DEPARTMENT OF COMMERCE

International Trade Administration

(C–533–821)

Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain hot–rolled carbon steel flat products from India for the period January 1, 2004, through December 31, 2004, the period of review (POR). For information on the net subsidy rate for the reviewed company, see the ''Preliminary Results of Review'' section, *infra*. If the final results remain the same as the preliminary results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties as detailed in the ''Preliminary Results of Administrative Review'' section, *infra*. Interested parties are invited to comment on these preliminary results. (*See* the ''Public Comment'' section, *infra*).

EFFECTIVE DATE: January 10, 2006.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Preeti Tolani, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1767 or (202) 482–0395, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2001, the Department published in the **Federal Register** the CVD order on certain hot–rolled carbon steel flat products from India. *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) (*Hot–Rolled Amended Final Determination*). On December 1, 2004, the Department published a notice of opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 69889 (December 1, 2004). On December 30, 2004, we received a timely request for review from Essar Steel Ltd. (Essar), an Indian producer and exporter of subject merchandise, and on January 3, 2005, we received an untimely request for review from petitioner.[1] On January 31, 2005, the Department initiated an administrative review of the CVD order on certain hot–rolled carbon steel flat products from India, covering POR January 01, 2004 through December 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 4818 (January 31, 2005).

On February 3, 2005, the Department issued a questionnaire to the Government of India (GOI) and Essar. We received questionnaire responses from Essar on April 11, 2005, and from the GOI on April 7, 2003. On June 28, 2005, we issued supplemental questionnaires to the GOI and Essar; the responses were received on July 11, 2005, from the GOI and July 20, 2005, from Essar. On August 18, 2005, the Department issued a second supplemental questionnaire to Essar. On August 25, 2005, Essar provided a response.

On May 2 and June 29, 2005, petitioner submitted new subsidy allegations. These allegations covered the following programs: GOI's provision of high–grade iron ore for less than adequate remuneration, the State Government of Gujarat's (SGOG) tax incentives, and the State Government of Maharashtra's (SGOM) tax incentives. On July 19, 2005, the Department initiated an investigation of the new subsidy allegations. *See* Memorandum to Melissa G. Skinner regarding ''Administrative Review of the Countervailing Duty Order on Certain Hot–Rolled Carbon Steel Flat Products from India, New Subsidy Allegations'' (New Subsidy Allegation Memorandum). On July 19, 2005, additional supplemental questionnaires were issued to the GOI and Essar. The responses were received on August 10 and August 25, 2005, from Essar and on September 2, 2005, from the GOI. On September 12, 2005, we issued a supplemental questionnaire to the GOI and on September 20, 2005, to Essar. We received responses from the GOI on October 7 and 14, 2005, and from Essar on October 4 and 11, 2005.

On September 7, 2005, the Department published in the **Federal Register** an extension of the deadline for the preliminary results. *See Notice of Extension of Time Limits for Preliminary Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India*, 70 FR 53166 (September 7, 2005).

On October 20 through October 28, 2005, we conducted verifications of the questionnaire responses of the GOI and Essar in New Delhi and Mumbai, India.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The only company subject to this review is Essar. This review covers eleven programs.

Scope of Order

The merchandise subject to this order is certain hot–rolled flat–rolled carbon–quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in the scope of this order are vacuum–degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high–strength low–alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low–carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or

[1] Petitioner in this case is United States Steel Corporation.

2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

- Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico–manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion–resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is currently classifiable in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled flat–rolled carbon–quality steel covered by this order, including: vacuum–degassed fully stabilized; high–strength low–alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

Subsidies Valuation Information

Benchmarks for Loans and Discount Rate

Benchmark for Short–Term Loans

In accordance with 19 CFR 351.505(a)(3)(ii), for those programs requiring the application of a short–term benchmark interest rate where the firm has no comparable commercial loans, the Department may use a national average interest rate for comparable commercial loans. Essar did not have any comparable, commercial loans denominated in the appropriate foreign currency. Therefore, we are using the currency–specific ''Lending rates'' from private creditors as published in the *International Financial Statistics. See Final Affirmative Countervailing Duty Determination: Certain Hot–Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001) (*HRC Investigation*), and the Accompanying Issues and Decision Memorandum (HRC Investigation Decision Memo), at Benchmarks for Loans and Discount Rate.

Benchmark for Long–Term Loans issued up to 2000

For those programs requiring a rupee–denominated discount rate or the application of a rupee–denominated, long–term benchmark interest rate, we used, where available, company–specific, weighted–average interest rates on commercial long–term, rupee–denominated loans. We note, however, that Essar did not have rupee–denominated, long–term loans from commercial banks for all required years. Therefore, for those years for which we did not have company- specific information, we relied on a rupee–denominated, long–term benchmark interest rate from the immediately preceding year as directed by 19 CFR 351.505(a)(2)(iii).

