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**File No. 6/16/2019-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
Jeevan Tara Building, 5, Parliament Street, New Delhi 110001**

Dated 15th January, 2021

Case No: CVD-OI-05/2019

NOTIFICATION

FINAL FINDINGS

Sub: Anti-subsidy investigation concerning imports of “Flat Products of Stainless Steel” from Indonesia.

A. BACKGROUND OF THE CASE

Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as “the Act”), and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter also referred to as “the Rules”) thereof:

1. Indian Stainless Steel Development Association (ISSDA), Jindal Stainless Limited (JSL), Jindal Stainless (Hisar) Limited (JSHL) and Jindal Stainless Steelway Limited (JSSL) (hereinafter also referred to as “the Applicants”) have filed an application before the Designated Authority (hereinafter also referred to as “the Authority”) in accordance with the Act and the Rules for imposition of Countervailing duty on imports of “Flat Products of Stainless Steel” (hereinafter also referred to as “subject goods”) from Indonesia (hereinafter also referred to as the “subject country”).
2. The Authority, on the basis of sufficient prima facie evidence submitted by the Applicant, issued a public notice vide Notification No. 6/16/2019 - DGTR dated 18th October, 2019, published in the Gazette of India, initiating the subject investigation in accordance with Rule 6 to determine the existence, degree and effect of the alleged subsidy and to recommend the amount of anti-subsidy/countervailing duty, which if levied, would be adequate to remove the alleged injury to the domestic industry.

3. The Authority, in terms of Rule 14 of the Rules, issued a public notice vide Notification No. 6/16/2019-DGTR dated 7th August 2020 notifying Preliminary Findings in the investigation. Pursuant to the recommendation by the Authority, the Central Government imposed provisional duties vide Notification No. 02/2020 – Customs (CVD) dated 9th October 2020.

B. PROCEDURE

4. The procedure described herein below has been followed by the Authority with regard to the subject investigation:
- a) The Authority notified the Embassy of the Subject Country in India about the receipt of the present anti-subsidy application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 6 supra.
 - b) The Authority invited the Government of Indonesia for consultation with the aim of clarifying the situation and arriving at a mutually agreed solution in accordance with Article 13 of the Agreement on subsidies and countervailing measures. The consultation was held on 23rd September, 2019 at New Delhi, which was attended by representatives of the Government of Indonesia.
 - c) The Authority issued a public notice dated 18th October 2019, published in the Gazette of India Extraordinary, initiating anti-subsidy investigation concerning imports of the subject goods from the subject country.
 - d) The Authority sent a copy of the initiation notification to the Embassy of the Subject Country in India, known producers/exporters from the subject country, known importers/users and the Domestic Industry as well as other domestic producers as per the addresses made available by the Applicants and requested them to make their views known in writing within the prescribed time limit.
 - e) The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassy of the subject country in India in accordance with Rule 7(3) of the Rules.
 - f) The Embassy of the subject country in India was also requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject country.
 - g) The Authority sent questionnaire to the Government of Indonesia in order to seek relevant facts/information with regard to various schemes/programs where countervailable benefit might have been conferred by the Government.
 - h) The Authority sent questionnaires to the following known producers/exporters in the subject country in accordance with Rule 7(4) of the Rules:
 - (i) PT IMR ARC Steel
 - (ii) PT Bintang Asia Usaha
 - (iii) PT Tsingshan Steel

i) In response, the following exporters/producers from the subject country filed exporter's questionnaire response:

- (i) PT Indonesia Guang Ching Nickel and Stainless Steel Industry
- (ii) PT Indonesia Tsingshan Stainless Steel
- (iii) PT Indonesia Ruipu Nickel and Chrome Alloy
- (iv) PT Tsingshan Steel Indonesia
- (v) PT Sulawesi Mining Investment, Indonesia
- (vi) PT EKASA YAD RESOURCES, Indonesia
- (vii) PT Bintangdelapan Mineral, Indonesia
- (viii) Eternal Tsingshan Group Limited
- (ix) Celerity Asia Trade Limited
- (x) Golden Harbour International PTE. Ltd.
- (xi) Hanwa Co. Ltd.
- (xii) Schuang International Development Limited
- (xiii) Stratus Steels DMCC
- (xiv) Recheer Resources (Singapore) PTE. Ltd.
- (xv) PT Hanwa Indonesia
- (xvi) PT IMR ARC Steel, Indonesia
- (xvii) IMR Metallurgical Resources AG
- (xviii) PT Bintang Asia Usaha (BAU), Indonesia

j) Pursuant to the initiation notification, apart from the above producers/ exporters from the subject country, Government of Indonesia also filed the questionnaire response.

k) The Authority sent Importer's Questionnaire to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 7(4) of the Rules:

- i. Accurate Steel
- ii. Moonlight Tube Industries
- iii. Amanat Steels Pvt. Ltd
- iv. Naman Steel
- v. Aminox international
- vi. National peroxide limited
- vii. Ankur exports
- viii. Navgrah fastners pvt ltd
- ix. Anupam impex
- x. Navgrah fastners pvt. Ltd.
- xi. Montex stainless and alloys
- xii. Navpad steel centre
- xiii. Ashok metal corporation
- xiv. Navyug metal corporation

- xv. Ashwin impex
- xvi. Nenava metal corporation
- xvii. B.V.S. Overseas
- xviii. Neptune Steel Impex
- xix. Balaji Impex
- xx. NG Industries
- xxi. Balaji Niryaat Private
- xxii. Nickel Impex LLP
- xxiii. Bhalaria metal craft pvt ltd
- xxiv. Numax steels
- xxv. Bharat Exports
- xxvi. Ohsung Electronics India Private Limited
- xxvii. Bhavyadeep Impex
- xxviii. Om Gurudev Metals
- xxix. Chanchal Metal & Tube
- xxx. P.P. Impex (india)
- xxxi. Chirag Udyog
- xxxii. Pacific Metal Trading co
- xxxiii. Devdeep Steel Alloys
- xxxiv. Param Industries
- xxxv. Dhanera impex.
- xxxvi. Paras Impoexpo Pvt Ltd.
- xxxvii. Dhanera Metal Supply Corporation
- xxxviii. Phoenix Foils Pvt. Ltd.
- xxxix. Minox Metal Private Limited
- xl. Posco-India Pune Processing Center Pvt. Ltd
- xli. Divine Overseas Private Limited
- xl.ii. Rajesh Steel
- xl.iii. Flange Forge India
- xl.iv. Rajguru Enterprises Pvt. Ltd
- xl.v. Forte Impex Pvt. Ltd.
- xl.vi. Ramani Steel House
- xl.vii. Godrej & Boyce Mfg. Co. Ltd.
- xl.viii. Randen Engineering Pvt.Ltd.
- xl.ix. Goodluck Metal Corporation
- l. Riddhi Siddhi Impex
- li. Goodluck Steels
- lii. Welkin Infotech Private Limited
- liii. H. K. Impex Pvt. Ltd.
- liv. S S Impex
- lv. Him Enterprises
- lvi. Saneet Steelsa
- lvii. Hindustan Inox Limited

- lviii. Saraswati Steel India
- lix. Hindustan Syringes And Medical Devices Ltd
- lx. Seth Iron & Steel Pvt. Ltd.
- lxi. Home Zone Metals Private
- lxii. Shah Foils Limited
- lxiii. Home Zone Stainless Private Limited
- lxiv. Shakti Pumps India Limited
- lxv. Horizon Chutes Pvt
- lxvi. Shree Ashapura Steel Centre
- lxvii. Hypro Engineers Pvt Ltd.
- lxviii. Shree Mahavir Steel
- lxix. Igp Engineers Private Limited
- lxx. Shree Ramdev Metal Mart
- lxxi. Inco Steel
- lxxii. Shree Ramdev Steels Pvt.Ltd.
- lxxiii. Inox Stainless
- lxxiv. Shree Swangiya Metal Industries
- lxxv. J.Y. International
- lxxvi. Shree Tube Mfg.Co.Pvt.Ltd.
- lxxvii. Jagdamba Cutlery Private Limited
- lxxviii. Shree Vallabh Metals
- lxxix. Jaiman Metalloys Llp
- lxxx. Shriram Handles
- lxxxi. Jainex Steel & Metal
- lxxxii. Siddhant Steel
- lxxxiii. Jay Laxmi Metal Corporation
- lxxxiv. Siddhivinayak Steel
- lxxxv. Jayna Steel India
- lxxxvi. Silver Steels
- lxxxvii. Jewel Impex Pvt Ltd
- lxxxviii. Stainox Alloys Pvt Ltd
- lxxxix. Jfe Shoji Trade India Private Limited
- xc. Steel International Mahavir Darshan
- xc. Kamal Metal Corporation
- xcii. Steel Line (India)
- xciii. Keshoram Industries
- xciv. Steel Yard Overseas
- xcv. Keyur Kitchenware
- xcvi. Stride Industries LLP
- xcvii. Kitchen Essentials
- xcviii. Suchi Fasteners Pvt Ltd
- xcix. Kraftwares (India) Private Limited.
- c. Suman Metalshop

- ci. Kunal Housewares Pvt.Ltd.
- cii. Suncity Sheets Pvt Ltd
- ciii. Larsen & Toubro Limited
- civ. Suncity Strips & Tubes Private Limited
- cv. Lubi Industries Llp
- cvi. Sunder Impex Pvt Ltd
- cvii. M. P. Steel Centre
- cviii. Super Impex
- cix. Magppie International Ltd
- cx. Swastik Industries
- cxi. Mahaveer Stainless Steel
- cxii. Trident Steel
- cxiii. Mars Housewares
- cxiv. Uttam Steel Alloys Pvt Ltd
- cxv. Maruti Suzuki India Limited
- cxvi. Vishal Steels
- cxvii. Maxim Tubes Company Pvt Ltd
- cxviii. Veena Steel Industries
- cxix. Mayfair International
- cxx. Victora Auto Pvt. Ltd
- cxxi. Metal One Corporation India Private Limited
- cxxii. Vikram Metal [India]
- cxxiii. Milan Steel

- l) In response, the following importers/users have responded and filed importer's questionnaire response.
- (i) Indian Coke and Power Pvt. Ltd.
- m) The Authority made available non-confidential version of the evidence presented / submissions made by various interested parties in the form of a public file kept open for inspection by the interested parties. Submissions made by all interested parties have been taken into account in these final findings.
- n) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the transaction-wise details of imports of subject goods for the past three years, and the period of investigation, which was received by the Authority. The Authority has relied upon the DGCI&S data for computation of the volume and value of imports and its analysis after due examination of the transactions.
- o) The Non-Injurious Price (NIP) has been determined based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the Domestic Industry on the basis of Generally Accepted Accounting Principles (GAAP) so as to ascertain whether countervailing duty lower than the subsidy margin would be sufficient to remove the injury to the Domestic Industry.

- p) Considering the fact that the subject goods are being imported in various grades/sizes/forms, the applicants have proposed Product Control Numbers (PCNs) in order to make a PCN to PCN comparison for computing the injury margin. The Authority holds to adopt the same PCN methodology as published vide notification 6/12/2019-DGTR dated 14th August, 2019 in a parallel anti-dumping investigation concerning imports of Flat Rolled Products of Stainless Steel initiated vide Notification 6/12/2019-DGTR dated 3rd July, 2019.
- q) The Period of Investigation for the purpose of the present anti-subsidy investigation is from April 2018 to March 2019 (12 Months). The injury investigation period covers the period April 2015-March 2016, April 2016-March 2017, April 2017-March 2018 and the POI.
- r) The Authority notified the Preliminary Findings to all interested parties. As recorded in the Preliminary Findings, the Authority invited comments on the same and the views of the interested parties on the preliminary determination have been considered and addressed to the extent possible for the purpose of present Final Findings.
- s) In accordance with Rule 6(6) of the Rules, the Authority provided opportunity to the interested parties to present their views orally in a public hearing held on 8th December, 2020 through video conferencing. The parties, which presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.
- t) The submissions made by the interested parties during the course of this investigation, to the extent considered relevant to the present investigation, have been appropriately considered by the Authority in these Final Findings.
- u) Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted, and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- v) Wherever an interested party has refused access to or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the views and observations on the basis of the facts available.
- w) In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide Disclosure Statement dated 23rd December, 2020 and comments received thereon, considered relevant by the Authority, have been addressed in these final findings. The Authority notes that most of the post disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post disclosure submissions to the extent considered relevant are being examined in these Final Findings.

- x) ***in these Final Findings represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- y) The exchange rate adopted for the subject investigation is US\$1 = ₹70.82.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

5. At the stage of initiation, the product under consideration was defined as:

“The product under consideration in the present application is “Flat Rolled Products of Stainless Steel”, excluding the following:

- a. *Blade Steel, or commercially known as razor blade grade steel used in the production of razor*
- b. *Coin Blank falling under 7326 9099 used in the production of monetary coins.*

Product under consideration can be transacted in a number of different forms, such as coils, sheets, plates, circles, strips or otherwise. All forms of the product are within the scope of the product under consideration. The subject goods fall under Customs Sub-heading ‘7219’ and ‘7220’ of Chapter 72 of the Act. Customs classification is, however, indicative only and in no way binding on the scope of present investigation.”

C.1. Submissions made by the Domestic Industry

6. The submissions made by the Domestic Industry with regard to product under consideration and like article and considered relevant by the Authority are as follows:

- a) The product under consideration in the present application is “Flat Rolled Products of Stainless Steel, excluding the following
 - i. Blade Steel, or commercially known as razor blade grade steel used in production of razor
 - ii. Coin Blank falling under 7326 9099 used in production of monetary coins
- b) Product under consideration can be transacted in a number of different forms, such as coils, sheets, plates, circles, strips or otherwise. All forms of the product are within the scope of the product under consideration.
- c) Different forms/types of the product under consideration varies in terms of product specifications, which are achieved by the producers to meet the specific end application. The product under consideration is broadly classified into following series:
 - i. 200 series
 - ii. 300 series
 - iii. 400 series
 - iv. Duplex

- d) Within each of these series, the product can have a number of different specifications and are designated by different grades.
- e) Generally, the product is first produced in hot conditions (called hot rolled) and thereafter rolled in cold conditions (called cold rolled). Various properties in the product are achieved by targeting right chemical composition and by subsequent processing in the plant. The producer in subject country and the domestic industry in India typically hold sufficient production facilities to achieve different product specifications desired by the consumers.
- f) The product under consideration falls under customs sub-heading nos. 7219 and 7220 of Chapter 72 of the Customs Tariff Act, 1975. The classification is however indicative only and in no way binding on the scope of the present investigation. Under Customs Tariff, the product is described variedly on the basis of following parameters:
- i. Width – below and above 600 MM
 - ii. Whether or not further worked than hot-rolled (i.e., hot rolled, cold rolled, etc.)
 - iii. Whether or not further worked than cold-rolled
 - iv. Form – such as coils, sheets, plates and circles
 - v. Thickness – such as exceeding 14mm, 10-14mm, 4.75-10 mm, 3-4.75 mm, less than 3mm, etc.
 - vi. Chromium or nickel chromium austenitic type
- g) Product under consideration is normally produced and sold in terms of net weight expressed in terms of kgs or MT.
- h) The subject goods are used for manufacture of various kinds of products viz. architecture building construction, consumer durables, process & engineering and automobile railway transport.
- i) The petitioners proposed following PCN methodology to be adopted for the purpose of present investigation.

1	Condition	HR, CR, HRAP, CRAP
2	Grade	201, 202, 216, 204CU, 212-YKK, 253 MA, J4, J5, J6, J7, J8, JSLAUS, JSLU, JT, 301, 304/L, 309, 310/S, 316/L, 317, 321, 347, 405, 409, 410/S, 415, 420, 430, 432, 436, 439, 441, 444, 446, DUPLEX, 904 L, Super Aus and their variants under various standards
3	Form	Coil, Plate, Sheet
4	Width	Width less than 600 MM, Width 600 MM or more
5	Thickness	<0.5 MM, =>0.5 MM (only for CR/CRAP)
6	Finish	Black, No 1 HRAP, No 2B AND 2D CRAP Special (Scotch Brite, HL, NN, No 3, No 4 etc), Tempered

C.2. Submissions made by the other interested parties

7. The submissions made by the exporters, importers, users and other interested parties with regard to product under consideration and like article, and considered relevant by the Authority, are as follows:
- Product exported by PT Bintang Asia Usaha (BAU) falls outside the scope of product under consideration prescribed in the notice of initiation.
 - Hot rolled and Cold Rolled products cannot be considered as a single “Product under Consideration” as they are two separate products in terms of production, machinery, raw material, customs classification, usage etc.
 - Designated Authority in the past has conducted investigations for Hot Rolled Products and Cold Rolled products separately.
 - Hon'ble Supreme Court of India in the case of *Gujarat Industries and Ors. v. Commissioner of Central Excise-1, Ahmedabad* (Civil Appeal Nos. 5784-5788 of 2007) whereby the Hon'ble Court has held that production of Cold Rolled Products from Hot Rolled Products, as separate manufacturing activities
 - When two different articles are identified for the investigation, the Act and the Rules contemplate separate examination with respect to each such product. However, the Designated Authority, by merging HR and CR products, has increased the scope of the present investigation. .
 - Subject goods with the below mentioned specifications are not manufactured by the Domestic Industry:

Types	Max Width MM	Max Thickness
Hot-Rolled Coils/HRAP	1650	12 mm
Plates	1620	80 mm
HRAP Coils	1650	8 mm
CRAP Coils	1600	3.15 mm
Strips	435	0.5 Mm

- Maximum width of Hot Rolled Stainless Steel Flat Product supplied by the petitioner companies is 1650 mm and maximum width of the cold rolled stainless steel flat products supplied by the petitioner company is 1600 mm. Similarly, 80 mm is the maximum thickness of Hot Rolled Stainless Steel Plate supplied by the petitioner company but the maximum thickness of cold rolled stainless steel flat product supplied by the petitioner company is not beyond 10mm
- Cold Rolled Flat products are available in a variety of surface finishes. The petitioner company has a limited range of such finishes and the definition of PUC should be restricted to the capabilities of and the supplies made by the petitioner companies.

C.3. Examination by the Authority

8. The submissions made by the Domestic Industry and other interested parties with regard to the PUC related issues are examined and addressed hereunder.
9. The very first step in an investigation is to identify the product under consideration. The product under consideration is the imported product which is allegedly causing injury to the domestic industry. The product under consideration (PUC) in the present investigation, as defined in the initiation notification is "Flat rolled products of stainless steel". The product scope specifically excludes Blade Steel, or commercially known as razor blade grade steel used in the production of razor and Coin Blank falling under 73269099 used in the production of monetary coin. The product under consideration is classified in Chapter 72 under customs heading nos. 7219 and 7220 of the Customs Tariff Act, 1975.
10. The Authority notes that that the subject goods are being imported in various grades/sizes/forms. The applicants have proposed Product Control Numbers (PCNs) in order to make a PCN to PCN comparison. The Authority has adopted the same PCN methodology as published vide notification 6/12/2019-DGTR dated 14th August 2019 in a parallel anti-dumping investigation concerning imports of Flat Rolled Products of Stainless Steel initiated vide Notification 6/12/2019-DGTR dated 3rd July 2019.
11. The basic production process involved in the production of the product under consideration involves melting the raw materials, scrap (alloy and non-alloy) and ferro-alloys in an electric arc furnace, where powerful electric arcs start to melt the scrap and alloys. The hot rolling process begins at the reheat furnace where the slabs are heated to between 1100 and 1300°C, depending on the stainless-steel grade. The hot rolled products are softened (annealed) and descaled (pickled with acids). Cold rolling of the Hot rolled stainless steel takes place in Sendzimer mills (Z-mills), which produce smooth, shiny finished, cold rolled stainless steel by rolling the HR steel. The product is first produced by rolling Slab in hot condition/form. It can thereafter be sold in the market, or cold rolled further. Cold rolled products cannot be made directly from scrap or slab and cold rolled steels are formed by rolling of hot rolled coils at specific temperature.
12. Product under consideration is used for manufacture of white goods, processed equipment, dairy equipment, re-rolling, reactor vessels, material handling equipment, railways, pipes & tubes, automotive components, rail carts, metro coaches, architecture, building and construction, rolled formed sections, industrial fabrication etc.
13. Questionnaire response filed by the responding producers/ exporters and information provided by the domestic industry show that the producers tend to produce both hot rolled and cold rolled products and offer these in a wide range of shape, size, and metallurgical composition to suit specific end consumer requirements.
14. The product under consideration includes both hot rolled and cold rolled stainless steel product. Various interested parties have contended that hot rolled flat products and cold

rolled flat products are two different products and cannot be treated as one product under consideration. Information provided by the domestic industry shows that Hot Rolled (HR) products and Cold Rolled (CR) products can be treated as one PUC considering (a) both Hot rolled and Cold Rolled products are produced by the same production technology; (b) Manufacturing facilities are the same up to the stage of Hot rolled Annealing pickling (HRAP). Majority portion of production activities is up to this stage. Further activities are minimal; (c) Essential raw material used for manufacture of stainless steel flats i.e. stainless steel scrap, ferro-nickel, ferrochrome, are the same for both Hot rolled and Cold Rolled products.; (d) Majority of the costs/ investment is incurred/ made up to HR stage and only incremental cost/ investment is incurred/ made in cold rolling activity (g) Product specification is the same for both HR and CR products;

15. Similar arguments were raised by interested parties in the CVD investigation conducted on the certain hot rolled and cold rolled stainless steel flat products from China PR. The Authority had concluded in the said countervailing investigation conducted on hot rolled and cold rolled stainless steel flat products from China PR that hot rolled flat stainless steel products and cold rolled flat stainless steel products are two sub-categories of the broad stainless steel category and accordingly included both within scope of one product under consideration.
16. The Authority further notes that M/s Suncity Sheets Pvt. Ltd. filed an appeal before Hon'ble CESTAT challenging the final finding in the aforesaid investigation on various issues including this one. After hearing the parties, the Hon'ble tribunal in the matter of M/s Suncity Sheets Pvt. Ltd. vs. Union of India, upheld the determination of the Authority and held that Hot Rolled products and Cold Rolled products are rightly considered as one product. The relevant part of the CESTAT order is reproduced below

"We heard all sides of the case and perused the appeal record. On the first issue, regarding the scope of the subject goods, we note that the appellant made great emphasis on the distinction between the HR and CR steel products. Admittedly, the product under consideration is first produced in hot-rolled conditions and thereafter rolled in cold conditions. Various properties of the products are achieved either by right combination to the material at the time of melting of inputs in the furnace by processing in the plant. The producers of the said goods, both in China and in India, hold sufficient facilities to produce products of specifications as required by the consumers. We note that there is no legal requirement of internal homogeneity within the subject goods or for inter-se substitutability of various types of subject goods. The DA examined the production process and concluded that both HR and CR firms can be included for investigation. Even the Customs Tariff main heading did not specify the products for classification separately. It was also noted that substantial cost of production is on raw materials and utilities upto the stage of steel melting. Expenses involved at rolling stage, whether hot or cold, and are not so significant. The DI produces both HR and CR products in a wide range of shape, size and metallurgical composition as per requirement of the customer. The DA also relied on the scope of lesser principle in terms of WTO agreement on

subsidies for countervailing measures. As such, we find no infirmity in considering the scope of the subject goods for the present investigation.”

17. M/s Suncity Sheet Pvt. Ltd. had filed Civil Appeal No. 9126 of 2018 before Hon'ble Supreme Court against the CESTAT Final Order No. AD/A/51101/2018-CU(DB), dated 27-3-2018. The Hon'ble Supreme Court dismissed the Civil Appeal No. 9126 of 2018 filed by M/s Suncity Sheets Private Limited against the CESTAT Final Order No. AD/A/51101/2018-CU(DB), dated 27-3-2018 as reported in 2018 (364) E.L.T. 1010 (Tri. - Del.). In view of above-said position, the Authority holds to treat both Hot Rolled and Cold Rolled Stainless Steel Flat products as one product.
18. Interested parties have relied upon the Hon'ble Supreme court decision in the matter of Gujarat Industries & Ors. v. Commissioner of Central Excise-I, Civil Appeal Nos. 5784-5788 of 2007. It is noted that the said decision pertains to an issue under the Central Excise Tariff Act, 1985 to adjudge liability towards payment of central excise duty. The Authority notes that this decision also was brought to the notice of the Hon'ble CESTAT in the matter of M/s Suncity Sheets Pvt. Ltd. vs. Union of India/Designated Authority. The Hon'ble CESTAT however did not accept the contention of the party.
19. The Authority notes that cold rolled products are also hot rolled products only. Scrap is melted to cast into slab. Thereafter, slab is hot rolled. Substantial production activities, and value addition takes place up to this stage. The product is further cold reduced to achieve desired thickness and finish. Thus, even though these products are called cold rolled products, the production process of these products is substantially slab casting and hot rolling. It is also noted that the chemistry and chemical composition of the product is decided at the steel melting stage itself. The product's technical properties are most important and relevant. While finishing is done to enhance aesthetics, thickness is reduced to cater to end use application of product and product properties are frozen at hot rolling stage itself.
20. It is further noted that the US International Trade Commission (USITC) in the investigation on stainless steel plate from Belgium, South Africa and Taiwan finally treated HR and CR stainless steel plate as one product. The USITC had observed that “..... hot-rolled and cold-rolled stainless steel plate shared similar physical characteristics, chemical composition, and dimensions and also shared common channels of distribution and production processes. It further observed that the two products were used in most of the same corrosion-resistant applications and were substitutable for one another without further grinding and polishing. Because there was no clear dividing line between hot-rolled and cold-rolled stainless plate, the Commission defined the domestic like product as all stainless steel plate.....”

21. It is further noted that there have been several instances in the past wherein different forms of a product, where one form was produced by processing another form of the product, have been considered as one article.
22. It is noted that the majority of the cost is incurred at the stage of mixing the raw materials, steel melting, and slab casting. The data provided by the domestic industry shows that for the same PCN, the difference in the cost of production of HR and CR products is marginal.
23. Therefore, on analysis & examination of the arguments of the interested parties and the decision of Hon'ble CESTAT, the Authority holds that HR and CR stainless steel flat products do not form two different products and are required to be considered as one product under consideration for the present investigation.
24. However, the Authority notes that the domestic industry is not producing 'Flat Rolled Products of Stainless Steel of width more than 1650 MM' & 'Flat Products of Stainless Steel of thickness greater than 80 MM'. Accordingly, 'Flat Products of Stainless Steel of width more than 1650 MM' & 'Flat Products of Stainless Steel of thickness greater than 80 MM' are excluded from the scope of PUC.
25. With regard to like article, it is noted that Rule 2(ca) of the Rules provides that "like article" means an article which is identical or alike in all respects to the article under investigation or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation. On the basis of information on record, the Authority notes that there is no known difference in the subject goods produced by the Indian industry and those imported from the subject country. The two are comparable in terms of physical characteristics, functions and uses, product specifications, and tariff classifications of the goods. The two are technically and commercially substitutable. The Authority, thus, holds that the products manufactured by the Applicants constitute like article to the subject goods being imported into India from the subject country.
26. On the basis of submissions made by various interested parties and the information on record, the Authority holds that the product under consideration is as under:

"The product under consideration in the present application is "Flat Rolled Products of Stainless Steel", excluding the following:

- a. *Blade Steel, or commercially known as razor blade grade steel used in the production of razor.*
- b. *Coin Blank falling under 73269099 used in the production of monetary coins.*
- c. *Flat Rolled Products of Stainless Steel of width more than 1650 MM.*
- d. *Flat Rolled Products of Stainless Steel of thickness greater than 80 MM.*

Product under consideration can be transacted in a number of different forms, such as coils, sheets, plates, circles, strips or otherwise. All forms of the product are within the

scope of the product under consideration. The subject goods fall under Customs Tariff heading '7219' and '7220' of Chapter 72 of the Act. Customs classification is, however, indicative only and in no way binding on the scope of present investigation."

27. The Authority further notes that exclusion of Flat Rolled Products of Stainless Steel of width more than 1650 MM would only be applicable in case of bonafide use by importers/ users for end use in the same form. Exclusion would not be applicable in those cases where the imported flat rolled products of stainless steel of width more than 1650 mm would be slit into products having width lower than 1650 mm.

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

D.1. Submission of other interested parties

28. Interested parties other than the domestic industry have made following submissions with regard to the standing of the Domestic Industry.

- i. PT. Jindal Stainless Indonesia, has exported the subject goods to India through a trader situated in Hong Kong during the POI.
- ii. PT. Jindal Stainless Indonesia has exported the subject goods to India even in the Injury period and the law does not say that related party transaction should be checked only with regard to POI. Such an interpretation would frustrate the intent of the legislature which did not restrict the imports to the POI to prevent any possibility of manipulation by the applicant industry.
- iii. Even the Authority calculates recurring subsidies, considering past period up to the actual useful life of the machinery (AUL), which is beyond POI. Thus, it would be inappropriate for the Authority to adopt a different interpretation with regard to relationship and restrict the test to POI only.
- iv. Goods shown in DGCI&S import data as originating in Dubai/Singapore/Hong Kong is actually originating from Indonesia. It is required to be checked if these exports were made by PT. Jindal Stainless, Indonesia. A mere examination of invoicing data of PT Jindal Stainless Indonesia will not suffice. It is important to find out which of the customers of PT Jindal Stainless Indonesia (based out of East/South-East Asia or UAE- places close to India) were traders and where did they in turn re-sell the subject goods. It is only when this exercise is carried out that one can conclusively decide whether the related exporter in question actually exported the goods to India.
- v. M/s. Jindal Stainless (Hisar) Limited, Jindal Stainless Ltd. and Jindal Stainless Steelway Limited (collectively, hereinafter referred to as applicant industry in the above-mentioned investigation) are ineligible to be considered as eligible Domestic Industry in term of Rule 2 (b) of the CVD Rules as there is no discretion available under Rule 2(b) with the Authority to consider applicant industry as eligible Domestic Industry.

- vi. In contradiction to AD Rules, CVD Rules considers the applicant ineligible if they themselves or their related parties had imported the subject goods even from “Other Countries”.
- vii. The applicants are related to both Jindal Saw Ltd., and Jindal Quality Tubular Ltd., as is evident from annual reports of Jindal Saw Ltd., and Jindal Quality Tubular Ltd.
- viii. In recent related party disclosure dated 19.11.2020 filed by Jindal Saw in the National Stock Exchange of India Limited (NSE), Jindal Saw has mentioned applicants’ names under “entities where key management personnel and their relatives exercise significant influence”.
- ix. Jindal Saw Ltd., and Jindal Quality Tubular Ltd are importers of the product under consideration during the period under investigation. Thus, applicants are related to importer of the subject goods.
- x. Production of those producers who are producing cold rolled products in India from purchased hot rolled products should be included in total production.
- xi. Authority erroneously decided to include Jindal Stainless Steelway Ltd. as Domestic Industry despite the fact that the said company is admittedly involved only in slitting of the subject goods as well as carrying out certain incremental activities. There are a host of independent slitters who could not have been excluded for the purpose of “standing” as they are in no way different from Jindal Stainless Steelway.

D.2. Submissions made by the Domestic Industry

29. The submissions made by the Domestic Industry during the course of the investigation with regard to scope of Domestic Industry & standing are as follows:

- i. Petitioner companies’ production constitutes more than 50% of Indian production. Accordingly, Production by the petitioner companies constitutes a major proportion in Indian production and therefore petitioners constitute “Domestic Industry” within the meaning of Rule 2 (b) of the CVD Rules.
- ii. Petitioner companies have not imported the subject goods during the period of investigation. Petitioner companies are related to a producer of the subject goods in Indonesia. However, that does not affect the eligibility of petitioners under Rule 2(b).
- iii. The allegation that Jindal Saw Ltd. (Jindal Saw), and Jindal Quality Tubular Ltd. (JQTL) are related party to JSL and JSHL and are importer of the subject goods and that PT. Jindal Stainless Indonesia, has exported subject goods to India during the period of investigation, is baseless and factually incorrect.

- iv. Domestic producers shall be deemed to be related to exporters or importers only if one of them directly or indirectly controls the other; or both of them are directly or indirectly controlled by a third person; or together they directly or indirectly control a third person.
- v. A producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter. None of the mentioned situations exist in the present case and thus it should be considered that JSL/JSHL are not related to Jindal Saw/JQTL.
- vi. Applicant domestic industry does not consider these two entities as related entity in terms of legal provisions. The applicant companies have not reported in their Annual reports these companies as their related entity.
- vii. None of the shareholders (barring investment entities/financial institutions) owns or holds 5% or more of the outstanding voting stock or shares at the same time in either JSL/JSHL on one hand and JSAW/JQTL on other hand.
- viii. Barring one independent director, there are no common directors between boards of JSHL on one hand and Jindal Saw on the other hand. As per the annual Report of the companies that there are no common directors between Jindal Saw & JSL and also between JTQL & JSHL/JSL and there are no common key managerial personnel between JSL/JSHL on one hand and Jindal Saw/JQTL on the other hand
- ix. Considering voting rights, the fact of existence of one common director, and that too an independent director, does not mean “legally or operationally in a position to control”. There are various instances of an independent director being appointed as director in more than one company.
- x. Securities and Exchange Board of India (SEBI) guidelines specifically provide that a person can be independent director in up to seven companies. Thus, the logic that merely on account of a person being a common independent director makes him “legally or operationally in a position to control” and therefore making two entities related is erroneous.
- xi. An independent director is governed by strict laws and expected to abide by the Code of Conduct under Companies Act 2013. This ensures that the independent director shall not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making. An independent director therefore cannot be considered as interested in either of the companies.
- xii. Day to day functioning of Jindal saw and JSHL/JSL is conducted by their own board of directors. The Board of Directors take decision by a majority. One common director cannot in any situation influence any decision. The applicant companies have never reported these companies as related companies and reporting of the applicant companies have never been questioned by any statutory authority.

- xiii. To the allegation that PT Jindal Indonesia has exported the subject goods to India even in the injury period, the applicants have submitted a letter from PT Jindal Stainless, Indonesia, along with relevant information on the global exports made by the company.
- xiv. PT Jindal imports hot rolled stainless steel products from India and other countries and produces cold rolled stainless flat products which are sold domestically and are also exported globally. However, it has not exported subject goods to India during the entire injury period. PT Jindal has exported only “Scrap” to India to the applicant companies during POI, which is not the product under consideration in the present investigation.
- xv. PT Jindal has not exported product under consideration in Indian market in the entire injury period including POI, either directly, or indirectly. Even in a case of exports through trader, the goods are shipped directly from the manufacturer’s premises to the country concerned. Thus, even in exports through trader, PT Jindal ships the goods directly to the country concerned and is aware of the eventual country where the goods were destined. This can also be verified from sales details that have been provided by the company. Thus, it would be seen that there are no exports of the product under consideration by the related company of the applicants, PT Jindal Stainless, Indonesia to India.
- xvi. To the claim that PT Jindal Indonesia’s exports of the subject goods to India even in the injury period should be examined since the Authority calculates recurring subsidies availed in the past period up to the actual useful life of the machinery (AUL), which is beyond POI, it is stated that the consistent practice of the Designated Authority is to consider imports /exports during the POI only to decide eligibility. PT Jindal Stainless though has not exported subject goods in the entire injury period.

D.3. Examination by the Authority

30. Rule 2(b) of the Rules prior to amendment vide Notification 10/2020-Customs (NT) dated 2.2.2020 provided as follows:

“domestic industry means the domestic producers as a whole of the like article or domestic producers whose collective output of the said article constitutes a major proportion of the total domestic production of that article, except when such producers are related to the exporters or importers of the alleged subsidized article, or are themselves importers thereof, in which case such producers shall be deemed not to form part of domestic industry”.

31. Definition of domestic industry subsequent to amendment vide Notification 10/2020-Customs (NT) dated 2.2.2020 reads as under:

"domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article, except when such producers are related to the exporters or importers of the alleged subsidised article, or like article from other countries or are themselves importers thereof:"

"Explanation. - For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if, -

(a) one of them directly or indirectly controls the other; or

(b) both of them are directly or indirectly controlled by a third person; or

(c) together they directly or indirectly control a third person, subject to the condition that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers."

Note: For the purpose of this Explanation, a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter."

32. Some interested parties have argued that the applicant companies are ineligible domestic industry as they have related parties, namely Jindal Saw Ltd (Jindal saw), and Jindal Quality Tubular Ltd. (JQTL), who have imported subject goods. It has also been argued that PT Jindal, Indonesia, another related party of the applicants in Indonesia, has exported subject goods to India via Hong Kong through trader.
33. As regards the argument regarding relationship between applicant companies and Jindal Saw and JQTL on the basis of annual report of Jindal Saw and JQTL, it is noted that annual report(s) cannot be conclusive factor to decide the issue of relationship between companies. In this particular case, Jindal Saw and JQTL have been claimed to be related companies. Jindal Saw in its annual report has listed some 54 entities wherein its key management personnel and their relatives exercise significant influence and the name of the applicant companies figure therein. The applicant companies in their annual reports do not consider Jindal Saw and JQTL as related parties.
34. The Authority notes that in term of Rules, producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly controls the other, or (b) both of them are directly or indirectly controlled by a third person or (c) together they directly or indirectly control a third person, subject to the condition that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers. Further, a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise

restraint or direction over the latter. The Authority therefore has examined the issue of relationship of the applicant companies (“first party”) with the Jindal Saw Ltd (Jindal saw), and Jindal Quality Tubular Ltd. (second party”).

35. The interested party alleging relationship between first party and second party has not established that one of the parties directly or indirectly controls the other party, or both of them are directly or indirectly controlled by a third person/parties, or together they directly or indirectly control a third person/party. The Authority further notes that it has not been demonstrated that there are grounds for believing or suspecting that the effect of the alleged relationship is such as to cause the first party to behave differently from non-related producers.
36. The Authority has taken note of information provided by the applicants showing that (a) none of the shareholders (barring investment entities/financial institutions) owns or holds 5% or more of the voting stock or shares at the same time in the first and second party. The Authority notes that the key element in regard to relationship of the applicant companies and JSW & JQTL is ‘control’, legal or operational. The Authority finds that none of the shareholders (barring investment entities/financial institutions) owns or holds more than 5% voting stock or shares at the same time in the first and second party. Mere shareholding does not amount to exercise of legal or operational control unless, the shareholding is proved to be in majority and the same has led to legal or operational control over the other party. (b) there are no common key managerial personnel between first and second party (c) day-to-day functioning of first party and second party are conducted subject to overall superintendence & control of the Board of Directors of the respective companies (d) applicant companies have not reported alleged related companies as their related entity in their annual reports. It is further seen that there is only one common independent director namely, Shri Girish Sharma in the boards of JSHL and Jindal Saw.
37. Section 149(6) of the company Act, 2013 and Provision 16 of SEBI (Listing Obligations and Disclosure Requirements) Regulation, deal with the issue of appointment of independent director(s) in a company. The Authority notes that person having no direct or indirect relationship or interest with the promoters or shareholders of the company or any related or subsidiary company can only be appointed as an independent director in a company. The purpose of appointment of the independent director is to ensure objectivity and fair play in decision-making in a company and he is not supposed to allow to bring in any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making. An independent director therefore cannot be considered as interested in either of the companies. Even otherwise the Board of Directors take decision by a majority voting and one common independent director cannot in any situation influence any decision in the two companies and thus cannot be considered to be in a position to lead the company to legally or

operationally control the other company nor such common independent director can be in a position to exercise restraint or direction over the other.

38. Authority has also examined the evidence produced by the interested parties regarding disclosure of influence by management personnel of Jindal Saw over the applicant domestic industry. This disclosure also does not evidence that Jindal Saw Ltd. is controlling the applicant domestic industry
39. Based on evidence on record, it is noted that neither Applicants directly or indirectly control Jindal Saw and JQTL and *vice versa*, nor these are directly or indirectly controlled by a third party/entity, nor together they directly or indirectly control a third party/entity. The Authority further notes that it has not been established that any of these parties is legally or operationally in a position to exercise restraint or direction over the other party. In view of the above the Authority does not consider Jindal Saw Ltd and Jindal Quality Tubular Ltd. as related parties to the applicant companies within the meaning of the Rules.
40. As regards the submission that PT. Jindal Stainless Indonesia, has exported the subject goods to India through a trader situated in Hong Kong, it is noted that PT. Jindal Stainless Indonesia has submitted their invoice by invoice details of total global sales which show that subject goods have not been exported from Indonesia to India during the entire period of investigation. It is seen that only "scrap" has been exported to India, which is not the product under consideration. Thus, the claim of the interested parties is factually incorrect. The possibility that traders in Hong Kong, Dubai and Singapore would re-export the goods imported from PT Jindal Stainless Indonesia after stocking and this would be without knowledge of final of PT. Jindal Stainless Indonesia at the time of export to these traders is hypothetical and cannot form the basis for the Authority to determine that PT. Jindal Stainless Indonesia has exported the subject goods to India. The Authority thus notes that Applicants are not related to any importer or exporter of the subject goods. It is further noted that evidence on record shows that Applicants have not imported the subject goods either. Production by the applicant companies JSL and JSHL accounts for a major proportion of Indian production.
41. As regards the argument that certain producers of cold rolled products have been excluded from the scope of the domestic industry, it is noted that the producers of cold rolled products merely transform one form of the subject goods into another form. Production by cold rolled producers who produce cold rolled products by procuring hot rolled products from domestic producers is already included in the production by the domestic producers of hot rolled products. Further, production of producers who are producing cold rolled products from imported hot rolled product are in any way ineligible domestic producers under Rule 2(b) by virtue of imports of the product under consideration. Therefore, production of cold rolled stainless steel flats, either from domestically procured or imported hot rolled stainless steel flats, has not been counted for calculating Indian domestic production for the reasons stated above.

42. The Authority after examining the information on record and submissions made by interested parties has determined that JSL and JSHL constitute “domestic industry” within the meaning of Rule 2(b) and the application satisfies the criterion of standing in terms of Rule 6(3) of the Rules.

E. ISSUES RELATING TO CONFIDENTIALITY

E.1. Submissions by Domestic Industry

43. The following submissions have been made by the Domestic Industry with regard to confidentiality issues:
- a) Applicant has disclosed all the essential information in the non-confidential version of the application in accordance with Rule 8 of CVD Rules.
 - b) The exporters and producers from Indonesia, particularly Tsingshan group, have filed grossly deficient response and have claimed excessive confidentiality. The exporters have even failed to provide information regarding existence of scheme in Indonesia.

E.2. Submissions by other interested parties

44. Applicants claimed all information like demand, production quantity, sales quantity etc. as confidential and provided only the indexed numbers. Trade Notice No 10/2018 dated 7th September, 2018 issued by DGTR stipulates that in case three or more companies have filed the information, then actual information needs to be provided in the non-confidential version also.
45. Authority has not published a list of the interested parties on its website directing that the submissions filed by any of the interested parties have to be circulated to all the interested parties in the investigation.

E.3. Examination by the Authority

46. With regard to confidentiality of information, Rule 8 of the CVD Rules provides as follows:

“Confidential information. (1) Notwithstanding anything contained in subrule (1), (2), (3) and (7) of rule 7, subrule (2) of rule 14, subrule (4) of rule 17 and subrule (3) of rule 19 copies of applications received under subrule (1) of rule 6 or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish nonconfidential summary thereof in sufficient details to permit a

reasonable understanding of the substance of the confidential information and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in subrule (2), if the designated authority, is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, it may disregard such information.

47. The Authority made available non-confidential version of the information provided by various interested parties to all interested parties through the public file containing non-confidential version of evidences submitted by various interested parties for inspection. Since public inspection at DGTR office was discontinued due to Covid-19 pandemic from 10th April 2020 i.e. during the pendency of the investigation, the Authority issued the list of registered interested parties on 28 October 2020 to facilitate circulation of non-confidential versions of submissions.

48. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

F. DETERMINATION OF SUBSIDY AND SUBSIDY MARGIN

49. The petition filed by Domestic Industry provided *prima facie* evidence of existence of countervailable subsidies in the subject country to initiate the instant investigation. Government of Indonesia was invited for consultation, which was held on 23rd September 2019 in New Delhi. The producers and exporters from Indonesia were advised to file response to the questionnaire and were given adequate opportunity to provide verifiable evidence on the existence, degree and effect of alleged subsidy program for making an appropriate determination of existence and quantum of such subsidies, if any.

50. The following producers/exporters from Indonesia including Government of Indonesia have filed questionnaire responses.

- i. PT Indonesia Guang Ching Nickel and Stainless Steel Industry
- ii. PT Indonesia Tsingshan Stainless Steel
- iii. PT Indonesia Ruipu Nickel and Chrome Alloy

- iv. PT Tsingshan Steel, Indonesia
- v. PT Sulawesi Mining Investment, Indonesia
- vi. PT EKASA YAD RESOURCES, Indonesia
- vii. PT Bintangdelapan Mineral, Indonesia
- viii. PT Bintang Asia Usaha (BAU)
- ix. Eternal Tsingshan Group Limited
- x. Celerity Asia Trade Limited
- xi. Golden Harbour International PTE. Ltd.
- xii. Hanwa Co. Ltd.
- xiii. Schuang International Development Limited
- xiv. Stratus Steels DMCC
- xv. Recheer Resources (Singapore) PTE. Ltd.
- xvi. PT Hanwa Indonesia
- xvii. PT IMR ARC Steel, Indonesia
- xviii. IMR Metallurgical Resources AG

General overview of the alleged Subsidy Programs

F.1. Submissions made by domestic industry

- i. The domestic industry has contended that the Government of Indonesia is providing countervailable subsidies to its producers/exporters of the subject goods and has provided prima facie evidence of existence of such subsidy schemes in terms of legislation and policy documents. Accordingly, the domestic industry identified existence of certain numbers of countervailable subsidy schemes in Indonesia, within the meaning of ASCM and Indian Rules.
- ii. The Petitioners have submitted that the producers/exporters of subject goods in Indonesia have benefited from actionable subsidies. The Government of Indonesia has maintained various programs. Petitioners have considered documents such as legal notifications in form of circulars, notifications, regulations, laws, official reports, private reports, articles, WTO notifications, annual reports, etc. The petitioners have provided elaborate information regarding various subsidy programs. Petitioners further submit that below mentioned subsidy programs significantly lower the cost of production of the subject goods.
- iii. The programs of the Government of Indonesia constitute a subsidy because of the following reasons:
 - There is a financial contribution by government or a public body, where the government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits), government providing goods or services other than general infrastructure at less than adequate remuneration , or purchasing goods at more than adequate remuneration;

- Benefit is thereby conferred on the Indonesian producers/ exporters of the PUC; and
- The program is specific within the meaning of Indian CVD Rules and ASCM.

iv. Relevant Indonesian laws and regulations, legal notifications in form of circulars, notifications, regulations, laws, official reports, private reports, articles, WTO notifications, annual reports, constitute sufficient evidence of the existence of countervailable subsidy programs in Indonesia. These evidences were made available by the petitioner to all interested parties, including the Government of Indonesia and the known producers and exporters in Indonesia.

v. Following is the list of various countervailable subsidies identified by the petitioners under various heads such as tax incentives, loans, debt restructuring, duty drawback and ad-hoc subsidies which has been provided to producers/ exporters by the Government of Indonesia.

S.No.	Program No.	Schemes
1.	Program No 1	Benchmarking Coal Price for Electricity
2.	Program No 2	Minimum value addition for export
3.	Program No 3	Benchmark pricing for Minerals, Metals and Coal
4.	Program No 4	Domestic Market Obligation (DMO) Scheme
5.	Program No 5	Export Credit Insurance/reimbursement from losses
6.	Program No 6	Export Credit Guarantees
7.	Program No 7	Reduction of Income tax
8.	Program No 8	Tax Holiday
9.	Program No 9	Export Financing from Indonesia EXIM
10.	Program No 10	Exemption on Import Duty
11.	Program No 11	Import Duty Drawback
12.	Program No 13	Reduction of Net Taxable Income
13.	Program No 14	Carry Forward of Losses
14.	Program No 15	Postponement of Import Duty
15.	Program No 16	Exemption of Duty on Raw Material and Supporting Goods for Production Purpose
16.	Program No 17	Exemption from Income Tax on Imports
17.	Program No 18	Reduction for Investors investing in SEZ
18.	Program No 19	Pioneer Industry Status
19.	Program No 21	Deduction in Land Tax
20.	Program No 23	Refund of VAT

vi. Petitioners further submit that subsidies are also required to be considered having regard to benefits received by their affiliates in any of its form, including cross owned affiliates. The existence of countervailable subsidies is required to be examined/investigated in respect of

countervailable subsidies in upstream product, in case such upstream products are supplied by affiliates.

- vii. Since benefits under some of these schemes are non-recurring, the existence of countervailable subsidies is required to be examined/investigated over the AUL (Average Useful Life). Thus, even if some non-recurring subsidies might have been withdrawn or not availed in the proposed POI, the Designated Authority is required to investigate the same as long as it is evident that the benefit under the scheme was non-recurring.
- viii. Petitioner has an affiliated company engaged in producing and selling cold rolled stainless steels. The company is following 16 years as the AUL of assets. On this basis, the petitioners submit that the Authority may kindly consider 16 years as the life of assets.
- ix. All the related parties in an anti-subsidy investigation are required to file the questionnaire response. Subsidy received by a party may pass to its related party.
- x. Indonesia Morowali Industrial Park (IMIP) is a joint venture of a Chinese and Indonesian Company. China has made huge investment in IMIP. The relationship of IMIP with the major producers ITSS and GCNS has been concluded by the European Commission in antidumping investigation concerning imports of Hot Rolled Stainless Steel sheets and coils from Indonesia, China PR and Taiwan. IMIP's failure to file response makes it impossible for the Authority to quantify the benefits availed by all related parties. Therefore, subsidy margin should be determined based on adverse facts available.

F.2. Calculation Methodology

51. The Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 lays down the methodology for determination of quantum of subsidization. The determination in this investigation is in accordance with these guidelines.

F.3. Submissions made by other interested parties

52. In the preliminary findings issued by the Authority, the Authority has provided the subsidy quantum for "other program" with methodology. However, exact calculation was not provided.
53. The Authority has clubbed Scheme Nos. 1, 2 and 4, and computed combined single subsidy margin for each of the three producers. However, the Authority has not provided any reason or logic for clubbing all three schemes. For Program No. 9, the Authority has not provided any details of subsidy margins. DGTR has also applied best information available clause despite all the information on record. The Authority has applied best facts available for computing subsidy margin, without following the pre-conditions associated with Rule 7(8).

54. Authority cannot countervail the provision of Coal and Nickel at LTAR because Authority never requested data on the amount of Coal and Nickel consumed in the period under investigation by the producers/exporters.
55. There is no evidence that Government of Indonesia has restricted the Nickel and Coal producers' freedom to export the goods or to set prices. Authority has countervailed the effects of an export tax applied by Indonesian Government on Nickel and Domestic Market Obligation on Coal.
56. Designated Authority has complete information regarding loans procured by producers/exporters in Indonesia. There is also no reason to doubt the claim of the Government of Indonesia that there is no benefit to producers or exporters through loans from Exim banks.
57. Major stainless steel producers in India are operating in Morowali. Indonesia Morowali Industrial Park (IMIP) is only an Industrial Park run by a private company. It is not a government entrusted body. IMIP does not have capacity or authority to render any tax or customs facility.
58. Neither IMIP nor Morowali Regency hold status as Special Economic Zone in Indonesia. As per 17 February 2020, taken from Indonesia National Council for Special Economic Zone (please visit <https://kek.go.id/peta-sebaran-kek>), there are several areas in Indonesia assigned as SEZ namely: Arun Lhokseumawe, Sei Mangkei, Galang Batang, Tanjung Kelayang, Tanjung Lesung, Mandalika, Maloy Batuta Trans Kalimantan, Palu, Bitung, Morotai and Sorong. While there are other 4 areas in the SEZ development phase namely Tanjung Api-api, Singhasari, Kendal and Likupang.
59. Authority should not have applied adverse facts available for PT Bintang Asia Usaha (BAU) in the preliminary findings. PT BAU has provided complete information in the questionnaire response. PT BAU submitted Format E containing transaction by transaction exports to India on 2 December 2019.
60. PT BAU did not receive any benefit from the Government of Indonesia from all of the alleged programs during the period of investigation, accordingly PT BAU provided response which was applicable to it. PT BAU requested the Authority to seek more information, if necessary. Authority should have directed PT BAU to provide missing information. Authority should consider PT BAU as cooperating party in this investigation.

F.4. Examination of the Subsidy programs alleged by the Petitioners

(i) Program No. 1: Benchmarking Coal Price for Electricity

a. Submission by Domestic Industry

61. The Petitioners submitted that Indonesian Government determines the capping of maximum selling price for coal. Selling price for coal for electricity is set at US\$ 70 per MT. Any company engaged in production of coal is required to sell such coal following the decree issued by GOI, irrespective of its legal status. Coal is being made available at a cheaper rate to the domestic producers of subject goods by putting a maximum price cap on coal for purpose of electricity generation.
62. Benchmark prices for coal are far below the international benchmark prices for coal. Contrary to the Indonesian government's submission, the benchmarking of coal has been reaffirmed once again in 2020 through Regulation Number: 261 K / 30 / Mem / 2019 Dated December 26, 2019. This mandates 25% of coal produced will go in the domestic market obligation and coal prices for electricity has been capped at \$70.

b. Submission by Government of Indonesia/other interested parties

63. Govt. of Indonesia sets benchmark price for coal sales for public electricity at US\$ 70/Metric to ensure availability of coal for public electricity. "Public" refers to the distribution of electricity for people consumption as a whole. Thus, benchmark price is not applicable for coal sales to private owned power plant for self-consumption. No export tax is applied on export of coal.
64. The benchmark price for coal only apply for 2018 and 2019 periods. The regulation also sets maximum selling volume which the benchmark applies at 100 million metric tonnes of coal annually. There is no application process applied. This scheme does not provide any assistance to the responding companies.
65. Government of Indonesia has submitted that special price set for Coal at USD 70/ MT is only applied for State Electricity Company (PLN) Coal procurement.
66. The exporters submitted that they have not availed benefit under the scheme as the scheme is only applicable to coal prices for electricity that is supplied in the public interest. Since they are not supplying electricity, this scheme is not applicable. They are purchasing coal on the basis of International coal benchmark rate.

(ii) Program No. 2: Minimum value addition for export and Domestic Market Obligation

a. Submission by Domestic Industry

67. The Petitioners submitted that Indonesian Government ensures that there is abundant supply of raw material for mineral and metal downstream industries. This is done by (i) imposing

prohibition on export of mineral ore and its concentrate without processing and refining, (ii) levying very high rates of export tax on the processed and refined minerals and metals and (iii) creating domestic market obligation by guaranteeing the supply of coal which is necessary for meeting the domestic demand.

68. Mining companies have to comply with the DMO requirements by selling their mineral/coal production to domestic consumers. It is mainly provided to business using Mineral/Coal as its input. By subjecting exports to duty/ restrictions and obligatory domestic market sales the government is artificially suppressing prices of minerals/coal in the domestic market which allows the downstream industries using it as inputs to procure them at low prices.
69. New regulation MEMR 11/2019 stops exports of nickel below content 1.7% from January 2020. There is complete ban on export of unprocessed nickel from Indonesia.

b. Submission by Government of Indonesia/other interested parties

70. The GOI issued the Govt. Regulation No. 1 of 2017 as the fourth amendments of Govt. regulation No. 23 of 2010 which requires the mining license holders to conduct in-country-process so as to increase the value of the minerals and coals products and accelerate the investment in mining sectors. GOI also retains the right of export of Minerals and Coal products. Mineral products are allowed to be exported only on satisfying minimum level of processing requirement as regulated under the Minister of Energy and Mineral Resources Regulation No. 25 of 2018. There is no minimum level of processing requirement for export of Coal products. No assistance/benefit in this program was received by the responding companies.
71. Government of Indonesia has submitted that setting up of regulation in Indonesia on minimum value added for export of mineral cannot be construed as countervailable subsidy as we do not interfere the transaction price of nickel between the sellers and the buyers.
72. There is no basis to suggest that generally or in this particular case, imposition of such restrictions will invariably lead to fall in prices in the market place. It is also important to note that the imposition of export tax cannot be said to be a state interference resulting in distortion of the market. Imposition of export tax is absolutely legitimate and within the provisions of Article XX (g) & (i) of GATT.
73. Government of Indonesia has submitted that export restraint cannot be considered as entrustment or direction and financial contribution by the Government in accordance with Article 1.1 of the SCM Agreement.
74. IMR ARC does not use coal and nickel in its production activity. It procures hot rolled products and exports cold rolled products. It is not affiliated to any coal or nickel producer in Indonesia.

(iii) Program No. 4: Domestic Market Obligation (DMO) Scheme

a. Submission by Domestic Industry

75. Indonesian Government policy is intended to guarantee the supply of minerals/coal for meeting the increasing domestic demand. The Central Government controls the production and the exports of each mining product. The regional government is also obliged to comply with the production and export controls that are imposed by the Central Government. The DMO applies to all types of coal and minerals. Mining companies must comply with the DMO requirements by selling their mineral/coal production to domestic consumers. Through imposition of such obligations government is artificially suppressing prices of minerals/coal in the domestic market which allows the downstream industries using it as inputs to procure them at low prices.
76. The newly introduced regulation 11/2019 mandates coal producers to fulfil the domestic demand first and complete 25% quota. If they fail to do so, they shall pay compensation for shortage of coal sales in country.

b. Submission by Government of Indonesia/other interested parties

77. Law Number 4 of 2009, the GOI requires minimum sale to domestic market for Mineral and Coal products through Minister of Energy and Mineral Resources Regulation Number 39 of 2009 as amended by the Minister of Energy and Mineral Resources Regulation Number 25 of 2008.
78. In each year the GOI determines minimum percentage sales of coal for public interest. In 2018 and 2019 respectively, the GOI determined that 25% rate of domestic production is sufficient to meet domestic needs. In 2017 under Minister of Energy and Mineral Resources Regulation Number 5 of 2017, the GOI determined that Nickel smelting company should use Nickel with Ni less than 1.7% for at least 30% of its installed capacity. However, the Regulation was revoked in 2018 by Minister of Energy and Mineral Resources Regulation Number 25 of 2018, and in the latter, the requirement no longer existed. Thus, there is no minimum sale to domestic market requirement for Mineral products.
79. Government of Indonesia has submitted that Domestic Market Obligation (DMO) Program was introduced due to the shortage of coal that PLN has experienced in the past to provide the electricity to the public. The 25% allocation level of coal production for domestic sale is determined based on the calculation of how much the quantity of coal that should be secured for the State Electricity Company (PLN) in its electricity production. There is no oversupply of coal in the domestic market.

80. Exporters have submitted that downstream producer should not be subjected to a burden for a subsidy availed by the upstream producer.

a. **Examination by the Authority for programs 1, 2 and 4**

81. The Authority notes that program nos. 1, 2 & 4 relate to series of measures taken by the Government of Indonesia to regulate, monitor and control sales of nickel, coal and other minerals. Since effect of these programs results in access to coal and nickel at less than adequate remuneration, it is considered appropriate to combine these programs and examine them collectively for the purpose of present investigation.
82. Ministry of Energy and Mineral Resources Regulation has regulated production/processing and sale of minerals, wherein minerals and ores are required to be domestically processed before being exported. It is noted that there is restriction on exports of mineral and ore.
83. The Government of Indonesia also retains the right of exports of Mineral and Coal products. However, Mineral products are allowed to be exported only if they have satisfied minimum level of processing requirements as regulated under the Minister of Energy and Mineral Resources regulation Number 25 of 2018. Moreover, the GOI allows export of nickel ore with Ni content less than 1.7 percent but such exports are subjected to 10% export tax. Additionally, the domestic market obligations are required to be met for Coal. The domestic market obligation was set at 25% of the production in 2019.
84. Thus, the coal producers/miners are forced to first provide coal to meet the domestic demand. The Authority notes that the Government of Indonesia by means of export tax, export restrictions and by allowing existence of the legal acts requiring Coal producers to sell domestically in Indonesia is directing private entities to provide financial contribution to steel producers in the form of sale of Nickel ore and Coal at less than adequate remuneration. Thus, Coal and Nickel is available to the producers of the product under consideration at less than adequate remuneration. Neither the GOI nor the participating producers/exporters from Indonesia have shown that coal and nickel prices in Indonesia are completely governed by market forces without any government intervention. Amount of benefit is equal to the difference between the price paid by stainless steel producers in Indonesia and the price that would have been payable in absence of these measures. The subsidy program is also specific because it is limited to certain specific enterprises or sectors that use Nickel, Coal and other minerals in their production of finished goods.
85. With regard to coal the requirement of domestic market obligation of 25% of total production of coal constitutes a legal act requiring the domestic producers to sale locally.
86. Thus, the series of steps by Government of Indonesia are directing private entities to provide Nickel ore and Coal at less than adequate remuneration by means of export tax, export restrictions and by allowing existence of the other legal acts requiring Coal producers to sell

domestically in Indonesia. Thus, Coal and Nickel is available to the producers of the product under consideration at less than adequate remuneration.

87. None of the producers/exporters have provided complete information regarding the benefit received pursuant to these programs based on their purchase of Coal and Nickel ore. PT IMR ARC has submitted that it is procuring hot rolled products from unrelated suppliers and converting it to cold rolled products and therefore is not availing benefit under this program. However, for the reasons mentioned in subsequent paragraphs, the Authority has not determined individual subsidy margin for PT IMR ARC.
88. The claim of interested parties that export restraint and tax cannot result in entrustment and direction and cannot amount to financial contribution is irrelevant. The measures taken by Government of Indonesia goes far beyond imposition of mere export tax and export restraint. As elaborated above, the legal acts requiring domestic sales and introducing mandatory value addition requirements for minerals amounts to entrustment and direction to private entities to provide goods at less than adequate remuneration. The Authority notes that these programs are countervailable and benefit is conferred to the exporters within the meaning of Rules and ASCM agreement and hence countervailing duty should be imposed against these programs based on facts available.

(iv) Program No. 3: Benchmarking pricing for Minerals, Metals and Coal

b. Submission by Domestic Industry

89. The Petitioners submitted that the MoEMR (Minister of Energy and Mineral Resources), through the DGoMC (Director General of Minerals and Coal), is responsible for setting the benchmark prices for coal and metal minerals. If the Standard price (benchmark) for the relevant metal or coal, determined by MoEMR is set below appropriate market rate, the royalty fees calculated as payable to the Government of Indonesia will be less than the royalty fee calculated using market rate. Accordingly, the benefit conferred is the difference between the royalty fee calculated using the appropriate market rate for metals and coal and the royalty fee calculated using benchmark. Additionally, the royalty fee collected can also be influenced by the percentage of royalty determined on various kinds of metals or coal.

c. Submission by Government of Indonesia/other interested parties

90. As per Article 85 of the Regulation, the Ministry of Energy and Mineral Resources is responsible for setting the benchmark price. The Govt. of Indonesia sets the benchmark price on mineral, metal and coal products to optimize govt. revenue by the provision initiated in 2010 under Govt. Regulation No. 20 of 2010 as amended by Govt. Regulation No. 8 of 2018.
91. The benchmark price respectively for Mineral Metal and Coal products should reflect market mechanism and/or international market as per Regulation No.7 of 2017 of Minister

of Energy and Mineral Resources. The mining concession holder must use the related formula and variables in calculating its benchmark price in every of its Mineral and Coal products domestic and export transaction. GOI will charge royalty on either benchmark rate or actual transaction price subject to the condition of whichever is higher.

92. The scheme is not countervailable because it does not provide any benefit whatsoever to the exporter. On the contrary, the scheme is designed in a manner that it may collect duty more than what is due but never less than the actual transactional value.

c. Examination by the Authority

93. Ministry of Energy and Mineral Resources is responsible for setting the benchmark of Indonesia as per Article 85 of the Regulation. It sets benchmark/minimum selling price of minerals and ore for the purpose of royalty collection. Authority notes that the benchmarking of mineral and ore is done only with the purpose of collecting royalties and optimize revenue.
94. The mining concession holders must use the related formula and variables in calculating its benchmark price in every of its Mineral and Coal products domestic and export transaction. If benchmark price is higher than the actual transactional value, the royalty amount will be based on benchmark price. If transaction value is higher than the benchmark price, royalty amount will be based on the transaction value.
95. The Authority has already determined that nickel ore is available to Indonesian producers at less than adequate remuneration. There is no further benefit under this program. The Authority thus holds that no countervailing duty should be imposed against this program.

(v) Program No. 5: Export Credit Insurance and reimbursement from losses

a. Submission by Domestic Industry

96. State-owned firm Asuransi Ekspor Indonesia ('ASEI') provides comprehensive export credit insurance and reimbursements for the losses of export. ASEI reimburses exporters for up to 85 percent of their losses. It has specialized products to cover the risks borne by exporters and banks. It is mainly provided to enterprises engaged in exports except for enterprise engaged in exports of oil and gases. It confers a benefit equal to the difference between the amount the recipient pays on the premium for insurance and the amount the recipient would pay on a comparable insurance cover that the recipient could actually obtain on the market.
97. As per information available on "Asuransi Ekspor Indonesia Bank" website, this scheme of export credit insurance is operational. The annual report of the EXIM bank mentions that a huge amount has been paid to the mining sectors. PT Bintang Delapan Mineral (Nickel

Mining Company), who also provides nickel and ore to PT Sulawesi mining company, must have availed benefit under the program.

b. Submission by Government of Indonesia/other interested parties

98. Government Regulation No. 1/1982 enacted the export credit insurance and export credit guarantee programs. Export credit insurance is provided to insure/protect Indonesian exporters against the non-payment risk from their importers, whilst export credit guarantees are provided to insure Indonesian banks against the default risk of the borrower's export loan. In addition, Government Regulation No.20/1983 stipulated the establishment of a State-Owned Enterprise to carry out the provision of export credit insurance and export credit guarantees. None of the companies under investigation used this program.

99. Asuransi Asei is a subsidiary of a state-owned enterprise, 99.998% is owned by Indonesia-Re and 0.002% is owned by its employee cooperative. Asuransi Asei is a profit oriented/commercial entity and continues to provide general insurance products and services (including credit insurance) to its corporate clients. Asuransi Asei has not offered export guarantees since 1995.

c. Examination by the Authority

100. Government Regulation No.20/1983 stipulated the establishment of a State-Owned Enterprise ("SOE") to carry out the provision of export credit insurance and export credit guarantees.

101. PT. Asuransi Ekspor Indonesia (Persero) was established to carry out the business for export credit guarantee and insurance. Persero established a subsidiary named PT. Asuransi Asei Indonesia (Asuransi Asei) and subsequently spun-off its insurance business in December 2014. It has been claimed that Asuransi Asei has not offered export guarantees since 1995.

102. Interested parties have also claimed that they have not received any benefit under this program. Authority holds that no countervailing duty is required to be imposed against this program.

(vi) Program No. 6: Export Credit Guarantees

a. Submission by Domestic Industry

103. The Petitioners submitted that the State-owned Indonesia Eximbank provides export credit guarantees that permit banks to charge low rates for export financing as a result of which low rate of financing is available to export oriented enterprises.

b. Submission by Government of Indonesia/other interested parties

104. Both Indonesia Eximbank provide export credit guarantee to bank or financial institution against risk of debtor's default.
105. The program is eligible for both business entities and individuals domiciled in the territory of the Republic of Indonesia. There is no such law and regulations governing the eligibility criteria. Internal procedural of Indonesia Eximbank will be applicable for determining eligibility. None of the participating companies applied for, accrued, or received benefits from this program during the POI.

c. Examination by the Authority

106. The Authority notes that Indonesia Eximbank is a statutory body established under the Lembaga Pembiayaan Ekspor Indonesia (LPEI) Act and is 100% owned by GOI. Operation of Indonesia Exim Bank is subject to the Indonesia Central regulation (Bank Indonesia/BI) and Financial Services Authority (Otoritas Jasa Keuangan/OJK) regulation. Therefore, export credit guarantee provided by Indonesia Eximbank amounts to financial contribution in the form of provision of service by Public Body at less than adequate remuneration.
107. Benefit is granted to enterprise in terms of the difference between the fee charged by Indonesia Eximbank and the fee charged by other commercial banks for providing the guarantee. However, none of the participating companies applied for, accrued, or received benefits from this program during the POI. Authority holds that no countervailing duty is required to be imposed against this program.

(vii) Program No. 7: Reduction of Income Tax

a. Submission by Domestic Industry

108. Indonesian Government provides for reduction of net income to a specified extent of the total investments made within a definite period. Article 18 of the Law of the Republic of Indonesia specifies the eligibility –
- (i) Makes an investment (expands its business; or makes a new investment)
 - (ii) Clears any one eligibility –
 - absorbs many workers
 - falls under a high priority scale
 - is engaged in infrastructure constructions
 - transfers technology
 - is engaged in a pioneer industry
 - is located in a remote area, a less-developed area, a contiguous area, or another area deemed needy
 - keeps the environment sustainable

- conducts research, development, and innovation activities
- is in partnership with micro, small and medium enterprises or cooperatives

109. Reduction of income results in lower income tax liability. Additionally, 5% reduction is applicable to companies listed on Indonesia Stock Exchange.

b. Submission by Government of Indonesia/other interested parties

110. The reduction of income tax for listed companies in Indonesia Stock Exchange (IDX) is firstly regulated under the Government Regulation Number 81 of 2007 as amended by the Government Regulation Number 77 of 2013. As stipulated in the former regulation, the reduction is to promote the role of capital market in financing business sectors, encourage the proliferation of public companies, as well as to increase public ownership in business entities. The reduction is provided at 5% rate of Corporate Income to listed companies in IDX which meet certain requirements. None of the participating companies is public company and listed to the IDX. Thus, none of them applied for, accrued, or received benefits from this program during the POI.

c. Examination by the Authority

111. Authority notes that two types of benefits are provided under this program in the form of reduction from income tax (i) Companies making investments during a prescribed period and fulfilling certain conditions will be allowed reduction of specified percentage from total income and (ii) 5% reduction is provided to companies listed on stock exchange in Indonesia.

112. All participating companies have submitted that they have not received any benefit under this program. Regarding the reduction of 5% rate of income tax, Authority notes that none of the participating companies are listed companies. However, interested parties and Government of Indonesia have not provided complete information and explanation regarding absence of benefit to participating companies based on investment criteria. The Authority does not have sufficient information and evidence at this stage to conclude that exemption from income tax was granted to enterprise based on investment criteria.

113. The Authority, thus, holds that no countervailing duty is required to be imposed against this program.

(viii) Program No. 8: Tax Holiday

a. Submission by Domestic Industry

114. Tax holiday is applicable in the form of reduction from Corporate Income Tax to relevant pioneer industry taxpayers that have made new capital investment plans of at least Rs. 500 billion.

b. Submission by Government of Indonesia/other interested parties

115. Corporate Income Tax Reduction Facility in Tax Holiday shall be granted to income received or accrued from main business activity which constitutes a Pioneer Industry. In the April 2018, Tax Holiday was amended to provide a 100 percent income tax reduction for five to twenty years. As it currently stands, the Tax Holiday offers income tax reduction for 50 percent and 100 percent depending on the total investment value.

116. The corporation receiving the tax reduction has to be working in a “pioneer industry,” defined as an industry “*with extensive interconnection that provides added value and high externality, introduces new technology, and has strategic value for the national economy.*”

117. None of the companies under investigation applied for, accrued, or received benefits under this program during the POI.

c. Examination by the Authority

118. Authority notes that the program provides for reduction of income tax to certain enterprises incurring investment and meeting the prescribed eligibility criteria. Program provides for a financial contribution in the form of revenue foregone which is otherwise due and a benefit is thereby conferred.

119. None of the participating companies claims to have applied for, accrued, or received benefits under this program during the POI. The Authority holds that no countervailing duty is required to be imposed against this program.

(ix) Program No. 9: Export Financing from Indonesia EXIM

a. Submission by Domestic Industry

120. Indonesian Exim bank -Lembaga Pembiayaan Ekspor Indonesia (“LPEI”) provides export financing at preferential rates to support the improvement of the nation’s leading export products as well as to the high-competitive products by providing financing. Main function of LPEI is to support the advancement of Indonesian exports and it serves to provide funding to regions that commercial banks or commercial financial institutions are reluctant to enter.

121. In addition to financing for exporters, Indonesia Exim bank may also provide financing to overseas buyer in order to import goods and services from Indonesia. Indonesian Exim bank’s sources of funds according to Article 22 Act of LPEI are (i) issuance of marketable

securities; (ii) loans from foreign governments, multilateral agencies, banks, financial institutions, and the GOI; (iii) grants; and (iv) fund placement by Bank Indonesia.

b. Submission by Government of Indonesia/other interested parties

122. Indonesia Eximbank is a special financial institution owned by Government of Indonesia and was established as part of mandate of the Act No. 2/2009 regarding Lembaga Pembiayaan Ekspor Indonesia (LPEI). However, the operation of Indonesia Eximbank is subject to the Indonesia Central regulation (Bank Indonesia/BI) and Financial Services Authority (Otoritas Jasa Keuangan/OJK) regulation.

123. Furthermore, the key activities of Indonesia Eximbank are financing (both conventional and Sharia compliant); guarantees; insurance; coaching and advisory services to banks, financial institutions, exporters manufacturers of export goods, especially small-and medium-sized enterprises and cooperatives; and special assignment by the Government to support the national export program. Govt. of Indonesia submitted that none of the companies under investigation applied for, accrued, or received benefits from this program during the POI.

124. This program was not availed by the producers/exporters from Indonesia in any manner. Producers/exporters have not taken any new loan during POI and has never availed any financing from Exim Bank of Indonesia. Also, Eximbank has the same commercial business platform as other financial institutions where it charges the interest at prevailing market rate.

125. Annual report of 2018 GCNS, IRNC and ITSS notes the name of bank from whom the loans were obtained and the applicable interest rates. Subsequent to preliminary findings, PT IMR ARC has noted that it has no outstanding loans at the beginning of the POI from any banks in Indonesia. Therefore, Authority should not apply facts available to determine the subsidy margin under this program.

c. Examination by the Authority

126. Authority notes that Indonesia Eximbank provides financing to enterprises including enterprises involved in export of goods. All participating entities are eligible to receive benefit under this program in form of preferential financing.

127. Authority notes that Indonesia Eximbank is a statutory body established under the Lembaga Pembiayaan Ekspor Indonesia (LPEI) Act and is 100% owned by Government of Indonesia. Operation of Indonesia Eximbank is subject to the Indonesia Central regulation (Bank Indonesia/BI) and Financial Services Authority (Otoritas Jasa Keuangan/OJK) regulation. Therefore, export financing provided by Indonesia Exim Bank amounts to financial contribution in the form of direct transfer of funds by Public Body.

128. Amount of benefit is equal to the difference between the interest charged by Indonesia Eximbank/any other stateowned bank and the interest charged by any other commercial banks on a comparable commercial loan. None of the participating companies have provided information regarding the loans obtained from Eximbank and/or any other state owned banks during the POI or AUL period. Authority notes that none of the participating companies provided information regarding loans requested under the loan appendices. However, Authority has relied on the information provided by the co-operating producers/exporters and Government of Indonesia subsequent to the issuance of preliminary findings and concludes that co-operative producers/exporters from Indonesia have not received benefit under this program. Thus, the Authority determines that no countervailing duty should be imposed for program 9 for co-operating producers/exporters.

129. However, Authority holds that since the subsidy program is in existence and available to producers/exporters in Indonesia, countervailing duty is required to be imposed against this program on all others residual category of producers/exporters based on facts available.

(x) Program No. 10: Exemption on Import Duty

a. Submission by Domestic Industry

130. Indonesian Government exempts imports of material goods from import duties when they are used in manufacturing goods for export purposes. The exemption is operated with requirements and under strict surveillance. If there's deficiency between imported materials given for exemption and used in production, the exemption will not apply for the deficiency and will be penalized according to customs regulation.

131. Exemption is mainly provided to enterprises in Bonded Zones, Free Trade Zones or similar zone. The actual amount of the exemption is determined through the amount of imported materials used in manufacturing final goods for export.

b. Submission by Government of Indonesia/other interested parties

132. This program is set under import facility for export purposes (KITE) scheme which established on December 2003, pursuant to Minister Finance Decision No. 580/KMK.04/2003, as mandated by Act No. 10/1995 as partly amended by Act No. 17/2006 on Customs.

133. Goods processed, assembled or installed in manufacturing goods for export purposes may be exempted from import duties. Imports of fixed assets are not exempted from import duties under this program.

134. The exemption is operated with requirements and under strict surveillance. All of the end-goods resulted from the imported material should be exported, and if according to the

conversion test, there's deficiency between imported materials given for exemption and used in production, the exemption will not apply for the deficiency and will be penalized according to customs regulation.

135. Regional Customs Office operated under Directorate General of Customs and Excise – Ministry of Finance administers this scheme and conducts strict surveillance. If the realization export report is agreed by the Regional Customs Office, the exemption is applied. According to Director General of Customs and Excise Regulation No. 16/BC/2012 as partly amended by Director General of Customs and Excise Regulation No. 04/BC/2014, the applicant must possess Identification Number (NIPER) for exemption purpose. In the process to obtain the NIPER, the applicant must submit letter of application to the Regional Customs Office and satisfy several requirements. All NIPER holder companies may benefit from the exemption. However, none of the companies under investigation applied for, accrued, or received benefits from this program during the POI.

c. Examination by the Authority

136. The government of Indonesia submitted that the above-mentioned program is set under import facility for export purposes (KITE) scheme which established on December 2003, pursuant to Minister Finance Decision No. 580/KMK.04/2003, and lastly amended by Minister Finance Regulation No. 253/PMK.04/2011 and Minister Finance Regulation No. 177/PMK.04/2013.

137. The program is not a permissible duty remission program under footnote 1 of SCM Agreement and Section 9B(1) (b) of the Customs Tariff Act. The program provides exemption to raw material used in the production of exported product. There is no sufficient evidence of verification mechanism which ensures that there is no excess benefit to enterprise. There is no evidence to show that penalty or recovery of duty was actually made from enterprises who were unable to utilize the raw material in the production of exported goods.

138. The program provides for financial contribution in the form of revenue foregone and benefit is thereby conferred. The program is also specific because it is contingent on export. However, the Authority has determined that countervailing duty should be imposed for bonded zone program and other two import duty exemption programs (other programs) granting exemption from import duties to participating companies. The Authority holds that no additional countervailing duty is required to be imposed against this program.

(xi) Program No. 11: Import Duty Drawback

a. Submission by Domestic Industry

139. Indonesian Government permits exemption from import duty payable by enterprises for goods processed, assembled or installed in manufacturing goods for export purposes. The Designated Regional Customs Office assess the amount of duty drawback proposed with the application of capital goods reports.

b. Submission by Government of Indonesia/other interested parties

140. This program is set under import facility for export purposes (KITE) scheme which established on December 2003, pursuant to Minister Finance Decision No. 580/KMK.04/2003, as mandated by Act No. 10/1995 as partly amended by Act No. 17/2006 on Customs. According to both Minister Finance regulations, import duty drawback scheme provides exemption from import duties payable for imports of goods processed, assembled or installed in manufacturing goods for export purposes. The applicant will receive the duty drawback after the end-goods is exported.

141. This scheme is administered by each Regional Customs Office operated under Directorate General of Customs and Excise – Ministry of Finance. The administration of this scheme was regulated on Director General of Customs and Excise Regulation No. 15/BC/2012 as partly amended by Director General of Customs and Excise Regulation No. 05/BC/2014. The designated Regional Customs Office has the authority to administer the application and issue the decision of the application. The eligibility criterion is Company Identification Number (NIPER) holder.

142. None of the companies under investigation applied for, accrued, or received benefits from this program during the POI.

c. Examination by the Authority

143. The Government of Indonesia submitted that the above-mentioned program is set under import facility for export purposes (KITE) scheme which was established on December 2003, pursuant to Minister Finance Decision No. 580/KMK.04/2003, and lastly amended by Minister Finance Regulation No. 253/PMK.04/2011 and Minister Finance Regulation No. 177/PMK.04/2013.

144. As per the Ministry of Finance regulation, the drawback scheme provides import duties payable for imports of goods when processed, assembled or installed in manufacturing goods for export purposes, may be partially or wholly returned, receivable at the time of export of end-goods. The present scheme is also under the supervision of the Regional Customs Officer operated under Directorate General of Customs and Excise – Ministry of Finance.

145. The eligibility criterion is Company Identification Number (NIPER) as explained in the Minister Finance Regulation No. 177/PMK.04/2013. The amount of the duty drawback is

contingent to the amount of the duty paid on goods contained in the end-goods for exports. The Authority has already determined that the KITE program provides for financial contribution in the form of revenue foregone and benefit is thereby conferred. The program is also specific because it is contingent on export. The Authority has determined that countervailing duty should be imposed for bonded zone program and other two import duty exemption programs (other programs) granting exemption from import duties to participating companies. Authority holds that no additional countervailing duty is required to be imposed against this program.

(xii) Program No. 13: Reduction of Net Taxable Income

a. Submission by Domestic Industry

146. The Petitioners submitted that Indonesian Government provides a reduction to enterprise net taxable income of up to 30% of the amount invested in the form of fixed assets (including land), pro-rated at 5% for six years of commercial production provided that the assets invested are not misused or transferred within a certain period. It is mainly provided to enterprises located in SEZ zones.

b. Submission by Government of Indonesia/other interested parties

147. KEK (Kawasan Ekonomi Khusus), as it is established through Act No. 39/2009 on Special Economic Zone, allows company located and operating main business in KEK to obtain wide range of facilities and incentives from taxation to employment. Currently there are 13 designated KEK across Indonesia. In its implementation, KEK is established by KEK National Council. One of main duties of KEK National Council is to determine which business sector to be main business in KEK. These areas have potentials to be developed, ranging from plantations, logistics, to tourism. As it currently stands, the SEZ is not fully operated yet.
148. The provision relating to reduction of net taxable income in KEK as stipulated in Government Regulation No. 96/2015 reduces net taxable income up to 30% of the amount invested in the form of fixed assets (including land), pro-rated at 5% for six years of commercial production. The application for the facility should be submitted to the Ministry of Finance via the Administrator of the respective KEK.
149. Apart from the KEK, Income Tax Allowance facilities, regulated under Government Regulation No. 18/2015, provide similar reduction of net taxable income. However, it is impossible for a company to obtain double-income tax facility. None of the companies under investigation applied for, accrued, or received benefits from this program, or located in KEK during the POI.

c. Examination by the Authority

150. Authority notes that the program is available to industries located in Special Economic Zones and provides for reduction of taxable income by 30%. The program is governed by Government Regulation No. 18/2015. The income tax exemption can be availed by the industry located in Special Economic Zone under this program only and not under any other program.
151. The subsidy program provides for financial contribution the form of revenue foregone which is otherwise due. The program is also specific because it is region specific. However, none of the participating companies applied for, accrued, or received benefits from this program during the POI. The Authority holds that no countervailing duty is required to be imposed against this program.

(xiii) Program No. 14: Carry Forward of Losses

a. Submission by Domestic Industry

152. Indonesian Government provides the investors with an option to carry forward their losses up to a span of 5 years which can be further extended to 5 years.
- Extension of 1 year if the capital investment is more than Rp. 200 billion;
 - Extension of 1 year or 2 years if:
 - Employ not less than 500 Indonesian workers for 5 years;
 - Employ not less than 1000 Indonesian workers for 5 years;
 - Extension of 1 year if the new capital investment needs investment or expense for economic and social infrastructure at SEZ at least is Rp. 10 billion;
 - Extension of 2 years if spend on research and development in domestic for product development or product efficiency is at least 5% from investment for 5 years;
 - Extension of 1 year if domestic raw materials were used for manufacturing end products
 - Extension of 2 years if capital investment in expansion of business operation in SEZ
 - Extension of 2 years if export sales comprises of at least 30% of total sales
153. It is mainly provided to business entities and business players operating in SEZ zones.

b. Submission by Government of Indonesia/other interested parties

154. According to the Minister of Finance Regulation No. 104/2016 on Taxation, Customs, and Excises Treatment on Special Economic Zone, the application for the facility should be submitted to the Indonesian Investment Coordination Board (BKPM) via the Administrator of the respective KEK.
155. Apart from the KEK, Income Tax Allowance facilities, regulated under Government Regulation No. 18/2015, provide similar reduction of net taxable income. However, as

stipulated in the article 11 of Government Regulation No. 96/2015, the taxpayer in KEK may only apply the reduction of net taxable income facility, and any other income tax facilities, through the requirement under Government Regulation No. 96/2015. Thus, it is impossible for a company to obtain double-income tax facility. The eligibility is limited to business entities/business players operate within KEK region. None of the companies under investigation applied for, accrued, or received benefits from this program, or located in KEK during the POI.

c. Examination by the Authority

156. Program provides for carry forward of losses to business enterprise. The subsidy program provides for financial contribution in the form of revenue foregone which is otherwise due. The program is also specific because it is specific to enterprise located in KEK. However, none of the participating companies are claimed to have applied for, accrued, or received benefits from this program during the POI. The Authority holds that no countervailing duty is required to be imposed against this program.

(xiv) Program No. 15: Postponement of Import Duty

a. Submission by Domestic Industry

157. The Petitioners submitted that Indonesian Government postpones the import duty payment on capital goods and equipment, goods and materials for processing. It is mainly provided to business entities and business players operating in SEZ zones.

b. Submission by Government of Indonesia/other interested parties

158. KEK is established by KEK National Council. One of main duties of KEK National Council is to determine which business sectors are to be the main business in KEK. These areas have potentials to be developed, ranging from plantations, logistics, to tourism.
159. KEK National Council forms Region Council to perform implementation including establishment of administrator in each KEK. Region Council also reports to the KEK National Council of its management performance in each KEK.
160. The postponement of payment of import duty in KEK as stipulated in Government Regulation No. 96/2015 is operated through withholding system. The application for the facility should be submitted to the Ministry of Finance via the Administrator of the respective KEK. The application process of the program is in line with the general regulation on importation. The company notifies the Customs of its importation and submits standard customs form. None of the companies under investigation applied for, accrued, or received

benefits from this program, or located in KEK during the POI.

c. **Examination by the Authority**

161. Authority notes that the program provides for postponement of import duty for enterprise. Thus, the program provides for deferral of taxes owed. Benefit conferred on the enterprise is in the form of interest free short term or long-term loan. Amount of benefit is equivalent to the amount of interest charged by bank on commercial loan.
162. The program provides for financial contribution in the form of revenue foregone. Program is also specific because it provides benefit to certain enterprise located in Special Economic Zone. However, the Authority has determined that countervailing duty should be imposed for bonded zone program and other two import duty exemption programs (other programs) granting exemption from import duties to participating companies. The Authority, therefore, holds that no additional countervailing duty is required to be imposed against this program.

(xv) **Program No. 16: Exemption of Duty on Raw Material and Supporting Goods for Production Purpose**

a. **Submission by Domestic Industry**

163. Indonesian Government exempts the duty on raw material and supporting goods for investors who are expanding their production in SEZ.
164. This tax benefit is available to two set of categories:
- Taxpayers organizing a SEZ's business activity-
 - Registered by relevant government agency to be a business entity that develops or manages a SEZ.
 - Have agreements on the SEZ with the government agency
 - Create relevant boundaries of SEZ's activities
 - Taxpayers carrying out business in SEZ:
 - Have a legalized new capital investment plan for the administrator of SEZ
 - Have an information system connected to Director General of Customs and Excise

b. **Submission by Government of Indonesia/other interested parties**

165. The exemption of duty on raw material and supporting goods for production in KEK as stipulated in article 19 Government Regulation No. 96/2015 is given to the Business entities and Business Players for the development and expansion of industry for certain period.
166. As stipulated in Article 40 and 41 of Minister of Finance Regulation No. 104/2016, import of capital goods by Business Entities is exempted from import duty for 3 years, while Business Players may get import duty exemption for capital goods and/or materials for 2

years. As further stated, the type and amount of goods subject to exemption is determined by the KEK administrator, and the imported goods may only be used within the KEK region.

167. The program is administered by Directorate General of Customs and Excise via the Administrator of the respective KEK. None of the companies under investigation applied for, accrued, or received benefits from this program, or located in KEK during the POI.

a. Examination by the Authority

168. The program provides for financial contribution in the form of revenue foregone. Program is also specific because it provides benefit to certain enterprise located in KEK region. However, the Authority has determined that countervailing duty should be imposed for bonded zone program and other two import duty exemption programs (other programs) granting exemption from import duties to participating companies. The Authority, therefore, holds that no additional countervailing duty is required to be imposed against this program.

(xvi) Program No. 17: Exemption from Income Tax on imports

a. Submission by Domestic Industry

169. Indonesian Government grants exemption of Income Tax on importation of certain goods if the company is located in SEZ.

170. This tax benefit is available to two set of categories:

- Taxpayers organizing a SEZ's business activity
 - Registered by relevant government agency to be a business entity that develops or manages a SEZ.
 - Have an agreement on the SEZ with the government agency
 - Create relevant boundaries of SEZ's activities.
- Taxpayers carrying out business in SEZ:
 - Have a legalised new capital investment plan for the administrator of SEZ
 - Have an information system connected to Director General of Customs and Excise.

b. Submission by Government of Indonesia/other interested parties

171. Exemption of income tax on imports in KEK as stipulated in Government Regulation No. 96/2015 is applied for goods designated to business players in the KEK from Outside of Customs Area; Other Business Players within the KEK; Other Business Players in other KEK; Bonded Zones outside of the KEK; Free Trade Zone and Free Port; and/or Other Region TLDPP. The application for the facility should be submitted to the Ministry of Finance via the Administrator of the respective KEK. None of the companies under

investigation applied for, accrued, or received benefits from this program, or located in KEK during the POI.

c. Examination by the Authority

172. Authority notes that the exemption of duty on raw material and supporting goods for production in KEK as stipulated in article 19 Government Regulation No. 96/2015 is given to the Business entities and Business Players for the development and expansion of industry for certain period.
173. The exemption under this program results in deferment of income tax payment as income tax paid on import is an instalment of annual income tax payment. The program provides for financial contribution in the form of direct transfer of funds. Benefit is equal to the interest paid on the loan obtained for such deferred amount from commercial bank. Program is also specific because it provides benefit to certain enterprise located in KEK region. However, none of the participating companies are claimed to have applied for, accrued, or received benefits from this program during the POI. The Authority, therefore, holds that no additional countervailing duty is required to be imposed against this program.

(xvii) Program No. 18: Reduction for Investors investing in SEZ

a. Submission by Domestic Industry

174. The Petitioners submitted that Indonesian Government provides reduction in income tax for investors investing in SEZ- Up to 20-100 % for at least 10 years to a maximum of 25 years and Up to 20-100% for at least 5 years to a maximum of 15 years. Customs, and Excise Treatment on Special Economic Zone provides that taxpayer should be:
- New Taxpayer;
 - Operating new capital investment or expansion of new capital investment;
 - Its business field is in line with the main business in SEZ;
 - Fulfilled DER requirement;
 - It has submitted letter of intent to deposit fund in Banking institutions in Indonesia with minimum deposit 10% from investment value;
 - Holds Legal entities status since 15 August 2011

b. Submission by Government of Indonesia/other interested parties

175. Reduction in Income Tax for Investors investing or Tax Holiday in KEK as stipulated in Government Regulation No. 96/2015 is categorized as follows:
- a) Investment >Rp. 1 trillion, reduction in income tax ranging from 20 – 100% for 10 – 25 years;
 - b) Investment Rp. 500 billion - Rp.1 trillion, reduction in income tax ranging from 20 – 100% for 5 – 15 years;

c) Investment <Rp. 500 billion, reduction in income tax ranging from 20 – 100% for 5 – 15 years;

176. The amount of Income Tax reduction for each year of the period given remains the same. The facility itself is given upon income specifically received from main business operation in KEK. However, income received from business activities other than its main operation is still subject for taxation. The application for the facility should be submitted to the Indonesia Investment Coordinating Board (BKPM) via the Administrator of the respective KEK.
177. According to article 7 of Government Regulation No. 96/2015, Ministry of Finance determines the period and the amount of income tax reduction based on the proposal from taxpayer. For determining the amount of the reduction, the Ministry of Finance forms verification committee.
178. The eligibility is limited to business entities/business players operating within KEK region. None of the companies under investigation applied for, accrued, or received benefits from this program, or located in KEK during the POI.

c. Examination by the Authority

179. Authority notes that the program provides exemption from income tax. The Authority has already determined that the subsidy program granting reduction or exemption from income tax provides for financial contribution the form of revenue foregone which is otherwise due. The subsidy program is also specific because it applies to certain enterprises incurring investment as per Government Regulation.
180. However, none of the participating companies claimed to have applied for, accrued, or received benefits from this program during the POI. The Authority thus holds that no countervailing duty is required to be imposed against this program.

(xviii) Program No. 19: Pioneer Industry Status

a. Submission by Domestic Industry

181. Indonesian Government launched Pioneer Industry Tax Benefits Program. The program, as it stood in the POI and as it currently stands, provides an income tax reduction in the range of 10 percent to 100 percent over five to fifteen years for certain corporate taxpayers. The tax reduction starts from the first year of the corporation's commercial production time. The corporation receiving the tax reduction has to be a "pioneer industry" defined as an industry "with extensive interconnection that provides added value and high externality, introduces new technology, and has strategic value for the national economy." In addition, considering the total investment value, the corporation has to invest at least IDR 1,000,000,000,000.00

(one trillion rupiah) for all sectors of pioneer industries excluding the information, communication and technology (ICT) sector that introduces high technology. The corporations in the ICT sector could invest minimum IDR 500,000,000,000.00 (five hundred billion rupiah) to be eligible for the benefit. In addition, the corporation must fulfil other requirements for the tax reduction, namely depositing a minimum of 10 percent of the investment plan in Indonesian banks, maintaining a debt to equity ratio at least 4:1, and having the status of Indonesian legal entity since August 15, 2011.

182. Under this program, benefits available to enterprises include simplified environmental reporting requirements and licensing requirements, fiscal incentives such as tax holidays and tax allowances at both the national and regional levels, reductions, allowances or exemptions of regional taxes or levies.

b. Submission by Government of Indonesia/other interested parties

183. Pioneer Industry status is defined as industry “*with extensive interconnection that provides added value and high externality, introduces new technology, and has strategic value for the national economy*”. The status however is only eligible for the Tax Holiday program and not for the Tax Allowance facility as alleged by the petitioner instead.

184. Pioneer industry covers 18 sectors. However, the list is not exhaustive. The program opens the opportunity for other sectors other than currently stipulated in the program upon the approval of the Minister of Finance. Thus, the program is not limited to certain sectors or region in nature. Nonetheless, none of the alleged exporters applied or benefitted from this program.

c. Examination by the Authority

185. Authority notes that the program provides exemption from income tax. The Authority has already determined that the subsidy program granting reduction or exemption from income tax provides for financial contribution the form of revenue foregone which is otherwise due. The subsidy program is also specific because it applies to certain enterprises having pioneer industry status.

186. However, none of the participating companies are claimed to have applied for, accrued, or received benefits from this program during the POI. The Authority holds that no countervailing duty is required to be imposed against this program.

(xix) Program No. 21: Deduction in Land Tax

a. Submission by Domestic Industry

187. The Petitioners submitted that Indonesian Government provides benefit of land tax to the enterprises located in SEZ region.

188. This tax benefit is available to two set of categories:

- Enterprises which are located in SEZ:
 - Registered by relevant government agency to be a business entity that develops or manages a SEZ
 - Have an agreement on the SEZ with the government agency
 - Create relevant boundaries of SEZ's activities
- Taxpayers carrying out business in SEZ:
 - Have a legalized new capital investment plan for the administrator of SEZ
 - Have an information system connected to Director General of Customs and Excise

b. Submission by Government of Indonesia/other interested parties

189. Land and Building Tax (PBB) in Indonesia tax system is part of the regional/city tax or retribution, and it is determined by the regional government through head of regional/mayor regulation. In Act No. 39/2009, reduction of PBB is provided in line with regulation. However, in Government Regulation No. 96/2015, PBB is provided under facilities in KEK for Tourism which provides that regional government may determine reduction or exemption of regional tax ranging from 50% and 100%.

190. As it stands, only KEK with main business in Tourism such as KEK Tanjung Kelayang, KEK Mandalika, KEK Tanjung Lesung, KEK Morotai, KEK Sorong applied reduction in regional/city tax. PBB is provided under facilities in KEK for Tourism which provides that regional government may determine reduction or exemption of regional tax ranging from 50% and 100%. None of the companies under this investigation used this program.

c. Examination by the Authority

191. The program provides reduction in land tax application to enterprise if the enterprise is located in Special Economic Zone. However, the benefit of reduction is available to enterprise carrying out tourism related business activity. Therefore, Authority holds that no countervailing duty is required to be imposed under this program.

(xx) Program No. 23: Refund of VAT

a. Submission by Domestic Industry

192. Indonesian Government provides refund of VAT in certain cases. The delivery of goods and services in Indonesia is generally subject to VAT, except for the delivery of certain pre-determined types of goods and services. The current VAT rate is 10%. The prevailing VAT Law stipulates that supplies of gold bars, coal, and natural resources that have been taken directly from their source are not subject to VAT. This VAT position may change, according to the level of processing of the mining product in question. During pre-production, only

Input VAT that has been incurred on purchases of capital goods is creditable. Furthermore, since the company will not have any Output VAT during the pre- production period, a VAT overpayment is likely. For most companies, a VAT refund is only available at the end of the year. However, companies that incur VAT during pre-production may apply for refunds in respect of VAT on capital goods on a monthly basis. But, if they fail to commence production (defined as the delivery of VAT-able goods/services) within three years (potentially extended to five years in some circumstances) from the date on which they credit the Input VAT, they must repay the VAT refund by the end of the month following the failure to enter into production. The prevailing VAT Law stipulates that supplies of gold bars, coal, and natural resources that have been taken directly from their source are not subject to VAT.

b. Submission by Government of Indonesia/other interested parties

193. Value Added Tax (VAT) is a tax imposed on any value added of goods or services in circulation from producer to consumer.
194. Indonesia has a single tariff system for VAT, which is 10%. The main legal basis used for the application of VAT in Indonesia is Law No. 8 of 1983 lastly amended with Law No. 42 of 2009.
195. VAT rate of 0 percent is applied on export of tangible goods, export of intangible goods and export of services. VAT is an indirect tax. In the application of VAT levies, tax payers will credit input tax and output tax within the same fiscal period. If in the fiscal period the output tax is greater, then the excess tax output must be deposited in the state treasury.
196. Conversely, if in the tax period, the input tax period is greater than the output tax, the excess input tax can be compensated to the next tax period. In this procedure, the amount to be paid by the tax payers may change according to the input tax paid. Basically, all goods and services are taxable goods and taxable services, so they are subject to Value Added Tax (VAT), except for the types of goods and types of services as stipulated in Article 4A of Law No. 42 of 2009 concerning the Third Amendment of Law Number 8 of 1983 on the Value Added Tax of Goods and Services.
197. Article 4A of the Law No. 42 of 2009 stipulates that type of goods that are not subject to the Value Added Tax shall be certain goods within the group of goods are: 1) mining and drilling products of which are taken directly from their sources; 2) staple goods of which are mostly required by the people; 3) food and beverage of which are served in the hotel, restaurant, food shop, shop, or the similar is desired, including dine in and take out food, including food and beverage of which are presented by catering company; and 4) money, gold bullion, and securities.

198. The VAT refund is not contingent upon export performance or on the use of domestic goods. The provision is applied to all taxpayers. The legal basis of VAT return is in Article 6 of Minister of Finance Regulation Number 72 of 2010. None of the companies under investigation applied for, accrued, or received benefits from this program.

c. Examination by the Authority

199. Authority notes that all products are subject to VAT in Indonesia. However, mining and drilling products, which are taken directly from their sources are not subject of VAT.

200. Additionally, VAT refund is granted under this program. If in the fiscal period, the output tax is greater than input tax, excess tax output must be deposited in the state treasury. If in the tax period, the input tax period is greater than the output tax, the excess input tax can be compensated to the next tax period.

201. Authority notes that fixing differential VAT rate does not amount to financial contribution to enterprises procuring such product. Moreover, refund of excess VAT paid also does not amount to financial contribution as it does not result in foregoing of revenue that is otherwise due.

(xxi) Other Program 1: Bonded Zone

a. Submission by Domestic Industry

202. The domestic industry has not alleged existence of this program in the petition.

b. Submission by Government of Indonesia/Other interested parties

203. A “Bonded Zone” is defined as a bonded storage location which is utilized to store imported goods and/ or goods from other location in customs territory in order to be processed or assembled. However, as stipulated in Minister of Finance Regulation No. 147/PMK.04/2013 Bonded Zone is categorized as part of the Customs territory and operated under full surveillance of Directorate General of Customs and Excise. As it is part of Indonesia Customs territory which is neutral, goods entering Bonded Zone are not yet considered as a fully imported goods. By this understanding, Customs cannot collect import duty, income tax, value added tax (VAT), luxury tax, and excise.

204. VAT import exemption on raw materials or capital goods is SCM consistent. The exemption of income tax for import materials and capital goods does not also confer benefit as income tax for import is instalment for annual payable income tax. The suspension of import duty for capital goods and import of material does not also have material benefit since material imported is subject to preferential import tariff from 0% with maximum 5% rate.

205. Customs Authority also implements a very strict control on the movement of goods in the Bonded Zone area. There is no excess of duty exemption including duty exemption for import of machinery.

c. Examination by the Authority

206. Authority notes that import duty exemption is granted to imports into bonded zone. Participating companies PT Indonesia Tsingshan Stainless Steel, PT Guang Ching Nickel and Stainless Steel Industry, PT Indonesia Ruipu Nickel and Chrome Alloy, PT Tsingshan Steel Indonesia (TSI), PT Sulawesi Mining Investment are located in the Bonded Zone and provided information regarding the exemption of duty on capital goods imported into bonded zone.
207. Authority notes that exemption from import duty for goods imported into bonded zone amounts to financial contribution in the form of revenue foregone that is otherwise due. Amount of benefit is equal to the difference between the import duty on import and the income tax and import duty paid on imports. The Authority holds that countervailing duty should be imposed against this program.

(xxii) Other program 2: Exemption of Import Income Tax under Article 22

a. Submission by Domestic Industry

208. The domestic industry has not alleged existence of this program in the petition.

b. Submission by Government of Indonesia/Other interested parties

209. Under the Director General of Tax Regulation No. 1/PJ/2011, the GOI provides an exemption on final income tax and import income tax to tax payers who (1) face fiscal loss due to certain causes such as a) new tax payer is in investment phase; b) the tax payer is not in the commercial operation; or c) Force Majeure; (2) eligible for fiscal loss compensation and 3) the amount of paid income tax is greater than the payable income tax
210. The tax payers who meet the above criteria may request for the exemption through written application to local tax office along with supporting documents such as the previous year tax notification letter. If granted, the exemption would apply for the final income tax at 10% or income import tax at 2.5% rate and for the given tax year. The exemption of import income tax at 2.5% rate does not confer benefit as it is instalment for annual payable income tax.

Examination by Authority

211. Authority notes that under this program, enterprise which is (1) facing fiscal loss due to certain causes such as new tax payer in investment phase, not in the commercial operation, Force Majeure or (2) is eligible for fiscal loss compensation or 3) Wherein the amount of paid income tax by enterprise is greater than the payable income tax, may apply for the facility. If granted, the exemption would apply for the final income tax at 10% or income import tax at 2.5% rate and for the given tax year.

212. PT IMR ARC received exemption at 2.5% rate. The exemption under this program results in deferment of income tax payment as income tax paid on import is an instalment of annual income tax payment. The program provides for financial contribution in the form of direct transfer of funds. Benefit is equal to the interest paid on the loan obtained for such deferred amount from commercial bank. The Authority holds that countervailing duty should be imposed against this program.

(xxiii) Other Program 3: Investment Facility for Imports of Machinery and Capital Goods

a. Submission by Domestic Industry

213. The domestic industry has not alleged existence of this program in the petition.

b. Submission by Government of Indonesia/Other interested parties

214. Government Regulation No. 81 of 2015 (GR 81/2015) provides for imports of strategic goods, which among others include machineries and factory equipment to be installed and used for production by newly established industry and/or expansion of industry, which may obtain import facility in form of exemption of import duty and VAT exemption.

215. For the import duty exemption, the proposed items and value of the imported goods shall first be proposed to and approved by the supervising agencies, namely the BKPM, whereas for the VAT exemption importing companies may propose and seek approval from the local tax office under the Directorate General of Taxation.

216. Machineries and equipment imported shall only be used by the importing industries (non-transferrable) and for the intended purpose as stated in the application only.

217. There is no duty exemption under the program for PT IMR ARC Steel, Indonesia because even in absence of the program, the imports would have entered Indonesia without import duty pursuant to ASEAN-CEPA.

c. Examination by Authority

218. Authority notes that under this program import of goods are exempted from customs duty and VAT for new units and for units creating expansion. Normal VAT rate in Indonesia is 10%. Even if VAT is payable, tax payers will credit input tax against output tax payment.
219. PT IMR ARC received exemption on its import of capital goods under this program. The claim that imports would have entered Indonesia without import duty pursuant to ASEAN-CEPA is not supported by legal and factual evidence. The exemption of customs duty on import of capital goods results in financial contribution in the form of foregoing of revenue that is otherwise due. The amount of benefit is equal to the amount of customs duty paid on import of capital goods and the amount of customs duty payable in absence of exemption under this program. Exemption from VAT on import of capital goods does not provide financial contribution as it does not result in revenue foregone that is otherwise due. The Authority holds that countervailing duty should be imposed against this program for customs duty exemption on import of capital goods.

Producers/exporters from Indonesia

PT Guang Ching Nickel and Stainless Steel Industry (GCNS)

220. PT Guang Ching Nickel and Stainless Steel Industry (GCNS) is the producer/exporter of subject product in Indonesia. PT GCNS has filed questionnaire response and has provided information regarding the subsidy received by it. Related raw material suppliers in Indonesia PT Tsingshan Steel Indonesia (TSI) and PT Sulawesi Mining Investment have also filed questionnaire response. PT GCNS has exported the subject product to India through related traders namely Golden Harbour International PTE. Ltd., Eternal Tsingshan Group Limited, Hong Kong and through Stratus Steels DMCC, Dubai. All the three related exporters have filed questionnaire responses.
221. PT GCNS is related to other producer/exporters PT. Indonesia Tsingshan Stainless Steel (PT ITSS), and PT. Indonesia Ruipu Nickel and Chrome Alloy (PT IRNC) in Indonesia, who have also filed separate questionnaire responses.
222. Authority has examined the response filed by, PT GCNS, its related raw material suppliers and its related exporters. Upon examination of these response, the Authority notes that the related exporters are also purchasing subject goods from other suppliers in Indonesia for exporting to India. However, the information provided by the related exporters regarding transaction by transaction exports to India does not disclose the name of the producer in Indonesia. Based on the examination of the questionnaire responses, the Authority also notes that in a given export transaction to India, more than one related trader is involved before goods are finally exported to customer in India but no clear export value chain is prescribed or identifiable based on the information provided in the questionnaire response. The Authority is unable to determine specific export price for PT GCNS based on the information provided in its questionnaire response. The questionnaire response by related

exporters have also not provided information in accordance with the PCN finalized by the Authority in this investigation. Thus, the Authority notes that the information provided by PT GCNS and its related exporters is not complete and is deficient on many aspects. However, upon examination of transaction by transaction exports to India provided by PT GCNS, the Authority notes that PT GCNS has exported only one type of grade to India. Authority has accordingly determined export price and landed value for exports to India based on final export price to India by related exporters and has not rejected the information provided in the questionnaire response of PT GCNS and its related exporters entirely.

223. Authority has determined subsidy margin for programs, for which information was provided in the questionnaire response of GCNS and its related raw material suppliers in Indonesia, equal to the benefit received or accrued during the POI. It is noted that PT GCNS and its related raw material suppliers availed benefit under other program concerning exemption from import duty in Bonded Zone. Authority determines that the subsidy programs resulted in the provision of financial contribution in the form of revenue foregone which was otherwise due. As a result, benefit was conferred to PT GCNS as a recipient of this benefit. Subsidy program was also specific because they were limited to certain enterprise including PT GCNS located in Bonded Zone.

224. Authority has also relied on facts available to determine the subsidy margin for provision of raw materials Coal and Nickel ore for less than adequate remuneration by relying on information available publicly.

225. The table below provides name of the subsidy programs and the corresponding subsidy margin.

Program Nos.	Name of the Program	Brief Description	Subsidy Margin %	Subsidy Margin Range
Other Program	Bonded Zone	Exemption from customs duty and income tax on import of capital goods	***	0-5%
Program Nos. 1, 2 & 4	Minimum value addition for export and domestic market obligation requirement	Provision of minerals at less than adequate remuneration	***	15-20%
Total			*** %	15-25 %

PT. Indonesia Tsingshan Stainless Steel (ITSS)

226. PT Indonesia Tsingshan Stainless Steel is the producer/exporter of subject product in Indonesia. PT ITSS has filed questionnaire response and has provided information regarding the subsidy received by it. Related raw material suppliers in Indonesia PT Tsingshan Steel Indonesia (TSI) and PT Sulawesi Mining Investment have also filed questionnaire response. PT ITSS has exported the subject product to India through related traders namely Golden Harbour International PTE. Ltd., Eternal Tsingshan Group Limited, Hong Kong, Hanwa Co. Ltd., Japan and through Stratus Steels DMCC, Dubai. All the four related exporters have filed questionnaire responses.
227. PT ITSS is related to other producer/exporters PT GCNS and PT. Indonesia RuiPu Nickel and Chrome Alloy (PT IRNC) in Indonesia, who have also filed separate questionnaire responses.
228. Authority examines the response filed by, PT ITSS, its related raw material suppliers and its related exporters. Upon examination of these response, the Authority notes that the related exporters are also purchasing subject goods from other suppliers in Indonesia for exporting to India. However, the information provided by the related exporters regarding transaction by transaction exports to India does not disclose the name of the producer in Indonesia. Based on the examination of the questionnaire responses, the Authority also notes that in a given export transaction to India, more than one related trader is involved before goods are finally exported to customer in India but no clear export value chain is prescribed or is identifiable based on the information provided in the questionnaire response. The Authority is unable to determine specific export price for PT ITSS based on information provided in the questionnaire response. The questionnaire response by PT ITSS and its related exporters have also not provided information in accordance with the PCN finalized by the Authority in this investigation. However, upon examination of transaction by transaction exports to India provided by PT ITSS, the Authority notes that PT ITSS has exported only two types of grade to India. Authority has accordingly determined export price and landed value for exports to India based on final export price to India by related exporters and has not rejected the information provided in the questionnaire response of PT ITSS and its related exporters entirely.
229. Authority has determined subsidy margin for programs, for which information was provided in the questionnaire response of PT ITSS and its related raw material suppliers in Indonesia, equal to the benefit received or accrued during the POI. It is noted that PT ITSS and its related raw material suppliers availed benefit under other program concerning exemption from import duty in Bonded Zone. Authority determines that the subsidy programs resulted in the provision of financial contribution in the form of revenue foregone which was otherwise due. As a result, benefit was conferred to PT ITSS as a recipient of this benefit.

Subsidy program was also specific because they were limited to certain enterprise including PT ITSS located in Bonded Zone.

230. Authority has also relied on facts available to determine the subsidy margin for provision of raw materials Coal and Nickel ore for less than adequate remuneration by relying on information available publicly.

231. The table below provides name of the subsidy programs and the corresponding subsidy margin.

Program No.	Name of the Program	Brief Description	Subsidy Margin	Subsidy Margin Range
Other Program	Bonded Zone	Exemption from customs duty and income tax on import of capital goods	***%	0-2%
Program Nos. 1, 2 & 4	Minimum value addition for export and domestic market obligation requirement	Provision of minerals at less than adequate remuneration	***%	15-25%
Total			***%	15-25%

PT. Indonesia RuiPu Nickel and Chrome Alloy (IRNC)

232. PT Indonesia RuiPu Nickel and Chrome Alloy (IRNC) is the producer/exporter of subject product in Indonesia. PT ITSS has filed questionnaire response and has provided information regarding the subsidy received by it. Related raw material suppliers in Indonesia PT Tsingshan Steel Indonesia (TSI) and PT Sulawesi Mining Investment have also filed questionnaire response. PT IRNC has exported the subject product to India through related traders namely Golden Harbour International PTE. Ltd., Eternal Tsingshan Group Limited, Hong Kong Celerity Asia Trade Limited, Hong Kong, Recheer Resources (Singapore) PTE. Ltd., Schuang International Development Limited, Hong Kong and through Stratus Steels DMCC, Dubai. All the related exporters have filed questionnaire responses.

233. PT. IRNC is related to other producer/exporters PT ITSS, PT GCNS in Indonesia, who have also filed separate questionnaire responses.

234. Authority examines the response filed by, PT IRNC, its related raw material suppliers and its related exporters. Upon examination of these response, the Authority notes that the

related exporters are also purchasing subject goods from other suppliers in Indonesia for exporting to India. However, the information provided by the related exporters regarding transaction by transaction exports to India does not disclose the name of the producer in Indonesia. Based on the examination of the questionnaire responses, the Authority also notes that in a given export transaction to India, more than one related trader is involved before goods are finally exported to customer in India but no clear export value chain is prescribed or is identifiable based on the information provided in the questionnaire response. The Authority is unable to determine specific export price for PT IRNC based on information provided in the questionnaire response. The questionnaire response by PT IRNC and its related exporters have also not provided information in accordance with the PCN finalized by the Authority in this investigation. However, upon examination of transaction by transaction exports to India provided by PT IRNC, the Authority notes that PT IRNC has exported only one type of grade to India. Authority has accordingly determined export price and landed value for exports to India based on final export price to India by related exporters and has not rejected the information provided in the questionnaire response of PT IRNC and its related exporters entirely.

235. Authority has determined subsidy margin for programs, for which information was provided in the questionnaire response of PT IRNC and its related raw material suppliers in Indonesia, equal to the benefit received or accrued during the POI. It is noted that PT IRNC and its related raw material suppliers availed benefit under other program concerning exemption from import duty in Bonded Zone. Authority determines that the subsidy programs resulted in the provision of financial contribution in the form of revenue foregone which was otherwise due. As a result, benefit was conferred to PT IRNC as a recipient of this benefit. Subsidy program was also specific because they were limited to certain enterprise including PT IRNC located in Bonded Zone.

236. Authority has also relied on facts available to determine the subsidy margin for provision of raw materials Coal and Nickel ore for less than adequate remuneration by relying on information available publicly.

237. The table below provides name of the subsidy programs and the corresponding subsidy margin.

Program No.	Name of the Program	Brief Description	Subsidy Margin	Subsidy Margin Range
Other Program	Bonded Zone	Exemption from customs duty and income tax on import of capital goods	***%	0-5%
Program Nos. 1, 2 & 4	Minimum value addition for	Provision of minerals at less	***%	15-25%

	export and domestic market obligation requirement	than adequate remuneration		
Total			***%	15-25%

PT IMR ARC Steel. Indonesia

238. PT IMR ARC Steel, Indonesia is the producer/exporter of subject goods in Indonesia. PT IMR ARC has filed questionnaire response and has provided information regarding the subsidies received by it. Indian Coke and Power Pvt. Ltd. is the related importer of PT IMR ARC in India. PT IMR ARC has exported subject goods to related and unrelated importers in India directly, through related exporter IMR Metallurgical Resources AG, Switzerland, and also through unrelated exporters M/s. Century Steel Pte Ltd, Mikas Stainless Steel Pte Ltd , Leo Metals limited, EMlsteel FZE, Amersonic International, DAI ICHI USA, Ltd, SK Networks Co. Ltd., Yangkong Stainless SDN BHD. Unrelated exporters M/s. Century Steel Pte Ltd, Mikas Stainless Steel Pte Ltd., Leo Metals limited, EMlsteel FZE, Amersonic International, DAI ICHI USA, Ltd, Sk Networks Co. Ltd., Yangkong Stainless sdn bhd have not filed questionnaire responses. Questionnaire responses have not been filed by all exporters involved in the exports of goods produced by PT IMR ARC. Therefore, export value chain of goods produced by PT IMR ARC is not complete. The Authority notes that more than 30% of exports to India have been made through unrelated traders. Thus, share of exports to India of unrelated exporters not participating in the investigation constitutes more than 30% of the total volume of exports to India by the respective producer. The Authority is therefore considering producer PTR IMR ARC as non-cooperative and therefore, Authority has not determined subsidy margin for PT IMR ARC.

239. Authority has not determined individual subsidy margin for PT IMR ARC based on information provided in the questionnaire response. Authority has relied on facts available to determine subsidy margin for PT IMR ARC.

PT Bintang Asia Usaha (BAU). Indonesia

240. PT Bintang Asia Usaha (BAU) is the producer/exporter of subject product in Indonesia. PT BAU has filed exporter questionnaire response. PT BAU has claimed that product exported by PT BAU is not covered within the scope of PUC. Authority has examined the response of PT BAU. Authority notes that product exported by PT BAU to India is “Stainless Steel Circles” and is covered within the scope of product under consideration.

241. PT BAU has claimed that it has not received benefit under any subsidy programs. However, the Authority notes that PT BAU is importing raw material stainless steel coils, which is also a product under consideration, for production of stainless steel circles. PT BAU has

noted that no other raw materials are procured either domestically or from other countries for production of stainless steel circles. The production process appended to the questionnaire response also does not specify any substantial production process for production of stainless steel circles from stainless steel coils. Authority notes that PT BAU is only acting as a trader and exporter of goods by performing incremental activity by converting imported product i.e. one form of product under consideration to other form of product under consideration. It cannot be considered as producer of product under consideration. Therefore, Authority holds that there is no requirement for examining actual receipt of subsidies by PT BAU as PT BAU cannot be subject to individual subsidy margin rate meant for producers of flat rolled products of stainless steel in Indonesia.

Summary of Subsidy Programs for Indonesia

242. There are three groups of participating producers/exporters from Indonesia. The first group comprises of three related producers in Indonesia namely PT GCNS, PT ITSS and PT IRNC and their related raw material suppliers and related traders/exporters. The second group comprises of producer PT IMR ARC, its related exporter IMR Metallurgical Resources AG in Switzerland and its related importer in India Indian Coke and Power Pvt. Ltd. The third group comprises of producer/exporter PT BAU, Indonesia. Authority has determined subsidy margin for first group only based on information provided in their questionnaire responses.
243. Countervailing duty for all other producers/exporters from Indonesia has been determined based on the highest of the subsidy margins for the cooperating parties and based on facts available.

Program No.	Name of the Program	Brief Description	Subsidy Margin	Subsidy Margin Range
Other Program	Bonded Zone	Exemption from customs duty and income tax on import of capital goods	***%	0-5%
Other Program	Exemption from Income Tax on Raw Materials	Exemption from income tax on import of raw materials	***%	0-5%
Program Nos. 1, 2 & 4	Minimum value addition for export and domestic market	Provision of minerals at less than adequate remuneration	***%	15-25%

	obligation requirement			
Program No. 9	Export Financing from Indonesia Exim Bank	Direct transfer of funds in form of loans from state owned banks/public bodies	***%	5-10%
Total			***%	20-30%

G. INJURY ASSESSMENT AND CAUSAL LINK

G.1. Submissions by Domestic Industry

244. The following submissions have been made by the Domestic Industry with regard to injury issues:

- a. Demand or apparent consumption of the product concerned in India is defined as the sum of domestic sales of Indian producers and imports from all other countries. Production/sales of those producers whose input and output both are within the scope of product under consideration in the present petition is required to be ignored. There has been increase in demand throughout the injury period
- c) There is significant increase in imports from the subject country throughout the injury period. Imports were only 93 MT in the base year and the same have increased to 76,102 MT in the POI. Thus, imports have increased by more than 700 times over the injury period
- d) Market share in imports from subject country was almost NIL in the base year and the same increased to 17% of total imports in the POI. Imports have not only increased in absolute terms but have also increased in relation to production, consumption, sale and total imports in the same proportion.
- e) Subject imports constituted only 0.01% of production in the base year which has increased to 5.29% in the POI.
- f) Similarly, subject imports did not constitute any percentage of consumption of the domestic industry and it was merely 0.17% in 2016-17 which increased to 2.95% in the POI. Subject imports were only 0.01% of sales of domestic industry in the base year, which has now increased to 23%.
- g) Price undercutting should be determined considering only those import transactions whose landed price of imports is below selling price of the domestic industry. Petitioner's concern is against injurious imports.
- h) Authority should consider only those transactions that are below non-injurious price for calculation of injury margin
- i) The cost of production has increased over the current injury period in view of significant increase in input prices. Prices of these major inputs such as scrap, nickel,

Ferro alloys have increased over the injury period thus resulting in increase in direct costs over the injury period. In particular, between POI and preceding year, there have been significant increase in prices of inputs and resultantly in the material costs. However, the selling prices have not increased in proportion to the increase in raw material cost

- j) The capacity with the domestic industry has remained the same over the injury period. The domestic industry along with the other producers in India have sufficient capacity to cater to the domestic demand. Thus, imports to this extent are not necessary.
- k) The production and sales of the domestic industry has increased throughout the injury period. Subsidized imports from Indonesia has prevented the domestic industry from increasing its domestic sales to the extent of production, thereby forcing the domestic industry to continue to resort to exports.
- l) Domestic industry is not able to utilise its capacity to the fullest. The domestic industry is exporting the product at significant financial losses in spite of adequate demand in the domestic market. The only reason for the domestic industry to export the product is subsidised imports accounting for significant share of the market demand and resultantly taking away market share from the domestic industry
- m) The domestic industry was forced to reduce prices in view of the significant price undercutting being faced.
- n) The profits of the domestic industry increased in 2017-18. However, it declined significantly in the POI. The cash profits and return on investments have followed the same trend as that of profits. Cash profits and return on investments have declined significantly in the POI.
- o) The market for the product was predominantly dictated by the Chinese prices up to the imposition of CVD. The domestic industry suffered significant price injury as a result of subsidized Chinese imports. The industry had hoped to improve its prices and profitability with the imposition of CVD. This did happen to some extent in 2017-18. However, this remained short lived in view of imports of subsidized goods from Indonesia.
- p) Petitioners have lost revenue and consequently profits by undertaking exports instead of selling in the domestic market.
- q) Employment level have remained in the similar region, while wages paid have increased. Petitioners have not claimed any injury on this account.
- r) The growth of the domestic industry in respect of volume parameters has remained adverse. The domestic industry expected to gain the market share vacated by China pursuant to imposition of CVD duties. However, subsidized imports from the subject country has led to the adverse impact on the production, sales and utilization of the domestic industry. Further, growth in terms of the price parameters has been negative in the POI.
- s) Imports from countries other than the subject country are either negligible or are already attracting Anti-dumping duty/ countervailing duty or are being examined under antidumping investigation.

- t) There is no decline in demand of the product over the injury period. Decline in demand is not a possible cause of injury to the domestic industry.
- u) Performance of other products being produced and sold by the Domestic Industry has no impact over reported performance of the product. Availability of subsidized imports in the market is the sole reason for the present injury being suffered by the domestic industry.
- v) There is significant difference between the prices offered by the domestic industry and foreign producers. Resultantly, imports have increased significantly over the injury period.
- w) The price undercutting has prevented the domestic industry from raising prices to the extent of cost increases. Price suppression has led to decline in profits of the domestic industry
- x) Growth of the domestic industry has become negative in respect of a number of price parameters in the proposed POI, which is due to subsidized imports in the country.
- y) Chinese company Tsingshan has invested heavily in a plant with mammoth capacity (much more than the demand in Indonesia).
- z) The market share of imports from subject country has increased
- aa) The rate of increase in imports is also high. Imports from subject country have increased by around 700 times since the base year. It is likely that the imports will increase further in the future.
- bb) The Tsingshan group alone has set up a plant with 3 million tons capacity. Tsingshan group has made this massive investment, having regard to global market. The huge capacities coming up in Indonesia are primarily targeted at other markets as the consumption of stainless steel in Indonesia is extremely low and is likely to further disturb the global trade balance
- cc) The major centres of stainless-steel consumption are China, EU, Japan, Korea and USA and these countries are already riddled with stagnant demand & excess production and surplus capacity which leaves very little space for absorbing additional volumes.
- dd) Comparison of selling price with landed price of import shows that the imports are undercutting the prices of the domestic industry. These low-priced imports are leading to price suppression in the market. Thus, imports are likely to increase further in case anti subsidy measures are not imposed.
- ee) Landed value of imports are at a price much lower than the selling price and cost of sales of the Domestic Industry. The producers from subject country are finding the Indian market quite attractive in terms of prices. Imports are entering at prices that are having a significant suppressing effect on domestic prices and would likely increase demand for further imports. India is not only the second largest producer & consumer of stainless steel but is also the only market where stainless-steel consumption is growing at a CAGR of 9-10% per annum. As against a global per capita stainless-steel consumption of 6 kgs, the figure of per capita consumption in India is only 2kgs, which clearly indicates that growth is expected to continue in the same trajectory. This makes India a very obvious target for the stainless-steel capacities set up in Indonesia.

- ff) Annexure III of the AD rules is not applicable in the antisubsidy investigation, thus, it is requested that the Authority should consider actual cost of production as permitted under CVD laws.

G.2. Submissions by other interested parties

245. Data of Jindal Steelway has not been considered for determining injury or the standing. This implies that injury has been claimed by the Domestic Industry for the further processed products without the data relating to injury regarding such products being on record.
246. Authority should ensure that there is normation for the consumption norm of raw material for computation of non-injurious price.
247. Sufficient protection has been ensured to the domestic industry on import of subject goods through several anti-dumping investigations. Also, subject goods are coming at fairly lower prices from the countries under investigation in the anti-dumping duty case as compared to the prices from the subject country in the present case.
248. There is no injury to the domestic industry because economic indicators shows positive performance. There is also no causal link between imports from Indonesia and injury to the domestic industry. Import from Indonesian only represents 3 percent of Indian total consumption, while the Petitioner controls more than 80 percent of Indian domestic consumption. Domestic selling price has increased more than the cost of sales during the injury investigation period. Authority should examine development in technology and captive sales as other factors causing injury to the domestic industry.
249. In flat rolled products of stainless steel, there are variety of grades. While computing the injury margin in the aforesaid manner, it is important to have an apple- to apple comparison between grades. It is important to establish the equivalence of grades through a comparison of the chemical composition or specification.
250. Authority should determine whether imports as well as domestic sales have similar distribution of quantities between different thickness categories because a lower thickness will have a higher cost as well as higher price.
251. The imports from Indonesia are of mostly 200 series and even within 200 series, there are a very limited range of grades which have been offered by Indonesian mills. The domestic industry cannot claim injury on the grades which were never supplied.

G.3. Examination by the Authority

252. The submissions made by the interested parties have been analysed by the Authority to examine the injury to the domestic industry on account of subsidized imports from the subject country.

253. Rule 13 of the Rules deals with the principles governing the determination of injury which is as follows:

“13. Determination of injury.-

(1) In the case of imports from specified countries, the designated authority shall give a further finding that the import of such article into India causes or threatens material injury to any industry established in India, or materially retards the establishment of an industry in India.

(2) Except when a finding of injury is made under sub-rule (3), the designated authority shall determine the injury, threat of injury, material retardation to the establishment of an industry and the casual link between the subsidized import and the injury, taking into account inter alia, the principle laid down in Annexure I to the rule.

(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured if –

(i) there is a concentration of subsidized imports into an isolated market, and

(ii) the subsidized imports are causing injury to the producers of almost all of the production within such market.”

H. Volume Effect of subsidized imports and Impact on domestic Industry

(i) Assessment of Demand

254. Demand or apparent consumption of the product concerned in India is defined as the sum of domestic sales of Indian producers and imports from all other countries. It is noted that the product under consideration is being imported into India in cold and hot rolled conditions. Some producers of cold rolled products procure hot rolled either from the domestic market or from imports. Therefore, sales of these producers have not been counted to determine consumption of the product under consideration in India in order to avoid double accounting of production. It is seen that demand has increased over the injury period and POI. The demand so assessed is as follows:

Particulars	UOM	2015-16	2016-17	2017-18	POI
Subject Country Imports	MT	93	4,024	8,601	76,102
Trend	Index	100	4,327	9,248	81,830
Country attracting CVD (China)	MT	235,949	241,703	152,821	62,705
Trend	Index	100	100	102	65
Countries attracting ADD	MT	39,435	30,839	34,829	59,232

Particulars	UOM	2015-16	2016-17	2017-18	POI
Trend	Index	100	78	88	150
Countries under ongoing ADD Investigation (except Indonesia and China)	MT	209,705	185,680	243,335	243,216
Trend	Index	100	89	116	116
Other Countries	MT	9,637	6,184	9,651	158
Trend	Index	100	64	100	2
Domestic sales by DI	MT	***	***	***	***
Trend	Index	100	107	131	133
Domestic sales by other Indian Producers	MT	***	***	***	***
Trend	Index	100	101	110	110
Total Demand	MT	***	***	***	***
Trend	Index	100	102	114	115

It is noted that the demand of the subject goods follows increasing trend throughout the injury period.

(ii) Imports

255. With regard to volume of the subject imports, the Authority is required to consider whether there has been a significant increase in subsidized imports either in absolute terms or relative to production or consumption in India.

256. The Authority notes that the volume of subject imports from the subject country has increased very significantly in POI as compared to previous years, as is obvious from the table below:

Particulars	UOM	2015-16	2016-17	2017-18	POI
Import Volume					
Subject Country-Indonesia	MT	93	4,024	8,601	76,102
Country attracting CVD(China)	MT	235,949	241,703	152,821	62,705
Countries attracting ADD	MT	39,435	30,839	34,829	59,232
Countries under ongoing ADD Investigation (except Indonesia and China)	MT	209,705	185,680	243,335	243,216
Other Countries	MT	9,637	6,184	9,651	158
Total	MT	494,819	468,429	449,237	441,412
Share in Imports					
Subject Country-Indonesia	%	0%	1%	2%	17%
	Range	0%	0-10%	0-10%	15-25%
Country attracting CVD(China)	%	48%	52%	34%	14%
	Range	45-55%	50-60%	30-40%	10-20%
Countries attracting ADD	%	8%	7%	8%	13%
	Range	5-15%	5-15%	5-15%	10-20%

Countries under ongoing ADD investigation (except Indonesia and China)	%	42%	40%	54%	55%
	Range	40-50%	35-45%	50-60%	50-60%
Other Countries	%	2%	1%	2%	0%
	Range	0-10%	0-10%	0-10%	0-10%
Total	%	100%	100%	100%	100%

257. Imports from Indonesia increased from 93 MT in the year 2015-16 to 76,102 MT in the POI. The Authority observed that the trend of import in relation to production and consumption in India follows the same trend as imports in absolute terms. The imports in relation to production and consumption in India has increased significantly in POI as compared to previous years.

Particulars	UOM	2015-16	2016-17	2017-18	POI
Subject Country Imports in relation to					
Indian Production	%	***	***	***	***
	Range	0%	0-10%	0-10%	0-10%
Consumption	%	***	***	***	***
	Range	0%	0-10%	0-10%	0-10%
Total imports	%	0.02%	0.86%	1.91%	17.24%
	Range	0%	0-10%	0-10%	15-20%

258. Share of subject imports in total domestic production increased from 0% to 0-10% and share of imports in total consumption increased from 0% to 0-10%.

(iii) Market Share

Particulars	UOM	2015-16	2016-17	2017-18	POI
Share in Demand					
Subject Country-Indonesia	%	***	***	***	***
Country attracting CVD(China)	%	***	***	***	***
Countries attracting ADD	%	***	***	***	***
Countries under ongoing ADD investigation (except Indonesia and China)	%	***	***	***	***
Other Countries	%	***	***	***	***
DI domestic Sales	%	***	***	***	***
	Index	35-45%	40-50%	45-55%	45-55%
Other Indian Producers	Index	35-45%	35-45%	35-45%	35-45%
Total Demand	%	100%	100%	100%	100%

259. It is seen that the market share of imports from the subject country was almost NIL in the base year and the same has increased to 0-10% during POI. The market share of domestic industry has also increased during POI.

I. Price effect of subject imports and impact on domestic industry

260. With regard to the effect of subsidized imports on prices, it is required to be examined whether there has been a significant price undercutting by the subsidized imports as compared with the price of the like product in India, or whether the effect of such subsidized imports is otherwise to depress prices to a significant degree or prevent price increase, which otherwise would have occurred, to a significant degree. For the purpose of this analysis, the weighted average cost of production (COP), weighted average Net Sales Realization (NSR) of the domestic industry have been compared with the landed price of imports from the subject country.

(i) Price Undercutting

261. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the price undercutting has been worked out by comparing the landed price of imports with the selling price of the domestic industry during the injury period. The price undercutting has been determined for the POI separately for each PCN produced by the domestic industry and thereafter for the product under consideration as a whole.

Particulars	UOM	2015-16	2016-17	2017-18	POI
Import Volume from subject country	MT	93	4,024	8,601	76,102
Trend	Index	100	4326	9254	81,830
Landed price of imports	Rs/MT	20,635	100,572	103,938	137,996
Trend	Index	100	487	503	668
Net Sales Realization	Rs/MT	***	***	***	***
Trend	Index	100	109	118	149
Price undercutting	Rs/MT	***	***	***	***
Trend	Index	100	10	16	12
Price undercutting	%	***	***	***	***
Price undercutting Range	%	380-390%	5-15%	10-20%	5 -15%

262. The Authority notes that the landed prices of the subject goods were below the selling price of the domestic industry showing price undercutting being caused by the subsidized products from the subject country during the injury investigation period including the POI.

(ii) Price Underselling/ Injury Margin

263. The Authority has worked out the non-injurious prices of the subject goods and compared the same with the landed value of the imported goods to arrive at the extent of price underselling. The price underselling/ injury margin has been determined separately for each PCN and thereafter for the product under consideration as a whole.

264. It is noted from the table below that the price underselling/ injury margin is positive, indicating that the imports have entered the market at injurious prices.

265. The injury margin for cooperative producers/exporters and others are evaluated as under: -

S.No.	Producer	Landed Value	Injury Margin	Injury Margin	
		US\$/MT	US\$/MT	%	Range
1	PT. Indonesia Guang Ching Nikel and Stainless Steel Industry PT. Indonesia Ruipu Nickel and Chrome Alloy; PT. Indonesia Tsingshan Stainless Steel (Tsingshan Group)	***	***	***	20-30
2.	All Others	***	***	***	20-30

(iii) Price Suppression and Depression

266. In order to determine whether the subsidized imports are suppressing or depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree, the Authority considered the changes in the costs and prices over the injury period. The position is shown in the table below:

Particulars	UOM	2015-16	2016-17	2017-18	POI
Cost of Sales	Rs/MT	***	***	***	***
Trend	Indexed	100	99	104	116
Selling Price	Rs/MT	***	***	***	***
Trend	Indexed	100	109	118	129
Landed Price	Rs/MT	20,635	100,572	103,938	137,996
Trend	Indexed	100	487	504	669

267. From the above table, it is clear that the landed value of imports from the subject country have shown an upward trend in injury period as compared to the previous years. The Authority further notes that cost of sales and the selling price of the domestic industry has increased during the POI as compared to the base year.

II. Economic Parameters relating to the Domestic Industry

268. The Rules require that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the Rules further provide that the examination of the impact of the subsidized imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Accordingly, performance of the domestic industry has been examined over the injury period.

(i) Production, Capacity, Capacity Utilization and Sales

269. Position of the domestic industry over the injury period with regard to Production, Capacity, Capacity Utilization and Sales was as follows:

Particulars	UOM	2015-16	2016-17	2017-18	POI
Capacity	MT	1,600,000	1,600,000	1,600,000	1,600,000
Trend	Index	100	100	100	100
Production	MT	***	***	***	***
Trend	Index	100	112	127	125
Capacity Utilization	%	***	***	***	***
Trend	Index	100	111	126	125
Sales Volume Total	MT	***	***	***	***
Trend	Index	100	112	130	126

270. The Authority notes that-

- a) The capacity with the domestic industry has remained the same over the injury period.
- b) The production, sales of the domestic industry and capacity utilisation have increased throughout the injury period with marginal decline in POI.

(ii) Profitability, return on investment and cash profits

271. Position of the domestic industry over the injury period with regard to profitability, ROI and cash profit are as follows:

Particulars	UOM	2015-16	2016-17	2017-18	POI
Cost of Sales	Rs/MT	***	***	***	***
Trend	Indexed	100	99	104	116
Selling Price	Rs/MT	***	***	***	***
Trend	Indexed	100	109	118	129
Profit	Rs/MT	***	***	***	***
Trend	Indexed	-100	-19	9	-4
Cash Profits	Rs Lacs	***	***	***	***
Trend	Indexed	-100	19	73	47
PBIT	Rs Lacs	***	***	***	***
Trend	Indexed	-100	76	133	107
Return on Investment	%	***	***	***	***
Trend	Indexed	-100	82	138	120

272. From the above information, the Authority notes that:

- The profits of the domestic industry increased in 2017-18, but it turned into losses in the POI.
- The cash profits, profit before interest & tax and return on investments have followed the same trend as that of profits. Cash profits, profit before interest & tax and return on investments increased in 2017-18, but declined thereafter in the POI.

(iii) Market share

273. Position of the domestic industry over the injury period with regard to market share in demand are as follows:

Particulars	UOM	2015-16	2016-17	2017-18	POI
Market Share in Demand					
Subject Country-Indonesia	%	0%	0%	0%	3%
Country attracting CVD(China)	%	10%	10%	6%	2%
Countries attracting ADD	%	2%	1%	1%	2%
Countries under ongoing ADD Investigation (except Indonesia and China)	%	9%	8%	9%	9%
Other Countries	%	0%	0%	0%	0%
DI domestic Sales	%	35-45%	40-50%	45-55%	45-55%
Other Indian Producers	%	35-45%	35-45%	35-45%	35-45%
Total Demand	%	100%	100%	100%	100%

274. The market share of subject imports has increased during the POI as compared to the previous years.

(iv) Employment, Wages and Productivity

Particulars	UOM	2015-16	2016-17	2017-18	POI
No of Employees	Nos	***	***	***	***
Trend	Indexed	100	102	107	107
Salaries & Wages	Rs Lacs	***	***	***	***
Trend	Indexed	100	111	162	157
Salaries & Wages per Unit	Rs./MT	***	***	***	***
Trend	Indexed	100	99	128	125
Productivity Per Employee	MT/No	***	***	***	***
Trend	Indexed	100	109	119	117
Productivity Per Day	MT/Day	***	***	***	***
Trend	Indexed	100	112	127	125

275. Salaries & wages per unit and productivity per employee and productivity per day has marginally declined during POI as compared to previous year.

(v) **Inventories**

276. Inventories with the domestic industry have declined in the POI.

Particulars	UOM	2015-16	2016-17	2017-18	POI
Inventory	MT	***	***	***	***
Trend	Indexed	100	107	97	83

(vi) **Ability to raise capital investment**

277. The Petitioner has submitted that ability to raise fresh investment are taken considering present and potential demand for the product under consideration. Long term viability of the product under consideration is dependent upon strong profitable business, which is impacted due to subject imports.

III. Causal link

278. The Authority has examined whether other known factors listed below could have caused injury to the domestic industry:

a. Volume and prices of imports from third countries

279. The imports from other countries are either attracting anti-dumping duty or under antidumping investigation or are at higher prices.

b. Contraction of demand and changes in the pattern of consumption

280. The Authority notes that there is no contraction of demand. On the contrary, overall demand for subject goods has shown improvement over the injury period. The pattern of consumption

with regard to the product under consideration has not undergone any change. Changes in the pattern of consumption could not have contributed to the injury to the domestic industry.

c. Trade restrictive practices of and competition between the foreign and domestic producers

281. There is no known trade restrictive practice which could have contributed to the injury to the domestic industry.

d. Developments in technology

282. None of the interested parties has furnished any evidence to demonstrate any change in the technology that could have caused injury to the domestic industry.

e. Export performance of the domestic industry

283. The injury information has been considered separately for domestic and exports, to the extent the same could be segregated.

f. Performance of other products being produced and sold by the domestic industry

284. The Authority has considered data only in relation to the product under consideration.

IV. Conclusion on Causal Link

285. The Authority notes as under:

- a) Subsidized imports from the subject country are coming into India in substantial volumes during the POI.
- b) Imports are undercutting the prices of the Domestic Industry during the injury period.
- c) Performance of the domestic industry has deteriorated during POI in terms of profits and ROI. Cash profits, profit before interest & tax and return on investments increased in 2017-18, however declined in the POI.

286. The Authority therefore holds that there is causal link between the subsidization of the subject goods and the injury suffered by the domestic industry.

V. Threat of Material Injury

287. The provisions relating to threat of material injury are provided in para 3 of Annexure I of Subsidy Rules which provide as follows:

3. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of a material injury, the designated authority shall consider, inter alia, such factors as:

- i. *nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;*
- ii. *a significant rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importation;*
- iii. *sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased subsidized exports to Indian market, taking into account the availability of other export markets to absorb any additional exports;*
- iv. *whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further Imports; and*
- v. *Inventories of the product being investigated.*

288. With respect to threat of material injury, the Authority notes as under:

- a) There is significant difference between the prices offered by the domestic industry and Foreign Producers. There are countervailable subsidies which are being provided to the producers of the product under consideration in Indonesia. The subsidy margins for all of the co-operating producers/exporters from Indonesia are above de-minimis.
- b) The Authority has examined the capacity details of the co-operative producers/exporters from the subject country and it is noted that no significant capacity has been added by any of the co-operative producers/exporters.
- c) Imported product is undercutting the prices of the domestic industry. Resultantly, the domestic industry has been prevented from charging fair prices.
- d) Authority has examined the inventory of the co-operative producers/exporters from the subject country and it is noted that none of them hold any significant inventory of the subject goods.

I. POST DISCLOSURE COMMENTS

289. Post disclosure comments have been received from interested parties as under:

Submissions made by the domestic industry

290. PT Indonesia Tsingshan Stainless Steel, PT Indonesia Guang Ching Nickel and Stainless Steel Industry and PT Indonesia RuiPu Nickel and Chrome Alloy have been examined individually for the purpose of determining injury and subsidy margin. All three producers are part of one group. Thus, there should be one duty for group as a whole.

291. The Authority may kindly examine the role of PT Bintagdelapan Mineral, who has filed exporter questionnaire response and is related to Tsingshan group. The response filed by Tsingshan group should be rejected on account of suppression of facts. The Indonesian producers and the Government of Indonesia have suppressed vital facts on operation of export restraints.
292. IMIP has not filed questionnaire response. Total cost incurred for the park till 2016 is US\$ 2.5 billion. The park has provided all relevant facilities for production of the product under consideration. The producers of the product under consideration are de-facto sole beneficiary of this facility. Land of 2000 hectare has been provided to IMIP, a Chinese Joint venture to establish stainless steel fully integrated plant. Sulawesi is nickel rich area and the same was given to IMIP at less than adequate remuneration. The Authority should quantify benefit received to IMIP, which is embedded in the cost of production of the producers.
293. EXIM Bank provides regular financing to the mining sector. PT Sulawesi Mining Investment is involved in nickel mining. Applicants believe that these companies have availed preferential financing from the EXIM bank. China Development bank (CDB), Asian Development Bank and EXIM Bank China has provided huge financing to the park and the companies under the park for developing the nickel and stainless steel facilities.
294. Huge loans and bank guarantee by Chinese banks should be countervailed. These include US\$1.22 billion of funding for the park for three manufacturing plants and two new coal-fired electricity generating facilities constructed on the 2,000-hectare site, establishment of Sulawesi mining investment costing US\$628 million. Total investment of US\$628 million, was made for GCNS which was largely sourced from the CDB. The stainless-steel slab and captive power plant, the final project of the first development phase, was backed by Indonesia Tsingshan Stainless Steel, with the CDB covering \$570 million of the \$800 million overall cost of the facility. By the end of September 2016, the total investment in the park was around \$2.5 billion.
295. Regulation no 81/2015 provides various tax exemption to Industrial Zones, Morowali park is one of the Industrial parks entitled to certain tax benefits such as net income tax reduction of 5% per year over six years, as well as an accelerated depreciation and amortization of assets and a 10% reduction on the tax rate on dividends. The possible compensation of losses is extended to ten year.
296. The Regulation also provides VAT exemption on machines and equipment and import duties exemption on machinery and goods for a period of four years, further extendable by one year. The benefits are being provided to all the companies situated in that industrial development park.
297. The response of Tsingshan group should also be rejected because IMIP a related party and the company which is crucial for quantifying benefits, has not filed response. That IMIP is related to Tsingshan has been concluded by European Commission. The applicants have also filed

- sufficient evidence on record for the same. The total amount, till 2019 invested in the park is USD 7 billion.
298. The park has various facilities required for a fully integrated stainless steel plant starting from nickel smelter to coal fired power plant to seaport, residential quarter for workers etc. The infrastructural development made by the Indonesian government for the park does not fall under the general infrastructural because the same has been specifically for IMIP.
299. EXIM bank Indonesia has disbursed a huge amount for development of IMIP, since IMIP did not file response, same could not be quantified. IMIP has filed questionnaire response in CVD investigation initiated by European Union for Stainless steel HR products.
300. Exporters have claimed excessive confidentiality and has filed the response in contravention to the trade notice 10/2018. Also, they have given a standard reply for the programs as not applicable and therefore no benefit is availed.
301. Most of the submissions made by the Government of Indonesia has been dealt by the Authority in the disclosure statement. Still they have commented that the Authority has not dealt with the submissions filed by them. A clear reading of the disclosure statement shows that all the submissions made by the Indonesian Government have been addressed.
302. In their comment the Indonesian Government is completely silent about schemes and non-filing of response by IMIP or Government's involvement in development of IMIP.
303. Authority has rightly clubbed program no 1,2 and 4 as they all deal with export restraint of coal and nickel. There is no bar in clubbing programs under CVD Rule.
304. The European Union, in an anti-subsidy investigation concerning on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) has held that export restraints are countervailable subsidies. The facts of the present case are very similar to the EU case and the Authority is requested to follow the same view as the European Commission
305. Authority has correctly observed that by imposing significant export restraints and other regulations relating to nickel, coal and scraps, the Govt. of Indonesia entrusts or directs the producers of these raw materials to provide them to the Indonesian stainless steel producers, directly or indirectly, at less than adequate remuneration within the meaning of Articles 1.1 (a) (1)(iv) of the SCM.
306. The injury parameters listed under the law is the minimum list of parameters and not the maximum list. The Designated Authority should examine all the other factors demonstrating injury such as (a) the fact that the domestic industry is in the process of recovering from the past ill effects of dumping and subsidised imports, (b) domestic industry being constrained to

undertake less viable exports, (c) comparison of performance of "other products" and "product under consideration" shows ill effect of dumping.

307. To examine the suppressing or depressing effects of imports in general, the cost and price of the domestic industry are compared but that is not the true representative of the facts always. In the present case, the price moves in tandem with the raw material prices. The Authority, in order to examine the effect of suppression or depression, may kindly compare the movement of costs on account of raw materials and price of the product.
308. The price undercutting and injury margin should be considered only for those import transactions whose landed price of imports is below selling price and non-injurious price of the domestic industry respectively, as the industry's concern is against injurious imports, and not non-injurious imports.
309. Domestic industry was earlier suffering from the effect of dumped and subsidized imports from China. After imposition of CVD measures and final findings of anti-circumvention case, the domestic industry was in the process of recovering from the ill effects of subsidized imports and resultantly the prices and ROI should have increased more than the increase in the cost of sales. By the time the domestic industry recovered from the ill effects of past dumping and subsidized imports, the prices were suppressed in the POI.
310. The domestic industry is exporting the product at financial losses in spite of adequate demand in the domestic market. The comparison of performance of domestic industry for (a) company as a whole and (b) product not subject to investigations, further shows the effect of subsidized import on the domestic industry. The performance of domestic industry has shown improvement in respect of products not under consideration and has shown deterioration in respect of product under consideration. This clearly establishes both injury as well as causal link.
311. Macro parameters of Indian industry will show that two third of the stainless steel capacity is with MSME and their capacity utilization is worse than the applicants. The market share is stagnant.
312. Imports are not necessary, as there is no demand supply gap. There is sufficient capacity with Indian Industry and MSME and other producers are suffering the worst.
313. Imposition of anti-subsidy measure would be in the interests of consumers as well. It is in the consumers' interest to have a competitive domestic industry capable of supplying the product to the consumers in competition to fair priced imports. The eventual impact on the cost of the end products is insignificant.
314. Mammoth capacities created by Indonesian producers on one hand and their high export orientation on the other establish that there is threat of material injury.

315. The domestic demand for the product under consideration in Indonesia is hardly in the region of 1.7 lacs MT whereas the capacity in Indonesia is around 45 lacs MT. It would be seen that capacities in Indonesia is around 25 times the domestic consumption in Indonesia and around twice the domestic demand in India.
316. Indonesia has caused further trade distortion in stainless steel globally. Out of almost 18 trade remedial measures in force (or being investigated) since 2018, 9 investigations i.e., more than 50 percent investigations involve Indonesia.
317. The producers in the subject country are massively export oriented units. Market intelligence suggests that almost 70% of the stainless steel produced by ITSS is meant for exports.

Submissions made by other interested parties

318. Programs 1, 2 and 4 are independent of each other and are distinct in operation and function. They cannot be combined. There is no justification in the disclosure statement to combine these schemes.
319. The issue in subsidy programs 1, 2 and 4 does not pertain to the subsidization on the purchase of coal or nickel but the issue is with respect to the availability of coal and nickel at less than adequate remuneration. Therefore, the issue of the respondents providing any information based on their purchase of coal or nickel does not arise.
320. Contrary to the observation of the Authority, Program 4 on DMO does not apply to Nickel or mineral products and it applies only to Coal. Program 4 cannot be construed as a series of programs with Program 1 because it serves a different purpose. The purpose of Program 4 is to avoid a shortage of coal for public electricity. coal in the DMO scheme is mainly used as material to generate electricity and not as raw materials to produce Stainless Steel.
321. It is wrong assumption of Authority that Coal and Nickel are available to the producers of the product under consideration at less than adequate remuneration.
322. The application of facts available, in terms of Rule 8, is permitted only when an interested party refuses access to or fails to provide any information in the time limits. The disclosure statement does not even identify at what juncture the Authority sought any information from producers/exporters with respect to programs 1, 2 and 4.
323. Benchmark prices used for computing the benefits conferred under programs 1, 2 & 4 is a violation of the principles of natural justice and the rights of the producers/exporters to appropriately defend their interest in the investigation.
324. Submission of producers/exporters and Government of Indonesia that no benefit has been received under Program 9 concerning provision of loans should have been accepted by the

Authority in absence of any evidence to the contrary. Moreover, when the program only pertains to the loans provided by the EXIM bank of Indonesia, the loans provided by any other bank cannot be included while making an examination under program 9. Therefore, the loans by Chinese bank or any bank from any other country cannot be considered for examination of benefits or for the alleged subsidization for exports from Indonesia.

325. Products which are not manufactured by either JSL or JSHL cannot be included in the investigation. If products manufactured by Jindal Steelway are included, the Authority should give specific finding that any company carrying out incremental activities can be included in the investigation for increasing the scope of PUC even if their data relating to injury or causal link is not considered.
326. The respondents note that the product scope proposed in paras 26 and 27 of the disclosure statement is much wider than the product scope determined in the anti-dumping duty investigation. If the Authority has already determined in the anti-dumping duty investigation that certain products are not included, such product types should be excluded from the scope of product under consideration.
327. Jindal Saw and JQTL have the power to participate in the operating and financial policy decisions of the applicants in terms of the applicable accounting standards. It was incumbent upon the Authority to seek clarification from SEBI and MCA in order to go to the root of the matter and not merely rely upon the self-serving statements of the applicants.
328. Anti-subsidy investigation conducted by the European Union against the imports of certain hot rolled stainless steel sheets and coils from Indonesia has been terminated without imposition of any anti-subsidy duties.
329. If response of producers/exporters are used for determining subsidy margin for other programs, it can also be used to determine individual subsidy margin for such producers/exporters.
330. Producers/exporters who purchase HR steel to produce CR steel should be treated differently because it cannot be presumed that benefits received by HR steel producers were passed on to CR steel producers.
331. It is mandatory to determine individual subsidy margin for producers/exporters in accordance with Rule 19(2) of CVD Rules and Article 19.3 of SCM Agreement. Thus, Authority should reverse its observations in para 87 of the Disclosure statement and determine individual subsidy margin for PT IMR ARC.
332. Evidence showing that no benefit was received pursuant to program 9 by producers/exporters was submitted after preliminary findings and it should not be considered as evidence submitted at belated stage.

333. Evidence was provided regarding nil rate of customs duty and existence of ASEAN-CEPA. Therefore, Authority should not have countervailed exemption of customs duty on import of capital goods under other program 3. USDOC determined in investigation on *Citric Acid and Certain Citrate Salts from Thailand* that amount of duty respondents would have paid on Chinese origin machinery even in absence of the program would have been the same because of existence of FTA. Thus, no countervailable benefit for the imports of Chinese-origin and machinery was determined by USDOC.
334. The Authority has not determined individual dumping margin for PT IMR ARC due to non-cooperation from unrelated traders of PT IMR ARC. Non-cooperation by unrelated exporters only affect determination of export price and not the subsidy claims. Therefore, the Authority should have determined individual subsidy margin for PT IMR ARC.
335. PT IMR ARC STEEL is only a small producer and was not placed in any such position to avail subsidies as determined by the Authority.
336. PT BAU is in fact a producer of cold rolled steel since BAU has made a substantial value addition to its raw materials. Certificate of origin issued in accordance with AIFTA and change in HS code from raw material used in the production to the finished product shows that there is substantial value addition by PT BAU.

Examination by Authority

337. The Authority has examined the post disclosure comments by the interested parties including reiterations which have already been examined suitably and addressed adequately in the relevant paragraphs of these final findings. The issues raised for the first time in the post disclosure comments/submissions by the interested parties and considered relevant by the Authority are examined below.
338. As regard the argument that product types produced by Jindal Steelways should be excluded, it is noted that the domestic industry during investigation has contended that the sole reason for adding Steelways as an applicant was to demonstrate that the industry produces and supplies these types. It is noted that the product supplied by Steelways is not a distinctly different product but only a different form of PUC made through an incremental process.
339. As regards the argument that product scope is wider in the present investigation as compared to the anti-dumping investigation, it is noted that certain product types have been excluded in the anti-dumping investigation which were product types for which specific exclusions were sought by producers/exporters from different subject countries and exclusions were granted considering the fact that even comparable product types for such grades cannot be produced by the domestic industry. No specific exclusion has been sought in the present investigation. It has

not been shown that the product types excluded from the anti-dumping investigation are being imported from Indonesia.

340. As regards the submission that facts available should not be applied for program 9 concerning provision of loans by EXIM bank because the producers/exporters from Indonesia have not received loans from EXIM bank in Indonesia, it is noted that even though complete information was not provided in this regard by the producers/exporters in the questionnaire response, the Authority relies on the information provided by the co-operating producers/exporters and Government of Indonesia subsequent to the issuance of preliminary findings that they have not received benefit under this program. The Authority thus holds that no countervailing duty should be imposed for program 9 for co-operating producers/exporters.
341. As regards the claim that individual subsidy margin should be determined for producer/exporter even though unrelated exporters have not cooperated, the Authority notes that the export value chain is not complete because of absence of exporters questionnaire response from unrelated traders who have exported more than 30% of exports of the producer concerned. It is noted that the Authority cannot determine export price to India of subject goods exported, if unrelated traders who are responsible for a significant portion of the exports to India choose not to cooperate in the investigation. Consequently, the Authority cannot determine individual subsidy margin for such producer/ exporter. In this case the extent of exports to India by the unrelated trader is more than 30%, which is a significant portion. Response of exporters involved in the sale of subject goods to India is required for assessment of injury margin also. If the exporter does not file questionnaire response, the Authority cannot know the price actually paid for the goods when sold for exports to India and cannot determine the correct landed value of the subject goods, which is required for assessment of injury margin.
342. As regards the argument that the European Commission terminated the anti-subsidy investigation against Indonesia without imposing any duty, the Authority notes that the investigation was terminated because the application was withdrawn by the applicant domestic industry. Thus, termination of an anti-subsidy investigation by European Union is of no relevance in the present investigation.
343. As regards the argument that the exporter, PT BAU, has been granted country of origin eligibility for its production of subject goods from the stage of its raw material under AIFTA, it is noted that the information available with the Authority shows that PT BAU is merely processing stainless steel coils to produce stainless steel circles. PT BAU cannot thus be considered as a producer of the subject goods for the purpose of determining individual CVD margin. As regards the documents presented before the customs to show that stainless steel coils imported by it gets transformed into another product warranting change in custom classification code leading to grant of "country of origin" status, the Authority considers that the same is not relevant for the present purposes.

344. The Authority notes that anti-dumping duty has been recommended for the product under consideration in the parallel anti-dumping investigation. Therefore, the Authority is required to ensure that (i) no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization in accordance with Section 9B(1)(a) of the Customs Tariff Act and Article VI:5 of GATT 1994 & (ii) the anti-dumping duty and countervailing duty put-together should not exceed the injury margin because India follows a lesser duty rule, which provides that anti-dumping duty and/or countervailing duty will be equal to the injury margin if such injury margin is lesser than dumping margin and/or subsidy margin.

345. Therefore, to ensure compliance with both the aforementioned requirements, the Authority noted in the final findings of anti-dumping duty investigations against the same product that “the amount of anti-dumping duty to be imposed is equivalent to the difference between the quantum of anti-dumping duty and the countervailing duty payable, if any. If the anti-dumping duty is less than the countervailing duty payable, the differential amount would be in the negative and no anti-dumping duty shall be collected in such case”.

J. INDIAN INDUSTRY INTEREST AND OTHER ISSUES

346. The Authority notes that the purpose of countervailing duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of subsidization so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. The interested parties have not established that imposition of duties is going to adversely impact the public interest.

347. It is recognized that the fair competition in the Indian market will not be reduced by the countervailing duty measure, particularly if the levy of the countervailing duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of countervailing duty measure would remove the unfair advantages gained by subsidization, prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

K. CONCLUSIONS AND RECOMMENDATIONS

348. After examining the submissions made by the interested parties and issues raised therein, and considering the facts available on record, the Authority concludes that:

- a. The product under consideration that has been exported to India from Indonesia is subsidized.
- b. The domestic industry has suffered material injury.
- c. Material injury has been caused by the subsidized imports of product under consideration from Indonesia.

349. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspect of subsidy, injury and causal link. Having initiated and conducted the investigation into subsidy, injury and causal link in terms of the provisions laid down under the Anti-Subsidy Rules, the Authority is of the view that imposition of duty is required to offset subsidization and injury. Therefore, Authority considers it necessary to recommend imposition of countervailing duty on imports of subject goods from the subject country in the form and manner prescribed hereunder.

350. Having regard to the lesser duty rule, the Authority recommends imposition of definitive countervailing duty equal to the lesser of margin of subsidy and margin of injury, so as to remove the injury to the domestic industry. Accordingly, the Authority recommends imposition of definitive countervailing duty on the imports of goods mentioned at Col. 3 of the table below, originating in or exported from the subject country, equal to the amount mentioned in Col. 7 of the duty table appended below for a period of five (5) years, from the date of notification issued by the Central Government imposing provisional duty.

DUTY TABLE

S.No.	Heading/Sub-heading	Description	Country of Origin	Country of export	Producer	Duty Amount as a % of CIF Value of imports
1	2	3	4	5	6	7
1.	7219 & 7220	Flat Rolled Products of Stainless Steel*	Indonesia	Any Country including Indonesia	PT. Indonesia Guang Ching Nikel and Stainless Steel Industry PT. Indonesia Ruipu Nickel and Chrome Alloy; PT. Indonesia Tsingshan Stainless Steel (Tsingshan Group)	18.83%
2.	7219 & 7220	Flat Rolled Products of Stainless Steel*	Indonesia	Any country including Indonesia	Any producer other than producers	24%

					mentioned at S.No. 1 above	
3.	7219 & 7220	Flat Rolled Products of Stainless Steel*	Any country other than Indonesia	Indonesia	Any	24%

* The product under consideration is "Flat Rolled Products of Stainless Steel", excluding the following:

- a. Blade Steel, or commercially known as razor blade grade steel used in the production of razor.
- b. Coin Blank falling under 73269099 used in the production of monetary coins.
- c. Flat Rolled Products of Stainless Steel of width more than 1650 MM.
- d. Flat Rolled Products of Stainless Steel of thickness greater than 80 MM.

Product under consideration can be transacted in a number of different forms, such as coils, sheets, plates, circles, strips or otherwise. All forms of the product are within the scope of the product under consideration. The subject goods fall under Customs Tariff heading '7219' and '7220' of Chapter 72 of the Act. Customs classification is, however, indicative only and in no way binding on the scope of present investigation."

The exclusion of Flat Rolled Products of Stainless Steel of width more than 1650 MM would only be applicable in case of bonafide use by importers/ users for end use in the same form. Exclusion would not be applicable in those cases where the imported flat rolled products of stainless steel of width more than 1650 mm would be slit into products having width lower than 1650 mm.

351. Subject to above, the Preliminary Finding notified vide notification dated 07th August, 2020 is hereby confirmed.

L. FURTHER PROCEDURE

352. An appeal against the order of the Central Government that may arise out of this Final Findings Notification shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.



(B.B.Swain)

Special Secretary and Designated Authority