



C-533-872

Administrative Review

POR: 01/01/18 – 12/31/18

Public Document

E&C/OVI: JCM/NH/TW

December 3, 2020

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

FROM: James Maeder
Deputy Assistant Secretary
for Enforcement and Compliance

SUBJECT: Decision Memorandum for the Preliminary Results of the
Countervailing Duty Administrative Review of Finished Carbon
Steel Flanges from India and Intent to Rescind, in Part; 2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on finished carbon steel flanges (steel flanges) from India in response to requests from interested parties. The period of review (POR) is January 1, 2018 through December 31, 2018. We preliminarily determine that Norma (India) Ltd. (Norma) and R.N. Gupta & Co. Ltd (RNG) benefitted from countervailable subsidies during the POR.

II. BACKGROUND

A. Initiation and Case History

On August 24, 2017, Commerce published in the *Federal Register* the CVD order on steel flanges from India.¹ On August 2, 2019, Commerce published a notice of opportunity to request an administrative review of the *Order*.² On September 3, 2019, Weldbend Corporation and Boltex Mfg. Co., L.P., (the petitioners),³ requested a review of 37 producers and/or exporters of subject merchandise.⁴ From August 29, 2019 through September 3, 2019, Norma,⁵ RNG, Jai

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

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 37834 (August 2, 2019).

³ See *Finished Carbon Steel Flanges from India: Initiation of Countervailing Duty Investigation*, 81 FR 49625 (July 20, 2016).

⁴ See Petitioners' Letter, "Finished Carbon Steel Flanges from India: Request for Administrative Review," dated September 3, 2019 (Petitioners' Review Request).

⁵ Norma requested a review of itself and its affiliates USK Export Private Limited (USK); Uma Shanker Khandelwal and Co. (UMA); and Bansidhar Chiranjilal (BCL).



Auto Pvt. Ltd., and Bebitz Flanges Works Private Limited, foreign producers or exporters of subject merchandise, requested a review of the *Order* with respect to themselves.⁶

On October 7, 2019, we published a notice of initiation of this CVD review.⁷ Further, on October 18, 2019, we released the U.S. Customs and Border Protection (CBP) data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁸ We did not receive any comments from interested parties regarding respondent selection.

We selected Norma and RNG as mandatory respondents⁹ and issued the initial CVD questionnaire to the Government of India (GOI) on November 6, 2019.¹⁰ RNG and Norma submitted their affiliation questionnaire responses on November 20 and 26, 2019, respectively.¹¹ The GOI submitted its response to Commerce's initial questionnaire on December 31, 2019.¹² On January 6, and 15, 2020, RNG and Norma submitted their responses to Section III of Commerce's initial questionnaire.¹³ Between January 21, 2020 and September 1, 2020, Commerce issued additional supplemental questionnaires to Norma, RNG, and the GOI, and received timely responses.¹⁴

⁶ See Norma's Letter, "Finished Carbon Steel Flanges from India: Request for an Administrative Review," dated August 29, 2019; RNG's Letter, "Finished Carbon Steel Flanges from India: Request for Countervailing Duty Administrative Review," August 30, 2019; Jai Auto Pvt. Ltd.'s Letter, "Request for Review of Countervailing Duty Administrative Review of Finished Carbon Steel Flanges from India," dated August 30, 2019; and Bebitz Flanges Works Private Limited's Letter, "Finished Carbon Steel Flanges from India: Requests for Administrative Review," dated September 3, 2019.

⁷ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 53411, 53421-53422 (October 7, 2019).

⁸ See Memorandum, "Finished Carbon Steel Flanges from India: Release of U.S. Customs and Border Protection Import Data," dated October 18, 2019 (CBP Data Memo).

⁹ See Memorandum, "Countervailing Duty Administrative Review of Finished Carbon Steel Flanges from India: Respondent Selection," dated November 4, 2019.

¹⁰ See Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Finished Carbon Steel Flanges from India: Initial Questionnaire," dated November 6, 2019.

¹¹ See RNG's Letter, "Initial Response to Section III of the Countervailing Duty Questionnaire – Identification of Affiliated Companies," dated November 20, 2019 (RNG Affiliation QR); *see also* Norma's Letter, "Finished Carbon Steel Flanges from India: Section III Affiliated Companies Response of Norma (India) Limited," dated November 26, 2019 (Norma Affiliation QR).

¹² See GOI's Letter, "Countervailing Duty Administrative Review of Finished Carbon Steel Flanges from India: Response to Section II of the CVD Questionnaire," dated December 31, 2019 (GOI Initial QR).

¹³ See RNG's Letter, "Initial Response to Section III of Countervailing Duty Questionnaire of Finished Carbon Steel Flanges from India," dated January 6, 2020 (RNG Initial QR); *see also* Norma's Letter, "Finished Carbon Steel Flanges from India: Section III Response of Norma (India) Limited," January 15, 2020 (Norma Initial QR); UMA's Letter, "Finished Carbon Steel flanges from India: Section III Response of Norma (India) Limited – Affiliate UMA Shanker Khandelwal & Co.," dated January 15, 2020 (UMA Initial QR); USK's Letter, "Finished Carbon Steel Flanges from India: Section III Response of Norma (India) Limited – Affiliate USK Exports Private Limited," dated January 15, 2020 (USK Initial QR); and BCL's Letter, "Finished Carbon Steel Flanges from India: Section III Response of Norma (India) Limited – Affiliate Bansidhar Chiranjilal," dated January 15, 2020 (BCL Initial QR).

¹⁴ See Commerce's Letter, "Countervailing Duty Administrative Review of Finished Carbon Steel Flanges from India: (Affiliation) Supplemental Questionnaire for Norma (India) Limited," dated January 21, 2020; Norma's Letter, "Finished Carbon Steel Flanges from India: Supplemental Affiliated Companies Response of Norma (India) Limited," dated February 4, 2020 (Norma's First SQR); Commerce's Letter, "Finished Carbon Steel Flanges from India – the Government of India: First Supplemental Questionnaire," dated April 6, 2020; GOI's Letter,

B. Extension of Time Limit for Preliminary Results

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until June 22, 2020.¹⁵ Further, on June 19, 2020, Commerce extended the time period for issuing these preliminary results by 109 days, in accordance with section 751(a)(3)(A) of the Act, to October 8, 2020.¹⁶ On July 21, 2020, Commerce again tolled all deadlines in administrative reviews by 60 days, thereby extending the deadline for these results until December 7, 2020.¹⁷

III. INTENT TO RESCIND, IN PART

As stated above, on September 3, 2019, the petitioners requested a review of 37 producers and/or exporters of the subject merchandise, including Bebitz U.S.A., Inc. and Silbo Industries, Inc.¹⁸ On January 16, 2020, Silbo Industries, Inc. submitted a letter in which it identified itself as a U.S. importer, not an Indian producer or exporter of subject merchandise.¹⁹ On this basis, Silbo Industries Inc. requested that Commerce rescind the review of Silbo Industries Inc. On September 21, 2020, the petitioners stated that they had inadvertently requested a review of Bebitz U.S.A., Inc., which is a United States importer.²⁰ Because Commerce does not conduct reviews of U.S. importers, information on the record shows that Silbo Industries, Inc. and Bebitz U.S.A., Inc. are not producers or exporters of subject merchandise, and the CBP data demonstrate

“Countervailing Duty Administrative Review of Finished Carbon Steel Flanges from India: Response to First Supplemental Questionnaire,” dated June 29, 2020 (GOI’s First SQR); Commerce’s Letter, “Countervailing Duty Administrative Review of Finished Carbon Steel Flanges from India: Supplemental Questionnaire for R.N. Gupta and Company Limited,” dated April 17, 2020; RNG’s Letter, “1st Supplemental Response to Section III of Countervailing Duty Questionnaire of Finished Carbon Steel Flanges from India,” July 2, 2020 (RNG’s First SQR); Commerce’s Letter, “Countervailing Duty Administrative Review of Finished Carbon Steel Flanges from India: Second Supplemental Questionnaire for Norma (India) Limited,” May 18, 2020; Norma’s Letter, “Finished Carbon Steel Flanges from India: Second Supplemental CVD Response of Norma (India) Limited,” dated June 9, 2020; Commerce’s Letter, “Countervailing Duty Administrative Review of Finished Carbon Steel Flanges from India: Third Supplemental Questionnaire for Norma (India) Limited,” dated July 8, 2020; Norma’s Letter, “Finished Carbon Steel Flanges from India: Third Supplemental CVD Response of Norma (India) Limited,” dated July 24, 2020; Commerce’s Letter, “Finished Carbon Steel Flanges from India: the Government of India Second Supplemental Questionnaire,” dated July 28, 2020; GOI’s Letter, “Countervailing Duty Administrative Review of Finished Carbon Steel Flanges from India: Response to Second Supplemental Questionnaire,” dated August 5, 2020; Commerce’s Letter, “Countervailing Administrative Review of Finished Carbon Steel Flanges from India: Fourth Supplemental Questionnaire for Norma (India) Ltd.,” dated September 1, 2020; and Norma’s Letter, “Finished Carbon Steel Flanges from India: 4th Supplemental Response,” dated September 4, 2020.

¹⁵ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020.

¹⁶ See Memorandum, “Finished Carbon Steel Flanges from India: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 1/1/2018 – 12/31/2018,” dated June 19, 2020.

¹⁷ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

¹⁸ See Petitioners’ Review Request.

¹⁹ See Silbo Industries, Inc.’s Letter, “Silbo’s Request to Rescind the Review: 2nd Administrative Review of the Countervailing Duty Order on Finished Carbon Steel Flanges from India (C-533-872),” dated January 16, 2020.

²⁰ See Memorandum, “Administrative Review of the Countervailing Duty Order on Finished Carbon Steel Flanges from India: Phone Call with Counsel to the Petitioners,” dated September 23, 2020.

that neither company exported steel flanges from India to the United States during the POR,²¹ we intend to rescind the review with respect to Bebitz U.S.A., Inc. and Silbo Industries, Inc. Our determination is in accordance with 19 CFR 351.213(b)(1). If our preliminary decision to rescind this review with respect to Bebitz U.S.A., Inc. and Silbo Industries, Inc. is affirmed in the final results of this review, we will issue final partial rescission liquidation instructions to CBP 15 calendar days of the publication of the final results.

IV. 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 order. 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 order.

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 (*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;

²¹ See CBP Data Memo at Attachment 1.

- (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.

V. PERIOD OF REVIEW

The POR is January 1, 2018 through December 31, 2018.

VI. SUBSIDIES VALUATION INFORMATION

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. Commerce finds the AUL in this proceeding to be seven years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. Commerce notified the respondents of the 7-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the value of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the year in which the assistance was approved. If the value 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 over 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) provides 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 these 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 the other corporation(s) 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 voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *CVD Preamble* to Commerce's regulations further clarifies 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 way 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.²²

Thus, Commerce's regulations make 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 way it could use its own subsidy benefits.²³

Norma

Norma responded on behalf of itself and three affiliates involved in the production and sale of subject merchandise: UMA, USK, and BCL. We preliminarily determine that these companies are cross-owned within the meaning of 19 CFR 351.565(b)(6)(vi) because members of one family hold substantial ownership positions in all of these companies.

Norma stated that it is, and USK and UMA are, producers of forged flanges and all three companies were engaged in the manufacture and sale of forged flanges, including the subject merchandise, steel flanges, during the POR and over the AUL.²⁴ Further, Norma, USK and UMA sold subject merchandise to one another and provided services to facilitate the development, sales, production, and distribution of the subject merchandise during the POR.²⁵ Regarding BCL, Norma reported that BCL did not engage in the production, sale, development, distribution, or processing of finished subject merchandise for sale to either the domestic or

²² See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

²³ See *Fabrique de Fer de Charleroi S.A. v. United States*, 166 F. Supp. 2d 593, 603 (CIT 2001).

²⁴ See Norma Affiliation QR at 1-2; Norma's First SQR at 1-2 and 7-9; Norma Initial QR at 1-2; UMA Initial QR at 1-2; and USK Initial QR at 1-2 and 5-6.

²⁵ See Norma's First SQR at 8-9.

export markets during the POR.²⁶ Norma reported that BCL did not provide a primarily dedicated input, produce subject merchandise, make any sales of steel flanges or transfer a subsidy during the POR or AUL, and that BCL is not a parent or holding company of Norma or of USK and UMA; Norma also reported that BCL did not receive any subsidies during the POR or over the AUL.²⁷ As such, because Norma, USK, and UMA are corporations producing the same product, pursuant to 19 CFR 351.525(b)(6)(ii), we are attributing to the combined sales of UMA, USK, and Norma (less intercompany sales) all subsidies received by Norma, USK, and UMA.

RNG

RNG is a producer and exporter of the subject merchandise. RNG did not export any subject merchandise produced by any other company during the POR.²⁸ RNG processed and exported subject semi-finished steel flanges purchased from unaffiliated producers prior to the POR during the AUL period.²⁹ However, consistent with our prior determinations in this proceeding, because there is no affiliation between RNG and its suppliers, we determine that further information regarding these producers is not required.³⁰ RNG reported affiliation with certain companies during the POR.³¹ Based on our review of the information provided in its questionnaire responses, we did not find these companies to be cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). As such, pursuant to 19 CFR 351.525(b)(6)(i), we are attributing to RNG subsidies received by RNG.

C. Denominators

In accordance with 19 CFR 351.525(b)(1) – (5), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs are the respondent's export sales, as described below, and which are also explained in further detail in the preliminary calculations memoranda prepared for these preliminary results.³²

²⁶ *Id.* at 1-2.

²⁷ See Norma Affiliation QR at 2; *see also, e.g.*, BCL Initial QR at BCL-9, BCL-11.

²⁸ See RNG Affiliation QR at 3.

²⁹ See RNG Initial QR at 10-11 and Exhibit 4(c).

³⁰ *See, e.g., Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination*, 81 FR 85928 (November 29, 2016) (*Carbon Steel Flanges from India Preliminary Determination*), and accompanying PDM at 6; *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Carbon Steel Flanges from India Final Determination*), and accompanying IDM at 5 and Comment 7; *see also Finished Carbon Steel Flanges from India: Preliminary Results of Countervailing Duty Administrative Review, 2016-2017*, 84 FR 55141 (October 15, 2019) (*Carbon Steel Flanges from India 2016-2017 AR Preliminary Results*), and accompanying PDM at 9; and *Finished Carbon Steel Flanges from India: Final Results of Countervailing Duty Administrative Review, 2016-2017*, 85 FR 18193 (April 1, 2020) (*Carbon Steel Flanges from India AR Final Results*) and the accompanying IDM at 4.

³¹ See RNG Affiliation QR at 3, Exhibit-1(a), and Exhibit 1(b).

³² See Memoranda, "Preliminary Results Calculations for RN Gupta & Company Limited," (RNG's Preliminary Calculation Memorandum); and "Preliminary Results Calculations for Norma (India) Ltd., USK Exports Private

VII. BENCHMARK INTEREST RATES AND DISCOUNT RATES

Section 771(5)(E)(ii) of the Act provides that the benefit for loans 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). In addition, 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. Commerce has previously determined that the Industrial Development Bank of India (IDBI), the Industrial Finance Corporation of India (IFCI), and the Export-Import Bank of India (EXIM) are government-owned special-purpose banks. As such, Commerce does not use loans from the IDBI, the IFCI, or the EXIM as a basis for a commercial loan benchmark.³³ Also, 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).

RNG and Norma (and its cross-owned affiliates USK and UMA) received exemptions from import duties under the Export Promotion Capital Goods Scheme and the Status Holder Incentive Scheme, which we treat as non-recurring benefits and allocate over the AUL. Pursuant to 19 CFR 351.524(d)(3), and consistent with past segments of this proceeding, we preliminarily determine that commercial loans identified provided by RNG and Norma are not comparable fixed-rate loans and cannot be used as discount rates for purposes of allocating the non-recurring benefits provided under the EPCGS program and SHIS programs. Therefore, to allocate the non-recurring benefits, we have preliminarily used national average interest rates, pursuant to 19 CFR 351.505(a)(3)(ii). Specifically, we used the yearly average long-term lending rate from the International Monetary Fund’s International Financial Statistics (IFS).

Limited, UMA Shanker Khandelwal & Co., and Bansidhar Chiranjilal,” (Norma’s Preliminary Calculation Memorandum) dated concurrently with this memorandum.

³³ See *Final Results of the Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*PET Film Final Results 2003 Review*), and accompanying Issues and Decision Memorandum (IDM) at Comment 3; see also *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2018) (*PET Film Final Results 2005 Review*), and accompanying IDM at Benchmark Interest Rates and Discount Rates.

VIII. ANALYSIS OF PROGRAMS

A. Programs Preliminarily Determined to be Countervailable

1. Duty Drawback Program (DDB Program)

Commerce determined in the investigation that this program is countervailable.³⁴ Specifically, we found that the rebated duties provided through the DDB Program constitute a financial contribution, as defined under section 771(5)(D)(ii) of the Act, in the form of revenue forgone by the GOI.³⁵ We further determined that the program was only available to exporters, and therefore it is specific under sections 771(5A)(A) and (B) of the Act.³⁶ We also found that the GOI had not supported its claim that the DDB system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported products.³⁷ Therefore we found that the entire amount of import duty rebate earned during the POI constituted a benefit.³⁸

In this review, the GOI did not submit any new information or evidence of changed circumstances that warrants reconsideration of Commerce's prior determination in the investigation concerning the countervailability of the program.³⁹ Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence, we preliminarily continue to find that this program confers a financial contribution as provided under section 771(5)(D)(ii) of the Act and is specific, under section 771(5A)(A) and (B) of the Act.⁴⁰ Furthermore, we preliminarily determine that the GOI did not submit any new information or argument regarding its claim that the DDB system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported products.⁴¹ Accordingly, we preliminarily continue to find that the GOI has not supported its claim. Therefore, under 19 CFR 351.519(a)(4), the entire amount of import duty rebate earned during the POR constitutes a benefit.⁴² Our findings are consistent with prior India CVD proceedings.⁴³

³⁴ See *Carbon Steel Flanges from India Preliminary Determination*, and accompanying PDM at 10-12, unchanged in final determination; see also *Carbon Steel Flanges from India 2016-2017 AR Preliminary Results* and accompanying PDM at 10-11, unchanged in final results.

³⁵ *Id.*

³⁶ *Id.*

³⁷ See *Carbon Steel Flanges from India Preliminary Determination*, and accompanying PDM at 10-12, unchanged in final determination; see also, e.g., *Certain Frozen Warmwater Shrimp from India: Preliminary Countervailing Duty Determination*, 78 FR 33344 (June 4, 2013) (*Shrimp from India*), and accompanying PDM at 12-14, unchanged in final determination; and *Countervailing Duty Investigation of Glycine from India: Affirmative Final Determination*, 84 FR 18482 (May 1, 2019) (*Glycine from India*), and accompanying IDM at Comment 4.

³⁸ *Id.*

³⁹ See GOI Initial QR at 12-27; and GOI's First SQR at 14-15.

⁴⁰ See *Magnola Metallurgy, Inc. v. United States*, 508 F. 3d 1349, 1353-1356 (CAFC 2007) (*Magnola*).

⁴¹ See *Magnola* at 1353-1356.

⁴² See *Carbon Steel Flanges from India Preliminary Determination*, and accompanying PDM at 10-12, unchanged in final determination; see also, e.g., *Shrimp from India*, and accompanying PDM at 12-14, unchanged in final determination; and *Glycine from India*, and accompanying IDM at Comment 4.

⁴³ See, e.g., *Glycine from India*, and accompanying issues and decision memorandum at Comment 4.

Norma reported that Norma and its cross-owned affiliate USK, received duty rebates under this program, and RNG reported receiving duty rebates under this program.⁴⁴ The GOI explained that the DDB Program provides rebates for duty or tax chargeable on any imported materials or excisable materials and input services used in the manufacture of such goods for export.⁴⁵ Further, drawback is available only to: (1) re-exported goods; (2) import duties on raw materials used in the manufacture of exports products; (3) service tax paid on input services used in the manufacture of export products; (4) certain supplies that have been deemed export; and (5) the reimbursement of excise duty paid on fuels by way of drawback notified by the Directorate General of Foreign Trade (DGFT).⁴⁶

Duty drawback is subject to an All Industry Rate (AIR) or a Brand Rate.⁴⁷ The AIRs are generally fixed as a percentage of the free-on-board (FOB) price of the exported product or as specific rates.⁴⁸ The Brand Rate may be fixed in terms of “Rules 6 and 7 of the Drawback Rules, 2017.”⁴⁹ The GOI specifies that a company may be subject to a Brand Rate, rather than an AIR, when the exporter feels that drawback as determined under the AIRs is less than four-fifths of the duty or taxes paid on the materials, components, or input services used in the manufacture of goods.⁵⁰

Pursuant to 19 CFR 351.519(b)(1), we find that benefits from the DDB Program are conferred as of the date of exportation of the shipment for which the drawbacks are earned. We calculated the benefit on an as-earned basis upon export of subject merchandise because drawback under the program is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis. As such, it is at this point that recipients know the exact amount of the benefit (*i.e.*, the value of the drawback).⁵¹

We calculated the subsidy rate using the value of all DDB Program duty rebates that Norma and its cross-owned affiliate USK earned, and that RNG earned on U.S. sales during the POR. For Norma and USK, in accordance with 19 CFR 355.525(b)(6)(ii), we divided the total amount of the benefit received by the two companies by the combined total export sales made by Norma, USK, and UMA to the United States of subject merchandise during the POR. For RNG, we divided the total amount of the benefit received by RNG by its total sales of U.S. exports of subject merchandise during the POR. On this basis, we preliminarily determine a countervailable subsidy rate of 1.99 percent *ad valorem* for Norma, and 2.56 percent *ad valorem* for RNG.

⁴⁴ See Norma Initial QR at 17-21; USK Initial QR at 17-21; and RNG Initial QR at 17-22 and Exhibit 10(a).

⁴⁵ See GOI Initial QR at 14-15.

⁴⁶ *Id.*

⁴⁷ *Id.* at 19-20.

⁴⁸ *Id.*

⁴⁹ *Id.* at 20.

⁵⁰ *Id.*

⁵¹ See, *e.g.*, Norma Initial QR at Exhibit Nil-12(a); USK Initial QR at Exhibit USK-21(a); and RNG Initial QR at 18-20, Exhibit 10(a), and Exhibit 10(d).

2. Export Promotion of Capital Goods Scheme (EPCGS)

Commerce determined in the investigation that this program is countervailable.⁵² Specifically, we found that the EPCGS program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOI for not collecting import duties.⁵³ We further determined that the program was only available to exporters, and therefore it is specific under sections 771(5A)(A) and (B) of the Act because it is contingent upon export performance.⁵⁴

In this review, the GOI did not submit any new information or evidence of changed circumstances that warrants reconsideration of Commerce's prior determination in the investigation concerning the countervailability of the program.⁵⁵ Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence, we preliminarily continue to find that this program confers a financial contribution as provided under section 771(5)(D)(ii) of the Act and is specific, under section 771(5A)(A) and (B) of the Act.⁵⁶ Our findings are consistent with prior India CVD proceedings.⁵⁷

Norma reported that USK received benefits under this program and RNG reported receiving benefits under this scheme.⁵⁸ The GOI reported that the EPCGS program provides for a reduction of or exemption from customs duties and certain excise taxes on imports of capital goods used in pre-production, production, or post-production of exported products.⁵⁹ Under this program, producers must commit to export, over a specific period of time, goods manufactured in relation to the imported capital goods for a value equal to a multiple of the duty value saved on such capital goods.⁶⁰ If the company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, in addition to an interest penalty.⁶¹ When the company meets the export obligation, it is granted a final waiver of the duties.

Under the EPCGS program, the exempted import duties would have to be paid to the GOI if the accompanying export obligations are not met. 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).⁶² Since the unpaid duties constitute a liability contingent on

⁵² See *Carbon Steel Flanges from India Preliminary Determination*, and accompanying PDM at 12-15, unchanged in final determination.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See GOI Initial QR at 28-41, GOI's First SQR at 17-18, and GOI's Second SQR at 4-5.

⁵⁶ See *Magnola* at 1353-1356.

⁵⁷ See, e.g., *Glycine from India*, and accompanying IDM at Comment 5.

⁵⁸ See USK Initial QR at 21-22; and RNG Initial QR at 22-35 and Exhibit 11(a).

⁵⁹ See GOI Initial QR at 29, Exhibit EPCG-2, and Exhibit EPCG-3.

⁶⁰ See *id.*; see also USK Initial QR at 22.

⁶¹ See GOI Initial QR at Exhibit EPCG-2.

⁶² See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11163 (March 2, 2015) (*PET Film from India 2012 Review*), and accompanying Issues and Decision Memorandum at 7-10.

subsequent events, we treat the amount of unpaid duty liabilities as an interest-free contingent-liability loan. We find that the amount a respondent would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation to constitute the first benefit under the EPCGS program. The second benefit arises based on the amount of duty finally waived by the GOI on imports of capital goods covered by those EPCGS licenses for which the export requirement has been met. With regard to licenses for which the GOI has acknowledged that the company has completed its export obligation, pursuant to 19 CFR 351.505(d)(2), we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption. Further, in accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we treat import duty exemptions on capital equipment as non-recurring benefits.

Norma reported that USK, in years prior to the POR, imported capital goods under the EPCGS program with import duty exemptions.⁶³ Information provided by Norma indicates that at the time of bestowal, USK's EPCGS licenses were not tied to the production of any type of merchandise; therefore, we are attributing the EPCGS benefits received to total exports consistent with 19 CFR 351.525(b)(5).⁶⁴ Norma reported that USK met export requirements for all EPCGS licenses, and was granted the final waivers of duties.⁶⁵

RNG reported that it imported capital goods under the EPCGS program in the years prior to the POR, and that for some of these imports, RNG had met the export obligations and the GOI granted the final waiver of duties, and that for other imports, the export obligations remain pending during the POR.⁶⁶ Consistent with the underlying investigation, we preliminarily find that all of RNG's EPCGS licenses benefit all of the company's export sales.⁶⁷ We are attributing the EPCGS benefits received to their total exports consistent with 19 CFR 351.525(b)(5).

To calculate the benefit received from by RNG from the final waiver of import duties on capital equipment imports where its export obligation was met prior to the end of the POR, and by Norma from USK's final waiver of import duties on capital equipment imports where its export obligation was met prior to the end of the POR, we considered the total amount of duties waived, *i.e.*, the calculated duties payable less the duties actually paid in the year, net of required application fees, in accordance with section 771(6) of the Act, to be the benefit, and we treated these amounts as grants pursuant to 19 CFR 351.504. Further, consistent with the approach followed in previous investigations, we determine the year of receipt of the benefit to be the year in which the GOI finally waived the outstanding import duties.⁶⁸ Next, we performed the "0.5 percent test," as prescribed under 19 CFR 351.524(b)(2), for the total value of duties waived, for each year in which the GOI granted respondents an import duty waiver. For any years in which the value of the waived import duties was less than 0.5 percent of respondents' total export sales, we expensed the value of the duty waived to the year of receipt. For years in which the value of the waivers exceeded 0.5 percent of respondents' total export sales in that year, we allocated the

⁶³ See USK Initial QR at 21-23.

⁶⁴ *Id.* at Exhibit USK-13(a) through (c).

⁶⁵ See USK Initial QR at 21-23 and Exhibit USK-13(a).

⁶⁶ See RNG Initial QR at 20-34 and Exhibit 11(a) and RNG's First SQR at Revised Exhibit 11(a)

⁶⁷ See *Carbon Steel Flanges from India Preliminary Determination*, and accompanying PDM at 13-14, unchanged in final determination.

⁶⁸ See *PET Film Final Determination*, and accompanying IDM at Comment 5.

value of the waivers using over the seven-year AUL period, in accordance with 19 CFR 351.524(d)(2),⁶⁹ using the appropriate discount rate for the year in which the GOI officially waived the import duties.⁷⁰

As noted above, import duty reductions that RNG received on the imports of capital equipment for which it had not yet met export obligations may have to be repaid to the GOI if the obligations under the licenses are not met. Consistent with our practice and prior determinations, we are treating the unpaid import duty liability as an interest-free loan.

The amount of the unpaid duty liabilities to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the respondent applied, but that had not been officially waived by the GOI, as of the end of the POR. Accordingly, we find the benefit to be the interest that the respondent would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation.

As noted 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 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the 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 rates as discussed in the “Benchmark Interest Rates 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 we summed the resulting amounts to determine the total benefit in the POR. For EPCGS licenses with duty free imports made during the POR, we calculated the benefit based on the appropriate long-term interest rate and the number of days the loan was outstanding during the POR, to arrive at the contingent liability benefit for those imports.

The benefit received under the EPCGS program is the sum of: (1) the benefit attributable to the POR from the finally-waived duties for imports of capital equipment for which the respondents met export requirements by the end of the POR; 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 importation for imports of capital equipment that have unmet export obligations during the POR. In accordance with 19 CFR 351.525(b)(6)(ii), we then divided the total benefits received by USK under the EPCGS program by the combined total export sales of Norma, UMA, and USK during the POR, as described above. For RNG, we divided the total benefit received under the EPCGS program by RNG’s total export sales. On this basis, we preliminarily determine a countervailable subsidy rate of 0.16 percent *ad valorem* for Norma.⁷¹ We preliminarily determine the countervailable subsidy provided to RNG under the EPCGS program to be less

⁶⁹ See “Allocation Period” section, *supra*.

⁷⁰ See “Benchmark Interest Rates and Discount Rates” section, *supra*.

⁷¹ See Norma’s Preliminary Calculation Memorandum.

than 0.005 percent *ad valorem*, and therefore not measurable.⁷² Consistent with our practice,⁷³ we are not including RNG's subsidies from the EPCGS program in the net countervailable subsidy rate for RNG.

3. Merchandise Export from India Scheme (MEIS)

Commerce determined in the investigation that this program is countervailable.⁷⁴ Specifically, we found that the scrips provided through MEIS constitute a financial contribution, as defined under section 771(5)(D)(ii) of the Act, in the form of revenue forgone by the GOI, because the scrips provide exemptions for paying duties associated with the imported goods.⁷⁵ We further determined that as the eligibility to receive scrips under this program is contingent upon export, MEIS was only available to exporters, and is therefore specific under sections 771(5A)(A) and (B) of the Act.⁷⁶

In this review, the GOI did not submit any new information or evidence of changed circumstances that warrants reconsideration of Commerce's prior determination in the investigation concerning the countervailability of the program.⁷⁷ Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence, we preliminarily continue to find that this program confers a financial contribution as provided under section 771(5)(D)(ii) of the Act and is specific, under section 771(5A)(A) and (B) of the Act.⁷⁸ Our findings are consistent with prior India CVD proceedings.⁷⁹

Norma reported receiving MEIS benefits during the POR and that UMA and USK received MEIS benefits during the POR. RNG also reported receiving MEIS benefits during the POR.⁸⁰ The GOI explained that the MEIS was introduced in the Foreign Trade Policy (FTP) 2015-2020.⁸¹ Its purpose is to "offset infrastructural inefficiencies and associated costs" in order to promote the manufacture and export of goods/products, especially those having high export intensity and employment potential thereby enhancing India's export competitiveness.⁸² Under this program, the GOI issues a scrip worth either two, three, or five percent of the FOB value of

⁷² See RNG's Preliminary Calculation Memorandum.

⁷³ See *Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2017-2018*, and accompanying decision memorandum at 24, unchanged in final results.

⁷⁴ See *Carbon Steel Flanges from India Preliminary Determination*, and accompanying PDM at 15-17, unchanged in final determination.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See GOI Initial QR at 42-53; GOI's First SQR at 19-21; and GOI's Second SQR at 6-7.

⁷⁸ See *Magnola* at 1353-1356.

⁷⁹ See, e.g., *Certain Corrosion-Resistant Steel Products from India: Final Results of Countervailing Duty Administrative Review; 2015-2016*, 84 FR 11053 (March 25, 2019) (*Corrosion-Resistant Steel from India*), and accompanying issues and decision memorandum at Comment 9.

⁸⁰ See GOI Initial QR at 43 and Exhibit MEIS-2; see also Norma Initial QR at 22; UMA Initial QR at 17; USK Initial QR at 34-35; and RNG Initial QR at 35-39 and exhibit 15(a).

⁸¹ See GOI Initial QR at 42.

⁸² See GOI Initial QR at 42 Exhibit MEIS-1 and MEIS-3; and Norma Initial QR at 21-22 and Exhibit Nil-7(b) – Part-2.

“exports in free foreign exchange, or on the FOB value of exports, as given on the shipping bills in free foreign exchange, whichever is less.”⁸³ To receive the scrip, a recipient must file an electronic application and supporting shipping documentation for each port of export with DGFT.⁸⁴ Each application can comprise a maximum of 50 shipping bills.⁸⁵ Scrip received under this program is usable for the payment of future customs duties for importing goods, and it is fully negotiable, *i.e.*, it can be transferred or sold to another company.⁸⁶

Norma reported that it and UMA and USK submitted applications and received approval under the MEIS. RNG also reported submitting applications and receiving approval under the MEIS. According to Norma, and RNG, each met the requirements of this program and obtained the scrips from the DGFT, which it can use for its own consumption or sell in the market. According to Norma, and RNG, the MEIS is a continuous program and thus, the benefits are recurring, in nature.⁸⁷

This program provides a recurring benefit because, unlike the scrips in the SHIS scheme, the scrips provided under this program are not tied to capital assets. Furthermore, recipients can expect to receive additional subsidies under this same program on an ongoing basis from year to year, as described by 19 CFR 351.524(c)(2)(i).

We calculated the benefit to Norma and RNG to be the total value of scrips granted during the POR. Normally, in cases where the benefits are granted based on a percentage value of a shipment, Commerce calculates benefit as having been received as of the date of exportation;⁸⁸ however, because the MEIS benefit, *i.e.*, the scrip, amount is not automatic and is not known to the exporter until well after the exports are made, it is the MEIS licenses themselves, which contain the date of validity and the duty exemption amount as issued by the GOI, that are the best method to determine the amount and establish the timing of the receipt of the benefit is received.⁸⁹ For Norma, in accordance with 19 CFR 351.525(b)(6)(ii), we divided the total amount of the benefit received by Norma, UMA, and USK (as recorded on MEIS licenses issued during the POR) by the combined total export sales made by Norma, UMA, and USK. For RNG, we divided the total benefit received on MEIS certificates during the POR by RNG’s total export sales, as described above. On this basis, we preliminarily determine a countervailable subsidy rate of 3.18 percent *ad valorem*⁹⁰ for Norma and 2.65 percent *ad valorem*⁹¹ for RNG.

⁸³ See GOI Initial QR at Exhibit MEIS-3.

⁸⁴ *Id.*

⁸⁵ *Id.*; see also *e.g.*, Norma’s IQR at 24.

⁸⁶ See Norma Initial QR at 24; UMA Initial QR at 18; USK Initial QR at 36; and RNG Initial QR at 31.

⁸⁷ See Norma Initial QR at 25; UMA Initial QR at 20; USK Initial QR at 38; and RNG Initial QR at 50-51.

⁸⁸ See 19 CFR 351.519(b)(1).

⁸⁹ See *Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2012*, 79 FR 50616 (August 25, 2014) (*PET Film Preliminary Results 2012*), and accompanying Memorandum titled, “Calculations for the Preliminary Results: Jindal Poly Films of India Limited (Jindal) at 4-5, unchanged in *PET Film from India 2012 Review; Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 7753 (February 16, 2016) at Comment 2.

⁹⁰ See Norma’s Preliminary Calculation Memorandum.

⁹¹ See RNG’s Preliminary Calculation Memorandum.

4. Interest Equalization Scheme (IES)

Commerce determined in the investigation that this program is countervailable on the basis of adverse facts available, because we found that the GOI failed to cooperate to the best of its ability in not providing information about the program.⁹² Specifically, we found that the GOI conferred a financial contribution and we find that the IES program is specific within the meaning of 771(5)(D) and 771(5A) (B) of the Act, respectively.⁹³ We further determined that the IES program provided a recurring benefit that is contingent upon exports.⁹⁴ In the previous administrative review, we relied on the determination in the investigation on the basis of adverse facts available.⁹⁵

In this review, RNG reported receiving benefits under the IES program during the POR, and the GOI provided a complete response regarding this program. The GOI reported that it implemented the IES scheme for pre-shipment and post-shipment export financing for eligible exporters effective beginning April 1, 2015.⁹⁶ According to the GOI, funds are provided by the GOI's Department of Commerce and the Department of Banking Regulation, Central Office Reserve Bank of India is the government authority responsible for administering the program.⁹⁷ The GOI indicated that the program is governed and eligibility criteria are established pursuant to Reserve Bank of India (RBI) circular DCBR.CO.SCB.Cir. No. 1/13.05.000/2015-16 issued February 11, 2016.⁹⁸ Under the program, commercial banks reduce the interest rate charged to borrowers by three percent and the GOI refunds to the commercial banks an amount equal to the three percentage points of interest forgone on Indian Rupee (INR) denominated pre-shipment and post-shipment export financing.⁹⁹

Based on information the GOI provided in this review, we preliminarily determine that the IES program provides reduced interest rates to exporters which used INR denominated pre-shipment or post-shipment export financing. Accordingly, we find that under the program, the GOI conferred a financial contribution within the meaning of section 771(5)(D) of the Act. Further, because the program is export contingent, we find that the IES program is specific within the meaning of section 771(5A)(B) of the Act. Our findings are consistent with our findings regarding this program in prior India CVD proceedings.¹⁰⁰

⁹² See *Carbon Steel Flanges from India Preliminary Determination*, and accompanying PDM at 17-18, unchanged in final determination.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ See *Carbon Steel Flanges from India 2016-2017 AR Preliminary Results*, and accompanying PDM at 15-16, unchanged in final results.

⁹⁶ See GOI Initial QR at 56; see also RNG Initial QR at 40; see also *Carbon Steel Flanges from India Preliminary Determination*, and accompanying PDM at 17, unchanged in final determination; see also *Carbon Steel Flanges from India AR Final Results*, and accompanying IDM at 23, unchanged in final results.

⁹⁷ See GOI Initial QR at 56-57.

⁹⁸ *Id.* at 56-59, 60, and Exhibit J.

⁹⁹ *Id.* at 56 and Exhibit J. See also RNG Initial QR at 40; *Carbon Steel Flanges from India Preliminary Determination*, and accompanying PDM at 17, unchanged in final determination; and *Carbon Steel Flanges from India AR Final Results* and the accompanying IDM at 23, unchanged in final results.

¹⁰⁰ See, e.g., *Carbon and Alloy Steel Threaded Rod from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 36570

Because the IES is contingent upon exports, and provides a recurring benefit, we divided the total benefit received by RNG during the POR by the value of RNG's total exports during the POR. On this basis, we preliminarily determine a countervailable subsidy rate of 0.11 percent *ad valorem*¹⁰¹ for RNG.

5. Status Holder Incentive Scheme (SHIS)

Commerce determined in the investigation that this program is countervailable.¹⁰² Specifically, as adverse facts available, we found that the GOI conferred a financial contribution and that SHIS is specific within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act, respectively.¹⁰³ In this review, we preliminarily determine that the GOI did not submit any new information or evidence of changed circumstances that warrants reconsideration of Commerce's prior determination in the investigation concerning the countervailability of the program.¹⁰⁴ Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence, we preliminarily continue to find that this program confers a financial contribution as provided under section 771(5)(D) of the Act and is specific, under section 771(5A)(B) of the Act.¹⁰⁵ Our findings are consistent with prior India CVD proceedings.¹⁰⁶

Norma reported that it, UMA, and USK used SHIS and RNG reported its use of SHIS in their respective questionnaire responses and provided certain supporting documentation.¹⁰⁷ The GOI claims that the SHIS ceased operation after March 31, 2013.¹⁰⁸ However, there is no deadline for the GOI's issuance of program benefits.¹⁰⁹ In addition, the GOI provided no evidence demonstrating that this program has been terminated by an official government act, there has been no replacement program, or that there are no residual benefits provided. Pursuant to 19 CFR 351.526, without such evidence, we are unable to find the program be terminated.

As explained in *Steel Threaded Rod from India*, a benefit is provided under the SHIS in accordance with section 771(5)(E) of the Act and 19 CFR 351.519 in the amount of exempted duties on imported capital equipment. The SHIS scrip represents a non-recurring benefit that is

(July 29, 2019) (*Steel Threaded Rod from India*), and accompanying PDM at 23-24, unchanged in final determination; *Certain Lined Paper Products from India: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2016*, 83 FR 50896 (October 10, 2018), and accompanying PDM at 19, unchanged in final results.

¹⁰¹ See RNG's Preliminary Calculation Memorandum.

¹⁰² See *Carbon Steel Flanges from India Preliminary Determination*, and accompanying PDM at 18-19, unchanged in final determination.

¹⁰³ *Id.*

¹⁰⁴ See GOI Initial QR at 65; and GOI's First SQR at 23.

¹⁰⁵ See *Magnola* at 1353-1356.

¹⁰⁶ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Countervailing Duty Administrative Review; 2016*, 83 FR 39677 (August 10, 2018) (*PET Film from India 2016 Review Prelim*), and accompanying preliminary decision memorandum at 9-11, unchanged in the final results.

¹⁰⁷ See, e.g., Norma Initial QR at 26; USK Initial QR at 39; UMA Initial QR at 21; and RNG Initial QR at 42-46 and Exhibit 17(a), Exhibit 17(b), and Exhibit 17(c).

¹⁰⁸ See GOI Initial QR at 65.

¹⁰⁹ See GOI Initial QR at 65 and Exhibit SHIS-1; and First SQR at 23-24.

not automatically received and the amount of which is known to the recipient only at the time of receipt of the scrip.¹¹⁰ Although Commerce’s regulations provide that we will normally consider this type of benefit as having been received as of the date of exportation, *see* 19 CFR 351.519(b)(1), 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 themselves, which contain the date of validity and the duty exemption amount, as issued by the GOI, provide the documentation that allows us to determine the amount of the benefit and account for when it is received.¹¹¹

We performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), for the total value of the exempted customs duties for the years in which Norma (and its cross-owned affiliates) and RNG received SHIS scrips and determined to allocate the benefits over the AUL.¹¹² We then determined the amount of the benefits allocated to the POR in accordance with 19 CFR 351.524(d)(1).

For Norma, in accordance with 19 CFR 351.525(b)(6)(ii), we divided the benefits allocated to the POR by the combined total exports of Norma, USK, and UMA (less intercompany sales); for RNG, we divided the benefits allocated to the POR by RNG’s total exports. On this basis, we determine a countervailable subsidy of 0.28 percent *ad valorem* for Norma and 0.10 percent *ad valorem* for RNG.

B. Programs Preliminarily Determined to be Not Used

We preliminarily determine that the respondents did not apply for or receive countervailable benefits during the POR under the following programs:

1. Focus Product Scheme
2. Advanced License Program
3. Advance Authorization Scheme
4. Government of India Loan Guarantees
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 (LTAR) of Carbon Steel Inputs Provided by Steel Authority of India (SAIL) Used in the Production of Flanges

¹¹⁰ *See Steel Threaded Rod from India*, and accompanying IDM at “Status Holder Incentive Scrip.”

¹¹¹ Commerce determined and was upheld by the CIT in *Essar Steel v. United States*, 395 F. Supp. 2d 1275, 1278 (CIT 2005) (*Essar Steel*) in the similar but discontinued GOI program, the Duty Entitlement Passbook Scheme (DEPS), benefits were conferred when earned, rather than when the credits were used.

¹¹² *See* Norma’s Preliminary Calculation Memorandum.

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

State Government of Uttar Pradesh (SGUP) Subsidies

- 20. Investment Promotion Scheme
- 21. Special Assistance for Mega Projects
- 22. Exemption from Entry Tax for the Iron and Steel Industry

State Government of Punjab (SGP) Subsidies

- 23. Punjab Fiscal Incentives for Industrial Promotion

C. Programs Preliminarily Determined to be Not Countervailable

1. Pradham Mantri Rojgar Protsahan Yojna (PMRPY) Scheme

Norma reported that it, UMA, USK, received benefits under this program, and RNG reported receiving benefits under this program in their questionnaire responses.¹¹³ The GOI reported that the PMRPY Scheme was created to incentivize employers to hire new employees and to provide them social security.¹¹⁴ Under this program, all companies must register with the Employees' Provident Fund Organization (EPFO), not have hired employees that previously worked for an EPFO-registered employer, and the new employee must be earning less than or equal to 15,000 rupees per month.¹¹⁵ If the employer/new employee meet these criteria, under this program the GOI will make an 8.33 percent contribution to the Employees' Pension Scheme for a period of three years, a contribution for which the employer would otherwise be responsible.¹¹⁶

¹¹³ See Norma Initial QR at 31; UMA Initial QR at 26; USK Initial QR at 44; and RNG Initial QR at 46-51; *see also* GOI Initial QR at Exhibit PMRPY-2.

¹¹⁴ See GOI Initial QR at 66 and Exhibit PMRPY-1.

¹¹⁵ *Id.*

¹¹⁶ *Id.* We note that for the textile sector, the GOI makes an additional contribution of 3.67 percent to the Employees Provident Fund (EPF).

Based on the information initially provided by the GOI in its supplemental response and consistent with other proceedings,¹¹⁷ Commerce preliminarily finds that this program is not specific within the meaning of section 771(5A) of the Act because the EPFO registration is open to public and private sector employers and is not limited to a particular industry, sector or enterprise.¹¹⁸ Moreover, information provided by the GOI does not demonstrate that the program is specific under section 771(5A)(D)(iii) of the Act. Therefore, we preliminarily determine that this program is not countervailable.

¹¹⁷ See, e.g., *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Preliminary Results of Countervailing Duty Administrative Review, 2017-2018*, 85 FR 12897 (March 5, 2020), and accompanying decision memorandum at 31-32, unchanged in final results.

¹¹⁸ See GOI Initial QR at 66.

IX. CONCLUSION

We recommend applying the above methodology for these preliminary results.



Agree

Disagree

12/3/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance