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International Trade Administration
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Sunset Review
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

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

Summary

We have analyzed the responses of interested parties in the expedited sunset reviews of the countervailing duty (“CVD”) orders on certain hot-rolled carbon steel flat products (“hot-rolled steel”) from India and Indonesia. 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

History of the Orders

India

On December 3, 2001, the Department published in the *Federal Register* the CVD order on hot-rolled steel from India.¹ In the final determination, the Department 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”),

¹ 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) (“*India and Indonesia Order*”).



9.26 percent for Tata Iron and Steel Company Limited (“TISCO”), and 16.17 for “all others.”² 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, Government of India (“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.³ These rates were adjusted for cash deposit purposes to reflect the Department’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.”⁴

In the first sunset review of the CVD order on hot-rolled steel from India, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“Act”), the Department 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.⁵ On December 27, 2007, the Department published the notice of continuation of the order.⁶

Since the issuance of the order, the Department has rescinded two administrative reviews in their entirety based on a lack of shipments⁷ and has completed five administrative reviews. The first review covered the time from the issuance of the preliminary determination of investigation through December 31, 2002, and Essar. During the course of the review, in response to petitioner allegations, the Department 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 2002.⁸ Although Essar challenged the final results, the Department’s determination was sustained.

² 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 *India and Indonesia Order*.

³ See *India Final Determination*.

⁴ See *India Final Determination*.

⁵ 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 Issues and Decision Memorandum.

⁶ 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*”).

⁷ 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.

⁸ 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 (“2001-2002 Review Final”).

The second review covered calendar year 2004 and Essar. During the course of the review, in response to petitioner allegations, the Department 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 LTAR. The calculated rate was 4.56 percent.⁹

The third review covered calendar year 2006 and four companies: Essar, Ispat, Tata, and JSW. During the course of the review, in response to petitioner allegations, the Department 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 the Department relied on adverse facts available (“AFA”) for financial contribution and specificity calls. However, where available, the Department relied on usage data provided by the companies. Where the company did not provide usage data (JSW), the Department relied on AFA. The Department 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, the Department determined the following net subsidy rates: Essar – 17.50 percent, Ispat – 15.27 percent, Tata – 27.22 percent and JSW – 484.41 percent.¹⁰ 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).¹¹ Both domestics and Essar challenged the results for Essar and, after adjustments to the calculation of the benefit from iron ore purchases, Essar’s rate increased to 23.64 percent.¹²

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. During the course of the review, in response to petitioner allegations, the Department 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, the Department relied on AFA and found that those programs provided a financial contribution and were specific. Where available, the Department relied on usage data provided by Essar, however, Essar failed to provide information with respect to its Chhattisgarh facility, therefore, the Department applied AFA for usage. On this basis, the Department determined the net subsidy rate for Essar was 76.88 percent.¹³ The litigation associated with Essar’s challenge of several issues continues. The court affirmed the Department on all except the application of total AFA with respect to the Chhattisgarh programs, and ordered the Department to reopen the record and place information on the record demonstrating that Essar did not receive any benefit from the programs.

⁹ 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 Issues and Decision Memorandum (“2004 Final”).

¹⁰ 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 Issues and Decision Memorandum (“2006 Final”).

¹¹ 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).

¹² 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).

¹³ 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 Issues and Decision Memorandum (“2007 Final”).

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, the Department again found the net subsidy rate for Essar was 76.88 percent.

The fifth administrative review covered calendar year 2008 and Tata. The review with respect to Essar, Ispat, and JSW was rescinded after petitioner withdrew its review request.¹⁴ 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, the Department relied on AFA and determined that all of the state programs provided a financial contribution and were specific. The Department also determined that Tata benefited from every GOI and state program found countervailable. As a result, the Department determined the net subsidy rate for Tata was 577.28 percent.¹⁵ 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).¹⁶

Indonesia

On December 3, 2001, the Department published in the *Federal Register* the CVD order on hot-rolled steel from Indonesia.¹⁷ In the final determination of the investigation, covering the period January 1, 1999, through December 31, 1999, the Department 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: Government of Indonesia ("GOIA") Equity Infusions, Two Step Loan.¹⁸

In the first sunset review of the CVD order on hot-rolled steel from Indonesia, pursuant to section 751(c) of the Act, the Department 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.¹⁹ On December 27, 2007, the Department published the notice of continuation of the order.²⁰

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

¹⁴ See *Certain Hot-Rolled Carbon Steel Flat Products from India: Partial Rescission of Countervailing Duty Administrative Review*, 74 DR 26847 (June 4, 2009).

¹⁵ 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 Issues and Decision Memorandum ("2008 Final").

¹⁶ 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).

¹⁷ See *India and Indonesia Order*.

¹⁸ See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Indonesia*, 66 FR 49637 (September 28, 2001) ("*Indonesia Final Determination*").

¹⁹ See *First Expedited Final* and accompanying Issues and Decision Memorandum.

²⁰ See *Continuation of Orders*.

Background

On November 5, 2012, the Department initiated the second sunset reviews of the CVD orders on hot-rolled steel from India and Indonesia pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c).²¹ United States Steel Corporation (“U.S. Steel”); ArcelorMittal USA, LLC (“ArcelorMittal”); Nucor Corporation (“Nucor”); Gallatin Steel (“Gallatin”); Steel Dynamics Inc. (“Steel Dynamics”), and SSAB Americas (“SSAB”) (collectively, “domestic interested parties”) filed timely notices of intent to participate, in accordance with 19 CFR 351.218(d)(1).

The Department received adequate substantive responses collectively from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department did not receive a substantive response from any government or respondent interested party to the Indian or Indonesian proceedings. Because the Department 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), the Department conducted expedited reviews of these CVD orders

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting these reviews 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 the Department shall consider: 1) the net countervailable subsidy 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, the Department shall provide to the International Trade Commission (“ITC”) the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC 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 (“ASCM”).

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Party 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 argue that during the period covered by this five-year review, the GOI

²¹ See *Initiation of Five-Year (“Sunset”) Reviews*, 77 FR 66439 (November 5, 2012).

and Indian state governments have continued to provide an ever increasing number of subsidies to Indian producers and exporters of hot-rolled steel. Therefore, the Department should determine that revocation of these orders is likely to lead to the continuation or recurrence of countervailable subsidies.

Department's Position

According to the Statement of Administrative Action (“SAA”), the Department 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.²² The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.²³ 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.²⁴ Where a subsidy program is found to exist, the Department 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.²⁵

There was no participation in these sunset reviews by any of the respondent interested parties. Further, the facts available to the Department indicate that the subsidy programs found countervailable during the Indonesia investigation continue to exist. As noted above, in the India investigation, the Department verified that two programs were terminated subsequent to the period of investigation (“POI”). Therefore, the Department 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, the Department has found numerous additional programs have provided countervailable subsidies to Indian producers and exporters of hot-rolled steel and has not found any countervailable programs terminated. Consequently, the Department finds that countervailable subsidies would be likely to continue or recur in the event that these CVD orders were revoked.

2. Net Countervailable Subsidy Likely to Prevail

Interested Party Comments

For Indonesia, the domestic interested parties argue that the magnitude of the net countervailable subsidy rates likely to prevail is equal to the rates in the investigation. With respect to India, the domestic interested parties argue that, consistent with the methodology adopted by the Department in the first sunset review of the order, the Department should include in its calculation of the net countervailable subsidy rates likely to prevail the highest rate determined by the Department for each of the new subsidies that the Department has investigated and

²² See SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

²³ *Id.*

²⁴ 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 Issues and Decision Memorandum at Comment 1.

²⁵ See *id.*

countervailed in the administrative reviews. In addition, the domestic interested parties argue that consistent with the section 752(b)(1) of the Act, the *Policy Bulletin*,²⁶ and the Department's practice, the Department 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. Based on these positions, the domestic interested parties provided calculations asserting that the Department should report the following net countervailable subsidy rates as the rates likely to continue or recur should the order be revoked: Essar - 629.82 percent; Ispat - 653.43 percent; SAIL - 639.81 percent; Tata - 630.71 percent; JSW - 637.64 percent; and all others - 637.64 percent.

Department's Position

The Department normally will provide the ITC 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. However, this rate may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews 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.²⁷ Where the Department has conducted an administrative review of the order and determined to increase the net countervailable subsidy rate for any reason, including as a result of the application of facts available, the Department may adjust the net countervailable subsidy rate determined in the original investigation to reflect the increase in the rate.²⁸ Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide the "all others" rate determined in the investigation as the rate likely to prevail.²⁹

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, the Department 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 the Department's policy to adjust the rates from the investigation to account for programs found terminated and new

²⁶ 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*").

²⁷ See *Grain-Oriented Electrical Steel from Italy; Final Results of Full Sunset Review of Countervailing Duty Order*, 65 FR 65295 (November 1, 2000), and accompanying Issues and Decision Memorandum at Comment 3.

²⁸ See *Policy Bulletin* at III.B.3(d)

²⁹ See *Policy Bulletin* at III.B.2.

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, the Department'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 the Department 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 the "all others" to reflect the programs that were subsequently found countervailable. Consistent with section 752(b)(3) of the Act, the Department will provide the ITC the net countervailable subsidy rates below in the section entitled "Final Results of Review."³⁰

3. Nature of the Subsidy

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

India

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

1. *Advance Licenses*: Under India's Duty Exemption Scheme, exporters may import inputs dutyfree through the use of import licenses. Using advance licenses, companies are able to import inputs "required for the manufacture of goods" without paying India's basic customs duty. Advance intermediate licenses and special imprest licenses are also used to import inputs dutyfree. The GOI reported that advance intermediate licenses and special imprest licenses are not related to exports. Under 19 CFR §351.524(c), this program provides a recurring benefit because advance licenses provide import duty exemptions.

2. *Duty Entitlement Passbook Scheme*: India's DEPS was enacted on April 1, 1997 and enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. Exporting companies may obtain DEPS credits on a pre-export basis or on a post-export basis. Eligibility for pre-export DEPS credits is limited to manufacturers/exporters that have exported for a three-year period prior to applying for the program. All exporters are eligible to earn DEPS credits on a post-export basis, provided that the exported product is listed in the GOI's Standard Input and Output Norms ("SIONs"). Post-export DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. Under 19 CFR §351.524(c), we found this program provides a recurring benefit because DEPS credits provide exemption from import duties.

³⁰ See Memorandum to File concerning Calculation of Net Countervailable Subsidy Likely to Prevail dated concurrent with this memorandum.

3. *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. The Department 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.

4. *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 ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. 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 the Department 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. The Department 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. In order 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. The Department found that the GOI's forgiveness of SDF loans issued to SAIL conferred countervailable subsidies on subject merchandise. The Department 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. The Department found that the GOI's forgiveness of additional loans issued to SAIL conferred countervailable subsidies on subject merchandise. The Department treated the amount of debt forgiveness SAIL received as a nonrecurring 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. The Department 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, the Department 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: Loans

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, there were no programs that fall within the meaning of Article 3.1 of the ASCM. The following programs do not fall within the meaning of Article 3.1 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. 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 the Department to make such a determination. We are, however, providing the ITC with the following program descriptions:

1. *GOIA Equity Infusions*: The GOIA provided various equity infusions into Krakatau and its subsidiary, Cold-Rolling Mill of Indonesia (“CRMI”). In 1995, the GOIA converted approximately 1.298 trillion rupiah of debt into equity. In addition, the GOIA provided Krakatau with equity infusions totaling 1.6 trillion rupiah in the five years prior to December 31, 1992.

2. *Two-Step Loan*: Pursuant to Government Regulation number 12/1969, the Ministry of Finance through Bank Indonesia, Indonesia’s Central Bank, can borrow money denominated in foreign currencies to lend to Indonesian companies. Two-step loans are drawn from credit facilities (*i.e.*, lines of credit) in the billing currencies of foreign equipment suppliers. These loans are converted into rupiah based on the exchange rate on the drawing date and carry an interest rate inconsistent with the rate a company would have received on a comparable commercial loan. Krakatau had an outstanding loan which was provided by an Austrian bank and was guaranteed by the GOI.

Final Results of Review

The Department finds that revocation of the CVD 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)	539.89 percent ad valorem
Ispat Industries Limited (Ispat)	563.50 percent ad valorem
Steel Authority of India Limited (SAIL)	549.88 percent ad valorem
Tata Iron and Steel Company Limited (TISCO)	540.78 percent ad valorem
All Others	547.71 percent ad valorem

INDONESIA

Manufacturers/Exporters Subsidy rate

P.T. Krakatau Steel	10.21 percent ad valorem
All Others	10.21 percent ad valorem

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 final results of review in the *Federal Register*.

AGREE DISAGREE



Paul Piquado
Assistant Secretary
for Import Administration

5 MARCH 2013
Date