Benchmark for Long–Term Loans issued in 2001 and 2002

In the most recently completed administrative review, we found Essar to be uncreditworthy during 2001 and 2002. *See Final Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India*, 69 FR 26549 (May 13, 2004) (*HRC First Review Final*), and Accompanying Issues and Decision Memorandum (HRC First Review Decision Memo). As no new evidence has been provided to the Department with respect to Essar's uncreditworthiness during 2001 and 2002, we will continue to apply the uncreditworthy methodology for those programs requiring a long–term benchmark for 2001 and 2002. For our long–term interest rate, we used India's prime lending rate (PLR), as published by the Reserve Bank of India (RBI). We note that we converted the PLR into a benchmark interest rate for uncreditworthy companies using the formula set forth in 19 CFR 351.505(a)(3)(iii).

Benchmark for Long–Term Loans issued from 2003 and 2004

For those programs requiring a rupee–denominated discount rate or the application of a rupee–denominated, long–term benchmark interest rate, we used company–specific interest rates, as reported by Essar.

Programs Preliminarily Determined To Be Countervailable

1. Export Promotion 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 five times the CIF value of capital goods to be fulfilled over a period of eight years (12 years in the case where the CIF value is Rs. 100 Crore[2]). 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.

In prior proceedings, we determined that import duty reductions provided

[2] A crore is equal to 10,000,000 rupees.

under the EPCGS constituted a countervailable export subsidy. *See e.g.*, *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 34950 (May 16, 2002) (*PET Film*), and PET Film Issues and Decision Memorandum (PET Film Decision Memo), at section II.A.4. ''EPCGS.'' Specifically, the Department found that under the EPCGS program, the GOI provides a financial contribution under section 771(5)(D)(ii) of the Tariff Act of 1930, as amended (the Act), in the form of revenue foregone that otherwise would be due, that a benefit is thereby conferred, as defined by section 771(5)(E) of the Act, and that this program is specific under section 771(5A)(B) of the Act because it is contingent upon export performance. No new information or evidence of changed circumstances has been provided with respect to this program. Therefore, we continue to find that import duty reductions provided under the EPCGS are countervailable export subsidies.

We have determined the benefit under this program in accordance with our findings and treatment of benefit in *HRC Investigation* and *PET Film*. *See HRC Investigation* at Analysis of Programs I.E. ''Export Promotion of Capital Goods Scheme (EPCGS)'' and PET Film Decision Memo, at section II.A.4. ''EPCGS.'' Specifically, there are two benefits under the EPCGS program. The first benefit is the amount of unpaid duties that would have to be paid to the GOI if the export requirements are not met. The repayment of this liability is contingent on subsequent events, and in such instances it is the Department's practice to treat any balance on an unpaid liability as an interest–free loan. *See* 19 CFR 351.505(d)(1). Because Essar had not yet met its export obligation, we preliminarily determine that the company has an outstanding contingent liability during the POR. We further determine that the amount of the contingent liability to be treated as an interest–free loan is the amount of the import duty reduction or exemption for those EPCGS licenses which Essar applied but, as of the end of the POR, had not received a waiver of its obligation to repay the duties from the GOI.

Accordingly, for those unpaid duties for which Essar has yet to fulfill its export obligations, we determine the benefit to be the interest that Essar would have paid during the POR had it borrowed the full amount of the duty reduction at the time of import. Pursuant to 19 CFR 351.505(d)(1), we used a long–term interest rate as our benchmark to calculate the benefit of a contingent liability interest–free loan because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period for Essar to fulfill its export commitments) occurs at a point in time more than one year after the date the capital goods were imported. Specifically, we used the calculated long–term benchmark interest rate for Essar, as described in the ''Subsidies Valuation'' section, *supra*. The rate used corresponded to the year in which Essar imported the item under the program. Consistent with our policy, absent acknowledgment from the GOI that the liability has been eliminated, we continue to treat benefits of these licenses as contingent liabilities. *See* ''Export Promotion of Capital Goods Scheme (EPCGS)'' section from the HRC First Review Decision Memo.

