸⁵ Based on Jindal SAW's information of this review as facts available, the Department determines that the GOI continues to own all mineral rights and mining leases in India, and that, accordingly, prices within India for iron ore are distorted such that they cannot be used as a tier one benchmark.¹⁸⁶

After the preliminary results, the Department invited parties to comment on benchmark information used concerning the provision of mining rights for iron ore program. As discussed above at Comment 1, the GOI did not take the opportunity to place any benchmark information on the record for the Department's benchmark analysis. However, we note that Jindal SAW did submit benchmark information that included 2014 monthly average sales price data for iron ore from the Indian Bureau of Mines¹⁸⁷ in its filing. However, Jindal SAW did not provide any

¹⁸⁴ See *Preamble*, 63 FR 65377. See *Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination*, in *Part*, 82 FR 2946 (January 10, 2017), and accompanying Issues and Decision Memorandum (IDM), at 8-12; see also, *Certain Oil Country Tubular Goods From the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, and accompanying Issues and Decision Memorandum (IDM), at Comment 6.

¹⁸⁵ See *Hot-Rolled Steel 2006*, at Comment 24, and see Memorandum To Paul Piquado, Assistant Secretary for Enforcement and Compliance From Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations: Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436); Preliminary Determination, dated March 18, 2016 (*Prelim Hot-Rolled Steel 129 Implementation Memo*), at 7-11 (unchanged in *Hot-Rolled Steel 129 Implementation Memo*).

¹⁸⁶ See *Preliminary Results 2013-2014*, at 13-15; see also *Prelim Hot-Rolled Steel 2006* at 73 FR 1578, 1591, unchanged in *Final Hot-Rolled Steel 2006*; reaffirmed in *Hot-Rolled Steel 129 Implementation Memo*, at 21-25.

¹⁸⁷ The Indian Bureau of Mines is a multidisciplinary government organization under the Department of Mines, Ministry of Mines; see <http://ibm.nic.in/>.

explanation on how these data are derived, the underlying methodology for collection and categorization, the basis of the pricing, etc. Furthermore, there is no information on what or how the Bureau of Mines is organized and administered or its possible relationship to other Indian government entities involved in mineral mining and processing, such as NMDC, which has been found to provide iron ore at preferential prices.¹⁸⁸ Nor did Jindal SAW provide the terms of sales or the origin of the iron ore itself.¹⁸⁹ The only additional information Jindal SAW provided in this filing with respect to the data was a footnote stating that the data are from the public website of the Indian Bureau of Mines and constitute actual prevailing market rates in India, based on average rates of sales prices submitted and filed by all mine owners and operators in India.¹⁹⁰ There is no information whether those mine owners and operators in India are private commercial entities or public bodies, or on the number of enterprises, public and privately owned. For those reasons, we find the iron ore price data from the Indian Bureau of Mines submitted by Jindal SAW are not useable for a tier one benchmark.¹⁹¹ Accordingly, there is no information on the record of this proceeding provided by the GOI or Jindal SAW that is suitable for use as tier one benchmark.

Tier Two Benchmark for Iron Ore and Ocean Freight

The Department relied on a tier two world market price, and used the price for Hamersley lumps for iron ore in 2007, inflated for the POR. For ocean freight, absent any benchmark information on the record of the review at the time of the preliminary results, the Department obtained Maersk Line international freight data for standard steel container for calendar year 2014 for the route from Sidney to Chennai, as an adjustment to the comparison price.

Based on the information and arguments provided by Jindal SAW in its third supplemental response and case brief,¹⁹² we agree that the Department's benchmark for iron ore should be based on Hamersley fines, rather than lumps. Jindal SAW explained that the information it provided on its average cost for iron ore the Department used in its calculations¹⁹³ encompasses iron ore concentrate, which is akin to iron ore fines with a higher iron concentration of 60 to 65 percent. Accordingly, we find it more appropriate to use world market prices for iron ore fines, and not lumps.¹⁹⁴ In addition, we agree with Jindal SAW that the Department used the input quantity of the iron ore mined to calculate the benefit, rather than the reduced quantity after processing for concentration. We also agree that the Department should include an amount for profit because the benchmark value for Hamersley iron ore fines includes an amount for profit. Therefore, we are adding an amount of profit to Jindal SAW's average cost for the iron ore concentrate.

¹⁸⁸ National Minerals Development Corporation (NMDC).

¹⁸⁹ See Letter to the Department from Jindal SAW, dated October 31, 2016 (JS Benchmark Info), at 2 and Attachment 1.

¹⁹⁰ There is no information whether those mine owners and operators in India are private commercial entities or public bodies, or how many there are.

¹⁹¹ See Jindal SAW Ltd. Post-Prelim Benchmark Rebuttal Letter, dated October 31, 2016 (Jindal SAW Mining Rights Benchmarks), at Attachment 1.

¹⁹² See Jindal SAW Ltd.'s Third Supplemental Questionnaire, dated November 9, 2016 (Jindal SAW SQR3), at 2-5.

¹⁹³ See Jindal SAW IQR, at 14-19 and Exhibits 61-63.

¹⁹⁴ See Jindal SAW SQR3, at 2-3.

