Federal Register Volume 81, Number 229 (Tuesday, November 29, 2016)
Notices
Pages 85928-85930
From the Federal Register Online via the Government Publishing Office
www.gpo.gov
FR Doc No: 2016-28704

DEPARTMENT OF COMMERCE

International Trade Administration

C-533-872

Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of finished carbon steel flanges (steel flanges) from India. The period of investigation (POI) is April 1, 2015, through March 31, 2016. Interested parties are invited to comment on this preliminary determination.

DATES: Effective November 29, 2016.

FOR FURTHER INFORMATION CONTACT: Emily Maloof or Davina Friedmann, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-5649 or (202) 482-0698, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 2016, the Department published the notice of initiation of this investigation.\1\ For a complete description of the events that followed the initiation of this investigation, see the memorandum that is dated concurrently with this determination and hereby adopted by this notice.\2\ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at https://access.trade.gov, and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at http://enforcement.trade.gov/frn/. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

\1\ See Finished Carbon Steel Flanges from India: Initiation of Countervailing Duty Investigation, 81 FR 49625 (July 28, 2016) (Initiation Notice).

\2\ See Memorandum to Paul Piquado, "Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Finished Carbon Steel Flanges from India," dated November 21, 2016 (Preliminary Decision Memorandum).

Scope of the Investigation

The product covered by this investigation is steel flanges from India. For a complete description of the scope of the investigation, see Appendix I.

Scope Comments

We received no comments from interested parties regarding the scope of the investigation as it appeared in the Initiation Notice.

Methodology

The Department is conducting this countervailing duty (CVD investigation in accordance with section 701 of the Tariff Act of 1930 (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy (i.e., a financial contribution by an “authority” that gives rise to a benefit to the recipient) and that the subsidy is specific.\3\ For a full description of the methodology underlying our preliminary conclusions, see the Preliminary Decision Memorandum.

\3\ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Preliminary Determination and Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated a CVD rate for each individually-investigated producer/exporter of the subject merchandise. We preliminarily determine that countervailable subsidies are being provided with respect to the manufacture, production, or exportation of the subject merchandise. For a full description of the programs which have preliminarily determined to be countervailable, as well as those not used during the POI, see the Preliminary Decision Memorandum. In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not individually examined, we apply an “all-others” rate, which is normally calculated by weight-averaging the individual company subsidy rates of each of the companies investigated.

Under section 705(c)(5)(A)(i) of the Act, the all-others rate should exclude zero and de minimis rates or any rates based entirely on facts otherwise available pursuant to section 776 of the Act. Neither of the mandatory respondents’ rates in this preliminary determination were zero or de minimis or based entirely on facts otherwise available. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the “all-others” rate by weight-averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. Instead, we have calculated the all-others rate using a simple average of the final rates for the two mandatory company respondents.\4\

\4\ See Preliminary Decision Memorandum at “CALCULATION OF THE ALL-OTHERS RATE” (for further explanation of the business propretiary information concerns); see also Memorandum to the File, “Countervailing Duty Investigation of Finished Carbon Steel Flanges: Preliminary Determination Margin Calculation for All-Others,” dated concurrently with this memorandum.

We preliminarily determine the countervailable subsidy rates to be:

Company	Subsidy rate (percent)
Norma (India) Limited, USK Exports Private Limited, UMA Shanker Khandelwal & Co., and Bansidhar Chiranjilal	2.76
R.N. Gupta & Company Limited	3.66
All-Others	3.21

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of steel flanges from India that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the Federal Register, and to require a cash deposit for such entries of merchandise in the amounts indicated above.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted by the respondents prior to making our final determination.

U.S. International Trade Commission

In accordance with section 703(f) of the Act, we will notify the U.S. International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

The Department intends to disclose calculations performed for this preliminary determination to the parties within five days of the date of public announcement of this determination in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.\5\ A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department, pursuant to 19 CFR 351.309(c)(2) and (d)(2). This summary should be limited to five pages total, including footnotes.

\5\ See 19 CFR 351.309; see also 19 CFR 351.303 (for general

filing requirements).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically-filed request must be received successfully, and in its entirety, by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date, time, and specific location to be determined. Parties will be notified of the date, time, and location of any hearing. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: November 23, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation 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 investigation. 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 investigation. While these finished carbon steel flanges are generally manufactured to specification ASME 816.5 or ASME 816.47 series A or series 8, 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.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Alignment
VI. Injury Test
VII. Subsidies Valuation
VIII. Loan Benchmark and Interest Rates
IX. Use of Facts Otherwise Available
X. Analysis of Programs
XI. Calculation of All-Others Rate
XII. International Trade Commission
XIII. Disclosure and Public Comment
XIV. Conclusion

FR Doc. 2016-28704 Filed 11-28-16; 8:45 am
BILLING CODE 3510-DS-P

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-533-872
Investigation
Public Document
E&C/Office VI: EM, DF

DATE: November 21, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Finished Carbon Steel Flanges from India

---

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to exporters and producers of finished carbon steel flanges (steel flanges) from India, as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On June 30, 2016, Weldbend Corporation and Boltex Mfg. Co., L.P. (collectively, Petitioners) filed a countervailing duty (CVD) petition regarding steel flanges from India.[1] Supplements to the CVD Petition and our consultations with the Government of India (the GOI) are described in the Initiation Checklist.[2] On July 20, 2016, the Department initiated a CVD investigation of steel flanges from India.[3]

We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff

---

[1] *See* Letter from Petitioners, "Petitions for the Imposition of Antidumping Duties on Imports of Finished Carbon Steel Flanges from India, Italy and Spain and Countervailing Duties on Imports from India," dated June 30, 2016 (alleging countervailable subsidies at Volume V (CVD Petition)).
[2] *See Finished Carbon Steel Flanges from India: Initiation of Countervailing Duty Investigation*, 81 FR 49625 (July 20, 2016) (*Initiation Notice*), and accompanying Countervailing Duty Investigation Initiation Checklist (Initiation Checklist).
[3] *See Initiation Notice*, 81 FR at 49625.

Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.[4] We released the CBP entry data under administrative protective order (APO) on July 27, 2016.[5] We received comments from Petitioners on August 8, 2016.[6] No other party filed comments on our CBP entry data. Section 777A(e)(1) of the Act directs the Department to determine an individual countervailable subsidy rate for each known exporter/producer of subject merchandise. The Department, however, may limit its examination to a reasonable number of exporters/producers under section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2) if it determines that it is not practicable to determine individual countervailable subsidy rates because of the large number of exporters/producers involved in the investigation.

The Department determined that, in this investigation, it was not practicable to examine all of the exporters/producers of steel flanges from India because of the large number of identified exporters/producers relative to the resources available at the Department to conduct this investigation.[7] Based upon CBP entry data, the Department selected the two exporters/producers accounting for the largest volume of subject merchandise exported to the United States from India during the period of investigation (POI): Norma (India), Ltd. (Norma India) and R.N. Gupta & Co (RNG).[8] On August 24, 2016, we issued the CVD questionnaire to the GOI, requesting that it forward this questionnaire to the selected mandatory respondents.[9]

On September 7 and October 11, 2016, Bebitz Flanges Works Pvt. Ltd. (Bebitz India) submitted a voluntary response to our CVD questionnaire.[10] However, on November 21, 2016, we determined that we did not have the resources to consider Bebitz India as a voluntary respondent because to do so would be unduly burdensome and would inhibit the timely completion of this investigation.[11] Consequently, we are not conducting an individual examination of Bebitz India.[12]

---

[4] *See Initiation Notice*, 81 FR at 49627.
[5] *See* "Letter for All Interested Parties," dated July 27, 2016.
[6] *See* Letter from Petitioners, "Re: Finished Carbon Steel Flanges from India: Comments on CBP Data," dated August 8, 2016.
[7] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection for the Countervailing Duty Investigation of Finished Carbon Steel Flanges from India," dated August 23, 2016 (Respondent Selection Memorandum).
[8] *Id.*
[9] *See* Letter from the Department, "Countervailing Duty Investigation of Finished Carbon Steel Flanges from India: Countervailing Duty Questionnaire," dated August 24, 2016.
[10] *See* Letter from Bebitz India, "Re: Finished Carbon Steel Flanges from India: Affiliation Response of Bebitz Flanges Works Pvt. Ltd.," September 7, 2016. *See also* Letter from Bebitz India, "Re: Finished Carbon Steel Flanges from India: Section III Response of Bebitz Flanges Works Pvt. Ltd.," dated October 11, 2016.
[11] *See* section 782(a) of the Act; *see also* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Re: Countervailing Duty Investigation of Finished Carbon Steel Flanges from India: Selection of Voluntary Respondent," dated November 21, 2016.
[12] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding, "Countervailing Duty Investigation of Finished Carbon Steel Flanges from India: Selection of Voluntary Respondent," dated November 4, 2016.

Between September 7, 2016, and October 26, 2016, we received timely questionnaire responses from the GOI and the company respondents regarding our CVD and supplemental questionnaires. We received one untimely response from the GOI, which was rejected.[13]

On November 15, 2016, Petitioners filed comments in advance of this preliminary determination.[14] To the extent practicable, we have considered these comments in making this preliminary determination.

B. Postponement of Preliminary Determination

On August 21, 2016, based on a request from Petitioners, the Department postponed the deadline for the preliminary determination until November 21, 2016, in accordance with sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).[15]

C. Period of Investigation

The POI was originally defined as January 1, 2015, through December 31, 2015. We received comments from Norma India and RNG requesting that the Department alter the POI to correspond with the most recent completed fiscal year, April 1, 2015, through March 31, 2016, as opposed to the calendar year.[16] No other parties submitted comments regarding the POI. We find that this request is consistent with 19 CFR 351.204(b)(2), and consequently changed the POI to April 1, 2015, through March 31, 2016, reflecting the most recently completed Indian fiscal year.[17]

III. SCOPE COMMENTS

As noted in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and we stated that all such comments must be filed within 20 calendar days of publication of the *Initiation Notice*.[18]

We received no comments regarding the scope of this investigation.

---

[13] *See* Memorandum to the File, "Request to Take Action on Certain Barcodes," dated November 16, 2016.
[14] *See* Letter from Petitioners, "Re: Finished Carbon Steel Flanges from India: Comments in Advance of Preliminary Determination," dated November 15, 2016.
[15] *See Finished Carbon Steel Flanges From India: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 81 FR 62098 (September 8, 2016).
[16] *See* Letter from Norma India, "Re: Finished Carbon Steel Flanges from India: Request for Change Countervailing Duty (CVD)-Period of Investigation," dated August 29, 2016. *See also* Letter from RNG, "Re: Finished Carbon Steel Flanges from India: Request for Change Countervailing Duty (CVD)-Period of Investigation," dated August 29, 2016.
[17] *See* Memorandum to the File, "Re: Countervailing Duty Investigation of Finished Carbon Steel Flanges from India: Period of Investigation," dated August 30, 2016.
[18] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997); *see also Initiation Notice*.

IV. SCOPE OF THE INVESTIGATION

The product covered by this investigation is steel flanges from India. For a full description of the scope of this investigation, *see* Appendix I to the accompanying preliminary determination *Federal Register* notice.

V. ALIGNMENT

In accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4), and based on the Petitioners' request,[19] we are aligning the final CVD determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of steel flanges from India. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than April 11, 2017, unless extended.

VI. INJURY TEST

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On August 19, 2016, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by imports of steel flanges from India.[20]

VII. SUBSIDIES VALUATION

A. Allocation Period

The Department 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.[21] The Department finds the AUL in this proceeding to be 7 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[22] The Department 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 amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the year in which the assistance was approved. If the amount of the subsidies is less than 0.5

---

[19] *See* Letter from the Petitioners, "Re: Finished Carbon Steel Flanges from India: Request to Align the Countervailing Duty Final Determination with the Companion Antidumping Final Duty Determination," dated November 15, 2016.
[20] *See Finished Carbon Steel Flanges From India, Italy, and Spain; Determinations,* 81 FR 55482, dated August 19, 2016.
[21] *See* 19 CFR 351.524(b).
[22] *See* U.S. Internal Revenue Service Publication 946 (2015), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

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), the Department 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 the Department'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 the Department's regulations further clarifies the Department's cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

> {T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same 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.[23]

Thus, the Department'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 the Department'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.[24]

---

[23] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).
[24] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

Norma India

Norma India responded on behalf of itself and three affiliates involved in the production and sale of subject merchandise: Uma Shanker Khandelwal & Co. (UMA), USK Exports Private Limited (USK), and Bansidhar Chiranjilal (BDCL) (collectively, USK Group). We preliminarily determine that these companies are cross-owned within the meaning of 19 CFR 351.565(b)(6)(vi) because of the substantial ownership positions held by the family members of USK group.[25]

Norma India states that USK and UMA are engaged in the manufacture and sale of forged flanges, including carbon steel flanges.[26] Further, USK and UMA further process flanges produced by Norma India.[27] Norma India also reported that USK and UMA sell forged flanges in the domestic and export markets. Norma India also reported on behalf of BDCL as a further processor of subject merchandise for Norma India and non-affiliated customers during the POI and AUL. However, Norma India stated that BDCL did not engage in the sale of finished subject merchandise to either the domestic nor export markets during the POI.[28] As such, pursuant to 19 CFR 351.525(b)(6)(ii), all subsidies received by UMA, USK, and Norma India are attributed to the combined sales of UMA, USK, BDCL, and Norma India (less intercompany sales). We note that BDCL reported receiving no subsidies.[29]

RNG

RNG reported affiliation with certain companies during the POI. 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).[30]

C. Denominators

In accordance with 19 CFR 351.525(b)(1) – (5), the Department 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

---

[25] *See* Letter from Norma India, "Re: Finished Carbon Steel Flanges from India: 1st Supplemental Response to Section III of Initial Questionnaire—Identification of Affiliated Companies," dated September 22, 2016 (Norma India AQR) at 2-5, and Exhibits: NIL-1(a), USK-1(a), UMA-1(a), BC-1(a), NIL-2(a), USK-2(a), UMA-2(a), BC-2(a). *See also* Memorandum to the File, "Countervailing Duty Investigation of Finished Carbon Steel Flanges from India: Norma (India) Ltd. Preliminary Calculation Memorandum," dated concurrently with this memorandum (Norma India's Preliminary Calculation Memorandum).

[26] *See* Letter from Norma India, "Re: Finished Carbon Steel Flanges from India: Initial Response to Section III of Initial Questionnaire," dated October 6, 2016 (Norma India IQR) at 5-7.

[27] *Id.*

[28] *See* Letter from Norma India, "Re: Finished Carbon Steel Flanges from India: Response to 4th Supplemental of Section III Questionnaire of Countervailing Duty Questionnaire," dated November 2, 2016 (Norma India 4SQR) at 1.

[29] See Letter from BDCL, "Re: Finished Carbon Steel Flanges from India: Initial Response to Section III of Initial Questionnaire," dated October 6, 2016 (BDCL IQR) at 9.

[30] Because certain information concerning RNG's affiliation with other companies is proprietary in nature, discussion of this issue is provided in Memorandum to the File, "Countervailing Duty Investigation of Finished Carbon Steel Flanges from India: R.N. Gupta & Co., Ltd. Preliminary Calculation Memorandum," dated concurrently with this memorandum (RNG's Preliminary Calculation Memorandum).

subsidy rate 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 this preliminary determination.[31]

VIII. LOAN BENCHMARKS AND INTEREST 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" the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans during the period, the Department "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 the Department will not consider a loan provided by a government-owned special-purpose bank for purposes of calculating benchmark rates. 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).

A. Short-Term and Long-Term Rupee-Denominated Loans

Based on the responses from Norma India's affiliate USK, USK received rupee-denominated long-term loans from a commercial bank for certain years for which we must calculate benchmark and discount rates. However, pursuant to 19 CFR 351.524(d)(3), we preliminarily determine that the loan provided by USK is not a comparable fixed-rate loan. Therefore, we are preliminarily using national average interest rates, pursuant to 19 CFR 351.505(a)(3)(ii). Specifically, we used national average interest rates from the International Monetary Fund's International Financial Statistics (IFS) as benchmark rates for rupee-denominated short-term and long-term loans.[32] We preliminarily find that the IFS rates provide a reasonable representation of both short-term and long-term interest rates for rupee-denominated loans.

B. Discount Rates

For allocating the benefit from non-recurring grants under the Export Promotion Capital Goods (EPCGS) program, we have used the discount rates described above for the year in which the government agreed to provide the subsidy, consistent with 19 CFR 351.524(d)(3)(i)(A).[33] The interest-rate benchmarks and discount rates used in our preliminary calculations are provided in the preliminary calculation memoranda.[34]

---

[31] *See* Norma India's Preliminary Calculation Memorandum and RNG's Preliminary Calculation Memorandum.
[32] *See* Memorandum to the File, "Re: Countervailing Duty Investigation of Finished Carbon Steel Flanges from India: Source Documentation for Interest and Discount Rates," dated November 17, 2016.
[33] *See* Norma India's Preliminary Calculation Memorandum.
[34] *Id.*

IX. Use of Facts Otherwise Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.[35]

Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, the Department's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[36] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[37]

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[38] It is the Department's practice to consider information to be corroborated if it has probative value.[39] In analyzing whether information has probative value, it is the Department's practice to examine the

---

[35] On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362, dated June 29, 2015. The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this investigation.

[36] *See, e.g., Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from the PRC*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932, dated February 23, 1998.

[37] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

[38] *See, e.g.*, SAA at 870.

[39] *See* SAA at 870.

reliability and relevance of the information to be used.[40] However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.[41]

Finally, under the new section 776(d) of the Act, the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[42]

For the reasons explained below, the Department preliminarily determines that application of facts otherwise available, with an adverse inference, is warranted pursuant to section 776(b) of the Act because, by not responding to our requests for information, the GOI failed to cooperate by not acting to the best of its ability.

Government of India

The GOI submitted an untimely response to the Department's October 18, 2016 supplemental questionnaire. On October 18, 2016, we issued the GOI a supplemental questionnaire in response to certain deficiencies that we identified in its initial questionnaire response, submitted on October 6, 2016. In the supplemental questionnaire, we requested information, for a second time, that had been previously requested and which the GOI had failed to provided. This information included key program procedures and guidelines pertaining to the, Interest Equalization Scheme (IES) and Focus Product Scheme (FPS). Further, both respondents self-reported use of the Status Holder Incentive Scheme (SHIS), for which the GOI had not self-reported under the "other subsidies" portion of the questionnaire.[43] As such, we requested official documentation and program operation information to determine the countervailability of the aforementioned programs.

When we issued the supplemental questionnaire on October 18, 2016, we established an October 25, 2016, deadline for the GOI's response. At the request of the GOI, we extended the deadline for the GOI to respond to the supplemental questionnaire until 5 p.m. Eastern Time on October 28, 2016. However, the GOI failed to submit a timely response. Rather, the GOI submitted its response on October 29, 2016.

Pursuant to 19 CFR 351.104(a)(2)(iii) and 19 CFR 351.301(c)(1), we rejected the submission as untimely on November 2, 2016.[44] Although the GOI states that it encountered technical difficulties when submitting the response, we were not notified of these difficulties until the

[40] *See, e.g.*, SAA at 869.
[41] *See* SAA at 869-870.
[42] *See* section 776(d)(3) of the Act.
[43] *See* Letter from the GOI, "Re: Carbon Steel Flanges from India: Response to Section II of the CVD Questionnaire," dated October 6, 2016 (GOI IQR) at 96.
[44] *See* Memorandum to the File, "Request to Take Action on Certain Barcodes," dated November 2, 2016.

deadline had already passed.[45] We do not find that the reasons set forth in the GOI's November 7, 2016 letter establish extraordinary circumstances, as specified in 19 CFR 351.302(c). We continue to find the GOI's filing was untimely submitted.

Therefore, we preliminarily determine that necessary information is not available on the record and that the GOI did not provide information that was requested of it. Thus, the Department must rely on "facts available" in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOI failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the IES, FPS, and SHIS constitute a financial contribution within the meaning of section 771(5)(D) of the Act and are specific within the meaning of section 771(5A)(B) of the Act. We note that these three programs have been countervailed in prior cases; in this instance we are preliminarily relying on adverse inference since the GOI has not cooperated to the best of its ability. As respondents reported their respective usage of the aforementioned programs, we are relying on the respondents' reported usage data to calculate the benefit, within the meaning of section 771(5)(E) of the Act.

Additionally, we requested information for a fourth program in the supplemental questionnaire issued to the GOI on October 18, 2016, the Status Certificate Program (SCP). Although we are applying AFA to the aforementioned three programs also listed in the GOI's supplemental questionnaire (FPS, IES, and SHIS), we preliminarily determine that we have sufficient information on the record regarding the GOI's IQR to determine financial contribution and specificity for the SCP. Further, as discussed below, we are relying on the respondents' reported usage of the SCP to evaluate program benefit.

X. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following:

A. Programs Preliminarily Determined to be Countervailable

1. Duty Drawback Program (DDB Program)

Norma India, USK, UMA, and RNG reported receiving duty rebates under this program.[46] The GOI explained that the DDB Program provides rebates for duty or tax chargeable on any (a)

[45] *See* Letter from the GOI, "Re: Carbon Steel Flanges from India: Rejection of Government of India's Response to the First Supplemental Questionnaire," dated November 7, 2016, at Exhibit 2.

