

Post Disclosure Comments of the Government of India

The Government of India presents its comments to the United Kingdom-Trade Remedies Authority and has the honour of writing with reference to the Transition Review of countervailing measures applying to certain Stainless-Steel Bars and Rods (“Subject goods”) originating in the Republic of India. The Government of India presents the following comments to the Statement of Essential Facts issued by the Trade Remedies Authority (“TRA”) on 20th December 2022:

1. At the outset, GOI would like to convey its appreciation to the Trade Remedies Authority (“TRA”) for reaching a conclusion in favor of suspension of countervailing duties in force against the subject goods from India. GOI strongly believes that the said countervailing duties have been place for a sufficient period of time, and are no longer required for the protection of the UK Industry. Therefore, the GOI requests the TRA to confirm its conclusion made in the statement of essential facts and make a final recommendation to revoke the CVD against the imports of the subject goods from India.
2. Notwithstanding GOI’s appreciation for the TRA’s conclusion in the statement of essential facts, GOI would like to place the following submissions on record to re-iterate its position:
A. Non-participation of the UK domestic producers and importers
3. None of the domestic producers in the United Kingdom have filed an application for review of the current transition review and have also not registered as interested parties to this review. Further no questionnaire response has been filed by the UK domestic producers as well as the importers of the subject goods in the UK. The non-participation of the UK domestic producers as well as the UK importers is a strong indication that the UK producers and importers are not in favor of continuation of the duty. GOI supports the decision by the TRA to apply facts available to reach its conclusion that no injury is being caused to the UK industry.
4. GOI would also like to highlight that EEF Limited (“UK Steel”) had initially requested for a continuation of the duty against the subject goods from India.¹ However, subsequently, EEF Limited (“UK Steel”) has withdrawn its interest *“due to minimal supply to the UK market of stainless bars and rods by UK producers and therefore very low risk of injury resulting from the removal of the measure. This position is supported by both the UK producers of the product.”*² Since UK Steel is a trade association representing all of the country’s steel producers and a vast majority of its downstream processors, a categorical statement by them to support the revocation of the duty is a clear indication that the UK domestic industry and downstream processors are not in favour of extension of the duty in

¹ See UK Steel, Registration of Interest dated 6th July 2022, <https://www.trade-remedies.service.gov.uk/public/case/TS0023/submission/a87ea013-c346-4958-82c0-8635ba28d495/> (accessed 21st January 2023, at IST 11:13).

² See UK Steel Questionnaire Response dated 5th September 2022, <https://www.trade-remedies.service.gov.uk/public/case/TS0023/submission/d831f230-7887-456e-a562-d8b2c60e99f5/> (accessed 21st January 2023, at IST 11:15).

force. Furthermore, the continuation of duty would be against the interest of the UK industry as a whole due to the shortage of supply of the subject goods by the UK producers.

B. Cooperation by the interested parties from India

5. GOI would like to point out that one of the major exporters of the subject goods from India, Viraj Profiles Private Limited (“Viraj”) has fully cooperated in this review by not only filing the response to the questionnaire issued by the TRA, but also by welcoming TRA’s verification of its data. Furthermore, GOI, through its Trade Defense Wing (ITDW) has fully cooperated in this investigation by filing its response to the questionnaire. ITDW assures the TRA of its continued cooperation for this investigation.

C. No likelihood of Subsidized Imports

6. GOI understands that the UK has not made a re-assessment of the countervailability of the subsidy programs in question and has only examined whether there is a likelihood of subsidized imports continuing if the measure were no longer applied. In paragraphs 83 and 84 of the disclosure of essential facts, the TRA has noted that two programs, i.e. Advance Authorization Scheme (“AAS”) and the Duty Drawback Scheme (“DDS”) are still in operation. TRA has determined that since Viraj has not received benefits from AAS, it was unable to examine AAS in relation to the Goods Subject to Review. It has been concluded “*that DDS continues to operate and confer a benefit to UK exports of the Goods Subject to Review.*”
7. In this context, GOI submits that DDS is not countervailable in terms of footnote 1 of the ASCM. Footnote 1 of the SCM Agreement confirms that the financial contribution in the form of the government revenue foregone, is limited to the excess amount of remission. Footnote 1 identifies two situations under which subsidies is deemed not to exist- (i) The exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption; and (ii) the remission of such duties or taxes in amounts not in excess of those which have accrued.
8. The above submission is also accepted by the Appellate body in *European Union - Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan (DS 486)*. The panel (as affirmed by the Appellate body) in this report stated that “the excess remission principle” provides the legal standard which determine whether the remissions of import duties obtained under the duty drawback scheme constitute a financial contribution in the form of government revenue foregone that is otherwise due within the meaning of Article 1.1 (a)(1)(ii) and footnote 1 of the SCM Agreement. The panel considered the “duties.... which have accrued” within the meaning of footnote 1 to be those import duties accrued on imported inputs consumed in the production of a subsequently exported product.
9. The panel also considered that a comparison under Article 1.1(a)(1)(ii) is required to be done between the remission of duties obtained by a company under the scheme, on the one hand, and the duties that accrued on imported production inputs used by that company to produce a subsequently exported product, on the other hand. The panel viewed that a

subsidy in the form of government revenue foregone that is otherwise due, exist only to an extent the former exceeds the latter. It is well established that duty exemption and remission programs are not inconsistent with the ASCM. In this regard reference is drawn to paragraphs (h) and (i) of Annex I read with Annex II of the ASCM.

10. GOI submits that it has already placed on record in its questionnaire response all the relevant laws and procedures to demonstrate that no excess remission takes place through the duty drawback scheme. GOI therefore requests TRA to reconsider its conclusion regarding the countervailability of the duty drawback scheme.

D. No Likelihood of Injury due to imports from India

11. GOI fully supports the conclusion of the TRA that “*there is no likelihood of injury continuing or recurring were the measure to no longer apply*”. GOI notes that from Table 1 in paragraph 67 of the Statement of Essential Facts, it is clear that the volume of imports from India is miniscule when compared to imports from other sources. It is submitted that low volumes of imports are unlikely to cause injury to the UK domestic industry. Furthermore, due to the absence of any information regarding to the performance of the UK domestic industry due to the non-participation of the UK producers, it is not possible to make a conclusion that there is either injury or likelihood of continuation of injury in case of revocation of duty. GOI appreciates the TRA’s decision to apply facts available to determine that there is no positive evidence to suggest that injury was likely to recur if the measure were to no longer apply.
12. However, the GOI would like to highlight that the reference to the injury analysis of the EU investigation in paragraph 105 of the statement of essential facts is not appropriate since the injury analysis of the European Commission was made in relation to the EU Union Industry as a whole, and this may not be a true and exact reflection of situation of the UK Domestic Industry.

E. Conclusion and Requests

13. GOI expresses its appreciation and support for the intended recommendations made in the Statement of Essential Facts to revoke the countervailing duty in force against the subject goods from India. However, based on the explanation provided above regarding DDS, GOI requests the TRA to conclude that “DDS” is not countervailable.
14. **GOI requests the TRA to affirm its conclusion in the Statement of Essential Facts and make a final recommendation for revocation of duty in force against the subject goods from India.**
15. The Government of India takes this opportunity to renew to the TRA the assurances of its highest consideration.