



C-533-894  
Investigation  
**Public Document**  
AD/CVD Office I: WPL

December 7, 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:** Issues and Decision Memorandum for the Final Determination in the  
Countervailing Duty Investigation of Forged Steel Fluid End Blocks  
from India

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## I. SUMMARY

The Department of Commerce (Commerce) 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 705 of the Tariff Act of 1930, as amended (the Act). Below is a complete list of issues in this investigation for which we received comments from interested parties:

- Comment 1: Whether the Duty Drawback Scheme Is Countervailable
- Comment 2: Whether the Income Tax Reduction for Research and Development (R&D) Scheme Is Countervailable
- Comment 3: Whether the Package Scheme of Incentives (PSI) Is Countervailable
- Comment 4: Whether Commerce Should Use the International Monetary Fund (IMF) Lending Benchmark for 2014-2016
- Comment 5: Whether Commerce Should Treat EPCGS Licenses Fulfilled during the POI as an Interest-Free Loan
- Comment 6: Whether Commerce Should Revise Its Calculation for the Benefit of the Duty Drawback Program
- Comment 7: Whether Commerce Should Revise Its Calculation for the Benefit of the Package Scheme of Incentives Provided by the State Government of Maharashtra
- Comment 8: Whether Renewable Energy Certificates Are Countervailable
- Comment 9: Whether Commerce Should Exclude Goods and Service Tax from Its Calculations of the Renewable Energy Certificate Program
- Comment 10: Whether Commerce Should Exclude CENVAT from its Calculations of the EPCGS Program
- Comment 11: Whether Commerce Should Revise Its Calculations of the Focus Product Scheme

## II. BACKGROUND

### A. Case History

The mandatory respondent subject to this investigation is Bharat Forge Limited (Bharat Forge). On May 26, 2020, Commerce published the *Preliminary Determination* and, at the petitioner's<sup>1</sup> request, we aligned the final countervailing duty (CVD) determination with the final determination of the companion antidumping duty (AD) investigation of forged steel fluid end blocks from India.<sup>2</sup> On June 4, 2020, Commerce issued supplemental questionnaires to Bharat Forge and the Government of India (GOI) requesting additional information regarding additional subsidy programs reported by Bharat Forge in their questionnaire responses prior to the *Preliminary Determination*.<sup>3</sup> On June 19 and 29, 2020, Bharat Forge and the GOI timely submitted their respective responses to Commerce's supplemental questionnaires.<sup>4</sup> On August 10, 2020, Commerce issued a Post-Preliminary Analysis Memorandum.<sup>5</sup>

During the course of this investigation, travel restrictions were imposed that prevented Commerce personnel from conducting on-site verification. Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but cannot be verified, Commerce will use "facts otherwise available" in reaching the applicable determination. Accordingly, as we were unable to conduct verification in this investigation for reasons beyond our control, we relied on the information submitted on the record, which we relied on in making our *Preliminary Determination* (and as further developed via response to subsequent supplemental questionnaires and factual information submitted on the record), as facts available in making our final determination. Therefore, on August 31, 2020, Commerce notified interested parties that it was unable to conduct verification and set a deadline for the submission of case and rebuttal briefs.<sup>6</sup> On September 16, 2020, Commerce received case briefs from the petitioner, Bharat Forge, and the GOI.<sup>7</sup> On September 25 through 28, 2020, Commerce received rebuttal briefs from the

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<sup>1</sup> The petitioner is the FEB Fair Trade Coalition, comprised of the Forging Industry Association (FIA); the Ellwood Group; and Finkl Steel.

<sup>2</sup> See *Forged Steel Fluid End Blocks from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 31452 (May 26, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>3</sup> See Commerce's Letter, "Forged Steel Fluid End Blocks (fluid end blocks) from India: Supplemental Questionnaire for Bharat Forge Limited," dated June 4, 2020; see also Commerce's Letter, "Forged Steel Fluid End Blocks (Fluid End Blocks) from India: Supplemental Questionnaire for the Government of India (GOI)," dated June 4, 2020.

<sup>4</sup> See Bharat Forge's Letter, "Forged Steel Fluid End Blocks from India: Submission of Bharat Forge Limited's Second Supplemental Section III Response," dated June 19, 2020 (Bharat Forge SQR 6-19-20); see also GOI's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from India: Response to supplemental questionnaire issued on June 04, 2020," dated June 29, 2020 (GOI SQR 6-29-20).

<sup>5</sup> See Memorandum, "Decision Memorandum for the Post-Preliminary Analysis in the Countervailing Duty Investigation of Forged Steel Fluid End Blocks from India," dated August 10, 2020 (Post-Preliminary Analysis).

<sup>6</sup> *Id.*

<sup>7</sup> See Petitioner's Letter, "Forged Steel Fluid End Blocks from India: Petitioner's Case Brief," dated September 16, 2020 (Petitioner's Case Brief); see also Bharat Forge's Letter, "Forged Steel Fluid End Blocks from India: Submission of Administrative Case Brief," dated September 16, 2020 (Bharat Forge's Case Brief); and GOI's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from India: Case Brief," dated September 16, 2020 (GOI's Case Brief).

petitioner, Bharat Forge, and the GOI.<sup>8</sup> On November 5, 2020, Bharat Forge and Ultra Engineers withdrew their requests for hearings.<sup>9</sup> On November 6, 2020, the petitioner withdrew the request for a hearing.<sup>10</sup> On November 6, 2020, we submitted a memorandum to the file cancelling hearings and documenting our communications with the GOI in which the GOI expressed intent to withdraw the request for a hearing.<sup>11</sup> Therefore, Commerce did not hold a public hearing for this investigation.

## **B. Period of Investigation**

The period of investigation (POI) is April 1, 2018 through March 31, 2019.

## **III. SUBSIDIES VALUATION**

### **A. Allocation Period**

We made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation period used in the *Preliminary Determination*.

### **B. Attribution of Subsidies**

In the Post-Preliminary Analysis, we determined that BF Utilities was a cross-owned supplier of electricity, an input primarily dedicated to the production of subject merchandise.<sup>12</sup> We have made no changes to, and interested parties raised no issues in their case briefs, the attribution methodology used in the *Preliminary Determination* and Post-Preliminary Analysis.

### **C. Denominators**

We made no changes to, and interested parties raised no issues in their case briefs regarding, the denominators used in the *Preliminary Determination*.

## **IV. BENCHMARKS AND INTEREST RATES**

Interested parties submitted comments in their case and rebuttal briefs regarding the appropriate benchmark to use for Bharat Forge for the years 2014-2016. These issues are discussed in Comment 4. Interested parties raised no other issues regarding benchmarks and interest rates.