[46] *See* Letter from Norma India, "Finished Carbon Steel Flanges from India: Initial Response to Section III of Initial Questionnaire," dated October 6, 2016 (Norma India IQR) at 16; *see also* Letter from USK, "Finished Carbon Steel Flanges from India: Initial Response to Section III of Initial Questionnaire," dated October 6, 2016 (USK IQR) at 15; Letter from UMA, "Finished Carbon Steel Flanges from India: Initial Response to Section III of Initial Questionnaire," dated October 6, 2016 (UMA IQR) at 15; Letter from RNG regarding, "Finished Carbon Steel Flanges from India: Response to Section III of Original Countervailing Duty Questionnaire," dated October 6, 2016, at 16 (RNG IQR).

imported or excisable materials and (b) input services used in the manufacture of export goods.[47] Specifically, the duties and tax "neutralized" under the program are the (i) Customs and Union Excise Duties in respect of inputs and (ii) Service Tax in respect of input services.[48] The duty drawback is generally fixed as a percentage of the free on board (FOB) price of the exported product.[49]

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.[50] However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products, and in what amounts.[51] This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.[52] 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, remission or drawback is countervailable.[53]

Regarding its establishment of applicable duty drawback rates, the GOI explained that a committee is established to review data and recommend duty drawback rates. Specifically, the GOI stated that following:

> The Committee undertakes analysis of data which includes the data on procurement process of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products, submitted on representative basis by EPCs / commodity boards / trade bodies. The Government databases are used for appropriate cross-checks. The Committee also visits manufacturer exporter units for first-hand knowledge of the manufacturing process and observe nature of inputs ordinarily used and wastage. Committee also takes into account the industry experience and broad technical factors, as appropriate.[54]

We requested that the GOI provide a copy of the recommendations and supporting documents (*e.g.*, accounting records, company-specific files, databases, budget authorizations, *etc.*) for the

---

[47] *See* Letter from the GOI, "Re: Carbon Steel Flanges from India: Response to Section II of the CVD Questionnaire," dated October 6, 2016 (GOI IQR) at 24-25.
[48] *Id.*
[49] *Id.*
[50] *See* 19 CFR 351.519(a)(1)(ii).
[51] *See Certain Frozen 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 "Duty Drawback (DDB)." In *Shrimp from India*, we stated that the GOI must have a system in place to track consumption of imported products used in the production of exported products as they pertain to receiving duty drawback funds. As the GOI did not demonstrate that such a system was in operation, we determined that the DDB program was countervailable in the prior investigation.
[52] *Id.*
[53] *See* 19 CFR 351.519(a)(4)(i)-(ii).
[54] *See* GOI IQR at 30.

drawback rates in effect during the POI;[55] the GOI did not provide the requested documentation.[56] Thus, consistent with *Shrimp from India*, we are determining that the GOI's response lacks the documentation to support that the GOI has a system in place to confirm which inputs are consumed in the production of the exported products, and in what amounts. Therefore, we preliminarily conclude that the GOI has not supported its claim that its system is reasonable or effective for the purposes intended.[57]

Accordingly, we preliminarily determine that the DDB Program confers a countervailable subsidy. Under the DDB Program, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because rebated duties represent revenue forgone by the GOI. Moreover, as explained above, the GOI has not supported its claim that the DDB Program system is reasonable and effective in confirming which inputs, and in what amounts, are consumed in the production of the exported product. Therefore, under 19 CFR 351.519(a)(4), the entire amount of the import duty rebate earned during the POI constitutes a benefit. Finally, this program is only available to exporters: therefore, it is specific under sections 771(5A)(A) and (B) of the Act.

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 pertinent drawbacks are earned. We calculated the benefit on an as-earned basis upon export 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).

We calculated the subsidy rate using the value of all DDB Program duty rebates that Norma India, USK, UMA, and RNG earned on U.S. sales during the POI. 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 POI. For Norma India and its affiliates USK and UMA, we divided the total amount of the benefit received by each company by the combined total export sales made by Norma India, USK, BDCL and UMA to the U.S. of subject merchandise during the POI.

On this basis, we preliminarily determine a countervailable subsidy rate of 1.92 percent *ad valorem* for Norma India and 1.95 percent *ad valorem* for RNG.

2. Export Promotion of Capital Goods Scheme (EPCGS)

The GOI reported that the EPCGS program provides for a reduction of or exemption from customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to a multiple of the duty value saved on the capital goods within a period of a certain number of years. If the company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction,

[55] *See* Letter to the GOI, dated October 18, 2016.
[56] *See* Memorandum to the File, "Requesting to Take Action on Certain Barcodes," dated November 2, 2016.
[57] *See Shrimp from India*, and accompanying Issues and Decision Memorandum at 12-14.

depending on the extent of the shortfall in foreign currency earnings, in addition to an interest penalty.

The Department has previously determined that import duty reductions or exemptions provided under the EPCGS program are countervailable export subsidies because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone for not collecting import duties; (2) provides two different benefits to respondents, as described below, under section 771(5)(E) of the Act; and (3) is specific pursuant to sections 771(5A)(A) and (B) of the Act because the program is contingent upon export performance.[58] Because the evidence on the record with respect to this program has not changed from previous findings, we preliminarily determine that this program is countervailable.

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 the Department'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).[59] Since the unpaid duties constitute a liability contingent on subsequent events, we treat the amount of unpaid duty liabilities as an interest-free contingent-liability loans. We find the amount respondents would have paid during the POI 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 waived by the GOI waives on imports of capital equipment covered by those EPCGS licenses for which the export requirement has already been met. With regard to licenses for which the GOI has acknowledged that the company has completed its export obligation, 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 pursuant to 19 CFR 351.505(d)(2).

Import duty exemptions under this program are approved for the purchase of capital equipment. The *CVD Preamble* states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring…."[60] In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.

RNG reported that it imported capital goods under the EPCGS program in the years prior to the POI. Based on record information, RNG received various licenses which it reported were for the manufacture of both subject and non-subject merchandise.[61] RNG claimed that all EPCG

---

[58] *See, e.g., Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India*, 67 FR 34905, dated May 16, 2002 (*PET Film Final Determination*), and accompanying IDM at "Pre-Shipment and Post-Shipment Export Financing"; *Shrimp from India*, and accompanying IDM at 14-17; *see also Welded Stainless Pipe from India*, and accompanying IDM at 12-13.
[59] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11163, dated March 2, 2015, and accompanying Issues and Decision Memorandum at 7-10; *see also Welded Stainless Pipe from India*, and accompanying IDM at 12-13.
[60] *See Countervailing Duties*, 63 FR 65393.
[61] *See* RNG IQR at 21 and Exhibit 9(a) - 9(e).

licenses to which it was issued were also redeemed prior to the end of the POI.[62] Also, information provided by RNG indicates that some of the licenses were issued for the purchase of capital goods and input material that could be used in the production of both subject and non-subject merchandise.[63] Based on this information, we cannot reliably determine that the EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). Therefore, we find that all of RNG's EPCGS licenses benefit all of the company's exports sales.

USK reported that they imported capital goods with waived import-duty rates under the EPCGS program.[64] Information provided by USK indicates that its EPCGS licenses were not tied to the production of any type of merchandise, so we are attributing the EPCGS benefits received to their total exports consistent with 19 CFR 351.525(b)(5).[65] USK reported that it met several export requirements for EPCG since December 31, 2015 (the last day of the POI). USK also reported that it did not meet the export requirements for many EPCGS licenses prior to the last day of the POI. Therefore, USK received final waivers of the obligation to pay duties for some imports of capital goods while receiving deferrals from paying import duties for other imports of capital goods. For those deferrals, the final waiver of the obligation to pay the duties has not yet been granted.

To calculate the benefit received from RNG's and USK's formal waiver of import duties on capital equipment imports where its export obligation was met prior to the end of the POI, 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 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 formally waived respondents' outstanding import duties.[66] 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 value of the waivers using respondents' company-specific allocation period of seven years for nonrecurring subsidies, in accordance with 19 CFR 351.524(d)(2).[67] For purposes of allocating the value of the waivers over time, we used the appropriate discount rate for the year in which the GOI officially waived the import duties.[68]

As noted above, import duty reductions that USK 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

---

[62] *Id.* at 23.
[63] *Id.* at 26 and Exhibit 9(e).
[64] *See* USK IQR at 20; RNG IQR at 22.
[65] *Id.*, at Exhibit USK-13(c)-(g).
[66] *See PET Film Final Determination*, and accompanying IDM at Comment 5.
[67] *See* "Allocation Period" section, above.
[68] *See* "Benchmark Interest Rates and Discount Rates" section, above.

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 had not been officially waived by the GOI, as of the end of the POI. Accordingly, we find the benefit to be the interest that the respondent would have paid during the POI had it borrowed the full amount of the duty 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 "Loan Benchmarks and Interest Rates" section, above. We then multiplied the total amount of unpaid duties under each license by the long-term benchmark interest rate for the year in which the capital good was imported and summed these amounts to determine the total benefit. For EPCGS licenses with duty free imports made during the POI, we calculated a daily interest rate based on a long-term interest rate and the number of days the loan was outstanding during the POI, to arrive at a prorated contingent liability for those imports.

The benefit received under the EPCGS program is the sum of: (1) the benefit attributable to the POI from the formally-waived duties for imports of capital equipment for which the respondents met export requirements by the end of the POI; and (2) the interest that would have been due had the respondents borrowed the full amount of the duty reduction or exemption at the time of importation for imports of capital equipment that have unmet export requirements during the POI. We then divided the total benefit received by USK under the EPCGS program by the combined total exports sales of USK, Norma India, BDCL and UMA during the POI, as described above. On this basis, we preliminarily determine a countervailable subsidy rate of 0.33 percent *ad valorem* for Norma India[69] and 0.37 percent *ad valorem* for RNG.[70]

3. Merchandise Export from India Scheme (MEIS)

RNG reported receiving benefits from the MEIS during the POI.[71] The GOI explained that the MEIS was introduced in the Foreign Trade Policy (FTP) 2015-2020. Its purpose is to "offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness."[72] Under this program, the GOI issues a scrip worth either two, three, or five percent of the FOB value of the of "exports in free foreign exchange, or on the FOB value of exports, as given on the shipping bills in free foreign

[69] *See* Norma India's Preliminary Calculation Memorandum.
[70] *See* RNG's Preliminary Calculation Memorandum.
[71] *See* GOI's IQR at 97; *see also* RNG IQR at 47.
[72] *See* GOI's IQR at 97

exchange, whichever is less."[73] To receive the scrip, a recipient must file an electronic application and supporting shipping documentation for each port of export with Director General of Foreign Trade (DGFT).[74] Each application can only comprise of a maximum of 50 shipping bills.[75] After a recipient receives and registers the scrip, it may use it for either the payment of future customs duties for importing goods or transfer it to another company.[76]

The Department has found a similar program, the Status Holder Incentive Scheme (SHIS), to be countervailable. For that program, similar to this MEIS program, the GOI provides scrips to exporters worth a certain percentage of the FOB value of exports. The scrip could then be used as a credit for future import duties or could be transferred to other "Status Holders" to be used as credit for future import duties.[77]

The program is specific within sections 771(5A)(A) and (B) of the Act because, as the GOI and RNG admit, its eligibility to receive the scrips is contingent upon export.[78] As the Department determined for the SHIS program, this program provides a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act because the scrips provide exemptions for paying duties associated with the import of goods which represents revenue foregone by the GOI.[79]

RNG reported that it submitted applications and received approval under the MEIS program. According to RNG, it met the requirements of this program and obtained the requisite scrips from the DGFT, which it could use for its own consumption or sell it in the market. RNG indicated that it sold all of its scrips, or licenses, based on the sales value, rather than on the license value. According to RNG, the MEIS program is a continuous program and thus, is recurring, in nature.[80]

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 under 19 CFR 351.524(c)(2)(i). We calculated the benefit to RNG to be the total value of scrips granted during the POI. Normally, in cases where the benefits are granted based on a percentage value of a shipment, the Department calculates benefit as having been received as of the date of exportation;[81] 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, the MEIS

---

[73] *Id.* at 97.
[74] *Id.* at 100.
[75] *Id* at Exhibit 9, paragraph 3.16; *see also* RNG IQR at 48.
[76] *See* RNG IQR at 49.
[77] *PET Film from India 2013 Preliminary Results*, and accompanying IDM at 11, *unchanged in PET Film from India 2013 Final Results*, and accompanying IDM; *Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) (*Steel Threaded Rod from India Final*), and accompanying IDM, at "Status Holder Incentive Scrip."
[78] *Id.*
[79] *Id.*
[80] *See* RNG IQR at 50-51.
[81] *See* 19 CFR 351.519(b)(1); *see also Welded Stainless Pipe from India* and accompanying IDM at 8-11.

licenses, which contain the date of validity and the duty exemption amount as issued by the GOI, are the best method to determine and account for when the benefit is received.[82] On this basis we determine the countervailable subsidy provided to RNG under the MEIS to be 1.30 percent *ad valorem*.[83]

4. Interest Equalization Scheme (IES)

The GOI introduced the IES program effective April 1, 2015, which centers on rupee export financing, or pre-shipment and post-shipment export financing in rupee denomination. Under this program, the Reserve Bank of India provides a refund of three percent of interest charged by the bank on "pre-shipment and post-shipment export finance in Rupees."[84] According to RNG, this scheme is available to certain products that are exported under specific tariff codes, as identified by the Reserve Bank of India for exports made by Micros, Small & Medium (MSMEs) across all "ITC (HS) codes."[85] RNG states that the three percent interest equalization, as charged by the bank, is specific to the merchandise under investigation and is contingent upon exports.[86]

In order to avail benefits under this program, RNG explains that it must first submit a formal application to its local commercial bank identifying the "ITC HS code" of the product to be or that has been exported and for which it is requesting a refund under the IES. RNG further explained that once the bank is satisfied with the information submitted in the company's application, the bank issues a credit to the company's bank account equivalent to the three percent refund under this scheme. According to RNG, thereafter, the bank credits the interest refund on a monthly basis.[87]

While RNG self-reported the use of the IES program its questionnaire response and provided documentation, it is the Department's practice to rely on governments to provide financial contribution and specificity information. In this instance, while RNG did provide documentation demonstrating operation of this program in accordance with the RBI and other banking rules, we were not able to confirm this information with the GOI and its official documents, as discussed above under "Use of Facts Otherwise Available." Therefore, we are determining that an adverse

---

[82] *See Polyethylene Terephthalate Film, Sheet and Strip From India: Preliminary Results And Partial Rescission of Countervailing Duty Administrative Review; 2012*, 79 FR 50616, dated 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 Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 40, dated March 2, 2015; *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 7753 dated February 16, 2016 at Comment 2.
[83] *See* RNG's Preliminary Calculation Memorandum.
[84] *See* RNG IQR at 52; see also RNG IQR at Exhibit 17(a), which includes a circular from the Ministry of Commerce and Industry regarding the IES on Pre- and Post-Shipment Rupee Export Credit.
[85] *Id*. Exhibit 17(a) includes several pages that were purportedly extracted from a list of 416 ITC HS lines, or tariff codes, covered by the GOI IES program.
[86] *Id*.; *see also* RNG IQR at Exhibit 17(a), which lists the products that may be eligible for interest equalization, RNG points to ITC (HS) Code, *i.e.*, tariff codes, 7307 representing "Articles of Iron or Steel," specifically, "Tube or Pipe Fittings (For Example, Couplings, Elbows, Sleeves); 7326 that include, Of Iron Or Steel" or "Other Articles of Iron or Steel."
[87] *See* RNG IQR at 52-54 and Exhibit 17.

inference is warranted in determining whether the GOI provided a financial contribution to RNG under the IES program, and in determining whether this program is specific. Accordingly, we preliminarily determine 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.

Based on the information provided on the record of this investigation, we find that a benefit was conferred under section 771(5)(E)(ii) of the Act inasmuch as the interest rates, which are determined by the RBI, provided under these programs are lower than commercially available interest rates. As discussed above under the section in this memorandum entitled, "Use of Facts Otherwise Available," we are using information on the record as provided by RNG to calculate the benefit received. Because the IES program is contingent upon exports, and is a recurring benefit, we divided the total benefit received for each year in which this benefit was reported by the value of RNG's total exports during the POI. On this basis we determine the countervailable subsidy provided to RNG under the MEIS program to be 0.04 percent *ad valorem*.

5. Status Holder Incentive Scheme (SHIS)

Norma India, USK, and UMA self-reported use of the SHIS in their respective questionnaire responses and provided certain supporting documentation. It is the Department's practice to rely on governments to provide financial contribution and specificity information. In this instance, while Norma India, USK, and UMA did provide documentation demonstrating operation of this program in accordance with the RBI and other banking rules, we were not able to confirm this information with the GOI and its official documents, as discussed under section "Use of Facts Otherwise Available," above. As discussed above, we are therefore finding that an adverse inference is warranted in determining whether the GOI provided a financial contribution through the SHIS program, and whether the SHIS is specific. Consequently, as AFA, we preliminarily determine that the GOI conferred a financial contribution and we find the SHIS program specific within the meaning of sections 771(5)(D) and 771(5A) (B) of the Act, respectively.

With respect to RNG, the company acknowledged its attempt to avail benefit under this program during the POI. However, RNG's application for the SHIS scrip was rejected by the DGFT. Accordingly, no benefit was received or reported by RNG during the POI.[88]

As explained in *Steel Threaded Rod from India*, a benefit is also provided under the SHIS program under 771(5)(E) of the Act and 19 CFR 351.519 in the amount of exempted duties on imported capital equipment. As discussed at "Use of Facts Otherwise Available," section above, we are using information on the record provided by respondents to calculate the benefit received by the companies.

USK, UMA, and Norma India reported that import duty exemptions under this program are provided solely for the purchase of capital equipment.[89] The *CVD Preamble* states that, if a government provides an import duty exemption tied to major equipment purchases, "it may be

[88] *See* RNG IQR at 54-55.
[89] *See, e.g.* Letter from USK, "Re: Finished Carbon Steel Flanges from India: Initial Response to Section III of Initial Questionnaire," dated October 6, 2016 (USK IQR) at 47.

reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring… ."[90] In accordance with 19 CFR 351.524(c)(2)(iii) and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.[91]

USK, UMA, and Norma India reported that they received SHIS license scrips to import capital goods duty-free during the AUL. Information provided by Norma India and its affiliates indicates that its SHIS license scrips were issued for the purchase of capital goods used for the production of exported goods, so we are attributing the SHIS benefits received by Norma India and its affiliates to the combined total exports, less intercompany sales.[92]

The SHIS scrip represents a non-recurring benefit that is not automatically received and is known to the recipient at the time of receipt of the scrip.[93] Although the Department's regulations stipulate that we will normally consider the 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, which contain the date of validity and the duty exemption amount, as issued by the GOI, are the best method to determine and account for when the benefit is received.[94]

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 year in which Norma India and its affiliates received the SHIS scrip and determined to allocate the benefits across the AUL.[95] We then calculated the benefits according to the calculation provided for in 19 CFR 351.524(d)(1). On this basis, we determine a countervailable subsidy of 0.51 percent *ad valorem* for Norma India.

B. Programs Preliminarily Determined to be Not Used

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

1. Focus Product Scheme

As discussed above in section "Use of Facts Otherwise Available," based on AFA, we find that the GOI conferred a financial contribution through the Focus Product Scheme, and we find that the program is specific. However, respondents reported non-use of this program.

---

[90] *See Countervailing Duties*, 63 FR at 65393.
[91] *See Steel Threaded Rod from India*, and accompanying IDM at "Status Holder Incentive Scrip."
[92] *See* Norma India Preliminary Calculation Memorandum.
[93] *See Steel Threaded Rod from India Final*, and accompanying IDM at "Status Holder Incentive Scrip;" *see also*, GOI IQR at 101-102 and 105.
[94] The Department 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.
[95] *See* Norma India's Preliminary Calculation Memorandum.

2. *Advanced License Program*
3. *Advance Authorization Scheme*
4. *Duty Free Import Authorization Scheme*
5. *Market Development Scheme*
6. *Market Access Initiative*
7. *Status Certificate Program*
8. *Steel Development Fund Loans*

State Government of Maharashtra (SGOM) Subsidy Programs

9. *Infrastructure Assistance for Mega Projects Under the Maharashtra Industrial Policy of 2013 and Other SGOM Industrial Promotion Policies to Support Mega Projects*
10. *Subsidies for Mega Projects under the Package Scheme of Incentives*
11. *Maharashtra Package Scheme of Incentives, 2013*

XI. CALCULATION OF THE ALL-OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not individually investigated, we will determine an all-others rate by weight averaging the individual company subsidy rates of each of the companies investigated, excluding any zero, *de minimis*, or facts available rates. In this review, the preliminary subsidy rates calculated for the two mandatory respondents are above *de minimis* and neither was determined based entirely on facts otherwise available pursuant to section 776 of the Act. However, calculating the all-others rate by using the respondents' actual weighted-average rates risks disclosure of proprietary information. Therefore, for these preliminary results, we calculated the simple-average all-others rate for non-selected companies using publicly-ranged information reported by Norma India and RNG. As a result, the all-others rate is 3.21 percent *ad valorem*.[96]

XII. International Trade Commission

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making all non-privileged and non-proprietary information relating to this investigation available to the ITC. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

[96] *See* Memorandum to the File, "Countervailing Duty Investigation of Finished Carbon Steel Flanges from India: Preliminary Determination Margin Calculation for All-Others," dated concurrently with this memorandum.

XIII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[97] Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[98] This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.[99] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time, and location to be determined. Parties will be notified of the date, time, and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.[100] Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time, on the due dates established above.[101]

---

[97] *See* 19 CFR 351.224(b).
[98] *See* 19 CFR 351.309(c)(2) and (d)(2).
[99] *See* 19 CFR 351.310(c).
[100] *See* 19 CFR 351.303(b)(2)(i).
[101] *See* 19 CFR 351.303(b)(1).

XIV. CONCLUSION

We recommend that you approve the preliminary determination described above.

☒ ☐

_____ _____

Agree Disagree

11/21/2016

X

Signed by: PAUL PIQUADO

Paul Piquado
Assistant Secretary
for Enforcement and Compliance