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

C-557-817
Investigation
Public Document
E&C/O6: YN

October 27, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Negative Determination in the Countervailing Duty Investigation of Certain Steel Nails from Malaysia

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I. SUMMARY

The Department of Commerce (Department) preliminarily determines that *de minimis* countervailable subsidies are being provided to producers and exporters of certain steel nails (nails) in Malaysia, as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On May 29, 2014, Mid-Continent Steel & Wire, Inc. (Petitioner) filed a petition with the Department seeking the imposition of countervailing duties (CVDs) on nails from, *inter alia*, Malaysia.[1] Supplements to the petition and our consultations with the Government of Malaysia are described in the Initiation Checklist.[2] On June 18, 2014, the Department initiated a CVD investigation on nails from Malaysia[3]

We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on United States Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the

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[1] *See* Letter from Petitioner, "Petitions for the Imposition of Countervailing Duties on Certain Steel Nails from India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam," (May 29, 2014).
[2] *See* "Countervailing Duty Initiation Checklist: Certain Steel Nails from Malaysia," (June 18, 2014) (Initiation Checklist).
[3] *See Certain Steel Nails from India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam*, 79 FR 36014 (June 25, 2014) (*Initiation Notice*).

investigation. On June 19, 2014, the Department released the CBP entry data under administrative protective order.[4]

We received respondent selection comments from Petitioner.[5] On July 10, 2014, we selected Inmax Sdn. Bhd. (Inmax) and Region International Co., Ltd., (Region) as mandatory respondents.[6] We sent our countervailing duty questionnaire seeking information regarding the alleged subsidies on July 11, 2014.[7]

We received responses to our questionnaires on July 25, 2014, and August 25, 2014.[8] We sent supplemental questionnaires on September 18, 2014.[9] Responses to the supplemental questionnaires were received from Region on September 29, 2014,[10] Inmax on September 30, 2014,[11] and the GOM on October 2, 2014.[12]

On September 8, 2014, Petitioner filed comments on the questionnaire responses.[13] Petitioner's comments included two new subsidy allegations. Both of these allegations pertain to subsidies that the Department previously identified and included in the supplemental questionnaires to Inmax and Region, therefore, the Department was already investigating these programs.

On July 28, 2014, Petitioner requested that the deadline for the preliminary determination be postponed until no later than 130 days after the initiation of the investigation. The Department granted Petitioner's request and on August 7, 2014, postponed the preliminary determination until October 27, 2014, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).[14]

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[4] *See* Letter to Interested Parties, "Release of Customs and Border Protection (CBP) Data," (June 19, 2014).
[5] *See* Letter from Petitioner, "Comments on Respondent Selection," (June 30, 2014).
[6] *See* Department Memorandum, "Countervailing Duty Investigation of Certain Steel Nails from Malaysia: Respondent Selection Memo," (July 10, 2014) (Respondent Selection Memo). As explained in that memorandum, when faced with a large number of producers/exporters, the Department may determine that it is not practicable to examine all companies. In these circumstances, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.
[7] *See* Letter from Department to Hairil Yahri Yacob, Minister Counselor (Economics), "Investigation of Certain Steel Nails from Malaysia: Countervailing Duty Questionnaire," (July 11, 2014).
[8] *See* Affiliation Response from Region (July 25, 2014) (Affiliation-Region); Initial Questionnaire Response from the Government of Malaysia, (August 25, 2014) (IQR-GOM); Initial Questionnaire Response from Inmax, (August 25, 2014) (IQR-Inmax); Initial Questionnaire Response from Region, (August 25, 2014) (IQR-Region).
[9] *See* Letter from Department to GOM, "First Supplemental Questionnaire," (September 18, 2014); Letter from Department to Inmax, "First Supplemental Questionnaire," (September 18, 2014); Letter from Department to Region, "First Supplemental Questionnaire," (September 18, 2014).
[10] *See* First Supplemental Questionnaire Response from Region (September 29, 2014) (1SQR-Region).
[11] *See* First Supplemental Questionnaire Response from Inmax (September 30, 2014) (1SQR-Inmax).
[12] *See* First Supplemental Questionnaire Response from GOM (October 2, 2014) (1SQR-GOM).
[13] *See* Letter from Petitioner, "Comments on the Questionnaire Reponses of the Government of Malaysia; Inmax Sdn. Bhd., and Region Systems Sdn. Bhd. and Allegations of New Subsidies," (September 8, 2014).
[14] *See Certain Steel Nails From the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 79 FR 46251 (August 7, 2014).

B. Period of Investigation

The period of investigation (POI) is January 1, 2013, through December 31, 2013.

III. ALIGNMENT

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), based on Petitioner's request, we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of nails from Malaysia. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently due no later than March 2, 2015, unless postponed.

IV. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. [15] On July 8, 2014, the Department received comments on the scope from The Home Depot and Target, asking the Department to modify the scope language to include the mixed-media factors for evaluating whether subject nails packaged in combination with one or more non-subject articles remain included in the scope of the investigations.[16] IKEA asked the Department to exclude from the class or kind of merchandise subject to the investigations nails packaged in combination with unassembled finished articles such as furniture or storage items.[17] On July 18, 2014, Petitioner filed rebuttal comments to the scope comments raised by The Home Depot, Target, and IKEA.[18]

Petitioner argues that the scope language provides a bright line threshold to address mixed media issues and allows importers and CBP to easily ascertain whether mixed media products are covered by the scope: if the merchandise contains 25 nails or more, those imports must be entered as subject to the antidumping duty (AD) and countervailing duty (CVD) order with the value of those nails identified as dutiable on the entry documentation. Therefore, Petitioner contends that no revision of the scope is needed to address mixed media issues and asks the Department to reject the proposals submitted by The Home Depot, Target, and IKEA.

On October 17, 2014, The Home Depot and Target filed amended scope comments in which they propose the following change to the scope of this investigation:[19]

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[15] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); *see also Initiation Notice*, 79 FR at 36015.

[16] *See* Letters from The Home Depot and Target, "Certain Steel Nails from India, Korea, Malaysia, Oman, Turkey, and Vietnam: Comments on the Scope of the Investigation" (July 8, 2014).

[17] *See* Letter from IKEA, "Comments on Scope of the Investigation: Certain Steel Nails From India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam" (July 8, 2014).

[18] *See* Letter from Petitioner, "Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Petitioner's Rebuttal Comments Concerning Scope Language," dated July 18, 2014.

[19] *See* Letters from The Home Depot and Target, "Certain Steel Nails from Korea, Malaysia, Oman, Taiwan and Vietnam: Amendment to Comments on the Scope of the Investigation" (October 17, 2014).

> ... Certain steel nails may be sold in bulk, or they may be collated **in** any manner using any material.
>
> Excluded from the scope of this investigation are certain steel nails packaged in combination with one or more non-subject articles, if
>
> (1) the total number of nails of all types that are under 2 inches in length, in the aggregate, is 0 to 199, and
> (2) the total number of nails of all types that are 2 inches or more in length, in the aggregate, is 0 to 24.

On October 24, 2014, Petitioner submitted additional comments in response to The Home Depot and Target's October 17, 2014, amended scope comments.[20] In these comments, Petitioner requests the Department reject and remove the October 17, 2014, filings from the records of the AD/CVD investigations covering certain steel nails from Korea, Malaysia, Oman, Taiwan and Vietnam. Petitioner argues that the comments provided by The Home Depot and Target are untimely presented, unsupported by and indeed contrary to evidence, and seek an outcome that would undermine the clarity of the existing scope language.

Due to the limited time available for considering the proposals presented by The Home Depot and Target and the additional comments received by Petitioner responding to The Home Depot and Target's amended scope comments, the Department will consider additional comments and address the specific scope comments and exclusion request in the preliminary determination of the companion AD investigation. Any modifications to the scope or scope exclusions that may be made in the AD preliminary determination will be placed on the record of this CVD investigation and parties will be afforded an opportunity to comment.

V. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is certain steel nails having a nominal shaft length not exceeding 12 inches.[21] Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning

[20] *See* Letter from Petitioner, "Certain Steel Nails from the Republic of Korea, Malaysia, Oman, Taiwan, and Vietnam: Response to Additional Scope Comments," dated October 24, 2014.

[21] The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25.

Excluded from the scope of this investigation are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25.

Also excluded from the scope of this investigation are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision).

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of this investigation are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale ("HRC"), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this investigation also may be classified under HTSUS subheading 8206.00.00.00.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

VI. RESPONDENT SELECTION

Section 777A(e)(1) the Act directs the Department to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if the Department determines it is not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.

As noted above, on July 10, 2014, the Department determined that it was not practicable to examine the large number or producers/exporters in the instant investigation.[22] Therefore, the Department selected, based on data from CBP, the two exporters/producers accounting for the largest volume of nails exported from Malaysia during the POI: Inmax and Region.[23]

VII. INJURY TEST

Because Malaysia is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission is required to determine whether imports of the subject merchandise from Malaysia materially injure, or threaten material injury to, a U.S. industry. On July 18, 2014, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of nails from, *inter alia*, Malaysia.[24]

VIII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[25] The Department notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

Furthermore, for non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

Cross Ownership

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by

[22] *See* Respondent Selection Memo at 3.
[23] *Id*. at 4.
[24] *See* Certain Steel Nails From India, Korea, Malaysia, Oman, Taiwan, Turkey, and Vietnam: Inv. Nos. 701-TA-515-521 and 731-TA-1251-1257 (Preliminary) (July 2014); *Certain Steel Nails From India, Korea, Malaysia, Oman, Taiwan, Turkey, and Vietnam*, 79 FR 42049 (July 18, 2014).
[25] *See* U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard.[26] According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[27]

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[28]

Inmax

Inmax responded to the Department's questionnaire on behalf of itself and Inmax Industries Sdn. Bhd. (Inmax Industries).[29] Both Inmax and Inmax Industries are wholly owned by Inmax Holding Co. Ltd. (Inmax Holding).[30] Inmax Holding is a Taiwanese company that is publicly listed on the Taiwan Stock Exchange.[31] As such, pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that cross-ownership exists among Inmax and Inmax Industries. Inmax reported that Inmax Industries has not produced or sold the subject merchandise.[32]

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[26] *See Countervailing Duties; Final Rule*, 63 FR 65347, 65401 (Nov. 25, 1998) (*CVD Preamble)*.
[27] *Id.* at 65401.
[28] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[29] *See* Inmax-IQR at 2.
[30] *Id.*
[31] *Id.*
[32] *Id.*

Region

Region responded to the Department's questionnaire on behalf of itself and Region System Sdn. Bhd. (Region System).[33] Region is a Seychelles corporation operating in Malaysia that exported to the United States subject merchandise produced in Malaysia by its affiliated supplier, Region System.[34] Region System is controlled by Region through common shareholdings.[35] As such, pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that cross-ownership exists between Region and Region Systems.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Preliminary Calculation Memoranda" prepared for this investigation.[36]

IX. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determined that in accordance with section 703(b)(4)(B) of the Act, the aggregate of the net countervailable subsidies for each respondent is *de minimis*.

A. Programs Preliminarily Determined To Be Countervailable

1. Double Deduction for the Promotion of Exports

Double Deduction for the Promotion of Exports is a tax incentive granted to companies under section 41 of the *Promotion of Investments Act 1986* and the *Income Tax (Promotion of Exports) Rules 1986*, whereby the Minister of Finance authorized an adjustment of income with regard to expenses incurred for export promotion.[37] Types of expenses that qualify for this tax incentive include such expenses as overseas advertising, export market research, preparation of the supply of goods to prospective overseas customers, and overseas travel expenses incurred for sales or trade fairs.[38]

The GOM granted this deduction to Inmax from January 1, 2012, to December 31, 2012.[39]

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[33] *See* Region-IQR at cover letter.
[34] *Id.*
[35] *See* Affiliation-Region at 2.
[36] *See* Department Memoranda, "Countervailing Duty Investigation of Certain Steel Nails from Malaysia: Inmax Preliminary Calculation Memorandum," dated concurrently with this memorandum; "Countervailing Duty Investigation of Certain Steel Nails from Malaysia: Region Preliminary Calculation Memorandum," dated concurrently with this memorandum (collectively, Preliminary Calculation Memoranda).
[37] *See* IQR-GOM at Attachment 8.
[38] *Id.*
[39] *See* IQR-Inmax at Exhibit 3.

Inmax applied the tax adjustment in its income tax return for tax assessment year 2012, which was filed with tax authorities during the POI.[40]

We preliminarily determine that this program confers a countervailable subsidy. The income tax exemption is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipient in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. Based upon the language in the *Promotion of Investments Act 1986* and the *Income Tax (Promotion of Exports) Rules 1986*, we preliminarily determine that the tax exemption provided to Inmax under the Double Deduction for the Promotion of Exports program is specific under sections 771(5A)(A) and (B) of the Act.

To calculate the benefit from this program, we treated the income tax exemption claimed by Inmax as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we calculated the amount of tax that Inmax would have paid absent the tax exemption at the 25 percent tax rate.[41] The difference between the amount of tax that Inmax should have paid and the amount of tax actually paid by Inmax is the tax savings. We then divided the tax savings by the 2013 total export sales for Inmax. On this basis, we preliminarily determine a countervailable subsidy rate of 0.009 *ad valorem* for Inmax.

2. Double Deduction for Insurance Premium on Export Cargo

Double Deduction for Insurance Premium on Export Cargo is a tax incentive granted to companies under subsection 154(1) of the *Income Tax Act (ITA) 1967 (Revised 1971) (Act 53)* and rule 2 of the *Income Tax (Deductions of Insurance Premiums For Exporters) Rules 1995*, whereby an exporter may make a deduction from taxable income for premium insurance on export cargo.[42] The premium expenses are an addition to the expenses allowable under section 33 of the *ITA*.[43]

The GOM granted this deduction to Region from January 1, 2012, to December 31, 2012.[44] Region applied the tax adjustment in its income tax return for tax assessment year 2012, which was filed with tax authorities during the POI.[45]

We preliminarily determine that this program confers a countervailable subsidy. The income tax deduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipient in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. Based upon the language in the

[40] *Id.*
[41] *See* IQR-GOM at 37.
[42] *See* 1SQR-GOM at 11, 17, Attachment 7 and Attachment 8.
[43] *Id.*
[44] *See* 1SQR-GOM at 12.
[45] *Id.*

Income Tax Act (ITA) 1967 (Revised 1971) (Act 53) and the *Income Tax (Deductions of Insurance Premiums For Exporters) Rules 1995,* we preliminarily determine that the tax deduction provided to Region under the Double Deduction for Insurance Premium on Export Cargo program is specific under sections 771(5A)(A) and (B) of the Act.

To calculate the benefit from this program, we treated the income tax exemption claimed by Region as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we calculated the amount of tax that Region would have paid absent the tax exemption at the 25 percent tax rate.[46] The difference between the amount of tax that Region should have paid and the amount of tax actually paid by Region is the tax savings. We then divided the tax savings by the 2013 total export sales for Region. On this basis, we preliminarily determine a countervailable subsidy rate of 0.02 *ad valorem* for Region.

B. Programs Preliminarily Determined To Be Not Used During the POI

1. Allowance for Increased Export

Allowance for Increased Export is a tax incentive granted to companies under subsection 154(1) of the *Income Tax Act (ITA) 1967 (Revised 1971) (Act 53)*, rule 3 of the *Income Tax (Allowance for Increased Exports) Rules 1999*, and *Income Tax (Allowance for Increased Exports) (amendment) Rules 2003* whereby an exporter may make a deduction from taxable income for increased exports.[47] The amount of the deduction is restricted to 70 percent of statutory income.[48] Any allowance that is not used during the earned period can be carried forward to the following years of assessment until fully absorbed.[49]

We preliminarily determine that this program confers a countervailable subsidy. The income tax deduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipient in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. Based upon the language in the *Income Tax Act (ITA) 1967 (Revised 1971) (Act 53), rule 3 of the Income Tax (Allowance for Increased Exports) Rules 1999, and Income Tax (Allowance for Increased Exports) (amendment) Rules 2003*, we preliminarily determine that the tax deduction provided under the Allowance for Increased Export program is specific under sections 771(5A)(A) and (B) of the Act.

Inmax has carry forward balances of this allowance from previous years before the POI, however, no claims were made by Inmax for this allowance during the POI.[50] Therefore, we preliminarily determine that this program was not used during the POI.

We preliminarily determine the following programs were also not used during the POI:

[46] *See* IQR-GOM at 37.
[47] *See* 1SQR-GOM at 18, Attachment 7, Attachment 9, and Attachment 10.
[48] *Id*. at 23.
[49] *Id*. at 24.
[50] *Id*. at 19.

2. Pioneer Status Program
3. Investment Tax Allowance
4. Infrastructure Allowance
5. Export Credit Refinancing Program
6. Double Deductions for Export Credit Insurance
7. Tax Exemptions for Exporters in Free Trade Zones
8. Duty Exemptions for Exporters in Free Trade Zones

X. CALCULATION OF THE ALL OTHERS RATE

Consistent with section 703(d) of the Act, the Department did not calculate an all-others rate because it did not reach an affirmative preliminary determination.

XI. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 75 days after we make our final determination.

XII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[51] Case briefs or other written comments for all non-scope issues may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[52] Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of this preliminary determination in the *Federal Register*, and rebuttal briefs, limited to issues raised in the case briefs, maybe submitted no later than five days after the deadline for the case briefs. For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for the five concurrent countervailing duty investigations.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[53] This summary should be limited to five pages total, including footnotes.

[51] *See* 19 CFR 351.224(b).
[52] *See* 19 CFR 351.309.
[53] *See* 19 CFR 351.309(c)(2) and (d)(2).

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.[58] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using the Department's electronic records system, IA ACCESS.[59] Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,[60] on the due dates established above.

XIII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

XIV. CONCLUSION

We recommend that you approve the preliminary determinations described above.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

27 October 2014
Date

[58] *See* 19 CFR 351.310(c).
[59] *See* 19 CFR 351.303(b)(2)(i).
[60] *See* 19 CFR 351.303(b)(1).