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Remand (Slip Op. 19-34)
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Uttam Galva Steels Limited v. United States

Court No. 16-00162, Slip Op. 19-34 (CIT March 12, 2019)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

I. SUMMARY

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the opinion and remand order of the Court of International Trade (CIT) in *Uttam Galva Steels Limited v. United States*, Court No. 16-00162, Slip Op. 19-34 (CIT March 12, 2019) (*Opinion and Remand Order*). These final results of redetermination concern *Certain Corrosion-Resistant Steel Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 35329 (June 2, 2016) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM). On August 16, 2018, Commerce issued its Remand I[1] in response to the first opinion and remand order from the CIT.[2] In its *Opinion and Remand Order*, the CIT remanded Commerce's recalculation of Uttam Galva Steels Limited's (Uttam Galva) duty drawback adjustment, finding that Commerce's particular application of a circumstances of sale (COS) adjustment was unsupported by substantial evidence and not in accordance with law.[3]

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[1] *See Final Results of Redetermination Pursuant to Court Remand Order in Uttam Galva Steels Limited v. United States*, Court No. 16-00162, Slip Op. 18-44 (Remand I), accessed on April 11, 2019, at http://ia.ita.doc.gov/remands/18-44.pdf.
[2] *See Uttam Galva Steels Limited v. United States*, Court No. 16-00162, Slip Op. 18-44 (CIT April 18, 2018) (*Uttam Galva I*).
[3] *See Opinion and Remand Order* at 8.

As set forth in detail below, pursuant to the CIT's *Opinion and Remand Order*, Commerce has, under respectful protest,[4] amended its duty drawback calculation methodology in these final results of redetermination to remove any perceived or actual double counting of import duties to ensure that our dumping calculation is duty neutral, meaning that the same amount of duties are accounted for on both sides of the dumping equation, by doing the following: (1) making a per-unit adjustment to U.S. price in the full amount of the per-unit duty drawback granted on export, as claimed by Uttam Galva; (2) not including imputed import duties in Uttam Galva's cost of production (COP); (3) making a COS adjustment to remove all booked import duties from constructed value (CV) and from Uttam Galva's reported home market prices; and (4) making another COS adjustment to CV and home market price to add the same amount of the per-unit amount of import duties added to U.S. price.

On April 30, 2019, we released our Draft Results of Redetermination to interested parties.[5] On May 3, 2019, Uttam Galva and the petitioners[6] provided comments.[7] We respond to these comments below. After considering these comments and analyzing the record, for purposes of these final results of redetermination, Commerce continues to apply the duty drawback methodology employed in the Draft Results of Redetermination.

[4] *See Viraj Group, Ltd. v. United States*, 343 F. 3d 1371 (Fed. Cir. 2003).
[5] *See* Memorandum, "*Uttam Galva Steels Limited v. United States*, Court No. 16-00162, Slip Op. 19-34 (CIT March 12, 2019); Draft Results of Redetermination Pursuant to Court Remand," dated April 30, 2019 (Draft Results of Redetermination).
[6] The petitioners in this proceeding are California Steel Industries and Steel Dynamics Inc. (collectively, the petitioners).
[7] *See* Uttam Galva's Letter re: "Uttam Galva Steels Limited's Comments on the Draft Second Remand Redetermination in Court No. 16-00162," dated May 3, 2019 (Uttam Galva's Draft Comments); *see also* Petitioners' Letter, "Comments on Draft Second Remand Determination," dated May 3, 2019 (Petitioners' Draft Comments).

II. REMANDED ISSUE

1. Legal Framework

Pursuant to section 772(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), Commerce shall increase export price (EP) and constructed export price (CEP) by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." In determining whether an adjustment for duty drawback should be made, Commerce looks for a reasonable link between the duties imposed and those rebated or exempted.[8] However, Commerce does not require that the imported material be traced directly from importation through exportation.[9]

In determining whether a respondent is entitled to a duty drawback adjustment, Commerce traditionally uses the following two-prong test: first, that the import duty paid and the rebate payment are directly linked to, and dependent upon, one another, or that the exemption from import duties is linked to the exportation of subject merchandise; and second, that there were sufficient import duties incurred on the imported raw material to account for the amount of duty drawback received upon the exports of the subject merchandise.[10] Notably, the respondent

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[8] *See Light-Walled Rectangular Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 47477 (October 12, 2017), and accompanying Issues and Decision Memorandum at Comment 5; *see also Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 82 FR 23192 (May 22, 2017), and accompanying Issues and Decision Memorandum at Comment 1.

[9] *Id.*

[10] *See*, *e.g.*, *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed Cir. 2011) (*Saha Thai*); *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006), citing *Wheatland Tube Company v. United States*, 414 F. Supp. 2d 1271, 1287 (CIT 2006)*; Allied Tube & Conduit Corp. v. United States*, 374 F. Supp. 2d 1257, 1261 (CIT 2005) (*Allied Tube II*); *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1093 (CIT 2001); *Far East Machinery Co., Ltd v. United States*, 699 F. Supp. 309, 311 (CIT 1988); *Carlisle Tire & Rubber Co. v. United States*, 657 F. Supp. 1287, 1289-90 (CIT 1987).

bears the burden of establishing that both prongs of the test have been satisfied and, thus, that its entitlement to a duty drawback adjustment is warranted.[11]

2. Background

In Remand I, Commerce, under respectful protest, amended its calculations by: (1) making a per-unit adjustment to U.S. price in the full amount of per-unit duty drawback granted on export, as claimed by Uttam Galva; and (2) making a COS adjustment to the home market price to account for the differences in the amount of import duties included in the U.S. price as a duty drawback adjustment and the amount of import duties reflected in the costs of production.[12] Specifically, Commerce calculated the COS adjustment, on a CONNUM-specific[13] basis, as the difference between the per-unit amount of the duty drawback adjustment to U.S. price and the per-unit amount of import duties reflected in the cost of production.[14]

3. The CIT's Second Remand Order

In its *Opinion and Remand Order*, the CIT remanded Commerce's "revised calculation of Uttam Galva's duty drawback adjustment."[15] The CIT found "that Commerce's action on remand here negates the statutory duty drawback adjustment that Uttam Galva earned by exporting its finished product to the United States and impinges on the agency's ability to make a fair comparison," and "Commerce's circumstance of sale adjustment in this case double-counts Uttam Galva's import duties within normal value because Commerce's original calculation

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[11] *See Allied Tube II*, 374 F. Supp. 2d at 1261.
[12] *See* Remand I at 1-2.
[13] Within the scope of each proceeding, Commerce defines a product based on established physical characteristics, which, when concatenated, define the product control number, or "CONNUM." The CONNUM uniquely identifies each product under examination.
[14] *See* Memorandum, "Less-Than-Fair Value Investigation of Certain Corrosion-Resistant Steel Products from India: Draft Redetermination Analysis Memorandum for Uttam Galva Steels Ltd.," dated July 9, 2018, at 2-5.
[15] *See Opinion and Remand Order* at 8.

incorporated already the import duties incurred for merchandise sold in the home market."[16] Accordingly, the CIT remanded to Commerce to reconsider its calculation of Uttam Galva's duty drawback adjustment.[17]

4. Analysis

Section 772(c)(1)(B) of the Act provides that "{t}he price used to establish export price and constructed export price shall be increased by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States."[18] The primary purpose of the duty drawback provision regarding U.S. price is to recognize and compensate for the fact that, pursuant to a duty drawback program, the cost of the refunded or exempted import duties are not reflected in the price charged to the U.S. customer, which is the starting point to calculate EP or CEP, *i.e.*, the U.S. price. The concern is that the import duties are reflected in normal value, but because the price to the U.S. customer is set exclusive of the refunded or exempted import duties, the dumping margin will be artificially increased by the amount of the rebated or forgiven duties not reflected in U.S. price. Therefore, the statute requires the addition of the rebated or forgiven duties to U.S. price.[19]

There are two general types of duty drawback programs: refund/rebate programs and exemption programs. These program types operate, and are accounted for, differently in a company's books and records. For a refund duty drawback program, where the import duties are paid and later refunded by the government of the exporting country, a producer will typically record the amount of import duties as a direct material cost and will then recognize a separate

[16] *Id.* at 7-8.
[17] *Id.* at 8.
[18] *See* section 772(c)(1)(B) of the Act.
[19] *Id.*

revenue for any amount of duty drawback granted for the export transaction. Conversely, for an exemption duty drawback program, when a material input is imported, typically, a producer will neither record an amount for import duties as a direct material cost, nor recognize a separate revenue for the amount of duty drawback granted for the export transaction. Thus, the per-unit amount of import duties imbedded in a product's cost of production may, in fact, be zero for an exempted duty drawback program, where import duties are forgiven by the government of the exporting country.[20] Regardless of the type of duty drawback program of which a company may avail itself, the duty drawback adjustment attempts to make the dumping calculation duty neutral by increasing U.S. price to reflect a duty inclusive amount.

Additionally, the presumption that the normal value includes the full duty proportionate to the full duty drawback is uncertain. For example, the merchandise under consideration may be capable of being produced from several alternative inputs (*e.g.*, iron ore, scrap metal, pig iron, slabs, billets, *etc.*), only some of which might be subject to import duty. Alternatively, another example is where only a portion of the inputs required to produce the subject merchandise may have been imported and the domestically sourced inputs have no associated duty. It is important to note that the duty and duty drawback schemes of virtually all countries allow for substitution of inputs, meaning that, while the actual imported material subject to duty is fungible and can be consumed in any of the finished goods, it is assigned by the company to exported finished goods for purposes of the program. In other words, the imported inputs are presumed to have been consumed in producing the exported finished good. Both Commerce and the U.S Court of Appeals for the Federal Circuit (CAFC) have recognized this can create an imbalance, where the

[20] Generally, when exempted import duties have not been reported as a cost of production, Commerce practice has been to impute a cost for import duties based on the amount of imported raw material purchases during the period under investigation.

statute requires an increase to the U.S. price of the drawn back duties, but there are significantly less, or no corresponding, import duties actually reflected in the normal value.[21]

Consider the following example, wherein one unit of input is domestically sourced for $10 and one unit of input is imported for $10, plus a $5 duty. Under the standard way of determining costs for general accounting purposes,[22] the company's average cost for the inputs per unit is the domestic input of $10 plus the imported input of $15 ($10 + $5) divided by two units of input which equals $12.50 (*i.e.*, $10 + $15 = $25 and $25/2 = $12.50). Thus, $12.50 is the annual average per-unit input cost, including only $2.50 of the import duty for each unit. However, upon export of one unit of the finished good, the duty drawback scheme allows the entire $5 of import duties to be rebated or forgiven. As a result, following this logic, the adjusted U.S. price reflects $5 per unit of duties, while the normal value cost of production includes an average of $2.50 per unit. This creates an imbalance in the amount of duties in each side of the dumping equation, artificially lowering the margin by $2.50 of duties (assuming through the cost test the average home market (HM) price would include the $2.50 of duties in the cost of the input). The CIT has recognized this distortion in *RTAC II*.[23] Specifically, in *RTAC II*, the CIT agreed with Commerce's finding that granting a duty drawback adjustment "is flawed insofar as it produces a distorted comparison of a per-unit NV with a per-unit EP/CEP when production involves a mixture of foreign-sourced and domestic-sourced inputs."[24]

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[21] *See Saha Thai* at 1342 ("agree{ing} that Commerce reasonably decided that any increase to EP pursuant to a duty drawback adjustment should be accompanied by a corresponding increase to COP and CV.").
[22] *See* Letter to Uttam Galva, Section D questionnaire dated July 23, 2015, at I.D.
[23] *See Rebar Trade Action Coalition v. United States*, No. 14-00268, Slip Op. 2016-88 at 10-12, 2016 Ct. Intl. Trade LEXIS 90 (CIT Sept. 21, 2016) (*RTAC II*) at *14-*16.
[24] *Id.* at *15.

In a duty program that exempts the importer from paying import duties pending the expected export of the finished good,[25] the import duty is not actually paid, but a liability is created and the liability for the import duties is extinguished upon export of the finished good. Under such circumstances, the liability for duties does not usually appear in the company's books and records, as it is not recorded as part of material costs, because no cost was actually incurred or money paid out under the duty program. As noted above, both Commerce and the CAFC have recognized this imbalance, where the statute requires an addition to the U.S. price by the amount of the uncollected "drawn back" duties, but there are no corresponding import duties actually in the normal value or cost. In order to remedy this imbalance, Commerce imputed, and the CAFC approved, a cost adjustment to add the uncollected import duties (*i.e.*, the liability) to the material costs, so that the import duties are accounted for in both sides of the dumping comparison, U.S. price and normal value.[26]

Commerce originally attempted to remedy the distortions discussed above by making the adjustment to U.S. price limited to the average amount of duty included in the cost (*e.g.*, $2.50 in the example). Using the original methodology, Commerce had been dividing the duty drawback by the number of exports. In the example above, one unit was exported, and the duty drawn back was $5, so that the per-unit duty added was 5/1 = $5. Commerce then revised its methodology and divided total duty by total production, as it did with cost, and based on the example again, $5 of duty divided by two units of finished goods results in a $2.50 per unit of import duty drawback adjustment. Limiting the U.S. price adjustment to $2.50 was warranted because it represents the same amount reflected in the normal value. As a result, there was $2.50

[25] As opposed to a rebated duty program where the importer pays duties on the imported goods and receives a rebate upon exportation of the finished goods.
[26] *See Saha Thai Steel Pipe (Public) Co. Ltd. v. United States*, 635 F.3d 1342, 1343 (Fed. Cir. 2011).

per unit of import duties added to U.S. price and $2.50 of import duty in the cost, making the duty draw back adjustment duty neutral, consistent with the CAFC's reasoning in *Saha Thai*.[27] However, the CIT found that the language of the statute does not permit Commerce to calculate the duty drawback added to U.S. price by dividing total duty by total production and remanded the issue to Commerce for further consideration.[28]

Upon further consideration in response to the CIT's opinions, Commerce developed a different method for accounting for the imbalance of import duties. Commerce went back to adding the full $5 per-unit duty drawback to U.S. price as required by the CIT. Commerce continued to make sure the import duties were included in the cost, $2.50 per unit in the example, including the uncollected duties based on the *Saha Thai* adjustment. However, Commerce decided to make a COS adjustment to the normal value of $2.50, the per-unit differential between the per-unit duty drawback adjustment to U.S. price (*i.e.*, $5) and the per-unit duty included in the cost of production (*i.e.*, $2.50). As a result, based on the example, Commerce added $5 duty drawback to U.S. price and $5 ($2.50 in cost and $2.50 added directly to normal value) to ensure that the import duty on both sides of the dumping equation, U.S price and home market price, was $5. In other words, we attempted to make the comparison of U.S. price with normal value duty neutral.

This CIT found that this remand method caused Commerce to double count duties on the normal value side of the dumping margin equation.[29] Continuing with the example above, it appears that it was the CIT's understanding that under the remand methodology $5 was added to

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[27] *Id.*
[28] *See RTAC II*, No. 14-00268, Slip Op. 2016-88 at 10-11, 2016 Ct. Intl. Trade LEXIS 90, at *14-15; *see also Uttam Galva Steels Ltd. v. United States*, 311 F. Supp. 1345, 1356-57 (CIT 2018)
[29] *See Remand Opinion and Order* at 8.

U.S. price and $5 was added to cost, with an additional COS adjustment of $2.50 to home market price meaning that there were $7.50 of duties in the normal value side of the dumping equation, thus double counting $2.50 of the duties already included in cost.[30] In fact, however, the $5 that Commerce added to cost was diluted to $2.50 per unit – meaning that there were only $5 of duties in the normal value side of the equation. Accordingly, Commerce respectfully disagrees that double counting occurred under the described remand methodology.

Duty drawback schemes "distort" normal costs because they allow, for duty and drawback purposes, a party to assume the imported inputs were consumed in the exported finished goods. Thus, they allocate more import duties to exports than are accounted for by the annual weighted-average input costs of the company under standard cost accounting. Commerce's addition of $2.50 to the home market price, in addition to the $2.50 included in the example costs, is simply a re-allocation – thus, in fact, only $5 of import duty is included in the home market price. To be clear, there is <u>not</u> $7.50 per unit of duty in the home market price used as normal value for comparison with the U.S. price. There is only a total of $5 per unit in the home market price: $2.50 in the cost and $2.50 added to the home market price. Accordingly, as this example shows, there is no double counting under the methodology applied in the initial remand.

5. Revised Duty Drawback Redetermination Methodology

The CIT remanded the issue for further consideration and recalculation.[31] Commerce has, therefore, revised its methodology again to account for duty drawback on the normal value side of the equation. Commerce will continue to add, consistent with the CIT's previous opinion, the full amount of duty drawback to the exports on the U.S. price side of the dumping

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[30] *Id*.
[31] *Id.* at 8-9.

equation. This complies with the CIT's decision that the full amount of duties rebated, or uncollected by reason of exportation of the subject merchandise, must be added to the U.S. price, while also ensuring that the normal value reflects such duties.

In the instant case, Uttam Galva purchased a number of different inputs from both foreign and domestic sources. Uttam Galva reported that it participated in three duty drawback programs during the POI: the duty drawback scheme (DDS); the advance licenses program (DEEC or AAP); and the duty free import authorization scheme (DFIA).[32] Uttam Galva further reported that the AAP and DFIA programs are duty exemption programs, while the DDS program is a rebate program.[33] The duties associated with the duty rebate program are imbedded in the cost of production at the average duty per-unit cost of production.[34] When the inputs are imported under the duty exemption programs, an "off the books" liability is created for the duties, but no amount is actually paid.[35] When the finished product is exported, the duty payable (*i.e.*, "off the books" liability) is released. Commerce has reviewed the record evidence to compare the imported quantities of inputs under the three schemes to the quantities of exported finished goods and quantities of domestically sold finished goods, in order to determine the amount of duties reflected in the cost of production and the normal value.[36]

[32] *See* Uttam Galva's Section C questionnaire response, dated September 29, 2015 (Uttam Galva SCQR) at 40.
[33] *See* Uttam Galva's third supplemental Section B and C questionnaire response, dated December 2, 2015 (Uttam Galva SuppBC3) at 10-16.
[34] *See* Uttam Galva's third supplemental Section D questionnaire response, dated December 30, 2015, at 4-5.
[35] *See* Verification of the Cost Response of Uttam Galva Steels Limited in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Flat Products from India, dated March 23, 2016, at 16-17.
[36] *See* Uttam Galva SCQR at Exhibit C-24; Uttam Galva's supplemental Section C questionnaire response, dated November 2, 2015, at Exhibit SCd-22; Uttam Galva SuppBC3 at 10-16 and exhibits 3S-6 through 3S-10; and Memorandum, "Adjustments to the Cost of Production and Constructed Value Information Pursuant to Second Court Remand – Uttam Galva Steels Limited," dated April 29, 2019.

a. Cost Test

The cost test is performed to ensure that home market prices used as a basis for normal value are made above the cost of production including duties.[37] As a part of the cost test, we compare home market prices to the cost of producing the merchandise. Home market sales that pass the cost test will, necessarily, include any duties actually paid and reflected in the producer's books and records, because they were included in the cost calculations. The COP will not include any duties from an exempted program because they are not actual costs incurred by the respondent. As explained below, any such exempted duties will be taken into consideration in making the duty drawback adjustments to U.S. price and the home market or CV to which it is compared.

b. Adjustments to Comparison Market Price and CV

To make a fair comparison, and to eliminate the perceived double counting, Commerce will first remove all booked duties eligible for rebate from the CV and home market price. At this step in the analysis, neither the CV nor the home market price will include import duties booked as a cost of production, which are eligible for duty drawback. This means that any duties paid that are eligible for rebate upon exportation of the finished good and are booked in the company records will be subtracted from CV and home market price as a COS adjustment.

Further, where the company does not record the import duties associated with imported raw materials (*i.e.*, under a duty exemption program), the company's accounting system would not include an amount for import duties. In this situation, Commerce will not impute a cost for

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[37] *See Certain Corrosion-Resistant Steel Products from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 63 (January 4, 2016), and accompanying Preliminary Decision Memorandum (PDM) at 21-23.

the unrecorded duties. This results in a CV and home market price that are completely duty exclusive from any duties eligible for duty drawback.

The circumstances of sale for which the normal value is being adjusted are: (1) the fact that the import duty program and drawback provision impose a different set of accounting and duty treatments dependent upon which market the finished good was sold and the markets from which the imported input is sourced; and (2) the effect of the different sourcing of inputs and associated duty costs, and how the duty drawback is treated for the U.S. and home market sales. The schemes treat the import duty liability different from standard cost accounting, as explained above, by permitting the assignment of imported inputs and the associated import duties to export sales, while attributing the domestic purchases exclusive of duty to domestic sales. Further, such treatment is different from standard cost accounting and the respondent's normal books and records, which calculate an annual weighted-average price of inputs and is allocated to overall production versus market-specific production. This difference results in a U.S. price which contains the full per-unit duty drawback amount and, thus, reflects a certain amount of import duties, as required by the CIT, and normal value which has a diluted per-unit amount of duty.

To rectify this imbalance, Commerce will use a COS adjustment to remove any duties from normal value and use a second COS adjustment, described below, to add to normal value the same per unit amount of duty added to U.S. price, ensuring that both sides of the dumping equation contain the same amount of per unit import duties and eliminating any possible double

counting. Thus, this methodology adds the statutorily required rebated or forgiven import duties to the company's export prices and is consistent with the CIT's various rulings on this matter.[38]

At this point in the calculation, the adjusted U.S price includes the full amount of rebated or forgiven duties. However, neither the home market price nor the CV contains the duties. Therefore, in order to achieve a fair comparison, Commerce is making a second COS adjustment, adding to the normal value the same per-unit amount of rebated or forgiven duty added to U.S. price. Thus, as a result, there is no double counting in the dumping calculations.

It is important here to note that this methodology works for either the situation where the respondent reports its duty drawback on a sale-by-sale basis or on a lump sum basis allocated over sales (*i.e.*, an average amount). In other words, under either scenario, the same per-unit amount of drawn back duty is being added to U.S. price, under section 772(c)(1)(B) of the Act and the normal value pursuant to the circumstance of sale regulations.[39]

6. Application of Duty Drawback Redetermination Methodology

Commerce has applied the new methodology discussed above thereby ensuring that: (1) Uttam Galva receives the full amount of its claimed duty drawback adjustment to U.S. price; (2) the same amount of duty is contained in normal value, which allows for a "fair comparison" under section 773(a) of the Act; and (3) no purported double counting occurs. As noted above, the instant case involves both rebate and exemption programs. In particular, Uttam Galva requested a duty drawback adjustment for three duty programs: DDS, AAP, and DFIA.[40] DDS is a rebate program and both AAP and DFIA are exemption programs.[41]

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[38] *See* section 772(c)(1)(B) of the Act; *see also Rebar Trade Action Coal v. United States*, No. 14-00268, Slip Op. 2015-130 at 4-5, 2015 Ct. Intl. Trade LEXIS 132 (Ct. Int'l Trade Nov. 23, 2015) at *5; *Uttam Galva*, 311 F. Supp. 3d at 1355; *Allied Tube II*, 374 F. Supp. 2d at 1261.
[39] *See* 19 CFR 351.410.
[40] *See* PDM at 16
[41] *See* Uttam Galva SuppBC3 at 10-16.

Concerning the exemption programs, AAP and DFIA, there is nothing added to Uttam Galva's cost of production, because the company did not incur and record any actual duty costs in its normal books and records. Rather, an "off the books" liability was generated when inputs were imported under these programs, and that liability was later reversed upon exportation of subject merchandise to the United States. If the liability had not been extinguished, the company would have been required to pay the exempted duties. During the POI, Uttam Galva did not pay or record as a cost any duties associated with the AAP and DFIA exemption programs.

On the other hand, for the rebate program, DDS, Uttam Galva actually paid and recorded duties as a cost in the normal books and records of the company. Accordingly, for the DDS program, we have made certain that the duties paid were included in Uttam Galva's cost of production. We then ran the sales-below-cost test.[42]

Following this, as part of the COS adjustment to normal value, we removed all paid duties eligible for rebate from Uttam Galva's CV and home market price. This results in a home market price and CV that exclude all paid duties that are eligible for rebate. In addition, since Uttam Galva never actually paid or recorded any duty costs associated with the exempted duty schemes (*i.e.*, the AAP and DFIA programs), there is no duty in CV or home market price associated with these programs.

Next, we made the statutory duty drawback adjustment to U.S price, as required by the CIT. Specifically, we granted Uttam Galva an adjustment to U.S. price for the full amount of duties that were drawn back.[43] In accordance with our new methodology, as a second COS

[42] *See* section 773(b)(2) of the Act.
[43] *See* Memorandum, "Less-Than-Fair Value Investigation of Certain Corrosion-Resistant Steel Products from India: Draft Redetermination Analysis Memorandum for Uttam Galva Steels Ltd." dated April 29, 2019 (Uttam Galva Draft Remand Analysis Memo).

adjustment, we then added the same per-unit amount to normal value that was added to U.S. price.[44] This resulted in an equivalent duty burden in both sides of the dumping equation, and ensured that no double counting occurs.

Based on the foregoing, and pursuant to the CIT's *Opinion and Remand Order*, Commerce has amended its calculations from Remand I in this draft results of redetermination by: (1) making an adjustment to U.S. price for the full per-unit amount of the claimed duty drawback as claimed by Uttam Galva; (2) ensuring that the amount of duty in the normal value is the same per-unit amount added to U.S. price by first making a COS adjustment to remove all paid recoverable import duties from CV and Uttam Galva's reported home market prices; and 3) making another COS adjustment to normal value to add the same amount of per-unit import duties added to U.S. price. In response to the CIT's concerns, we find that this methodology eliminates any chance of double counting.

III. DRAFT REMAND CONCLUSION

In accordance with the CIT's *Opinion and Remand Order*, Commerce reconsidered and, as discussed above, revised certain aspects of its dumping analysis. Based on these changes, the estimated weighted-average dumping margin for Uttam Galva for the period of investigation, July 1, 2014, through June 30, 2015, for corrosion-resistant steel from India is 0.00 percent.[45] Because the estimated weighted-average dumping margin for Uttam Galva is zero, entries of

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[44] *Id.*

[45] *Id.* at 1. We note that the draft remand inadvertently stated that the revised margin for Uttam Galva was 1.32 percent. However, the margin would have been 1.32 percent if we were to rely on the mixed alternative methodology to calculate Uttam Galva's margin. When the percentage of sales passing the Cohen's *d* test is 58.60 percent, as was the case here, our normal practice suggests that the mixed alternative methodology may be appropriate. However, because the margin calculated using the mixed alternative methodology does not cross the *de minimis* threshold (2.0 percent in investigations), there is no meaningful difference between the standard methodology and the mixed alternative methodology, and our normal practice is to rely on the standard methodology. Accordingly, for these final results of redetermination, we are relying on the standard methodology, in accordance with our normal practice.

subject merchandise produced and exported by Uttam Galva will be excluded from the *Order* if these final results of redetermination are sustained, consistent with section 735(a)(4) of the Act. Accordingly, because there was an additional affirmative estimated weighted-average dumping margin calculated in the underlying investigation, the rate calculated for JSW Steel Ltd. (JSW) shall be the rate applied to all other producers and exporters upon reaching a final decision in this litigation.[46]

IV. INTERESTED PARTY COMMENTS

On April 30, 2019, Commerce released the draft results of redetermination to all interested parties and invited parties to comment on the draft results of redetermination.[47] Uttam Galva and the petitioners submitted comments on May 3, 2019.[48] No other interested party submitted comments.

Issue: Commerce's Duty Drawback Methodology

Petitioners' Comments:

- In the Final Determination, Commerce's methodology was consistent with the "duty neutrality" principle in *Saha Thai*.[49]

[46] JSW's margin from the *Final Determination* was amended in the *Amended Final and Order* to correct for certain ministerial errors, including a failure to account for export subsidies based on adverse facts available, pursuant to sections 776(a) and (b) of the Act. *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016) (*Orders*). Subsequent litigation on the countervailing duty investigation reversed the decision that resulted in export subsidies based on AFA. *See JSW Steel Ltd. And JSW Steel Coated Products Ltd. v. United States*, 348 F. Supp. 3d 1319 (CIT 2018). However, the dumping margin published in the *Order* continues to be 4.43 percent while the adjustment for export subsidies results in a cash deposit rate of 0.47 percent. *See* Uttam Galva Draft Remand Analysis Memo at 5-6.

[47] *See* Draft Results of Redetermination.

[48] *See* Uttam Galva's Draft Comments; Petitioners' Draft Comments.

[49] *See* Petitioners' Draft Comments at 1-2.

- The CIT remanded to Commerce to "recalculate {Uttam Galva's}'s duty drawback adjustment using a methodology that is consistent with this opinion." The CIT did not specify that Commerce must add the "full adjustment" to U.S. price.[50]
- The CIT did not object to Commerce's COP adjustment in Remand I, only that the COS adjustment double-counted Uttam Galva's import duties in NV.[51]
- Commerce's draft remand proposes to eliminate the adjustment to COP for exempted duties, to which the CIT did not object, and make an additional COS adjustment, which the CIT found was not supported by substantial evidence.[52]
- By dropping the COP adjustment, the number of sales failing the cost test decreased substantially, and the margin thus fell to *de minimis*.[53]
- There is no reason to equate the term "full adjustment" with the amount of duty drawback claimed by respondents; the purpose of the duty drawback adjustment is to adjust for the amount of duties to which domestic merchandise is subject.[54]
- Commerce's *Final Determination* correctly adjusted for this, and there was no double-counting, as stated in the draft remand.[55]
- It is not clear how removing the adjustment to COP for exempted duties makes the calculation more accurate and responsive to the CIT's concerns when Commerce was not directed to change this aspect of its methodology.[56]

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[50] *Id.* at 2.
[51] *Id.* at 3.
[52] *Id.* at 3.
[53] *Id.*
[54] *Id.* at 4.
[55] *Id.*
[56] *Id.* at 4-5.

- Commerce should return to the methodology adjusting COP that it has had in place since the *Saha Thai* opinion.[57]

Uttam Galva's Comments:

- Commerce correctly applied the full per-unit duty drawback adjustment to U.S. price, consistent with the CIT's order and the statute, which was all that was required to comply with the CIT's remand order.[58]
- There is no need for Commerce to make the additional COS adjustments.[59]
- Upon application of the full duty drawback adjustment to U.S. price, Uttam Galva's margin is *de minimis* and its exports of subject merchandise should be excluded from this Order.[60]

Commerce's Position:

We agree with the petitioners that the methodology described in the *Final Determination* was consistent with *Saha Thai* and correctly adjusted for an imbalance that occurs when an upward adjustment to EP or CEP is made but there is no corresponding adjustment to COP. In the *Final Determination*, we adjusted EP and CEP based on the per-unit amount of the import duty cost included in COP, which, in our view, correctly adjusted for situations where home market sale prices and COP are import duty inclusive while U.S., and third-country, export sale prices are import duty exclusive. We also agree with the petitioners that adjusting COP properly remedies the imbalance that is created by a full, unadjusted, duty drawback adjustment. However, we have developed the alternative methodology described above to comply with the CIT's *Opinion and Remand Order* while simultaneously maintaining a fair comparison by

[57] *Id.* 5.
[58] *See* Uttam Galva's Draft Comments at 3.
[59] *Id.* at 3-4.
[60] *Id.* at 4.

remedying the imbalance in the comparison between normal value and EP or CEP. Specifically, our revised methodology removes unrecovered paid and exempted duties from CV or home market price as a COS adjustment, applies the reported duty drawback adjustment to U.S. price, as required by the CIT, and adds the per-unit amount to normal value that was added to U.S. price as a second COS adjustment, resulting in an equilibrium on both sides of the dumping equation with respect duties paid and reimbursed that also ensures that no double counting occurs.

Although the petitioners argue that there is no reason to equate the term "full adjustment" with the "amount of duty drawback that respondents claim,"[61] we disagree that there is room for interpretation in the CIT's instructions related to the amount of the duty drawback adjustment. As stated in the *Final Determination*, Commerce has historically accepted the figures reported by a respondent for rebated or exempted duties in a given year, and divided it by the number of subject exports.[62] In *Uttam Galva I*, the CIT stated that the methodology adopted in the *Final Determination* was problematic in that it "lessens the upwards adjustment and conceptually reintroduces an imbalance in the dumping calculation."[63] The CIT further stated that "Commerce's upwards adjustment to EP, as mandated by the statute, itself creates the 'duty-neutral framework' under which the agency can compare NV and EP," and that the "facts in the record do not support {Commerce's} implementation of a new methodology in this case."[64] Thus, we understand the CIT's instructions to indicate that the facts of the record necessitate that we not reduce the duty drawback upwards adjustment because doing so would create an imbalance in the dumping calculation. Nevertheless, while we acknowledge that the CIT

[61] *See* Petitioners' Draft Comments at 4.
[62] *See* IDM at 7; *see also* Remand I at 2.
[63] *See Uttam Galva I* at 14.
[64] *Id.* at 13-14.

understands the full adjustment to be mandated by the statute, we disagree that no further adjustments are necessary to the AD calculation as a whole. We note that in Remand I, where we also adjusted Uttam Galva's EP or CEP by the full amount reported as duty drawback by Uttam Galva, the petitioner did not suggest that we reduce the amount of that adjustment and agreed that a COS adjustment to normal value in order to bring the normal value into balance with the EP was consistent with the statute.[65] Accordingly, in this remand redetermination, we continue to base the duty drawback adjustment to EP and CEP on the "full amount" of duty drawback reported by Uttam Galva, as we did in Remand I.

We disagree with Uttam Galva's contention that no additional COS adjustments are necessary and explained that these adjustments are necessary to make a fair comparison and to eliminate any actual or perceived double counting. As described above, when adjusting by the full amount of duty drawback reported, the U.S. price reflects a certain amount of import duties while normal value has a diluted per-unit amount of duty. Under these circumstances, the COS adjustments address the imbalance by removing unrecovered duties from normal value and adding to normal value the same per-unit amount of duty added to U.S. price. This ensures that both sides of the dumping equation contain the same amount of per-unit import duties and eliminates any possible double counting.

We agree with Uttam Galva that upon application of the duty drawback adjustment as detailed above, its margin is *de minimis* and that entries of merchandise produced and exported by Uttam Galva will be excluded from the *Order* upon a final judgement in this matter. Accordingly, Commerce will direct U.S. Customs and Border Protection to release any bonds or

[65] *See* Remand I at 10.

other security and refund cash deposits pertaining to any suspended entries produced and exported by Uttam Galva.

For the reasons described above, we continue to conclude that the methodology described herein properly applies the duty drawback adjustment reported by Uttam Galva, in the context of the CIT's order, when combined with the COS adjustments described above to remedy the imbalance between normal value and EP and CEP and any perceived double counting.

V. FINAL RESULTS OF REDETERMINATION

Pursuant to the CIT's remand order, Commerce has revised its duty drawback methodology with respect to Uttam Galva. As a result, Uttam Galva's weighted-average dumping margin has changed from 3.05 percent in the *Final Determination* to 0.00 percent.

5/29/2019

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance