



C-533-872
Administrative Review
POR: 01/01/18 – 12/31/18
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April 20, 2021

MEMORANDUM TO: Christian Marsh
Acting 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 Results of the
2018 Countervailing Duty Administrative Review of Finished
Carbon Steel Flanges from India

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty (CVD) order¹ on finished carbon steel flanges from India covering the period of review (POR), January 1, 2018, through December 31, 2018.

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

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

- Comment 1: Commerce’s Determination Regarding the State Government of Uttar Pradesh (SGUP) – Exemption from Entry Tax for the Iron and Steel Industry
- Comment 2: Commerce’s Calculation of EPCGS Benefits for RNG

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

² See *Finished Carbon Steel Flanges from India: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind, in Part*; 2018, 85 FR 79466 (December 10, 2020) (*Preliminary Results*), and accompanying PDM.



Comment 3: RNG's POR Sales Denominators

Comment 4: Commerce's Calculation of DDB Program Benefits for RNG

II. BACKGROUND

On December 10, 2020, Commerce published the *Preliminary Results* of this review. R.N. Gupta & Co. Ltd. (RNG) and the petitioners³ timely submitted case briefs,⁴ and Norma timely submitted a rebuttal brief.⁵ On March 22, 2021, Commerce postponed the final results of review by 21 days, until April 30, 2021.⁶

III. PARTIAL RESCISSION

In the *Preliminary Results*, we stated that we intended to rescind this review with respect to Silbo Industries, Inc. and Bebitz U.S.A., Inc..⁷ No interested parties raised this issue in case or rebuttal briefs. Therefore, we are rescinding this review with respect to Silbo Industries, Inc. and Bebitz U.S.A., Inc.

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

The "Analysis of Programs" section below contains summaries of the comments and Commerce's positions on the issues raised in the briefs. We have made changes to the calculation of benefits received under the Export Promotion of Capital Goods Scheme (EPCGS) and Duty Drawback Program (DDB) programs since the *Preliminary Results* for RNG. In addition, we made changes to the calculation of RNG's sales denominators which resulted in changes to the *ad valorem* subsidy rates for RNG under the Interest Equalization Scheme (IES), Status Holder Incentive Scheme (SHIS), and Merchandise Export from India Scheme (MEIS) programs.

V. SCOPE OF THE ORDER

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

³ The petitioners are Weldbend Corporation and Boltex Manufacturing Co., L.P.

⁴ See RNG's Case Brief, "Finished Carbon Steel Flanges from India: Case Brief of R.N. Gupta & Company, Limited," dated January 8, 2021 (RNG's Case Brief); and Petitioners' Case Brief, "Finished Carbon Steel Flanges from India: Petitioners' Case Brief," dated January 11, 2021 (Petitioners' Case Brief).

⁵ See Norma's Rebuttal Brief, "Finished Carbon Steel Flanges from India: Rebuttal Brief," dated January 19, 2021 (Norma's Rebuttal Brief).

⁶ See Memorandum, "Finished Carbon Steel Flanges from India: Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 01/01/2018 – 12/31/2018," dated March 22, 2021.

⁷ See *Preliminary Results* PDM at 3-4.

processing after forging) does not render the forging into a finished carbon steel flange for purposes of this review.

While these finished carbon steel flanges are generally manufactured to specification ASME B16.5 or ASME B16.47 series A or series B, the scope is not limited to flanges produced under those specifications. All types of finished carbon steel flanges are included in the scope regardless of pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class (usually, but not necessarily, expressed in pounds of pressure, *e.g.*, 150, 300, 400, 600, 900, 1500, 2500, *etc.*), type of face (*e.g.*, flat face, full face, raised face, *etc.*), configuration (*e.g.*, weld neck, slip on, socket weld, lap joint, threaded, *etc.*), wall thickness (usually, but not necessarily, expressed in inches), normalization, or whether or not heat treated. These carbon steel flanges either meet or exceed the requirements of the ASTM A105, ASTM A694, ASTM A181, ASTM A350 and ASTM A707 standards (or comparable foreign specifications). The scope includes any flanges produced to the above-referenced ASTM standards as currently stated or as may be amended. The term “carbon steel” under this scope is steel in which: (a) Iron predominates, by weight, over each of the other contained elements; (b) The carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

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

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

VI. PERIOD OF REVIEW

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

VII. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to the allocation period used in the *Preliminary Results*.

B. Attribution of Subsidies

None of the interested parties raised issues concerning the attribution of subsidies in their case briefs. Thus, Commerce has made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies. For a description of the methodologies used for these final results, *see* the *Preliminary Results* PDM at 5-7.

C. Denominators

None of the interested parties raised issues concerning Norma's sales denominators in their case briefs. Thus, Commerce has made no changes to Norma's denominators used in the *Preliminary Results*. However, Commerce has made changes to RNG's sales denominators. For a description of the denominators used for these final results, *see* Comment 3, below and the *Preliminary Results* PDM at 7.

D. Benchmarks and Discount Rates

None of the interested parties raised issues concerning benchmarks or discount rates in their case briefs. Thus, Commerce has made no changes to benchmarks or the discount rates used in the *Preliminary Results*. For a description of the benchmarks and discount rates used for these final results, *see* the *Preliminary Results* PDM at 8.

VIII. ANALYSIS OF PROGRAMS

Programs Determined to be Countervailable

1. Duty Drawback Program

Norma: 1.99 percent *ad valorem*

RNG: 1.99 percent *ad valorem*

2. Export Promotion of Capital Goods Scheme

Norma: 0.16 percent *ad valorem*

RNG: 0.01 percent *ad valorem*

3. Interest Equalization Scheme

RNG: 0.12 percent *ad valorem*

4. Status Holder Incentive Scheme

Norma: 0.28 percent *ad valorem*

RNG: 0.11 percent *ad valorem*

5. Merchandise Export from India Scheme

Norma: 3.18 percent *ad valorem*

RNG: 2.81 percent *ad valorem*

Programs Determined to be Not Used

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

1. Focus Product Scheme
2. Advanced License Program
3. Advance Authorization Scheme
4. Government of India Loan Guarantees⁸
5. Duty Free Import Authorization Scheme
6. Market Development Scheme
7. Market Access Initiative
8. Status Certificate Program
9. Steel Development Fund Loans
10. Incremental Export Incentivization Scheme
11. Pre-Shipment and Post-Shipment Export Financing
12. Provision for Less Than Adequate Remuneration of Carbon Steel Inputs Provided by Steel Authority of India (SAIL) Used in Production of Flanges

State Government of Maharashtra (SGOM) Subsidy Programs

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

Export Oriented Units

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

⁸ This program was inadvertently not included in the *Preliminary Results* PDM.

19. Exemption from Payment of Central Excise Duty (CED) on Goods Manufactured in India and Procured from a Domestic Tariff Area

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

IX. ANALYSIS OF COMMENTS

Comment 1: Commerce's Determination Regarding the SGUP – Exemption from Entry Tax for the Iron and Steel Industry

Petitioners' Case Brief:

- Commerce may use an adverse inference in applying facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with requested information.⁹
- The U.S. Court of Appeals for the Federal Circuit (CAFC) has found that, in determining whether the application of adverse facts available (AFA) is warranted, Commerce needs only to conclude that a respondent has failed to put forth the maximum effort to investigate and obtain requested information.¹⁰
- Further, the CAFC has upheld Commerce's application of AFA to a non-cooperating government even if it subjects a cooperative respondent to the collateral effects of AFA.¹¹
- The Government of India (GOI) failed to submit information requested by Commerce concerning this program in the last review and in other India countervailing duty (CVD) proceedings.¹²
- In the *Preliminary Results*, Commerce found that the SGUP - Exemption from Entry Tax for the Iron and Steel Industry program was not used by respondents during the POR. For the final, Commerce should reverse this decision because the GOI failed to comply with

⁹ See Petitioners' Case Brief at 1-2 (citing section 776(a) and (b) of the Act).

¹⁰ *Id.* at 2. (citing *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1375 and 1383 (Fed. Cir. 2003)).

¹¹ *Id.* at 2-3 (citing *Fine Furniture (Shanghai) Limited v. United States*, 748 F.3d 1365, 1373 (Fed. Cir. 2014); *Steel Propane Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019); and accompanying IDM at 51; and *Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 8507 (January 26, 2017), and accompanying IDM at Comment 1).

¹² *Id.* at 3-4 (citing *Finished Carbon Steel Flanges from India: Final Results of Countervailing Duty Administrative Review, 2016-2017*, 85 FR 18193 (April 1, 2020) (*India Flanges 16-17 Final*), and accompanying IDM at 11-12; and *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Countervailing Duty Determination*, 82 FR 58172 (December 11, 2017), and accompanying IDM at Comment 7).

Commerce's requests for information. Specifically, the GOI withheld information necessary for Commerce to determine program termination.¹³

- The GOI claimed that the SGUP - Exemption from Entry Tax for the Iron and Steel Industry program was subsumed by the Goods and Services Tax, but did not respond to the Standard Questions Appendix, provide details to support this assertion, or provide supporting documentation, despite having chances to remedy its reporting.¹⁴
- The information provided by the GOI with regard to this program is incomplete and inconsistent, which prevents Commerce from making a decision regarding program termination.¹⁵
- Moreover, if there had been a nominal termination, the record lacks information on whether benefits continued to be granted in practice and/or under another name, as required by 19 CFR 351.526, which was again caused by the GOI's non-cooperation. Specifically, as noted above, the GOI failed to fully respond to all parts of Commerce's questions in three separate questionnaires.¹⁶
- As such, the GOI's failure to cooperate to the best of its ability warrants the application of AFA. Commerce can use information concerning Norma and USK Export Private Limited (USK)'s reporting of purchases that would have been subject to this program during the months of March and July 2018 to calculate benefits over the POR, even though there is not information about program benefits covering the entire POR on the record.¹⁷
- In this case, the GOI failed to carry its burden of proof that the SGUP - Exemption from Entry Tax for the Iron and Steel Industry program was terminated.¹⁸
- The GOI provided no evidence that there was a specific notification to rescind this program.¹⁹

Norma's Rebuttal Brief:

- In the *Preliminary Results*, Commerce correctly determined that Norma did not apply for or receive benefits under this program. Further, both Norma and the GOI provided substantial evidence in their responses demonstrating that this program was repealed and subsumed by the Goods and Services Tax (GST) prior to the POR.²⁰
- The application of AFA with respect to this program is not appropriate because Norma was fully cooperative and the GOI was responsive to Commerce's requests for information.²¹

¹³ *Id.* at 4-5 (citing *Preliminary Results* PDM at 18-19; *India Flanges 16-17 Final* IDM at Comment 1; and 19 CFR 351.526(d)).

¹⁴ *Id.* at 5-6 (citing 19 CFR 351.526(d)).

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 7-10.

¹⁷ *Id.* at 10-11 (citing 19 CFR 351.308)).

¹⁸ *Id.* at 11-12 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033 (June 27, 2017), and accompanying IDM at Comment 22).

¹⁹ *Id.* at 12-13.

²⁰ See Petitioners' Rebuttal Brief at 2-4 (citing *Preliminary Results* PDM at 19).

²¹ *Id.* at 4.

- Commerce cannot ignore record evidence submitted by a respondent that demonstrates non-use, and apply AFA because the government fails to cooperate.²²
- Contrary to the petitioners' claims, the GOI did respond to the Standard Questions Appendix and Commerce's questions.²³
- Should Commerce determine that the GOI failed to cooperate to the best of its ability, it should not adversely impact Norma – a cooperative party – because the record demonstrates that Norma did not use this program.²⁴
- Finally, Commerce's treatment of this program in the *India Flanges 16-17 AR* is distinguishable from the facts on the record of this review and should thus have no bearing on Commerce's treatment of this program in this review.²⁵

Commerce's Position: For purposes of these final results, we continue to find that Norma did not use the SGUP – Exemption from Entry Tax for the Iron and Steel Industry program during the POR. This decision is consistent with our finding in the *Preliminary Results*.²⁶ Further, we also find that this program has been terminated.

With respect to Norma's argument that it did not use the SGUP – Exemption from Entry Tax for the Iron and Steel Industry program during the POR, we continue to find that the record evidence shows non-use of the program. In response to requests for information to clarify non-use, Norma provided invoices for products that would have been subject to the SGUP exemption from entry tax.²⁷ These invoices demonstrate that there was neither an SGUP exemption from entry tax for iron and steel products nor the application of any SGUP entry taxes; the invoices also demonstrated that a GST was applied to purchases of iron and/or steel products. As such, we continue to find that record evidence indicates that Norma did not use this program during the POR.

With respect to the GOI's argument that this program was terminated, we find that the record supports a finding, pursuant to 19 CFR 351.526(a) and (b), that the SGUP – Exemption from Entry Tax for the Iron and Steel Industry program has been terminated. The GOI provided an official government act (*i.e.*, the Uttar Pradesh Goods and Services Tax Act, 2017), stating that the "Uttar Pradesh Tax on Entry of goods into local areas Act, 2007" was repealed.²⁸ As such, we find that in demonstrating the repeal of the entry tax itself, this official government document also demonstrates that program that provided an exemption from the entry tax, the SGUP – Exemption from Entry Tax for the Iron and Steel Industry program has been terminated.

²² *Id.* at 4-5 (citing section 771(5)(B) of the Act; *Yama Ribbons and Bows Co., v. United States*, 419 F. Supp. 3d 1341 (CIT 2019); and *Dorbest Ltd., v. United States*, 462 F. Supp. 2d 1262, 1302 (CIT 2006) (*Yama Ribbons*)).

²³ *Id.* at 5-6.

²⁴ *Id.* at 6-7 (citing *Yama Ribbons* at 1347 (citing *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 352 F. Supp. 3d 1316 (CIT 2018) (quoting *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013)); and *Mueller Comercial de Mexico, S. DE R.L. DE C.V. v. United States*, 753 F. 3d 1227, 1235 (CIT 2014))).

²⁵ *Id.* at 7.

²⁶ See *Preliminary Results* PDM at 19.

²⁷ See Norma's Letter, "Finished Carbon Steel Flanges from India: Third Supplemental CVD Response of Norma (India) Limited," dated July 27, 2020 at S3-4 and S3-5 and Exhibit S3-3.

²⁸ See GOI First SQR at Exhibit 1.

According to 19 CFR 351.526(a), when establishing a cash deposit rate, Commerce may take into account a program-wide change. Commerce considers the termination of a program in order to determine whether it is appropriate to remove from the cash deposit rate the rate attributable to a program that is established with, in this case, the final results of review. Pursuant to 19 CFR 351.526(d), if a program has been terminated and there are residual benefits or a replacement program, Commerce will not adjust a respondent's cash deposit to remove a terminated program. However, because we have found that Norma did not use the program, there is no portion of the cash deposit that is attributable to this program to retain or remove from Norma's cash deposit rate. Thus, in this instance, the issue of the impact of the existence of a replacement program on the cash deposit rate is not relevant because Norma did not use the program.

With respect to the petitioners' argument that we should apply AFA with respect to the GOI and Norma's responses regarding this program, and apply an AFA rate for this program, we disagree. Specifically, we do not find that the GOI's responses are deficient or lacking with respect to this program. We also do not find that because Norma did not report any other basis for non-use, distinct from the GOI's reasoning, that we should apply AFA to Norma and apply an AFA program rate. As explained above, there is evidence on the record demonstrating that Norma did not use this program and that this program has been terminated by a government act. Here, we have not made any decision that either the GOI or Norma has failed to act to the best of their ability to provide needed information. Rather, we find that the record demonstrates that Norma did not use the SGUP – Exemption from Entry Tax for the Iron and Steel Industry program during the POR and that this program has been terminated.

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

Petitioners' Case Brief:

- Commerce excluded the benefit for one unfulfilled EPCGS license from the calculation of RNG's benefit under the EPCGS program. Commerce should correct this error for the final results.²⁹

No other interested party commented on this issue.

Commerce's Position: We have reviewed Commerce's calculations for the *Preliminary Results* and have determined that we inadvertently excluded from the calculations the of RNG's benefit one EPCGS license. We have corrected the error for these final results.³⁰

²⁹ See Petitioners' Case Brief at 13.

³⁰ See RNG Final Analysis Memorandum, dated concurrently with these final results at worksheet "EPCGS Unfulfilled BPI."

Comment 3: RNG's POR Sales Denominators

RNG's Case Brief:

- Commerce incorrectly relied upon publicly-ranged sales figures as the denominators to calculate RNG's subsidy rates, rather than relying on the proprietary sales figures.³¹

No other interested party commented on this issue.

Commerce's Position: We have reviewed Commerce's calculations in the *Preliminary Results* and have determined that the calculations contain the error described by RNG. Specifically, Commerce incorrectly relied on publicly ranged sales figures to calculate RNG's subsidy rates, rather than relying on the proprietary sales figures. We have corrected the error for these final results.³²

Comment 4: Commerce's Calculation of DDB Program Benefits for RNG

RNG's Case Brief:

- Commerce incorrectly included DDB on sales of merchandise other than subject merchandise to the United States in RNG's DDB program benefit calculations.³³

No other interested party commented on this issue.

Commerce's Position: We have reviewed Commerce's calculations in the *Preliminary Results* and have determined that the calculations contain the error described by RNG. Specifically, Commerce incorrectly included DDB on sales of merchandise other than subject merchandise to the United States in RNG's DDB program benefit calculations. We have corrected the error for these final results.³⁴

³¹ See RNG's Case Brief at 3-4.

³² See RNG Final Analysis Memorandum, dated concurrently with these final results at worksheet "Sales Denominators BPI."

³³ See RNG's Case Brief at 5-4.

³⁴ See RNG Final Analysis Memorandum, dated concurrently with these final results at worksheet "DDB BPI."

X. RECOMMENDATION

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



Agree

Disagree
4/20/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance