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**F. 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 07<sup>th</sup> August, 2020

Case No: CVD-OI-05/2019

**NOTIFICATION**

**PRELIMINARY FINDINGS**

**Sub: Preliminary Findings in the 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 and Jindal Stainless Steelway Limited (JSSL) (hereinafter also referred to as “the Applicants” or “the Domestic Industry”) 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 18<sup>th</sup> 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.

## **B. PROCEDURE**

3. 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 23<sup>rd</sup> September, 2019 at New Delhi, which was attended by representatives of the Government of Indonesia.
  - c) The Authority issued a public notice dated 18<sup>th</sup> 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 Nikel 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
- 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
  - xlii. Rajesh Steel
  - xliii. Flange Forge India
  - xliv. Rajguru Enterprises Pvt. Ltd
  - xlv. Forte Impex Pvt. Ltd.
  - xlvi. Ramani Steel House
  - xlvii. Godrej & Boyce Mfg. Co. Ltd.
  - xlviii. Randen Engineering Pvt.Ltd.
  - xlix. 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
- 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
- xcii. Kamal Metal Corporation
- xciii. Steel Line (India)
- xciv. Keshoram Industries
- xcv. Steel Yard Overseas
- xcvi. Keyur Kitchenware
- xcvii. Stride Industries LLP
- xcviii. Kitchen Essentials
- xcix. Suchi Fasteners Pvt Ltd
- c. Kraftwares (India) Private Limited.
- ci. Suman Metalshop
- cii. Kunal Housewares Pvt.Ltd.
- ciii. Suncity Sheets Pvt Ltd
- civ. Larsen & Toubro Limited
- cv. Suncity Strips & Tubes Private Limited
- cvi. Lubi Industries Llp
- cvi. Sunder Impex Pvt Ltd
- cvi. M. P. Steel Centre
- cvi. Super Impex
- cix. Magppie International Ltd
- cx. Swastik Industries
- cxii. 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) Apart from the respondent exporters and importers mentioned above, some legal submissions have been received on behalf of the following parties during the course of this investigation.
- (i) PT Bintang Asia Usaha (BAU), Indonesia
- n) 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 this Preliminary Finding Notification.
- o) 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.
- p) 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.
- q) 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 proposes 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.

- r) 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 Apr2015-Mar16, Apr2016-Mar17, Apr2017-Mar18 and the POI.
- s) 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 this preliminary findings.
- t) 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.
- u) 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 preliminary findings on the basis of the facts available.
- v) \*\*\*in this preliminary finding represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- w) The exchange rate adopted for the subject investigation is US\$1 = ₹70.82.

#### **C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

4. 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**

5. 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**

6. 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:
  - a) Product exported by PT Bintang Asia Usaha (BAU) falls outside the scope of product under consideration prescribed in the notice of initiation.

### **C.3. Examination by the Authority**

7. The submissions made by the Domestic Industry and other interested parties with regard to the PUC related issues are examined and addressed hereunder.
8. 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.
9. 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.

10. 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.
11. 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.
12. 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. 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 provisionally excluded from the scope of PUC.
13. 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 provisionally holds 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, provisionally holds that the products manufactured by the Applicants constitute like article to the subject goods being imported into India from the subject country.
14. On the basis of submissions made by various interested parties and the information on record, the Authority provisionally 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."*

15. 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**

16. Interested parties other than the domestic industry have made following submissions with regard to the standing of the Domestic Industry.
  - i. 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.
  - ii. 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".
  - iii. 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.
  - iv. 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.

- v. PT. Jindal Stainless Indonesia, has exported the subject goods to India through a trader situated in Hong Kong during the POI.
- vi. 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.
- vii. 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.

## **D.2. Submissions made by the Domestic Industry**

17. 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 allegation that PT Jindal Indonesia has exported the subject goods to India even in the injury period 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 the consistent practice of the Designated Authority 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**

18. 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".*

19. 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."*

20. 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.
21. 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.
22. 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").
23. 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.