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<sup>8</sup> See Petitioner's Letter, "Forged Steel Fluid End Blocks from India: Petitioner's Rebuttal Brief," dated September 25, 2020 (Petitioner's Rebuttal Brief); see also Bharat Forge's Letter, "Forged Steel Fluid End Blocks from India: Submission of Administrative Rebuttal Brief," dated September 28, 2020 (Bharat Forge's Rebuttal Brief); and GOI's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from India: Rebuttal to the case brief," dated September 25, 2020 (GOI's Rebuttal Brief).

<sup>9</sup> See Bharat Forge's Letter, "Forged Steel Fluid End Blocks from India: Withdrawal of Hearing Request," dated November 5, 2020; see also Ultra Engineers' Letter, "Ultra Withdrawal of Hearing Request in the Countervailing Duty Investigation on Forged Steel Fluid End Blocks From India (C-533-894)," dated November 5, 2020.

<sup>10</sup> See Petitioner's Letter, "Forged Steel Fluid End Blocks from India: Withdrawal of Request for a Hearing," dated November 6, 2020.

<sup>11</sup> See Commerce's Memorandum, "Cancellation of Hearing Scheduled for November 9, 2020," dated November 6, 2020.

<sup>12</sup> See Post-Preliminary Analysis at 2-3.

We have made no other changes to the benchmarks and interest rates used in the *Preliminary Determination*.

## V. USE OF FACTS AVAILABLE

In the Post-Preliminary Analysis, we found the 1998 Power Generation and Promotion Policy countervailable relying on information provided by Bharat Forge.<sup>13</sup> No interested parties raised issues in their case or rebuttal briefs regarding the application of facts available or the countervailability of this program. For this final determination, we made no changes to our decision to find the 1998 Power Generation and Promotion Policy countervailable using facts available.

## VI. ANALYSIS OF PROGRAMS

### A. Programs Determined to be Countervailable

#### GOI Programs

##### 1. *Duty Drawback Scheme*

Interested parties submitted comments regarding this program, which are discussed in Comment 1 and Comment 6. Commerce modified the calculation of the subsidy rate for this program to account for duty drawback on exports during the POI where the drawback was not received until after the POI. *See* Comment 6.

Bharat Forge: 1.90 percent *ad valorem*

##### 2. *Export Promotion of Capital Goods Scheme*

Interested parties submitted comments regarding this program, which are discussed in Comment 5 and Comment 10. Commerce modified the calculation of the benefit for this program to exclude Central Value-Added Tax (CENVAT) for the final determination. Commerce has also modified its calculation of the program to treat any EPCGS licenses with export obligations fulfilled during the POI as interest-free loans until the date of fulfillment. *See* Comment 5 and Comment 10.

Bharat Forge: 0.64 percent *ad valorem*

##### 3. *Merchandise Exports from India Scheme*

No interested parties submitted comments regarding this program. Commerce did not modify its analysis or calculation of the subsidy rate from the *Preliminary Determination*.

Bharat Forge: 1.96 percent *ad valorem*

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<sup>13</sup> *Id.* at 2.

#### 4. *Interest Equalization Scheme*

No interested parties submitted comments regarding this program. Commerce did not modify its analysis or calculation of the subsidy rate from the *Preliminary Determination*.

Bharat Forge: 0.14 percent *ad valorem*

#### 5. *Status Holder Incentive Scheme*

No interested parties submitted comments regarding this program. Commerce did not modify its analysis or calculation of the subsidy rate from the *Preliminary Determination*.

Bharat Forge: 0.16 percent *ad valorem*

#### 6. *Income Tax Deduction for R&D Expenses*

Interested parties submitted comments regarding this program, which are discussed in Comment 2. Commerce did not modify its analysis or the calculation of the subsidy rate for this program from the *Preliminary Determination*.

Bharat Forge: 0.21 percent *ad valorem*

#### 7. *1998 Power Generation and Promotion Policy*

No interested parties submitted comments regarding this program. Commerce did not modify its analysis or calculation of the subsidy rate from the Post-Preliminary Analysis.

Bharat Forge: 0.05 percent *ad valorem*

#### 8. *Renewable Energy Certificates*

Interested parties submitted comments regarding this program, which are discussed at Comment 8 and Comment 9. Commerce modified its calculation of the countervailable subsidy rate under this program to exclude Goods and Service Tax (GST) collected by Bharat Forge on its sales of certificates.

Bharat Forge: 0.05 percent *ad valorem*

### **State Government of Maharashtra Programs**

#### 9. *State Government of Maharashtra PSI: Industrial Promotion Subsidy*

Interested parties submitted comments regarding this program, which are discussed at Comment 3. Commerce did not modify its analysis or calculation of the subsidy rate for this program from the *Preliminary Determination*.

Bharat Forge: 0.09 percent *ad valorem*

## **B. Programs Determined Not to Have Conferred a Measurable Benefit**

### 1. State Government of Maharashtra PSI: Sales Tax Deferrals

Interested parties submitted comments regarding this program, which are discussed at Comment 3. Commerce did not modify its analysis or calculation of the subsidy rate for this program from the *Preliminary Determination*.

### 2. State Government of Maharashtra PSI: Electricity Duty Exemption

Interested parties submitted comments regarding this program, which are discussed at Comment 3 and Comment 7. Commerce did not modify its analysis or calculation of the subsidy rate for this program from the *Preliminary Determination*.

## **C. Programs 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
  - 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. Status Certificate Program
11. Focus Product Scheme (FPS)

Interested parties submitted comments regarding the FPS, which are discussed at Comment 11. Commerce modified its analysis of this program for the final determination to find that it was not used by Bharat Forge.

## VII. ANALYSIS OF COMMENTS

### Comment 1: Whether the Duty Drawback Scheme Is Countervailable

#### *GOI's Arguments:*

- The GOI states that under this scheme there is a system to track which inputs, and in what quantity, were consumed in the production of the exported product. Per the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement), the GOI argues, only the drawback in excess of the taxes or charges actually levied on consumed inputs for exported products is countervailable.<sup>14</sup>
- The GOI further cites the Appellate Body of the WTO decision in DS486: European Union – Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan in support of the GOI's argument that only the excess drawback can be countervailed.<sup>15</sup>

#### *Petitioner's Rebuttal Arguments:*

- The petitioner states that because the GOI continues to rely on universal rates calculated from aggregate data, rather than firm-specific calculations, the entire amount of the drawback is countervailable, consistent with Commerce's longstanding practice.<sup>16</sup>

**Commerce's Position:** In the *Preliminary Determination*, Commerce found the entire amount of the duties rebated under the Duty Drawback Scheme (DDB) to be countervailable. Pursuant to 19 CFR 351.519(a)(1)(ii), import duty exemptions on inputs for exported products are not countervailable, so long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste. However, as stated in *Shrimp from India*, 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.<sup>17</sup> This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export. If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of 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.

The GOI claims that there is a system in place to confirm and track inputs that are consumed in the production of the exported product.<sup>18</sup> However, in the GOI's questionnaire response dated March 9, 2020, the GOI acknowledged that DDB rates for fluid end blocks were calculated using standard input-output norms (SIONs), *i.e.*, industry-wide rates.<sup>19</sup> Specifically, in the *Preliminary Determination* Commerce noted 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, and the GOI specifically states that the

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<sup>14</sup> See GOI's Case Brief at 2.

<sup>15</sup> *Id.* at 2-3.

<sup>16</sup> See Petitioner's Rebuttal Brief at 5-6.

<sup>17</sup> 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.

<sup>18</sup> See GOI's Case Brief at 2.

<sup>19</sup> See GOI IQR at 35.

“rates provided to the goods in question represent a *broad assessment* of unrebated incidence...”<sup>20</sup> Therefore, we continue to find that the GOI does not have a reasonable and effective system in place for this scheme to track inputs used in the production of the exported product.

The GOI references the Appellate Body findings in DS486: European Union — Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan. It is well-settled that WTO decisions are not binding on Commerce or the courts.<sup>21</sup> Moreover, WTO findings are not self-executing under U.S. law, and can only be implemented through the statutory procedure for such implementation.<sup>22</sup> Furthermore, because the relevant facts of DS486 are not on the record of this investigation, we are unable adequately evaluate the GOI’s claim that these cases are analogous.

We continue to find that a financial contribution, pursuant to section 771(5)(D)(ii) of the Act, is provided under the DDB program because rebated duties represent revenue forgone by the GOI. Because the program is only available to exporters, we determine that the DDB is specific under section 771(5A)(A) and (B) of the Act. Because the GOI has not supported the 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 merchandise, we determine that the entire amount of the import duty earned during the POI constitutes a benefit under 19 CFR 351.519(a)(4). Accordingly, we continue to find that the DDB scheme confers a countervailable subsidy and agree with the petitioner that the GOI presented no new evidence that would justify revisiting or altering the preliminary determination of countervailability for this program.

## **Comment 2: Whether the Income Tax Reduction for R&D Scheme Is Countervailable**

### *GOI’s Arguments:*

- The GOI claims that income tax reductions under Section 35 for R&D programs are not specific within the meaning of section 771(5A)(A) and (D) of the Act on the basis that benefits under this program are not limited to certain industries or enterprises. Instead, the GOI claims, income tax reductions under this program are available to any entity that meets the deduction criteria.

### *Petitioner’s Rebuttal Arguments:*

- The petitioner argues that information on the record of the case, including the text of the Income Tax Act as provided by the GOI, indicates that income tax reductions under this program are not, per the GOI’s claim, available to any entity that meets the criteria. Instead, eligibility for the program is limited to “companies engaged in bio-technology or in the manufacture of any good not specifically listed on the Eleventh Schedule.”<sup>23</sup>

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<sup>20</sup> See *Preliminary Determination* at 9-10.

<sup>21</sup> See *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1348-49 (Fed. Cir. 2005); see also *Timken Co. v. United States*, 354 F.3d 1334, 1344 (Fed. Cir. 2004).

<sup>22</sup> See, e.g., Statement of Administrative Action for Uruguay Round Agreements Act (SAA), H.R. Rep. No. 103-316, vol. I at 656, 659 (1994) (“WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it.”)

<sup>23</sup> See Petitioner’s Rebuttal Brief at 8.

Therefore, the petitioner argues, the program is specific pursuant to section 771(5A) of the Act.

**Commerce’s Position:** In the *Preliminary Determination*, Commerce found this program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, on the basis that eligibility is limited to firms engaged in a limited number of sectors or enterprises. We do not find the GOI’s arguments on this matter to be convincing, nor has the GOI pointed to any information onto the record that contradicts this finding,<sup>24</sup>

We continue to find that this program is specific within the meaning of section 771(5A)(D)(i) of the Act because the program is limited to certain enterprises or industries or groups thereof. Eligibility for the program is limited to companies engaged in biotechnology or in the manufacture of any good not specifically listed on the Eleventh Schedule.<sup>25</sup> Therefore, and as noted in the *Preliminary Determination*, this program is limited to certain enterprises or industries or groups thereof and, therefore, *de jure* specific. Accordingly, we continue to find that income tax deductions for R&D expenses under Section 35 constitute countervailable subsidies.

### **Comment 3: Whether the PSI Is Countervailable**

#### *GOI’s Argument:*

- The GOI states that because the PSI is administered by the State Government of Maharashtra (SGOM), rather than the federal government, and is not limited to an enterprise or industry, it is not specific and therefore not countervailable.<sup>26</sup>

#### *Petitioner’s Rebuttal Arguments:*

- The petitioner reiterates the GOI’s statements that eligibility for the program is dependent upon a new project’s location within the state of Maharashtra, and that location’s development rating.<sup>27</sup>
- The petitioner states that Commerce found the PSI to be regionally specific under section 771(5A)(D)(iv) of the Act because it is limited to enterprises in a designated geographic region within the designation of the administering authority (*i.e.*, the SGOM), and that the GOI provided no new factual information to contradict this finding.

**Commerce’s Position:** As noted by the petitioner, Commerce found the PSI to be regionally specific in the *Preliminary Determination* under section 771(5A)(D)(iv) of the Act. The GOI’s statements do not contradict this finding. Section 771(5A)(D)(iv) of the Act states that “where a subsidy is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy, the subsidy is specific.” The GOI argues that because the PSI is implemented by a local government, it should not be considered specific. However, the GOI further stated that the PSI is “aimed at eliminated all regional

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<sup>24</sup> See GOI’s Case Brief at 3.

<sup>25</sup> See *Preliminary Determination* at 19-20; see also Petitioner’s Rebuttal Brief at 2; Bharat Forge IQR at 68; and GOI IQR at Exhibit 31.

<sup>26</sup> See GOI’s Case Brief at 8-9.

<sup>27</sup> See Petitioner’s Rebuttal Brief at 8-9.

imbalances” within Maharashtra.<sup>28</sup> As noted in the *Preliminary Determination*, “{e}ligibility 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.” Because only firms within designated geographic regions of Maharashtra (*i.e.*, areas with a certain development classification) are eligible for subsidies under this program, it is specific within the meaning of section 771(5A)(D)(iv) of the Act.

Therefore, we continue to find that this program is regionally specific, pursuant to section 771(5A)(D)(iv) of the Act. Accordingly, we continue to find that the PSI confers countervailable subsidies and further agree with the petitioner that the GOI has presented no new evidence that would justify revisiting or altering the preliminary determination of countervailability for this program.

#### **Comment 4: Whether Commerce Should Use the IMF Lending Benchmark for 2014-2016**

##### *Petitioner’s Arguments:*

- The petitioner argues that Commerce should reject loans from the Indo-German Science and Technology Center (IGSTC) from Bharat Forge’s lending benchmark. The petitioner alleges that loans from this institution were not provided on commercial terms. The petitioner states that record information shows the IGSTC to be a joint venture between the GOI and the Government of Germany, with non-commercial aims including funding and supporting “collaborative research partnerships of industrial relevance”.<sup>29</sup>
- The petitioner cites 19 CFR 351.505(a)(2), which states that a loan will be excluded from a benchmark if “there is evidence that the loan from a government-owned bank is provided on non-commercial terms.” The petitioner also cites Commerce’s practice of excluding respondent-reported interest rates from company benchmarks when they are provided on non-commercial terms.<sup>30</sup>
- The petitioner concludes that, because IMF’s International Financial Statistics are available on the record of the investigation and are already used to calculate benchmark rates for other years, Commerce should instead use the IMF lending rates for India during the corresponding years.<sup>31</sup>

##### *Bharat Forge’s Rebuttal Arguments:*

- Bharat Forge asserts that IGSTC lending was provided on commercial terms. Bharat Forge states that a “comparison of the terms of the IGSTC loan to other rupee-denominated loans issued by commercial banks during the average useful life (AUL) period demonstrates that the IGTSTC was, in fact, based on commercial terms.”<sup>32</sup> Bharat Forge claims that another rupee-denominated loan from a commercial bank was issued on

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<sup>28</sup> See GOI’s Case Brief at 4.

<sup>29</sup> See Bharat Forge SQR 6-29-20 at 9 and Exhibit CVD-45; see also Petitioner’s Case Brief at 7.

<sup>30</sup> See Petitioner’s Case Brief at 5; see also *Coated Free Sheet Paper from the Republic of Korea Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007), and accompanying IDM at Comment 21.

<sup>31</sup> See Petitioner’s Case Brief at 8.

<sup>32</sup> See Bharat Forge’s Rebuttal Brief at 3.

comparable terms, and cites the securitization of the IGSTC loan against a bank guarantee as evidence that the IGSTC operates comparably to commercial lending institutions.<sup>33</sup>

- Bharat Forge further states that, although the IGSTC is government-supported, 19 CFR 351.505(a)(2)(ii) states that Commerce will treat loans from government-owned banks as a commercial loan “unless there is evidence that the loan from a government-owned bank is provided on non-commercial terms or at the direction of the government.”<sup>34</sup>

**Commerce’s Position:** In the *Preliminary Determination*, there was insufficient evidence on the record to indicate whether the IGSTC lending reported by Bharat Forge was offered on non-commercial terms. Accordingly, we included those loans in the interest benchmark rate calculations, pursuant to 19 CFR 351.505(a)(2)(ii). In a post-preliminary supplemental questionnaire, we requested details of Bharat Forge’s IGSTC loans to determine whether it was appropriate to keep those loans in the benchmark calculations.<sup>35</sup> Bharat Forge provided details and documentation regarding the IGSTC lending, and the petitioner timely submitted new factual information in response.<sup>36</sup>

The additional details and documentation provided by Bharat Forge, as well as the new factual information submitted by the petitioner, including IGSTC press releases and excerpts from the IGSTC website, indicate that the institution is funded and supported by the GOI.<sup>37</sup> Furthermore, the information provided by the petitioner indicates that the IGSTC has non-commercial aims and offers lending on non-commercial terms, including “soft loans.”<sup>38</sup> Specifically, information provided by the petitioner indicates that the IGSTC was established by the GOI with the explicit purpose of supporting R&D networking, academic and industry research, and the economic and social development of India and Germany.<sup>39</sup> As such, we find that these loans were provided by a government-funded lending institution set up for the explicit purpose of funding R&D and technology-related activities, on a non-commercial basis. Thus, we agree with the petitioner that IGSTC lending should be excluded from Bharat Forge’s interest rate benchmarks. Accordingly, for the final determination, we are calculating Bharat Forge’s interest rate benchmarks for 2014-2016 based on the India-wide interest rates according to the IMF’s International Financial Statistics for the corresponding years.

#### **Comment 5: Whether Commerce Should Treat EPCGS Licenses Fulfilled during the POI as an Interest Free Loan**

##### *Petitioner’s Arguments:*

- The petitioner argues that Commerce incorrectly calculated the benefit to Bharat Forge under the EPCGS. The petitioner states that Commerce should treat any EPCGS licenses

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See Commerce’s Letter, “Forged Steel Fluid End Blocks (fluid end blocks) from India: Supplemental Questionnaire for Bharat Forge Limited,” dated June 4, 2020.

<sup>36</sup> See Petitioner’s Letter, “Forged Steel Fluid End Blocks from India: Petitioners’ Rebuttal Factual Information Concerning Bharat Forge’s Second Supplemental Section III Response,” dated June 29, 2020 (Petitioner June NFI).

<sup>37</sup> *Id.*; see also Bharat Forge SQR 6-19-20 at Exhibit CVD-45.

<sup>38</sup> See Petitioner June NFI at attachments 1-3.

<sup>39</sup> *Id.*

with export obligations fulfilled during the POI as an interest-free loan until the date the license is fulfilled, and then as a grant upon fulfillment.

- The petitioner cites Commerce’s practice in a number of other CVD proceedings involving the EPCGS program, stating that this proposed calculation methodology was applied in each case.<sup>40</sup>

*Bharat Forge’s Rebuttal Arguments:*

- Bharat Forge responds that Commerce correctly distinguished between the two types of benefits in the *Preliminary Determination* and maintains that any EPCGS licenses with export obligations fulfilled during the POI should be treated as grants during the POI.<sup>41</sup>
- The respondent claims that the petitioner’s proposed calculation methodology is contrary to 19 CFR 351.505(d)(2), which states that the outstanding balance of a loan will be treated as a grant in the event that repayment is no longer viable.
- Bharat Forge further argues that we should calculate EPCGS benefits only for those licenses tied to subject merchandise, and only for those with export obligations not met during the POI.<sup>42</sup> Bharat Forge states that this approach is consistent with Commerce’s practice in prior CVD investigations, citing a recent administrative review of *PET Film from India*.<sup>43</sup>

**Commerce’s Position:** In the *Preliminary Determination*, Commerce found that the EPCGS program provides an exemption from customs duties on imports of capital goods used in the production process of exported products.<sup>44</sup> This exemption is contingent on fulfilling an export obligation proportionate to the value of the duty saved on the imported capital goods within a specified time period.<sup>45</sup>

In the *Preliminary Determination*, we treated all EPCGS licenses with export obligations fulfilled prior to the end of the POI as grants. Any EPCGS license with export obligations still outstanding after the POI were treated as interest-free loans. The petitioner argues that these should not be mutually exclusive categories. According to the petitioner, because Bharat Forge is exempt from certain import duties under the program, even before the licenses are fulfilled, Bharat Forge is effectively receiving an interest-free loan on those duties from the GOI until the fulfillment date, and only at that time does it become a grant. Therefore, the petitioner argues, EPCGS licenses fulfilled during the POI confer two types of benefits and Commerce must

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<sup>40</sup> See, e.g., *Certain New Pneumatic Off-the-Road Tires from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Determination*, 81 FR 39903 (June 20, 2016), and accompanying PDM at A.2; see also *Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India*, 70 FR 13460 (March 21, 2005), and accompanying IDM at Comment 9; *Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 18112 (April 17, 2017), and accompanying IDM at Comment 4; and *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009), and accompanying IDM at IV.A.2.

<sup>41</sup> See Bharat Forge’s Rebuttal Brief at 5.

<sup>42</sup> *Id.* at 6.

<sup>43</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2017*, 84 FR 48105 (September 12, 2019) (*PET Film from India*).

<sup>44</sup> See *Preliminary Determination PDM* at 14.

<sup>45</sup> *Id.*

account for both in order to calculate the full amount of Bharat Forge's benefit under the program.

Although Bharat Forge objects that the petitioner's proposed methodology is inconsistent with both 19 CFR 351.505(d)(2) and Commerce's practice in prior cases, Bharat Forge gives little explanation as to the nature of the inconsistency. Consistent with our treatment of Investment Incentive Certificates in *Rebar from Turkey*, we agree with the petitioner's proposed methodology for those EPCGS licenses with export obligations fulfilled during the POI.<sup>46</sup> Specifically, for these licenses, for the time between the start of the POI and the date the export obligation was fulfilled, we determine that Bharat Forge is also benefiting from an interest-free loan. Consistent with our calculations in the *Preliminary Determination*, we are treating any unpaid duty liability as a contingent-liability interest-free loan, pursuant to 19 CFR 351.505(d)(1). Accordingly, we have revised our calculations of the EPCGS program in the final determination to include these interest-free loan benefits for the EPCGS licenses with export obligations fulfilled during the POI, in addition to the grant we calculated on the fulfillment date.

Finally, Bharat Forge argues that we should calculate EPCGS benefits only for those licenses tied to subject merchandise.<sup>47</sup> However, in the *Preliminary Determination*, we stated that although Bharat Forge indicated whether each of the licenses was used to import capital equipment used to produce subject merchandise, Bharat Forge did not indicate whether that capital equipment was used exclusively for the production of subject merchandise.<sup>48</sup> Given that Bharat Forge has not provided new information that would allow us to determine which licenses were used to import capital equipment used exclusively for the production of subject merchandise, we determine not to adopt Bharat Forge's proposed methodology.

#### **Comment 6: Whether Commerce Should Revise Its Calculation for the Benefit of the Duty Drawback Program**

##### *Petitioner's Arguments:*

- The petitioner claims that in our calculation of the benefit from the DDB scheme, Commerce should include the value of duty drawback received during the POI on the basis of U.S. sales of subject merchandise prior to the POI. The petitioner argues that because we exclude DDB received during the POI on sales prior to the POI, we must include DDB received after the POI on sales during the POI.<sup>49</sup>
- The petitioner proposes that, because the information to calculate Bharat Forge's benefit on DDB received after the POI is not on the record, Commerce could rely on facts available to calculate the additional benefit.<sup>50</sup>

##### *Bharat Forge's Rebuttal Arguments:*

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<sup>46</sup> See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review in Part; 2016*, 83 FR 63472 (December 10, 2018) (*Rebar from Turkey*), and accompanying PDM at 17-19.

<sup>47</sup> See Bharat Forge's Rebuttal Brief at 6.

<sup>48</sup> See *Preliminary Determination* at 13.

<sup>49</sup> See Petitioner's Case Brief at 10.

<sup>50</sup> *Id.* at 11.

- Bharat Forge claims that Commerce was correct to calculate the benefit only on DDB received during the POI on sales made during the POI. According to 19 CFR 351.519(b)(1), Bharat Forge states, Commerce “will only consider benefits under this program as received on the date of exportation.”<sup>51</sup>
- Bharat Forge argues further that, because the amount of drawback actually received may be less than the claimed amount, or may be rejected entirely, it is unreasonable to calculate DDB benefits until they are actually received by Bharat Forge.<sup>52</sup>
- Bharat Forge also objects to the petitioner’s claim that there is information missing from the record of the investigation. Bharat Forge states that all requested information regarding DDB received during the POI had been placed on the record, including DDB claimed during the POI, which “is sufficient to calculate the benefits received under this program during the POI.”<sup>53</sup>

*GOI’s Rebuttal Arguments:*

- The GOI objects that if Commerce includes duty drawback received during the POI on sales of subject merchandise prior to the POI in the calculation of the benefit, then any drawback received after the POI on sales during the POI must be excluded.<sup>54</sup>

**Commerce’s Position:** In the *Preliminary Determination*, we calculated the benefit for the DDB using the value of duty drawback received during the POI on exports of subject merchandise to the United States during the POI. The petitioner argues that we should include duty drawback claimed on POI exports, but not received until after the POI. The petitioner states that because we have determined that benefits under this program occur at the time of export, excluding the amount of DDB earned on exports during the POI, but not received until after the POI, undercounts the full amount of Bharat Forge’s benefit under this program.

Bharat Forge claims that the petitioner’s proposed methodology is contrary to Commerce’s practice, citing a number of determinations regarding the program.<sup>55</sup> However, in *Forged Steel Fittings from India*, which was cited by Bharat Forge, we found that “benefits from the DDB program are conferred on the dates of exportation.”<sup>56</sup> This finding is consistent with our *Preliminary Determination*, where we stated that benefits are conferred at the time of export.<sup>57</sup>

<sup>51</sup> See Bharat Forge’s Rebuttal Brief at 7.

<sup>52</sup> *Id.* at 7-8

<sup>53</sup> *Id.* at 7.

<sup>54</sup> See GOI’s Rebuttal Brief at 3.

<sup>55</sup> See, e.g., *Certain Quartz Surface Products from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, In Part, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 54838 (October 11, 2019) (*Quartz from India*), and accompanying PDM, unchanged in the final determination; see also *Fine Denier Polyester Staple Fiber from India: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 51387 (November 6, 2017), and accompanying PDM; see also *Certain Polyethylene Terephthalate Resin from India: Preliminary Affirmative Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 48819 (August 14, 2015), and accompanying PDM; and *Forged Steel Fittings from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination* 85 FR 17536 (March 30, 2020) (*Forged Steel Fittings from India*), and accompanying PDM, unchanged in the final determination.

<sup>56</sup> See *Forged Steel Fittings from India* PDM at 26.

<sup>57</sup> See *Preliminary Determination* at 11.

Therefore, we agree with the petitioner that we should revise our calculations to include drawback claimed on all U.S. exports of subject merchandise during the POI, rather than only those exports where the drawback was also received during the POI.

Bharat Forge objects that it is inappropriate to calculate a drawback rate on the basis of the claimed amount because in some cases, the amount of benefit received is less than the claimed amount, or that benefits may be rejected entirely.<sup>58</sup> In the *Preliminary Determination*, we stated that the benefit occurs at the time of exportation on the basis that “recipients know the exact amount of the benefit” they will receive.<sup>59</sup> Although there may be some difference between the drawback amount claimed and the amount received, the duty drawback itself is a fixed percentage of the free-on-board (FOB) value of the exported product.<sup>60</sup>

The GOI states that if Commerce were to include duty drawback received during the POI on sales prior to the POI, then we should similarly exclude any duty drawback received after the POI on sales during the POI.<sup>61</sup> However, the GOI’s argument is a misunderstanding of Commerce’s preliminary findings. In the *Preliminary Determination*, we did not include duty drawback received during the POI on sales prior to the POI; we calculated the benefit to Bharat Forge using the DDB received during the POI on sales during the POI.

Calculating benefits under this program based on the duty drawback earned during the POI on U.S. exports of subject merchandise during the POI is consistent with Commerce’s practice and consistent with the methodology described in the *Preliminary Determination*.<sup>62</sup> Accordingly, we are revising our calculations in the final determination to include the amount of duty drawback reported by Bharat Forge on the basis of POI exports, regardless of whether the duty drawback was received during the POI.

**Comment 7: Whether Commerce Should Revise Its Calculation for the Benefit of the Package Scheme of Incentives Provided by the State Government of Maharashtra**

*Petitioner’s Arguments:*

- The petitioner claims that Commerce should revise its calculations for programs under the SGOM PSI. The petitioner argues that under the PSI, Bharat Forge was approved for subsidies with a ceiling equivalent to 75 percent of Bharat Forge’s initial investment (*i.e.*, up to 3.75 billion INR).<sup>63</sup> The petitioner states that 19 CFR 351.524(b)(2) directs Commerce to calculate the 0.5 percent test based on the total amount approved during the year of approval.<sup>64</sup>
- Further, the petitioner argues that Commerce should find that Bharat Forge used the Electricity Duty Exemption during the AUL period on the basis that it is a financial

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<sup>58</sup> See Bharat Forge’s Rebuttal Brief at 8.

<sup>59</sup> See *Preliminary Determination* at 11.

<sup>60</sup> See, *e.g.*, *Quartz from India* at 13-14; see also *Forged Steel Fittings from India* at 24; and *Preliminary Determination* at 11.

<sup>61</sup> See GOI’s Rebuttal Brief at 3.

<sup>62</sup> See *Preliminary Determination* at 11.

<sup>63</sup> See Petitioner’s Case Brief at 11-12.

<sup>64</sup> *Id.*

contribution in the form of revenue forgone, is regionally limited to enterprises in specific areas of Maharashtra, and it provides a benefit in the amount of electricity duty exempted.<sup>65</sup>

*Bharat Forge's Rebuttal Arguments:*

- Bharat Forge argues that Commerce correctly found the Electricity Duty Exemption not to have been used on the basis that it provides a recurring benefit and was not used during the POI.<sup>66</sup>

*GOI's Rebuttal Arguments:*

- The GOI claims that Commerce correctly performed the 0.5 percent test, arguing that any benefits received under other PSI subprograms would count against Bharat Forge's benefit ceiling.<sup>67</sup>
- The GOI objects to the petitioner's argument that Commerce should find the Electricity Tax Exemption to have been used during the POI on the basis that it is a recurring program that was not used during the POI.<sup>68</sup>

**Commerce's Position:** In the *Preliminary Determination*, Commerce calculated a countervailable subsidy rate for the Industrial Subsidy Promotion under the SGOM PSI, found the Sales Tax Deferrals under this program to be not measurable, and found the Electricity Duty Exemptions not to have been used. First, the petitioner claims that Commerce should perform the 0.5 percent test on the full amount of the subsidy that Bharat Forge was eligible to receive under each subprogram of the SGOM PSI (*i.e.*, 3.75 billion INR). Second the petitioner claims that Commerce should have found the Electricity Duty Exemption to have been used during the AUL period.

Commerce disagrees with the petitioner on both points. The 3.75 billion INR figure cited by the petitioner is the amount that Bharat Forge was theoretically eligible to receive under the SGOM PSI, but realizing this full amount was contingent upon the amount of tax actually paid by the recipient. That Bharat Forge could have claimed up to 3.75 billion INR in subsidies does not mean that Bharat Forge would realize the full amount of the benefit ceiling under this subprogram. Therefore, the appropriate basis for the 0.5 percent test is the amount disbursed under each subprogram of the PSI.

Second, electricity tax exemptions are tax programs explicitly listed under 19 CFR 351.524(c)(1) as examples of recurring benefits. Commerce treats the programs listed under that regulation as recurring unless there is evidence on the record that indicates that the program is non-recurring. Because the petitioner has not provided evidence that would indicate that Bharat Forge's Electricity Duty Exemptions should be treated as a non-recurring program, Commerce will continue to treat the program as recurring for the final determination. Accordingly, because Bharat Forge did not report use of the program during the POI, Commerce will continue to find that it was not used in the final determination.

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<sup>65</sup> *Id.* at 13-14.

<sup>66</sup> *Id.* at 8.

<sup>67</sup> See GOI's Rebuttal Brief at 3-4.

<sup>68</sup> *Id.* at 4.

## Comment 8: Whether Renewable Energy Certificates (RECs) Are Countervailable

### *Bharat Forge's Arguments:*

- Bharat Forge claims that RECs do not meet the criteria for countervailability on two fronts: first, they do not constitute a financial contribution; and second, they are not sufficiently specific.
- Regarding the program's financial contribution, Bharat Forge argues that, because RECs themselves do not have any value, and all compensation is from the private entities who purchase RECs, there is no financial contribution from the GOI.<sup>69</sup>
- For specificity, Bharat Forge argues that RECs are not *de jure* specific on the basis that all industries involved in the production of renewable energy may earn them.<sup>70</sup> Because there is no express limitation to any particular industry, region, or export activity, Bharat Forge continues, RECs are not specific and therefore should not be found countervailable.<sup>71</sup>

### *Petitioner's Rebuttal Arguments:*

- The petitioner reiterates Commerce's findings in our Post-Preliminary Analysis, in which we found that RECs provided a financial contribution in that they are provided by the GOI to Bharat Forge for free and are transferable to other entities. As such, the petitioner argues, the GOI is providing something of value to the GOI.<sup>72</sup>
- Regarding specificity, the petitioner argues that the program's governing regulations state that eligibility is limited to "a generating company engaged in the generation of electricity from renewable energy sources."<sup>73</sup> Therefore, the petitioner argues, although issuance of RECs is not specific to the fluid end block industry, it is specific to producers of renewable energy.<sup>74</sup>

**Commerce's Position:** In our Post-Preliminary Analysis, we found that RECs constitute a financial contribution in the form of a direct transfer of funds, pursuant to section 771(5)(D)(i) of the Act, and that RECs are *de jure* specific to producers of renewable energy, per section 771(5A)(D)(i) of the Act.<sup>75</sup> Bharat Forge argues that because RECs themselves have no value, there is no financial contribution from the GOI. However, Bharat Forge also states that it received "compensation from private entities that purchased RECs."<sup>76</sup> That private entities are willing to compensate Bharat Forge for RECs indicates that those RECs have monetary value, even if the amount of that value may not be known at the time of bestowal. We agree with the petitioner that the GOI bestowing RECs, an instrument with monetary value, to Bharat Forge constitutes a financial contribution in the form of a direct transfer of funds.

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<sup>69</sup> See Bharat Forge's Case Brief at 3.

<sup>70</sup> *Id.* at 4.

<sup>71</sup> *Id.* at 4.

<sup>72</sup> See Petitioner's Rebuttal Brief at 3.

<sup>73</sup> *Id.* at 4; see also GOI SQR 6-29-20 at exhibit 2A.

<sup>74</sup> *Id.*

<sup>75</sup> See Post-Preliminary Analysis at 5.

<sup>76</sup> See Bharat Forge's Case Brief at 3.

Bharat Forge further argues that RECs are not specific on the basis of industry, region, or export activity.<sup>77</sup> However, Bharat Forge also states that RECs are available to all industries engaged in the production of renewable energy.<sup>78</sup> The petitioner cites program documentation provided by the GOI, which states that eligibility for RECs is limited to companies that produce electricity from renewable sources.<sup>79</sup> As the petitioner notes, a program need not be limited to producers of subject merchandise to be found specific within the meaning of section 771(5A)(D)(i) of the Act. In this case, as information on the record indicates, RECs are limited to producers of renewable energy, and therefore limited to certain enterprises or industries or groups thereof.

We agree with the petitioner that RECs confer a financial contribution pursuant to 771(5)(D)(i) of the Act and are *de jure* specific pursuant to section 771(5A)(D)(i). Bharat Forge has not introduced any new information or arguments that would cause us to reconsider our findings in the Post-Preliminary Analysis. Accordingly, we continue to find that RECs confer a countervailable subsidy in the final determination.

### **Comment 9: Whether Commerce Should Exclude Goods and Service Tax from Its Calculations of the Renewable Energy Certificate Program**

#### *Bharat Forge's Arguments:*

- Bharat Forge additionally claims that Commerce should exclude the amount of Goods and Service Tax (GST) received by Bharat Forge on the sales of RECs.<sup>80</sup> Bharat Forge states that any GST received by Bharat Forge on the sales of RECs is ultimately paid as taxes to the GOI. Therefore, Bharat Forge argues, Commerce should subtract the amount of the GST from the sales of RECs.<sup>81</sup>
- Bharat Forge notes that the amount of GST collected on each REC sale is indicated in the response.<sup>82</sup>

#### *Petitioner's Rebuttal Arguments:*

- The petitioner did not provide a rebuttal argument on this issue.

**Commerce's Position:** In the Post-Preliminary Analysis, we calculated the benefit from RECs by dividing the total sale value of all RECs sold during the POI by the net intercompany sales of Bharat Forge and BF Utilities.<sup>83</sup> We agree with Bharat Forge that the total sales value of RECs sold during the POI includes GST ultimately paid back to the GOI. Accordingly, we are revising our calculations for this program in the final determination to exclude GST from the benefit calculation.

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<sup>77</sup> *Id.* at 4.

<sup>78</sup> *Id.*

<sup>79</sup> See Petitioner's Rebuttal Brief at 4.

<sup>80</sup> See Bharat Forge's Case Brief at 4.

<sup>81</sup> *Id.* at 5.

<sup>82</sup> *Id.*; see also Bharat Forge SQR 5-18-20 at Exhibit CVDU-8.

<sup>83</sup> See Commerce's Memorandum, "Post-Preliminary Analysis Calculations for Bharat Forge Limited," dated August 10, 2020 at 2.

## **Comment 10: Whether Commerce Should Exclude CENVAT from its Calculations of the EPCGS Program**

### *Bharat Forge's Arguments:*

- Bharat Forge states that under the 2004 CENVAT Credit Rules, manufacturers and service providers may take CENVAT credits of duties paid on inputs, capital goods, or service taxes.<sup>84</sup> Bharat Forge further states that CENVAT duties are not a waiver on duties owed, as is the case with the EPCGS.<sup>85</sup>
- The respondent cites Commerce's administrative practice in treating CENVAT credits as separate from the EPCGS, stating that Commerce has repeatedly found that additional duties, including CVD, education cess, and the Special Additional Duty (SAD) are refundable regardless of whether a firm uses EPCGS.<sup>86</sup>
- Bharat Forge concludes that Commerce should calculate the EPCGS benefits with respect to only the basic customs duties and cess, after offsetting the credits forgone.<sup>87</sup>

### *Petitioner's Rebuttal Arguments:*

- The petitioner states that the changes proposed in Comment 5 are the appropriate changes for Commerce to make to the program.<sup>88</sup>
- The petitioner adds that, if Commerce excludes CENVAT credits from the calculations, Commerce should modify the calculations to attribute the grant benefit to the POI, rather than the AUL.

**Commerce's Position:** In the *Preliminary Determination*, Commerce found that the EPCGS program provides an exemption from customs duties on imports of capital goods used in the production process of exported products.<sup>89</sup> This exemption is contingent on fulfilling an export obligation proportionate to the value of the duty saved on the imported capital goods within a specified time period.<sup>90</sup>

Bharat Forge reported the amount of duty subject to reduction under the EPCGS program, as well as the CENVAT duties due and explained that capital goods imported duty-free under the EPCGS are exempt from CENVAT.

Bharat Forge notes that Commerce has previously investigated the relationship between CENVAT and the EPCGS, as well as previous, similar taxes (*e.g.*, CVD, SAD, *etc.*).<sup>91</sup> In *Cold-Rolled Steel from India*, Commerce declined to include reported CVD and SAD in the benefit calculation for EPCGS, citing "information on the record and the Department's prior

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<sup>84</sup> See Bharat Forge's Case Brief at 6.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*; see also *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination*, 81 FR 49932 (July 29, 2016); *Polyethylene Terephthalate Film, Sheet, and Strip Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*; 2016, 83 FR 39677, (August 10, 2018), and accompanying IDM at 17-19, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip Final Results of Antidumping Duty Administrative Review*; 2016-2017, 84 FR 9092, (March 13, 2019).

<sup>87</sup> See Bharat Forge's Case Brief at 8.

<sup>88</sup> See the petitioner's arguments at Comment 5 of this document.

<sup>89</sup> See *Preliminary Determination PDM* at 14.

<sup>90</sup> *Id.*

<sup>91</sup> See Bharat Forge's Case Brief at 5.

determinations {which} indicated that CenVAT duties are refunded for both exporters and non-exporters regardless of whether a firm uses the EPCGS program.”<sup>92</sup> In *Threaded Rod from India* and *Hot-Rolled Carbon Steel from India*, Commerce also adjusted the benefit calculation by “removing the impact of the additional duty (CVD), the Education Cess, and the SAD for each instance in which the data was provided” for entries under the EPCGS.<sup>93</sup> In *Quartz Surface Products from India* and *Forged Steel Fittings from India*, Commerce specifically excluded the newly-established IGST from the benefit calculations for EPCGS.<sup>94</sup>

We find that the information on the record, in combination with Commerce’s prior determinations, indicates that the payment of the CENVAT allows companies to earn tax credits toward future CENVAT obligations on the sale of a product, regardless of whether the product is later exported or whether the company imports capital goods under the EPCGS. As a result, we are excluding CENVAT from the calculation of the program benefit for EPCGS for the final determination.

### **Comment 11: Whether Commerce Should Revise Its Calculations of the Focus Product Scheme (FPS)**

#### *Bharat Forge’s Arguments:*

- Bharat Forge states that benefits under this program were not received for exports made during the POI.<sup>95</sup> Bharat Forge explains that the FPS was discontinued, and only export sales made prior to March 31, 2015, were eligible for benefits under the program.<sup>96</sup>
- The respondent claims that the FPS is a recurring program and that benefits are conferred on the date of exportation, on the basis that FPS credits are “provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis.”<sup>97</sup>
- Bharat Forge argues that because no benefits were received under this recurring program on exports made during the POI, Commerce should not assign any subsidy benefits to Bharat Forge under this program in the final determination.<sup>98</sup>
- Bharat Forge additionally argues that, if Commerce does continue to find that a benefit from the FPS during the POI, we should calculate the benefit on the basis of the realized value of the licenses, rather than the full, face value of the licenses awarded to Bharat Forge.<sup>99</sup>

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<sup>92</sup> See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination*, 81 FR 49932 (July 29, 2016), and accompanying IDM at 21.

<sup>93</sup> 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) (*Threaded Rod from India*), and accompanying IDM at Section A.3; see also *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) (*Hot-Rolled Carbon Steel from India*), and accompanying IDM at Comment 21.

<sup>94</sup> See *Quartz Surface Products from India* IDM at 26; see also *Forged Steel Fittings from India: Final Affirmative Countervailing Duty Determination*, 85 FR 66535 (October 20, 2020) IDM at 9.

<sup>95</sup> See Bharat Forge’s Case Brief at 9.

<sup>96</sup> *Id.*; see also Bharat Forge’s IQR at 56.

<sup>97</sup> *Id.* at 9-10.

<sup>98</sup> *Id.* at 10.

<sup>99</sup> *Id.* at 11.

*Petitioner's Rebuttal Arguments:*

- The petitioner states that, although the benefits received under the program were on the basis of sales made prior to the POI, the licenses issued under the program were granted during the POI as a result of administrative delays.<sup>100</sup>
- The petitioner further states that Commerce should continue to calculate the benefit amount based on the full value of the license as issued, rather than the amount that Bharat Forged received when selling the licenses on the market.<sup>101</sup>

**Commerce's Position:** In the *Preliminary Determination*, Commerce found the FPS to provide benefits to exporters of eligible products, based on the FOB value of the exported goods.<sup>102</sup> The GOI provides exporters with a duty credit scrip, which may be redeemed against future import duties, or transferred to other entities.<sup>103</sup>

In Bharat Forge's initial questionnaire response, Bharat Forge reported receiving benefits for exports during the POI.<sup>104</sup> However, Bharat Forge has since clarified that although Bharat Forge received duty credit scrip under this program, those benefits were associated with exports made prior to the POI, and that because the FPS has been terminated as of March 31, 2015, none of the exports during the POI are eligible for benefits under the program.<sup>105</sup> Therefore, Bharat Forge argues, Commerce should find that this program has not been used during the POI and should not assign Bharat Forge a countervailable subsidy rate for the program.<sup>106</sup>

The petitioner objects that Commerce preliminarily determined benefits under this program were conferred when the licenses were granted, rather than on the date of the corresponding export sale.<sup>107</sup> Because Bharat Forge received licenses under the FPS that were granted during the POI, the petitioner argues, Commerce should continue to find that Bharat Forge received benefits under this program during the POI.

For this program, which confers benefits based on the FOB value of the exported product, it is Commerce's practice to find that the exporter receives the benefit on the date of exportation, on the basis that the exporter knows the exact amount of the benefit at the time of export.<sup>108</sup> In this case, exporters receive a duty credit scrip that is worth either two or five percent of the FOB value of exported goods, depending on the product.<sup>109</sup> In *OCTG from India*, we found that the "benefits from the FPS program are conferred as of the date of exportation of the shipment for which the FPS is earned."<sup>110</sup>

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<sup>100</sup> See Petitioner's Rebuttal Brief at 7.

<sup>101</sup> *Id.*

<sup>102</sup> See *Preliminary Determination* at 18.

<sup>103</sup> *Id.* at 18-19.

<sup>104</sup> See Bharat Forge IQR at 56.

<sup>105</sup> See Bharat Forge's Case Brief at 9.

<sup>106</sup> *Id.* at 9-10.

<sup>107</sup> See Petitioner's Rebuttal Brief at 7.

<sup>108</sup> See, e.g., *Certain Oil Country Tubular Goods from India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 81 FR 24799 (October 14, 2016) (*OCTG from India*), and accompanying PDM at 12; see also *Forged Steel Fittings from India* PDM at 26; and *Preliminary Determination* at 11.

<sup>109</sup> See *Preliminary Determination* at 18.

<sup>110</sup> See *OCTG from India* PDM at 12.

Bharat Forge reports that, although Bharat Forge technically received duty credit scrip under this program during the POI, the corresponding products were exported in 2014.<sup>111</sup> Because our practice is to treat benefits under this program as received on the date of exportation and Bharat Forge did not have any applicable export sales under this program during the POI, we determine that this program has not been used during for our final determination.

### VIII. RECOMMENDATION

We recommend that you approve the findings described above. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

12/7/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

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<sup>111</sup> See Bharat Forge's Case Brief at 9.