The second benefit is the waiver of import duty on imports of capital equipment covered by those EPCGS licenses for which export requirements have been met. Essar reported that it imported machinery under the EPCGS in the years prior to the POR and during the POR. Upon importation under these licenses Essar received reduced import duty liabilities and agreed to the export obligations prescribed under the program, as noted above. For some of its licenses, Essar reported to the GOI that it met its export requirements and requested waiver of the obligation to repay the duties otherwise due for importation of the equipment. For certain EPCGS licenses Essar provided evidence that the GOI granted these waivers during the POR. For those licenses upon which waivers were granted, we followed our methodology set forth in the *HRC Investigation* and summed the benefits. We then performed the 0.5 percent test to determine whether the benefit should be allocated or expensed. For one license waived in 2002, we divided the benefit by Essar's export sales for 2002 and found that the benefit was less than 0.5 percent. Consistent with the policy set forth in 19 CFR 351.524(b)(2), we expensed that license during the year in which it was waived. For other waived licenses, we found that the benefit exceeded the 0.5 percent test and we are allocating the benefit pursuant to the methodology described under 19 CFR 351.524(d)(1).

Essar reported that it paid application fees in order to obtain its EPCGS licenses. We preliminarily determine that the application fees paid by Essar qualify as an ''application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.'' *See* section 771(6)(A) of the Act. As a result, we have offset the benefit in an amount equal to the fees paid.

To calculate the subsidy rate, we summed the benefits from the waived licenses and those licenses which have yet to be waived, which we determine conferred a benefit on Essar in the form of contingent liability loans. Where licenses related to imports of capital goods during 2004, we prorated the contingent liability by the actual number of days. After subtracting the application fees, we divided Essar's total benefit under the program by its respective total export sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy from this program to be 2.12 percent *ad valorem*.

2. State Government of Gujarat Tax Incentives

Pursuant to a 1995 Industrial Policy of Gujarat and an Incentive Policy of 1995–2000, the SGOG offered incentives, such as sales tax exemptions and deferrals, to companies that locate or invest in certain disadvantaged or rural areas in the State of Gujarat. A company could be eligible to claim exemptions or deferrals valued up to 90 percent of the total eligible capital investment. These policies exempt companies from paying sales tax on the purchases of raw materials, consumable stores, packing materials and processing materials. There are two schemes available under this policy: Pioneer and Prestigious. To be eligible for the incentives, companies must make a fixed capital investment of over 5 crores (Pioneer scheme) or 300 crores (Prestigious scheme) in a qualified under–developed area in the state of Gujarat. *See* the January 3, 2006, Memorandum to Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, from Tipten Troidl and Preeti Tolani, Case Analysts, Regarding: Countervailing Duty Administrative Review of Certain Hot–Rolled Carbon Steel Flat Products from India: Verification of the Questionnaire Responses Submitted by the Government of India, at pages 3–4 (GOI Verification Report). The amount of this eligible capital investment is linked to the amount of the incentives received over a period of eight to fourteen years, depending on the category of participation. For the Pioneer scheme, which initially began in 1986, companies making a capital investment during 1986 and 1991 were allowed to utilize this program. For the Prestigious scheme, tax incentives were offered only for investment units which started production between 1990 and 1995. *See* GOI Verification Report at 4.

During the current review, we found that Essar had investments under both the Pioneer and the Prestigious schemes. During the POR, Essar only took sales tax exemptions. In *PET Resin*, the Department determined that the purchases under these two schemes resulted in companies not paying the state sales tax otherwise due, and thus constituted a countervailable subsidy. *See Final Affirmative Countervailing Duty Determination: Bottle–Grade Polyethylene Terephthalate (PET) Resin from India*, 70 DR 13460 (March 21, 2005) (*PET Resin*), and Accompanying Issues and Decision Memorandum (PET Resin Decision Memo) at page 10.

Consistent with our findings in *PET Resin*, we preliminarily find that this program is countervailable. It is limited to only those companies that make an investment in a specified disadvantaged area and is therefore specific under section 771(5A)(D)(iv) of the Act. We also preliminarily find that the SGOG provides a financial contribution under section 771(5)(D)(ii) of the Act by foregoing the collection of sales tax revenue and that Essar receives a benefit under section 771(5)(E) of the Act in the amount of sales tax that Essar does not pay.

Essar reported that it claimed tax exemptions on purchases during the POR. To calculate the benefit under this program we multiplied the tax rate by the amount of purchases Essar reported it claimed tax exemptions for in 2004. We summed the amounts for both the Pioneer and Prestigious schemes. We then divided this amount by Essar's total sales. On this basis, we preliminarily calculated an *ad valorem* rate of 0.12 percent for 2004.

3. Bombay Relief Undertaking (BRU) Act

Enacted in 1958 and later amended in 1974, the BRU is a provincial law enacted by the SGOG that is intended to safeguard employment. Under the BRU, companies designated as ''relief undertakings'' have all litigation against them stayed for a period of one year. In disputes between companies and their creditors, the effect is that principal and interest payments are also put on hold, as a creditor is unable to sue for collection. During the time in which litigation is stayed, the company has the opportunity to become current on its financial debts. Subsequent BRU declarations are allowable after the initial declaration. A company can be protected under the BRU for up to ten years. To be designated as a relief undertaking, a company must submit an application which the SGOG evaluates according to three criteria: (1) Whether the company's balance sheet indicates a loss, (2) whether there is an allegation that unemployment will occur if the applicant is not declared a relief undertaking, and (3) whether there is information demonstrating that the company has the potential to turn itself around.

Essar was declared a relief undertaking and was granted protection beginning on March 19, 2002. *See Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India*, 69 FR 907 (January 7, 2004) (*HRC First Review Prelim*) at 911. The Department determined that the SGOG's protection of Essar from litigation under the BRU constituted a financial contribution under section 771(5)(B)(iii) of the Act. In particular, we found that by granting Essar protection under the BRU and by prohibiting Essar's creditors from pursing any pending litigation against the company, ''the SGOG directed the creditors to not collect principal and interest payments on loans that otherwise would be due.'' *HRC First Review Final* and HRC First Review Decision Memo at page 5. Moreover, we found that under section 771(E)(ii) of the Act, Essar benefitted under this program ''in an amount equal to the principal and interest it would have had to pay absent the legal protection afforded under the BRU.'' *Id.* Lastly, the Department found this program was specific under section 771(5A)(D)(iii)(I) of the Act.

During this POR, Essar applied for and was granted an extension of its original one-year protection under the BRU. Its initial application for an extension was denied by the SGOG, but upon amending its application to seek protection only from unsecured foreign lenders, Essar's request for an extension was granted. *See* GOI's July 11, 2005, submission at page 13 and Exhibit 8. The SGOG extended Essar's BRU protection for a one-year period from September 11, 2003, to September 10, 2004. In granting Essar protection, the SGOG stated that it was ''. . . pleased to direct that dues of the foreign un-secured lenders only, in relation to the said undertaking rights, privileges, obligations, liabilities (other than those liabilities etc, towards its employees) occurred or incurred before dated 11th September, 2003 and remedy for the enforcement thereof shall be suspended and proceedings relating thereto pending before any Court, Tribunal, officer or Authority shall be stayed during one year commencing from 11th September, 2003 and ending on 10th September, 2004.'' *Id.*

With respect to the issue of specificity, during the course of this review we asked the SGOG to provide certain information regarding the application process and approval of BRU protection as well as the companies granted relief undertaking status. In our initial questionnaire, our June 28, 2005, supplemental and our September 14, 2005, supplemental, we asked the SGOG to submit information on the companies and industries who applied for and were granted relief during the POR. In their October 7, 2005, questionnaire response, the SGOG submitted a list of only those companies that were granted either initial protection or an extension of their protection. They did not provide any information on those companies who applied for relief and whose applications were rejected. During the time period that Essar was granted its second protection under BRU, the SGOG granted five companies initial protection, 10 companies (including Essar) an extension of their initial protection, one company a third extension, and 3 companies a fourth extension of their protection, for a total of 19 companies in 10 industries. However, the SGOG did not provide the information requested concerning the number of companies whose applications were rejected.

In the *HRC First Review Prelim*, the Department found that eight companies were granted protection in 2001 and six in 2002, while 25–30 applicants had submitted applications during that time. In light of the existence of generic criteria, the absence of any specific measure for evaluating the criteria, and the number of companies whose applications were rejected, the Department determined that the SGOG exercised discretion in a manner in which it grants approval under this program to a limited number of users, leading the Department to determine the program was *de facto* specific.

In this review, the SGOG did not provide the Department with the information it requested on this issue. Section 776(a)(2)(A) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department. As described above, the SGOG failed to provide the requested information concerning the total number of applications during this review. Therefore, we must resort to the use of facts otherwise available. Furthermore, section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. The Department finds that, by not providing necessary information specifically requested by the Department, despite numerous opportunities, the SGOG has failed to cooperate to the best of its ability. Therefore, in selecting from among the facts otherwise available, the Department determines that an adverse inference is warranted. When employing an adverse inference in an administrative review, section 776(b) of the Act allows the Department to rely upon information derived from the petition, a final determination in the investigation, any previous review or any other information placed on the record. In applying adverse facts available in the instant review, we have used information on the record of this administrative review. Therefore, as adverse facts available, as consistent with the our findings in the last administrative review, and because the SGOG did not provide us with the number of applicants, the Department preliminarily concludes that the SGOG continues to exercise discretion in the manner in which it grants approval under this program to a limited number of users. Therefore, we preliminarily find this program to be specific under section 771(5A)(D)(iii)(I) of the Act.

Essar has argued that it did not have any protection from the government under the BRU since it expired in 2004. *See* Essar's August 25, 2005, submission at page 7, and October 4, 2005, submission at page 5. Moreover, during verification Essar officials explained that although one creditor had sued Essar in a London court, pending the outcome of the litigation, Essar had placed the full amount of the loan into a reserve account with the Court. Essar further explained that if the creditor wins the litigation, the creditor will receive the amount in this reserve; however, if the Court rules in favor of Essar, the amount in the reserve account will be returned. *See* the January 3, 2006, Memorandum to Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, from Tipten Troidl and Preeti Tolani, Case Analysts, Regarding: Countervailing Duty Administrative Review of Certain Hot–Rolled Carbon Steel Flat Products from India: Verification of the Questionnaire Responses Submitted by Essar Steel Ltd. (Essar Verification Report), at page 11. However, Essar was not able to submit any documentation to support this claim. Absent any such documentation, we were unable to verify this claim.

Therefore, the Department preliminarily determines that the SGOG's protection of Essar from litigation under the BRU continues to constitute a financial contribution under section 771(5)(B)(iii) of the Act to the extent that the SGOG is prohibiting Essar's creditors from pursuing any pending litigation against the company and thereby directing creditors not to collect principal and interest payments on loans that otherwise would be due. We also preliminarily find that Essar receives a benefit under this program in an amount equal to the interest and principal it would have had to pay absent the legal protection afforded under the BRU.

To calculate the benefit to Essar, we summed the amount of interest and principal payments that Essar would have otherwise been required to make had it not been under the protection of the BRU. We treated these payments as interest–free short–term loans. Therefore, we calculated the interest that would have been due by the interest rate listed in their loan agreement. *See* the GOI's July 11, 2005, submission at page 80, Annexure 8. We added this amount to the outstanding principal and multiplied the sum by the short–term interest benchmark, as discussed in the ''Benchmarks for Loans and discount Rate'' section, *supra*. We then divided this amount by Essar's total sales for 2004. As information on the record indicates that the protection under the BRU expired on September 10, 2004, we are only calculating a net subsidy rate for this program up to that date. On this basis, we preliminarily find that Essar received a countervailable subsidy of 0.63 percent *ad valorem*.

4. Sale of High–Grade Iron Ore for Less Than Adequate Remuneration

On May 2 and June 29, 2005, petitioner submitted new subsidy allegations, alleging that the GOI, through the government–owned National Mineral Development Corporation (NMDC), provided high–grade iron ore to Essar for less than adequate remuneration. On July 19, 2005, the Department initiated an investigation into whether Essar received a direct subsidy from the GOI when purchasing iron ore from the NMDC. *See* New Subsidy Allegation Memorandum.

Essar reported that it purchased high–grade iron ore (*i.e.*, iron ore with Fe content of 64 percent or above) from the NMDC during the POR. In accordance with section 771(5) of the Act, to find a countervailable subsidy, the Department must determine that a government provided a financial contribution and that a benefit was thereby conferred, and that the subsidy is specific within the meaning of section 771(5A) of the Act.

Section 771(5)(D)(iii) of the Act states that the provision of a good or service (other than general infrastructure) by a government (or any public entity) constitutes a financial contribution. During verification, the Department found that the NMDC is a mining company governed by the GOI's Ministry of Steel and that the GOI holds 98 percent of its shares. *See* GOI Verification Report, at page 5. Accordingly, we preliminarily determine that the NMDC is a part of the GOI. Therefore, we preliminarily find that the GOI directly, through the government–owned NMDC, provided a financial contribution as defined under section 771(5)(D)(iii) of the Act to Essar.

We preliminarily find that the GOI's provision of high–grade iron ore is specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipient of the subsidy is limited to industries that use iron ore, including the steel industry, and is thus limited in number.

Section 771(5)(E)(iv) of the Act provides that a benefit is conferred by a government when the government provides the good or service for less than adequate remuneration. Pursuant to 19 CFR 351.511(a)(2)(i) the Department will normally seek to measure the adequacy of remuneration by comparing the government price for the goods or service to a market–determined price resulting from actual transactions in the country in question. The regulations provide that such market–determined prices could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. In seeking a market–determined benchmark price, we found that Essar purchases more than 98 percent of its high–grade iron ore from NMDC, and the remainder from a mine run by the State of Orissa. *See* Essar Verification Report at page 19. Moreover, the record contains no information on actual transaction prices between private parties in India. Additionally, a review of GOI import statistics demonstrates that there is no distinction in iron ore imports based on grade so we have no basis to determine whether import statistics reflect prices associated with imports of high–grade iron ore. Therefore, the Department preliminarily determines that there is no record information regarding actual transactions between private parties that could be used as an ''in–country'' benchmark to compare against Essar's purchases from NMDC. Thus, the Department is unable to measure the adequacy of remuneration using actual market–determined prices in India, as directed by 19 CFR 351.511(a)(2)(i).

Under 19 CFR 351.511(a)(2)(ii), where actual market–determined prices are not available with which to make the comparison under paragraph (a)(2)(i), the Department will seek to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such prices would be available to purchasers in the country in question. This second tier directs the Department to examine prices which it would be reasonable to conclude that purchasers could obtain in India. Information on the record indicates that there are prices from the world market for comparable goods which can be used as a benchmark to determine whether the GOI provides high–grade iron ore to Essar for less than adequate remuneration. During verification, NMDC and MMTC[3] officials provided copies of the *Tex Report*. The *Tex Report* is a daily Japanese publication that reports on world–wide price negotiations for iron ore.[4] The officials explained that annual negotiations occur between steel makers and iron ore suppliers, either in Japan or in other countries (including European countries). During these negotiations, the participating parties agree on a percentage change (either up or down) from the base price. *See* GOI Verification Report at page 6. The February 16, 2004, edition of the *Tex Report* reported that several Japanese integrated steelmakers had concluded negotiations with an Indian mission including MMTC, Kudremukh Iron Ore (KIOCL), and officials of the Indian government regarding prices for iron ore, including high–grade iron ore. The price for this iron ore is quoted on an FOB Indian port basis. In addition, the February 24, 2005, edition of the *Tex Report* reported that several Japanese steelmakers had concluded talks with an Australian company for high–grade iron ore. This publication includes the prices for high–grade iron ore that were set for 2004. Based upon this information, we preliminarily determine that the prices reported in the *Tex Report* constitute world market prices that would be available to Essar in accordance with 19 CFR 351.511(a)(2)(ii).

To measure the adequacy of remuneration, we compared the price that Essar actually paid for its high–grade iron ore to an average of the prices of high–grade iron ore set forth in the *Tex Reports*. We made the following adjustments to the benchmark information: We converted the iron ore lumps and fines' prices listed in U.S. cents per dry long ton to U.S. dollars. We multiplied the per unit U.S. dollar price by 64 (iron ore is priced by one unit of Fe content) to calculate a U.S. dollar high–grade iron ore amount. We then converted the dry long ton to a wet long ton. We applied the conversion from dry long ton to wet long ton for those purchases that were already listed in U.S. dollars with an Fe content of 64. We then applied the average exchange rate for 2004 to calculate a Rupee per metric ton price for high–grade iron ore. We then averaged all of the prices to arrive at the benchmark used to compare against Essar's purchases of high–grade iron ore.

To calculate the benefit, we compared Essar's monthly prices for iron ore to the benchmark rate, and multiplied this price differential by the quantity that Essar purchased from NMDC. We then divided this amount by Essar's total sales for 2004. We preliminarily calculated a rate of 0.65 percent *ad valorem*.

Program Preliminarily Determined Not To Be Used

1. Duty Free Replenishment Certificate (DFRC)

The DFRC scheme was introduced by the GOI in 2001 and is administered by the Director–General for Foreign Trade (DGFT). The DFRC is a duty replenishment scheme that is available to exporters for the import of inputs used in the manufacture of goods without payment of basic customs duty. The DFRC differs from other duty exemption schemes previously reviewed by the Department to the extent that the exemption is earned on specified exports and is applicable to future imports. In order to receive a license, which entitles the recipient to import duty free certain inputs used in the production of the exported product, as identified in a Standard Input/Output Norm (SION), within the following 24 months, a company must: (1) export manufactured products listed in the GOI's export policy book and against which there is a SION for inputs required in the manufacture of the export product based on quantity; and (2) have realized the payment of export proceeds in the form of convertible foreign currency. See GOI Verification Report at 10; *see also* the GOI's July 11, 2005, submission at page 70, Annexure 6. The application must be filed within six months of the realization of the profits. DFRC licenses are transferrable, yet the transferee is limited to importing only those products and in the quantities specified on the license. *Id*.

Essar exported merchandise during the POR for which it applied for a DFRC license. However, it did not receive its DFRC license until after the POR. Although 19 CFR 351.519(b)(2) provides that the Secretary will normally consider any benefit from a duty drawback or exemption program as having been received as of the date of exportation, we preliminary find that an exception to this normal practice is warranted here in view of the unique manner in which this program operates. Specifically, a company may not submit an application for a DFRC license until the proceeds of the sale are realized. The license, once granted, specifies the quantity of the particular inputs that the bearer may then subsequently import duty free.

In *HRC First Review Final*, we noted that the benefits from another duty exemption program, the Duty Entitlement Passbook Scheme, were conferred as of the date of exportation of the shipment because it is at that point that ''the amount of the benefit is known by the exporter.'' *See* HRC First Review Decision Memo at page 6. However, in the case of the DFRC, the company does not know at the time of export the value of the duty exemption that it will ultimately receive; it merely knows the quantity of the inputs it will likely be able to import duty free if its application for a DFRC license is granted. Unlike the Duty Entitlement Passbook Scheme, under the DFRC program the respondent will only know the total value of the duty exemption when it subsequently uses that license to import the specified products duty free.

Accordingly, we preliminarily determine that any benefit from the DFRC program would be received as of the date of the exemption of payment of duties. In this case, the benefit would not be received until Essar began to import inputs and claim the exemption. Because Essar did not receive the license for the POR export until 2005, we preliminarily determine that this program was not used during this POR.

[3] MMTC was formally called Minerals & Metals Trading Corporation.

[4] Copies of several issues of the *Tex Report* reporting on negotiated iron ore prices with Australian, Brazilian iron ore producers and Japanese and European steel makers are provided as an exhibit E-15 of the Essar Verification Report.

2. Pre–shipment Export Financing

3. Duty Entitlement Passbook (DEPS)

4. Target Plus Scheme

5. Advance Licenses

6. Tax Incentives from the State Government of Maharashtra (SGOM)

Programs Preliminary Found Not To Be Countervailable

1. Corporate Debt Restructuring

On August 23, 2001, and February 5, 2003, the RBI and the government bank of India set forth guidelines for corporations and their creditors to follow during the course of a corporate debt restructuring (''CDR''). *See* the GOI's July 11, 2005, submission at page 40, Annexure 2. The CDR mechanism has a set of guidelines that all companies must follow. *See* GOI's Verification Report at page 2.

The organization of the CDR mechanism has three levels: the CDR Core Group, the Empowered Group and the CDR Cell. *See id*; *see also HRC First Review Prelim* at 913. The Core Group is responsible for overseeing the CDR as a whole, while the Empowered Group is responsible for making the decision on the restructuring packages. The CDR Cell works with the company and oversees the restructuring package. *Id.* The CDR cell is comprised of the company's main lenders and it oversees the actual restructuring of the company. *Id.*

Essar was one such company that, at the determination of its creditors, participated in such a restructuring program. Essar's restructuring involved debt from private lenders as well as from lending institutions owned/controlled by the GOI. In the *HRC First Review Final* we determined that Essar did not use the CDR program during the POR. *See HRC First Review Final* and HRC First Review Decision Memo at Corporate Debt Restructuring (CDR) page 7. Specifically, in the *HRC First Review Prelim*, we found that the restructuring plan for Essar did not take effect until after the POR. *See HRC First Review Prelim.* Essar's debt restructuring was in effect and covered debt outstanding during the period of the current review.

The Department does not automatically find reorganizations, workout programs or bankruptcy proceedings to be countervailable. Rather, the Department must find that the program is not generally available in the country or, if it is generally available in the country in question, that it is provided in a manner that is inconsistent with typical practice. *See e.g., Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004), and Accompanying Issues and Decision Memorandum at Comment 4 (where the Department found that KAMCO's debt forgiveness to Sammi was not specific or preferential as it was similar to debt forgiveness to other companies in court receivership where KAMCO was the lead creditor) and *Final Affirmative Countervailing Duty Determination and Negative Critical Circumstances Determination: Carbon and Certain Alloy Seel Wire Rod from Germany*, 67 FR 55808 (August 30, 2002), and Accompanying Issues and Decision Memorandum at 24–25 (where the Department found that Saarstahl and its creditors followed established procedures and that there was no evidence indicating that the German government acted in a manner that caused the terms of Saarstahl's bankruptcy/restructuring proceedings to be unduly favorable to the company).

In the prior administrative review of this order, the Department found that the RBI and a group of lenders introduced the CDR Mechanism to restructure corporations' debt in August 2001. *See HRC First Review Prelim* at 913. The Inter–Creditor Agreement (ICA) was signed in February 2002 to deal with the increasing amount of non–performing assets that banks were holding. The RBI and the CDR Standing Forum, which consisted of members from various banks in India, reviewed other countries' restructuring programs and ultimately based the CDR framework on the London Approach. The CDR is a non–statutory and voluntary organization whose members are bound by the ICA. Lender participation in the CDR is voluntary. However, when a restructuring package is accepted by at least 75 percent of the lenders, the remaining 25 percent must either comply with the terms of the agreement, or, if they decide to opt out, they may take a payout at a discounted rate. *Id.*

We preliminarily determine that Essar did not receive a benefit from any government–provided financial contribution during the course of its restructuring. Record evidence indicates that Essar and its creditors followed the existing framework and guidelines of the CDR and that Essar's participation in the restructuring program was made at the behest of its secured creditors. There is no evidence of government influence over the decision making ability of the CDR cell, and/or any private lenders.

In view of the fact that there is no evidence of government influence over the decision making ability of the CDR cell and given that the private lenders freely agreed to be a part of Essar's CDR restructuring package, we preliminarily find that Essar's loans from private lenders that were included as part of Essar's restructuring package serve as a comparable commercial benchmark for evaluating the concurrently restructured loans from the GOI–owned/controlled lenders.[5] Exhibit 2 of Essar's July 20, 2005, submission provides a list of Essar's restructured loans from both private and GOI–owned/controlled banks and demonstrates that Essar's loans from private and government banks were restructured on the same terms, including at the same interest rates. Further, a review of Essar's approved restructuring package and amendments to that approved restructuring package further demonstrates that there was no distinction in the treatment of debt from private and government banks. The GOI–owned/controlled banks, which held a minority share of Essar's debt, agreed to the same terms and conditions set by the company's private creditors. Therefore, we preliminarily determine that this program is not countervailable as Essar did not receive any benefit from any GOI–provided financial contribution.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a subsidy rate for Essar subject to this administrative review, for 2004. We preliminarily determine the total estimated net countervailable subsidy rate is 3.52 percent *ad valorem* for 2004.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct CBP, within 15 days of publication, to liquidate shipments of certain hot–rolled carbon steel flat products from India entered, or withdrawn from warehouse, for consumption from January 1, 2004, through December 31, 2004 at 3.52 percent *ad valorem* of the f.o.b. invoice price on all shipments of the subject merchandise from Essar. Also, the rate of cash deposits of estimated countervailing duties will be set at 3.52

[5] As it is the Department's practice to treat any material change to an outstanding loan as a new loan, the restructured loans from GOI-owned/controlled banks can be considered to be contemporaneous with the private-lender loans. *See e.g., Final Affirmative Countervailing Duty Determinations: Certain Cut-to-Length Carbon Steel Plate from Mexico*, 69 FR 1972 (January 13, 2004), and Accompanying Issues and Decision Memorandum at Comment 4; *Final Affirmative Countervailing Duty Determinations: Stainless Steel Plate in Coils from Italy*, 64 FR 15508, 15516 (March 31, 1999).

percent *ad valorem* for all shipments of certain hot–rolled carbon steel flat products made by Essar from India entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review. The Department will issue appropriate instructions directly to CBP within 15 days of the final results of this review.

Because the Uruguay Round Agreements Act (URAA) replaced the general rule in favor of a country–wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non–reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. A requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal–Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the pre–URAA antidumping regulation on automatic assessment, which was identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific or country–wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non–reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted under the URAA. *See HRC Amended Final Determination*, 66 FR 60200. These rates shall apply to all non–reviewed companies until a review of a company assigned these rates is requested. In addition, for the period April 20, 2001, through December 31, 2002, the assessment rates applicable to all non–reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, 37 days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 677f(I)(1)).

Dated: January 3, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092705C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendments 14 and 15 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico and Amendments 27 and 28 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico; Scoping Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; intent to prepare draft supplemental environmental impact statements (DSEISs), scoping meetings, request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) previously published a notice of intent in the **Federal Register** (70 FR 57859, October 5, 2005) to prepare a DSEIS for a joint Amendment 14 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the Gulf of Mexico (Shrimp FMP) and Amendment 27 to the FMP for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP). This notice supplements the previous notice and provides notice of the Council's intent to prepare a second DSEIS for a subsequent joint Amendment 15 to the Shrimp FMP and Amendment 28 to the Reef Fish FMP. The alternatives in the two joint amendments will consider measures to reduce red snapper fishing mortality and bycatch in the shrimp and reef fish fisheries, and to achieve optimum yield (OY) in the shrimp fishery. The purpose of this notice of intent is to solicit public comments on the scope of issues to be addressed in the DSEISs.

DATES: Written comments must be received by February 9, 2006.

The meetings will be held in January 2006. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments on the scope of the DSEISs, and requests for additional information on the joint amendments, should be sent to the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; phone: 813–348–1630; fax: 813–348–1711. Comments may also be sent by e-mail to: *rick.leard@gulfcouncil.org*.

The locations of all scoping meetings are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.