24. 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.
25. 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.
26. Based on evidence on record, it is noted that neither Applicants directly or indirectly control Jindal Saw and JQTL, 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.

27. 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 injury period. 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 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. It is further noted that Applicants' production account for more than 50% of Indian production.
28. In view of the above, the Authority accordingly notes that the Applicants command a major proportion of the production of the subject goods in India and satisfy the standing requirement and constitute the domestic industry in terms of Rule 2(b) and Rule 6(3) of the CVD Rules.

## **E. ISSUES RELATING TO CONFIDENTIALITY**

### **E.1. Submissions by Domestic Industry**

29. 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.

### **E.2. Submissions by other interested parties**

30. None of the interested parties have filed any comments regarding the confidentiality of information.

### **E.3. Examination by the Authority**

31. 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.*

32. 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.
33. 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**

34. 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 23<sup>rd</sup> 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.
35. The following producers/exporters from Indonesia including Government of Indonesia have filed questionnaire responses.
- i. PT Indonesia Guang Ching Nikel 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

### **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.

## **F.2. Calculation Methodology**

36. Article 14 of ASCM, provides guidelines and methodology for calculating the benefit conferred to the recipient pursuant to paragraph 1 of Article 1 and further provides that any method used by the investigating authority to calculate the benefit to the recipient shall be transparent and adequately explained. Further, any method used by the investigating authority to calculate the benefit to the recipient shall be provided for in their national legislation or implementing regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained. In accordance with the requirement, 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. Examination of the Subsidy programs alleged by the Petitioners**

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

#### **a. Submission by Domestic Industry**

37. 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.

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

38. 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.
39. 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.

40. 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**

41. The Petitioners submitted that Indonesian Government ensures that there is abundant supply of raw material for mineral and metal downstream industries. This is done is 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.

42. 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.

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

43. 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.

44. 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.

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

**a. Submission by Domestic Industry**

45. 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.

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

46. 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.

47. In each year the GOI determines minimum percentage sales of coal for public interest. In 2018 and 2019 respectively, The GOI determines 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.

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

48. 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 coal and other minerals.

49. 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.

50. 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.

51. 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. 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.
52. With regard to coal, the benchmark price settings for coal was also enacted in 2011 through Minister of Energy and Mineral Resources No. 0617 K/32/MEM/2011 on Coal Price which applied for coal purchased by for National Electric Company (PLN) PLN. However, the benchmark price does not apply for coal sales to private-owned power plant for self-consumption including for operation of production facility. The Authority considers that the power sold by the power generating company may have an element of subsidies. However, in the absence of specific evidence on record with regard to sale of power by power generating companies to steel producers, the Authority has not considered this for further analysis at this stage, pending further investigation. However, 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 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.
53. None of the producers/exporter have provided complete information regarding the benefit received pursuant to these programs based on their purchase of Coal and Nickel ore. The Authority provisionally determines 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 provisionally against these programs based on facts available.

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

**b. Submission by Domestic Industry**

54. 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**

55. 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.
56. 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.
57. 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**

58. 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.
59. 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.
60. The Authority has already provisionally concluded that nickel ore is available to Indonesian producers at less than adequate remuneration. There is no further benefit under this program. The Authority thus provisionally 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**

61. 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.

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

62. 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.
63. 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**

64. 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.
65. 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.
66. Interested parties have also claimed that they have not received any benefit under this program. Authority provisionally determines that subject to further investigation no countervailing duty is required to be imposed against this program.

**(vi) Program No. 6: Export Credit Guarantees**

**a. Submission by Domestic Industry**

67. 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**

68. Both Indonesia Eximbank provide export credit guarantee to bank or financial institution against risk of debtor's default.

69. 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**

70. 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.

71. 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 provisionally determines that pending further investigation no countervailing duty is required to be imposed against this program.

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

**a. Submission by Domestic Industry**

72. 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

73. 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**

74. 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**

75. 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.

76. 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.

77. The Authority thus, pending further investigation, provisionally determines that no countervailing duty is required to be imposed against this program.

**(viii) Program No. 8: Tax Holiday**

**a. Submission by Domestic Industry**

78. 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 Rp 500 billion.

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

79. 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.

80. 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."*

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

**c. Examination by the Authority**

82. 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.

83. None of the participating companies claims to have applied for, accrued, or received benefits under this program during the POI. Pending further verification, the Authority provisionally determines 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**

84. 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.

85. 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**

86. 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.
87. 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.

**c. Examination by the Authority**

88. 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.
89. 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.
90. Amount of benefit is equal to the difference between the interest charged by Indonesia Eximbank/any other state owned 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.
91. None of the participating companies provided supporting information or documentation to substantiate its claim that no benefit was received under this program. Thus, denial by the participating exporters of benefit received in terms of direct transfer of funds through loans from Indonesian Eximbank or any other state-owned bank cannot be accepted without supporting information regarding all loans obtained from banks in response to information requested in loan appendices. Authority provisionally determines that countervailing duty is

required to be imposed against this program on all participating producers/exporters based on facts available.

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

**a. Submission by Domestic Industry**

92. 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.
93. 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**

94. 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.
95. 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.
96. 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.
97. 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**

98. 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.
99. 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.
100. 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 provisionally 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**

101. 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**

102. 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.

103. 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.
104. None of the companies under investigation applied for, accrued, or received benefits from this program during the POI.

**c. Examination by the Authority**

105. 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.
106. 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.
107. 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 provisionally determines 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**

108. The Petitioners submitted that Indonesian Government provides a reduction to enterprise in 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**

109. 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.
110. 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.
111. 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**

112. 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.
113. 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 pending verification of records provisionally 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**

114. 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
115. It is mainly provided to business entities and business players operating in SEZ zones.

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

116. 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.
117. 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**

118. 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 pending verification provisionally 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**

119. 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**

120. 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.

121. 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.

122. 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**

123. 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.

124. 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, provisionally determines 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**

125. Indonesian Government exempts the duty on raw material and supporting goods for investors who are expanding their production in SEZ.
126. 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**

127. 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.
128. 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.
129. 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**

130. 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, provisionally determines 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**

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

132. 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**

133. 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**

134. 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.

135. 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, pending further investigation holds provisionally 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**

136. 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**

137. 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;

138. 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.

139. 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.

140. 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**

141. 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.

142. However, none of the participating companies are claimed to have applied for, accrued, or received benefits from this program during the POI. Pending verification, the Authority provisionally 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**

143. 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.
144. 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**

145. 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.
146. 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**

147. 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.
148. However, none of the participating companies are claimed to have applied for, accrued, or received benefits from this program during the POI. Pending verification, the Authority provisionally 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**

149. The Petitioners submitted that Indonesian Government provides benefit of land tax to the enterprises located in SEZ region.
150. 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**

151. 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%.

152. 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**

153. 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**

154. 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**

155. Value Added Tax (VAT) is a tax imposed on any value added of goods or services in circulation from producer to consumer.
156. 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.

157. 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.
158. 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.
159. 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.
160. 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**

161. 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.
162. 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.
163. 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**

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

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

165. 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.

166. 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.

**c. Examination by the Authority**

167. 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.

168. 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 provisionally determines 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**

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

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

170. 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
171. 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**

172. 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.
173. PT IMR ARC received exemption at \*\*\*% 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 preliminary determines 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**

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

##### **b. Submission by Government of Indonesia/Other interested parties**

175. 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.

176. 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.
177. 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.

**c. Examination by Authority**

178. 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%. PT IMR ARC has received VAT exemption under this program. If VAT is payable, tax payers will credit input tax against output tax payment.
179. PT IMR ARC received exemption on its import of capital goods under this program. 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 provisionally determines 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)**

180. 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 \*\*\* and \*\*\* have also filed questionnaire response. PT GCNS has exported the subject product to India through related traders namely \*\*\*, \*\*\*and through \*\*\*. All the three related exporters have filed questionnaire responses.
181. PT GCNS is related to other producer/exporters \*\*\*, and \*\*\* in Indonesia, who have also filed separate questionnaire responses.
182. 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 proposed 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 .

183. 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.

184. 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. Authority has also relied on facts available to determine subsidy margin for program concerning export financing by Indonesia Eximbank.

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

<b>Program Nos.</b>	<b>Name of the Program</b>	<b>Brief Description</b>	<b>Subsidy Margin %</b>	<b>Subsidy Margin Range</b>
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	Provision of minerals at less than adequate remuneration	***	15-20%

	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%
<b>Total</b>			***	<b>20-30%</b>

**PT. Indonesia Tsingshan Stainless Steel (ITSS)**

186. 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 \*\*\* and \*\*\* have also filed questionnaire response. PT ITSS has exported the subject product to India through related traders namely \*\*\*, \*\*\*, \*\*\* and through \*\*\*. All the four related exporters have filed questionnaire responses.
187. PT ITSS is related to other producer/exporters \*\*\* and \*\*\* in Indonesia, who have also filed separate questionnaire responses.
188. 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 proposed 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.

189. 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.

190. 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. Authority has also relied on facts available to determine subsidy margin for program concerning export financing by Indonesia Eximbank.

191. 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%
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%
<b>Total</b>			***	<b>20-30%</b>

**PT. Indonesia Ruipu Nickel and Chrome Alloy (IRNC)**

192. PT Indonesia Ruyuan Nickel and Chrome Alloy (IRNC) is the producer/exporter of subject product in Indonesia. PT IRNC has filed questionnaire response and has provided information regarding the subsidy received by it. Related raw material suppliers in Indonesia \*\*\* and \*\*\* have also filed questionnaire response. PT IRNC has exported the subject product to India through related traders namely \*\*\*, \*\*\*, \*\*\*, \*\*\*, \*\*\* and through \*\*\*. All the related exporters have filed questionnaire responses.
193. PT. IRNC is related to other producer/exporters \*\*\*, \*\*\* in Indonesia, who have also filed separate questionnaire responses.
194. 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 proposed 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.
195. 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.
196. 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. Authority has also relied on facts available to determine subsidy margin for program concerning export financing by Indonesia Eximbank.

197. 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 export and domestic market obligation requirement	Provision of minerals at less than adequate remuneration	***	15-25%
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%
<b>Total</b>			***	<b>20-30%</b>

### PT IMR ARC Steel, Indonesia

198. 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. \*\*\*. is the related importer of PT IMR ARC in India. PT IMR ARC has exported subject goods to India directly and through related exporter \*\*\* to related and unrelated importer in India.

199. Authority has determined subsidy margin for programs, for which information was provided in the questionnaire response of PT IMR ARC equal to the benefit received or accrued during the POI. It is noted that PT IMR ARC and its related raw material suppliers availed benefit under other program concerning exemption from import duties. 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 IMR ARC as a recipient of this benefit. Subsidy program was also specific because they were limited to certain enterprise including PT IMR ARC who fulfilled the eligibility criteria under the program.

200. 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. Authority has also relied on facts available to determine subsidy margin for program concerning export financing by Indonesia Eximbank.

201. 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	Facilty Service Capital Investment (Master List Scheme)	Exemption from customs duty on machines	***	0-5%
Other Program	Exemption from Income Tax on Machines	Exemption from 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 obligation requirement	Provision of minerals at less than adequate remuneration	***	15-25%
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%

### PT Bintang Asia Usaha (BAU), Indonesia

202. 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. Authority further notes that PT BAU has not provided complete transaction by transaction information regarding exports made to India during the POI. Thus, the Authority has relied on facts available to determine the export price of PT BAU in this preliminary determination.
203. Authority has examined the questionnaire response filed by PT BAU. PT BAU has not provided complete information regarding the programs identified in the notice of initiation and regarding the programs under which benefit is received by PT BAU. Thus, Authority rejects the questionnaire response filed by PT BAU and determines PT BAU as non-cooperating producer/exporter from Indonesia in this preliminary determination. Accordingly, the Authority has relied on facts available to determine the subsidy margin for PT BAU.

#### **Summary of Subsidy Programs for Indonesia**

204. There are three groups of participating producers/exporters from Indonesia. The first group comprises of three related producers in Indonesia namely \*\*\*, \*\*\*, and \*\*\* and their related raw material suppliers and related traders/exporters. The second group comprises of producer PT IMR ARC, its related exporter \*\*\* and its related importer in India \*\*\*. The third group comprises of producer/exporter PT BAU, Indonesia. Authority has determined subsidy margin for first two groups based on information provided in their questionnaire responses.
205. Countervailing duty for all other producers/exporters from Indonesia has been determined based on the highest of the subsidy margins for the cooperating parties.

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 obligation requirement	Provision of minerals at less than adequate remuneration	***	15-25%
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%
<b>Total</b>			***	<b>20-30%</b>

## **G. INJURY ASSESSMENT AND CAUSAL LINK**

### **G.1. Submissions by Domestic Industry**

206. 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 \*\*\* % of production in the base year which has increased to \*\*\* % in the POI.
- f) Similarly, subject imports did not constitute any percentage of consumption of the domestic industry and it was merely \*\*\* % in 2016-17 which increased to \*\*\* % in the POI. Subject imports were only \*\*\* % of sales of domestic industry in the base year, which has now increased to \*\*\*%.

- 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

## **G.2. Examination by the Authority**

207. 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.

208. 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**

209. 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
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**

210. 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.
211. 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
<b>Import Volume</b>					
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
<b>Share in Imports</b>					
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%
<b>Total</b>	<b>%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

212. 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
<b>Subject Country Imports in relation to</b>					
Indian Production	%	***	***	***	***
	Range	0%	0-10%	0-10%	0-10%
Consumption	%	***	***	***	***
	Range	0%	0-10%	0-10%	0-10%
Total imports	%	***	***	***	***
	Range	0%	0-10%	0-10%	15-20%

213. 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
<b>Share in Demand</b>					
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	%	***	***	***	***
	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%
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214. 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

215. 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

216. 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%

217. 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

218. 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.

219. 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.

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

Producer	Non-Injurious Price (USD/MT)	Landed Price (USD/MT)	Injury Margin (USD/MT)	Injury Margin %	Injury Margin Range
PT Indonesia Guang Ching Nickel and Stainless Steel Industry	***	***	***	***	10-30%
PT Indonesia Tsingshan Stainless Steel	***	***	***	***	10-30%
PT Indonesia Ruipu Nickel and Chrome Alloy	***	***	***	***	10-30%
PT IMR ARC Steel	***	***	***	***	10-30%
Others	***	***	***	***	10-30%

### **(iii) Price Suppression and Depression**

221. 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	149

Particulars	UOM	2015-16	2016-17	2017-18	POI
Landed Price	Rs/MT	20,635	100,572	103,938	137,996
Trend	Indexed	100	487	504	669

222. 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

223. 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

224. 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	***	***	***	***
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

225. The Authority notes that-

- The capacity with the domestic industry has remained the same over the injury period.
- 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

226. 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

227. 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

228. 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
<b>Market Share in Demand</b>					
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%

229. 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

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

(v) Inventories

231. 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

232. 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**

233. 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**

234. 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**

235. 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**

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

**d. Developments in technology**

237. 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**

238. 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**

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

**IV. Conclusion on Causal Link**

240. 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.

241. The Authority therefore provisionally 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**

242. 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.*

243. 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 preventing 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.

#### **H. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

244. The Authority notes that the purpose of imposition 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. Imposition of countervailing duty would not prohibit imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

245. It is recognized that the imposition of countervailing duty might affect the cost of the subject goods. However, fair competition in the Indian market will not be reduced by the imposition of the countervailing measures, particularly if the levy of the provisional countervailing duty is restricted to an amount necessary to redress the injury caused to the domestic industry by the imports of subsidized subject goods. On the contrary, imposition of countervailing measures would remove the unfair advantages gained by subsidization and create level playing field.

#### **I. CONCLUSION & RECOMMENDATIONS**

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

- a) The product under consideration has been exported to India from the subject country at subsidized prices.
- b) The domestic industry has suffered material injury due to subsidization of the product under consideration.
- c) The material injury has been caused by the subsidized imports of the subject goods originating in or exported from the subject country.

247. The Authority notes that the investigation was initiated and notified to all interested parties including the Government of Indonesia and adequate opportunity was given to exporters, importers and other interested parties to provide positive information on the aspect of subsidization, injury and causal link. Having initiated and conducted the investigation into subsidization, injury and causal links in terms of the Rules laid down and having established positive subsidy margin as well as material injury to the domestic industry caused by such subsidized imports, the Authority is of the view that imposition of provisional countervailing duty is required to offset subsidization and injury, pending completion of the investigation. Therefore, the Authority considers it necessary to recommend imposition of provisional countervailing duty on the imports of the subject goods from Indonesia in the form and manner described hereunder.

248. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of provisional 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 provisional countervailing duty on the imports of subject goods, originating in or exported from the subject country, from the date of notification to be issued in this regard by the Central Government, equal to the amount mentioned in Col. 7 of the duty table appended below. The landed value of imports for this purpose shall be assessable value as determined by the Customs under Customs Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

**DUTY TABLE**

S. No.	Heading/ Subheading	Description of Goods	Country of Origin	Country of Export	Producer	Duty amount as a % of CIF value
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Flat Products of Stainless Steel	7219 and 7220	Indonesia	Any country including Indonesia	PT Indonesia Guang Ching Nikel and Stainless Steel Industry	22.31%

2.	-do-	-do-	Indonesia	Any country including Indonesia	PT Indonesia Tsingshan Stainless Steel	22.31%
3.	-do-	-do-	Indonesia	Any country including Indonesia	PT Indonesia Ruipu Nickel and Chrome Alloy	22.31%
4.	-do-	-do-	Indonesia	Any country including Indonesia	PT IMR ARC Steel	22.65%
5.	-do-	-do-	Indonesia	Any country including Indonesia	Any producer other than producers mentioned in S. Nos. 1 to 4 above	24.83%
6.	-do-	-do-	Any country other than Indonesia	Indonesia	Any	24.83%

#### **J. FURTHER PROCEDURE**

249. The procedure as below would be followed subsequent to notifying the preliminary findings:

- i. The Authority invites comments on these provisional findings from all the interested parties and the same, considered relevant by the Authority, would be considered in the final finding.
- ii. Domestic Industry, exporters, importers and other interested parties known to be concerned are being addressed separately by the Authority, who may make their views known, within forty days from the date of the publication of these preliminary findings.
- iii. Any other interested party may also make its views known within forty days from the date of publication of these findings.
- iv. The Authority would conduct oral hearing in terms of rule 7(6) to give an opportunity to all interested parties to present their views relevant to the investigation. Issues and concerns raised during oral hearing will be examined in the final findings.
- v. The date of the oral hearing would be announced on the DGTR website (dgtr.gov.in).
- vi. The Authority would conduct further verification to the extent deemed necessary.
- vii. The Authority would disclose the essential facts as per the Rules before announcing the final findings.

  
**(B.B.Swain)**

**Special Secretary and Designated Authority**