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Sunset Review
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June 5, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Expedited Third Sunset Reviews of the Countervailing Duty
Orders on Certain Hot-Rolled Carbon Steel Flat Products from
India and Indonesia

I. Summary

Following issuance of the notice of initiation¹ of the third sunset reviews of the countervailing duty (CVD) orders (*Orders*) on certain hot-rolled carbon steel flat products (hot-rolled steel) from India and Indonesia, we have analyzed the substantive responses received from interested parties with respect to these proceedings. We did not receive a response from the Government of India (GOI) or the Government of Indonesia (GOIA), nor from any foreign exporter/producer interested party. Accordingly, we conducted expedited (120-day) sunset reviews pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues that we address in these expedited sunset reviews:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidy

II. Background

On February 5, 2019, the Department of Commerce (Commerce) initiated the third sunset reviews of the *Orders* on hot-rolled steel from India and Indonesia pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c).² Nucor Corporation, AK Steel Corporation,

¹ See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 1705 (February 5, 2019) (*Initiation Notice*).

² See *Initiation Notice*.

ArcelorMittal USA LLC, United States Steel Corporation, California Steel Industries, SSAB Enterprises LLC, and Steel Dynamics, Inc. (collectively, domestic interested parties) filed timely notices of intent to participate, in accordance with 19 CFR 351.218(d)(1).³

Commerce received adequate substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁴ Commerce did not receive a substantive response from any government or respondent interested party to the Indian or Indonesian proceedings. Because Commerce received no responses from the respondent interested parties, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce has conducted expedited reviews of the *Orders*.

III. History of the *Orders*

India

On December 3, 2001, Commerce published in the *Federal Register* the CVD order on hot-rolled steel from India.⁵ In the *India Final Determination*, Commerce found an estimated net countervailable subsidy rate of 8.35 percent for Essar Steel Limited (Essar), 31.94 percent for Ispat Industries Limited (Ispat), 18.45 percent for Steel Authority for India Limited (SAIL), 9.26 percent for Tata Iron and Steel Company Limited (TISCO), and 16.17 for all others.⁶ These rates were based on the following countervailable programs: Pre-Shipment and Post-Shipment Export Financing, Duty Entitlement Passbook Scheme, Advance Licenses, Special Import Licenses (SILs), Export Promotion Capital Goods Scheme (EPCGS), Loans from the Steel Development Fund (SDF) Fund, GOI Forgiveness of SDF Loans Issued to SAIL, GOI Forgiveness of Other Loans Issued to SAIL, Loan Guarantees from the GOI, and Exemption of Export Credit from Interest Taxes.⁷ These rates were adjusted for cash deposit purposes to reflect Commerce's determination that two programs (SILs and Export Credit from Interest Taxes) were terminated. The adjusted rates were 8.28 percent for Essar, 31.89 percent for Ispat, 18.27 percent for SAIL, 9.17 percent for TISCO, and 16.10 percent for all others.⁸

³ See domestic interested parties' letter, "Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Intent to Participate," dated February 20, 2019.

⁴ See domestic interested parties' letter, "Certain Hot-Rolled Carbon Steel Flat Products from India: Substantive Response to Notice of Initiation," dated March 7, 2019 (Substantive Response).

⁵ See *Notice of Amended Final Determination and Notice of Countervailing Duty Orders: Certain Hot-Rolled Carbon Steel Flat Products from India and Indonesia*, 66 FR 60198 (December 3, 2001) (*Orders*).

⁶ See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001) (*India Final Determination*), as amended by *Orders*.

⁷ See *India Final Determination*.

⁸ *Id.*

Since the issuance of the order, Commerce has rescinded two administrative reviews in their entirety based on a lack of shipments,⁹ rescinded another review based on timely requests for withdrawal,¹⁰ and has completed five administrative reviews.

The first review covered the time from the issuance of the preliminary determination of the investigation through December 31, 2002, and Essar. In response to petitioner allegations, during the course of the review, Commerce initiated a review of new subsidy programs. Essar was found to have benefited from four programs. The calculated rates were 1.69 percent for 2001 and 16.88 percent for 2002.¹¹ Although Essar challenged the final results, Commerce's determination was sustained.

The second review covered calendar year 2004 and Essar. In response to petitioner allegations during the review, Commerce initiated a review of new subsidy programs. Essar was found to have benefited from four programs, including the sale of high-grade iron order for less than adequate remuneration (LTAR). The calculated rate was 4.56 percent.¹²

The third review covered calendar year 2006 and four companies: Essar, Ispat, Tata, and JSW. In response to petitioner allegations during the review, Commerce initiated a review of new subsidy programs alleged to be benefitting the various respondents. The GOI and state governments did not respond to the new subsidy questionnaires, so Commerce relied on adverse facts available (AFA) for financial contribution and specificity determinations. However, where available, Commerce relied on usage data provided by the companies. Where the company did not provide usage data (JSW), Commerce relied on AFA. Commerce found that the state governments of Gujarat, Karnataka, and Maharashtra provided countervailable benefits in addition to the ten GOI programs providing benefits. As a result, Commerce determined the following net subsidy rates: Essar – 17.50 percent, Ispat – 15.27 percent, Tata – 27.22 percent and JSW – 484.41 percent.¹³ JSW's litigation resulted in a settlement agreement establishing a rate of 76.88 percent (the highest calculated rate from the order at the time of the settlement – 2007 Essar rate).¹⁴ Both domestic interested parties and Essar challenged the results for Essar

⁹ See *Notice of Rescission of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India*, 71 FR 40699 (July 18, 2006) (rescinding the 2005 review of Essar); and *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Rescission of Countervailing Duty Administrative Review*, 76 FR 26694 (May 9, 2011) (rescinding the 2011 review of Ispat).

¹⁰ See *Notice of Rescission of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India*, 78 FR 40429 (July 5, 2013). This rescinded review is the only review of the order initiated since the prior sunset.

¹¹ See *Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India*, 69 FR 26549 (May 13, 2004) and accompanying Issues and Decision Memorandum (IDM) (2001-2002 Review Final).

¹² See *Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India*, 71 FR 28665 (May 17, 2006) and accompanying IDM (2004 Final).

¹³ See *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) and accompanying IDM (2006 Final).

¹⁴ See *Certain Hot-Rolled Carbon Steel Flat Products from India: Amended Final Results of Countervailing Duty Administrative Review Pursuant to Court Decision*, 75 FR 80455 (December 22, 2010).

and, after adjustments to the calculation of the benefit from iron ore purchases, Essar's rate increased to 23.64 percent.¹⁵

The fourth review covered calendar year 2007 and Essar. The review with respect to Ispat, JSW, and Tata was rescinded based on a lack of exports. In response to petitioner allegations during the review, Commerce initiated a review of new subsidy programs benefitting Essar. The GOI did not provide the requested information with respect to the Special Economic Zone Act of 2005 (SEZ Act) and the governments of Gujarat and Chhattisgarh did not respond with respect to the programs they administer. Therefore, Commerce relied on AFA and found that those programs provided a financial contribution and were specific. Where available, Commerce relied on usage data provided by Essar; however, Essar failed to provide information with respect to its Chhattisgarh facility; therefore, Commerce applied AFA for usage. On this basis, Commerce determined the net subsidy rate for Essar was 76.88 percent.¹⁶ The litigation associated with Essar's challenge of several issues continues. The court affirmed Commerce on all except the application of total AFA with respect to the Chhattisgarh programs, and ordered Commerce to reopen the record and place information on the record demonstrating that Essar did not receive any benefit from the programs. Elimination of the benefit from the Chhattisgarh programs reduced Essar's rate to 22.19 percent. However, the Court of Appeals for the Federal Circuit overturned the Court of International Trade and, on remand, Commerce again found the net subsidy rate for Essar was 76.88 percent.¹⁷

The fifth administrative review covered calendar year 2008 and Tata. The review with respect to Essar, Ispat, and JSW was rescinded after the petitioner withdrew its review request.¹⁸ Although the GOI provided some responses, it did not reply to any of the state government program questions. Further, Tata did not provide any response. Therefore, Commerce relied on AFA and determined that all of the state programs provided a financial contribution and were specific. Commerce also determined that Tata benefited from every GOI and state program found countervailable. As a result, Commerce determined the net subsidy rate for Tata was 577.28 percent.¹⁹ Tata's litigation resulted in a settlement agreement establishing a cash deposit and assessment rate of 102.74 percent (the highest calculated rate from any Indian case that was not based entirely on AFA).²⁰

In the first sunset review of the CVD order on hot-rolled steel from India, pursuant to section 751(c) of the Act, Commerce found that revocation of the order would be likely to lead to continuation or recurrence of subsidization at rates from the original investigation, adjusted to

¹⁵ See *Certain Hot-Rolled Carbon Steel Flat Products from India: Amended Final Results of Countervailing Duty Administrative Review Pursuant to Court Decision*, 76 FR 65497 (October 21, 2011).

¹⁶ See *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009) and accompanying IDM (2007 Final).

¹⁷ See *Essar Steel Limited v. United States*, 678 F.3d 1268 (Fed. Cir. 2012).

¹⁸ See *Certain Hot-Rolled Carbon Steel Flat Products from India: Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 26847 (June 4, 2009).

¹⁹ See *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 43488 (July 26, 2010) and accompanying IDM (2008 Final).

²⁰ See *Certain Hot-Rolled Carbon Steel Flat Products from India: Amended Final Results of Countervailing Duty Administrative Review Pursuant to Court Decision*, 76 FR 77775 (December 14, 2011).

reflect programs found to be terminated and newly identified programs.²¹ On December 27, 2007, Commerce published the notice of continuation of the orders.²²

In the second sunset review of the CVD order on hot-rolled steel from India, pursuant to section 751(c) of the Act, Commerce again found that revocation of the order would be likely to lead to continuation or recurrence of subsidization at rates from the original investigation, adjusted to reflect programs found to be terminated and newly identified programs.²³ Commerce published the notice of continuation of the orders on February 7, 2014.²⁴

There have been no administrative reviews or changed circumstances reviews of this order, pursuant to sections 751(a) and (c) of the Act, since the prior second sunset proceeding and publication of *Second Continuation of Orders*.²⁵ However, pursuant to a directive from the U.S. Trade Representative (USTR) instructing Commerce to implement its determinations under section 129 of the Uruguay Round Agreements Act (URAA), regarding several CVD administrative reviews, which render them not inconsistent with the World Trade Organization (WTO) dispute settlement findings in *United States—Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India—(DS436)*, Commerce issued revised final determinations pursuant to the section 129 proceedings for various reviews of the India CVD order listed above (*i.e.*, the *2006 Final*, *2007 Final*, and *2008 Final*), and implemented these final determinations and revised rates on May 6, 2016. Accordingly, Commerce made changes to the net subsidy rates in certain segments, and thus recalculated the CVD rates for various firms. The recalculated rates effective for each proceeding, are listed immediately below:

Amended Countervailable Subsidy Rates <i>Ad Valorem</i> (Percent) – 2006 Final		
<i>Exporter/Producer</i>	<i>CVD Rate (Administrative Review)</i>	<i>Revised CVD Rate</i>
JSW Steel Ltd	484.41	215.54
Tata Steel Ltd	27.22	18.81
Essar Steel India Limited	17.50	15.40
Ispat Industries Ltd	15.27	14.82

Amended Countervailable Subsidy Rates <i>Ad Valorem</i> (Percent) – 2007 Final		
<i>Exporter/Producer</i>	<i>CVD Rate (Administrative Review)</i>	<i>Revised CVD Rate</i>
Essar Steel India Limited	76.88	68.77

²¹ See *Final Results of Expedited Sunset Reviews of the Countervailing Duty Orders on Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, and Thailand*, 71 FR 70960 (December 7, 2006) (*First Expedited Final*) and accompanying IDM.

²² See *Certain Hot-Rolled Carbon Steel Flat Products from India, Indonesia, the People's Republic of China, Taiwan, Thailand, and Ukraine: Continuation of Antidumping and Countervailing Duty Orders*, 72 FR 73316 (December 27, 2007) (*Continuation of Orders*).

²³ See *Certain Hot-Rolled Carbon Steel Flat Products from India, Indonesia, and Thailand: Final Results of Expedited Sunset Reviews*, 78 FR 16252 (March 14, 2013) (*Second Expedited Final*) and accompanying IDM.

²⁴ See *Certain Hot-Rolled Carbon Steel Flat Products from India, Indonesia, the People's Republic of China, Taiwan, Thailand, and Ukraine: Continuation of Antidumping and Countervailing Duty Orders*, 79 FR 7425 (February 7, 2014) (*Second Continuation of Orders*).

²⁵ As noted above, the 2012 review of the India CVD order was rescinded in full.

Amended Countervailable Subsidy Rates Ad Valorem (Percent) – 2008 Final		
<i>Exporter/Producer</i>	<i>CVD Rate (Administrative Review)</i>	<i>Revised CVD Rate</i>
Tata Steel Ltd	577.28	140.18

Indonesia

On December 3, 2001, Commerce published in the *Federal Register* the CVD order on hot-rolled steel from Indonesia.²⁶ In the final determination of the investigation, covering the period January 1, 1999, through December 31, 1999, Commerce found an estimated net countervailable subsidy rate of 10.21 percent for P.T. Krakatau Steel (Krakatau) and 10.21 percent for all others based on the following countervailable programs: GOI Equity Infusions and Two Step Loan.²⁷

In the first sunset review of the CVD order on hot-rolled steel from Indonesia, pursuant to section 751(c) of the Act, Commerce found that revocation of the order would be likely to lead to continuation or recurrence of subsidization at the same rates as found in the original investigation.²⁸ On December 27, 2007, Commerce published the notice of continuation of the order.²⁹

In the second sunset review of the CVD order on hot-rolled steel from Indonesia, Commerce again found that revocation of the order would be likely to lead to continuation or recurrence of countervailable subsidy.³⁰ On February 7, 2014, Commerce published the notice of continuation of the order.³¹

There have been no administrative reviews or changed circumstances reviews of this order under sections 751(a) and (c) of the Act.

IV. Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Orders* would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that in making this determination, Commerce shall consider: 1) the net countervailable subsidy, as determined in the investigation and any subsequent reviews, and 2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, Commerce shall provide the International Trade Commission (ITC) with the net countervailable subsidy likely to prevail if the order were

²⁶ See *Orders*.

²⁷ See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Indonesia*, 66 FR 49637 (September 28, 2001) (*Indonesia Final Determination*).

²⁸ See *First Expedited Final* and accompanying IDM.

²⁹ See *Continuation of Orders*.

³⁰ See *Second Expedited Final* and accompanying IDM.

³¹ See *Second Continuation of Orders*.

revoked. In addition, consistent with section 752(a)(6) of the Act, Commerce shall provide the ITC with information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM Agreement).

These issues and the substantive response submitted by the petitioner are addressed below.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Domestic Interested Parties' Comments

Domestic interested parties argue that revocation of the CVD orders on hot-rolled steel from India and Indonesia would likely lead to the continuation or recurrence of countervailable subsidies. Domestic interested parties state that no administrative reviews have been conducted of the Indonesian order. Thus, domestic interested parties argue that the net countervailable subsidies determined in the final affirmative CVD determination have not changed. For India, domestic interested parties note that Commerce determined that nine schemes conferred subsidies to Indian hot-rolled steel producers and exporters in the initial investigation and has since determined that Indian hot-rolled steel producers have benefited from 79 new subsidy programs in subsequent reviews. Though domestic interested parties acknowledge that there have been no reviews of the India CVD order since the prior sunset, they note that Commerce relied on these new subsidy findings in its second sunset review, reasoning that because the agency had “found numerous additional programs {that} provided countervailable subsidies... and ha{d} not found any countervailable programs terminated,”³² Indian producers and exporters of hot-rolled steel would continue to benefit from these subsidies without the CVD order, and should similarly make the same finding in this third sunset review.

While domestic interested parties acknowledge that the 2016 Section 129 proceedings covering the 2006, 2007, and 2008 reviews led to adjustments in the rates determined in those reviews for some programs, the proceedings confirmed that Indian producers such as JSW, Tata, Essar, and Ispat, have benefited from countervailable subsidies at rates of up to 215.54 percent. Further, domestic interested parties assert that because there have been no new administrative reviews of this order in the five years since the previous sunset review, there has been no indication that any of the subsidy programs that Commerce considered in its second sunset review determination have been terminated. Thus, the lack of reviews during the current sunset review period further confirms that programs conferring significant countervailable benefits continue to exist and, as to the extent such programs had been partially or fully terminated, it would be expected that Indian producers or exporters would request a review in order to lower their current, significant CVD margins. Commerce should thus find, consistent with the statute, the *Policy Bulletin*, and the prior two sunset reviews, that countervailable subsidies are likely to continue or recur if the CVD order were revoked.

³² See *Second Expedited Final* and accompanying IDM at 6.

Commerce's Position

According to the Statement of Administrative Action (SAA), Commerce will consider the net countervailable subsidies in effect after the issuance of the order and whether the relevant subsidy programs have been continued, modified, or eliminated.³³ The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.³⁴ Additionally, the presence of programs that have not been used, but also have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.³⁵ Where a subsidy program is found to exist, Commerce will normally determine that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.³⁶

Consistent with prior determinations, two conditions must be met for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: (1) the program must be terminated, and (2) any benefit stream must be fully allocated.³⁷ Commerce has also stated that, in order to determine whether a program has been terminated, we will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program.³⁸ Commerce normally expects a program to be terminated by means of the same legal mechanism used to institute it.³⁹ Where a subsidy is not bestowed pursuant to a statute, regulation or decree, Commerce may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence that was not part of a broader government program.⁴⁰

There was no participation in these sunset reviews by any of the respondent interested parties. As such, no party submitted evidence to demonstrate that these countervailable programs have expired or been terminated, and there is no information on the record of this proceeding indicating any changes to the programs found countervailable during the investigation and administrative reviews. Absent argument or evidence to the contrary, we find that these countervailable programs continue to exist and be used.

³³ See SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

³⁴ *Id.*

³⁵ See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010) (*Hot-Rolled Brazil*) and accompanying IDM at Comment 1.

³⁶ *Id.*

³⁷ See, e.g., *Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006) and accompanying Preliminary Decision Memorandum at 5-7, unchanged in *Corrosion-Resistant Carbon Steel Flat Products from France: Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006).

³⁸ See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Full Third Sunset Review of Countervailing Duty Order*, 76 FR 70411 (November 14, 2011) and accompanying IDM at Comment 1.

³⁹ See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001) and accompanying IDM at Comment 7.

⁴⁰ See, e.g., *Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order*, 76 FR 25666 (May 5, 2011) and accompanying IDM at Comment 1.

In the India investigation, Commerce verified that two programs were terminated after the period of investigation (POI). Therefore, Commerce adjusted the cash deposit rates to reflect the termination of the Exemption of Export Credit from Interest Taxes and the SIL programs. In the administrative reviews of the CVD order on hot-rolled steel from India, Commerce has found numerous additional programs have provided countervailable subsidies to Indian producers and exporters of hot-rolled steel and has not found any other countervailable programs terminated. With regard to Indonesia, the facts available to Commerce indicate that the subsidy programs found countervailable during the Indonesia investigation (GOI Equity Infusions and Two Step Loan) continue to exist. Therefore, Commerce determines that there is a likelihood of continuation or recurrence of countervailable subsidies under both orders.

2. Net Countervailable Subsidy Likely to Prevail

Domestic Interested Party Comments

For Indonesia, the domestic interested parties argue that the net countervailable subsidy rate likely to prevail is the rate found in the investigation, *i.e.*, 10.21 percent. With respect to India, the domestic interested parties argue that, consistent with the methodology adopted by Commerce in the first and second sunset review of the *Orders*, Commerce should include in its calculation of the net countervailable subsidy rates likely to prevail the highest rate determined by Commerce for each of the new subsidies that Commerce has investigated and countervailed in the administrative reviews. In addition, the domestic interested parties argue that consistent with section 752(b)(1) of the Act, the *Policy Bulletin*,⁴¹ and Commerce's practice, Commerce should include for each subsidy program, the highest rate determined for a subsidy program in any administrative review, particularly in the case where there is a pattern of increased usage of a subsidy over time. Correspondingly, domestic interested parties argue that Commerce should specifically find that revocation of the order would likely lead to the continuation or recurrence of countervailable subsidies at or greater than the highest rates calculated for each subsidy program, inclusive of any rate modifications that resulted from the 2016 Section 129 determinations. Based on these positions, the domestic interested parties provided calculations asserting that Commerce should report the following net countervailable subsidy rates as the rates likely to continue or recur should the order be revoked: Essar - 539.89 percent; Ispat - 563.50 percent; SAIL - 549.88 percent; Tata - 540.78 percent; JSW - 547.71 percent; and all others - 547.71 percent.⁴²

Commerce's Position

Consistent with the SAA and legislative history, Commerce normally will provide the ITC with the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.⁴³ Section 752(b)(1)(B) of the Act, however, provides that Commerce will consider whether any change in

⁴¹ See *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*; *Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Policy Bulletin*).

⁴² See Substantive Response at Exhibit 1.

⁴³ See SAA at 890; *see also* H.R. Rep. No. 103-826 (1994) at 64.

the programs which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy. Therefore, a rate calculated in the investigation may not be the most appropriate if, for example, the rate was derived, in whole or part, from subsidy programs subsequently found to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.⁴⁴

In the final and amended final determinations in the investigations, we found that the GOI and GOIA provided countervailable subsidies to producers and exporters of the subject merchandise. Since that time, in the absence of administrative reviews of the CVD order on hot-rolled steel from Indonesia, the net countervailable subsidy rates have remained unchanged. As noted above, we did not receive responses from any of the respondent interested parties in these sunset reviews. Therefore, because there is no evidence that changes have been made to any of the Indonesian subsidy programs, and absent any argument and evidence to the contrary, Commerce determines that the net countervailable subsidies likely to prevail in the event of revocation of the Indonesian order would be 10.21 percent *ad valorem* for P.T. Krakatau Steel, and 10.21 percent *ad valorem* for all others.

For India, while we agree with the domestic interested parties that it is Commerce's policy to adjust the rates from the investigation to account for programs found terminated and new programs found to confer countervailable subsidies, we do not agree that such adjustments are made based on including the *highest rate* found for each new subsidy program. As it did in the first sunset review of the Indian order, Commerce's practice is to include the *rate from first use* for each new subsidy program. Only where there is a pattern of increased use of a subsidy program over time, does Commerce determine that the highest rate is appropriate. In this case, there is no pattern of increased use of a subsidy program by a respondent. Rather, the higher rates are a result of the application of adverse facts available to different respondents during the 2006, 2007, and 2008 administrative reviews.

As a result, we have adjusted the rates for each of the companies subject to the investigation and all others to reflect the programs that were subsequently found countervailable. We note that, in specific India administrative reviews listed above, certain countervailable subsidy rates were determined based entirely on AFA under section 776 of the Act. However, the inclusion of additional subsidy rates based entirely on AFA is consistent with Commerce's practice.⁴⁵

⁴⁴ See, e.g., *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62101 (October 7, 2010) and accompanying IDM at Comment 2.

⁴⁵ See *Policy Bulletin*, 63 FR at 18876 (stating, "{w}here {Commerce} has conducted an administrative review of the order, or suspension agreement, as applicable, and determined to increase the net countervailable subsidy rate for any reason, including as a result of the best information available or facts available, {Commerce} may adjust the net countervailable subsidy rate determined in the original investigation to reflect the increase in the rate"); see also *Certain Lined Paper Products from India: Final Results of Expedited Second Sunset Review of Countervailing Duty Order*, 82 FR 51390 (November 6, 2017) and accompanying IDM at 9.

Consistent with section 752(b)(3) of the Act, Commerce will provide the ITC the net countervailable subsidy rates below in the section entitled “Final Results of Review.”⁴⁶

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of the subsidies, and whether these are subsidies as described in Article 3 or Article 6.1 of the WTO SCM Agreement. We note that Article 6.1 of the SCM Agreement expired effective January 1, 2000.

India

The following programs fall within the definition of an export subsidy under Article 3.1 of the SCM Agreement, as receipt of benefits under these programs are contingent upon export activity.

1. *Export Promotion of Capital Goods Scheme (EPCGS)*: The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to four to five times the value of the capital goods within a period of eight years. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest. Commerce determines that it is appropriate to treat the waiver of duties received by a company as a non-recurring benefit. When a company has an outstanding liability and the repayment of that liability is contingent upon subsequent events, our practice is to treat any balance on that unpaid liability as an interest-free loan.

2. *Pre-Shipment and Post-Shipment Export Financing*: The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or “packing credits,” to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes, *i.e.*, for the purchase of raw materials, warehousing, packing, and transporting of export merchandise. Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to their lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of export proceeds from the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize export proceeds within 180 days from the date of shipment, which is monitored by the RBI. Post-shipment financing is, therefore, a working capital program used to finance export receivables. Therefore, we find that pre- and post-shipment export financing constitute countervailable export subsidies.

The following programs do not fall within the meaning of Article 3.1 of the SCM Agreement. However, they could be subsidies described in Article 6.1 of the SCM Agreement if the amount

⁴⁶ See memorandum, “Calculation of Net Countervailable Subsidy Likely to Prevail,” dated concurrently with this memorandum.

of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM Agreement. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for Commerce to make such a determination. We are, however, providing the ITC with the following program descriptions:

1. *Loans from the Steel Development Fund (SDF) Fund:* The SDF was established in 1978 during a time when the steel sector in India was subject to price and distribution controls. From 1978 through 1994, India's integrated steel producers, SAIL, TISCO, Rashtriya Ispat Nigam Limited (RINL), and India Iron & Steel Company Limited (IISCO), were mandated by the GOI to increase the prices for the products they sold. The proceeds from the price increases were remitted to the SDF. Under the SDF program, companies that contributed to the fund are eligible to take out long-term loans at advantageous rates. Commerce found that the loans from the SDF conferred countervailable subsidies on subject merchandise because of the GOI's substantial control over the operation of the Fund.
2. *The GOI's Forgiveness of SDF Loans Issued to SAIL:* In October of 1998, SAIL, which was facing financial problems, proposed a turnaround plan to the GOI, through the SDF Managing Committee, in which it outlined its financial and business restructuring. The goals of the restructuring plan were to restore the profitability and competitiveness of the company. To achieve these goals, SAIL included in its proposal to the GOI provisions for the forgiveness of portions of its outstanding SDF debt. As SAIL's principal shareholder, the GOI reviewed and approved SAIL's overall restructuring plan. However, the approval for the actual forgiveness of SAIL's SDF loans lay with the SDF Managing Committee. The SDF Managing Committee issued a resolution during the POI in which it waived Rs. 50.73 billion of SAIL's SDF debt. In addition, SAIL indicated that it received from the GOI three other waivers on its SDF loans in the years immediately preceding the POI. Commerce found that the GOI's forgiveness of SDF loans issued to SAIL conferred countervailable subsidies on subject merchandise. Commerce treated the amount of debt forgiveness SAIL received in each year under this program as a non-recurring grant.
3. *GOI Forgiveness of Other Loans Issued to SAIL:* In the 1970s, IISCO, a subsidiary of SAIL, was an ailing private sector company, the management of which was assumed by SAIL in the early 1970s at the direction of the GOI. According to the GOI, pursuant to a 1978 Act of Parliament, IISCO was made a wholly-owned subsidiary of SAIL. However, IISCO continued to incur losses, and, in order to meet its capital expenditures and to finance its debts, the GOI issued loans to the company in the late 1980s and early 1990s. The GOI eventually forgave these loans as part of SAIL's financial restructuring package. Commerce found that the GOI's forgiveness of additional loans issued to SAIL conferred countervailable subsidies on subject merchandise. Commerce treated the amount of debt forgiveness SAIL received as a non-recurring grant.
4. *Loan Guarantees from the GOI:* The GOI has stated that it normally extends loan guarantees to "Public Sector Companies," in particular, industrial sectors. SAIL was the only producer/exporter of subject merchandise that reported loans outstanding during the POI on

which it had received GOI loan guarantees. These long-term loans were denominated in several foreign currencies. Commerce found that GOI guarantees on loans provided to SAIL from commercial banks conferred countervailable benefits.

In addition to the programs found countervailable in the underlying investigation, Commerce has found the following programs provide countervailable subsidies to the producers and exporters of subject merchandise from India. A description of each of these programs is available in the *Federal Register* notice and Issues and Decision Memorandum cited for each program.

Programs Administered by the Government of India

2004

- Sale of High-Grade Iron Ore for Less Than Adequate Remuneration

2006

- Market Access Initiative (MAI)
- Duty Free Replenishment Certificate (DFRC) Scheme
- Captive Mining of Iron Ore
- Captive Mining Rights of Coal

2007

- Special Economic Zone Act of 2005 (SEZ Act): Duty Free Import/Domestic Procurement of Goods and Services for Development, Operation, and Maintenance of SEZ Units Program
- SEZ Act: Exemption from Excise Duties on Goods Machinery and Capital Goods Brought from the Domestic Tariff Area for Use by an Enterprise in the SEZ
- SEZ Act: Exemption from the Central Sales Tax (CST)
- SEZ Act: Exemption from National Service Tax
- Target Plus Scheme (TPS)

2008

- Export Oriented Units (EOU) Program: Duty-Free Import of Capital Goods and Raw Materials
- EOU Program: Reimbursement of Central Sales Tax (CST) Paid on Materials Procured Domestically
- SEZ Act: Drawback on Goods Brought or Services Provided from the Domestic Tariff Area Into a SEZ, or Services Provided in a SEZ by Service Providers Located Outside India
- SEZ Act: 100 Percent Exemption from Income Taxes on Export Income from the First 5 Years of Operation, 50 Percent for the Next 5 Years, and a Further 50 Percent Exemption on Export Income Reinvested in India for an Additional 5 Years
- Status Certificate Program
- Market Development Assistance (MDA)
- Market Access Initiative (MAI)

Programs Administered by the State Government of Gujarat (SGOG)

2002

- Bombay Relief Undertaking Act (BRU)

2004

- State Government of Gujarat Tax Incentives: Sales Tax Exemptions of Purchases of Goods During the POR

2006

- State Government of Gujarat Tax Incentives: Value Added Tax (VAT) Program Established on April 1, 2006

2007

- Gujarat Special Economic Zone Act (SGOG SEZ Act): Stamp Duty and Registration Fees for Land Transfers, Loan Agreements, Credit Deeds, and Mortgages
- SGOG SEZ Act: Sales Tax, Purchase Tax, and Other Taxes Payable on Sales and Transactions
- SGOG SEZ Act: Sales and Other State Taxes on Purchases of Inputs (Both Goods and Services) for the SEZ or a Unit Within the SEZ
- Wharfage Fees Paid Under the SGOG's Captive Port Facilities Program

2008

- State Government of Gujarat Tax Incentives: Deferrals on Purchases of Goods from Prior Years (As Well as Deferrals Granted During the POR)

Programs Administered by the State Government of Maharashtra Programs (SGOM)

2006

- Sales Tax Program
- Electricity Duty Exemption Under the Package Scheme of Incentives for 1993

2008

- Refunds of Octroi Under the PSI of 1993, Maharashtra Industrial Policy (MIP of 2001), and Maharashtra Industrial Policy (MIP of 2006)
- Loan Guarantees Based on Octroi Refunds by SGOM
- Infrastructure Assistance for Mega Projects
- Land for Less than Adequate Remuneration
- Investment Subsidy
- VAT Tax Refunds Under the SGOM Package Scheme of Incentives and the Maharashtra New Package Scheme of Incentives

Programs Administered by the State Government of Andhra Pradesh (SGAP)

2008

- Grant Under the Industrial Investment Promotion Policy of 2005-2010 (Andhra Pradesh IP): 25 percent reimbursement of cost of land in industrial estates and industrial development areas
- Grant Under the Andhra Pradesh IP: Reimbursement of power at the rate of Rs. 0.75 per unit for the period beginning April 1, 2005, through March 31, 2006 and for the four years thereafter to be determined by SGAP
- Grant Under the Andhra Pradesh IP: 50 percent subsidy for expenses incurred for quality certification up to Rs. 100 lakhs
- Grant Under the Andhra Pradesh IP: A 25 percent subsidy on cleaner production measures up to Rs. 5 lakhs
- Grant Under the Andhra Pradesh IP: A 50 percent subsidy on expenses incurred in patent registration, up to Rs. 5 lakhs
- Tax Incentives Under the Andhra Pradesh IP: 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
- Tax Incentives Under the Andhra Pradesh IP: A grant of 25 percent of the tax paid to SGAP, which is applied as a credit against the tax owed the following year, for a period of five years from the date of commencement of production
- Tax Incentives Under the Andhra Pradesh IP: Exemption from the SGAP Non-agricultural Land Assessment (NALA)
- Provision of Goods/Services for Less Than Adequate Remuneration Under Andhra Pradesh IP: Provision of infrastructure for industries located more than 10 kilometers from existing industrial estates or industrial development areas
- Provision of Goods/Services for Less Than Adequate Remuneration Under the Andhra Pradesh IP: Guaranteed stable prices of municipal water for 3 years for industrial use and reservation of 10% of water for industrial use for existing and future projects

Programs Administered by the State Government of Chhattisgarh (SGOC)

2007

- Grant Under the Industrial Policy 2004-2009 (Chhattisgarh Industrial Policy): A direct subsidy of 35 percent of total capital cost for the project, up to a maximum amount equivalent to the amount of commercial tax/central sales tax paid in a seven-year period
- Grant Under the Chhattisgarh Industrial Policy: A direct subsidy of 40 percent toward total interest paid for a period of 5 years (up to Rs. Lakh per year) on loans and working capital for upgrades in technology
- Grant Under the Chhattisgarh Industrial Policy: Reimbursement of 50 percent of expenses (up to Rs. 75,000) incurred for quality certification
- Grant Under the Chhattisgarh Industrial Policy: Reimbursement of 50 percent of expenses (up to Rs. 5 lakh) for obtaining patents
- Tax Incentives Under the Chhattisgarh Industrial Policy: Total exemption from electricity duties for a period of 15 years from the date of commencement of commercial production

- Tax Incentives Under the Chhattisgarh Industrial Policy: Exemption from stamp duty on deeds executed for purchase or lease of land and buildings and deeds relating to loans and advances to be taken by the company for a period of three years from the date of registration
- Tax Incentives Under the Chhattisgarh Industrial Policy: Exemption from payment of entry tax for 7 years (excluding minerals obtained from mining in the state)
- Tax Incentives Under the Chhattisgarh Industrial Policy: A 50 percent reduction of the service charges for acquisition of private land by Chhattisgarh Industrial Development Corporation for use by the company
- Land for Less Than Adequate Remuneration (LTAR) Under the Chhattisgarh Industrial Policy

Programs Administered by the State Government of Jharkhand

2008

- Tax Incentives Under the Jharkhand State Industrial Policy (JSIP) of 2001: Exemption of Electricity Duty
- Tax Incentives Under the JSIP of 2001: Offset of Jharkhand Sales Tax (JST)
- Grants Under the JSIP of 2001: Capital Investment Incentive
- Grants Under the JSIP of 2001: Capital Power Generating Subsidy
- Grants Under the JSIP of 2001: Interest Subsidy
- Tax Incentives Under the JSIP of 2001: Stamp Duty and Registration
- Grants Under the JSIP of 2001: Feasibility Study and Project Report Cost Reimbursement
- Grants Under the JSIP of 2001: Pollution Control Equipment Subsidy
- Grants Under the JSIP of 2001: Incentive for Quality Certification
- Employment Incentives Under the JSIP of 2001
- Infrastructure Subsidies to Mega Projects: Tax Incentives
- Infrastructure Subsidies to Mega Projects: Grants
- Infrastructure Subsidies to Mega Projects: Loan

State Government of Karnataka (SGOK)

2006

- SGOK's New Industrial Policy and Package of Incentives and Concessions of 1993 (1993 KIP): Tax Incentives
- 1993 KIP: Land at Less Than Adequate Remuneration
- 1993 KIP: Iron Ore at Less Than Adequate Remuneration
- 1993 KIP: Limestone, and Dolomite at Less Than Adequate Remuneration
- 1993 KIP: Coal at Less Than Adequate Remuneration
- 1993 KIP: Power/Electricity at Less Than Adequate Remuneration
- 1993 KIP: Roads and other infrastructure at Less Than Adequate Remuneration
- 1993 KIP: Port Facilities at Less Than Adequate Remuneration
- 1993 KIP: VAT Refunds
- 1993 KIP: Grants

- 1993 KIP: Loans
- SGOK's New Industrial Policy and Package of Incentives and Concessions of 1996 (1996 KIP): Tax Incentives, Loans, Grants, and Goods for LTAR
- SGOK's New Industrial Policy and Package of Incentives and Concessions of 2001 (2001 KIP): Tax Incentives, Loans, Grants, and Provision of Goods for LTAR
- SGOK's New Industrial Policy and Package of Incentives and Concession of 2006 (2006 KIP): Tax Incentives, Loans, Grants, and Goods for LTAR

Indonesia

In the case of Indonesia, the investigation found no programs that fall within the meaning of Article 3.1 of the SCM Agreement. The following programs could be subsidies described in Article 6.1 of the SCM Agreement if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM Agreement. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for Commerce to make such a determination. We are, however, providing the ITC with the following program descriptions:

1. *GOI Equity Infusions*: Between the years 1985 and 1995, the GOIA provided equity infusions, including some debt-to-equity conversions, into Krakatau and its subsidiary, Cold-Rolling Mill of Indonesia (CRMI), totaling approximately 2.898 trillion rupiah.
2. *Two Step Loan*: Under Government Regulation number 12/1969, the Ministry of Finance secures loans from foreign banks, including loans lent on behalf of foreign governments, which are then provided to specific state-owned companies. Although the recipient company is responsible for paying back the loan, these loans are guaranteed by the GOIA. Thus, the program provides a financial contribution in the form of a loan guarantee, with benefit determined by comparing the total costs of the guaranteed loan to the amount the company would otherwise pay on a comparable unguaranteed commercial loan. Krakatau had an outstanding loan during the period of investigation, which was provided by an Austrian bank and guaranteed by the GOIA under the program.

V. Final Results of Reviews

Commerce finds that revocation of the *Orders* would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:

INDIA

Manufacturers/Exporters Subsidy rate

Essar Steel Limited (Essar)	336.62 percent <i>ad valorem</i>
Ispat Industries Limited (Ispat)	360.23 percent <i>ad valorem</i>
Steel Authority of India Limited (SAIL)	346.61 percent <i>ad valorem</i>

Tata Iron and Steel Company Limited (TISCO)
All Others

337.51 percent *ad valorem*
344.44 percent *ad valorem*

INDONESIA

Manufacturers/Exporters Subsidy rate

P.T. Krakatau Steel
All Others

10.21 percent *ad valorem*
10.21 percent *ad valorem*

VI. Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the results of review in the *Federal Register*.



Agree



Disagree

6/5/2019

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance