



C-533-894
Investigation
POI: 4/1/2018 – 3/31/2019
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May 18, 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 Preliminary Determination in the
Countervailing Duty Investigation of Forged Steel Fluid End
Blocks from India

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to the producers and exporters of forged steel fluid end blocks (fluid end blocks) in India, as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On December 19, 2019, the FEB Fair Trade Coalition, Ellwood Group, and Finkl Steel (collectively, the petitioners), filed a petition with Commerce seeking the imposition of countervailing duties (CVD) on imports of fluid end blocks from India.¹ On January 8, 2020, Commerce initiated a CVD investigation on fluid end blocks from India.²

The petition identified Bharat Forge Limited (Bharat Forge) and Ultra Engineers (Ultra) as the only Indian exporters of subject merchandise to the United States.³ Consistent with 19 CFR

¹ See Petitioners' Letter, "Fluid End Blocks from China, Germany, India, and Italy: Antidumping and Countervailing Duty Petitions," dated December 19, 2019 (Petition).

² See "Countervailing Duty Investigation Initiation Checklist: Forged Steel Fluid End Blocks from India," dated January 10, 2020 (Initiation Checklist); *see also Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People's Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 2385 (January 15, 2020) (Initiation Notice).

³ See Petition at 19.



351.204(c)(1), Commerce selected both companies as mandatory respondents in the investigation.

On February 4, 2020, Ultra requested that fluid end block assemblies (FEB assemblies) be excluded from the scope of the investigation.⁴ On February 11, 2020, the petitioners submitted rebuttal comments in which they rejected Ultra's request but agreed in principle that finished FEB assemblies fall outside the scope of the investigation.⁵ After additional comments from Ultra and the petitioners, both agreed on scope language that would exclude FEB assemblies from the scope of the investigation.⁶ The petitioners added that, "the extent to which the merchandise that Ultra and {Shanghai} Qinghe {Machinery Co., Ltd.} sells in the United States are in-scope FEBs or an out-of-scope {Fluid End Modules} remains a factual question for investigation and verification by Commerce."⁷

B. Treatment of Ultra Engineers

On March 20, 2020, Ultra requested that Commerce de-select Ultra as a mandatory respondent in the investigation.⁸ On April 3, 2020, we requested additional information from Ultra regarding its products and sales, including descriptions of each product sold in the United States and an explanation of why each product is not subject merchandise.⁹ Ultra provided the requested information and confirmed that none of its U.S. exports during the POI included subject merchandise; Ultra also provided a list, descriptions, and diagrams of exported products, as well as sample sale and export documentation.¹⁰ Based on the information provided by Ultra and our preliminary scope ruling as outlined below, we preliminary find that Ultra's products are outside the scope of this investigation, and therefore we have not individually examined Ultra for this preliminary determination. As provided in section 782(i)(1) of the Act, we intend to verify Ultra's claim that it did not produce or sell the subject merchandise during the POI.

⁴ See Ultra's Letter, "Ultra Comments on Scope in the Antidumping and Countervailing Duty Investigations on Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy and the People's Republic of China," dated February 4, 2020.

⁵ See Petitioners' Letter, "Forged Steel Fluid End Blocks from China, Germany, India, and Italy: Petitioner's Scope Rebuttal Comments," dated February 11, 2020.

⁶ See Ultra's Letter, "Ultra Additional Comments on Scope in the Antidumping and Countervailing Duty Investigations on Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy and the People's Republic of China," dated March 13, 2020; see also Petitioners' Letter, "Forged Steel Fluid End Blocks from China, Germany, India, and Italy: Petitioner's Supplemental Scope Rebuttal Comments," dated March 18, 2020.

⁷ *Id.* at 3.

⁸ See Ultra's Letter, "Ultra Request to be De-selected as a Mandatory Respondent in the Countervailing Duty Investigation on Forged Steel Fluid End Blocks from India," dated March 20, 2020.

⁹ See Commerce's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from India: Ultra Engineers," dated April 3, 2020.

¹⁰ See Ultra's Letter, "Ultra Third Supplemental Response in the Countervailing Duty Investigation on Forged Steel Fluid End Blocks From India," dated April 30, 2020.

C. Questionnaires and Responses

On January 22, 2020, Commerce issued its initial questionnaire to the Government of India (GOI) requesting information on programs used by the two mandatory respondents which may constitute subsidies under U.S. law.¹¹ Commerce granted extensions and received timely filed responses to the initial questionnaire from the GOI, Bharat Forge and its cross-owned affiliate Saarloha Advanced Materials Private Limited (Saarloha).¹² Between February 24 and March 31, 2020, Commerce issued supplemental questionnaires to the GOI, Ultra, and Bharat Forge. The GOI, Ultra, and Bharat Forge filed timely responses to Commerce's supplemental questionnaires.¹³

D. Postponement of Preliminary Determination

On February 27, 2020, based on a request from the petitioners,¹⁴ Commerce postponed the deadline for the preliminary determination until May 18, 2020, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).

¹¹ See Commerce's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from India: Countervailing Duty Questionnaire," dated January 22, 2020.

¹² See Bharat Forge's Letter, "Forged Steel Fluid End Blocks from India: Submission Bharat Forge Limited's Affiliation Response," dated February 5, 2020 (Bharat Forge Affiliation Response); *see also* Ultra's Letter, "Ultra Response to Section III Identifying Affiliated Companies in the Countervailing Duty Investigation on Forged Steel Fluid End Blocks From India (C-533-894)," dated February 10, 2020; *see also* GOI's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from India: Response to Section II of the CVD Questionnaire," dated March 9, 2020 (GOI IQR); *see also* Bharat Forge's Letter, "Forged Steel Fluid End Blocks from India: Submission of Bharat Forge Limited's Section III Response," dated March 11, 2020 (Bharat Forge IQR); *see also* Ultra's Letter, "Ultra's Initial Questionnaire Response: Countervailing Duty Investigation of Forged Steel Fluid End Blocks from India," dated March 11, 2020; *see also* Saarloha's Letter, "Forged Steel Fluid End Blocks from India: Submission of Saarloha Advanced Materials Private Limited's Section III Response," dated March 11, 2020 (Saarloha IQR).

¹³ See Commerce's Letter, "Forged Steel Fluid End Blocks (fluid end blocks) from India: Supplemental Questionnaire for Ultra Engineers," dated February 24, 2020; *see also* Commerce's Letter, "Forged Steel Fluid End Blocks (fluid end blocks) from India: Supplemental Questionnaire for Bharat Forge Limited," dated February 24, 2020; *see also* Commerce's Letter, "CVD investigation on forged steel fluid end blocks from India: Government of India's incomplete response to the initial questionnaire," dated March 11, 2020; *see also* Ultra's Letter, "Ultra's Supplemental Affiliation Response: Countervailing Duty Investigation of Forged Steel Fluid End Blocks From India," dated March 11, 2020; *see also* Bharat Forge's Letter, "Forged Steel Fluid End Blocks from India: Submission of Bharat Forge Limited's Supplemental Affiliations Response," dated March 11, 2020; *see also* GOI's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from India: Partial Response to remaining questions of Section II of the CVD Questionnaire as per DOC Letter issued on March 11, 2020," dated April 6, 2020; *see also* Commerce's Letter, "Forged Steel Fluid End Blocks (fluid end blocks) from India: Supplemental Questionnaire for Bharat Forge Limited," dated March 30, 2020; *see also* Bharat Forge's Letter, "Forged Steel Fluid End Blocks from India: Bharat Forge Limited's Supplemental Section III Response, 1st Part," dated April 27, 2020 (Bharat Forge SQR1); *see also* Bharat Forge's Letter, "Forged Steel Fluid End Blocks from India: Bharat Forge Limited's Supplemental Section III Response, 2nd Part," dated May 5, 2020 (Bharat Forge SQR2); *see also* Commerce's Letter, "Forged Steel Fluid End Blocks (Fluid End Blocks) from India: Supplemental Questionnaire for the Government of India (GOI)," dated March 31, 2020; *see also* GOI's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from India: Response to supplemental questionnaire issued on March 31, 2020," dated May 4, 2020 (GOI SQR).

¹⁴ See Petitioners' Letter, "Forged Steel Fluid End Blocks from China, Germany, India, and Italy: Request to Extend Preliminary Results," dated February 10, 2020.

E. Period of Investigation

The period of investigation (POI) is April 1, 2018 through March 31, 2019. This period corresponds to the most recently completed fiscal year of the exporters and government in question, in accordance with 19 CFR 351.204(b)(2).¹⁵

F. Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioners' request,¹⁶ we are aligning the final CVD determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of fluid end blocks from India. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than September 29, 2020, unless postponed.

G. Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On January 31, 2020, the ITC published a preliminary determination that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of fluid end blocks from India that are allegedly subsidized by the GOI.¹⁷

III. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,¹⁸ we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage (*i.e.*, scope). BGH Edelstahl Siegen GmbH (BGH Siegen),¹⁹ Ultra Engineers (Ultra),²⁰ and Shanghai Qinghe

¹⁵ Commerce initiated on this investigation with a POI of January 1, 2018 through December 31, 2018. Bharat Forge requested that we amend the POI to match the Indian fiscal year (*i.e.*, April 1 through March 31 of the following year). See Bharat Forge's Letter, "Forged Steel Fluid End Blocks from India: Bharat Forge Limited Request to Amend POI," dated January 28, 2020. After inviting comments from the parties, Commerce amended the POI to coincide with the Indian fiscal year. See Memorandum, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from India: Amendment to the Period of Investigation," dated February 5, 2020.

¹⁶ See Petitioners' Letter, "Forged Steel Fluid End Blocks from China, Germany, India, and Italy: Petitioner's Request for Alignment of the Countervailing Duty Investigations with the Concurrent Antidumping Duty Investigations," dated April 1, 2020.

¹⁷ See *Fluid End Blocks from China, Germany, India, and Italy* (Inv. Nos. 701-TA-632-635 and 731-TA-1466-1468) (Preliminary), USITC Publication 5017, February 2020.

¹⁸ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

¹⁹ See BGH Siegen's Letters, "Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People's Republic of China; Comments on the Scope of the Investigations," dated February 4, 2020; and, "Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People's Republic of China; Additional Scope Comments," dated March 13, 2020.

²⁰ See Ultra's Letter, "*Ultra Comments on Scope* in the Antidumping and Countervailing Duty Investigations on Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People's Republic of

Machinery Co., Ltd. (Qinghe)²¹ commented on the scope of these investigations as it appeared in the *Initiation Notice*, and the petitioners submitted rebuttal comments.²² BGH Siegen requested that special martensitic precipitation hardening stainless components and forged steel blocks not used in fluid end block applications be excluded from the scope, and Ultra and Qinghe requested an exclusion for fluid end block assemblies. Based on our analysis of these comments, we preliminarily determined that special martensitic precipitation hardening stainless components and forged steel blocks, which meet the physical and chemical characteristics specified in the scope, are covered by the scope, while certain fluid end block assemblies are not covered by the scope.²³ For the reasons explained in the Preliminary Scope Decision Memorandum, Commerce has preliminarily revised the scope language to exclude only fluid end block assemblies.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are forged steel fluid end blocks (fluid end blocks), whether in finished or unfinished form, and which are typically used in the manufacture or service of hydraulic pumps.

The term “forged” is an industry term used to describe the grain texture of steel resulting from the application of localized compressive force. Illustrative forging standards include, but are not limited to, American Society for Testing and Materials (ASTM) specifications A668 and A788.

For purposes of this investigation, the term “steel” denotes metal containing the following chemical elements, by weight: (i) iron greater than or equal to 60 percent; (ii) nickel less than or equal to 8.5 percent; (iii) copper less than or equal to 6 percent; (iv) chromium greater than or equal to 0.4 percent, but less than or equal to 20 percent; and (v) molybdenum greater than or equal to 0.15 percent, but less than or equal to 3 percent. Illustrative steel standards include, but are not limited to, American Iron and Steel Institute (AISI) or Society of Automotive Engineers (SAE) grades 4130, 4135, 4140, 4320, 4330, 4340, 8630, 15-5, 17-4, F6NM, F22, F60, and XM25, as well as modified varieties of these grades.

The products covered by this investigation are: (1) cut-to-length fluid end blocks with an actual height (measured from its highest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), an actual width (measured from its widest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), and an actual length (measured from its longest point) of 11 inches (279.4 mm) to 75 inches (1,905.0 mm); and (2) strings of fluid end blocks with an actual height (measured from its

China,” dated February 4, 2020; Ultra’s Letter, “*Ultra Additional Comments on Scope* in the Antidumping and Countervailing Duty Investigations on Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy and the People’s Republic of China,” dated March 13, 2020.

²¹ See Qinghe’s Letter, “Qinghe Comments on Scope in the Antidumping and Countervailing Duty Investigations on Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy and the People’s Republic of China,” dated March 13, 2020.

²² See Petitioners’ Letters, “Forged Steel Fluid End Blocks from China, Germany, India, and Italy: Petitioner’s Scope Rebuttal Comments,” dated February 11, 2020; and, “Forged Steel Fluid End Blocks from China, Germany, India, and Italy: Petitioner’s Supplemental Scope Rebuttal Comments,” dated February 18, 2020.

²³ See Memorandum, “Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People’s Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated May 18, 2020 (Preliminary Scope Decision Memorandum).

highest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), an actual width (measured from its widest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), and an actual length (measured from its longest point) up to 360 inches (9,144.0 mm).

The products included in the scope of this investigation have a tensile strength of at least 70 KSI (measured in accordance with ASTM A370) and a hardness of at least 140 HBW (measured in accordance with ASTM E10).

A fluid end block may be imported in finished condition (*i.e.*, ready for incorporation into a pump fluid end assembly without further finishing operations) or unfinished condition (*i.e.*, forged but still requiring one or more finishing operations before it is ready for incorporation into a pump fluid end assembly). Such finishing operations may include: (1) heat treating; (2) milling one or more flat surfaces; (3) contour machining to custom shapes or dimensions; (4) drilling or boring holes; (5) threading holes; and/or (6) painting, varnishing, or coating.

Excluded from the scope of this investigation are fluid end block assemblies which (1) include (a) plungers and related housings, adapters, gaskets, seals, and packing nuts, (b) valves and related seats, springs, seals, and cover nuts, and (c) a discharge flange and related seals, and (2) are otherwise ready to be mated with the “power end” of a hydraulic pump without the need for installation of any plunger, valve, or discharge flange components, or any other further manufacturing operations.

The products included in the scope of this investigation may enter under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7218.91.0030, 7218.99.0030, 7224.90.0015, 7224.90.0045, 7326.19.0010, 7326.90.8688, or 8413.91.9055. While these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

V. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. Pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System,²⁴ the AUL in this proceeding is 15 years. The 15-year period corresponds to IRS Pub, 946 asset class 33.2. No party in this proceeding submitted comments challenging the proposed AUL period. Therefore, we preliminarily determine that a 15-year period is appropriate for purposes of allocating non-recurring subsidies.

Furthermore, for non-recurring subsidies we have applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for

²⁴ See U.S. Internal Revenue Service Pub 946 (2017), “Appendix B - Table of Class Lives and Recovery Periods” (IRS Pub. 946).

the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in the additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This section of Commerce's regulations states that this standard will normally be met where there is a majority of voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to Commerce's regulations further clarifies Commerce's cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same ways it can use its own assets (or subsidy benefits). Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.²⁵

Thus, Commerce's regulations make it clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.²⁶

Bharat Forge is the producer of the subject merchandise. Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Bharat Forge to its own sales.

²⁵ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

²⁶ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d. 593, 600-04 (CIT 2001).

In its affiliation response, Bharat Forge identified its affiliate Saarloha as a cross-owned supplier of iron and steel inputs used in the production of subject merchandise.²⁷ Bharat Forge further explained that Bharat Forge owns equity shares of Saarloha, and Saarloha's subsidiaries own equity shares of Bharat Forge.²⁸ Based on the business proprietary information provided by Bharat Forge, as discussed in the Preliminary Calculation Memorandum,²⁹ for this preliminary determination we find that Bharat Forge and Saarloha meet the cross-ownership definition detailed in 19 CFR 351.525(b)(6)(vi). We further find that Saarloha is a supplier of inputs primarily dedicated to the production of the downstream product. Therefore, we will attribute subsidies received by Saarloha to the combined sales of Saarloha and Bharat Forge (excluding intercompany sales), in accordance with 19 CFR 351.525(b)(6)(iv).

Bharat Forge Utilities (BF Utilities) is an affiliate of Bharat Forge that provides power, fuel, and water to Bharat Forge and was a supplier of capital goods during the AUL period.³⁰ To determine whether it is appropriate to attribute to Bharat Forge subsidies received by BF Utilities (*i.e.*, whether BF Utilities satisfies the criteria for a cross-owned provider of inputs for the production of subject merchandise), Commerce requested a full Section III questionnaire response from BF Utilities.³¹ This response is forthcoming; Commerce will address this matter in a post-preliminary determination.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)(5), Commerce considers the basis for a respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. We identified the denominator used to calculate the countervailable subsidy rate for each program, as discussed below and in the calculation memorandum prepared for this preliminary determination.³²

VI. BENCHMARKS AND INTEREST RATES

Section 771(5)(E)(ii) of the Act provides that the benefit for a loan is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market," indicating that a benchmark must be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient "could actually obtain on the market," Commerce will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans during the period, Commerce "may use a national average interest rate for comparable commercial loans," pursuant to 19 CFR 351.505(a)(3)(ii).

²⁷ See Bharat Forge Affiliation Response at 2.

²⁸ See Bharat Forge's Letter, "Forged Steel Fluid End Blocks from India: Submission of Bharat Forge Limited's Supplemental Affiliations Response," dated March 11, 2020.

²⁹ See Memorandum, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from India; Bharat Forge Ltd. Calculations for the Preliminary Determination," issued and dated concurrently with this memorandum (Preliminary Calculation Memorandum).

³⁰ See Bharat Forge IQR Exhibit CVD-6 at 187 and 311.

³¹ See Commerce's Letter, "Forged Steel Fluid End Blocks (fluid end blocks) from India: Supplemental Questionnaire for Bharat Forge Limited," dated March 31, 2020.

³² See Preliminary Calculation Memorandum.

Additionally, 19 CFR 351.505(a)(2)(ii) states that Commerce will not consider a loan provided by a government-owned special-purpose bank for purposes of calculating benchmark rates. In the absence of reported long-term loan interest rates, we use the above-discussed interest rates as discount rates for purposes of allocating non-recurring benefits over time pursuant to 19 CFR 351.524(d)(3)(i)(B).

Bharat Forge reported Indian rupee-denominated short-term and long-term loans that it received during the AUL from commercial lenders. Where applicable, we relied on the interest rate that the company paid on its rupee-denominated short and long-term rate borrowing as benchmark interest rates. For years in which a company-specific rate was not available, in accordance with 19 CFR 351.505(a)(3)(ii), we used national average interest rates from the International Monetary Fund's International Financial Statistics (IFS) as benchmark rates for rupee-denominated short-term and long-term loans.

For allocating the benefit under the Export Promotion Capital Goods (EPCGS) and State Government of Maharashtra (SGOM) Industrial Promotion Subsidy received by the company, we have used the discount rates described above for the year in which the government agreed to provide the subsidy, consistent with 19 CFR 351.524(d)(3)(i)(A). The interest-rate benchmarks and discount rates used in our preliminary calculations are provided in the preliminary calculation memoranda.

VII. ANALYSIS OF PROGRAMS

A. Programs Preliminarily Determined to be Countervailable

GOI Programs

1. Duty Drawback Scheme

The Duty Drawback (DDB) scheme provides rebates of duties levied on the inputs of exported manufactured goods.³³ Products with duties eligible for drawback include re-exported goods, raw materials and services used in the manufacture of exported products, certain supplies made under deemed export, and excise duty paid on fuels.³⁴ The rate of duty drawback can be either calculated on the basis of actual duty incidence, or on the basis of the all industry rate (AIR), which is determined by industry averages.³⁵

Bharat Forge and its cross-owned affiliate Saarloha both reported receiving benefits from the DDB scheme during the POI.³⁶ In its response, the GOI indicated that DDB benefits for subject merchandise are calculated on the basis of industry rates.³⁷ In its supplemental questionnaire

³³ See GOI IQR at 41.

³⁴ *Id.* at 42.

³⁵ See Bharat Forge IQR at 15.

³⁶ *Id.*; see also Saarloha IQR at 11.

³⁷ See GOI IQR at 35.

response, Bharat Forge confirmed that all duty drawback benefits claimed under this program were calculated on the AIR basis.³⁸

Import duty exemptions on inputs for exported products are not countervailable, as long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.³⁹ However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products and in what amounts.⁴⁰ The system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁴¹ If such a system does not exist, or if it is not applied effectively, and the government in question does not examine the *actual* inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, or remission of drawback is countervailable.⁴²

Regarding its establishment of the applicable DDB rates, the GOI stated the following in *Shrimp from India*:

The rates are determined following a specified procedure that is undertaken by an independent committee appointed by the Government. The committee makes its recommendations after discussions with all stake holders including Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB {free on board} values of export products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analyzed and this information is used to form the basis for the rate of Duty Drawback.⁴³

However, “based on the GOI’s questionnaire responses and lacking the documentation to support that the GOI has a system in place,” we concluded in that investigation that “the GOI had not supported its claim that its system is reasonable or effective for the purposes intended.”⁴⁴

Similar to its statement in *Shrimp from India*, the GOI once again reported:

The drawback rates are calculated on the basis of the data, pertaining to inputs and input services used in the manufacturing process as per SION, provided by the different export promotion councils and are duly verified by the statutory auditors. The data is also sought from the Customs, Central Excise and Service Tax Commissionerate regarding the

³⁸ See Bharat Forge’s Letter, “Forged Steel Fluid End Blocks from India: Bharat Forge Limited’s Supplemental Section III Response, 1st Part,” dated April 27, 2020 (Bharat Forge SQR1), at 3.

³⁹ See 19 CFR 351.519(a)(1)(ii).

⁴⁰ See *Certain Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India*), and accompanying Issues and Decision Memorandum (IDM) at 12-14.

⁴¹ *Id.*

⁴² See 19 CFR 351.519(a)(4)(i)-(ii).

⁴³ See *Shrimp from India* IDM at 12-13.

⁴⁴ *Id.*

inputs used, their prices and the duty incidence on the inputs or the input services. Based on these verified data, and any additional statutory or non-statutory data available from the different government departments, the drawback rates are calculated by the Drawback Committee.⁴⁵

Consistent with previous proceedings, including *Shrimp from India*, the record of this investigation indicates that the GOI continues to employ universal rates based on aggregate data collected from various sources, rather than attempting to determine the respondent's actual consumption, production, and waste. With regard to the drawback rate available on the export of subject merchandise, the GOI states that the "rates provided to the goods in question represent a *broad assessment* of unrebated incidence (direct and embedded) of the duties for which ease of implementation are together extended as the drawback rate."⁴⁶ The GOI further provides a table that shows the drawback rate by tariff item, indicating that rates for subject merchandise are calculated on an industry basis, and therefore are not calculated based on the respondents' actual consumption, production, and waste of manufacturing inputs for subject merchandise.⁴⁷

We preliminarily determine that a financial contribution, pursuant to section 771(5)(D)(ii) of the Act, is provided under the DDB program because the rebated duties represent revenue forgone by the GOI. Because the program is available only to exporters, we preliminarily determine that the DDB program is specific under section 771(5A)(A) and (B) of the Act. As explained above, under 19 CFR 351.519(a)(4), in the absence of an adequate drawback system, the entire amount of customs and excise duties and service taxes rebated during the POI constitutes a benefit. Drawbacks under the program are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, it is at the time of exportation that recipients know the exact amount of the benefit (*i.e.*, the value of the drawback). Therefore, pursuant to 19 CFR 351.519(b)(1), we find that the benefits from the DDB program are conferred on the dates of exportation of the shipments for which the pertinent drawbacks were earned.⁴⁸

Bharat Forge reported the benefits earned on exports of subject merchandise to the United States under this program on a transaction-specific basis.⁴⁹ In accordance with 19 CFR 351.525(b)(4) and (5), when a subsidy is tied to a certain product or market, Commerce will attribute that subsidy to only that product or market.⁵⁰ For Bharat Forge, we divided the DDB rebates earned on exports of subject merchandise to the United States during the POI by the company's exports of subject merchandise to the United States during the POI. On this basis, we preliminarily determine a net countervailable subsidy rate of 1.42 percent *ad valorem* for Bharat Forge.

⁴⁵ See GOI IQR at 34.

⁴⁶ *Id.* at 35.

⁴⁷ *Id.*

⁴⁸ See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Cut-To-Length Carbon Quality Steel Plate from India*, 64 FR 73131, 73140 (December 29, 1999).

⁴⁹ See Bharat Forge SQR1 at Exhibit CVD-30.

⁵⁰ Although Bharat Forge reported that Saarloha received benefits under this program, because Saarloha made no exports of subject merchandise to the United States during the POI, we are not including benefits received by Saarloha in our calculation of the benefit to Bharat Forge.

2. Export Promotion of Capital Goods Scheme

The Export Promotion of Capital Goods Scheme (EPCGS) provides an exemption from customs duties on imports of capital goods used in the pre-production, production, and post-production of exported products.⁵¹ Under the EPCGS, a license holder is exempt from custom duties on imported capital equipment subject to an export obligation.⁵² To fulfill the program's obligation, a company must export a multiple of the CIF value of the imported capital goods, or a multiple of the duty saved, within a designated period (*e.g.*, six times the duty saved over six years, applicable for the period 2015-2020).⁵³ Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is liable for penal action, including "forfeiture of the Bank Guarantee or any other Bond/Guarantee executed with the Customs/Licensing Authority."⁵⁴

We preliminarily determine that the EPCGS provides a financial contribution in the form of revenue forgone, pursuant to section 771(5)(D)(ii) of the Act, and is specific pursuant to section 771(5A)(A) and (B) of the Act because the program is contingent upon export performance. Moreover, in several prior investigations, Commerce has determined that import duty reductions or exemptions provided under the EPCGS are countervailable export subsidies.⁵⁵

Under the EPCGS, the exempted import duties not paid at the time of import are unpaid liabilities to the GOI until the export obligations are met and the duty obligation is finally waived. It is Commerce's practice to treat any balance on an unpaid liability that may be waived in the future as a contingent-liability interest-free loan pursuant to 19 CFR 351.505(d)(1).⁵⁶ Bharat Forge reported holding EPCGS licenses where it fulfilled its export obligations prior to the POI, as well as EPCGS licenses for which the final fulfillment waiver from the GOI is pending.⁵⁷

⁵¹ See GOI IQR at 56.

⁵² *Id.* at 63.

⁵³ *Id.* at 65.

⁵⁴ *Id.* at Exhibit 7a, at 172; see also Bharat Forge IQR at Exhibit CVD-16, at ANF-9.

⁵⁵ See, *e.g.*, *Shrimp from India* IDM at 14-17; see also *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 34905 (May 16, 2002) (*PET Film from India*), and accompanying IDM at "EPCGS."

⁵⁶ See *Shrimp from India* IDM at 14-17; see also *PET Film from India* IDM at "EPCGS"; see also *Glycine from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 44859 (September 4, 2018), and accompanying Preliminary Decision Memorandum (PDM) at "Export Promotion of Capital Goods Scheme," unchanged in *Glycine from India Final Determination*; see also *Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016) (*Steel Flanges from India Preliminary Determination*), and accompanying PDM at 13, unchanged in *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Steel Flanges from India Final Determination*); see also *Forged Steel Fittings from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination (Forged Steel Fittings from India)*, 85 FR 17536 (March 30, 2020), and accompanying PDM at 27.

⁵⁷ See Bharat Forge's Letter, "Forged Steel Fluid End Blocks from India: Bharat Forge Limited's Supplemental Section III Response, 1st Part," dated April 24, 2020 (Bharat Forge SQR1) at Exhibit CVD-31.

Pursuant to 19 CFR 351.505(d)(2), we treat forgone import duties for which Bharat Forge has received certification and final waiver as grants received in the year in which the GOI waived the contingent liability on the import duty exemption. We treat forgone import duties for which certification is still pending as of the end of the POI as an interest-free loan in the amount of the import duty exemption. Accordingly, we find the benefit to be the interest that the respondent would have paid during the POI had it borrowed the full amount of the duty exemption.

Import duty exemptions under this program are approved for the purchase of capital equipment. The preamble to our regulations states that, if a government provides an import duty exemption tied to major capital equipment purchases, “it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring....”⁵⁸ In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.⁵⁹

Information provided by Bharat Forge differentiates between licenses used for the duty-free import of capital equipment used to produce subject and non-subject merchandise.⁶⁰ Furthermore, Bharat Forge provides transaction-specific details on all capital equipment imported using its EPCGS licenses, indicating whether the equipment was used to produce subject merchandise.⁶¹ However, because Bharat Forge does not indicate whether the equipment was used exclusively to produce subject merchandise, we measured the benefit from all EPCGS licenses.

To calculate the benefit received from Bharat Forge’s formal waivers of import duties on capital equipment imports for which the export obligations were met prior to the end of the POI, we consider the benefit to be the total amount of duties waived, *i.e.*, the calculated duties payable less any duties actually paid in the year, net of required application fees, in accordance with section 771(6) of the Act; we treated these amounts as grants, pursuant to 19 CFR 351.504. We performed the “0.5 percent test” on benefits received for each year during the AUL period. Where applicable, we allocated the benefits over time to determine the amount of benefit attributable to the POI, pursuant to 19 CFR 351.524(d)(1).

For deferrals of import duties for which the final waiver of the obligation to pay the duties has not yet been granted, because Bharat Forge has not yet met the export requirements for these licenses, we are treating the unpaid import duty liability as an interest-free loan, consistent with our practice and prior determinations.⁶² Accordingly, the benefit is the interest that Bharat Forge would have paid during the POI, had it borrowed the full amount of the duties deferred at the time of importation.

As discussed above, the time period for fulfilling the export requirement expires a certain number of years after importation of the capital good. As such, pursuant to 19 CFR

⁵⁸ See *Countervailing Duties*, 63 FR 65348 (November 25, 1998).

⁵⁹ See, *e.g.*, *PET Film from India 2007 Review* IDM at Comment 9.

⁶⁰ See Bharat Forge IQR at Exhibit CVD-17.4.

⁶¹ *Id.* at Exhibits CVD-17.1 and CVD-17.2.

⁶² See *Steel Flanges from India Preliminary Determination* PDM at 15, affirmed in *Steel Flanges from India Final Determination*.

351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate, because the event upon which repayment of duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the long-term interest rate, as discussed in the “Benchmark and Discount Rates” section above. We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the capital good was imported and summed these amounts to determine the total benefit. For EPCGS licenses with duty-free imports made during the POI, we calculated a daily interest rate based on the long-term interest rate and the number of days the loan was outstanding during the POI to arrive at a prorated contingent liability for those imports.

The benefit received under the EPCGS program is the sum of: (1) the benefit attributable to the POI from the formally-waived duties for imports of capital equipment for which the respondents met export requirements by the end of the POI; and (2) the interest that would have been due had the respondents borrowed the full amount of the duty reduction or exemption at the time of the importation for imports of capital equipment for which respondents had not met export requirements for full waiver of the duty during the POI.

As discussed above, we are measuring the benefit from licenses granted for the importation of all capital goods. Therefore, we are attributing the EPCGS benefits received by Bharat Forge to their total exports during the POI, consistent with 19 CFR 351.525(b)(2). As such, we divided the total benefits received by Bharat Forge under the EPCGS program by the company’s total exports sales during the POI. On this basis, we preliminarily determine a countervailable subsidy rate of 0.71 percent *ad valorem* for Bharat Forge.

3. Merchandise Exports from India Scheme

Bharat Forge reported benefiting from this program during the POI.⁶³ The Merchandise Exports from India Scheme (MEIS) took effect on July 1, 2017, and entitles Indian producers and exporters to claim duty credit scrip on the basis of the FOB value of their exported goods.⁶⁴ According to the GOI, the purpose of this program is to offset the infrastructural inefficiencies incurred by the export of goods manufactured in India, including a wide range of indirect taxes (*e.g.*, on electricity, fuel, roads) for which no other credit is available.⁶⁵ Although the program’s rates are set based on the amount of such taxes to be refunded, the exact rate is an approximation, which enables GOI “to avoid a cumbersome task of calculating the exact refund for every product and every export.”⁶⁶

The rate of duty credit scrip for specific products is determined by the Indian Trade Classification Harmonized System. This rate is applied to the FOB value of the export sale to determine the value of the scrip.⁶⁷ To be eligible for benefits under the MEIS, a firm must export

⁶³ *Id.* at Bharat Forge IQR at 34.

⁶⁴ *See* GOI IQR at 70.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at Exhibit 7a, at 52.

goods eligible under the scheme and receive payment for the exported product.⁶⁸ An application must then be submitted to the Director General of Foreign Trade, which reviews it and issues the duty credit scrip.⁶⁹ Duty credit scrips can then be redeemed to pay customs and excise duties, and may be sold or transferred to another entity.⁷⁰

We preliminarily determine that the MEIS provides a countervailable subsidy. The MEIS is specific within the meaning of section 771(5A)(A) and (B) of the Act because eligibility to receive scrips under this program is contingent upon export performance.⁷¹ The program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, because the scrips provide exemptions from paying future import duties that would be otherwise owed, representing revenue forgone by the GOI. Furthermore, the duty credit scrips are transferable, and may be sold to another entity.⁷²

The program provides a recurring benefit, as the duty credit scrips are not tied to capital assets. Furthermore, recipients can apply for subsidies under this program on a recurring basis,⁷³ consistent with 19 CFR 351.524(c)(2)(i). We calculated the benefit to Bharat Forge to be the total value of scrips received during the POI. Normally, in cases where the benefits are granted based on a percentage value of the shipment, Commerce calculates the benefits as having been received as of the date of exportation.⁷⁴ However, because the benefit (*i.e.*, the value of the scrip) is not automatic and is not known to the exporter until well after the exports are made, the MEIS licenses, which contain the date of validity and the duty exemption amount issued by the GOI, are the best method to determine and account for when the benefit is received.⁷⁵ Therefore, for our subsidy rate calculation, we divided the value of the scrips Bharat Forge received during the POI by its total export sales. On this basis, we preliminarily determine the countervailable subsidy rate of 1.96 percent *ad valorem* for Bharat Forge.

4. Interest Equalization Scheme

Taking effect on April 1, 2015, the Interest Equalization Scheme (IES) is an export financing program that provides pre- and post-shipment financing in rupee denominations. The Reserve Bank of India (RBI) provides a refund of three percent of interest on rupee-denominated loans for the purpose of pre-shipment and post-shipment export financing.⁷⁶ Under this program, loans are issued by commercial banks, with the interest rate set by the bank at a rate no lower than the

⁶⁸ *Id.* at 71-72.

⁶⁹ *Id.* at 80.

⁷⁰ *Id.* at Exhibit 7a, at 51.

⁷¹ *Id.* at 71 (“To receive benefits under MEIS, a firm has to export notified goods/products and realize payments for the same.”).

⁷² *Id.* Exhibit 7a at 51.

⁷³ *Id.* Exhibit 7a at 52.

⁷⁴ See 19 CFR 351.519(b)(1).

⁷⁵ See, e.g., *Carbon and Alloy Steel Threaded Rod Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 36570 (July 29, 2019), and accompanying PDM at 23, unchanged in *Carbon and Alloy Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination* 85 FR 8828 (February 18, 2020).

⁷⁶ See GOI IQR at 90.

base rate determined by the RBI.⁷⁷ While the reduction in the interest rate is paid to the commercial bank, the bank is required to “completely pass on the benefit of interest equalization, as applicable, to the eligible exporters upfront and submit the claims to RBI for reimbursement.”⁷⁸ The program is available to all exporters of products under specific tariff codes, and to all micro, small, and medium enterprises (MSMEs).⁷⁹

Although Commerce initiated on the IES and the Pre-Shipment and Post-Shipment Export Financing Scheme as two separate programs, the GOI clarifies that Pre-Shipment and Post-Shipment Export Financing refers to specific types of loans for which exporters are eligible to receive the three percent interest rate reduction under the IES.⁸⁰ Specifically, pre-shipment (or packing credit) refers to “any loan or advance granted or any other credit provided by a bank to an exporter for financing the purchase, processing, manufacturing, or packing of goods prior to shipment.”⁸¹ Similarly, post-shipment credit refers to loans or guarantees that are provided by banks after export proceeds have been realized, in consideration of duty drawbacks allowed by the GOI.⁸² For consistency with the GOI and Bharat Forge and their description of the relevant programs, we are discussing export financing loans within the context of the IES.

Bharat Forge reported receiving four types of export credit loans during the POI: packing credit in foreign currency, packing credit in rupee (PCRE), bill discounting in rupee (BD), and bill discounting in foreign currency.⁸³ Beginning July 1, 2010, the RBI eliminated the interest rate cap set on loans under this program denominated in foreign currency.⁸⁴ Accordingly, of Bharat Forge’s export financing loans, only those denominated in rupees (*i.e.*, PRCE and BD) are eligible for reduced interest rates under the IES.

Based on the information provided on the record of the investigation, we preliminarily find that a benefit was conferred under section 771(5)(E)(ii) of the Act in that the interest rates provided under this program are lower than those commercially available. We preliminarily find that the subsidy is specific because it is export contingent, consistent with sections 771(5A)(A) and (B) of the Act.

To calculate the benefits for the post-shipment transactions (*i.e.*, BD), we compared the interest that would have been paid without this program to the interest actually paid absent this program, for loans related to shipments of subject merchandise to the United States during the POI. We divided these benefits by Bharat Forge’s total exports of subject merchandise to the United States during the POI.

⁷⁷ *Id.* at Exhibit 18.

⁷⁸ *Id.* at Exhibit 21.

⁷⁹ *Id.*

⁸⁰ See GOI’s Letter, “Countervailing Duty Investigation of Forged Steel Fluid End Blocks from India: Partial Response to remaining questions of Section II of the CVD Questionnaire as per DOC Letter issued on March 11, 2020,” dated April 6, 2020, at 131.

⁸¹ *Id.*

⁸² *Id.*

⁸³ See Bharat Forge IQR at 41.

⁸⁴ See *Shrimp from India*.

For its pre-shipment transactions (*i.e.*, PCRE), Bharat Forge did not indicate the country of export or whether the exported product was subject or non-subject merchandise. To calculate the benefits for PCRE, we compared the interest that would have been paid absent this program, to the interest actually paid, for all of Bharat Forge's export packing credits for exports during the POI. We divided this benefit amount by Bharat Forge's total exports during the POI.

Finally, we summed the rates calculated for both types of loans. On this basis, we preliminarily determine the countervailable subsidy rate of 0.14 percent *ad valorem* for Bharat Forge.

5. Status Holder Incentive Scheme

The Status Holder Incentive Scheme (SHIS) has the objective of promoting investment for technology upgrades in specified sectors. It does so by providing to a Status Certificate holder a duty credit scrip worth one percent of the FOB value of their exports.⁸⁵ The duty credit scrip can then be redeemed against the duties otherwise due on the import of capital goods, including machinery, equipment, or accessories required for manufacture, as well as their replacement, modernization, technological upgrade, or expansion.⁸⁶ Furthermore, duty credit scrip is transferable; it can be sold to any other eligible status holder.⁸⁷

Specified sectors include producers of leather, textiles and jutes, handicrafts, engineering (excluding iron and steel), and basic chemicals.⁸⁸ Bharat Forge indicated that it qualified for the program under the engineering sector.⁸⁹ Eligibility for the program requires the applicant to be a status holder under the Status Certificate Program, which is granted based on export performance.⁹⁰

Based on the information provided by the GOI and Bharat Forge,⁹¹ we preliminarily determine that this program provides a financial contribution, pursuant to section 771(5)(D)(ii) of the Act, in the form of revenue forgone. We further find that the program is contingent upon export performance and is therefore is specific within the meaning of sections 771(5A)(A) and (B) of the Act. The SHIS program provides a benefit in accordance with 771(5)(E) of the Act and 19 CFR 351.519, in the amount of the scrip granted to the recipient.

Companies may use SHIS scrip (or "licenses") to pay import duties only for the purchase of capital goods.⁹² The preamble of Commerce's regulations states that, if a government provides an import duty exemption tied to major capital goods purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring...."⁹³ Therefore, in accordance with 19

⁸⁵ See GOI IQR at 105.

⁸⁶ *Id.* at 107.

⁸⁷ *Id.* at 108.

⁸⁸ See Bharat Forge IQR at 36.

⁸⁹ See Bharat Forge SQR2 at 13.

⁹⁰ See Bharat Forge IQR at 36; *see also* GOI IQR at 133.

⁹¹ See GOI IQR at 105; *see also* Bharat Forge IQR at 34.

⁹² *Id.* at 35.

⁹³ See *Countervailing Duties*, 63 FR 65348 (November 25, 1998).

CFR 351.524(c)(2)(iii), and our practice,⁹⁴ we are treating these import duty exemptions on capital goods as non-recurring benefits.⁹⁵ The SHIS scrip represents a non-recurring benefit that is not automatically received and is known to the recipient at the time of receipt of the scrip.⁹⁶ Although 19 CFR 351.519(b)(1) stipulates that we will normally consider the benefit as having been received as of the date of exportation, because the SHIS benefit amount is not automatic and is not known to the exporter until well after the exports are made, the SHIS licenses, which contain the date of validity and the duty exemption amount, as issued by the GOI, are the best method to determine and account for when the benefit is received.⁹⁷

The GOI and Bharat Forge report that the program was terminated as of April 1, 2013, but that companies could continue to apply for benefits under the program until March 31, 2016, with benefits reduced by ten percent.⁹⁸ Bharat Forge reported using SHIS scrip to pay import duties on imported capital equipment during the AUL period.⁹⁹ Because the provision of these benefits is contingent on export performance, and consistent with prior determinations, we are attributing the SHIS benefits received by Bharat Forge to the company's total exports.¹⁰⁰ To calculate the benefit attributable to the POI, we first performed the "0.5 percent test" described by 19 CFR 351.524(b)(2), for the value of exempted import duties for each year in which Bharat Forge used SHIS scrip to pay duties. For years in which the value of such scrip was greater than 0.5 percent of Bharat Forge's export sales, we allocated the benefits over the AUL period. We summed the benefits allocated into the POI, and we divided the total benefits by Bharat Forge's total export sales during the POI.

On this basis, we preliminarily find a countervailable subsidy of 0.13 percent *ad valorem* for Bharat Forge.

6. Focus Product Scheme

The GOI states that the objective of the Focus Product Scheme (FPS) is to promote export of products with a high export intensity or employment potential by offsetting marketing costs.¹⁰¹ The program provides a duty credit scrip to exporters of eligible products worth either two or five percent of the FOB value of the exported goods, depending on the product.¹⁰² Duty credit

⁹⁴ See *Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014), and accompanying IDM.

⁹⁵ See, e.g., *PET Film from India 2007 Review* IDM at Comment 9.

⁹⁶ See *Steel Threaded Rod from India* IDM at 17.

⁹⁷ Commerce's determination regarding a similar program, the Duty Entitlement Passbook Scheme (DEPS), was upheld by the CIT in *Essar Steel v. United States*, 195 F. Supp. 2d 1275, 1278 (CIT 2005) (*Essar Steel*). Regarding the DEPS, Commerce recognized that similar benefits were conferred when earned, rather than when the credits were used.

⁹⁸ See Bharat Forge IQR at 37; see also GOI IQR at 105.

⁹⁹ *Id.*

¹⁰⁰ See, e.g., *Carbon and Alloy Steel Threaded Rod from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 50376 (September 25, 2019), and accompanying PDM at 26.

¹⁰¹ See GOI IQR Exhibit 7d at 39.

¹⁰² *Id.*

scrip obtained under the program may then be redeemed against import duties or transferred to other entities.¹⁰³

The program went into effect beginning August 27, 2009, and terminated on March 31, 2015.¹⁰⁴ Exporters could continue to apply for benefits under the program until March 31, 2018, with a ten percent rate cut in the value of the scrip.¹⁰⁵ The GOI and Bharat Forge reported that Bharat Forge received duty credit scrip based on its exports during the POI.¹⁰⁶

We preliminarily determine that the FPS confers a direct financial contribution in the form of revenue forgone, within the meaning of section 771(5)(D)(ii) of the Act. We further find that this program is specific, consistent with sections 771(5A)(A) and (B) of the Act, because it is export contingent. We find that the benefits conferred under this program fall within the meaning of section 771(5)(E) of the Act in the value of the scrips applicable to future duty payments.

Bharat Forge reported all of the duty credit scrip it received based on its total exports during the POI; it did not identify the products or export markets that underlie the scrip awarded. Therefore, to determine the subsidy rate under this program, we divided the total benefits Bharat Forge reported that it received during the POI, the value of all duty credit scrip earned under this program during the POI, by their total POI export sales. Accordingly, we preliminarily determine a countervailable subsidy rate of 0.05 percent *ad valorem* for Bharat Forge.

7. *Income Tax Deduction for Research and Development Expenses*

The GOI states that section 35 of the Income Tax Act of 1961 provides deductions from taxable income on expenditures incurred on scientific research.¹⁰⁷ Expenditures qualifying for the deduction include research conducted by a company (*i.e.*, “in-house” research), research by a third party (*e.g.*, a research association or university), or for capital expenditures incurred on scientific research related to business.¹⁰⁸ To qualify for research deductions, a company must receive approval from either the National Laboratory, the Indian Institute of Technology, or the Principle Scientific Adviser to the GOI.¹⁰⁹

The amount of the tax deduction is proportional to the expenditure incurred for research conducted during the previous year.¹¹⁰ The maximum deduction from April 1, 2017 through March 31, 2020, is 150 percent of the expenditure; on April 1, 2020, the maximum deduction was limited to 100 percent of the expenditure.¹¹¹ Eligibility for this program is limited to

¹⁰³ See Bharat Forge IQR at 56.

¹⁰⁴ See GOI IQR at 118-119.

¹⁰⁵ See Bharat Forge IQR at 57.

¹⁰⁶ See GOI IQR at Exhibit 28; *see also* Bharat Forge IQR at 56.

¹⁰⁷ See GOI IQR at 137.

¹⁰⁸ *Id.*

¹⁰⁹ See Bharat Forge IQR at 72; *see also* Saarloha IQR at 17.

¹¹⁰ See GOI IQR at 137.

¹¹¹ See Bharat Forge IQR at 70.

companies engaged in bio-technology or in the manufacture of any good not specifically listed on the Eleventh Schedule.¹¹²

We preliminarily find that the tax deductions provide a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act. Furthermore, under 771(5A)(D)(i) of the Act, the program is specific because it is limited to certain enterprises or industries or groups thereof. We find that there are benefits under this program to the extent that the tax paid by the company as a result of the program is less than the tax the company would have paid absent the program, as provided by 19 CFR 351.509(a)(1).

Bharat Forge reported receiving benefits under this program during the POI.¹¹³ Consistent with 19 CFR 351.509 and 19 CFR 351.519, the amount of the benefit is equal to the amount of the reduction in taxes owed under the program. To determine the benefit, we calculated the amount of tax that Bharat Forge would have paid during the POI absent the program and subtracted the amount of tax that Bharat Forge paid during the POI as a result of the program. To calculate the subsidy rate, we divided this benefit by Bharat Forge's total sales during the POI. On this basis, we preliminarily determine a countervailable subsidy rate of 0.21 percent *ad valorem* for Bharat Forge.

State Government of Maharashtra Programs

8. State Government of Maharashtra Package Scheme of Incentives: Industrial Promotion Subsidy

Bharat Forge and the GOI stated that the State Government of Maharashtra (SGOM) provided a Package Scheme of Incentives (PSI), which was intended to encourage investment and employment in underdeveloped areas of Maharashtra.¹¹⁴ The Package Scheme of Incentives 2007 document classifies regions within Maharashtra according to their level of development.¹¹⁵

The Industrial Promotion Subsidy, under the SGOM PSI, provides yearly payments equal to 25 percent of SGOM taxes paid by the eligible unit; there is a total payment ceiling that is set as a proportion of the initial fixed capital investment.¹¹⁶ Eligibility for the program is dependent on establishing a new project in an area of the state with an industrial development classification of "B" or below for micro and small manufacturing enterprises, or "C" or below for medium manufacturing industries and large scale industries.¹¹⁷ The amount of the subsidy is linked to the recipient's fixed capital investment, and investment in less developed areas is eligible for higher ceilings over a greater number of years.¹¹⁸

¹¹² *Id.* at 68; *see also* GOI IQR at Exhibit 31.

¹¹³ *See* Bharat Forge IQR at 78.

¹¹⁴ *See* GOI IQR at 78.

¹¹⁵ *See* GOI SQR at Exhibit 4A, Annexure-I.

¹¹⁶ *Id.* at Exhibit 4A, at 13.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

Bharat Forge indicated that it qualified for the Industrial Promotion Subsidy under a memorandum of understanding between Bharat Forge and the SGOM, in which Bharat Forge committed to an investment of up to 500 crore rupees (*i.e.*, 500 billion INR) at its Baramati location, and employment of 500 unskilled and semiskilled Maharashtrians.¹¹⁹ In return, the SGOM provided an industrial promotion subsidy with a ceiling equivalent to 75 percent of Bharat Forge's initial capital investment.¹²⁰

We preliminarily determine that this program provides a financial contribution, in the form of revenue forgone under section 771(5)(D)(ii) of the Act. Further, we preliminarily determine this program is regionally specific under section 771(5A)(D)(iv) of the Act because it is limited to enterprises in a designated geographical region within the jurisdiction of the administering authority (*i.e.*, only "B" or "C" classified areas within Maharashtra). Because the receipt of benefit under this program was conditional on Bharat Forge's investment in its capital assets, we are considering the benefits to be non-recurring, per 19 CFR 351.524(c)(2)(iii).¹²¹

To calculate the subsidy rate, we performed the "0.5 percent test" on benefits received for each year during the AUL period. Where applicable, we allocated the benefits over time to determine the amount of benefit received during the POI, pursuant to 19 CFR 351.524(d)(1). We then summed all benefits attributable to the POI and divided the total by Bharat Forge's total sales. On this basis, we preliminarily determine a countervailable subsidy rate of 0.07 percent *ad valorem* for Bharat Forge.

B. Programs Preliminarily Determined Not to Have Conferred a Measurable Benefit During the POI

1. State Government of Maharashtra Package Scheme of Incentives: Sales Tax Deferrals

C. Programs Preliminarily Determined Not to be Used by Bharat Forge Limited

1. Advance Authorization Scheme
2. Duty Free Import Authorization Scheme
3. Market Development Assistance Scheme
4. Market Access Initiative
5. Special Economic Zones
 - i. Duty-Free Import of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
 - ii. Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Material
 - iii. Exemption from Electricity Duty and Cess on Electricity Supplied to an SEZ Unit
 - iv. Income Tax Exemption

¹¹⁹ See Bharat Forge IQR at 78.

¹²⁰ *Id.*

¹²¹ *Id.*

- v. Service Tax Exemption
- 6. Steel Development Fund Loans
- 7. Incremental Exports Incentivization Scheme
- 8. Deduction under Section 32-AC of the Income Tax Act
- 9. Provision of Steel Ingots by SAIL for LTAR
- 10. State Government of Maharashtra Package Scheme of Incentives: Electricity Duty Exemption

D. Programs for Which Additional Information is Necessary

- 1. Sales Tax Deferral for Bharat Forge's Windmill Division under the Bombay Sales Tax Rules of 1959
- 2. Renewable Energy Certificates (RECs)
- 3. Status Certificate Program

VIII. CONCLUSION

We recommend that you approve the preliminary findings described above.



Agree



Disagree

5/18/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance