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Administrative Review
POR: 11/29/16 – 12/31/17
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March 23, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Final Results of the 2016-2017
Countervailing Duty Administrative Review of Finished Carbon
Steel Flanges from India

I. Summary

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty (CVD) order¹ on finished carbon steel flanges from India covering the period of review (POR) November 29, 2016 through December 31, 2017.

As a result of this analysis, we made changes to the *Preliminary Results*.² We recommend that you approve the positions described in the “Analysis of Comments” section of this memorandum.

II. List of Issues

Below is the complete list of issues for which we received comments and rebuttal comments from interested parties.

Comment 1: Determination Regarding the Exemption from Entry Tax for the Iron and Steel Industry in SGUP

¹ See *Finished Carbon Steel Flanges from India: Countervailing Duty Order*, 82 FR 40138 (August 24, 2017) (*Order*).

² See *Finished Carbon Steel Flanges from India: Preliminary Results of Countervailing Duty Administrative Review, 2016-2017*, 84 FR 55141 (October 15, 2019) (*Preliminary Results*), and accompanying Preliminary Results Memorandum (PDM).



Comment 2: Calculation of EPCGS Benefits for Norma

Comment 3: Calculation of EPCGS Benefits for RNG

III. Background

On October 15, 2019, Commerce published the *Preliminary Results* of this review.³ Norma (India) Ltd. (Norma), R.N. Gupta & Co. Ltd. (RNG) and the petitioners⁴ submitted timely filed case briefs,⁵ and Norma and the petitioners submitted timely filed rebuttal briefs.⁶ On February 3, 2020, Commerce postponed the final results of review by 44 days until March 27, 2020.⁷

IV. Changes Since the *Preliminary Results*

The “Analysis of Programs” section below contains summaries of the comments and Commerce’s positions on the issues raised in the briefs. We have made changes to the calculation of benefits received under the Export Promotion of Capital Goods Scheme (EPCGS) since the *Preliminary Results*.

V. Scope of the Order

The scope of the *Order* covers finished carbon steel flanges. Finished carbon steel flanges differ from unfinished carbon steel flanges (also known as carbon steel flange forgings) in that they have undergone further processing after forging, including, but not limited to, beveling, bore threading, center or step boring, face machining, taper boring, machining ends or surfaces, drilling bolt holes, and/or deburring or shot blasting. Any one of these post-forging processes suffices to render the forging into a finished carbon steel flange for purposes of this review. However, mere heat treatment of a carbon steel flange forging (without any other further processing after forging) does not render the forging into a finished carbon steel flange for purposes of this review.

While these finished carbon steel flanges are generally manufactured to specification ASME B16.5 or ASME B16.47 series A or series B, the scope is not limited to flanges produced under those specifications. All types of finished carbon steel flanges are included in the scope regardless of pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class (usually, but not necessarily, expressed in pounds of pressure, *e.g.*, 150, 300, 400, 600, 900, 1500, 2500, *etc.*), type of face (*e.g.*, flat face, full face, raised face, *etc.*), configuration

³ See *Preliminary Results*.

⁴ Weldbend Corporation and Boltex Manufacturing Co., L.P. (collectively, the petitioners)

⁵ See Norma’s Case Brief, “Finished Carbon Steel Flanges from India: Submission of Administrative Case Brief,” dated November 14, 2019 (Norma’s Case Brief); RNG’s Case Brief, “Finished Carbon Steel Flanges from India: Case Brief of R.N. Gupta & Company, Limited,” dated November 13, 2019 (RNG’s Case Brief); and Petitioners’ Case Brief, “Finished Carbon Steel Flanges from India: Case Brief – Weldbend Corporation and Boltex Manufacturing Co., L.P.,” dated November 14, 2019 (Petitioners’ Case Brief).

⁶ See Norma’s Rebuttal Brief, “Finished Carbon Steel Flanges from India: Rebuttal Brief,” dated November 22, 2019 (Norma’s Rebuttal Brief); and Petitioners’ Rebuttal Brief, “Finished Carbon Steel Flanges from India: Rebuttal Brief – Weldbend Corporation and Boltex Manufacturing Co., L.P.,” dated November 22, 2019 (Petitioners’ Rebuttal Brief).

⁷ See Memorandum, “Finished Carbon Steel Flanges from India: Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 11/29/2016 – 12/31/2017,” dated February 3, 2020.

(*e.g.*, weld neck, slip on, socket weld, lap joint, threaded, *etc.*), wall thickness (usually, but not necessarily, expressed in inches), normalization, or whether or not heat treated. These carbon steel flanges either meet or exceed the requirements of the ASTM A105, ASTM A694, ASTM A181, ASTM A350 and ASTM A707 standards (or comparable foreign specifications). The scope includes any flanges produced to the above-referenced ASTM standards as currently stated or as may be amended. The term “carbon steel” under this scope is steel in which: (a) Iron predominates, by weight, over each of the other contained elements: (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

- (i) 0.87 percent of aluminum;
- (ii) 0.0105 percent of boron;
- (iii) 10.10 percent of chromium;
- (iv) 1.55 percent of columbium;
- (v) 3.10 percent of copper;
- (vi) 0.38 percent of lead;
- (vii) 3.04 percent of manganese;
- (viii) 2.05 percent of molybdenum;
- (ix) 20.15 percent of nickel;
- (x) 1.55 percent of niobium;
- (xi) 0.20 percent of nitrogen;
- (xii) 0.21 percent of phosphorus;
- (xiii) 3.10 percent of silicon;
- (xiv) 0.21 percent of sulfur;
- (xv) 1.05 percent of titanium;
- (xvi) 4.06 percent of tungsten;
- (xvii) 0.53 percent of vanadium; or
- (xviii) 0.015 percent of zirconium.

Finished carbon steel flanges are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also be entered under HTSUS subheadings 7307.91.5030 and 7307.91.5070. The HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope is dispositive.

VI. Period of Review (POR)

The POR is November 29, 2016 through December 31, 2017. While the POR covers part of 2016 and calendar year 2017, we have limited the reporting period to January 1, 2017, through December 31, 2017.⁸ No parties submitted comments regarding the limited reporting period.

VII. Subsidies Valuation Information

A. Allocation Period

Commerce has made no changes to the allocation period used in the *Preliminary Results*. However, issues were raised by the interested parties in case briefs that led us to correct the allocation methodology that was used in the *Preliminary Results* to calculate benefits under the EPCGS.

B. Attribution of Subsidies

No issues concerning the attribution of subsidies were raised by the interested parties in their case briefs. Thus, Commerce has made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies. For a description of the methodologies used for these final results, *see the Preliminary Results*, and accompanying PDM at 8-9.

C. Denominators

No issues concerning sales denominators were raised by the interested parties in their case briefs. Thus, Commerce has made no changes to the sales denominators used in the *Preliminary Results*. For a description of the denominators used for these final results, *see the Preliminary Results*, and accompanying PDM at 9.

D. Benchmarks and Discount Rates

No issues concerning benchmarks or discount rates were raised by the interested parties in their case briefs. Thus, Commerce has made no changes to benchmarks or the discount rates used in the *Preliminary Results*. For a description of the benchmarks and discount rates used for these final results, *see the Preliminary Results*, and accompanying PDM at 9-10.

VIII. Use of Facts Otherwise Available and Adverse Inferences

A. Legal Standard

Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, use “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; fails to provide information within the deadlines established, or in the form and manner requested by Commerce,

⁸ *See* Memorandum, “Administrative Review of the Countervailing Duty Order on Finished Carbon Steel Flanges from India: Limited Reporting Period for the First Administrative Review,” dated November 15, 2018.

subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the Act.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the agency will so inform the party submitting the response and will, to the extent practicable, provide the party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁹ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record.¹⁰

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹¹ Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”¹² It is Commerce’s practice to consider information to be corroborated if it has probative value.¹³ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.¹⁴ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.¹⁵ Further, Commerce is not required to corroborate any CVD applied in a separate segment of the same proceeding.¹⁶

Finally, under section 776(d) of the Act, when applying an adverse inference, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable

⁹ See section 776(b)(1)(B) of the Act.

¹⁰ See 19 CFR 351.308(c).

¹¹ See 19 CFR 351.308(d).

¹² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. No. 103-316, vol. 1 at 870 (1994).

¹³ See SAA at 870.

¹⁴ See, e.g., SAA at 869.

¹⁵ See SAA at 869-870.

¹⁶ See section 776(c)(2) of the Act.

subsidy rate for a subsidy program from a proceeding that the agency considers reasonable to use, including the highest of such rates.¹⁷ Additionally, when using an adverse inference in selecting among the facts otherwise available, Commerce is not required, for the purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality of the interested party.”¹⁸

B. GOI- Application of Facts Otherwise Available and Adverse Facts Available (AFA)

Commerce relied on “facts otherwise available,” including AFA, for several findings in the *Preliminary Results*.¹⁹ For a description of these decisions, *see the Preliminary Results*. Commerce has not made any changes to its decisions in the *Preliminary Results* to use facts otherwise available and AFA. We address the use of partial facts available and AFA in Comment 1, below.

IX. Analysis of Programs

Programs Determined to be Countervailable

1. Duty Drawback Program (DDB Program)

Norma: 2.00 percent *ad valorem*

RNG: 2.00 percent *ad valorem*

2. Export Promotion of Capital Goods Scheme (EPCGS)

Norma: 0.32 percent *ad valorem*

RNG: less than 0.005 percent *ad valorem*

3. Interest Equalization Scheme (IES)

RNG: less than 0.005 percent *ad valorem*

4. Status Holder Incentive Scheme (SHIS)

Norma: 0.43 percent *ad valorem*

RNG: 0.19 percent *ad valorem*

5. Merchandise Export from India Scheme (MEIS)

Norma: 1.88 percent *ad valorem*

RNG: 2.50 percent *ad valorem*

¹⁷ See section 776(d)(1) and (2) of the Act.

¹⁸ See section 776(d)(3) of the Act.

¹⁹ See PDM at 5-7.

6. State Government of Uttar Pradesh (SGUP) - Exemption from Entry Tax for the Iron and Steel Industry

Norma: 0.76 percent *ad valorem*

Programs Determined to be Not Used

Commerce has made no changes to its preliminary findings with regard to the following programs. No issues were raised by the interested parties in case briefs regarding these programs. We continue to find that, for these final results, the following programs were not used by Norma or RNG during the POR:

1. Focus Product Scheme
2. Advanced License Program
3. Advance Authorization Scheme
4. Government of India Loan Guarantees²⁰
5. Duty Free Import Authorization Scheme
6. Market Development Scheme
7. Market Access Initiative
8. Status Certificate Program
9. Steel Development Fund Loans
10. Incremental Export Incentivization Scheme
11. Pre-Shipment and Post-Shipment Export Financing
12. Provision for Less Than Adequate Remuneration of Carbon Steel Inputs Provided by Steel Authority of India (SAIL) Used in Production of Flanges

State Government of Maharashtra (SGOM) Subsidy Programs

13. Infrastructure Assistance for Mega Projects Under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects
14. Subsidies for Mega Projects under the Package Scheme of Incentives
15. Maharashtra Package Scheme of Incentives, 2013

Export Oriented Units

16. Duty-Free Importation of Capital Goods and Raw Materials
17. Reimbursements of Central Sales Tax (CST) Paid on Goods Manufactured in India
18. Duty Drawback on Fuel Procured from Domestic Oil Companies
19. Exemption from Payment of Central Excise Duty (CED) on Goods Manufactured in India and Procured from a Domestic Tariff Area

²⁰ We note that this program was inadvertently not included in the list of “Programs Determined to be Not Used” in the PDM.

SGUP Subsidies

- 20. Investment Promotion Scheme
- 21. Special Assistance for Mega Projects

State Government of Punjab (SGP) Subsidies

- 22. Punjab Fiscal Incentives for Industrial Promotion

X. Analysis of Comments

Comment 1: Determination Regarding the Exemption from Entry Tax for the Iron and Steel Industry in SGUP

Norma's Case Brief:

- Commerce must explain its decision to apply AFA and record evidence must demonstrate that Norma failed to act to the best of its ability.²¹
- Further, the application of AFA with regard to the Exemption from Entry Tax for the Iron and Steel Industry in SGUP program is overly punitive.²²
- Although Commerce did not receive certain information regarding the entry tax on iron and steel during the POR from the government of India (GOI), Commerce cannot ignore information placed on the record by Norma indicating that the entry tax on iron and steel was 1 percent.²³
- Contrary to *OCTG from India*,²⁴ record evidence indicates the exemption from entry tax is not specific, and therefore, not countervailable.²⁵

²¹ See Norma's Case Brief at 4-5 (citing sections 776(a), 776(a)(2), 776(b), and 782(d) of the Act; *Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. vs. United States*, 387 F. Supp. 2d 1270, 1280 (CIT 2005); *Nippon Steel Corporation v. United States*, 337 F. 3d 1373, 1378-1379 and 1381 (Fed. Cir. 2003) (*Nippon Steel*); *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1329 (CIT 1999); *Allegheny Ludlum Corp. v. United States*, 215 F. Supp. 2d 1322, 1341 (CIT 2000); *Guizhou Tyre Co. v. United States*, 389 F. Supp. 3d 1315, 1320 (CIT 2019); *National Nail Corp. v. United States*, 390 F. Supp. 3d 1356, 1374; and *Mannesmanrohen-Werke AG v. United States*, 77 F. Supp. 2d 1302, 1314 (CIT 1999)).

²² *Id.* at 5-6 (citing *ArcelorMittal USA LLC v. United States*, 337 F. Supp. 1285, 1301 (CIT 2018) (*ArcelorMittal*); and *Essar Steel Limited v. United States*, 678 F. 3d 1268, 1276 (Fed. Cir. 2012)).

²³ *Id.* at 6-9 (citing PDM at 18; *GPX International Tire Corp., v. United States*, 942 F. Supp. 2d 1343, 1353 (CIT 2013) (*GPX International*); *ArcelorMittal at 1301*; *RZBC Group Shareholding Co., Ltd. v. United States*, 222 F. Supp. 3d 1196, 1208 (CIT 2017); *Gallant Ocean (Thailand) Co., Ltd. v. United States*, 602 F. 3d 1319, 1323 (Fed. Cir. 2010); and *Essar Steel, Limited v. United States*, 753 F. 3d 1368, 1373 (Fed. Cir. 2014)).

²⁴ See *Certain Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014), and accompanying Issues and Decision Memorandum (OCTG from India IDM) at Comment 15.

²⁵ See Norma's Case Brief at 9-13 (citing *Countervailing Duties*, 63 FR 65348 (November 25, 2008); sections 771(5A)(D)(i) and 771(5A)(D)(iii)(I)-(III); and *Magnolia Metallurgy, Inc. v. United States*, 508 F. 3d 1349, 1352).

Petitioners' Case Brief:

- Commerce correctly applied AFA to find the Exemption from Entry Tax for the Iron and Steel Industry in SGUP program (SGUP exemption from entry tax program) countervailable based on the GOI's failure to cooperate.²⁶
- Additionally, as Norma and USK Exports Private Limited (USK) only reported entry tax exemptions under this program for certain steel input purchases during part of the POR (*i.e.*, January through June 2017), Norma failed to cooperate to the best of its ability and Commerce should apply AFA to determine the subsidy rate.²⁷
- Alternatively, if Commerce does not apply an AFA subsidy rate to the SGUP exemption from entry tax program, it should calculate a subsidy rate using facts available for the entire period that Norma failed to report entry tax exemptions (*i.e.*, July through December 2017).²⁸

Norma's Rebuttal Brief:

- Contrary to Commerce's claim, although the GOI did not provide program termination information, record evidence provided by Norma is sufficient to demonstrate the SGUP entry tax program was terminated on July 1, 2017.²⁹
- Applying AFA to Norma for not reporting certain input purchases from July through December 2017 is unwarranted because a change in the tax law, effective July 1, 2017, repealed the entry tax provision. This demonstrated that benefits could no longer be received under this program.³⁰
- For reasons mentioned above, there is no basis for Commerce to apply facts available to purchases of steel inputs during the second half of the POR. Moreover, Commerce did not notify Norma of any deficiencies in its reporting of input purchases.³¹

²⁶ See Petitioners' Case Brief at 4 (citing PDM at 6-7)).

²⁷ *Id.* at 2-5 (citing PDM at 6-7 and 18; Sections 776, 776(a), and 776(b) of the Act; *Nippon Steel* at 1375 and 1383; *Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 23888 (May 23, 2018), and accompanying Decision Memorandum, unchanged in *Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 47878 (September 21, 2018); and *Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 8507 (January 26, 2017), and accompanying Issues and Decision Memorandum at Comment 1).

²⁸ *Id.* at 5.

²⁹ See Norma's Rebuttal Brief at 2-5 (citing PDM at 18; *Cerro Flow Products, LLC v. United States*, Slip Op. 14-84, 2014 WL 3539386 (CIT 2014) at 7; *GPX International* at 1353; *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254, 1260-1262 (CIT 2012) (*Fine Furniture*); *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 352 F. Supp. 3d 1316, 1325 (CIT 2018); and *Archer Daniels Midland Company v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013)).

³⁰ *Id.* at 5-6 (citing Sections 776(a) and 782(d) of the Act; and *Fine Furniture* at 1209).

³¹ *Id.* at 7 (citing Section 776(d) of the Act; *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323 (CIT 2002)).

Petitioners' Rebuttal Brief:

- Commerce correctly applied AFA in the *Preliminary Results*³² by finding the SGUP entry tax program specific and countervailable based on the GOI's failure to cooperate.³³
- Commerce should continue to rely on the five percent entry tax rate in calculating subsidy benefits under this program if it does not assign total AFA to Norma.³⁴

Commerce's Position: Consistent with the *Preliminary Results*, we determine that this program is countervailable and that the use of a 5 percent entry tax rate as AFA in calculating a subsidy rate for the SGUP Exemption from Entry Tax for the Iron and Steel Industry program for Norma and USK is appropriate.³⁵ Norma contends that although the GOI failed to provide information needed to determine financial contribution and specificity, it provided evidence demonstrating this program is not specific and has been terminated, which indicates this program is not countervailable. Additionally, Norma claims that even if Commerce countervails this program, we should rely on a 1 percent entry tax rate provided by Norma in calculating a program benefit, but only for the period for which the program was in effect.³⁶ As we explain below, Norma's arguments are not supported by record evidence.

Concerning Norma's argument that this program is not countervailable because it is not specific, we note that in a CVD proceeding, Commerce normally requires that the government of the country whose merchandise is under investigation provide this information.³⁷ With regard to specificity, Norma provided a worksheet based on an extract from the "Handbook on VAT, CST, & Entry Tax in Uttar Pradesh" indicating that entry tax exemptions of varying amounts have been available to numerous industries at different times and there is thus no predominant user of the exemptions granted under this program.³⁸ However, without a GOI response, Commerce is not able to conduct a specificity analysis and is also not able to corroborate information provided by a respondent. In such cases, where information concerning an alleged subsidy program is absent from the record, Commerce may apply an adverse inference and find that there is a government financial contribution and that the program is specific.³⁹

Without the government response which should include a description of the program including all eligibility criteria, Commerce is forced to resort to AFA. As stated in the *Preliminary Results*, the GOI deleted certain questions and failed to respond to the majority of questions in

³² See PDM at 18.

³³ See Petitioners' Rebuttal Brief at 3-7 (citing PDM at 6-7 and 18; OCTG from India IDM at 33 and Comment 15; *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Countervailing Duty Determination*, 82 FR 58172 (December 11, 2017), and accompanying Issues and Decision Memorandum at Comment 7 (Mechanical Tubing from India IDM); and Section 771(5)(D) of the Act).

³⁴ *Id.* at 7-10 (citing PDM at 18; Mechanical Tubing from India IDM at Comment 7; Sections 776(c) and 776(d)(3) of the Act).

³⁵ See PDM at 17-18.

³⁶ See Norma's Case Brief at 6-8.

³⁷ See e.g., *Multilayered Wood Flooring from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011), and accompanying Issues and Decision Memorandum at 14.

³⁸ See Norma's Letter, "Finished Carbon Steel Flanges from India: Submission of Norma's NSA Response," dated April 25, 2019 at 9-10 and Exhibits S2-3(b) and S2-3(c) (Norma's NSA Response).

³⁹ *Id.*

Commerce's New Subsidy Allegations (NSA) questionnaire.⁴⁰ Further, the GOI never indicated that it was having difficulty responding to these questions nor did it request an extension of time to submit a response. Therefore, in the *Preliminary Results*, we found that the GOI had not provided us with necessary information and impeded our ability to conduct this review. Moreover, the evidence provided by Norma does not provide all the information concerning the program that the GOI could and should have provided as the originator and administerer of the program. As such, as explained in the *Preliminary Results*, we applied AFA with respect to the government financial contribution and specificity findings.⁴¹

This decision is consistent with past CVD proceedings, where Commerce has applied AFA to the GOI's reporting of this program for financial contribution and specificity, and therefore lacked sufficient information needed to analyze whether this program is nonspecific.⁴² We also note that in *OCTG from India*, Commerce rejected the argument that this program was not countervailable.⁴³ Finally, the Court of Appeals for the Federal Circuit has upheld Commerce's application of AFA to a non-cooperating government even if it subjects a cooperative respondent to the "collateral affects" of adverse inference.⁴⁴

With regard to the termination of the program, the GOI reported that in terms of describing any program changes, including program termination, it "does not anticipate any changes under the Act in the near future."⁴⁵ Accordingly, without proof of program termination from the GOI, we continue to find that this SGUP program provides a government financial contribution and is specific.⁴⁶ Norma placed a letter on the record from the Government of Uttar Pradesh indicating this program was terminated during the POR.⁴⁷ But, as noted in the *Preliminary Results* and above, in response to Commerce's questions regarding program changes and termination, the GOI explained there were no changes to report.⁴⁸ Last, Commerce disagrees with Norma that the record supports the existence of a "program wide change" under 19 CFR 351.526. Although Norma contends that the program has been terminated, the GOI failed to provide any program information and moreover the required information concerning a program-wide change to this program. Therefore, we find Norma's argument to be an unsubstantiated claim of program termination and therefore it remains uncorroborated. Moreover, 19 CFR 351.526(d) states that Commerce will not adjust the cash deposit rate to reflect a terminated program if residual benefits may continue to be bestowed or a substitute program has been introduced. Because the GOI did not provide the requested information regarding this program, we are unable to find that there was a program termination pursuant to 19 CFR 351.526. As noted in the *Preliminary Results*, this is consistent with decisions made in prior India CVD proceedings.⁴⁹

⁴⁰ See PDM at 6-7 and 17-18.

⁴¹ *Id.*

⁴² See, e.g., Mechanical Tubing from India IDM at Comment 7.

⁴³ See, e.g., OCTG from India IDM at Comment 15.

⁴⁴ See *Fine Furniture* at 1365, 1373.

⁴⁵ See GOI NSA Response at 27-28.

⁴⁶ See PDM at 18.

⁴⁷ *Id.* at Exhibits S2-3(d) and S2-3(f).

⁴⁸ See GOI NSA Response 27-28.

⁴⁹ See PDM at 18; see also Mechanical Tubing from India IDM at Comment 7.

Norma argues that we should use the 1 percent entry tax rate and information it provided, if we countervail this program.⁵⁰ As noted in the *Preliminary Results*, the GOI provided information indicating that goods entering Uttar Pradesh may be subject to an entry tax rate as high as 5 percent.⁵¹ The GOI never corroborated or indicated that steel and iron imports would be subject to a 1 percent entry tax rate at most. Regardless, Norma argues that we should rely on information it placed on the record indicating that this rate was in effect on steel and iron imports during the first half of the POR. We find that evidence submitted by Norma highlights the need for a complete response from the GOI. However, because the GOI failed to provide any substantive response for this program, including information regarding the program's operation or the entry tax rates in effect during the POR, there is no corroborating information from the GOI confirming that this is the applicable rate during the POR. Due to the lack of the GOI information, Commerce is not able to fully analyze and determine the applicable entry rate for iron and steel products. Lastly, Commerce notes that there are additional questions concerning the application of entry tax to iron and steel products, special carve-outs or subsets of iron and steel products referenced in the "Handbook on VAT, CST, & Entry Tax in Uttar Pradesh"⁵² and, without the complete explanation from the GOI, Commerce cannot be sure how these are applied or how the program was administered during the POR.⁵³ For these reasons, we continue to find that the GOI's non-participation here requires Commerce to rely on the 5 percent entry tax rate in calculating benefits under this program.

The petitioners contend that Commerce should apply: (1) total AFA to Norma's reporting of benefits under this program, (2) partial AFA to the half of the year Norma's reported no benefits, or (3) that Commerce should continue to rely on the 5 percent rate to calculate the subsidy rate. In support of arguments one and two, the petitioners explain that Commerce stated that there was no evidence on the record to demonstrate program termination in the *Preliminary Results*,⁵⁴ meaning that Norma and USK should have reported benefits received under this program during the entire POR, regardless of its claim that the program no longer existed.

To clarify this matter, Commerce would need to ask Norma and USK additional supplemental questions about this program (*i.e.*, to provide information regarding benefits received during the second half of the POR). Further, without having provided Norma an opportunity to provide such information, we find that application of total AFA to Norma and USK's reporting of benefits under this program – or to benefits that may have been received during the second half of the POR – is unwarranted.

