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Investigation
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December 1, 2003

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Holly A. Kuga
Acting Deputy Assistant Secretary
for AD/CVD Enforcement II

RE: Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand from India

SUBJECT: Issues and Decision Memorandum

Summary

Petitioners were the only interested party to submit comments on the record for the final determination of this investigation.¹ Below are the issues with respect to all producers/exporters of subject merchandise and our recommendations. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant reconsideration of the findings in our preliminary determination. Therefore, we do not recommend any changes in the findings made in the preliminary determination.

Methodology and Background Information

I. Use of Facts Available

Section 776(a) of the Tariff Act of 1930, as amended (the Act), requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. As described in the Notice of Preliminary Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand from India, 68 FR 40629 (July 8, 2003) (Preliminary Determination)

¹This investigation covers the period April 1, 2001, through March 31, 2002, the period of investigation (POI).

(available on file in room B-099 of the Central Records Unit in the main Commerce building (CRU) or on the World Wide Web at <http://www.ia.ita.doc.gov>), Indian producers/exporters of subject merchandise and the Government of India (GOI) failed to provide information explicitly requested by the Department. Consequently, we preliminarily determined that the use of facts otherwise available was warranted. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of this finding. Therefore, we continue to find that the use of facts available is warranted.

Furthermore, section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. In this investigation, the Department requested that Indian producers/exporters of subject merchandise and the GOI submit requested program information and company-specific data necessary for calculating company-specific countervailing duty rates. Despite being given several opportunities by the Department, the Indian producers/exporters of subject merchandise and the GOI failed to submit the requested information.

In the Preliminary Determination, the Department found that the GOI failed to act to the best of its ability because it did not distribute the Department's questionnaires to Indian producers/exporters of subject merchandise, did not provide necessary information specifically requested by the Department in the GOI questionnaire, and did not respond to the Department's supplemental questionnaire. See 68 FR 40631. The Department also found that Tata Iron and Steel Company Limited (Wire Division) (TISCO) failed to act to the best of its ability because it did not provide, despite numerous extensions, necessary information specifically requested by the Department in the questionnaire and supplemental questionnaire. Preliminary Determination, 68 FR 40632. Rather, TISCO submitted a substantially incomplete questionnaire. Id. In addition, the small amounts of information TISCO did provide in its questionnaire response was unusable because it pertains to a period subsequent to the POI. Id. Because TISCO did not submit the information requested by the Department, in selecting facts available, the Department preliminarily determined that an adverse inference was warranted. For a more detailed discussion of the Department's decision to use adverse facts available, see Preliminary Determination, 68 FR 40631-4.

Section 776(b) of the Act indicates that, when employing an adverse inference, the Department may rely upon information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review; or (4) any other information placed on the record. See also 19 CFR §351.308(c).

If the Department relies on this secondary information as facts available, section 776(c) of the Act provides that the Department shall, "to the extent practicable," corroborate such information using independent sources reasonably at its disposal. The Statement of Administrative Action accompanying the URAA (SAA) further provides that to corroborate secondary information means that the

Department will satisfy itself that the secondary information to be used has probative value. See also, 19 CFR 351.308(d). Thus, in those instances in which the Department determines to apply adverse facts available, in order to satisfy itself that such information has probative value, the Department will examine, to the extent practicable, the reliability and relevance of the information used. However, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there are typically no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. The only source for such information normally is administrative determinations. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render benefit data not relevant. See Cotton Shop Towels from Pakistan: Final Results of Countervailing Duty Administrative Review, 66 FR 42514 (August 13, 2001). However, the fact that corroboration may not be practicable in a given case does not prevent the Department from applying an adverse inference as appropriate, and does not prevent the Department from using the secondary information. See 19 CFR 351.308(d). The SAA accompanying the URAA clarifies that information from the petition is "secondary information." See Statement of Administrative Action, accompanying H.R. 5110 (H. Doc. No. 103-316) (1994) at 870.

Section 776(b) of the Act indicates that the Department may use publicly available information from other proceedings for purposes of determining the adverse facts available rates for programs in which there is no information on the record. See also 19 CFR §351.308(c). Therefore, in determining the adverse facts available program rates, we used (where possible) the highest company-specific program rates from the most recently-completed investigation pertaining to exports of an Indian steel product – see Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 49635 (September 28, 2001) (Hot-Rolled Steel From India) and Issues and Decision Memorandum: Final Results of the Countervailing Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from India, which is on file in the CRU or available online at <http://www.ia.ita.doc.gov> (Hot-Rolled Steel From India Decision Memo). Because some of the programs under investigation were not investigated in Hot-Rolled Steel From India, we also used (where possible) as the adverse facts available program rates the highest company-specific program rates from another recently-completed Indian investigation. See Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip from India, 67 FR 34905 (May 16, 2002) (PET Film from India) and Issues and Decision Memorandum: Final Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India, which is on file in the CRU or available online at <http://ia.ita.doc.gov> (PET Film from India Decision Memo); see also Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30636 (June 8, 1999) (Sheet and Strip from Korea).

With respect to two of the programs we previously examined, Tax Deductions Under Section 80HHC of the India Tax Act and the State of Maharashtra Capital Incentive Scheme, we were unable to use company-specific program rates from Hot-Rolled Steel From India and PET Film from India as

adverse facts available program rates because the Department determined that the programs were not used during the POI's of those cases. In lieu of such company-specific program rates, we determined the adverse facts available rate for each these two programs to be 2.00 percent ad valorem, which is the de minimis rate for developing countries. See section 703(b)(4)(B) of the Act. Also, for each program that the Department has not examined in previous investigations or administrative reviews, we determined the adverse facts available program rate to be 2.00 percent ad valorem, which is the de minimis rate for developing countries.

On August 27, 2003, petitioners submitted a case brief in which they stated their agreement with the Department's preliminary determination. Petitioners urged the Department to continue to apply adverse facts available for the final determination. No other comments from interested parties were presented in this investigation to warrant any reconsideration of this finding. Therefore, for the final determination in this investigation, we recommend the continued use of adverse facts available for purposes of determining the program rates and the total net subsidy rate.

II. Programs Determined to Confer Subsidies

A. Government of India Programs

1. Pre-shipment and Post-shipment Export Financing

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 68 FR at 40633. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, using the highest company-specific program rate from Hot-Rolled Steel from India (66 FR 49635) as the adverse facts available program rate, we determine the net subsidy rate for pre-shipment export financing to be 1.32. percent ad valorem. Using the highest company-specific program rate from Hot-Rolled Steel from India as the adverse facts available rate, we determine the net subsidy rate for post-shipment export financing to be 0.74 percent ad valorem.

2. Duty Entitlement Passbook Scheme (DEPS)

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40633. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, using the highest company-specific program rate from Hot-Rolled Steel from India as the adverse facts available program rate, we determine the net subsidy rate for this program to be 13.98 percent ad valorem.

3. Export Promotion Capital Goods Scheme (EPCGS)

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40633-34. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, using the highest company-specific program rate from Hot-Rolled Steel from India as the adverse facts available program rate, we determine the net subsidy rate for this program to be 16.63 percent ad valorem.

4. Loans from the Steel Development Fund (SDF)

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40634. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, using the highest company-specific program rate from Hot-Rolled Steel from India as the adverse facts available program rate, we determine the net subsidy rate for this program to be 0.99 percent ad valorem.

5. Exemption of Export Credit from Interest Taxes

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40634. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, using the highest company-specific program rate from Hot-Rolled Steel from India as the adverse facts available program rate, we determine the net subsidy rate for this program to be 0.08 percent ad valorem.

6. Advance Licenses

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40634. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, using the highest company-specific program rate from Hot-Rolled Steel from India as the adverse facts available program rate, we determine the net subsidy rate for this program to be 0.24 percent ad valorem.

7. Income Tax Exemption Scheme (Section 80 HHC)

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40634. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, we determine the adverse facts available net subsidy rate for this program to be 2.00 percent ad valorem, which is the de minimis rate applicable for developing countries. See section 703(b)(4)(B) of the Act.

8. Loan Guarantees from the GOI

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40634-35. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, using the highest company-specific program rate from Hot-Rolled Steel from India as the adverse facts available program rate, we determine the net subsidy rate for this program to be 0.19 percent ad valorem.

B. State of Maharashtra (SOM) Programs

1. Sales Tax Incentives

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40635. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, using the highest company-specific program rate from PET Film from India as the adverse facts available program rate, we determine the net subsidy rate for this program to be 2.39 percent ad valorem.

2. Capital Incentive Scheme

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40635. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, we determine the adverse facts available net subsidy rate for this program to be 2.00 percent ad valorem, which is the de minimis rate applicable for developing countries. See section 703(b)(4)(B) of the Act.

3. Electricity Duty Exemption Scheme

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40635. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, using the highest company-specific program rate from PET Film from India as the adverse facts available program rate, we determine the net subsidy rate for this program to be 0.36 percent ad valorem.

4. Octroi Refund Scheme

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40635. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, we determine the adverse facts available net subsidy rate for this program to be 2.00 percent ad valorem, which is the de minimis rate applicable for developing countries. See section 703(b)(4)(B) of the Act.

5. Exemption of Sales and Purchase Taxes for Certain Investments Related to Automobiles or Automobile Components

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40635. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, we determine the adverse facts available net subsidy rate for this program to be 2.00 percent ad valorem, which is the de minimis rate applicable for developing countries. See section 703(b)(4)(B) of the Act.

C. Program in the State of Bihar

1. Sales Tax Incentives

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40635-36. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, we determine the adverse facts available net subsidy rate for this program to be 2.00 percent ad valorem, which is the de minimis rate applicable for developing countries. See section 703(b)(4)(B) of the Act.

D. Programs in the State of Jharkhand

1. Sales Tax Incentives

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40636. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, we determine the adverse facts available net subsidy rate for this program to be 2.00 percent ad valorem, which is the de minimis rate applicable for developing countries. See section 703(b)(4)(B) of the Act.

2. Captive Electricity Generative Plant Subsidy

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40636. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, we determine the adverse facts available net subsidy rate for this program to be 2.00 percent ad valorem, which is the de minimis rate applicable for developing countries. See section 703(b)(4)(B) of the Act.

3. Interest Subsidy

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40636. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, we determine the adverse facts available net subsidy rate for this program to be 2.00 percent ad valorem, which is the de minimis rate applicable for developing countries. See section 703(b)(4)(B) of the Act.

4. Stamp Duty and Registration

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40636. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, we determine the adverse facts available net subsidy rate for this program to be 2.00 percent ad valorem, which is the de minimis rate applicable for developing countries. See section 703(b)(4)(B) of the Act.

5. Pollution Control Equipment Subsidy

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40636. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, we determine the adverse facts available net subsidy rate for this

program to be 2.00 percent ad valorem, which is the de minimis rate applicable for developing countries. See section 703(b)(4)(B) of the Act.

6. Mega Units

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40636. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, we determine the adverse facts available net subsidy rate for this program to be 2.00 percent ad valorem, which is the de minimis rate applicable for developing countries. See section 703(b)(4)(B) of the Act.

7. Captive Electricity Tax Exemptions

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40636. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, we determine the adverse facts available net subsidy rate for this program to be 2.00 percent ad valorem, which is the de minimis rate applicable for developing countries. See section 703(b)(4)(B) of the Act.

E. Program in the State of Gujarat

1. Sales Tax Incentives

In the Preliminary Determination, we found that this program conferred countervailable subsidies on the subject merchandise. See 66 FR at 40636. No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of these findings. Accordingly, we determine the adverse facts available net subsidy rate for this program to be 2.00 percent ad valorem, which is the de minimis rate applicable for developing countries. See section 703(b)(4)(B) of the Act.

III. Total Ad Valorem Rate

No new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of the net subsidy rate that was calculated in the Preliminary Determination. Accordingly, we determine the adverse facts available net subsidy rate to be 62.92 percent ad valorem for all producers/exporters. See section 705 of the Act.

IV. Recommendation:

Because no new information, evidence of changed circumstances, or comments from interested parties were presented in this investigation to warrant any reconsideration of the net subsidy rate that was calculated in the Preliminary Determination, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final affirmative determination in the Federal Register.

Agree

Disagree

James J. Jochum
Assistant Secretary
for Import Administration

Date