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POR: 11/6/15-12/31/16  
Public Document  
E&C V: JMN MR

March 18, 2019

**MEMORANDUM TO:** Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Final Results of the  
Countervailing Duty Administrative Review; 2105-2016:  
Certain Corrosion-Resistant Steel Products from India

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## I. Summary

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of corrosion-resistant steel products (CORE) from India, within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act).<sup>1</sup> There are two respondents in this 2016 administrative review of the countervailing duty (CVD) order on CORE from India: JSW Steel Limited (JSW) and Uttam Galva Steels Limited (Uttam Galva). For these final results, we analyzed the case and rebuttal briefs submitted by interested parties in this administrative review. As a result of our analysis, we made certain changes to the *Preliminary Results* and Post-Preliminary Analysis, and for these final results, determine that JSW and Uttam Galva received *ad valorem* subsidy rates of 11.30 percent and 588.43 percent, respectively, during the period of review (POR).<sup>2</sup> We address the issues raised by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section, below.

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<sup>1</sup> See also section 701(f) of the Act.

<sup>2</sup> See *Certain Corrosion-Resistant Steel Products from India: Preliminary Results of the Countervailing Duty Administrative Review; 2015-2016*, 83 FR 39670 (August 10, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM); Commerce Memorandum, “Administrative Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from India: Post-Preliminary Analysis,” dated December 19, 2018 (Post-Preliminary Analysis). For the calculation of the rates, for JSW, see Commerce’s Memorandum, “Countervailing Duty Administrative Review of Certain Corrosion-Resistant Steel Products from India: Final Results Calculations for JSW Steel Limited,” dated concurrently with this memorandum; for Uttam Galva, see Attachment.



## II. Background

On August 10, 2018, Commerce published the *Preliminary Results* for this review. On December 19, 2018, we released our Post-Preliminary Analysis regarding the new subsidy allegations submitted by the petitioners<sup>3</sup> for which we did not have adequate information at the time of the *Preliminary Results*.<sup>4</sup> We invited parties to comment on the *Preliminary Results* and Post-Preliminary Analysis. The Government of India (GOI) filed its case brief on January 2, 2019,<sup>5</sup> while JSW filed its case brief on January 3, 2019.<sup>6</sup> On February 11, 2019, Uttam Galva filed its case brief.<sup>7</sup> The petitioners participating in this review filed a rebuttal brief on February 19, 2019.<sup>8</sup>

On December 6, 2018, Commerce fully extended the deadline for the final results until February 6, 2019.<sup>9</sup> Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>10</sup> This extended the deadline for the final results to March 18, 2019.

The “Subsidy Valuation Information” and “Analysis of Programs” sections, below, describe the subsidy programs and the methodologies used to calculate the subsidy rates for these final results. Additionally, the “Analysis of Comments” section, below, contains our analysis of the comments submitted by interested parties in their case and rebuttal briefs and Commerce’s responses to these issues. Based on the comments received, we made certain modifications to the *Preliminary Results*.

Below is the complete list of the issues raised in this administrative review for which we received comments:

- Comment 1: Whether Commerce Erred by Investigating New Subsidy Allegations and Not Providing the GOI with an Opportunity to Conduct Consultations
- Comment 2: Whether Commerce Can Rely on Prior Findings of Fact
- Comment 3: Whether Commerce Should Apply Adverse Facts Available as a Result of the GOI’s Failure to Cooperate to the Best of Its Ability
- Comment 4: Whether Commerce Should Apply Adverse Facts Available to Uttam Galva
- Comment 5: Whether the Incremental Export Incentivization Scheme Is Countervailable

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<sup>3</sup> The petitioners are Nucor Corporation, Steel Dynamics Inc., California Steel Industries, ArcelorMittal USA LLC, and AK Steel Corporation. California Steel Industries, Inc. and Steel Dynamics, Inc. are the two petitioners who have actively participated in this review.

<sup>4</sup> See Post-Preliminary Analysis.

<sup>5</sup> See Letter from the GOI, “Administrative Review of Countervailing Duty into Corrosion Resistant Steel from India (Case No. C-533-864) – Case Brief on behalf of Government of India,” dated January 2, 2019.

<sup>6</sup> See Letter from JSW, “Corrosion-Resistant Steel Products from India: Case Brief – JSW Steel Ltd.,” dated January 3, 2019.

<sup>7</sup> See Letter from Uttam Galva, “Certain Corrosion-Resistant Steel Products from India; Uttam Galva Steels Limited’s Case Brief,” dated February 11, 2019.

<sup>8</sup> See Letter from the petitioners, “Certain Corrosion-Resistant Steel Products from India: Rebuttal Brief,” dated February 19, 2019.

<sup>9</sup> See Commerce Memorandum, “Certain Corrosion-Resistant Steel Products from India: Extension of Deadline for Final Results of the First Countervailing Duty Administrative Review,” dated December 6, 2018.

<sup>10</sup> See Commerce Memorandum, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019.

- Comment 6: Whether the Export Promotion of Capital Goods Scheme Is Countervailable
- Comment 7: Whether the Advance Authorization Program, Duty Drawback Program, and Duty Free Authorization Program Are Countervailable
- Comment 8: Whether Programs Administered by the State Governments of Maharashtra and Karnataka Are Countervailable
- Comment 9: Whether the Merchandise Exports from India Scheme Is Countervailable
- Comment 10: Whether Uttam Galva's Benefits under the Merchandise Exports from India Scheme Should Be Tied to U.S. Exports
- Comment 11: Whether Safeguard Duties Should Be Included in the Advanced Authorization Program Calculations
- Comment 12: Whether the Administration of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) through the Board for Industrial & Financial Reconstruction (BIFR) Constitutes a Subsidy
- Comment 13: Whether Commerce Erred in Its Preliminary Calculations for Uttam Galva
- Comment 14: Correction of a Ministerial Error in the Calculations for JSW
- Comment 15: Whether Commerce Should Apply the Cash-Flow Method in Determining when the Benefits Are Received

### **III. Scope of the Order**

The products covered by this order are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and
- (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less,

by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

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

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

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin free steel), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the order may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

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

#### **IV. Use of Facts Otherwise Available and Adverse Inferences**

##### **A. Legal Standard**

Sections 776(a)(1) and (2) of the Act provide that Commerce 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 manner requested by Commerce, 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.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a

timely manner.”<sup>11</sup> Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>12</sup>

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>13</sup> It is Commerce’s practice to consider information to be corroborated if it has probative value.<sup>14</sup> In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.<sup>15</sup> However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.<sup>16</sup>

Finally, under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>17</sup>

## **B. Application of Adverse Facts Available**

Commerce relied on “facts otherwise available,” including adverse facts available, for several findings in the Post-Preliminary Analysis.<sup>18</sup> For these final results, Commerce made certain changes to its use of AFA as applied to Uttam Galva in the Post-Preliminary Analysis. These changes are explained further in Comments 4, and 10-13, below.

## **V. Subsidies Valuation Information**

### **A. Allocation Period**

Commerce made no changes to the allocation period or the allocation methodology used in the *Preliminary Results* or its Post-Preliminary Analysis. No issues were raised by interested parties

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<sup>11</sup> See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011), and accompanying Issues and Decision Memorandum at 7; see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>12</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA).

<sup>13</sup> See SAA at 870.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 869.

<sup>16</sup> *Id.* at 869-870.

<sup>17</sup> See section 776(d)(3) of the Act.

<sup>18</sup> See Post-Preliminary Analysis at 4-9.



in case briefs, nor was any record information identified that would lead us to reconsider our preliminary determination regarding the allocation period or the allocation methodology for respondent companies. For a description of allocation period and the methodology used for these final results, *see* the *Preliminary Results* and accompanying PDM at 6.

## **B. Attribution of Subsidies**

Commerce made no changes to the attribution methodologies used in the *Preliminary Results* or the Post-Preliminary Analysis. We have addressed parties' comments regarding the finding of cross-ownership between Uttam Galva and Lloyd Steels Industries Limited (LSIL) in Comment 4, below. No other issues were raised by interested parties in case briefs nor was any record information identified that would lead us to reconsider our preliminary findings regarding the attribution of subsidies. For a description of the methodologies used for these final results, *see* the *Preliminary Results* and accompanying PDM at 6-8, and the Post-Preliminary Analysis at 2.

## **C. Benchmarks and Discount Rates**

Commerce has made no changes to benchmarks or discount rates used in the *Preliminary Results*. No issues were raised by the other interested parties in case briefs nor was any record information identified that would lead us to reconsider our preliminary results regarding benchmarks or discounts rates. For a description of the benchmarks and discount rates used for these final results, *see* the *Preliminary Results* and accompanying PDM at 8-9.

## **D. Denominators**

Commerce has made no changes to the denominators used in the *Preliminary Results*. Except for Uttam Galva's concerns addressed in Comment 10, no issues were raised by interested parties in case briefs nor was any record information identified that would lead us to reconsider our *Preliminary Results* regarding the appropriate denominators. For a description of the denominators used for these final results, *see* the *Preliminary Results* and accompanying PDM at 9.

# **VI. Analysis of Programs**

We made certain changes to our *Preliminary Results* with respect to the methodology used to calculate the subsidy rates for certain programs. For further details, *see* the specific program section below and the final results calculation memorandum. For descriptions, analyses, and calculation methodologies for these programs, *see* the *Preliminary Results*. Except where noted below, no other issues were raised regarding these programs in the parties' case briefs.

## **A. Programs Determined to be Countervailable**

Commerce made no changes to its preliminary findings or calculations for the following programs. For the descriptions, analyses, and calculation methodologies of these programs, *see* the *Preliminary Results* and accompanying PDM. Issues raised by interested parties in case briefs regarding certain of these programs are addressed in Comments 5 through 11. For the remaining programs, parties raised no issues and identified no record information that would lead

us to reconsider our *Preliminary Results*. As explained in our Post-Preliminary Analysis and Comment 4 and 10-13, we are applying AFA to determine Uttam Galva's net subsidy rate, in accordance with sections 776(a) and (b) of the Act. For the subsidy rate assigned to each program and the calculation of Uttam Galva's AFA net subsidy rate, *see* Attachment. For JSW, the final company-specific program rates for each of the following programs are as follows:

1. Advance Authorization Program (AAP)/Advance License Program (ALP)

We discuss issues raised by interested parties that are related to this program in Comment 7. As explained in Comment 7, Commerce's analysis regarding this program remains unchanged from the *Preliminary Results*.

JSW: 0.59 percent *ad valorem*

2. Duty Free Import Authorization Program (DFIA Scheme)

We discuss issues raised by interested parties that are related to this program in Comment 7. As explained in Comment 7, with respect to the countervailability of this program, Commerce's analysis remains unchanged from the *Preliminary Results*.

3. Export Promotion of Capital Goods (EPCG) Scheme

We discuss issues raised by interested parties that are related to this program in Comment 6. As explained in Comment 6, Commerce's analysis regarding this program remains unchanged from the *Preliminary Results*.

JSW: 6.07 percent *ad valorem*

4. Incremental Export Incentivization Scheme

We discuss issues raised by interested parties that are related to this program in Comment 5. As explained in Comment 5, Commerce's analysis regarding this program remains unchanged from the *Preliminary Results*.

JSW: 0.02 percent *ad valorem*

5. Duty Drawback (DDB) Program

We discuss issues raised by interested parties that are related to this program in Comment 7. As explained in Comment 7, Commerce's analysis regarding this program remains unchanged from the *Preliminary Results*.

JSW: 2.68 percent *ad valorem*



7. Market-Linked Focus Product Scheme

No party submitted comments on this program. As such, our analysis regarding this program remains unchanged from the *Preliminary Results*.

JSW: 0.05 percent *ad valorem*

8. Focus Market Scheme

No party submitted comments on this program. As such, our analysis regarding this program remains unchanged from the *Preliminary Results*.

JSW: 0.10 percent *ad valorem*

9. Merchandise Exports from India Scheme

We discuss issues raised by interested parties that are related to this program in Comment 9 and 10. As explained in Comment 9, Commerce has changed its benefit finding in the *Preliminary Results*, and has determined for the final results, in accordance with 19 CFR 351.518, that this program provides an exemption, remission, or deferral upon export of prior-stage cumulative indirect taxes.

JSW: 1.03 percent *ad valorem*

10. Advance Authorization Exemption from Safeguard, Antidumping, and Countervailing Duties

We discuss issues raised by interested parties that are related to this program in Comment 11. As explained in Comment 11, Commerce's analysis regarding this program remains unchanged from the *Preliminary Results*. As noted in the *Preliminary Results*, because exemptions from these duties are part of the AAP, the benefits provided under this program have already been incorporated into the calculated *ad valorem* countervailable subsidy rates for the AAP program above.<sup>19</sup>

11. State Government of Maharashtra (SGOM) Subsidy Programs

We discuss issues raised by interested parties that are related to the programs below in Comment 8. As explained in Comment 8, Commerce's analysis regarding these programs remains unchanged from the *Preliminary Results*.

a. SGOM Electricity Duty Exemptions

JSW: 0.10 percent *ad valorem*

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<sup>19</sup> See PDM at 16.

b. SGOM – Sales Tax Program

JSW: 0.63 percent *ad valorem*

12. State Government of Karnataka Subsidy Programs

We discuss issues raised by interested parties that are related to the program below in Comment 8. As explained in Comment 8, Commerce’s analysis regarding this program remains unchanged from the *Preliminary Results*.

a. Industrial Policy (KIP) Tax Incentives

We discuss issues raised by interested parties that are related to the program below in Comment 8. As explained in Comment 8, Commerce’s analysis regarding this program remains unchanged from the *Preliminary Results*.

JSW: 0.03 percent *ad valorem*

**B. Programs Determined to Be Not Used or Not to Confer a Measurable Benefit During the POR**

*Government of India Programs*

1. Export Oriented Units

- a. Duty-Free Import of Goods, Including Capital Goods and Raw Materials
- b. Reimbursements of Central Sales Tax Paid on Goods Manufactured in India
- c. Duty Drawback on Fuel Procured from Domestic Oil Companies
- d. Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a DTA

1. Market Development Assistance Program

2. Market Access Initiative

3. Focus Product Scheme

4. GOI Loan Guarantees

5. Status Certificate Program

6. Income Deduction Tax Program (80-IB Tax Program)

7. Special Economic Zones (SEZ)

- a. SEZ - Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
- b. SEZ - Exemption from Payment of CST on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
- c. SEZ - Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit
- d. SEZ - Income Tax Exemption
- e. SEZ - Service Tax Exemption

8. Steel Development Fund Loans

9. Captive Mining Rights for Iron Ore for LTAR

10. Captive Mining Rights for Coal for LTAR
11. Provision of High-Grade Iron Ore for LTAR
12. Provision of Flat-Rolled Steel for LTAR
13. Provision of Steel for LTAR through Rashtriya Ispat
14. Pre- and Post-Shipment Export Financing
15. Preferential Long-Term Loans from State-Owned Banks under the 5/25 Scheme

*State Government Programs*<sup>20</sup>

1. State Government of Andhra Pradesh Programs
2. State Government Gujarat Programs
3. Waiving of Loan Interest by the State Industrial and Investment Corporation of Maharashtra Ltd (SICOM)
4. SGOM Investment Subsidies
5. SGOM Infrastructure Assistance for Mega Projects
6. SGOM Other Subsidies under the Package Scheme of Incentives<sup>21</sup>
7. SGOM State Electric Power Discounts
8. SGOM Package Scheme of Incentives
  - a. The provision of water for less than adequate remuneration (LTAR) under the SGOM Package Scheme of Incentives
  - b. The provision power for LTAR under the SGOM Package Scheme of Incentives
  - c. The provision of iron ore allotments for LTAR under the SGOM Package Scheme of Incentives
  - d. The provision of coal mine allotments for LTAR under the SGOM Package Scheme of Incentives
  - e. The provision of lime/dolomite mine allotments under the SGOM Package Scheme of Incentives
  - f. 100 percent reimbursement of stamp duty and registration charges
  - g. on purchases/leases of land
  - h. Exemption/deferment of sales tax/value-added tax on the sale of finished products
  - i. 100 percent freight subsidy towards freight payments on iron ore, coke, and coal
  - j. Inputs
  - k. 50 percent power subsidy during project installation
  - l. Clearance of forests
9. KIP Provision of Land for LTAR
10. KIP Provision of Iron Ore, Limestone and Dolomite for LTAR
11. KIP Provision of Power/Electricity for LTAR
12. KIP Provision of Water for LTAR
13. KIP Provision of Roads and Port Facility Infrastructure for LTAR
14. KIP Loans

<sup>20</sup> JSW also self-reported a state government program upon which we did not initiate, the State Government of Tamil Nadu Sales Tax Deferral Program. JSW stated, and the record evidence reflects, that it only benefitted from this program prior to the POR. See JSW Initial Response at 123-125.

<sup>21</sup> This includes the stamp duty waiver reported by JSW. See JSW Initial Response at 99, 107.

## VII. Analysis of Comments

### Comment 1: Whether Commerce Erred by Investigating New Subsidy Allegations and Not Providing the GOI with an Opportunity to Conduct Consultations

#### *GOI:*

- The GOI objects to Commerce’s unilateral extension of the scope of the administrative review by including new subsidy allegations that were not identified in the original petition.
- Because the additional schemes identified by the petitioners are different than those identified in the petition, the GOI has been denied an opportunity for consultations to clarify their foundational basis as required by Article 13 of the SCM Agreement.
- The inclusion of new subsidy allegations is inconsistent with past Commerce practice and 19 CFR 351.311. Commerce is not required to investigate all timely raised allegations, particularly where there is “insufficient time” to conduct a proper investigation of the alleged subsidies.<sup>22</sup>
- Commerce may consider factors regarding its determination to investigate new subsidy allegations, such as whether the allegation had not been investigated previously, its current workload, the number and complexity of allegations, and the limited time in which the investigation must be conducted.
- Commerce has in this review, without due regard to these factors, mechanically decided to investigate the petitioners’ new subsidy allegations without appreciating that the nature of the allegations would involve a laborious and difficult investigation of both GOI and state-government level agencies, as well as other entities (*e.g.*, state-owned banks and asset reconstruction companies).
- Based on Commerce’s workload in this administrative review, the six different new subsidy allegations, the complexity of those allegations, and the limited time period in which to investigate the programs, Commerce’s decision to investigate these new subsidy allegations cannot be considered reasonable, and is inconsistent with its past practice.<sup>23</sup>
- The GOI’s position on this matter has already been vindicated, with Commerce noting in the *Preliminary Results* that it was unable to gather the information required to make a preliminary determination regarding some of the new subsidy allegations, including the creditworthiness of Uttam Galva and Uttam Value Steels Limited (UVSL), and the receipt of benefits under the “Debt for Equity Swaps and other Assistance for Sick Industrial Companies” program.

#### *The petitioners’ Rebuttal:*

- Article 13 of the SCM Agreement has no direct effect under U.S. law.
- The WTO Appellate Body has agreed that an authority may investigate new subsidies during the course of a review.<sup>24</sup>

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<sup>22</sup> See *TMK IPSCO v. United States*, 179 F. Supp. 3d 1328, 1336 (CIT 2016).

<sup>23</sup> *Id.*

<sup>24</sup> See *United States-Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R (December 8, 2014) (DS436).

- An authority must be able to investigate and countervail subsidies not alleged in the original petition in order to prevent the original programs from simply being renamed or replaced with other programs in an effort to deny relief.
- 19 CFR 351.311 expressly authorizes the investigation of newly discovered subsidies.
- The GOI improperly substituted its own assessment of whether Commerce had sufficient time to investigate new subsidy allegations.

**Commerce’s Position:** As noted by the petitioners, the WTO Appellate Body disagrees with the GOI’s assertion that an investigating authority is required to provide the opportunity for consultations with respect to the investigation of subsidies in a review that were not included in the original investigation: “{W}e consider that the requirements for carrying out consultations, prescribed in Article 13.1 of the SCM Agreement, do not apply to the conduct of administrative reviews, as governed by Article 21.2 of the SCM Agreement.”<sup>25</sup> More importantly, we note that WTO agreements are not self-executing under U.S. law, unless adopted pursuant to specified statutory scheme as established in the Uruguay Round Agreements Act.<sup>26</sup> The authority exercised by Commerce is governed by the Act, as well as Commerce’s regulations. The Act itself calls for Commerce to provide the opportunity for consultations to foreign governments only with respect to a new investigation.<sup>27</sup>

The courts have recognized that, while Commerce has a general duty to investigate subsidy allegations that arise during the course of an investigation, that duty is tempered by the acknowledgment that investigating subsidies takes time, and that Commerce may not always have sufficient time or resources before the final determination to investigate a newly alleged subsidy.<sup>28</sup> Thus, “{b}ased upon the plain meaning of th{e} statute and regulation, it is clear that Commerce has an affirmative duty to investigate subsidies discovered during the course of an investigation, even if (for practical reasons) the investigation of the newly discovered subsidies must wait for an administrative review.”<sup>29</sup> Furthermore, the Act, and Commerce’s regulations, grant Commerce substantial discretion to determine how best to allocate its resources, with section 775 of the Act providing procedures for Commerce to follow if Commerce discovers an apparent countervailable subsidy during a proceeding, and 19 CFR 351.311(b) granting Commerce the discretion to determine whether there is sufficient time to investigate a discovered subsidy. Further, the GOI’s assertion that Commerce may never investigate newly alleged subsidies would arbitrarily restrict Commerce’s authority under the Act to investigate subsidies not included in the original petition.

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<sup>25</sup> See DS436 at 4.532.

<sup>26</sup> See *Cast Iron Soil Pipe Fittings from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 32075 (July 11, 2018) and accompanying IDM at Comment 1.

<sup>27</sup> See section 702(b)(4)(A)(ii) of the Act.

<sup>28</sup> See *Torrington Co. v. United States*, 68 F.3d 1347, 1351 (Fed. Cir. 1995) (“{A}gencies with statutory enforcement responsibilities enjoy broad discretion in allocating investigative and enforcement resources.”); see also *Longkou Haimeng Mach. Co. v. United States*, 32 C.I.T. 1142, 1151, 581 F.Supp.2d 1344, 1353 (2008) (*Longkou Haimeng Mach. Co.*) (“{A}ny assessment of Commerce’s operational capabilities or deadline rendering must be made by the agency itself.”).

<sup>29</sup> See, e.g., *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) and accompanying IDM at 35, citing *Allegheny Ludlum Corp., et al., v. United States*, 112 F. Supp. 2d 1142, 1150 (CIT 2000).

Section 775 of the Act specifically states that, if during a proceeding, Commerce discovers “a practice that appears to provide a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition,” Commerce “shall include the practice, subsidy, or subsidy program if the practice, subsidy or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding.” Under 19 CFR 351.311(b), Commerce will examine the practice, subsidy, or subsidy program if Commerce “concludes that sufficient time remains before the scheduled date for the final determination or final results of review.”<sup>30</sup> In the instant review, Commerce determined that sufficient time remained to further investigate any “other” governmental assistance received by the respondents. Commerce will determine the effect of its workload on its ability to properly perform its duties, which has been recognized by the courts, and “{t}o find otherwise would put this Court in the position of routinely second-guessing Commerce’s decisions regarding its own administrative capacity... {t}his is ‘a role for which courts are ill suited and one that could be quite disruptive of Commerce’s effort to establish enforcement priorities.’”<sup>31</sup> Given that the courts themselves have been reluctant to take on the role of examining Commerce’s self-assessments with regard to workloads, it is unnecessary and inappropriate for the GOI to do so.

Despite the GOI noting that Commerce required more time to fully examine one<sup>32</sup> of the six new subsidy allegations examined in this review at the time of the *Preliminary Results*, we note that the preliminary results in an administrative review have no immediate effect on establishing accurate cash deposit rates at the border. The primary purpose of Commerce’s preliminary findings in an administrative review is to make parties aware of issues prior to the issuance of the final results, when cash deposit rates will be adjusted, and final duties assessed for the POR. Moreover, because we had the resources to do so, we subsequently examined the single program that was not analyzed in the *Preliminary Results*, made a preliminary determination, and explained our countervailability finding in the Post-Preliminary Analysis.<sup>33</sup>

## **Comment 2: Whether Commerce Can Rely on Prior Findings of Fact**

*GOI:*

- In the *Preliminary Results*, Commerce stated in varying instances that “there is no new information on the record for us to reconsider our prior determination.”
- With respect to several programs, including AAP, DFIA, EPCG, DDB, and SGOM programs, Commerce did not note or analyze the information provided by the GOI in its questionnaire responses.

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<sup>30</sup> See, e.g., *Certain Steel Wheels from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) and accompanying IDM at Comment 5; *Multilayered Wood Flooring from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011) and accompanying IDM at Comment 3.

<sup>31</sup> See *Longkou Haimeng Mach. Co.* at 1353, quoting *Torrington* at 1351.

<sup>32</sup> Of the six NSA programs initiation, only one, Debt-for-Equity Swaps and Other Assistance for Sick Industrial Companies, was not examined in the *Preliminary Results*.

<sup>33</sup> See Post-Preliminary Analysis at 7-9.



- Commerce erred in concluding that the GOI does not have in place a system that is reasonable and effective to confirm which inputs, and in what amounts are consumed in the production of exported products, and thus, incorrectly found the GOI's duty exemption and remission schemes countervailable.
- For the DDB, the GOI clarified in the GOI IQR<sup>34</sup> that at the export stage the exporter makes a declaration that is subject to post-export random verification. There are guidelines for ensuring sampling for testing of export goods unless specified test reports are already available and the goods are subjected to examination as per norms. These checks ensure the integrity of declarations.
- Regarding the DFIA scheme, the GOI clarified in the GOI IQR that a two-tiered verification procedure for the DFIA scheme exists, firstly by determining whether the exports actually utilize the inputs listed in Standard Input Output Norms (SION) in the exporter's manufacture of exported products when the consumption details in Appendix 4H are presented to the Regional Authority. Secondly, the exporter is required to get a certificate from an independent Chartered Accountant confirming the veracity of the consumption details in Appendix 4H. Thirdly, Regional Authorities take action against authorization holders in case of non-submission of Appendix 4H and are empowered to take action for any misrepresentation, misdeclaration and default deducted subsequently in details declared and furnished in Appendix 4H.
- Regarding AAP, the GOI highlighted in the GOI IQR the Regional Authority's power to take penal action against an authorization holder for failure to complete export obligation, or failure to submit relevant information or documents for the GOI to enforce its monitoring system. The GOI also highlighted that if an authorization holder has consumed less quantity of input than imports, it shall be liable to pay customs duty on unutilized value of imported material along with interest.
- If Commerce had any doubts as to the veracity of GOI's submissions, Commerce could have conducted a verification of the above facts to its satisfaction. The failure to do so has prejudiced the GOI. As the Court has stated: "Commerce's findings in a particular case are not binding on it in a subsequent case. Rather, Commerce's findings in a particular case must be based solely on the facts in the administrative record of that case, regardless of the findings made in an earlier case."<sup>35</sup>
- "Subsidy findings are fact-specific, and circumstances often change. Commerce may conclude that a program conferred different levels of benefit during different administrative reviews, even among reviews of the same countervailing duty order. In some reviews, it may conclude that the program conferred no countervailable benefit at all. For that reason, factual findings in past determinations, while often relevant, are not binding in subsequent cases."<sup>36</sup>

*The petitioners' Rebuttal:*

- Commerce should not reverse years of findings regarding certain programs based on unsupported assertions in the GOI's questionnaire responses.

<sup>34</sup> See letter from the GOI, "Administrative Review/India/Corrosion-Resistant Steel: Countervailing Duty Questionnaire: Response to initial GOI questionnaire," dated December 11, 2017 (GOI IQR).

<sup>35</sup> See *Inland Steel Indus., Inc. v. United States*, 967 F. Supp. 1338, 1361 (CIT 1997).

<sup>36</sup> See *Nation Ford Chem. Co. v. United States*, 985 F. Supp. 133, 138 (CIT 1997), *aff'd*, 166 F.3d 1373 (CAFC 1999).

- The GOI cited to no documentation to support its assertion that it conducts random checks of drawback declarations, thus ensuring the integrity of the declarations.
- Similarly, for DFIA and AAP, the GOI's assertions in its questionnaire responses do not satisfy the GOI's burden to build a sufficient record to support its claim that earlier findings regarding these programs are no longer valid.
- The cases cited by the GOI only stand for the proposition that Commerce may make a different finding in a subsequent segment of a proceeding when it is confronted with new evidence that contradicts its previous finding.
- A respondent that desires Commerce to find differently in a subsequent proceeding must build a factual record sufficient to demonstrate that Commerce's prior findings are no longer accurate. The respondent cannot simply assert that circumstances have changed and then claim that its unsupported assertions have not been disproved.
- Commerce has previously considered and rejected the GOI's arguments with respect to the AAP, DDB, and EPCG programs, and verified in the investigation that these programs continue to operate in a manner that provides a countervailable subsidy.
- The GOI did not provide requested documentation that would identify and explain the types of documents maintained in the administration of the DDB program.
- The GOI did not provide the types of records or other factual evidence that would demonstrate that company respondents did not receive excessive exemptions or remissions but only argued that existing procedures are adequate to guard against such potential benefits.

**Commerce's Position:** As an initial matter, we recognize that we have previously addressed similar arguments made by the GOI.<sup>37</sup> The purpose of a CVD administrative review, pursuant to section 751(a)(1)(A) of the Act, is to "review and determine the amount of any net countervailable subsidy," not to determine whether countervailable subsidies exist in the first place, with the exception of a situation wherein a new subsidy is received, alleged or discovered in an administrative review. The determination of whether a countervailable subsidy exists is made when it is first investigated. Thus, Commerce'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.<sup>38</sup> The Court of Appeals for the Federal Circuit (CAFC) affirmed this practice in *Magnola*,<sup>39</sup> rejecting the same type of challenge that the GOI makes here. The plaintiff in that case claimed that Commerce was required to make a *de novo* finding of countervailability in a successive administrative review of an order, an argument with which the CAFC expressly disagreed.<sup>40</sup>

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<sup>37</sup> See *Certain Oil Country Tubular Goods from India: Final Results of Countervailing Duty Administrative Review; 2013-2014*, 82 FR 18282 (April 18, 2017) and the accompanying IDM at Comment 6.

<sup>38</sup> 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 {Commerce} to revisit its prior findings.").

<sup>39</sup> See *Magnola Metallurgy, Inc. v. United States*, 508 F.3d 1349 (Fed. Cir. 2007) (*Magnola*).

<sup>40</sup> *Id.* at 1354-55.

All of the programs referenced by the GOI were countervailed in the investigation, and the facts related to these findings were discussed in the investigation's IDM.<sup>41</sup> Parties were given an opportunity to provide new or updated information with regard to the programs, however the GOI only provided unsubstantiated assertions with respect to these programs, rather than submitting and citing any documentation which would indicate that changes had been made to these programs since the investigation. As such, we find that no party has introduced new evidence indicating these programs are no longer countervailable, or provided documentation purporting to suggest that they operated differently during the POR. Accordingly, pursuant to section 751(a)(1)(A) of the Act, *Magnola*, and our practice, we continue to rely on our past findings from the investigation in finding programs examined in this administrative review countervailable.

**Comment 3: Whether Commerce Should Apply Adverse Facts Available as a Result of the GOI's Failure to Cooperate to the Best of its Ability**

*GOI:*

- Commerce's reliance on AFA with respect to the "Debt-for-Equity Swaps and Other Assistance for Sick Industrial Companies" program is inconsistent with Article 12.7 of the SCM Agreement and section 776(b) of the Act.
- The WTO Dispute Settlement Panel in *United States – Countervailing Measures on Supercalendered Paper from Canada* indicated that only a failure to provide "necessary" information justifies resorting to facts available.
- Commerce may only apply AFA when an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The GOI has acted to the best of its ability to comply with every request for information in this proceeding, including its willingness to aid Commerce in verifying information on the record.
- In assessing whether a party has acted to the best of its ability in providing requested information, Commerce must examine the respondent's actions and assess the extent of the respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information. While this standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.<sup>42</sup>
- The GOI provided responses to the NSA questionnaire and the supplemental NSA questionnaire to best of its ability.
- Between the submission of its NSA questionnaire response in July 2018 and the release of the Post-Preliminary Analysis in December 2018, Commerce provided no notice to the GOI that it perceived the GOI's response to be unsatisfactory, despite continuing to issue supplemental questionnaires to Uttam Galva.
- Section 782(d) of the Act requires Commerce to promptly inform a party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that

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<sup>41</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Final Affirmative Determination*, 81 FR 35323 (June 2, 2016) and the accompanying IDM (Final IDM).

<sup>42</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

party with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review.

- In *SKF USA*, Commerce’s announcement of its decision to use partial AFA for the first time in the final results, and to offer no opportunity for the respondent to respond, correct, or clarify while also finding that it had not cooperated to the best of its ability, was found to be unsupported by substantial evidence and not in accordance with law.<sup>43</sup>
- Article 12.7 of the SCM Agreement mandates that investigating authorities apply facts available only in cases in which necessary information is not provided.
- The WTO Appellate Body has stated that an investigating authority’s discretion in applying facts available is not unlimited, and it is expected to employ the best information or facts available.<sup>44</sup>
- Under Article 12.7 of the SCM Agreement must be made on the basis of facts available and cannot be made on the basis of non-factual assumptions or speculations.<sup>45</sup>
- The GOI provided ample information regarding SICA, BIFR, and the Asset Recovery Corporation (India) Ltd. (ARCIL).
- Information provided by the GOI indicates that the SICA was repealed in 2016, and as a result, the BIFR was also dissolved. Other information indicates that ARCIL operates on the basis of commercial wisdom and there is no government involvement in its day-to-day functioning.
- Even if Commerce determines that the information provided by the GOI was not complete, it should not be ignored in its entirety, and Commerce should only be able to rely on AFA for information that is missing. Otherwise, the application of AFA is inconsistent with the Act, Commerce’s regulations, and the obligations of the United States under the SCM Agreement.

*The petitioners’ Rebuttal:*

- The GOI failed to cooperate by providing almost none of the information requested by Commerce in its questionnaire response, presenting instead unsupported narrative and legal conclusions that the “Debt-for-Equity Swaps and Other Assistance for Sick Industrial Companies” program did not qualify as a subsidy.
- Much of the GOI’s narrative supports a finding that the entities involved were in fact public bodies/entities.
- It is Commerce, not the respondent, who decides what information is necessary.
- Rather than providing the requested information, the GOI merely responded with arguments as to why Commerce did not need the information.
- Commerce need not waste resources identifying deficiencies when a respondent’s arguments make it clear that it has no interest in providing the relevant information.

**Commerce’s Position:** With respect to the “Debt-for-Equity Swaps and Other Assistance for Sick Industrial Companies” program, we continue to find for these final results that the necessary information is not available on the record and that the GOI withheld and failed to provide information that was requested of it in a timely manner, thereby impeding the proceeding. Thus,

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<sup>43</sup> See *SKF USA Inc. v. United States*, 29 C.I.T. 969, 979–80 (2005).

<sup>44</sup> See *Mexico – Definitive Anti-Dumping Measures on Beef and Rice WT/DS295/AB/R* (November 29, 2005) (DS295).

<sup>45</sup> See DS436.

Commerce is relying on “facts available” in making our final determination in accordance with sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act. Moreover, we determine that the GOI failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, an adverse inference is warranted in the application of adverse facts available, pursuant to section 776(b) of the Act. In drawing an adverse inference, we continue to find that the SBI and ARCIL are government authorities<sup>46</sup> within the meaning of section 771(5)(B) of the Act, and that they provided a financial contribution under this program under section 771(5)(D) of the Act.<sup>47</sup>

With respect to the GOI’s argument that the application of AFA in this case is inconsistent with the WTO SCM Agreement, as we explained in numerous past instances,<sup>48</sup> Commerce conducts its investigations and reviews in accordance with the Act and our regulations, and U.S. law is fully compliant with our WTO obligations:

Our CVD laws are consistent with our WTO obligations. Moreover, it is the Act and {Commerce’s} regulations that have direct legal effect under U.S. law, and not the WTO Agreements or WTO reports. In this regard, WTO reports “do not have any power to change U.S. law or to order such a change.”<sup>49</sup>

Moreover, we disagree with the GOI’s claim that certain WTO reports are relevant in this investigation. Findings of WTO reports are without effect under U.S. law “unless and until such {a report} has been adopted pursuant to the specified statutory scheme” established in the URAA.<sup>50</sup> As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of Commerce’s discretion in applying the statute.<sup>51</sup> In this regard, WTO reports do not have any power to change U.S. law or to order such a change.

Commerce also disagrees with the GOI’s contention that the application of AFA was not appropriate in this instance, where the GOI failed to provide requested information with respect

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<sup>46</sup> See Post-Preliminary Analysis at 6-7 (finding, using as AFA, that SBI and ARCIL are government authorities); see also Letter from the petitioners, “Certain Corrosion-Resistant Steel Products from India: New Subsidy Allegations,” dated January 5, 2018, at Exhibit 5 (New Subsidy Allegations); Commerce Memorandum, “Administrative Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from India: Analysis of New Subsidy Allegations,” dated June 22, 2018 (NSA Memorandum).

<sup>47</sup> See Post-Preliminary Analysis at 7-8 (finding, using AFA, that “this program provided a financial contribution in the form of a direct transfer of funds”); see also New Subsidy Allegations at 15-19 (and the exhibits listed therein); and NSA Memorandum at 5-6.

<sup>48</sup> See, e.g., *Large Diameter Welded Pipe from India: Final Affirmative Countervailing Duty Determination*, 83 FR 56819 (November 14, 2018) (*Welded Pipe from India*) and accompanying IDM at Comment 1; *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) and accompanying IDM at Comment 1; and *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016) and accompanying IDM at 18.

<sup>49</sup> See *Welded Pipe from India* and accompanying IDM at Comment 1.

<sup>50</sup> See *Corus Staal BV v. United States*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), accord *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007); see also *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007).

<sup>51</sup> See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary).



to the entities identified in the NSA Memorandum<sup>52</sup> as being relevant to the administration of the “Debt-for-Equity Swaps and Other Assistance for Sick Industrial Companies” program. We identified the missing information that we considered to be relevant to the investigation of this program in the Post-Preliminary Analysis:

In particular, the GOI provided no response to any appendices identified by Commerce, while also providing no responses to most of the individual questions asked of it... While the GOI provided some of the laws related to the establishment of {Asset Reconstruction Companies}, it provided none of the specific documentation requested of ARCIL and the SBI, such as incorporation documents, financial statements, and transaction records. What information the GOI did provide was in the form of a brief narrative section arguing that ARCIL is not a public body within the meaning of the Agreement on Subsidies and Countervailing Measures.<sup>53</sup>

As we explained further, in accordance with 776(a) of the Act, the information requested of the GOI regarding entities such as ARCIL and the SBI were necessary to determine the status of these entities as government authorities. Unsubstantiated statements by the GOI that these agencies are not public bodies does not substitute as factual and verifiable information allowing for Commerce’s own analysis of information that it requested.

The GOI’s decision not to fully respond to all of the questions asked in the NSA Questionnaire was inconsistent with the instructions provided by Commerce, which stated that if the GOI was “unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, you must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response.”<sup>54</sup> The questionnaire also warned that if Commerce did not receive either the requested information or a written extension request on the established deadline, “we may conclude that the government or the respondent company(ies) have decided not to cooperate in this proceeding... failure to properly request extensions for all or part of a questionnaire response may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.”<sup>55</sup> Instead of responding to each question as instructed, or contacting Commerce as necessary for additional time or clarification, the GOI ignored the requests for information.<sup>56</sup>

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<sup>52</sup> See NSA Memorandum at 5.

<sup>53</sup> See Post-Preliminary Analysis at 6.

<sup>54</sup> See Letter from Commerce to the GOI, “Administrative Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel from India: New Subsidy Allegations Questionnaire,” dated June 29, 2018.

<sup>55</sup> *Id.*

<sup>56</sup> See Letter from the GOI, “Administrative Review of Countervailing Duty into Corrosion Resistant Steel from India (Case No. C-533-864) – Response to New Subsidy Allegations (NSA) Questionnaire on behalf of Government of India,” dated July 19, 2018 (GOI NSA QR) at 18-20, in which the GOI provides no response to Commerce’s request that it complete questionnaire appendices. In addition, the GOI merely proffered a rote – and unsubstantiated – argument that the entities were not public bodies, and did not respond to any of the 15 questions asked regarding this program, nor to any of the appendices it was asked to complete. *Id.*



The GOI is, in essence, arguing that Commerce should have provided it with additional opportunities to report the information that it elected not to provide within established timelines. As provided for in the Act, Commerce notifies parties of deficiencies and, *to the extent practicable*, gives the party an opportunity to explain or remedy the deficiency in light of the time limits established for the completion of the investigation (emphasis added).<sup>57</sup> With that, Commerce must also maintain control of the deadlines in its proceedings and this statutory provision does not provide parties with an opportunity to self-grant extension requests or otherwise ignore Commerce’s deadlines or requests for information.<sup>58</sup> In this regard, Commerce’s regulations provide that parties must submit factual information in response to questionnaires within the deadlines set by Commerce.<sup>59</sup> Here the record shows that the GOI elected not to respond to Commerce’s 15 questions regarding the entities involved in the “Debt-for-Equity Swaps and Other Assistance for Sick Industrial Companies” program and provided no response to Commerce’s request that it complete questionnaire appendices.<sup>60</sup>

Here, because the GOI forwent the opportunity to provide Commerce with necessary requested information, Commerce was forced to select from the facts available to replace missing information. Commerce did so in accordance with section 776(a) and 776(b) of the Act. As noted in the Post-Preliminary Analysis, the GOI decided not to provide information regarding key entities involved in the “Debt-for-Equity Swaps and Other Assistance for Sick Industrial Companies” program. Because of the absence of information necessary to conduct our analysis regarding the financial contribution aspect of this program, we relied on other information on the record, specifically that provided in the petitioners’ new subsidy allegations submission, which we relied upon in initiating an investigation of this program and which indicated that the GOI has a significant role in the management of ARCIL and the SBI.<sup>61</sup> The purpose of the application of AFA is to ensure cooperation; Commerce did not select among the facts available and apply an adverse inference to punish the GOI or the mandatory respondents, but rather to provide a remedy for their failure to cooperate.

Due to the above-discussed deficiencies and given the GOI’s decision not to provide the requested information, the GOI’s response does not support its claim that entities such as ARCIL and the SBI do not constitute public bodies. Without the complete, accurate and reliable responses from the GOI, and in light of the GOI’s failure to cooperate to the best of its ability, Commerce must therefore rely on AFA in making its final determination with respect to the financial contribution aspect of the “Debt-for-Equity Swaps and Other Assistance for Sick Industrial Companies” program, under section 776(b) of the Act.

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<sup>57</sup> See section 782(d) of the Act.

<sup>58</sup> *Id.*

<sup>59</sup> See 19 CFR 351.301(c)(1).

<sup>60</sup> See GOI NSA QR at 18-20.

<sup>61</sup> See New Subsidy Allegations at 15-19 (and the exhibits cited therein). See also NSA Memorandum at 5.

#### **Comment 4: Whether Commerce Should Apply Adverse Facts Available to Uttam Galva**

##### *Uttam Galva:*

- Record evidence indicates that Uttam Galva cannot use or direct the individual assets of LSIL in essentially the same way it can use its own assets, and therefore cross-ownership cannot exist within the meaning of 19 CFR 351.525(b)(6)(vi).
- As such, Uttam Galva was not required to, and could not, have supplied a questionnaire response on behalf of LSIL.
- UVSL's initial questionnaire response contained the 2014-2015 Annual Report that explained the approval of a Scheme of Arrangement between UVSL and LSIL, wherein the Engineering Division of UVSL would be demerged from the company and transferred to LSIL.
- Uttam Galva and UVSL further explained that First India Infrastructure Private Limited (FI IPL) and Metallurgical Engineering and Equipments Limited (MEEL) own UVSL and that these companies are controlled by the Miglani Family.
- As this information was on the record, Commerce erred in finding that Uttam Galva was attempting to obfuscate or withhold information.
- Given that Uttam Galva had provided nine different questionnaire responses, providing an additional questionnaire for LSIL would have only incurred an incremental cost to Uttam Galva. Therefore, there was no reason for Uttam Galva to withhold information from Commerce.
- Commerce had months to review the information on the record and ask supplemental questions regarding LSIL and the Engineering Division.
- As noted in Uttam Galva's previous questionnaire responses, the Steel and Engineering Divisions of UVSL operated independently from each other, although both were nominally under the control of the same legal entity. Personnel and accounting were separate between the two divisions.
- During the POR, the Engineering Division was no longer operationally a part of UVSL and was transferred to LSIL.
- The Scheme of Arrangement clearly indicates that the Appointed Date for the demerger was April 1, 2014, the date on which the demerger scheme came into legal operation.
- Although ULSPL and MEEL are listed as share owners in LSIL, that is only because the planned transfer of shares to LSIL has not yet taken place.
- LSIL does not meet any of the criteria for providing questionnaire responses, *i.e.*, 1) it is not a cross-owned company producing subject merchandise; 2) it is not a cross-owned holding company or parent company; 3) it is not a cross-owned company supplying an input product that is primarily dedicated to the production of subject merchandise; 4) it is not a cross-owned company that has received and transferred a subsidy to the respondent company; and 5) it is not a cross-owned company that otherwise provides a good to the respondent company.
- In its affiliation questionnaire, Uttam Galva listed several companies that meet the criteria listed above, and for which it provided questionnaire responses in a timely manner.
- Even if Commerce were to determine that LSIL was cross-owned with Uttam Galva, there is now record evidence to demonstrate that LSIL is the Engineering Division of the former Lloyds Steel Industries Limited (Lloyds Steel)/UVSL. The Engineering Division

is not involved in the production of CORE, never produced subject merchandise, never supplied inputs or other goods used in the production of CORE, never transferred a subsidy to Uttam Galva, was never a holding/parent company of Uttam Galva.

- Therefore, even if LSIL were considered to be an affiliate of Uttam Galva, LSIL would not have been required to provide a questionnaire response.
- Commerce’s application of AFA in the Post-Preliminary Analysis is beyond the scope of its discretion under section 776 of the Act and its obligations under the SCM Agreement.
- Commerce may only make determinations relying on facts otherwise available if the necessary information is not available on the record. No such information regarding LSIL or the Engineering Division is missing from the record.
- Adverse inferences may only be applied if a respondent has failed to cooperate by not acting to the best of its ability. Uttam Galva has fully cooperated to the best of its ability with Commerce.
- Unlike a situation where Commerce discovers unreported affiliates at verification, the underlying facts with respect to LSIL were placed on the record voluntarily, and Commerce had the opportunity to seek additional information.
- All necessary information was either placed on the record in early questionnaire response or was later provided or clarified in subsequent responses. Therefore, without any missing information, there is no basis for Commerce to apply AFA.
- Article 12.7 of the SCM Agreement provides that a determination may be made on the basis of facts available if a party does not provide necessary information within a reasonable period, or significantly impedes the proceeding.
- The Appellate Body in *US – Carbon Steel (India)*, interpreted the terms “facts available” and “necessary information” in the context of Article 12.7 of the SCM Agreement. It stated that facts “available” refers to those facts that are in the possession of the investigating authority and on its written record. It was also stated that information is “necessary” if it is “required to complete a determination.”
- Commerce erred in applying AFA for the lack of “necessary information.” Commerce did not consider information submitted by Uttam Galva.
- When considering information provided by the GOI, Commerce is obligated to rely on such information even if is incomplete.<sup>62</sup>
- Commerce arbitrarily excluded from consideration information provided by Uttam Galva regarding debt-for-equity swaps and the stock prices of Lloyds Steel, as well as other information indicating that Lloyds Steel was not a sick company.
- Because information on the record indicates that Lloyds Steel was not a sick company as of 2012, Commerce cannot conclude that Lloyds Steel was unequityworthy without providing its reasoning for this conclusion.
- Commerce had sufficient information on the record to determine that there was no financial contribution or benefit.
- Uttam Galva demonstrated that ARCIL is a non-government company, as recognized by the Ministry of Corporate Affairs, and therefore not a public body.

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<sup>62</sup> See DS295.

*The petitioners' rebuttal:*

- Uttam Galva significantly impeded this proceeding when it withheld necessary information regarding its cross-ownership with LSIL.
- Uttam Galva's assertion that it provided sufficient information regarding LSIL is not supported by the record.
- Although Commerce requested information concerning Uttam Galva's affiliates in its initial questionnaire, it took nearly 11 months for Uttam Galva to disclose that it controls 46.11 percent of the shares in LSIL via common shareholding through the Miglani family.
- Uttam Galva provided false information that it had acquired control of a single division of LSIL as a corporate entity, when it had in fact acquired the entire company.
- Uttam Galva's failure to act to the best of its ability to provide full, timely responses to Commerce's requests for information prevented Commerce from being able to evaluate Uttam Galva's claim it was not operationally affiliated with LSIL.

**Commerce's Position:** As explained in more detail below, Commerce continues to find that Uttam Galva failed to report its affiliation with LSIL, and in accordance with sections 776(a)(2)(A)-(C) and 776(b) of the Act, we continue to find the application of AFA is warranted in determining whether Uttam Galva and LSIL are cross-owned. Because the record demonstrates that there is common ownership of Uttam Galva and LSIL by the Miglani family, we continue to find, as AFA, that the companies are cross owned.<sup>63</sup> Furthermore, Commerce continues to rely on facts otherwise available, pursuant to sections 776(a)(2)(A)-(C) of the Act, and finds that an adverse inference is warranted, pursuant to section 776(b) of the Act, in establishing the final countervailable subsidy rate for Uttam Galva in this administrative review. Because Uttam Galva failed to report its affiliation with LSIL, and failed to cooperate in this proceeding to the best of its ability, we were unable to fully investigate LSIL's use of programs that are being investigated in this administrative review. Consequently, and in light of our finding of cross-ownership with Uttam Galva, we are finding under sections 776(a)(2)(A)-(C) of the Act, and pursuant to an adverse inference under section 776(b) of the Act, that LSIL used all of the applicable programs under review, and are attributing the use of these programs to Uttam Galva in accordance with 19 CFR 351.525(b)(6)(vi).

To determine a subsidy rate for each program being examined as part of this administrative review, whether alleged in the investigation or the new subsidy allegations submitted by the petitioners in the course of this review, we first determine if there is an identical program from any segment of the proceeding and use the highest calculated rate for the identical program (excluding *de minimis* rates). If no such identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) within the same proceeding and apply the highest calculated rate for the similar/comparable program, excluding *de minimis* rates. If no such similar program exists within the same proceeding, we then determine if there is an identical or similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated rate, excluding *de*

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<sup>63</sup> See Commerce Memorandum, "2015-2016 Administrative Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from India: Financial Statements for Lloyds Steels Industries Limited," dated September 25, 2018; Post-Preliminary Analysis at 4-6.

*minimis* rates. When there is no identical or similar/comparable program in another CVD proceeding involving the same country, we apply the highest calculated rate from any non-company specific program in any CVD case involving the same country, but we do not use a rate from a program if the industry in the proceeding cannot use that program.<sup>64</sup>

Commerce set forth the facts regarding Uttam Galva's failure to report its affiliation with LSIL in great detail in the Post-Preliminary Analysis.<sup>65</sup> We adopt this explanation for purposes of our final results and will not reiterate the entire history of the record as it relates to LSIL here. However, we have addressed Uttam Galva's comments below.

First, Uttam Galva has argued that it was not required to provide a response on behalf of LSIL at the onset of this administrative review or in response to Commerce's initial questionnaire because, according to Uttam Galva, Uttam Galva and LSIL are not cross-owned. Uttam Galva is essentially arguing that because Commerce would not have found Uttam Galva and LSIL to be cross-owned, there was no need to report the companies' affiliation with one another. Uttam Galva has inverted the procedural order by which Commerce determines whether or not it should seek additional information regarding a respondent's affiliates. Commerce requests necessary information in its initial questionnaire in order to conduct its investigations and will decide on whether additional information is needed or not. In our initial questionnaire, we instructed Uttam Galva to "identify all companies with which your company is affiliated according to the above criteria." These criteria referenced the definition of "Affiliated Persons" as provided for in section 771(33) of the Act, which included:

(1) members of the same family, (2) any officer or director of an organization and such organization, (3) partners, (4) employers and their employees, and (5) any person or organization directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization. In addition, affiliates include (6) any person who controls any other person and that person, or (7) any two persons who directly control, are controlled by, or are under common control with, any person. "Control" exists where one person is legally or operationally in a position to exercise restraint or direction over the other person.<sup>66</sup>

Commerce initially provided the standard 39-day response time for respondents to file responses to the initial questionnaire. However, Commerce considers the identification of affiliates, and companies that may potentially need to file an entire Section III response, to be so integral to its countervailing duty proceedings that within the "Affiliated Companies" section of the questionnaire, it seeks information regarding affiliates prior to submission of all the other information solicited by the questionnaire. From a procedural standpoint, Commerce uses responses to the "Affiliated Companies" portion of Section III of the questionnaire to determine the universe of companies from which additional information may need to be solicited. If Commerce requests a full questionnaire of a company identified in a respondent's affiliation response, Commerce then uses the information in that affiliate's response to determine whether

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<sup>64</sup> See e.g., *Tai Shan City Kam Kiu Aluminum Extrusions Co. v. United States*, 125 F. Supp. 3d 1337, 1344 n.7 (CIT 2015).

<sup>65</sup> See Post-Preliminary Analysis at 4-7.

<sup>66</sup> See Initial Questionnaire, Section III, page 1.



or not cross-ownership exists between the respondent and the affiliate for the purposes of the countervailing duty law, in accordance with 19 CFR 351.525(b)(6)(vi).

Uttam Galva would have Commerce omit the affiliation stage of its cross-ownership analysis by substituting its own cross-ownership analysis, and then concluding that it need not report all of its affiliated entities. This reasoning is in error. The record information provided by Uttam Galva in response to supplemental questionnaires issued by Commerce shows that affiliation exists between Uttam Galva and LSIL during the POR. Specifically, following the *Preliminary Results*, Uttam Galva confirmed that Anuj and Ankit Miglani, who through their companies FI IPL and MEEL owned 46.11 percent of UVSL during the POR, had an equivalent ownership stake in LSIL.<sup>67, 68</sup>

Because this affiliation existed via common shareholding during the POR, Uttam Galva should have reported LSIL as an affiliate in its response to the “Affiliated Companies” section of initial questionnaire, providing Commerce an opportunity to determine whether additional information, such as a full questionnaire response, from LSIL was necessary. Then, after analyzing any additional information Commerce requested from the affiliate, Commerce would make its own determination of cross-ownership. However, Commerce was stripped of this opportunity because Uttam Galva did not identify the company in its affiliation response, and failed to cooperate in this proceeding to the best of its ability. As a result, we were unable to fully investigate LSIL’s use of the programs that would normally be investigated as a company found to be cross-owned with Uttam Galva. Therefore, because Uttam Galva failed to provide information requested of it regarding its affiliates, failed to provide information by established deadlines,<sup>69</sup> and significantly impeded Commerce’s ability to conduct this administrative review, we are applying facts otherwise available, with an adverse inference, under sections 776(a)(2)(A)-(C) and 776(b) of the Act, respectively, regarding the issues of affiliation and cross-ownership between Uttam Galva and LSIL.

Next, Uttam Galva appears to argue that it did notify Commerce of the affiliation between itself and LSIL. Specifically, Uttam Galva argues that UVSL’s 2014-2015 Annual Report identifies the Scheme of Arrangement to demerge the Engineering Division from UVSL and transfer it to LSIL. We do not find this argument persuasive, as it places an unreasonable burden on Commerce to infer, based on an identification of business dealings between two companies in a financial report, that the two companies are affiliated.<sup>70</sup> If Uttam Galva is imputing, based on the

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<sup>67</sup> Commerce found Uttam Galva and UVSL cross-owned in both the investigation and the *Preliminary Results*. Uttam Galva does not dispute this finding.

<sup>68</sup> See Letter from Uttam Galva, “Certain Corrosion-Resistant Steel Products from India; Uttam Galva Steels Limited’s Third Supplemental Questionnaire Response,” dated October 10, 2018 (Uttam Galva 3SQR) at 13.

<sup>69</sup> As was noted in the Post-Preliminary Analysis, Uttam Galva did not confirm its affiliation until after the *Preliminary Results*, nearly 11 months after the response to the affiliation section of the initial questionnaire was due. See Post-Preliminary Analysis at 5.

<sup>70</sup> See Letter from UVSL, “Certain Corrosion-Resistant Steel Products from India; Uttam Value Steels Limited’s Section III Questionnaire Response,” dated December 19, 2017 (UVSL IQR) at Exhibit 4. Relevant portions from the UVSL 2014-2015 financial statement to which Uttam Galva is alluding include: “The Stock Exchanges (BSE and NSE) have conveyed their ‘No-Objection’ approval for the draft Scheme of Demerger between Uttam Value Steels Limited (“UVSL” or “Demerged Company”); and Lloyds Steel Industries Limited (“LSIL” or “Resulting



business arrangement identified in a financial statement filed in response to the initial questionnaire, that Commerce should have known from these statements that LSIL was affiliated via shareholding with Uttam Galva, then the question remains as to why this same knowledge would not be imputed to Uttam Galva itself, such that it would have identified LSIL as an affiliate in its affiliation response that was submitted several weeks earlier. We do not consider two vague statements in an 80-plus page financial statement, itself provided among thousands of other pages in response to Section III of the initial questionnaire, to be sufficient in response to Commerce’s specific requests regarding affiliation. This is consistent with the Court of International Trade’s decision in *Husteel*, where the Court recognized that where a respondent relies on information buried in peripheral record information, this response is “inadequate to place Commerce on notice” of such information.<sup>71</sup> Commerce reasonably relied on Uttam Galva’s narrative responses to the affiliation section of the questionnaire – which did not identify LSIL – in assessing whether additional information, such as a full questionnaire response from any identified affiliates, was necessary. Further, like the plaintiff in *Husteel*, Uttam Galva “failed to notify Commerce of the issue, {i.e., its cross-ownership with LSIL} in any other prompt or reasonable way.”<sup>72</sup> The notion that Commerce was negligent in seeking additional information regarding LSIL is not supported by the record. As noted in the Post-Preliminary Analysis, Uttam Galva did not report that FIPL and MEEL were shareholders in LSIL until the company submitted its response to the NSA questionnaire – well after the deadline for the “Affiliated Companies” section of the questionnaire.<sup>73</sup> Subsequent to acquiring this information just two weeks before the *Preliminary Results*, Commerce placed LSIL’s financial statements on the record,<sup>74</sup> invited parties to comment on them, and issued a supplemental questionnaire to Uttam Galva on the subject of LSIL and the demerger agreement.<sup>75</sup> Although Uttam Galva protests that it provided responses for additional affiliates that it identified as being relevant to the production of CORE, and would have done so for LSIL had it been requested to do so, the fact remains that the absence of LSIL from Uttam Galva’s affiliation response means that Commerce had no opportunity to consider whether or not the company should provide a full questionnaire response.

Alternatively, Uttam Galva argues that affiliation did not even exist between it and LSIL during the POR, because UVSL’ Engineering Division was no longer part of the company and had been transferred to LSIL, and because the companies operated separately from each other. Again, we are not persuaded by this argument. In response to Uttam Galva’s argument that UVSL’s

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Company”)... the Equity Shareholders approved the said Scheme of Demerger” (page 16); and “The Company approved a Scheme of Arrangement (Scheme) between Uttam Value Steels Limited (UVSL) and Lloyds Industries Limited (LSIL), wherein the Engineering Division of the Company would be demerged to LSIL...” (page 41).

<sup>71</sup> See *Husteel Company, Ltd., v. United States*, 77 F. Supp. 3d 1286, 1295 (CIT 2015).

<sup>72</sup> *Id.* at 1296.

<sup>73</sup> See Post-Preliminary Analysis at 5; Letter from Uttam Galva, “Certain Corrosion-Resistant Steel Products from India; Uttam Galva Steels Limited New Subsidy Allegations Questionnaire Response, Question C & D,” dated July 19, 2018 (Uttam Galva NSA QR2) at 6-9.

<sup>74</sup> See Commerce Memorandum, “2015-2016 Administrative Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from India: Financial Statements for Lloyds Steels Industries Limited,” dated September 25, 2018 (LSIL Memorandum).

<sup>75</sup> See Commerce Letter, “Administrative Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from India: Supplemental Questionnaire,” dated September 27, 2018 (Third Supplemental Questionnaire).

Engineering Division was not operationally part of the company during the POR, we note the fact that the demerger itself did not occur until November 30, 2015, within the POR, regardless of any legal fiction that the “appointed date” and the “effective date” lay outside of the POR.<sup>76</sup> Nor do we consider the date of the demerger to be especially relevant in the first place, as the Miglani’s ownership stake in LSIL was acquired upon the demerger of the UVSL Engineering Division to LSIL. Therefore, the Miglani family’s stake in UVSL was merely substituted with an identical stake in a new affiliate, LSIL. Regardless of whether UVSL or LSIL owned and operated the Engineering Division, common ownership with Uttam Galva and LSIL exists via the Miglani family.

While Uttam Galva has argued that this ownership relationship between the Miglanis and LSIL was meant to be temporary, and that the Miglani shares are destined to be transferred to the Gupta family that “operates” LSIL, Uttam Galva acknowledges that this understanding between the parties is not documented anywhere.<sup>77</sup> In the absence of supporting documentation, we cannot accord any weight to Uttam Galva’s assertions regarding the purported agreement. Uttam Galva has explained why the share transfer has not yet taken place,<sup>78</sup> but in either case, whether the parties intend to one day transfer the shares, or there are hindrances impeding the completion of the transaction, the sole fact remains that a significant ownership share of LSIL remained within the Miglanis *during the POR*.

Uttam Galva further argues that it was inappropriate to apply AFA due to the lack of “necessary information” because Commerce did not identify what information it considered to be necessary. As an initial point, it is Commerce’s purview to determine what information is necessary in a proceeding. To that end, we issue questionnaires to respondents to request all of the information that we deem to be necessary, with the expectation that they will comply fully in responding to all questions therein and that, if necessary, they will seek additional clarification on points they consider to be unclear, or will submit extension requests if additional time is necessary to respond fully to requests for information.<sup>79</sup> With respect to its affiliates, we fully informed Uttam Galva of what information was considered necessary in Section III of the initial questionnaire, as discussed above. With respect to Uttam Galva’s additional arguments regarding Commerce’s obligations under the WTO SCM Agreement and the GOI’s arguments regarding public bodies, *see* Comment 3, above.

Finally, we are not altering our AFA finding regarding the unequityworthiness of Lloyds Steel at the time it received benefits under the “Debt-for-Equity Swaps and Other Assistance for Sick Industrial Companies” program. Because the GOI failed to cooperate to the best of its ability by electing not to provide information regarding the provision of debt-for-equity swaps and the basis under which they were provided, we have limited information regarding the unequityworthiness of Lloyds Steel.<sup>80</sup> Moreover, because we are not calculating a final subsidy rate for Uttam Galva in this proceeding, and instead are relying on the application of our AFA

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<sup>76</sup> *See* Uttam Galva 3SQR at 4-5.

<sup>77</sup> *Id.* at 16.

<sup>78</sup> The exact details of this transfer are proprietary.

<sup>79</sup> *See, e.g.,* the cover letter, as well as Section I: General Instructions, of the initial questionnaire

<sup>80</sup> *See* Post-Preliminary Analysis at 8; NSA Memorandum at 5-6.

hierarchy to establish a rate for each program, we continue to apply the 6.07 percent determined in the Post-Preliminary Analysis.<sup>81</sup>

#### **Comment 5: Whether the Incremental Export Incentivization Scheme Is Countervailable**

*GOI:*

- The Incremental Exports Incentivization Scheme was a one-time scheme offering benefits for incremental growth on the FOB value of exports from the period of April 1, 2013 through March 31, 2014 over the same period for the previous year. The GOI reported in its Initial Questionnaire Response that this scheme is no longer in force.

*The petitioners' Rebuttal:*

- Commerce should countervail benefits in the year they are received, in accordance with 19 CFR 351.524(a), regardless of when the activity leading the subsidy payment took place.

**Commerce's Position:** In its initial questionnaire response, JSW Steel reported that both it and JSW Coated achieved incremental growth on the FOB value of their exports in the period of April 1, 2013 through March 31, 2014, compared to the previous period of April 1, 2012 through March 31, 2013, on an annual basis.<sup>82</sup> Notably, however, the companies report that they did not actually receive the benefit from this growth in exports until the POR.<sup>83</sup> Consistent with 19 CFR 351.504(b), we find that the benefit was received at the time the firm received the incentive. Therefore, we are continuing to find that this program is countervailable during the POR despite claims to the contrary by the GOI that the program offered only a one-time incentive and that is no longer operational.

Moreover, to the extent that the GOI is claiming that this program is terminated, the provisions of 19 CFR 351.526 regarding program-wide changes have not been met. Specifically, 19 CFR 351.526(d) states that Commerce will not adjust the cash deposit rate for a program in cases where a residual benefit is allocated to the POR. Here, the period in which the benefits provided to JSW are allocated includes the POR, and thus there remain residual benefits provided to JSW.<sup>84</sup> As such, the GOI's termination of this program does not meet the provisions of 19 CFR 351.526, and we continue to measure the benefit and calculate a countervailable subsidy rate for this program for inclusion in the cash deposit rate.

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<sup>81</sup> *Id.* at 8-9.

<sup>82</sup> See Letter from JSW, “Corrosion-Resistant Steel Products from India: Response to Section III – Initial Questionnaire Response,” dated December 18, 2017 (JSW IQR) at 70-72.

<sup>83</sup> *Id.* at 72.

<sup>84</sup> See, e.g., *Polytetrafluoroethylene Resin from India: Final Affirmative Countervailing Duty Determination*, 83 FR 23422 (May 21, 2018) (*PTFE from India*) and the accompanying IDM at Comment 7.

## **Comment 6: Whether the Export Promotion of Capital Goods Scheme Is Countervailable**

### *GOI:*

- The EPCG is a permitted drawback scheme that allows a partial exemption from payment of customs duties upon importation of capital goods.
- Since there are no restrictions on the goods manufactured by imported machines or parts to be sold in the home market, the scheme is not export specific.
- The customs duty exemption on capital goods under the EPCG Scheme falls within the scope of Annex I (i) of the SCM Agreement, which permits the remission or drawback of import charges levied on imported inputs consumed in the production of the exported product not in *excess* of the value that accrued. The “remission or drawback” includes the full or partial exemption or deferral of import charges.
- Commerce seems to have simply relied upon its past determinations without referring to or considering the submissions/information available on the record.

### *The petitioners’ Rebuttal:*

- In the investigation, Commerce “verified the record information and find that there is no change in the administration and mechanics of the program that would cause us to change our determination”<sup>85</sup> from past findings regarding this program.

**Commerce’s Position:** As discussed in the *Preliminary Results*, EPCG Scheme has an export obligation which requires a company to export a certain amount of goods in order to qualify for the program. Because of the export obligation, the EPCGS is an “export subsidy” within the meaning of 19 CFR 351.514(a) as it is “contingent upon export performance.”

Furthermore, we agree with the petitioners that the GOI has not identified any record information that would indicate these programs are not contingent upon export, and that our findings regarding this program are consistent with prior determinations.<sup>86</sup>

## **Comment 7: Whether the Advance Authorization Program, Duty Drawback Program, and Duty Free Authorization Program Are Countervailable**

### *GOI:*

- Duty exemption and remission programs are not inconsistent with the SCM Agreement.
- Indirect tax rebate schemes and substitution drawback schemes can constitute an export subsidy only to the extent that they result in exemption, remission, deferral or refund of indirect taxes or import charges in excess of the amount of such taxes or charges actually levied on inputs that are consumed in the production of the exported product. However, normal allowance for waste must be made keeping in mind the consumption of inputs in the production of the exported product.

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<sup>85</sup> See Final IDM at Comment 4.

<sup>86</sup> See, e.g., *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Countervailing Duty Determination*, 82 FR 58172 (December 11, 2017) and accompanying IDM at 12-13; *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016) and accompanying PDM at 16 (unchanged in the final determination).

- Commerce erred in finding that the GOI has no effective and reasonable verification system in place.
- India has an effective control mechanism at every stage of the process, as detailed in the GOI's questionnaire response.
- Footnote I of the SCM Agreement provides that the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy. Therefore, the AAP is not countervailable as long as benefits received on the inputs that are consumed and the production of the exported product can be verified.
- In the case of the DDB program, the GOI monitors the consumption of inputs used in the production of exported products in accordance with the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 and the Customs Manual of 2015.
- The DDB program is not countervailable unless it could be proven that the drawback of indirect taxes of import charges in excess of the amount of such taxes or charges actually levied on inputs that are consumed in the production of the exported product and even in such cases only the excess drawback can be countervailed.
- The DDB program is not countervailable per the SCM Agreement unless it can be shown that in any particular case, drawback of indirect taxes or import charges are in excess of the amount of such taxes or charges actually levied on inputs that are consumed in the production of the exported product. Moreover, even in such cases only the excess drawback can be countervailed.<sup>87</sup>
- The DFIA scheme can function as a drawback scheme or a substitution drawback scheme.
- Under the DFIA scheme, authorization holders must indicate the excess inputs, along with the customs duty paid on these excess inputs.
- Exports under the DFIA scheme must actually consume the inputs listed in the SION, and this utilization must be certified by a chartered accountant.

*The petitioners' Rebuttal:*

- Commerce has previously considered and rejected similar arguments from the GOI regarding these programs.
- In the original investigation, Commerce "verified the record information by the GOI and continue to find that there is no change in the administration and mechanics of the {AAP} program that would cause us to change our determination."<sup>88</sup>
- In the original investigation, Commerce also "requested that the GOI identify and explain the types of records maintained by the relevant government or governments (e.g., accounting records, company-specific files, databases, budget authorizations, etc.) regarding the {DDB} program in effect during the POI"<sup>89</sup> but the GOI did not provide the requested documentation.

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<sup>87</sup> See DS486.

<sup>88</sup> See Final IDM at Comment 1.

<sup>89</sup> *Id.* at Comment 3.



**Commerce's Position:** We disagree with the GOI and continue to find these programs countervailable for the final results. Specifically, we disagree with the GOI's claim that it has an adequate system in place for the AAP, DDB program, and DFIA program, such that these programs would not be found to be providing a countervailable benefit within the meaning of 19 CFR 351.519(a)(4)(i). We previously addressed the GOI's arguments in the investigation.<sup>90</sup> As discussed in Comment 2, above, in a CVD administrative review, Commerce does not re-examine its countervailability findings from the investigation, absent new evidence presented by an interested party. The question then is whether or not the GOI has provided new evidence that would cause us to reconsider and overturn our findings from the investigation regarding the countervailability of these three programs, and more specifically, whether the GOI has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, within the meaning of 19 CFR 351.519(a)(4)(i). Most notably, Commerce still does not have information related to the GOI establishment of the Standard Input Output Norms (SION) as they are applicable to CORE, despite asking for this information specifically in its supplemental questionnaire to the GOI.<sup>91</sup> The GOI provided regulations and materials related to the establishment of SION, and identified the government agency responsible for establishing them, but did not provide the SION themselves.<sup>92</sup> Similar information is required for a full examination of the DDB and DFIA programs. With respect to the DDB program, we note that the GOI did provide the drawback schedule as requested,<sup>93</sup> and while this document does show the drawback rates in effect, it does not provide information as to how those rates are set, or how the GOI confirms the consumption of inputs used in the production of exported goods. Because we have no information on the record to establish that the GOI meets the requirements of 19 CFR 351.519(a)(4)(i), we continue to find that the entire amount of the import duty deferral or exemption provided under these programs constitutes a benefit under section 771(5)(E) of the Act.

#### **Comment 8: Whether Programs Administered by the State Governments of Maharashtra and Karnataka Are Countervailable**

*GOI:*

- The state government programs countervailed by Commerce in the *Preliminary Results* are not specific under section 771(5A)(D) of the Act.
- The criteria specified under the programs are objective and neutral, and the qualifications for benefits are automatic.
- These programs should not be treated as countervailable under section 771(5B)(C) of the Act.

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<sup>90</sup> See Final IDM at Comments 1-3.

<sup>91</sup> See SQR at question 6: "On page 9 of your questionnaire response, you identify the website from which a list of the Standard Input Output Norms (SION) can be downloaded. As information provided on a website is subject to change without notice, it cannot serve as a basis for the record in this proceeding. Please submit the SION applicable to corrosion-resistant steel on the record of this review."

<sup>92</sup> See Letter from the GOI, "Administrative Review of Countervailing Duty into Corrosion Resistant Steel from India (Case No. C-533-864) -Response to Supplemental Questionnaire on behalf of Government of India," dated July 16, 2018 (GOI SQR) at 3.

<sup>93</sup> See GOI SQR at Exhibit 16.



**Commerce's Position:** In the *Preliminary Results*, Commerce countervailed three SGOM Subsidy Programs: Electricity Duty Exemptions, the Sales Tax Program, and Subsidies for Mega Projects under the Package Scheme of Incentives - Mega Incentive. We noted in the *Preliminary Results* that we had no new information regarding the SGOM – Electricity Duty Exemptions and SGOM – Sales Tax Programs on the record of this administrative review, and that in the investigation we relied on the GOI's reporting that these programs are provided to those companies investing in specified developing regions in Maharashtra.<sup>94</sup> While the GOI argues that these programs meet the requirements for the exemption of a countervailability finding with regard to subsidies to disadvantaged regions, as set forth under section 771(5B)(C)(i) and (ii) of the Act, we note that that provision is no longer in effect.<sup>95</sup> Regarding specificity, the GOI relied on section 771(5A)(D) of the Act to argue these programs are not countervailable because they are not specific. However, section 771(5A)(D) of the Act outlines exceptions that are only applicable to subsidies that might otherwise be specific as a matter of law under section 771(5A)(D)(i) of the Act. Here, we find that that these programs are specific pursuant to section 771(5A)(D)(iv) of the Act, as they are only available to recipients in certain less developed industrial regions in the State of Maharashtra.

With respect to the SGOM - Subsidies for Mega Projects under the Package Scheme of Incentives - Mega Incentive Program, we found in the *Preliminary Results* that this program was specific to an enterprise under section 771(5A)(D)(i) of the Act. The benefits from this program are tailored to the expansion of certain facilities and there is no evidence on the record provided by the GOI that any of the exemptions listed under section 771(5A)(D)(ii) of the Act apply these packages of benefits that are tailored to specific enterprises. Furthermore, the receipt of these benefits are tied to the region of Maharashtra in which the companies are located,<sup>96</sup> meaning that they continue to be regionally specific under section 771(5A)(D)(iv), as found in the *Final Determination*.<sup>97</sup>

Commerce also countervailed Industry Policy (KIP) Tax Incentives provided by the State Government of Karnataka in the *Preliminary Results*. We continue to find that this program is enterprise specific under section 771(5A)(D)(i) of the Act because it is tied to JSW's establishment of new facilities, and there is no evidence that eligibility is automatic.

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<sup>94</sup> See PDM at 16-17.

<sup>95</sup> See section 771(5B)(G) of the Act; *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) and accompanying IDM at Comment 16.

<sup>96</sup> See, e.g., Letter from Uttam Galva, "Certain Corrosion-Resistant Steel Products from India; Uttam Galva Steels Limited's Section III Questionnaire Response," dated December 19, 2017 (Uttam Galva IQR) at 40 and UVSL IQR at 39.

<sup>97</sup> See Final IDM at Comment 5.

## Comment 9: Whether the Merchandise Exports from India Scheme Is Countervailable

### GOI:

- The MEIS should not be found countervailable because its objective is to provide assistance to exporters to offset infrastructural inefficiencies and associated costs and taxes involved, and to provide a level playing field.
- MEIS is a remission of taxes or duties falling under footnote 1 of the SCM Agreement, by virtue of which it is deemed not to be a “subsidy” under the SCM Agreement.
- Because the remission of prior-stage cumulative indirect taxes under MEIS is not in excess of the amount of such taxes levied on inputs consumed in the production of the exported product, MEIS is not an export subsidy under sections (g) and (h) of Annex I of the SCM Agreement.

### The petitioners’ Rebuttal:

- The GOI’s argument that the remissions it provides are not excessive, and that the MEIS is therefore not specific, is without merit. Commerce has previously examined and rejected the GOI’s argument in *Welded Pipe from India*.<sup>98</sup>

**Commerce’s Position:** We continue to find that this program is countervailable, as we have in previous investigations,<sup>99</sup> and that the GOI failed to demonstrate that the MEIS Program is not countervailable under the Act and Commerce’s regulations. The GOI falsely claims that duty credit scrips earned by the respondents under this program constitute the remission of prior-stage cumulative indirect taxes as the MEIS assists exporters to offset infrastructural inefficiencies and associated costs and taxes, and thus, is not countervailable to the extent that there is no excess remission. Further, the GOI failed to demonstrate that it has a system and procedures in place to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm, which indirect taxes are imposed on these inputs, and that its system or procedure is reasonable and effective.<sup>100</sup>

Pursuant to section 19 CFR 351.518, prior-stage cumulative indirect taxes are taxes that are levied at each stage of production and distribution without any offset, and the amounts exempted, remitted or deferred upon export must correspond to the prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product, making normal allowances for waste. That is, only exemptions, remissions or deferrals of such taxes in excess of the indirect taxes on inputs that are not consumed in the production of the export product are countervailable.<sup>101</sup> The supporting documentation to this program, submitted by the GOI makes it clear that the duty credit scrips under this program bare no relationship to any cumulative indirect taxes potentially levied on inputs throughout the production of the exported product, but

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<sup>98</sup> See *Welded Pipe from India* and accompanying IDM at Comment 2.

<sup>99</sup> See, e.g., *Welded Pipe from India* and *PTFE from India*; see also *Stainless Steel Flanges from India: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 83 FR 40748 (August 16, 2018) and accompanying IDM.

<sup>100</sup> See 19 CFR 351.518(a)(4). We note that in the *Preliminary Results*, we found that this program provided a benefit in accordance with 19 CFR 351.519. For the final results, we are finding that a benefit exists in the form of an exemption, remission, or deferral upon export of prior-stage cumulative indirect taxes (i.e., 19 CFR 351.518).

<sup>101</sup> *Id.* at 19 CFR 351.518(a)(1)-(3)

instead, are calculated based on the FOB value received in foreign exchange, for the exported product.<sup>102</sup> Furthermore, the GOI did not provide any explanation how the percent rate for calculating the duty credit scrip on exports of subject merchandise to the United States was derived for the groups of products and countries. That is, the GOI failed to explain how that particular percent reimbursement/credit on the FOB value received in foreign exchange was determined, or how it relates to any cumulative indirect tax expenses incurred by the Indian producer/exporter due to any prior-stage cumulative indirect taxes paid on the exported product, or how infrastructural inefficiencies are measured and assessed. Accordingly, we find that the GOI does not have a system in place to account for any prior-stage cumulative indirect taxes incurred by Indian producers on inputs for the export product, and consider the entire amount of the duty credit scrips confer a benefit.

#### **Comment 10: Whether Uttam Galva's Benefits under the Merchandise Exports from India Scheme Should Be Tied to U.S. Exports**

##### *Uttam Galva:*

- In the *Preliminary Determination*, Commerce incorrectly determined that the receipt of scrips was not tied to any specific market, and therefore, incorrectly used as a denominator the combined total FOB value of exports of Uttam Galva and UVSL.
- The receipt of scrips under the MEIS program is tied to specific markets, and therefore, Commerce should revise its determination and calculate a subsidy rate only for exports to the United States.
- Under 19 CFR 351.525(b)(4), when a subsidy is tied to a particular market, Commerce will attribute the subsidy only to products sold by the respondent to that market.
- Under the Foreign Trade Policy 2015-2020 the MEIS program is only available for “exports of notified goods/products with the {Indian Trade Classification (Harmonized System)} code, to notified markets as listed in Appendix 3B.”<sup>103</sup>
- Where a benefit is tied to export markets other than the United States, Commerce has determined that non-U.S. exports do not confer a countervailable subsidy.

##### *The petitioners' Rebuttal:*

- Commerce has repeatedly stated that “a subsidy is tied when the intended use of the subsidy is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy.”<sup>104</sup>
- Uttam Galva does not provide any evidence indicating that the GOI intended, or acknowledged, that the benefits provided under the MEIS would be used solely for exports to the United States. It merely points to record evidence that Uttam Galva itself

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<sup>102</sup> See GOI NSA QR at 3-8, and GOI SQR at Exhibit 5 (Foreign Trade Policy 2015-2020, Chapter 3).

<sup>103</sup> See GOI SQR Exhibit 5, page 52.

<sup>104</sup> See also *Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review*, 63 FR 13626, 13631 (March 20, 1998), citing *Final Affirmative Countervailing Duty Determinations: Certain Carbon Steel Products from Belgium*, 47 FR 39304 (September 7, 1982); see also *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) and accompanying IDM at Comment 3; and *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) and the accompanying IDM at Comment 7.

is able to determine whether benefits were applied to the United States or to other markets.

**Commerce's Position:** For the reasons explained in Comment 4, above, we are applying total AFA with respect to Uttam Galva for these final results. As such, pursuant to our AFA hierarchy, as discussed in Comment 4, we are applying a subsidy rate to each program pursuant to section 776(d)(1)(A) of the Act, including the MEIS. Given this finding, Uttam Galva's arguments are moot, and we have not analyzed them further.

#### **Comment 11: Whether Safeguard Duties Should Be Included in the Advanced Authorization Program Calculations**

##### *Uttam Galva:*

- Record evidence demonstrates that Uttam Galva was not obligated to pay safeguard duties on its imports, and there was therefore no exemption.
- Safeguard duties are never due for products that are not domestically consumed because import taxes must not be exported under the AAP.
- Although the Foreign Trade Policy 2015-2020 includes safeguard duties among the list of payments exempted under the AAP, not all of the duties mentioned are applicable to imports (*i.e.*, there were no antidumping or countervailing duties applicable to Uttam Galva's imports).
- While safeguard duties of 20 percent were in place for imported hot-rolled coils during the POR, these duties were never applicable to Uttam Galva's exports as demonstrated by the bill of entries that show no safeguard duties were due for imports of hot-rolled coils.
- If safeguard duties had been exempted as part of the AAP, they would have been listed in each section of the bill of entry that contains the summary of the duties that are due under the AAP.
- Commerce has previously established the concept that safeguard duties are not like other import duties, stating that they should not be treated as U.S. import duties or selling expenses for the purposes of calculating the gross U.S. price in antidumping investigations and reviews. Safeguard duties should also be treated differently in CVD proceedings.

##### *The petitioners' Rebuttal:*

- Record evidence demonstrates that safeguard duties on imports of hot-rolled coil were generally applicable during the POR, and the GOI provided a benefit in the form of exempting those duties under the AAP.
- Commerce was correct to reject Uttam Galva's arguments as contrary to record evidence.
- The bills of entry submitted by Uttam Galva do not provide conclusive evidence that the GOI did not intend to collect safeguard duties on imports of hot-rolled coil.
- Record evidence supports Commerce's finding that Uttam Galva's imports of hot-rolled coil are subject to safeguards, and that those safeguards are exempted under the AAP.
- GOI circulars announcing the imposition of safeguards do not include any carve-outs for AAP imports, despite explicitly including other carve-outs.

- The GOI has specifically stated that safeguard duties, like ordinary customs duties, education cess, and antidumping and countervailing duties, are exempt from payment under the AAP.

**Commerce’s Position:** We continue to find it appropriate to countervail the exemption of safeguard duties, and to include this benefit amount within the benefits received under the AAP. While the logic of Uttam Galva’s argument regarding the role of safeguards in relation to goods destined for export is understandable, the information we have on the record clearly indicates that it is the GOI’s intention to include safeguard duties among the category of duties that can be exempted under the AAP, under section 4.14 of the Foreign Trade Policy 2015-2020.<sup>105</sup> Section 4.14 of the Foreign Trade Policy 2015-2020 does reference certain “deemed exports” to which safeguard exemptions do not apply, however none of the goods imported by Uttam Galva constitute the sort of capital goods or goods supplied to the United Nations or other international organizations contemplated by section 7.02 of the Foreign Trade Policy 2015-2020, as referenced in section 4.14 of the Foreign Trade Policy 2015-2020.<sup>106</sup>

In the *Preliminary Results*, we found this program used by both JSW and Uttam Galva, based on their reporting that safeguard exemptions existed for goods that were imported by the companies within the POR.<sup>107</sup> For each company, we countervailed only those goods that they identified as being subject to safeguards, and only for those dates where the safeguards were in force. For Uttam Galva, this included imports of hot-rolled coils from September 14, 2015, through September 13, 2016, while for JSW it also included hot-rolled coils from China.<sup>108</sup> We relied on the statements by the respondents for purposes of finding safeguard exemptions countervailable in the *Preliminary Results*, and we continue to do so here. Uttam Galva has not provided an explanation for why the GOI would impose safeguard measures, and then choose not to impose any such duties on relevant imports. It is clear from the record that the GOI, when imposing safeguard duties, may choose to exempt their collection under certain provisions of the AAP.<sup>109</sup> We understand Uttam Galva’s argument to say that the GOI neglected to impose safeguard duties that it planned to exempt from collection regardless, had it imposed them. Either way, the undisputed fact remains that the GOI did not collect the applicable safeguard duties on Uttam Galva’s imports of hot-rolled coil from September 14, 2015, through September 13, 2016. Moreover, given the temporary nature of the applied safeguards, we do not find Uttam Galva’s self-selection of a single bill of entry as definitive proof that the GOI intended to alter its normal entry procedures and documentation regarding the collection of duties.<sup>110</sup>

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<sup>105</sup> See GOI SQR at page 70 of Exhibit 5.

<sup>106</sup> *Id.* at 113-115.

<sup>107</sup> See Letter from Uttam Galva, “Certain Corrosion-Resistant Steel Products from India; Uttam Galva Steels Limited New Subsidy Allegations Questionnaire Response,” dated July 16, 2018 (Uttam Galva NSA QR1) at 3; *see also* Letter from JSW, “Corrosion-Resistant Steel Products from India: New Subsidies Allegation Questionnaire Response,” dated July 16, 2018 (JSW NSA QR) at 5-6.

<sup>108</sup> See Uttam Galva NSA QR1 at 3; *see also* JSW NSA QR at 5-6.

<sup>109</sup> See GOI SQR at Exhibit 5, section 4.14 of the Foreign Trade Policy 2015-20.

<sup>110</sup> See Uttam Galva NSA QR1 at Exhibits 2 and 5.



**Comment 12: Whether the Administration of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) through the Board for Industrial & Financial Reconstruction (BIFR) Constitutes a Subsidy**

**GOI:**

- Asset Recovery Corporation (India) Ltd. (ARCIL) is sponsored by banks and financial institutions such as the State Bank of India, IDBI Bank Limited, ICICI Bank Limited, and Punjab National Bank.
- ARCIL operates on the basis of commercial wisdom and there is no government involvement in its day-to-day functioning. ARCIL does not exercise any governmental authority, and therefore cannot be considered a “public body.”
- Commerce’s public body analysis has been found to be inconsistent with the SCM Agreement by the WTO Appellate Body.<sup>111</sup> The WTO Appellate Body has found that a public body “must be an entity that possesses, exercises or is vested with governmental authority.”<sup>112</sup>
- Commerce’s principle reliance on ownership in its public body analysis is in error because ownership “is not sufficient because evidence of government ownership, in itself, is not evidence of meaningful control of an entity by government and cannot, without more, serve as a basis for establishing that the entity is vested with authority to perform a governmental function. Accordingly, such evidence, alone, cannot support a finding that an entity is a public body.”<sup>113</sup>
- Public sector banks in India do not possess, exercise, or are vested with governmental authority. “In determining whether or not a specific entity is a public body, it may be relevant to consider ‘whether the functions or conduct are of a kind that are ordinarily classified as governmental in the legal order of the relevant Member.’ The [...] classification and functions of entities within WTO Members generally may also bear on the question of what features are normally exhibited by public bodies.”<sup>114</sup>
- The Administration of SICA cannot be considered specific because it was applied to companies regardless of the type of merchandise manufactured or whether or not goods were exported.

**Commerce’s Position:** Commerce determined that the “Debt-for-Equity Swaps and Other Assistance for Sick Industrial Companies” program was countervailable in our Post-Preliminary Analysis, in part because we found, based on the application of AFA, that a financial contribution was provided by ARCIL and the SBI to UVSL.<sup>115</sup> For the reasons explained in Comment 3, above, we continue to find that these entities, *via* the SICA, provided a financial contribution to UVSL’s predecessor company, Lloyds Steel.

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<sup>111</sup> See *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* WT/DS379/R (October 22, 2010) (DS379).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*; see also DS436.

<sup>114</sup> See DS436.

<sup>115</sup> See Post-Preliminary Analysis at 6-7.



### **Comment 13: Whether Commerce Erred in Its Preliminary Calculations for Uttam Galva**

*Uttam Galva:*

- In the *Preliminary Results*, Commerce made ministerial calculation errors with respect to the Export Promotion for Capital Goods program, the SGOM Sales Tax Deferment Program, and the SGOM Mega Projects Program.

**Commerce's Position:** We have not made the corrections identified by Uttam Galva. For the reasons explained in Comment 4, above, we are applying total AFA with respect to Uttam Galva for these final results. As such, pursuant to our AFA hierarchy, we are applying a subsidy rate to each program pursuant to section 776(d)(1)(A) of the Act. Given this finding, Uttam Galva's arguments are moot, and therefore, we have not analyzed them further.

### **Comment 14: Correction of a Ministerial Error in the Calculations for JSW**

*JSW:*

- Commerce should correct a ministerial error in the benefit amount in one of the tabs for the EPCG program. The error involves a certain formula being off by 10 rows in the calculation spreadsheet.

**Commerce's Position:** We agree with the JSW that the aforementioned error should be corrected, and we have done so for these final results.<sup>116</sup>

### **Comment 15: Whether Commerce Should Apply the Cash-Flow Method in Determining when the Benefits Are Received.**

*GOI:*

- Commerce has a long-standing practice to use the cash-flow method in determining when benefits are received.<sup>117</sup>
- A company does not benefit from an alleged subsidy payment when it accrues, but instead when it is disbursed, and the company experiences a difference in cash flow.
- In accordance with this methodology, Commerce should hold that unless a benefit was received during the POR, the scheme should be determined to have not be used.

**Commerce's Position:** For these final results, Commerce has continued to apply the timing of the accrual of benefits in accordance with its regulations.

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<sup>116</sup> For specific details about the correction, which involve BPI, see the memorandum to the File "Countervailing Duty Administrative Review of Certain Corrosion-Resistant Steel Products from India: Final Results Calculations for JSW Steel Limited," dated concurrently with these final results.

<sup>117</sup> See *Industrial Phosphoric Acid from Israel--Final Results of Countervailing Duty Administrative Reviews*, 56 FR 50854 (October 9, 1991).

## VIII. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these positions are accepted, we will publish the final results in the *Federal Register*.

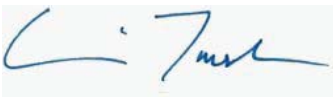
☒

\_\_\_\_\_  
Agree

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Disagree

3/18/2019

X 

Signed by: CHRISTIAN MARSH

Christian Marsh

Deputy Assistant Secretary  
for Enforcement and Compliance

## Attachment

### AFA Rate Calculation

Program Name	AFA Rate
1. Advance License Program <sup>118</sup>	0.59%
2. Advance Authorization Program <sup>119</sup>	
3. Duty Drawback Program <sup>120</sup>	2.68%
4. Duty Free Import Authorization Scheme <sup>121</sup>	14.61%
5. Export Oriented Units - Duty-Free Import of Goods, Including Capital Goods and Raw Materials <sup>122</sup>	14.61%
6. Export Oriented Units - Reimbursements of Central Sales Tax (CST) Paid on Goods Manufactured in India <sup>123</sup>	3.09%
7. Export Oriented Units - Duty Drawback on Fuel Procured from Domestic Oil Companies <sup>124</sup>	14.61%
8. Export Oriented Units - Exemption from Payment of Central Excise Duty on Goods Manufactured in India and Procured from a Domestic Tariff Area <sup>125</sup>	14.61%
9. Export Promotion of Capital Goods Scheme <sup>126</sup>	6.07%
10. Merchandise Exports from India Scheme <sup>127</sup>	1.03%
11. Pre-Shipment and Post-Shipment Export Financing <sup>128</sup>	2.90%
12. Market Development Assistance Scheme <sup>129</sup>	16.63%
13. Market Access Initiative <sup>130</sup>	16.63%
14. Focus Product Scheme <sup>131</sup>	2.00%
15. GOI Loan Guarantees <sup>132</sup>	2.90%

<sup>118</sup> This rate was calculated for JSW's use of the program in this review.

<sup>119</sup> This rate was calculated for JSW's use of the program in this review.

<sup>120</sup> This rate was calculated for JSW's use of the program in this review.

<sup>121</sup> See *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016) (*PET Resin from India*), and accompanying IDM at 27.

<sup>122</sup> See *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) (*Circular Welded Steel Pipe from India*), and accompanying IDM at 12-13.

<sup>123</sup> *Id.* at 13.

<sup>124</sup> *Id.* at 13-14.

<sup>125</sup> *Id.* at 14-15.

<sup>126</sup> This rate was calculated for JSW's use of the program in this review.

<sup>127</sup> This rate was calculated for JSW's use of the program in this review.

<sup>128</sup> See *Cold-Drawn Mechanical Tubing from India* at 12.

<sup>129</sup> See *PET Resin from India* at 26.

<sup>130</sup> See *Circular Welded Steel Pipe from India* at 19-20.

<sup>131</sup> See *PET Resin from India* at 18-19.

<sup>132</sup> *Id.* at 26.

16. Status Certificate Program <sup>133</sup>	2.90%
17. Income Deduction Program (80-IB Tax Program) <sup>134</sup>	35.00%
18. SEZ - Income Tax Exemption <sup>135</sup>	
19. SEZ - Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material <sup>136</sup>	14.61%
20. SEZ - Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material <sup>137</sup>	0.53%
21. SEZ - Exemption from Electricity Duty and Cess on Electricity Supplied to a SEZ Unit <sup>138</sup>	3.09%
22. SEZ - Service Tax Exemption <sup>139</sup>	3.09%
23. Steel Development Fund Loans <sup>140</sup>	0.99%
24. Provision of Hot-Rolled Steel for LTAR <sup>141</sup>	16.14%
25. Provision of Captive Mining Rights for Iron Ore for LTAR <sup>142</sup>	18.08%
26. Provision of Captive Mining Rights for Coal for LTAR <sup>143</sup>	3.09%
27. Provision of High-Grade Iron Ore for LTAR <sup>144</sup>	16.14%
28. Provision of Flat-Rolled Steel for LTAR <sup>145</sup>	16.14%
29. Provision of Steel for LTAR through Rashtriya Ispat <sup>146</sup>	16.14%
30. Incremental Exports Incentive Scheme <sup>147</sup>	0.40%
31. Preferential Long-Term Loans from State-Owned Banks under the 5/25 Scheme <sup>148</sup>	0.99%
32. Debt-for-Equity Swaps and Other Assistance for Sick Industrial Companies <sup>149</sup>	6.07%

<sup>133</sup> See *Circular Welded Steel Pipe from India* at 20-21.

<sup>134</sup> *Id.* at 11.

<sup>135</sup> *Id.* at 11, 23-24.

<sup>136</sup> *Id.* at 12-13.

<sup>137</sup> See *PET Resin from India* at 25.

<sup>138</sup> See *Circular Welded Steel Pipe from India* at 23.

<sup>139</sup> See *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) (*Hot-Rolled Carbon Steel Flat Products from India*), and accompanying IDM at 18-19.

<sup>140</sup> See *Hot-Rolled Carbon Steel Flat Products from India* at 11.

<sup>141</sup> See *Circular Welded Steel Pipe from India* at 24-25.

<sup>142</sup> *Id.* at 25.

<sup>143</sup> *Id.* at 25-26.

<sup>144</sup> *Id.* at 26.

<sup>145</sup> *Id.* at 24-25.

<sup>146</sup> *Id.*

<sup>147</sup> See *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination*, 83 FR 3122 (January 23, 2018), and accompanying IDM at 11.

<sup>148</sup> See *Hot-Rolled Carbon Steel Flat Products from India* at 11.

<sup>149</sup> As in the Post-Preliminary Analysis, we are applying the grant rate calculated for JSW's use of the "Export Promotion of Capital Goods Scheme."

33. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas <sup>150</sup>	6.06%
34. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: Reimbursement of Power at the Rate of Rs. 0.75 per Unit <sup>151</sup>	6.06%
35. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy for Expenses Incurred for Quality Certification <sup>152</sup>	6.06%
36. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 50 Percent Subsidy on Expenses Incurred in Patent Registration <sup>153</sup>	6.06%
37. SGAP Subsidy Programs - Grant under the Industrial Investment Promotion Policy: 25 Percent Subsidy in Cleaner Production Measures <sup>154</sup>	6.06%
38. SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: 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 <sup>155</sup>	3.09%
39. SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: Reimbursement on VAT, CST, and State Goods and Services Tax <sup>156</sup>	3.09%
40. SGAP Subsidy Programs - Tax Incentives under the Industrial Investment Promotion Policy: Exemption from SGAP Non-Agricultural Land Assessment <sup>157</sup>	3.09%
41. SGAP Subsidy Programs - Provision of Goods and Services for LTAR under the Industrial Investment Promotion Policy: Provision of Infrastructure for Industries Located More than 10 Kilometers from Existing Industrial Estates or Development Areas <sup>158</sup>	18.08%
42. SGAP Subsidy Programs - Provision of Goods and Services for LTAR under the Industrial Investment Promotion Policy: Guaranteed Stable Water Prices and Reservation of Municipal Water <sup>159</sup>	18.08%

<sup>150</sup> See *Hot-Rolled Carbon Steel Flat Products from India* at 29-30.

<sup>151</sup> *Id.* at 30.

<sup>152</sup> *Id.* at 30-31.

<sup>153</sup> *Id.* at 31-32.

<sup>154</sup> *Id.* at 31.

<sup>155</sup> *Id.* at 32.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at 33.

<sup>158</sup> *Id.* at 33-34.

<sup>159</sup> *Id.* at 34.

43. SGAP Subsidy Programs - Allotment of Land for LTAR <sup>160</sup>	6.06%
44. State Government of Maharashtra (SGOM) Subsidy Programs - SGOM Sales Tax Program <sup>161</sup>	0.63%
45. SGOM Subsidy Programs - Infrastructure Assistance for Mega Projects under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects <sup>162</sup>	6.06%
46. SGOM Subsidy Programs - Subsidies for Mega Projects under the Package Scheme of Incentives <sup>163</sup>	0.95%
47. SGOM VAT Refunds under the SGOM Package Scheme of Incentives <sup>164</sup>	3.09%
48. SGOM Electricity Duty Exemptions <sup>165</sup>	3.09%
49. SGOM Waiving Loan Interest by State Industrial and Investment Corporation of Maharashtra Ltd. (SICOM) <sup>166</sup>	2.90%
50. SGOM Investment Subsidies <sup>167</sup>	6.06%
51. SGOM Provision of Land for LTAR <sup>168</sup>	18.08%
52. SGOM Provision of Water for LTAR under the SGOM Package Scheme of Incentives <sup>169</sup>	18.08%
53. SGOM Provision of Power for LTAR under the SGOM Package Scheme of Incentives <sup>170</sup>	18.08%
54. SGOM Provision of Iron Ore Allotments for LTAR under the SGOM Package Scheme of Incentives <sup>171</sup>	18.08%
55. SGOM Provision of Coal Mine Allotments for LTAR under the SGOM Package Scheme of Incentives <sup>172</sup>	3.09%
56. SGOM Provision of Lime/Dolomite Mine Allotments under the SGOM Package Scheme of Incentives <sup>173</sup>	18.08%
57. SGOM 100 Percent Reimbursement of Stamp Duty and Registration Charges on Purchases/Leases of Land <sup>174</sup>	6.06%

<sup>160</sup> *Id.* at 29-30. No rate exists for this program and, therefore, we are using the rate for the SGAP Grant Under the Industrial Investment Promotion Policy: 25 Percent Reimbursement of the Cost of Land in Industrial Estates and Development Areas as a similar/comparable program.

<sup>161</sup> This rate was calculated for JSW's use of the program in this review.

<sup>162</sup> See *Circular Welded Steel Pipe from India* at 29-30.

<sup>163</sup> See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination*, 81 FR 4992 (July 29, 2016), and accompanying IDM at 11-12.

<sup>164</sup> See *Circular Welded Steel Pipe from India* at 27.

<sup>165</sup> *Id.* at 28.

<sup>166</sup> *Id.* at 31-32.

<sup>167</sup> *Id.* at 30-31.

<sup>168</sup> *Id.* at 30.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 25.

<sup>172</sup> *Id.* at 25-26.

<sup>173</sup> *Id.* at 25.

<sup>174</sup> See *Hot-Rolled Carbon Steel Flat Products from India* at 29-30.



58. SGOM Exemption/Deferment of Sales Tax/VAT on the Sale of Finished Products <sup>175</sup>	0.59%
59. SGOM 100 Percent Freight Subsidy towards Freight Payments on Iron Ore, Coke, and Coal Inputs <sup>176</sup>	6.06%
60. SGOM 50 Percent Power Subsidy during Project Installation <sup>177</sup>	6.06%
61. SGOM Clearance of Forests <sup>178</sup>	6.06%
62. KIP Provision of Land for LTAR <sup>179</sup>	18.08%
63. KIP Provision of Iron Ore, Limestone and Dolomite for LTAR <sup>180</sup>	18.08%
64. KIP Provision of Power/Electricity for LTAR <sup>181</sup>	18.08%
65. KIP Provision of Water for LTAR <sup>182</sup>	18.08%
66. KIP Provision of Roads & Port Facility Infrastructure for LTAR <sup>183</sup>	18.08%
67. KIP Loans <sup>184</sup>	1.32%
68. SGUP Exemption from Entry Tax for the Iron and Steel Industry <sup>185</sup>	3.05%
69. SGUP Long-term Interest Free Loans Equivalent to the Amount of VAT and CST Paid <sup>186</sup>	3.09%
70. SGUP's Interest Free Loans Under the SGUP Industrial Development Promotion Rules 2003 <sup>187</sup>	1.32%
TOTAL:	588.43%

<sup>175</sup> See *Circular Welded Steel Pipe from India* at 25.

<sup>176</sup> See *Hot-Rolled Carbon Steel Flat Products from India* at 30.

<sup>177</sup> *Id.*

<sup>178</sup> See *Circular Welded Steel Pipe from India* at 26-27.

<sup>179</sup> *Id.* at 30.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> See *Hot-Rolled Carbon Steel Flat Products from India* at 49.

<sup>185</sup> See *Cold-Drawn Mechanical Tubing from India* at 14.

<sup>186</sup> See *Hot-Rolled Carbon Steel Flat Products from India* at 22-23. No rate exists for this program and, therefore, we are using the rate for the SGOG's VAT Remission Scheme as a similar/comparable program.

<sup>187</sup> *Id.* at 27-28. No rate exists for this program and, therefore, we are using the rate for the SGOM Waiving Loan Interest by SICOM as a similar/comparable program.