Regarding the amount of the profit to be incorporated into Jindal SAW's average cost for iron ore concentrate, we disagree with Jindal SAW that we should use the profit rate calculated by Jindal SAW in its third supplemental response.¹⁹⁵ The Department requested Jindal SAW to explain and list, by line item, each POR cost/expense it incurred during the POR for its mining and concentration of iron ore operations.¹⁹⁶ In response, Jindal SAW derived a trial balance for its cost/expenses of the mining and concentration/pelletization operations (*i.e.*, by cost center) based on its integrated company-wide accounting system. However, Jindal SAW did not explain the criteria it used for selecting only certain accounts and allocated expenses. Nor did it explain how these expenses were calculated and tie back to the mining costs. Therefore, short of the excavation expenses, we were unable to tie the other expenses from Jindal SAW's cost calculations in its third supplemental response to the expenses reported in its initial response. Accordingly, for these final results, we continue to rely on the expense information provided in Jindal SAW's initial response used in the preliminary results. In addition, we calculated Jindal SAW's profit rate based on its consolidated financial statements for fiscal year April 2014 through March 2015, which we added to Jindal SAW's expenses for its iron ore concentrate.

Regarding the benchmark for ocean freight, there was no relevant benchmark information on the record of this review at the time of the preliminary results, and the Department thus relied on a container freight rate. However, we agree with Jindal SAW that a bulk freight rate better reflects the customary way in which iron ore is shipped. Therefore, for these final results, we are using benchmark information for bulk shipping for ocean freight, as provided by Jindal SAW in its benchmark comments.¹⁹⁷ Specifically, since the only iron ore fines benchmark we are using in this review are the Australian Hamersley fines, we calculated an average ocean freight rate based on tramp ocean freight rates between India and Australia, only, as reported in The TEX Report – 2014 Daily News Digest.¹⁹⁸

Comment 3: Whether the Department incorrectly countervailed licenses attributable to non-subject merchandise under the advance authorization program (AAP)

Jindal SAW's Case Brief

- In the preliminary results, the Department incorrectly determined that Jindal SAW's licenses are not tied to the production of a particular product.¹⁹⁹
- In the investigation, the Department determined that the AAP constitutes a countervailable export subsidy and calculated an *ad valorem* rate based on the benefits reported by Jindal SAW's Nashik division, while excluding licenses which could be tied to non-subject merchandise.²⁰⁰

¹⁹⁵ *Id.*, at 4-5 and Exhibit 122.

¹⁹⁶ See Jindal SAW IQR, at 15; *Note*: those are the expenses Jindal SAW reported for its provision of mining rights for iron ore, and constitutes the data against which the Department compared the benchmarks for iron ore in the preliminary results.

¹⁹⁷ See JS Benchmark Info, Attachment 3, B.

¹⁹⁸ *Id.*

¹⁹⁹ See JS Case Brief, at 40.

²⁰⁰ *Id.*, at 40-41.

- The facts have not changed since the investigation, but for unexplained reasons, the Department has determined in the instant review that Jindal SAW's AAP licenses are not tied to the production of a particular product.²⁰¹
- Only a small number of Jindal SAW's AAP licenses are not tied to a particular product, and all other licenses are both product- and facility-specific and cannot be utilized for the import of raw materials for the production of subject merchandise, as stated in the license documentation on the record.²⁰²

Domestic Interested Parties' Rebuttal Brief

- Jindal SAW admits that some of its AAP licenses are tied to both subject and non-subject merchandise, but the vast majority are tied to both the export of particular products, and also to particular facilities at which those products must be made.²⁰³
- The Department would need to calculate the combined sales of all those facilities for each of the products identified, and use that amount as the denominator, which would not only be impractical, but also is the reason that the regulations provide for tying only where a subsidy is tied to a particular product, not multiple products and/or facilities.
- It is the respondent's burden to demonstrate that a subsidy is tied to a particular product.²⁰⁴
- Jindal SAW falsely identifies one product in an exhibit; however, there are several export items listed on the condition sheet for exports for that particular license, *i.e.*, the subsidy cannot be tied to a particular product.²⁰⁵
- Record evidence indicates that an applicant need not tell the government in advance which products it intends to export using a license, and it is the recipient of the subsidy, not the government, that decides which products the subsidy program may be used for. Clearly, the subsidy program is not tied to a particular product under 19 CFR 351.525(b)(5).²⁰⁶
- Finally, some licenses are not product specific, while others identify production facilities, including Nashik. Additionally, the fact that a subsidy has been used for the production of non-subject merchandise does not exclude it from being used for the production of subject merchandise. For a subsidy to be tied, in accordance with 19 CFR 351.525(b)(5)(i), it must not be permissible or possible to use it other than for a particular product.²⁰⁷

Department's Position: We disagree with Jindal SAW that the Department incorrectly countervailed licenses attributable to non-subject merchandise under the AAP/ALP. As stated, in the preliminary results, the information contained in the licenses was not sufficient to

²⁰¹ *Id.*, at 41.

²⁰² *Id.*

²⁰³ *See* Petitioners' Rebuttal Brief, at 22-23.

²⁰⁴ *Id.*, at 23.

²⁰⁵ *Id.*, at 23-24.

²⁰⁶ *Id.*, at 24.

²⁰⁷ *Id.*, at 25.

determine that Jindal SAW's AAP/ALP licenses were tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5).²⁰⁸

In making a determination whether a subsidy is tied to a specific product or sale of a product, in accordance with 19 CFR 351.525(b)(5), the Department looks at the point of bestowal of such subsidy:

“{W}e analyze the purpose of the subsidy based on information available at the time of bestowal. Once the firm receives the funds, it does not matter whether the firm used the government funds, or some of its own funds that were freed up as a result of the subsidy, for the stated purpose or the purpose that we evince.”²⁰⁹

For the Department to make a determination as to whether certain AAP/ALP licenses are attributed to a particular product, it must first look at the original license, and its intended purpose at the point of bestowal, as endorsed or amended by the GOI. In the instant case, Jindal SAW reported that it used certain AAP/ALP licenses at its Nashik facility for the production of subject merchandise, non-subject merchandise, or both subject and non-subject merchandise.²¹⁰ Some of those licenses identified by Jindal SAW as used for the production of subject and/or non-subject merchandise are not tied to any one particular product. In addition, the company-wide AAP license documentation Jindal SAW submitted²¹¹ indicates that many licenses, including those associated with the Nashik facility, are not tied to any particular product. Rather, some of those licenses are tied to facilities, including the Nashik facility, which produce more than one product.²¹² Because those licenses were bestowed for the production of both subject and non-subject merchandise, or to several locations only, *i.e.*, not bestowed on any product at all, we cannot attribute those licenses to any particular product.