Therefore, for these final results, Commerce continues to rely on the 5 percent entry tax rate reported by the GOI in calculating subsidy benefits for this program. As discussed, this was the only actual rate provided by the GOI and, according to information submitted by the GOI, this is an actual entry tax rate on goods entering Uttar Pradesh during the POR.⁵⁵

⁵⁰ See Norma's Case Brief at 9-13 and Norma's Rebuttal Brief at 2-5.

⁵¹ *Id.*

⁵² *Id.* at 6-8; and Norma's Rebuttal Brief at 2-5.

⁵³ See Memorandum, "Countervailing Duty Administrative Review of Finished Carbon Steel Flanges from India: New Subsidy Allegations," dated April 10, 2019 at 7-8; see also OCTG from India IDM at Comment 15.

⁵⁴ See PDM at 18.

⁵⁵ *Id.* at 18.

Comment 2: Commerce's Calculation of EPCGS Benefits for Norma

Norma's Case Brief:

- In the *Preliminary Results*,⁵⁶ Commerce determined EPCGS to be a non-recurring program, however, Commerce failed to properly allocate certain EPCGS benefits received by USK, that exceeded 0.5 percent of total export sales, over the AUL period.⁵⁷

We received no comments from any other interested parties.

Commerce's Position: We agree with Norma that Commerce should have allocated non-recurring benefits for the EPCGS program for calendar year 2017. We note that Commerce's normal practice is to allocate over the AUL any non-recurring benefits that exceed 0.5 percent of the respondent's sales.⁵⁸ Further, this has been Commerce's normal practice with respect to EPCGS in previous CVD proceedings.⁵⁹ As a result, we have made this change to our calculations, which is also explained in further detail in the final calculations memorandum prepared for these final results.⁶⁰

Comment 3: Commerce's Calculation of EPCGS Benefits for RNG

RNG's Case Brief:

- RNG alleges that Commerce's EPCGS calculation incorrectly includes imports that were made prior to the AUL period.⁶¹
- Commerce failed to apply the 0.5 percent test to EPCGS licenses that were fulfilled.⁶²

Petitioner's Rebuttal Brief:

- Commerce should not change the calculation methodology it used in the *Preliminary Results*. RNG incorrectly relies on the time of the import transaction to decide its reporting obligation. The subsidy benefit was conferred at the time that the GOI officially waived the import duty and other tax liabilities owed on the transaction.⁶³
- Commerce correctly did not include in the preliminary calculation any benefits for which contingent liabilities were waived outside of the AUL period.⁶⁴

⁵⁶ *Id.* at PDM at 12-13.

⁵⁷ See Norma's Case Brief at 2-4 (citing 19 CFR 351.504; 19 CFR 351.524(b)(1); 19 CFR 351.524(b)(2); PDM at 13; and e.g., *Fabrique de Fer de Charleroi, S.A. v. United States*, 166 F. Supp. 2d 593 (CIT 2001)).

⁵⁸ See 19 CFR 351.504; 19 CFR 351.524(b)(1); 19 CFR 351.524(b)(2); and PDM at 13.

⁵⁹ See e.g., *Countervailing Duty Investigation of Glycine from India: Affirmative Final Determination*, 84 FR 18482 (May 1, 2019), and accompanying Issues and Decision Memorandum at Comment 4.

⁶⁰ See Memorandum, "Final Results Calculations for Norma Group," dated concurrently with this memorandum (Norma Group's Final Calculation Memorandum).

⁶¹ See RNG Case Brief at 3-4.

⁶² *Id.* at 4-5.

⁶³ See Petitioners' Rebuttal Brief at 2.

⁶⁴ *Id.* at 2.

- RNG's argument highlights its misunderstanding of its reporting requirements and the potential underreporting of AUL benefits under this program by RNG during the course of this review.⁶⁵

Commerce's Position: We agree with RNG that Commerce improperly failed to conduct the 0.5 percent test on the non-recurring benefits that were incurred on fulfilled licenses. It is Commerce's normal practice to conduct the 0.5 percent test on non-recurring benefits.⁶⁶ Further, this has been Commerce's normal practice with respect to the EPCGS program in previous CVD proceedings.⁶⁷ As such, we have made this change to our calculations, which is also explained in further detail in the final calculations memorandum prepared for these final results.⁶⁸

With regard to the petitioner's comment that RNG's case brief indicates that it may have underreported its AUL benefits, we do not see any basis on the record that supports this concern.

XI. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If accepted, we will publish the final results in the *Federal Register*.



Agree



Disagree

3/23/2020

X



Signed by: JEFFREY KESSLER