Therefore, based on our analysis of the information and documentation submitted by Jindal SAW on the record of this review, consistent with our attribution methodology, we continue to determine that the AAP/ALP licenses are not tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). Because the benefits are not tied to a particular product, we continue to calculate Jindal SAW's subsidy rate by dividing the benefit in duty savings derived from all of Jindal SAW's AAP/ALP licenses by its total export sales during the POR.²¹³

Comment 4: Whether the Department incorrectly countervailed licenses attributable to non-subject merchandise under the Export Promotion Capital Goods Scheme (EPCGS)

Jindal SAW's Case Brief

- The Department incorrectly determined that Jindal SAW's EPCGS licenses were issued

²⁰⁸ See *Preliminary Results 2013-2014*, at 6-7.

²⁰⁹ See *Countervailing Duties: Final Rule*, 63 FR 65348, 65403 (November 25, 1998) (*Preamble*).

²¹⁰ See Jindal SAW IQR, at Exhibit 20 and SQR1, at Exhibit 100.

²¹¹ See Jindal SAW SQR1, at Exhibit 100.

²¹² See also Jindal SAW IQR, at 17-23 and Exhibit 18-20.

²¹³ See Jindal SAW Prelim Calculation Memorandum.

for the production of both subject and non-subject merchandise. The condition sheet of Jindal SAW's EPCGS licenses indicates the subsidy is only attributable to that particular product listed on the license.

- Because Jindal SAW's EPCGS licenses are non-transferable to other locations and are tied to a particular product, and the Department needs to correct its error and calculate the subsidization rate based on the value of benefits attributable to subject merchandise divided by Jindal SAW's total export sales.²¹⁴

Petitioners' Rebuttal Brief

- Jindal SAW failed to meet its burden of showing that the EPCGS subsidy is tied to non-subject merchandise, arguing instead that the Department should be able to figure out which particular product each license is tied to by looking at the condition sheet for the license.²¹⁵
- It is impossible to guess what the condition sheets mean, and the Indian HTS numbers on the condition sheets are broad categories. Thus, the Department cannot know which particular products Jindal SAW will export using the EPCGS subsidy. It is further impossible to determine what product(s) a given piece of equipment will or could make.
- For purposes of a tying analysis, it is not how Jindal SAW chooses to use its subsidies, but whether the government actually dictates that it must be tied to a particular product.²¹⁶

Department's Position: As noted in the *Preliminary Results 2013-2014*,²¹⁷ the GOI approved certain EPCGS licenses for the export of both subject and non-subject merchandise.²¹⁸

Accordingly, this information does not allow us to tie the individual EPCG licenses to a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we will continue to attribute benefits received under the EPCGS program to all of Jindal SAW's export sales.

Contrary to Jindal SAW's claim that certain EPCGS licenses are tied to a particular product by virtue of being non-transferable to other locations, as indicated by the condition sheet, it is the export product for which the GOI bestowed the license that determines whether the license is tied to a particular product. Furthermore, the EPCGS license information support the finding that for all of Jindal SAW's production facilities placed on the record of this review, Jindal SAW's EPCGS licenses are not tied to any particular product.²¹⁹ Accordingly, this information does not supporting tying the EPCG licenses to any particular product within the meaning of 19 CFR 351.525(b)(5). Therefore, we did not change our findings for these final results. As such, consistent with our attribution methodology, we continue to attribute all EPCGS benefits received by Jindal SAW on all EPCGS licenses to its total exports sales during the POR.

²¹⁴ See JS Case Brief, at 42-43.

²¹⁵ See Petitioners' Rebuttal Brief, at 25.

²¹⁶ *Id.*, at 26.

²¹⁷ See *Preliminary Results 2013-2014*, at 10.

²¹⁸ See Jindal SAW IQR (APR 2016) at 26-29 and Exhibits 21-25, and SQR1 at Exhibit 103.

²¹⁹ See Jindal SAW IQR (APR 2016) at 26-29 and Exhibits 21-25, and SQR1 at Exhibit 103. *Note:* The scope of this order is not limited to seamless pipe and tubes.

Comment 5: Whether the Department should deduct an amount for CENVAT from the benefit calculation under the EPCGS

Jindal SAW's Case Brief

- To be consistent with its own past practice and its investigation segment of this proceeding, the Department should deduct the additional duty (CVD), the education cess on CVD, and the special additional duty (SAD) from its benefit calculation for the EPCGS.
- Jindal SAW reported its EPCGS benefits using the same methodology and clearly identified each of the aforementioned additional taxes in its original response.²²⁰

Department's Position: We disagree with Jindal SAW that the Department, in the preliminary results, was inconsistent with its own past practice and its investigation segment of this proceeding by not deducting CVD, education cess on CVD, and SAD from the benefit calculation for the EPCGS program.

Additional duty (CVD), education cess on CVD, and Special Additional Duty-Cenvatable are levied on all items, and are excise duties, which the Department previously determined to be not countervailable.²²¹ Accordingly, we would normally exclude those excise duties from our benefit calculations for Jindal SAW's benefits received under the export programs AAP/ALP, EOU, and EPCGS. However, Jindal SAW chose not to provide an itemized listing of the aforementioned excise duties for the EPCGS in its data sheets, and instead, opted to report summarily duties or taxes under one column heading, "CENVAT," leaving it to the Department to interpret what might be included in the duties and/or taxes owed and paid and/or foregone.²²² Without an itemization of the individual duties included, the Department cannot separate what duties in what amounts are included in that column, nor can the Department discern whether Jindal SAW appropriately and accurately claims a deduction from the total benefit calculated. Moreover, the amount for a deduction Jindal SAW is claiming exceeds the customary amounts, in percent, being deducted. That is, Jindal SAW now asks the Department to make a blanket deduction from its benefit calculations without identifying any source.

Furthermore, in an effort to obtain accurate information on all types of Indian duties and taxes, including their respective rates over time, effective dates, etc., the Department requested that the GOI provide the Department with this information in a supplemental questionnaire. However, the GOI's response was very limited, first citing to Chapter 4 of Enforcement and Compliance's Antidumping Manual, contending that "the information sought under this question does not pertain to inter-alia clarifications on information stated in the response to original questionnaire; accordingly, the same may not be sought from GOI at this stage." Nevertheless, the GOI stated,

²²⁰ See JS Case Brief, at 43-44.

²²¹ See *Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India*, 70 FR 13460 (March 21, 2005) (*Bottle-Grade PET Resin from India*), and accompanying Issues and Decision Memorandum (IDM), at "Export Oriented Units (EOUs) Programs: Purchase of Material and other Inputs Free of Central Excise Duty."

²²² See Jindal SAW IQR, at Exhibit 23.

“... considering the vast and comprehensive nature of the information sought and time constraint involved, the GOI is in the process of coordinating and collecting information from all the concerned agencies and departments.”²²³ As a response to the Department’s request, the GOI provided the applicable duty rates for the years 2013, 2014, and 2015, covering basic customs duties, customs education and customs higher education cess, CVD, and SAD.²²⁴ However, this information is deficient since it does not provide the details necessary for the Department to use the information, including rates for cess on CVD, information pertaining to the SAD, and an explanation of how the rates are calculated. Further, as the program is based on the importation of capital goods and spare parts, Jindal SAW’s reporting of benefits received under this program covers its AUL, which is 15 years. Accordingly, we do not have the information necessary to confirm the accuracy of the information provided by Jindal SAW, because the GOI did not provide the Department with the full rate information necessary for all years of the AUL. This prevents us from making any possible adjustments with respect to excise duties. Therefore, for these final results, we continue not to deduct the reported “CENVAT” duty paid,²²⁵ as reported by Jindal SAW, from the reported amount of duty payable, to arrive at the amount of the financial contribution, which we treat as an interest free loan, until Jindal SAW’s export obligation is fulfilled and the GOI formally waives the duties.

Comment 6: Whether the Department conducted a selective/incomplete analysis of elements in determining a countervailable subsidy in the context of Article 1.1 of the ASCM, the Act and the Department’s regulations, by mechanically relying on past decisions

GOI’s Case Brief

- To consider a scheme/program to be a countervailable subsidy, the burden of proof is on the Department to prove that all three elements are met: a financial contribution exists; a benefit is conferred by the financial contribution; and the subsidy is specific to certain enterprises within the jurisdiction of India.²²⁶
- It was incumbent on the Department to conduct an analysis of all three factors for all programs at issue, to make its countervailability determination, pursuant to the ASCM, the Act, and the Department’s regulations.
- In the preliminary results, the Department conducted a selective and incomplete analysis of the factors for countervailability for the following programs:
DDB (financial contribution), *EPCGS* (financial contribution, specificity), *EOU CST reimbursement* (specificity), *SGOM Sales Tax Program (1988)* (financial contribution, specificity), and *SGOG VAT Remission Scheme established on 1 April 2006* (specificity).

²²³ See GOI SQR1, at 3-4.

²²⁴ See GOI SQR1-2, at 1. The GOI requested, and the Department granted an extension to respond to the Department’s supplemental questionnaire, and the GOI provided responses to certain questions on the extended date, including this question, on September 29, 2016.

²²⁵ See Jindal SAW IQR, at Exhibit 23.

²²⁶ See GOI Case Brief, at 6; GOI referencing Article 1.1 of the ASCM and citing to *Appellate Body Report, Brazil – Export Financing Programme For Aircraft*, WT/DS46/AB/R, dated August 2, 1999 (*Appellate Body Brazil*), and *Panel Report, United States Measures Treating Export Restraints as Subsidies*, WT/DS194/R. Report, dated June 29, 2001 (*Canada Report*).

- The Department is required to analyze the facts of a particular case in light of each of the factors of the alleged subsidy, *i.e.*, financial contribution, benefit, and specificity, in accordance with the ASCM, the Act, and the Department's regulations. However, the Department mechanically relied on previous unrelated determinations instead.²²⁷

Department's Position:

As an initial matter, we clarify that pursuant to section 751(a)(1)(A) of the Act, the purpose of a CVD administrative review is to "review and determine the amount of any net countervailable subsidy," not to determine whether there is countervailable subsidization in the first place.²²⁸ The determination of countervailable subsidization is made in the investigation. Thus, the Department's longstanding practice is that in an administrative review, it will not re-examine whether a subsidy found countervailable in the investigation remains countervailable, absent new evidence presented by an interested party.²²⁹ The Court of Appeals for the Federal Circuit affirmed this practice in *Magnola Metallurgy, Inc. v. United States*,²³⁰ rejecting the same type of challenge that the GOI makes here. The plaintiff in that case claimed that the Department is required to make a *de novo* finding of countervailability in a successive administrative review of an order, but the Federal Circuit expressly disagreed.²³¹

All but three of the programs described below were countervailed in the investigation.²³² No party has introduced new evidence indicating these programs are no longer countervailable. Accordingly, pursuant to section 751(a)(1)(A) of the Act, *Magnola*, and our practice, we continue to find them countervailable.

Nevertheless, we recognize that our preliminary results were not clear on this point. For the sake of completeness, we address in more detail below the programs challenged by the GOI.

Provision of Mining Rights for Iron Ore (GOI and SGOR)

The Department found, in part, the Provision of Mining Rights for Iron Ore countervailable on the basis of facts available, relying on its determinations in *Hot-Rolled Steel 2006* and *Hot-Rolled Steel 129 Implementation Memo*. For more detailed information, *see* Comments 1 and 2 above.

²²⁷ *Id.*, at 8; GOI citing to *Bethlehem Steel Corp. v. United States*, 25 C.I.T. 307, 317, amended, 25 C.I.T. 627 (2001) and *Inland Steel Indus. Inc. v. United States*, 967 F. Supp. 1338, 1361 (Ct. Int'l Trade 1997), *aff'd*, 166 F.3d 1373 (Fed. Cir. 1999).

²²⁸ The exception is when there is a new subsidy received, alleged or discovered in an administrative review.

²²⁹ *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 52301 (September 3, 2014) and accompanying IDM at Comment 5 ("In an administrative review, we do not revisit prior countervailability findings in the proceeding absent new evidence that would cause the Department to revisit its prior findings.").

²³⁰ 508 F.3d 1349 (Fed. Cir. 2007).

²³¹ *See id.* at 1354-55.

²³² The three exceptions are the Provision of Mining Rights for Iron Ore (GOI and SGOR), the EOU, and the SGOG VAT Remission Scheme Established April 1, 2006.

AAP/ALP

In the investigation, we determined this program to be countervailable on the basis of adverse facts available,²³³ and relied on our determination in *PET Film from India 2007 Review*.²³⁴ In the most recently completed *PET Film from India 2014 Review*, the Department determined that the GOI did not make any changes to this program and continued to find this program countervailable.²³⁵ In the instant proceeding, the GOI confirmed that it did not anticipate any immediate changes to this program.²³⁶

Accordingly, for these final results, we find that: (1) a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from the payment of import duties that would otherwise be due; and (2) the GOI does not have in place and does not apply a system that is reasonable and effective for purposes of determining which inputs, and in what amounts, are consumed in the production of the exported products, making normal allowance for waste, as specified in 19 CFR 351.519(a)(4).²³⁷ 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. Further, this program is specific under sections 771(5A)(A) and (B) of the Act because it is contingent upon export performance.²³⁸ Therefore, for these final results, we find this program to be countervailable.

DDB

Based on the record information of this review, we continue to determine that the DDB confers a countervailable subsidy.²³⁹ 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.

EPCGS

For these final results, based on the GOI's reported information, the Department determines that import duty reductions provided under the EPCGS are countervailable export subsidies because:

²³³ See *OCTG Final Determination*, IDM, at 12-13.

²³⁴ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 6634 (February 10, 2010) (*PET Film from India 2007 Review*) and accompanying IDM at "Advance License Program," see also, *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008) (*PET Film From India 2005 Review*), and accompanying Issues and Decision Memorandum (IDM), at Comment 3, and *OCTG Final Determination*, IDM, at 18-19.

²³⁵ See *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty Administrative Review*; 2014, 81 FR 89056 (December 9, 2016).

²³⁶ See GOI IQR (APR2016), at 12.

²³⁷ Note: The GOI provided what it called the SION for seamless steel casing and tubing (SI. No. C1884), indicating a certain yield loss. However, we consider this information unreliable, because there is no information on how this information was obtained for this particular seamless tube/casing; and if so, how many and which producers provided this information. The billet input type appears to be general (Rounds of relevant grade and alloy/non-alloy). It does not provide any methodology how this overall general product SION was derived, and it does not describe how these yield losses were determined. There is no evidence that this information has been confirmed and verified by the GOI, tying this information to the producers, which are providing this information, accounting system.

²³⁸ See GOI IQR, at 5-16, and GOI SQR1, at Exhibit 4 (Annexure I).

²³⁹ See GOI SQR1, at 10 and GOI SQR1, at 11 and Exhibits 4-7.

(1) the scheme provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone; (2) respondent receives two different benefits under section 771(5)(E) of the Act; and (3) the program is contingent upon export performance, and is specific under sections 771(5A)(A) and (B) of the Act.²⁴⁰

EOU

We disagree with the GOI that the Department failed to address specificity for the sub-program *Reimbursement of CST Paid on Capital Goods and Raw Materials*. The Department addressed specificity for all sub-programs of the EOU. The Department specifically stated before addressing the individual sub-programs, that the benefits for the EOU are *per se* specific within the meaning of sections 771(5A)(A) and (B) of the Act, because the receipt of benefits under this program is contingent upon export performance.²⁴¹

With respect to the sub-program “Duty Free Imports of Goods and Raw Materials,” the GOI stated that “it is not aware of a program under this nomenclature.”²⁴² When asked in the Department’s supplemental questionnaire, referencing the respective page number in its initial response, to clarify and discuss whether the “Duty Free importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare parts and Packing Material,” is part of the EOU, the GOI responded, “{a}s specified at page 20 of the GOI Response of 16 February, the GOI is not aware of any programme named ‘Duty Free Import of Goods, Including Capital Goods and Raw Materials,’ program.”²⁴³ Accordingly, in the absence of any GOI information pertaining to this sub-program, the Department supported its countervailability determination based on the information provided on the record of this review by Jindal SAW²⁴⁴ and noted that the program had also been found countervailable in other proceedings, such as *Indian PET Resin Final Determination*.

Concerning the *Reimbursement of CST Paid on Capital Goods and Raw Materials*, the Department relied on the record of this review, however, we agree that we did not cite to the GOI’s response in making our determination. Therefore, for these final results, we determine that the reimbursement of CST paid on materials procured domestically provides a financial contribution and confers benefits equal to the amount of reimbursements of sales taxes pursuant to sections 771(5)(D)(ii) and (E) of the Act.²⁴⁵ Specifically, the benefit is the amount of reimbursed CST received by Jindal SAW during the POR that is associated with the domestically procured materials.

²⁴⁰ See GOI IQR, at 31-38 and GOI SQR1, at 2-3; 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 IDM at “EPCGS.”

²⁴¹ See *Preliminary Results 2013-2014*, PDM at 12; see also GOI SQR1, at 12.

²⁴² See GOI IQR, at 20.

²⁴³ See GOI SQR1, at 4-5.

²⁴⁴ See *Preliminary Results 2013-2014*, at 12.

²⁴⁵ See GOI IQR at 23 and 94-95; see also, *Notice of Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 70 FR 46483 (August 10, 2005) (*PET Film Preliminary Results of 2003 Review*), 70 FR at 46490 (unchanged in the final results).

SGOM Sales Tax Program (1988)

In the instant review, because the GOI failed to respond to the Department's question pertaining to this program,²⁴⁶ in the preliminary results, the Department had to rely on Jindal SAW's response for its determination of countervailability²⁴⁷ and noted that the program had also been found countervailable in other proceedings, such as *Hot-Rolled Steel 2006*.

For these final results, we find that the benefits provided under the program are specific under section 771(5A)(D)(iv) of the Act because they are limited only to those companies that make an investment in a specified developing area. We further find that the program constitutes a financial contribution under section 771(5)(D)(ii) of the Act by foregoing the collection of sales taxes and, in the case of sales tax deferrals, as is the case with respect to Jindal SAW, in the form of uncollected interest on the deferred sales taxes. We also find that the sales tax program confers a benefit under section 771(5)(E) of the Act: (1) in the amount of sales tax that a participating company does not pay; (2) in the case of sales tax deferrals, in the amount of interest otherwise due; and (3) in the case of sales tax loans, in the form of interest-free loans.²⁴⁸

SGOM PSI 2007 (IPS VAT and CST Refund and Electricity Duty Exemption Scheme)

In the investigation, the Department determined both sub-programs of the PSI 2007 to be countervailable.²⁴⁹ In light of the GOI not reporting any changes to the functioning and operation of this program in this segment of the proceeding, there is no need for the Department to reexamine the countervailability of these programs.²⁵⁰ Therefore, for these final results, the Department continues to find the SGOM PSI 2007 program to be countervailable.

SGOG VAT Remission Scheme Established April 1, 2006

We disagree with the GOI that the Department did not address specificity in the preliminary results. In the investigation, the Department determined this program to be not used.²⁵¹ In both its response to the initial questionnaire and in its supplemental response, the GOI insisted that Jindal SAW did not participate in this program.²⁵² However, Jindal SAW reported participating in this program. Therefore, as facts available, the Department continues to rely on information provided on the record of this review by Jindal SAW and on *Hot-Rolled Steel 2006* to find this program countervailable.²⁵³

Regarding the GOI's arguments under the ASCM, we reiterate that we are conducting this administrative review pursuant to U.S. law, particularly the Act and the Department's regulations. The Act and regulations are fully consistent with the ASCM. Therefore, because

²⁴⁶ See the Department's Initial Questionnaire, dated January 4, 2016, at I-21, questions section D.1.

²⁴⁷ See *Preliminary Results 2013-2014*, IDM, at 18, and Jindal SAW IQR (APR 2016) at 40-41 and at Exhibits 26, 27, and 30.

²⁴⁸ *Id.*, Jindal SAW IQR; see also *Hot-Rolled Steel 2006*, IDM, at 25.

²⁴⁹ See *OCTG Final Determination*, IDM, at 29-33.

²⁵⁰ See GOI IQR-1, at 151, GOI IQR-2, at 8 and 12, and Exhibit 23, and GOI SQR1, at Exhibit 21.

²⁵¹ See *OCTG Final Determination*, IDM, at 38.

²⁵² See GOI IQR-1, at 148 and Exhibit 23, and GOI SQR1, at 30 and Exhibit 20, Annex 2. *Note:* Exhibit 20 contains the Gujarat Industrial Policy-2009, Schemes for Improving Industrial Infrastructure – Amendment, Industries & Mines Department, but it does not contain any reference to the above discussed program.

²⁵³ See Jindal SAW's Initial Questionnaire Response at 20 and at Exhibits 17, 64, 66, and 67, and *Hot-Rolled Steel 2006*, at "State Government of Gujarat (SGOG) Tax Incentives."

our decisions here are consistent with the Act and regulations, they are also consistent with our obligations under the ASCM.

Comment 7: Whether the Department should consider other factors adversely impacting the domestic industry during the POR

GOI's Case Brief

- In accordance with Article 21.1 of the ASCM, the Department must consider other factors adversely impacting the domestic industry. Therefore, it is incumbent on the Department, in its decision whether to extend the countervailing duties imposed on subject goods, to determine whether there has been subsidization of subject goods during the POR, and, if so, whether subsidization is causing injury to the domestic industry.²⁵⁴
- Article 21.2 of the ASCM allows interested parties to bring forth information to determine whether injury is likely to continue or recur, if the duty were removed or varied, warranting the need for a review.²⁵⁵
- Demand of subject goods is dependent on the status and prospects of the oil and energy industries. Therefore, the dramatically falling price of oil during the POR had an effect on the producers of subject goods, and demand for subject OCTG has fallen accordingly.²⁵⁶
- The Department, when examining the impact of allegedly subsidized imports on the domestic industry, is required to conduct an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, as well as establish and demonstrate a causal relationship between the allegedly subsidized imports of the subject goods during the POR, and the alleged injury to the domestic industry.²⁵⁷
- The existence of other factors adversely impacting the domestic industry, as occurred during this POR, must be recognized during the administrative review. The domestic industry was already the beneficiary of state-imposed protectionist measures regarding the subject goods from several countries, indicating that the domestic industry continues to suffer injury despite the imposition of duties on the subject goods.²⁵⁸

Department's Position: We disagree with the GOI that the Department must consider other factors adversely impacting the domestic industry during the POR. That determination was made during the investigation stage of this proceeding by the U.S. International Trade Commission.²⁵⁹

The Department is currently conducting this administrative review in accordance with section 751(a)(1) of the Act and 19 CFR 351.213. An administrative review looks backward to see what

²⁵⁴ GOI Case Brief., at 10.

²⁵⁵ *Id.*, at 10-11; GOI citing to the Appellate Body Report, United States – *Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom*, WT/DS138/AB/R, Report, dated May 10, 2000.

²⁵⁶ *Id.*, at 12-13.

²⁵⁷ *Id.*, at 13-14; GOI citing to Articles 15.4 and 15.5 of the ASCM.

²⁵⁸ *Id.*, 14.

²⁵⁹ *See OCTG Final Determination.*

the rate of subsidization was during the period of review. A sunset review, under sections 751(c) and 752 of the Act, looks forward to determine whether subsidization and injury are likely to continue or recur. Sunset reviews occur every five years.

The GOI may, when the time comes, notify the Department of its intent to participate in a five-year sunset review, in accordance with 751(c) of the Act and 19 CFR 351.218.

Regarding the GOI's arguments under the ASCM, we reiterate that we are conducting this administrative review pursuant to U.S. law, particularly the Act and the Department's regulations. The Act and regulations are fully consistent with the ASCM. Therefore, because our decisions here are consistent with the Act and regulations, they are also consistent with our obligations under the ASCM.

Comment 8: Whether the Department erred in countervailing a certain exemption, remission, and drawback of indirect taxes in the context of Article 12 and Article 27, and Annex II and Annex VII of the ASCM

GOI's Case Brief

- The Department's determination of countervailability of certain exemption, remission, and drawback of indirect taxes is erroneous, because the GOI has a reasonable and effective system in place to confirm which inputs, and in what amounts, are consumed in the production of the exported products, as outlined in Annex II of the ASCM.²⁶⁰
- The investigation authority is required to determine the system/procedure in place, to confirm which inputs are consumed in the production of the exported product, in accordance with Article 12.6 and Annex VI of the ASCM, as of May 19, 2016. Further, unless the guidelines laid down in Annex II of the ASCM are followed, no conclusive finding with respect to the programs granting exemption, remission and drawback of indirect taxes can be made by the Department.²⁶¹
- In accordance with Article 27 of the ASCM, India is allowed to maintain subsidies which are contingent upon export performance, including those listed in Annex I, because India is included in Annex VII. Thus, to impose countervailing duties on such programs, the investigating authorities must determine that the said programs are causing injury to the domestic industry. The GOI has demonstrated that no injury can be attributed to the alleged subsidized imports of subject goods from India.²⁶²
- The Department included certain programs in the preliminary results, because they are allegedly contingent upon export performance, including duty exemption/duty remission programs related to export promotion, such as EOUs. None of these programs can be deemed to be prohibited subsidies, as their provision cannot be considered to be inconsistent with the provisions of the ASCM.²⁶³

²⁶⁰ *Id.*, at 14-15.

²⁶¹ *Id.*, at 15.

²⁶² *Id.*, at 16.

²⁶³ *Id.*, at 16-17.

Department's Position: In the context of section 776(a) of the Act and 19 CFR 351.308, we reject the GOI's complaint and point out that we provided the GOI with sufficient opportunity to provide all the information that the Department requested. Throughout the course of this review, the Department accepted a late filed addendum to the GOI's initial questionnaire response,²⁶⁴ and granted two extensions to its supplemental questionnaire.²⁶⁵ For more detailed information, please also refer to Comments 1 and 2, above.

We also disagree with the GOI with respect to the export programs enumerated by the GOI. Regardless of whether those export subsidies are prohibited under the ASCM – a question which is out of our purview – they are countervailable here. The Department has determined, based on the record of this review, that the GOI does not have a system for monitoring the programs, pursuant to 19 CFR 351.519(a)(4). We have addressed those issues in our discussions for the relevant export programs in the *Preliminary Results 2013-2014* and in these final results of review, and have not changed our countervailability determinations for those programs.

Regarding the GOI's arguments under the ASCM, we reiterate that we are conducting this administrative review pursuant to U.S. law, particularly the Act and the Department's regulations. The Act and regulations are fully consistent with the ASCM. Therefore, because our decisions here are consistent with the Act and regulations, they are also consistent with our obligations under the ASCM.

Comment 9: Whether the Department's analysis of certain programs is inconsistent with the ASCM, the Act, and the Department's regulations, as they do not involve a financial contribution and do not confer a benefit

GOI's Case Brief

- The Department's analysis of the *DDB*, *EPCGS*, *FPS*, and *EOU* (sup-programs: Duty free imports of capital goods and raw materials and re-imburement of CST paid on capital goods and raw materials) is inconsistent with the ASCM, the Act, and the Department's regulations, and does not involve a financial contribution, as defined by the ASCM. All of these programs involve rebates, reductions, exemption, remission of duties and/or taxes for exported products.²⁶⁶
- The only type of financial contribution that may be alleged with respect to the above programs, involves "government revenue that is otherwise due is foregone or not collected." However, these programs do not fall within the definition of Article 1 of the ASCM and Article XVI of the GATT 1994.²⁶⁷
- The Appellate Body stated in *US-FSC* that "exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the

²⁶⁴ Note: The Addendum was filed on April 4, 2017, with the cover letter thereof containing the extension request for certain information pertaining to Jindal SAW and the initial questionnaire response was filed on February 16, 2016.

²⁶⁵ Those extensions were granted on September 21, 2016 and on September 26, 2016, respectively.

²⁶⁶ See GOI Case Brief., at 23.

²⁶⁷ *Id.*, at 23-24.

remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.”²⁶⁸

- Rebates, reductions, exemptions, and remissions provided under the above-mentioned programs will not be considered a financial contribution because of the exception carved out by footnote 1. Thus, the Department must perform an analysis as to the general revenue, which would have been earned by the GOI, and which has been foregone by carving the above exception in favor of certain products. The Department did not perform this analysis.²⁶⁹
- The Department’s analysis of the *DDB*, *EPCGS*, *EOU* (sup-programs: duty free imports of capital goods and raw materials and re-imbursement of CST paid on capital goods and raw materials), *FPS*, *SGUP Exemption from Entry Tax for the Iron and Steel Industry*, and *SGOM Sales Tax program (1988)*, fails to demonstrate the three elements of comparative advantage, and as defined in *US-Hot-Rolled Steel (December 8, 2014)*, accrued to the recipients through these programs. This inconsistency is legally unsustainable.²⁷⁰
- None of the programs above meet the requirements of specificity under Article 2 of the ASCM, because the Department must come to a definite conclusion that the above programs constitute a financial contribution (or income or price support) granted by a government or a public body, and leading to conferment of a benefit. Unless the Department can come to a legally sound conclusion that these programs constitute a subsidy under Article 1 of the ASCM, no analysis of specificity under Article 2 can be initiated.²⁷¹
- Article 2.1(a) states that, where a granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to “certain enterprises,” such subsidy shall be specific. This is not the case with respect to the *AAP/ALP*, *DDB*, *SGOM Sales Tax Program (1988)*, *SGOM IPS 2007* (IPS VAT and CST refund, electricity duty exemption); *SGOG VAT Remission Scheme Established April 1, 2006*.²⁷²
- As stated in the questionnaire responses, all of the respective programs are administered pursuant to legislation/instrument which establishes objective criteria or conditions governing the eligibility for, and the amount of, any alleged subsidy which is granted pursuant to the same.²⁷³

Department Position: We disagree with the GOI that the Department’s analysis of certain programs is inconsistent with the Act and the Department’s regulations, as they do not involve a financial contribution and do not confer a benefit. The Department has addressed all criteria

²⁶⁸ *Id.*, at 24; GOI citing to *Appellate Body Report, United States – Tax Treatment For “Foreign Sales Corporations,”* WT/DS108/AB/R, Report dated February 24, 2000.

²⁶⁹ *Id.*

²⁷⁰ *Id.*, at 24-25; GOI citing to *US-Hot-Rolled Steel (December 8, 2014)*, at 4.123.

²⁷¹ *Id.*, at 25-27; GOI citing to *Appellate Body Report, United States – Definitive anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/RI, Report dated March 11, 2011, and *Appellate Body Report, United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)*, WT/DS353/AB/R, Report dated March 12, 2012.

²⁷² *Id.*, at 27.

²⁷³ *Id.*

necessary for a determination of countervailability within the context of sections 771(5)(D), 771(5)(E), and 771(5A) of the Act. *See* Comment 6.

Regarding the GOI's arguments under the ASCM, we reiterate that we are conducting this administrative review pursuant to U.S. law, particularly the Act and the Department's regulations. The Act and regulations are fully consistent with the ASCM. Therefore, because our decisions here are consistent with the Act and regulations, they are also consistent with our obligations under the ASCM.

Comment 10: Whether the Department made a calculation error in the benefit calculation of duty drawback (DDB).

Jindal SAW's Case Brief

- In calculating Jindal SAW's subsidy rate for DDB, the Department included the benefit for both 2013 and 2014 in its numerator, but only included the value of sales during 2014 in its denominator. The Department needs to ensure that the numerator and the denominator are on an equivalent basis for its rate calculations.²⁷⁴

Department's Position: We agree with Jindal SAW that respondent's 2013 benefits under this program were inadvertently included in the rate calculations for this program, when the Department clearly stated prior to, and in the preliminary results, that it intended to base the assessment rate on subsidy information provided for calendar year 2014 only.²⁷⁵ We have revised our rate calculations for this program and have excluded the 2013 benefits from our calculations.

²⁷⁴ *See* JS Case Brief, at 45.

²⁷⁵ *See* Memorandum To All Interested Parties From Elfi Bum: Countervailing Duty Administrative Review of Oil Country Tubular Goods from India; Period of Rate Calculation for the First Administrative Review, dated August 24, 2016, and *Preliminary Results 2013-2014*, at 2.

RECOMMENDATION:

Based on our analysis of the comment received, we recommend adopting the above position. If accepted, we will publish these final results of review in the *Federal Register*.



Agree



Disagree

4/12/2017

X

Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement & Compliance